IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Wiley Y. Daniel

Civil Action No. 83-cv-02388-WYD
(Consolidated with Civil Action No. 86-cv-1675-WYD)

STATE OF COLORADO,

Plaintiff,

v.

ASARCO INCORPORATED, et al.,

Defendants and Third-Party Plaintiffs,

v.

LEADVILLE CORPORATION, et al.,

Third Party Defendants,

UNITED STATES OF AMERICA,

Plaintiff,

v.

APACHE ENERGY AND MINERALS
COMPANY, et al.,

Defendants.

**ORDER GRANTING UNOPPOSED JOINT MOTION
FOR ENTRY AND APPROVAL OF FINAL CONSENT DECREES**

THIS MATTER is before the Court on the Unopposed Joint Motion for Entry and Approval of the Final Consent Decrees, filed by the United States and the State of Colorado (docket #282). The Court, having considered the motion and being fully

advised in the premises, finds that the Final Consent Decrees are fair, reasonable and consistent with the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act for the reasons set forth in the motion. Accordingly, it is

ORDERED that the Unopposed Joint Motion for Entry and Approval of the Final Consent Decrees (docket #282) is **GRANTED**. The Final ASARCO Decree, which was lodged with this Court on July 2, 2008 (Attached to docket #277), is approved and deemed to be entered on the date of this Order. The Final Newmont Decree, which was lodged with this Court on July 2, 2008 (Attached to docket #278), is approved and deemed to be entered on the date of this Order. It is further

ORDERED that this action is hereby **DISMISSED WITHOUT PREJUDICE**; provided, however, that nothing herein shall affect the terms of the Final Consent Decrees entered this day and that this Court retains jurisdiction to enforce the terms of the Final Consent Decrees and the Modification of 1994 Consent Decree Affecting Operable Unit 9, entered by this Court on May 1, 2008 (docket #273).

Dated: August 29, 2008

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
U. S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

STATE OF COLORADO, *Plaintiff*, v. ASARCO INCORPORATED, *et al*., *Defendants and Third-Party Plaintiffs*, v. LEADVILLE CORPORATION, *et al*., Third-Party Defendants	Civil Action No. 83-C-2388
UNITED STATES OF AMERICA, *Plaintiff*, v. APACHE ENERGY AND MINERALS COMPANY, *et al*., *Defendants*.	Civil Action No. 86-C-1675

FINAL CONSENT DECREE WITH NEWMONT USA LIMITED AND RESURRECTION MINING COMPANY

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I. BACKGROUND

A. On August 6, 1986, the United States of America ("United States"), at the request of the United States Environmental Protection Agency ("EPA"), filed a complaint against, among others, Newmont Mining Corporation (now known as Newmont USA Limited) ("Newmont") and Resurrection Mining Company ("Resurrection") (collectively, "Settling Defendants") pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607. The complaint sought injunctive relief for performance of response actions and for reimbursement of costs incurred and to be incurred by the United States in response to the release or threat of release of hazardous substances at the California Gulch Superfund Site located in and around Leadville, Colorado.

B. On December 9, 1983, the State of Colorado filed a complaint against Resurrection and others under Section 107 of CERCLA, 42 U.S.C. § 9607, for injury, destruction, or loss of natural resources associated with the release of hazardous substances and the cost of assessment of such injury from the Yak Tunnel and associated mine workings. The State amended its complaint on April 8, 1985, to include additional claims under Section 107 of CERCLA, 42 U.S.C. § 9607, for reimbursement of costs incurred and to be incurred in response to the release or threat of release of hazardous substances at the Yak Tunnel, associated mine workings, California Gulch, and portions of the Arkansas River.

C. The federal and state actions were consolidated on February 3, 1987. Asarco and Settling Defendants asserted counter-claims for contribution against the United States and State in the consolidated action.

D. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List ("NPL") on September 8, 1983. For ease of administration, the Site was divided into 12 operable units ("OUs"), numbered one through 12. EPA has selected a remedy for each OU at the Site except OU12.

E. On July 25, 1988, EPA issued a Unilateral Administrative Order ("UAO") (No. CERCLA VIII 88-11), superseded on March 19, 1989 by UAO No. CERCLA VIII 89-20 (collectively, the "Yak Tunnel UAOs"), requiring Settling Defendants (and others) to implement the selected remedy for OU 1, including the construction, operation and maintenance of a surge pond and water treatment plant near the portal of the Yak Tunnel to treat acid mine drainage before its discharge into California Gulch.

F. On August 26, 1994, the U.S. District Court for the District of Colorado approved and entered a Consent Decree (the "1994 Decree") in United States v. Apache Energy and Minerals Co., *et al.*, Civil Action No. 86-C-1675 (consolidated with State of Colorado v. ASARCO Inc., *et al.*, Civil Action No. 83-C-2388) ("the Federal Lawsuit"). As part of the 1994 Decree, Settling Defendants agreed to undertake response actions at OUs 4, 8, and 10. In return, the United States and the State provided certain covenants not to sue to the Settling Defendants. The Plaintiffs' claims for natural resource damages and assessment costs (natural resource damages or "NRDs") and liability with respect to OUs 1, 11, and 12 were not resolved by the 1994 Decree. The Federal Lawsuit was placed on administrative closure.

G. Much of the work required under the 1994 Decree with respect to OUs 4, 8, and 10 has been completed while operation and maintenance work is continuing. The remedial action for OU1 has been implemented, and operations and maintenance work continues at OU 1 pursuant to the Yak Tunnel UAOs.

H. EPA has completed a Remedial Investigation report, and a draft Feasibility Study report is under consideration, for OU 12 (addressing site-wide water quality matters). EPA anticipates issuing a proposed remedial action plan for OU12 within the next year. EPA will then select a remedy for OU12, which will be described in a record of decision.

I. The Colorado Mined Land Reclamation Act requires mining operators to obtain a permit from the State of Colorado and to reclaim areas disturbed by mining operations. In 1979, the Colorado Mined Land Reclamation Board and the Colorado Division of Reclamation, Mining and Safety (f/k/a the Division of Minerals and Geology and the Mined Land Reclamation Division) issued a permit (permit number M-1977-218-UG) to Asarco Incorporated, n/k/a Asarco LLC for its mining operations at the Black Cloud Mine, a/k/a Leadville Unit. Asarco LLC posted a financial warranty in the form of a corporate surety in the amount of $ 2,233,400 and a cash bond in the amount of $3,263.84 to ensure reclamation of the Black Cloud Mine. In addition, Asarco LLC recorded a deed of trust in the clerk and recorder's office in Lake County, Colorado, in favor of the Mined Land Reclamation Board as to all Resurrection-Asarco joint venture property. Although some reclamation has been conducted, the majority of reclamation of the Black Cloud Mine has not been performed. In addition, the State believes that the corporate surety bond, the cash bond and the deed of trust are not adequate to meet bonding requirements of the Colorado Mined Land Reclamation Act. Pursuant to a separate agreement with Asarco LLC, the Settling Defendants have agreed to assume the responsibility of reclaiming the Black Cloud Mine subject to the terms of this Consent Decree. Based on the information presently available, the Mined Land Reclamation Board and the Division of Reclamation, Mining and Safety believe that reclamation of the Black Cloud Mine will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

J. Based on the information currently available to EPA, EPA believes that the Work at the Site will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

K. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Work to be performed at the Site by the Settling Defendants under this Consent Decree shall constitute a response action taken or ordered by the President.

L. The Settling Defendants and their affiliates, directors, officers and employees do not admit any liability to the Plaintiffs or any other persons arising out of the transactions or occurrences alleged in the consolidated actions, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this

Consent Decree will expedite the cleanup and reclamation of the Site and further the restoration of the Upper Arkansas River Basin, and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the State and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including but not limited to any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Settling Defendant 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 Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or the Colorado Mined Land Reclamation Act or in regulations promulgated under CERCLA or the Colorado Mined Land Reclamation Act shall have the meaning assigned to them in CERCLA or the Colorado Mined Land Reclamation Act respectively or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"1994 Decree" shall mean the consent decree entered by the United States District Court for the District of Colorado on August 26, 1994 in the consolidated matters of United States v.

Apache Energy and Minerals Co., *et al*., Civil Action No. 86-C-1675, and Colorado v. ASARCO Inc., *et al*., Civil Action No. 83-C-2388.

"2007 Dollars" shall mean, for any dollar amount expressed as such in this Consent Decree, the nominal value of such amount as it existed in the year 2007. When determined in any year after 2007, a value that is expressed in this Consent Decree as being in "2007 Dollars" shall be inflated to such later -year dollars by means of the Consumer Price Index – All Urban Consumer (CPI-U), U.S. City Average, all items, base period 1982-84=100, as published by the U.S. Department of Labor, Bureau of Labor Statistics. Such values shall be converted to later-year dollars by multiplying the 2007 dollar value times a fraction whose numerator is the CPI-U for the most recent full calendar year at the date of calculation and whose denominator is the CPI-U for the year 2007. This can be expressed by the formula: Future Value = 2007 dollar amount x (most recent future year CPI-U / 2007 CPI-U). In the event the CPI-U ceases to be published or is materially altered, the Parties shall mutually agree upon an alternative index comparable to the CPI-U.

"Black Cloud Mine" shall mean that mine located in the vicinity of, but not included in, the California Gulch Superfund Site and in or around the Leadville Mining District east of Leadville, Colorado and that is described in Section 1 of the Reclamation Plan and Schedule and is depicted on Figure 1 thereto.

"California Gulch Superfund Site" shall mean the California Gulch Superfund Site, which consists of approximately 18 square miles in and around Leadville, Colorado, and is depicted generally on the map attached as Appendix C.

"CDPHE" shall mean the Colorado Department of Public Health and Environment and any successor departments or agencies of the State.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq*.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXXVI Appendices). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a Working Day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

"DOI" shall mean the United States Department of Interior and any successor departments or agencies.

"DRMS" shall mean the Colorado Division of Reclamation, Mining and Safety, formerly known as the Division of Minerals and Geology and as the Mined Land Reclamation Division, and any successor departments or agencies of the State.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 143.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Oversight Costs" shall mean all costs, direct and indirect, that the Plaintiffs incur on or after the date of lodging this Consent Decree in monitoring and supervising Settling Defendants' performance of Work at OUs 1, 4, 8 and 10 to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports or other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of such Work and enforcing this Consent Decree. Future Oversight Costs shall include but not be limited to payroll costs, contractor costs, travel costs, laboratory costs, as well as the costs incurred pursuant to Sections X (Remedy Review), XII (Access and Institutional Controls), and XX (Emergency Response), and Paragraphs 13(b) (Modification of the OU1 Work Plan), 17(b) (Modification of the O&M Plan for OUs 4, 8, and 10), and 122 (Work Takeover).

"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.

"MLRA" shall mean the Mined Land Reclamation Act, Colorado Revised Statutes at 34-32-101, *et seq* and regulations promulgated thereunder.

"MLRB" shall mean the Colorado Mined Land Reclamation Board and any successor Board.

"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.

"Natural Resource" or "Natural Resources" shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State of Colorado.

"Natural Resource Damages" shall mean any damages recoverable by the United States or the State on behalf of the public for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources including: (i) the costs of assessing such injury, destruction, loss or impairment arising from or relating to a release of hazardous substances; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent Natural Resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

"NRDAR Fund" shall mean DOI's Natural Resource Damage Assessment and Restoration Fund.

"NRDR Fund" shall mean the State's Natural Resource Damage Recovery Fund.

"O&M Plan for OUs 4, 8, and 10" shall mean the work plan for implementing O&M at OUs 4, 8, and 10, as set forth in Appendix D, and any modifications thereto made in accordance with this Consent Decree.

"Operation and Maintenance" or "O&M" shall mean all activities required under the O&M Plan for OUs 4, 8 & 10 and to maintain the effectiveness of the Remedial Action as required under the OU1 Work Plan, and any modifications thereto made in accordance with this Consent Decree.

"OU1" shall mean Operable Unit 1 at the California Gulch Superfund Site, which includes the Yak Tunnel and Yak Water Treatment Plant as depicted on the map attached as Appendix C and the work that addresses the discharge of acid mine drainage from the Yak Tunnel into California Gulch. The facilities within OU1 include the entire length of the Yak Tunnel; the Yak Tunnel portal; the bulkhead within the Yak Tunnel; external Yak Tunnel flow conveyance channels, ditches and pipelines; existing and future monitoring wells; the surge pond and Yak Water Treatment Plant.

"OU1 ROD" shall mean the EPA Record of Decision relating to Operable Unit 1 at the Site signed on March 29, 1988, by the Regional Administrator, EPA Region 8, or his/her delegate, and all attachments thereto, as modified by a ROD modification on March 23, 1989 and an "Explanation of Significant Differences" or "ESD" signed by EPA on October 22, 1991.

"OU1 Work Plan" shall mean the work plan set forth in Appendix A and any modifications thereto made in accordance with this Consent Decree.

"OU12" shall mean that operable unit encompassing the California Gulch Superfund Site surface waters and shallow alluvial aquifer not to exceed a depth of 250 feet or contact with bedrock, whichever is the lesser depth below the ground surface.

"OUs 4, 8 and 10" shall mean the operable units as defined in Appendix B and generally depicted on the map attached as Appendix C as operable units 4, 8 and 10.

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

"Parties" shall mean the United States, the State of Colorado, and the Settling Defendants.

"Past Response Costs" shall mean all costs, including but not limited to, direct and indirect costs, that the Plaintiffs have paid in connection with the Site through the date of lodging, plus accrued Interest on all such costs through such date.

"Performance Standards" shall mean the cleanup and reclamation standards and other measures of achievement set forth in the OU1 Work Plan, the O&M Plan for OUs 4, 8 and 10, and the Reclamation Plan and Schedule.

"Plaintiffs" shall mean the United States, on behalf of EPA and DOI, and the State of Colorado on behalf of CDPHE, all State natural resource trustees, DRMS and MLRB.

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

"Reclamation Plan and Schedule" shall mean the approved reclamation plan and schedule to be implemented at the Black Cloud Mine set forth in Appendix E to this Consent Decree and any modification made thereto in accordance with this Consent Decree.

"Records of Decision" or "RODs" shall mean the records of decision and any amendments or explanations of significant differences thereto for OUs 4, 8 and 10.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants at the Site to implement the OU1 Work Plan, including any work required in the event a contingency is triggered under the OU1 Work Plan.

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

"Settling Defendants" shall mean Newmont USA Limited (formerly known as Newmont Mining Corporation) and Resurrection Mining Company and their successors and assigns. For purposes of the Covenants not to Sue in Sections XXVII and XXVIII only, Settling Defendants shall include Settling Defendants' officers, directors and employees but only to the extent that the liability of such officers, directors, and employees arises solely from their status as officers, directors, or employees.

"Site" shall mean the California Gulch Superfund Site, the Black Cloud Mine, and any other areas where Waste Material from the California Gulch Superfund Site has come to be located. For purposes of the NRD covenants not to sue only, the Site shall mean the California Gulch Superfund Site, the Black Cloud Mine and (a) the 500-year flood plain of Iowa Gulch beginning at the Black Cloud Mine and extending down to the confluence with the Arkansas River, and (b) all areas where releases of hazardous substances from the Yak Tunnel specifically, and the California Gulch Superfund Site generally, have come to be located within the Arkansas River drainage to and including the Pueblo Reservoir.

"State" shall mean, unless otherwise indicated, the State of Colorado, including CDPHE, the State Natural Resource Trustees, MLRB, and DRMS.

"Supervising Contractor" shall mean the principal contractor, if any, retained by Settling Defendants to supervise, manage and direct the implementation of the Work under this Consent Decree. Any contractors that Settling Defendants retain to perform Work where the contractors' activities are supervised, managed, or directed by Settling Defendants shall not constitute a Supervising Contractor.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, including reclamation of the Black Cloud Mine, excluding those activities required by Section XXXII (Retention of Records).

"Yak Water Treatment Plant" shall mean the current water treatment plant situated in California Gulch, any modification or expansion of such plant, and any satellite or additional water treatment plant constructed in California Gulch for purposes of treating water that must be managed pursuant to this Consent Decree, including the OU1 Work Plan, the O&M Plan for OUs 4, 8 and 10, and the Reclamation Plan and Schedule.

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health, welfare, and the environment at the Site by the design and implementation of response actions by the Settling Defendants, to reimburse response costs of the Plaintiffs, to reimburse Plaintiffs for Natural Resource Damages, to satisfactorily reclaim the Black Cloud Mine by implementation by the Settling Defendants of the Reclamation Plan and Schedule, and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants.

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the OU1 Work Plan, the O&M Plan for OUs 4, 8, and 10, and the Reclamation Plan and Schedule. Settling Defendants shall also reimburse Plaintiffs for Past Response Costs, Future Oversight Costs, and Natural Resource Damages as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work, pay amounts owed the United States and the State, and provide Performance Guarantees for the Work under this Consent Decree are joint and several. In the event of the insolvency or other failure of any Settling Defendant to implement the requirements of this Consent Decree, the remaining Settling Defendant shall complete all such requirements.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the OU1 Work Plan, the O&M Plan for OUs 4, 8, and 10, and the Reclamation Plan and Schedule. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, and except as provided in Paragraph 8.d below for the Black Cloud Mine, no 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). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XXIV (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. The permit issued by the MLRB and DRMS to Asarco Incorporated, n/k/a Asarco LLC pertaining to reclamation of the Black Cloud Mine (Permit No. M-1977-218-UG) will be terminated or otherwise released upon the request of Asarco LLC and the corporate surety, cash bond and deed of trust provided by Asarco Incorporated n/k/a Asarco LLC and referenced in the Background Paragraph I above shall be released promptly upon the posting of a Performance Guarantee by the Settling Defendants acceptable to the MLRB and DRMS as specified in this Consent Decree. Reclamation of the Black Cloud Mine by the Settling Defendants shall be regulated and performed pursuant to and in accordance with this Consent Decree and appendices.

d. At least 30 days prior to the proposed transfer date, Resurrection Mining Company ("Resurrection") and Asarco LLC shall submit to CDPHE a completed permit transfer form transferring to Resurrection Colorado Discharge Permit System Permit No. CO-0000591 for discharges, if any, from the Black Cloud Mine and Mill to Iowa Gulch. The State shall thereafter confirm transfer of Permit No. CO-0000591 to Resurrection. This Permit shall govern discharges from the Black Cloud Mine and Mill other than treatment and discharge of water through the Yak Water Treatment Plant which shall be subject to Section 121(e) of CERCLA, 42 U.S.C. § 9621(e).

e. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successors-in-Title.

a. With respect to property within the Site that is now owned or controlled by Settling Defendants or subsequently acquired by Settling Defendants from Asarco LLC pursuant to that Settlement Agreement and Mutual Release dated July 16, 2007 by and among Asarco LLC, the Res-Asarco Joint Venture and Settling Defendants (hereinafter "Asarco Settlement"), within 20 days after the entry of this Consent Decree (or in the case of subsequently acquired property, within 20 days of the acquisition of such property), Settling Defendants shall submit to EPA and the State for review and approval a notice to be filed with the Clerk and Recorder's Office, Lake County, State of Colorado, which shall provide notice to all successors-in-title that the property is part of the Site and that Settling Defendants have

entered into a Consent Decree requiring completion of the Work. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of the case, and the date the Consent Decree was entered by the Court. The Settling Defendants shall record the notice within 10 days of EPA's and the State's approval of the notice. The Settling Defendants shall provide EPA and the State with a certified copy of the recorded notice within 10 days of recording such notice.

b. At least 30 days prior to conveying any interest in property located within the Site including but not limited to fee interests, leasehold interests, and mortgage interests, Settling Defendants shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument that confers a right of access to such property (hereinafter referred to as "access agreements") pursuant to Section XII (Access and Institutional Controls), and (iii) any instrument that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "environmental covenants") pursuant to Section XII (Access and Institutional Controls). At least 30 days prior to such conveyance, the Settling Defendants conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee and the date on which notice of this Consent Decree, access agreements, and environmental covenants were given to the grantee.

c. In the event of any such conveyance, Settling Defendants' obligations under this Consent Decree, including, but not limited to, their obligation to provide or secure access and institutional controls, as well as abide by such institutional controls, pursuant to Section XII (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Defendants. In no event shall the conveyance release or otherwise affect the liability of the Settling Defendants to comply with all provisions of this Consent Decree, absent the prior written consent of EPA and the State. If the United States and the State approve, the grantee may perform some or all of the Work under this Consent Decree.

10. Selection of Supervising Contractor.

a. Any aspect of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the OU1 Work by Settling Defendants), X (Remedy Review), XI (Quality Assurance, Sampling and Data Analysis), and XX (Emergency Response) of this Consent Decree may be under the direction and supervision of a Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. If Settling Defendants intend to use a Supervising Contractor, Settling Defendants shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor before proceeding with activities the Supervising Contractor is being retained to perform. With respect to any contractor proposed to be a Supervising Contractor, Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), 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, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time

thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XXIV (Force Majeure).

VI. PERFORMANCE OF THE OU1 WORK BY SETTLING DEFENDANTS

11. OU1 Work Plan. The OU1 Work Plan, attached as Appendix A, is incorporated into and enforceable under this Consent Decree. Settling Defendants shall implement at their sole expense (subject to possible partial reimbursement pursuant to Paragraph 12 below) all activities required under the OU1 Work Plan. Settling Defendants acknowledge that these activities will require long-term O&M.

12. Reimbursement from Environmental Trust. The United States shall attempt to secure funding from the "Environmental Trust" established in the Consent Decree between the United States, Asarco LLC and Southern Peru Holdings Corporation (No. CV 02-2079-PHX-RCB) to reimburse Settling Defendants for 50 percent of the costs they incur in implementing the OU1 Work Plan. If the United States is successful in securing funding from the Environmental Trust, Settling Defendants may seek reimbursement of eligible costs pursuant to the process established under the Environmental Trust. The right to seek reimbursement from the Environmental Trust and the United States' obligation to seek funding from the Environmental Trust pursuant to this Paragraph shall end as soon as (i) the Asarco LLC Environmental Trust terminates, or (ii) Asarco LLC pays to Settling Defendants the payments agreed to under that Settlement Agreement and Mutual Release dated July 16, 2007 by and among Asarco LLC, the Res-Asarco Joint Venture and Settling Defendants, whichever occurs first.

13. Modification of the OU1 Work Plan

a. If EPA, after consultation with the State, determines that modification to the work specified in the OU1 Work Plan is necessary to achieve and maintain the Performance Standards set forth in the OU1 Work Plan or to carry out and maintain the effectiveness of the remedy set forth in the OU1 ROD, EPA shall provide Settling Defendants and the State with a

written notice explaining such determination. Within 30 days after Settling Defendants' receipt of such notice, Settling Defendants shall, unless they invoke dispute resolution pursuant to Section XXV (Dispute Resolution), submit to EPA and the State a proposed modification to the OU1 Work Plan that addresses the issues described in EPA's notice. EPA shall review the proposed modification in accordance with Section XIV (EPA Approval of Plans and Other Submissions) and may require that such modification be incorporated into the OU1 Work Plan; provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the OU1 ROD, and is either (a) necessary to achieve and maintain Performance Standards in the OU1 Work Plan or (b) necessary to carry out and maintain the effectiveness of the remedy set forth in the OU1 ROD. EPA may not, however, require a modification to the OU1 Work Plan based predominantly on changed conditions directly resulting from work or activities by or on behalf of any Plaintiff. Additional modifications consistent with the scope of the remedy selected in the OU1 ROD could include, for example, requirements to address tunnel failure or elevated mine pool levels triggered by the Contingency Plan, which is incorporated in the OU1 Work Plan.

b. If Settling Defendants object to any notice by EPA under Paragraph 13(a) or any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XXV (Dispute Resolution), Paragraph 98 (record review). In such event, Settling Defendants shall not be required to implement any disputed portion of an OU1 Work Plan modification unless and until a final, non-appealable decision has been issued upholding such modifications. The OU1 Work Plan shall be modified in accordance with final resolution of the dispute. In the event that EPA implements any part of a modification to the OU1 Work Plan that Settling Defendants have disputed, and EPA prevails in the dispute, Settling Defendants shall pay the costs incurred by EPA in implementing the modification to the OU1 Work Plan as a Future Oversight Cost pursuant to Paragraph 81 (Payments for Future Oversight Costs). If Settling Defendants dispute EPA's determination that a plan modification is required, and EPA prevails in such dispute, Settling Defendants shall within 30 days of such final decision submit a proposed modification in accordance with Paragraph 13(a).

c. Settling Defendants shall implement any work required by any modifications incorporated in the OU1 Work Plan in accordance with this Paragraph.

d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the OU1 Work Plan, or any work plan developed under the OU1 Work Plan constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the OU1 Work Plan or any work plan developed under the OU1 Work Plan will achieve the Performance Standards.

VII. PERFORMANCE OF THE OUS 4, 8, AND 10 WORK BY SETTLING DEFENDANTS

15. Settling Defendants shall continue to perform O&M for OUs 4, 8 and 10 pursuant to the O&M Plan for OUs 4, 8 and 10. The Parties agree that the remedial action for OU10 is complete, and that the remedial action for OUs 4 and 8 will be complete upon execution and

recording of the Environmental Covenants or enactment of Governmental Controls in accordance with Section XII.

16. The O&M Plan for OUs 4, 8, and 10, attached as Appendix D, is incorporated into and enforceable under this Consent Decree. Settling Defendants shall implement at their sole expense all activities required under the O&M Plan for OUs 4, 8 and 10, including managing the seep from the Oregon Gulch tailings as provided for therein. Settling Defendants acknowledge that the remedies implemented at OUs 4, 8, and 10 include engineered structures that leave Waste Material in place and that these remedies will require long-term O&M.

17. Modification of the O&M Plan for OUs 4, 8, and 10

a. If EPA, after consultation with the State, determines that modification to the work specified in the O&M Plan for OUs 4, 8, and 10 is necessary to achieve and maintain the Performance Standards set forth in the O&M Plan for OUs 4, 8, and 10 or to carry out and maintain the effectiveness of the remedy set forth in the RODs for OUs 4, 8, and 10, EPA shall provide Settling Defendants and the State with a written notice explaining such determination. Within 30 days after Settling Defendants' receipt of such notice, Settling Defendants shall, unless they invoke dispute resolution pursuant to Section XXV (Dispute Resolution), submit to EPA and the State a proposed modification to the O&M Plan for OUs 4, 8, and 10 that addresses the issues described in EPA's notice. EPA shall review the proposed modification in accordance with Section XIV (EPA Approval of Plans and Other Submissions) and may require that such modification be incorporated into the O&M Plan for OUs 4, 8, and 10; provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the RODs for OUs 4, 8, and 10, and is either (a) necessary to achieve and maintain Performance Standards in the O&M Plan for OUs 4, 8, and 10 or (b) necessary to carry out and maintain the effectiveness of the remedy set forth in the RODs for OUs 4, 8, and 10. EPA may not, however, require a modification to the O&M Plan for OUs 4, 8, and 10 based predominantly on changed conditions directly resulting from work or activities by or on behalf of any Plaintiff. Any modification of the O&M Plan for OUs 4, 8 & 10 may only modify the O&M requirements for OUs 4, 8 and 10, and may not require any additional remedial actions, including any additional source control.

b. If Settling Defendants object to any notice by EPA under Paragraph 17(a) or any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XXV (Dispute Resolution), Paragraph 98 (record review). In such event, Settling Defendants shall not be required to implement any disputed portion of a modification to the O&M Plan for OUs 4, 8, and 10 unless and until a final, non-appealable decision has been issued upholding such modifications. The O&M Plan for OUs 4, 8, and 10 shall be modified in accordance with final resolution of the dispute. In the event that EPA implements any part of a modification to the O&M Plan for OUs 4, 8, and 10 that Settling Defendants have disputed, and EPA prevails in the dispute, Settling Defendants shall pay the costs incurred by EPA in implementing the modification to the O&M Plan for OUs 4, 8, and 10 as a Future Oversight Cost pursuant to Paragraph 81 (Payments for Future Oversight Costs). If Settling Defendants dispute EPA's determination that a plan modification is required, and EPA prevails in such dispute, Settling Defendants shall within 30 days of such final decision submit a proposed modification in accordance with Paragraph 17(a).

c. Settling Defendants shall implement any work required by any modifications incorporated in the O&M Plan for OUs 4, 8, and 10 in accordance with this Paragraph.

d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

VIII. PERFORMANCE OF WORK AT THE BLACK CLOUD MINE BY SETTLING DEFENDANTS

18.

a. Subject to the limitations in this Section VIII, Settling Defendants shall perform reclamation of the Black Cloud Mine in accordance with this Consent Decree and with the Performance Standards established in the Reclamation Plan and Schedule set forth in the appendices. Upon approval of DRMS or MLRB, changes proposed by the Settling Defendants may be made to the Reclamation Plan and Schedule. Such a change will be considered a "major modification" if it (i) results in a change in post-mining land use, (ii) results in an increase in the acreage of land affected in executing the Reclamation Plan and Schedule or (iii) if the DRMS and Settling Defendants otherwise agree the proposal will require a significant change in the design of a constructed reclamation feature. All other changes to the Reclamation Plan and Schedule will be considered minor modifications. If Settling Defendants and DRMS disagree as to whether a proposed change constitutes a major modification in accordance with this Paragraph, such dispute shall be resolved in accordance with the dispute resolution provisions under Paragraphs 96 and 100. The Settling Defendants shall pay to DRMS $4,025 each time they apply for a major modification and shall pay $1,000 each time they apply for a minor modification to the Reclamation Plan and Schedule. Settling Defendants shall pay $1,150 each year on or before December 1 until the MLRB releases the Performance Guarantee for the Black Cloud Mine, to help defray the administrative costs incurred by DRMS under this Consent Decree. The annual $1,150 payments shall count against the Reclamation Cap (defined below). All funds paid under this paragraph shall be deposited into the mined land reclamation fund created by C.R.S., § 34-32-127.

b. Minor modifications to the Reclamation Plan and Schedule shall be approved, denied or approved with conditions by DRMS. Major modifications to the Reclamation Plan and Schedule, shall be approved, denied, or approved with conditions by the MLRB during a formal public hearing. Once Settling Defendants' have applied for a major modification and have been notified in writing by DRMS that consideration of the major modification has been scheduled for hearing before the MLRB, Settling Defendants shall cause notice of the MLRB hearing to be made as follows: (i) Mailing notice by certified mail to the Lake County Commissioners, the Lake County Soil Conservation District, and the Leadville Mayor, and (ii) Publishing notice in a newspaper of general circulation in Leadville once a week for two (2) consecutive weeks prior to the hearing. Settling Defendants shall provide proof of these notifications to MLRB.

c. If conditions are encountered during the implementation of the Reclamation Plan and Schedule that DRMS determines require modification to the Reclamation Plan and Schedule in order to meet the Performance Standards set forth in the Reclamation Plan

and Schedule, DRMS shall provide written notice of such determination to the Settling Defendants, which notice shall include a description of the basis for DRMS' determination. Within 60 days after receipt of such notice, Settling Defendants shall submit a proposed modification of the Reclamation Plan and Schedule for DRMS approval, unless the Settling Defendants invoke the dispute resolution provisions of Paragraphs 96 and 100. If, during the implementation of the Reclamation Plan and Schedule and as part of the Work associated with reclaiming the Black Cloud Mine, the Settling Defendants cause disturbance to areas outside the Black Cloud Mine that is not authorized by the Reclamation Plan and Schedule, Settling Defendants shall reclaim such areas as required by DRMS and the costs of such reclamation shall not be credited against the Reclamation Cap.

19. The Settling Defendants shall complete the requirements of the Reclamation Plan and Schedule, including any approved modification thereto, provided that the total cost of completing such Work does not exceed $4,820,098 ("Reclamation Cap").

20. Settling Defendants shall use good faith efforts consistent with general industry standards to complete the Reclamation Plan and Schedule within the Reclamation Cap.

21. Reclamation Cap

a. To count against the Reclamation Cap, Settling Defendants' costs must be (i) reasonable, (ii) adequately documented, and (iii) incurred by Settling Defendants implementing the Reclamation Plan and Schedule. Such costs may include the pro rata share of salaries and benefits paid to employees who are conducting work pursuant to the Reclamation Plan and Schedule, costs paid to contractors, costs paid for the purchase of materials, costs paid for leasing or acquisition of equipment, transportation and haulage costs and any other costs meeting the requirements of the previous sentence. However, salaries and benefits paid to Settling Defendants' employees for reclamation administration and management, job superintendent, contract preparation, and project engineering shall only count against the Reclamation Cap up to the amounts set forth in the following table.

Year 1	25 percent	$94,064.00
Year 2	20 percent	$75,251.00
Year 3	13 percent	$48,913.15
Year 4	13 percent	$48,913.15
Year 5	9 percent	$33,862.70
Years 6 through 9	5 percent per year	$18,812.75
Total for nine years	100 percent	$376,255

Any amount of these annual caps that is not charged against in any year will carry over and may be charged against in subsequent years. Charges incurred by Settling Defendants that exceed the annual cap in any year may be carried forward and charged against the annual caps in subsequent years.

Additionally, costs charged against the Reclamation Cap for structural demolition and debris disposal may not exceed $614,000.

At least annually, Settling Defendants shall submit to DRMS, a notice setting forth the costs they have incurred for Black Cloud reclamation and an explanation of why these costs are consistent with the Reclamation Plan and Schedule. Based on the information submitted by Settling Defendants, DRMS will decide whether the costs meet all of the required conditions of this Paragraph. Within 45 days of receipt of the written request, DRMS will approve or deny such request, or may schedule an inspection of the reclamation performed. If DRMS conducts an inspection, it shall complete such inspection promptly and shall issue its written decision within 15 days of such inspection. In the event DRMS fails to provide its decision within such time frames, the costs set forth in Settling Defendants' notice shall be deemed to be creditable against the Reclamation Cap.

b. If DRMS agrees with the costs being assessed against the cap, it will so inform the Settling Defendants in writing. If DRMS finds that any of the conditions for approval are not satisfied, it will so inform the Settling Defendants in writing.

c. If Settling Defendants disagree with DRMS' notice that the requested credits do not meet all of the required conditions, Settling Defendants may seek to resolve the dispute in accordance with the dispute resolution provisions of Paragraphs 96 and 100. If, as a result of that dispute resolution process, the MLRB partially disagrees with DRMS, thereby only partially resolving the dispute, the appropriate non-disputed credit shall be allowed against the Reclamation Cap, and Settling Defendants may seek judicial review of MLRB's determination as to the remaining disputed amount.

d. If Settling Defendants choose to purchase soil for reclamation of the Black Cloud Mine, rather than use the borrow sources identified in the Reclamation Plan and Schedule, a maximum of $ 565,325.00 for the cost of purchasing such soil and delivering it to the Black Cloud Mine may be charged against the Reclamation Cap.

22. Beginning December 1 of the calendar year of the Effective Date of this Consent Decree, and each year thereafter until Settling Defendants' Performance Guarantee for the Black Cloud Mine reclamation is released, Settling Defendants shall provide the MLRB with 10 copies of an annual written report by December 1 detailing (i) the reclamation work completed during the previous 12 month period, (ii) a comparison of the work completed to the schedule set forth in the Reclamation Plan and Schedule and an explanation of any discrepancies, (iii) the reclamation work projected to be completed for the upcoming calendar year, and (iv) groundwater analytical data required to be collected under the Reclamation Plan and Schedule since the previous report. In addition to the report, Settling Defendants shall appear before the Board at its regularly scheduled meeting each December to present the report to the MLRB.

23. Settling Defendants may execute and deliver to DRMS an access agreement in the form of Appendix I granting DRMS access to borrow soil located on the Robinson/Chapman placer and access to the Kids' First soil stockpiled at the Yak Treatment Plant. The borrow soil and Kids' First soil would be used by DRMS in the event DRMS must perform the reclamation. If Settling Defendants provide such access agreement, the amount of the Performance Guarantee required under Paragraph 67 shall be reduced from $5,500,000 to $4,820,098.

IX. OFF-SITE SHIPMENTS

24. Settling Defendants shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA and State Project Coordinators of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

25. Settling Defendants shall include in the written notification the following information, where available: (A) the name and location of the facility to which the Waste Material is to be shipped; (B) the type and quantity of the Waste Material to be shipped; (C) the expected schedule for the shipment of the Waste Material; and (D) the method of transportation. Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

26. Before shipping any Waste Material from the Site to an off-site location, Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. 300.440. Settling Defendants shall only send Waste Material from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

X. REMEDY REVIEW

27. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c), 42 U.S.C. § 9621(c), of CERCLA and any applicable regulations.

28. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health or the environment, EPA may select further response actions for the California Gulch Superfund Site in accordance with the requirements of CERCLA and the NCP. Settling Defendants shall be obligated to perform further response actions selected by EPA but only to the extent provided in Paragraph 30 below.

29. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 122(c) of CERCLA, 42 U.S.C. § 9621(c), and to submit written comments for the record during the comment period.

30. Settling Defendants' Obligation To Perform Further Response Actions at OU1. If EPA selects further response actions relating to OU1 at the Site, Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 116 (United States' Reservations of Liability for OU1 and Black Cloud Mine Based On Unknown Conditions or New Information) are satisfied. Settling Defendants may invoke the

procedures set forth in Section XXV (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 116 are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health or the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 98 (record review).

31. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 30, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section XIV (EPA Approval of Plans and Other Submissions) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

32. Except as otherwise expressly provided in the OU1 Work Plan, Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples related to the conduct of Work at the California Gulch Superfund Site in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the OU1 Work Plan, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" dated February 1988, Methods for Chemical Analysis of Water and Wastes, March 1983, and SW-846, Test methods for Evaluating Solid Waste, Physical/Chemical Methods. In addition, for those biological analyses required for the Yak Water Treatment Plant effluent, the Settling Defendants shall use the methods for testing required under the OU1 Work Plan, and any modifications made thereto during the course of the implementation of this Decree. However, upon approval by EPA, after opportunity for review and comment by the State, the Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which

complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA. The provisions of this Paragraph 32 do not apply to Work at the Black Cloud Mine. As to the Black Cloud Mine, the Reclamation Plan and Schedule to be performed by the Settling Defendants includes a ground water monitoring plan for Iowa Gulch and a point of compliance and numeric protection limits for ground water quality. The Reclamation Plan and Schedule includes requirements for quarterly sampling and a QA/QC program that Settling Defendants shall comply with.

33. Upon request, Settling Defendants shall allow split or duplicate samples collected within the California Gulch Superfund Site or at the Black Cloud Mine to be taken by EPA or the State or their authorized representatives. Settling Defendants shall notify EPA and the State not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA, or the State for samples collected at the Black Cloud Mine. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow Settling Defendants to take split or duplicate samples taken as part of the Plaintiffs' oversight of Settling Defendants' implementation of the Work.

34. Settling Defendants shall submit two copies each to EPA and the State of the results of all sampling, tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site or implementation of this Consent Decree or both unless EPA and the State otherwise agrees.

35. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. ACCESS AND INSTITUTIONAL CONTROLS

36. With respect to property within the Site that is now owned or controlled by Settling Defendants or subsequently acquired by Settling Defendants as part of the Asarco Settlement, Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree (or date of acquisition in the case of property acquired from ASARCO LLC), provide the United States, the State, and their representatives, including EPA and its contractors, with access at all reasonable times to such property for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States or the State;

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

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional reclamation or response actions at or near the Site;

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

(7) Implementing the Work pursuant to the conditions set forth in Paragraphs 70 and 122 (Work Takeover) of this Consent Decree;

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

(9) Assessing Settling Defendants' compliance with this Consent Decree; and

(10) Determining whether the property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree. The United States, the State and their representatives shall use reasonable efforts to provide Settling Defendants with advance notice of any activities that require access under this Paragraph.

b. Commencing on the date of lodging of this Consent Decree, refrain from using such property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions already performed or instituted at the Site, or the response actions or reclamation work to be performed or instituted pursuant to this Consent Decree.

37. Environmental Covenants. Except as otherwise provided in Paragraph 38, Settling Defendants shall execute and record in the Clerk and Recorder's Office of Lake County, State of Colorado, Environmental Covenants in accordance with the terms of Appendix F1 on those properties listed in Appendix F2 to which Settling Defendants own the entire fee title upon completing the property transfer with Asarco LLC pursuant to the Settlement Agreement among Settling Defendants, Asarco LLC and the Res-Asarco Joint Venture. If the Settling Defendants, the State and EPA subsequently agree that as the result of completing the property transfer with Asarco LLC, Settling Defendants own the entire fee title in other claims that are not listed in Appendix F2, and (i) such claims are situated entirely within the boundaries of the California Gulch Superfund Site or (ii) the claim is listed on Attachment 3 to Appendix F1, Settling Defendants will provide an Environmental Covenant on such claims, which will contain the

applicable terms as set forth in Section A of Appendix F1. At least 60 days prior to the expiration of the second anniversary of the Effective Date of this Consent Decree, Settling Defendants shall submit to EPA and the State for their review and approval draft Environmental Covenants, in substantially the same forms as the draft Environmental Covenant(s) attached hereto as Appendix G. Settling Defendants shall execute and record such Environmental Covenants within 30 days following notice of EPA and the State's approval of the draft forms.

38. Settling Defendants' Obligations In The Event That Governmental Controls Are In Place. The requirements under Paragraph 37 shall not apply if local laws, regulations, ordinances or other governmental controls (hereinafter "Governmental Controls") are in place for the property described in Paragraph 37, which are at least as protective, as determined by EPA and the State, as the restrictions and requirements set forth in Appendix F1. If Settling Defendants conclude that such controls are in place, they shall provide notice to EPA and the State at least 60 days prior to expiration of the second anniversary of the Effective Date and the timeframe for filing Environmental Covenants under Paragraph 37 shall not apply. If EPA, after consultation with the State, determines that such governmental controls are not sufficient to meet the requirements of Appendix F, EPA shall notify Settling Defendants in writing. In such event, Settling Defendants shall within 20 days after receipt of such a notice either submit draft Environmental Covenants to EPA and the State as required under Paragraph 37 or seek Dispute Resolution pursuant to Section XXV. Dispute Resolution of this issue may not be invoked if Settling Defendants were provided notice prior to enactment of the Governmental Controls that EPA or the State did not consider the proposed Governmental Controls to be as protective as the restrictions and requirements set forth in Appendix F1. In the event Settling Defendants seek dispute resolution, they shall not be required to provide Environmental Covenants unless and until issuance of a final nonappealable decision holding that the existing Governmental Controls do not meet the requirements of Appendix F1. In such case, Settling Defendants shall within 20 days after service of such decision submit draft Environmental Covenants to EPA and the State as required under Paragraph 37, and shall execute and record those covenants within 30 days following notice of EPA and the State's approval of the draft forms. In the event Defendants do not seek dispute resolution, they shall execute and record Environmental Covenants within 30 days following EPA and the State's approval of the draft forms. If Governmental Controls are later repealed, suspended or otherwise invalidated, Settling Defendants shall within six months of the repeal, suspension, or invalidation of those Governmental Controls provide draft Environmental Covenants pursuant to Paragraph 37 and Appendix F1, and execute and record those Environmental Covenants within 30 days of approval by EPA and the State.

39. If the property within the Site where access or land/water use restrictions are needed to implement the OU1 Work Plan or the O&M Plan for OUs 4, 8, and 10 is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall:

a. use their best efforts to secure from such persons an agreement to provide access thereto for Settling Defendants, the United States on behalf of EPA, and the State as well as their representatives (including contractors) for the purpose of implementing the OU1 Work Plan and the O&M Plan for OUs 4, 8, and 10; and

b. cooperate with EPA and State to secure Environmental Covenants or other agreements consistent with the provisions of Appendices F1 and G.

40. For the purposes of Paragraph 39(a) of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access.

41. If EPA or the State determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the RODs, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA and State efforts to secure such governmental controls.

42. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, MLRA and any other applicable statute or regulations.

XIII. REPORTING REQUIREMENTS

43. Settling Defendants shall submit three copies each of all plans, reports, and data required by the OU1 Work Plan, the O&M Plan for OUs 4, 8, and 10, and any other approved plans to EPA and the State in accordance with the schedules set forth in such plans. Upon request by EPA or the State, Settling Defendants shall submit in electronic form all portions of any report or other deliverable Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

44. If requested by EPA or the State, Settling Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work.

45. Upon the occurrence of any event during performance of the Work that Settling Defendants are 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, Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 8, United States Environmental Protection Agency, and the State Project Coordinator. These reporting requirements are in addition to the reporting required by CERCLA Section 103, 42 U.S.C. § 9603, or EPCRA Section 304, 42 U.S.C. § 11004.

46. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Plaintiffs a written report, signed by Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

47. All reports and other documents submitted by Settling Defendants to EPA and to the State which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendants.

XIV. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

48. After review of any plan, report or other item which is required to be approved by EPA pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

49. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 48(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject to their right to invoke the Dispute Resolution procedures set forth in Section XXV (Dispute Resolution) and Paragraphs 13(b) and 17(b), if applicable, with respect to the modifications or conditions made by EPA.

50. Resubmission of Plans

a. Upon receipt of a notice of disapproval pursuant to Paragraph 48(d), Settling Defendants shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in XXVI (Stipulated Penalties), shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect.

b. Notwithstanding the receipt of such notice of disapproval, Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XXVI (Stipulated Penalties) for the outstanding deficiencies.

c. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject to their right to invoke the procedures set forth in Section XXV (Dispute Resolution) and Paragraphs 13(b) and 17(b), if applicable.

d. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendants invoke the dispute resolution procedures set forth in Section XXV (Dispute Resolution) and EPA's action is

overturned pursuant to that Section. Except as otherwise provided in Paragraphs 13(b) and 17(b) (modification of work plans), the provisions of Section XXV (Dispute Resolution) and Section XXVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXVI (Stipulated Penalties).

51. All plans, reports, and other items required to be approved by EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree, subject to Settling Defendants' right to invoke the dispute resolution procedures set forth in Section XXV (Dispute Resolution) and Paragraphs 13(b) and 17(b), if applicable.

XV. PROJECT COORDINATORS

52. Within 20 days of lodging this Consent Decree, Settling Defendants, the State, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and the State upon a finding that the proposed Project Coordinator lacks the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. The Settling Defendants' Project Coordinator may assign other representatives, including other contractors, to serve as representatives for oversight of performance of daily operations during the performance of Work at all or portions of the Site.

53. The EPA and State may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work at the Site required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

54. EPA's Project Coordinator, the State's Project Coordinator and the Settling Defendants' Project Coordinator will meet, at EPA's discretion by telephone or in person, at a minimum on an annual basis.

XVI. PERFORMANCE GUARANTEE FOR WORK AT OU1

55. Within 30 days of the Effective Date, Settling Defendants shall establish and maintain a Performance Guarantee (the "OU1 Performance Guarantee") for the benefit of EPA in an amount sufficient to complete the OU1 work as provided in this Section.

a. The amount of the OU1 Performance Guarantee shall equal the net present value of the estimated cost of the OU1 work for the 100-year period following the date that the amount of the OU1 Performance Guarantee is determined or adjusted pursuant to this Section. The initial amount of the OU1 Performance Guarantee shall be fourteen million five hundred thousand dollars ($14,500,000). The amount of the OU1 Performance Guarantee shall be updated or adjusted in accordance with Appendix H.

b. The Parties shall reevaluate the amount of the OU1 Performance Guarantee every five years as part of the periodic review process described in Section X (Remedy Review). In the event of a significant change in circumstances, any party may request a reevaluation of the amount of the OU1 Performance Guarantee at an earlier time.

c. Following any reevaluation of the amount of the OU1 Performance Guarantee pursuant to Paragraph 55(b), EPA shall, in consultation with the State and Settling Defendants, determine whether, pursuant to the model and formula described in Appendix H, an adjustment to the amount of the OU1 Performance Guarantee is appropriate. EPA's decision may be disputed pursuant to Section XXV (Dispute Resolution). Settling Defendants shall provide the amount of the OU1 Performance Guarantee in accordance with EPA's determination pursuant to Appendix H or, if such determination is disputed, then in accordance with the final administrative or judicial decision resolving such dispute.

56. Settling Defendants shall provide the OU1 Performance Guarantee required by this Section in one or more of the following forms to be selected by Settling Defendants, which must be satisfactory in both form and substance to EPA and the State:

a. A surety bond unconditionally guaranteeing payment 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. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency. Any irrevocable letter of credit provided pursuant to this Section must be issued for a period of at least one year and provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution notifies Settling Defendants, EPA, and the State, no less than 120 days before the current expiration date, by certified mail of a decision not to extend the letter of credit beyond the expiration date. If Settling Defendants do not establish an alternative Performance Guarantee satisfactory to EPA as specified in this Section at least 30 days before the expiration date of the letter of credit (as set forth in the issuing institution's initial notice or as may be extended by the issuing institution), EPA may draw the full amount of the letter of credit and deposit those funds into the California

Gulch Superfund Site Special Account for EPA's unconditional use in implementing the OU1 remedy at the Site. In the event Settling Defendants subsequently provide an alternative Performance Guarantee satisfactory to EPA, EPA shall within 60 days thereafter refund to Settling Defendants the amount of unexpended cash from the previously drawn letter of credit less any unpaid stipulated penalties; or

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency.

57. Settling Defendants have selected as an initial OU1 Performance Guarantee one or more irrevocable letters of credit, payable to or at the direction of EPA, meeting the requirements of Paragraph 56(b). Within 30 days after the Effective Date, Settling Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected OU1 Performance Guarantee legally binding and such Performance Guarantee shall thereupon be fully effective. Within 45 days of the Effective Date, Settling Defendants shall submit all executed and otherwise finalized instruments or other documents required in order to make the selected OU1 Performance Guarantee legally binding to the EPA Financial Analyst listed in Section XXXIII (Notices and Submissions), with a copy to the United States, EPA, and the State as specified in that Section.

58. The commencement of any Work Takeover pursuant to Paragraph 122 of this Consent Decree with respect to the OU1 work shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) in effect as of such time, as provided pursuant to Paragraph 55, and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable, after making a request for payment on the Performance Guarantee, to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, Settling Defendant shall within three Working Days of written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the amount of the OU1 Performance Guarantee. In the event Settling Defendants subsequently resume with EPA's approval the required Work for OU1 and provide a Performance Guarantee satisfactory to EPA, EPA shall refund to Settling Defendants the unexpended amount of the prior Performance Guarantee or other payments by Settling Defendants under this Paragraph less any unpaid stipulated penalties.

59. In the event that EPA determines that a Performance Guarantee provided by any Settling Defendant pursuant to this Section no longer satisfies the requirements set forth in this Section, whether due to an increase in the Estimated Cost of the OU1 Work or for any other reason, or in the event that any Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section no longer satisfies the requirements set forth in this Section, whether due to an increase in the Estimated Cost of the OU1 Work or for any other reason, Settling Defendants, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of any Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or

alternative form of Performance Guarantee listed in Paragraph 56 of this Consent Decree that satisfies all requirements set forth in this Section. If Settling Defendants dispute EPA's determination, Settling Defendants shall follow the dispute resolution procedures set forth in Section XXV (Dispute Resolution) of this Agreement. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 60(b) of this Consent Decree. Settling Defendants' inability to post a Performance Guarantee for the Estimated Cost of the OU1 Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendant to complete the Work in strict accordance with the terms hereof.

60. Change of Form of Performance Guarantee and Release

a. If, after entry of this Consent Decree, Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Defendants may, within 30 days of any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee(s) provided hereunder. Settling Defendants may challenge any decision by EPA denying a petition to change the form of the Performance Guarantee for OU1 pursuant to Section XXV (Dispute Resolution), provided (i) the form of Performance Guarantee requested by Settling Defendants is one of the forms listed in Paragraph 56 above, and (ii) Settling Defendants shall maintain an EPA-approved OU1 Performance Guarantee during the period of dispute resolution.

b. Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA and the State which shall specify, at a minimum, the Estimated Cost of the remaining OU1 Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Financial Analyst listed in Section XXXIII (Notices and Submissions) of this Consent Decree, with a copy to the State. EPA shall notify Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within 15 days after receiving a written decision approving the proposed revised or alternative Performance Guarantee(s), Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Defendants shall submit all executed and otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Financial Analyst listed in Section XXXIII (Notices and Submissions) within 30 days of receiving a written decision approving the proposed revised or alternative Performance Guarantee(s) in accordance with Section XXXIII (Notices and Submissions) of this Consent Decree and to the United States, EPA, and the State as specified in Section XXXIII (Notices and Submissions).

c. If Settling Defendants receive written notice from EPA in accordance with Paragraph 73 that the Work at OU1 has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA, after consultation with the State, otherwise so notifies Settling Defendants in writing, Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XVII. PERFORMANCE GUARANTEE FOR WORK AT OUS 4, 8, AND 10

61. In order to ensure the full and final completion of the Work at OUs 4, 8, and 10, Settling Defendants shall establish and maintain, within 30 days of the Effective Date, a Performance Guarantee for the benefit of EPA in the amount of $600,000 in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally guaranteeing payment 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. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration that one or more of the Settling Defendants meet the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the OUs 4, 8 and 10 Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the OU 4, 8 and 10 Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of Settling Defendants, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Settling Defendants; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the OUs 4, 8 and 10 Work that it proposes to guarantee hereunder.

62. Settling Defendants may, at their election, establish a single Performance Guarantee covering all or portions of their obligations under Sections XVI and XVII provided such Guarantee meets all of the requirements of each applicable Section.

63. If at any time during the effective period of this Consent Decree, a Settling Defendant provides a Performance Guarantee for completion of the Work at OUs 4, 8, and 10 by means of a demonstration or guarantee pursuant to Paragraph 61(e) or Paragraph 61 (f) above, the Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. §264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (iii) the notification of EPA within 90 days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section (Performance Guarantee for Work at OUs 4, 8, and 10), references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required by this Consent Decree for OUs 4, 8, and 10, and the terms "current closure cost estimate" "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the OUs 4, 8 and 10 Work.

64. In the event that EPA determines at any time that a Performance Guarantee provided by any Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the Estimated Cost of the OUs 4, 8, and 10 Work or for any other reason, or in the event that any Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the Estimated Cost of the OUs 4, 8, and 10 Work or for any other reason, Settling Defendants, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of any Settling Defendants becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 61 of this Consent Decree that satisfies all requirements set forth in this Section. If Settling Defendant disputes EPA's determination, Settling Defendants shall follow the dispute resolution procedures set forth in Section XXV (Dispute Resolution) of this Agreement. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 66(b)(2) of this Consent Decree. Settling Defendants' inability to post a Performance Guarantee for the Estimated Cost of the OUs 4, 8, and 10 Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendants to complete the Work in strict accordance with the terms hereof.

65. The commencement of any Work Takeover pursuant to Paragraph 122 of this Consent Decree shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) in effect as of such time, as provided pursuant to Paragraph 61, and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in

cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable, after making a request for payment on the Performance Guarantee, to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 61(e), Settling Defendant shall within three Working Days of written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the Estimated Cost of the OUs 4, 8, and 10 Work based on the remaining Work to be performed as of such date, as determined by EPA after consultation with the State. In the event Settling Defendants subsequently resume with EPA's approval the required Work for OUs 4, 8, and 10 and provide a Performance Guarantee satisfactory to EPA, EPA shall promptly refund to Settling Defendants the unexpended amount of the prior Performance Guarantee or other payments by Settling Defendants under this Paragraph, less any unpaid stipulated penalties.

66. Modification of Amount and/or Form of Performance Guarantee

a. Reduction of Amount of Performance Guarantee. If Settling Defendants believe that the estimated cost to complete the remaining OU 4, 8 and 10 Work that Settling Defendants are obligated to complete has diminished below the amount of the current Performance Guarantee, Settling Defendants may, within 30 days of any anniversary date following the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee(s) provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the current Estimated Cost of the OUs 4, 8 and 10 Work for the remaining Work to be performed. Settling Defendants shall submit a written proposal for such reduction to EPA and the State that shall specify, at a minimum, the cost of the remaining OUs 4, 8 and 10 Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 66(b)(2) of this Consent Decree. If EPA, after consultation with the State, decides to accept such a proposal, EPA shall notify the Settling Defendants and the State of such decision in writing. After receiving EPA's written acceptance, Settling Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 64 or 66(b) of this Consent Decree.

b. Change of Form of Performance Guarantee

(1) If, after entry of this Consent Decree, Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Defendants may, within 30 days of any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee(s) provided hereunder. The submission of such proposed

revised or alternative form of Performance Guarantee shall be as provided in Paragraph 66(b)(2) of this Consent Decree. Any decision made by EPA on a petition submitted under this subparagraph (b)(1) shall be made in EPA's sole and unreviewable discretion after consultation with the State, and such decision shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA and the State which shall specify, at a minimum, the Estimated Cost of the remaining OUs 4, 8, and 10 Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Financial Analyst listed in Section XXXIII (Notices and Submissions) of this Consent Decree. EPA shall notify Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within 15 days after receiving a written decision approving the proposed revised or alternative Performance Guarantee(s), Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Financial Analyst listed in Section XXXIII (Notices and Submissions) within 30 days of receiving a written decision approving the proposed revised or alternative Performance Guarantee(s) in accordance with Section XXXIII (Notices and Submissions) of this Consent Decree and to the United States and EPA as specified in Section XXXIII (Notices and Submissions).

c. Release of Performance Guarantee. If Settling Defendants receive written notice from EPA in accordance with Paragraph 73 that the Work at OUs 4, 8, and 10 has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA, after consultation with the State, otherwise so notifies Settling Defendant in writing, Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph 66.c. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XVIII. PERFORMANCE GUARANTEE FOR RECLAMATION OF BLACK CLOUD MINE

67. Within 30 days from the Effective Date of this Consent Decree, the Settling Defendants shall provide a Performance Guarantee to the MLRB and DRMS in the total sum of $5,500,000 (or $4,820,098 if Settling Defendants provide an access agreement pursuant to

Paragraph 23) in one or more of the following forms, which must be acceptable in form and substance to the MLRB and DRMS:

a. A surety bond issued by a corporate surety authorized to do business in the State of Colorado;

b. An irrevocable letter of credit in the form approved by MLRB issued by a bank authorized to do business in the United States. The letter of credit must be issued for a period of at least one year and must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing bank notifies the Settling Defendants and DRMS no less than 120 days before the current expiration date by certified mail of a decision not to extend the expiration date. If the Settling Defendants do not submit an acceptable alternate Performance Guarantee as specified in this Section and obtain DRMS and MLRB's approval of such alternate Performance Guarantee at least 30 days prior to the expiration date of the Letter (as set forth in the issuing bank's initial notice or as may be extended by the issuing bank), DRMS and the MLRB may draw the full amount of the letter of credit and deposit those funds in an account with the State Treasury. Such amount shall be held as and constitute a Performance Guarantee in the form of cash as provided in this Section. Settling Defendants may subsequently seek approval of an alternative form of Performance Guarantee under Paragraph 69. In addition, the Settling Defendants must provide evidence that the bank issuing the letter of credit has a credit rating of "a" or better. This documentation shall be provided by the Settling Defendants annually as part of the Settling Defendants' annual report required in Paragraph 22. The letter of credit shall be executed on the issuing bank's letterhead;

c. A certificate of deposit from a financial institution located in the State of Colorado. The Certificate shall be assigned to the State of Colorado/Mined Land Reclamation Board. The Certificate shall be automatically renewed. The account in which the Certificate is held shall be a public funds account. The Certificate shall be issued by an eligible public depository under the Public Deposit Protection Act as required by Colorado Revised Statute 11-10.5-101, *et seq*;

d. A cash bond which shall be cash or certified funds assigned to the MLRB. Such cash or certified funds shall be held in trust by the Colorado Treasurer's Office. All interest shall accrue to the DRMS and MLRB and used for reclamation of the Black Cloud Mine in the event the DRMS must perform reclamation.

e. No later than 30 days from the Effective Date of this Consent Decree, the Settling Defendants shall submit to DRMS and the MLRB the required Performance Guarantee. DRMS and MLRB shall issue a decision approving or denying the Performance Guarantee within 45 days after submission by the Settling Defendants. Upon acceptance by DRMS and MLRB of the Performance Guarantee, the MLRB shall promptly release the existing corporate surety and the cash bond posted by Asarco Incorporated, n/k/a Asarco LLC and the recorded deed of trust on the Resurrection-Asarco joint venture property.

68. In the event DRMS determines at any time that the Performance Guarantee provided by the Settling Defendants no longer satisfies the requirements set forth in this Section, or in the event that any Settling Defendant becomes aware of information indicating that a

Performance Guarantee provided pursuant to this Section no longer satisfies the requirements set forth in this Section, Settling Defendants, within 30 days of receipt of notice of DRMS's determination or, as the case may be, within 30 days of any Settling Defendant becoming aware of such information, shall obtain and present to DRMS for approval a revised or alternate form of Performance Guarantee that satisfies the requirements set forth in this Section. If the Settling Defendants dispute DRMS' determination, the Settling Defendants may seek dispute resolution in accordance with Paragraphs 96 and 100. Settling Defendant's inability to post a Performance Guarantee for completion of the Reclamation Plan and Schedule shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendant to complete the Reclamation Plan and Schedule in strict accordance with the terms hereof.

69. Modification of Amount or Form of Performance Guarantee

a. Reduction of Amount of Performance Guarantee. If Settling Defendants believe that the estimated cost to complete remaining work under the Reclamation Plan and Schedule has diminished below the amount set forth in Paragraph 67 above, Settling Defendants may, within 30 days of the date that the Annual Report in Paragraph 22 is due, or at any other time agreed to by the Parties, petition DRMS and MLRB in writing to request a reduction in the amount of the Performance Guarantee(s) provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining work under the Reclamation Plan and Schedule. Settling Defendants shall submit a written proposal for such reduction to DRMS and MLRB that shall specify, at a minimum, the cost of the remaining Reclamation Plan and Schedule work to be performed and the basis upon which such cost was calculated. In seeking approval of a reduced Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 69(c) of this Consent Decree. If DRMS and MLRB decide to accept such a proposal, DRMS shall notify the Settling Defendants of such decision in writing. After receiving DRMS's written acceptance, Settling Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision, as applicable, resolving such dispute pursuant to Paragraphs 96 and 100. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in this Paragraph or Paragraph 68 of this Consent Decree.

b. If, after entry of this Consent Decree, Settling Defendants desire to change the form or terms of any Performance Guarantee(s) to a form or terms other than as provided pursuant to this Section, Settling Defendants may, within 30 days of any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition DRMS in writing to request a change in the form of the Performance Guarantee(s) provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 69(c) of this Consent Decree.

c. Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to DRMS which shall specify, at a minimum, the estimated cost of the remaining reclamation work to be performed, the basis upon which such

cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the DRMS Project Coordinator and the Administrator of the MLRB listed in Section XXXIII (Notices and Submissions) of this Consent Decree. DRMS shall notify Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee(s), Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to DRMS as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the DRMS contact listed in Section XXXIII (Notices and Submissions) within 30 days of receiving a written decision approving the proposed revised or alternative Performance Guarantee(s) in accordance with Section XXXIII (Notices and Submissions) of this Consent Decree, with copies provided to the United States and the EPA. Settling Defendants may challenge any decision by DRMS denying a proposal to change the form of the Performance Guarantee for Black Cloud reclamation pursuant to Paragraphs 96 and 100, provided (i) the form of Performance Guarantee requested by Settling Defendants is one of the forms listed in Paragraph 67 above, and (ii) Settling Defendants shall maintain a DRMS-approved Performance Guarantee during the period of dispute resolution.

d. Release of Performance Guarantee. If Settling Defendants receive written notice from DRMS and MLRB that (i) the Reclamation Plan and Schedule has been fully and finally completed in accordance with the terms of this Consent Decree, or (ii) Settling Defendants have met the Reclamation Cap, or if DRMS and MLRB otherwise so notify Settling Defendant in writing, Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision, as applicable, resolving such dispute.

70. Work Takeover. In the event DRMS and MLRB determine that Settling Defendants (i) have ceased implementation of any portion of the Work required under the Reclamation Plan and Schedule; (ii) are seriously or repeatedly deficient or late in their performance of the Reclamation Plan and Schedule, or (iii) are implementing the Reclamation Plan and Schedule in a manner which may cause an endangerment to human health or the environment, DRMS may assume the performance of all or any portions of the Reclamation Plan and Schedule as DRMS determines necessary. The commencement of any Work Takeover pursuant to this Paragraph shall trigger DRMS and MLRB's right to receive the benefit of any Performance Guarantee(s) provided under this Section XVIII in effect as of such time, and DRMS and MLRB shall have immediate access to resources guaranteed under such Performance Guarantee(s) as needed to continue and complete the Reclamation Plan and Schedule assumed

by DRMS and the MLRB, except that five percent of the Performance Guarantee shall be deposited in the mined land reclamation fund, created in C.R.S., § 34-32-127, to cover the administrative costs incurred by DRMS in performing the reclamation. If for any reason DRMS and MLRB are unable, after making a request for payment on the Performance Guarantee, to promptly secure the resources guaranteed under any such Performance Guarantee(s) necessary to continue and complete the Reclamation Plan and Schedule, Settling Defendants shall within 3 Working Days after receiving written demand from DRMS deposit into an account specified by DRMS in immediately available funds and without setoff, credit, counterclaim or condition of any kind, a cash amount up to but not exceeding the estimated cost, as determined by DRMS, of continuing and completing the Reclamation Plan and Schedule subject to the Reclamation Cap, and upon such deposit, Settling Defendants shall be deemed to have satisfied the Reclamation Cap. Settling Defendants may invoke the procedures set forth in Paragraphs 96 and 100, to dispute DRMS and MLRB's determination that takeover of the Reclamation Plan and Schedule is warranted under this Paragraph.

71. Certification of Complete Performance under Reclamation Plan and Schedule

a. Within 90 days after Settling Defendants conclude that the Reclamation Plan and Schedule have been fully performed and the Performance Standards have been attained or that the Reclamation Cap has otherwise been satisfied, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and the DRMS Project Coordinator. If, after the pre-certification inspection, Settling Defendants still believe that the Reclamation Plan and Schedule has been fully performed and the Performance Standards have been attained or that the Reclamation Cap has otherwise been satisfied, they shall within 30 days of the inspection submit a written report to DRMS requesting certification of completion of the Reclamation Work. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Reclamation Plan and Schedule has been completed in full satisfaction of the requirements of this Consent Decree, or that the Reclamation Cap has otherwise been satisfied. The written report shall include as-built drawings signed and stamped by a professional engineer documenting the completed reclamation. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

> "To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is 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."

b. If, after completion of the pre-certification inspection and receipt and review of the written report, DRMS determines that the Reclamation Plan and Schedule has not been completed or that the Reclamation Cap has not been satisfied, DRMS will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Reclamation Plan and Schedule or otherwise satisfy the Reclamation Cap; provided, however, that DRMS may require Settling Defendants to perform such activities pursuant to this Paragraph only to the extent that such activities are consistent with the scope of the Reclamation Plan and Schedule and the Reclamation Cap. DRMS will set

forth in the notice a reasonable schedule for performance of such activities consistent with the Consent Decree or require Settling Defendants to submit a schedule to DRMS for its approval. Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph. If Settling Defendants disagree with DRMS' determination, the Settling Defendants may seek dispute resolution in accordance with Paragraphs 96 and 100.

c. If DRMS and the MLRB conclude, based on the initial or any subsequent request for Certification of Completion by Settling Defendants that the Reclamation Plan and Schedule has been performed in accordance with this Consent Decree or the Reclamation Cap has otherwise been satisfied, DRMS and MLRB will so notify Settling Defendants in writing.

d. Upon completion of the Reclamation Plan and Schedule or satisfaction of the Reclamation Cap satisfactory to the DRMS and MLRB, the MLRB shall promptly release the Settling Defendants from further reclamation obligations at the Black Cloud Mine and release the Performance Guarantee.

XIX. CERTIFICATION OF COMPLETION

72. Completion of the Remedial Action

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained under the OU1 Work Plan, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and the State. If, after the pre-certification inspection, Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained for OU1, they shall within 30 days of the inspection submit a written report to EPA, with a copy to the State, pursuant to Section XIV (EPA Approval of Plans and Other Submissions), requesting certification of completion of the Remedial Action for OU1. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Remedial Action for OU1 has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

> "To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is 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."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action for OU1 has not been completed in accordance with this Consent Decree, or that the Performance Standards for such OU have not been achieved, EPA will, within 30 days, notify Settling Defendants in writing of the activities that must be undertaken by Settling

Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards; provided, however, that EPA may require Settling Defendants to perform such activities pursuant to this Paragraph only to the extent that such activities are consistent with the this Consent Decree and the OU1 Work Plan. EPA will set forth in the notice a reasonable schedule for performance of such activities consistent with this Consent Decree and the OU1 Work Plan or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XIV. Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to the applicable cost caps and subject to their right to invoke the dispute resolution procedures set forth in Section XXV (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action for OU1 has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for the OU for purposes of this Consent Decree. Certification of Completion of the Remedial Action for OU1 shall not affect Settling Defendant's obligations at any other OUs under this Consent Decree.

73. Completion of the Work

a. Within 90 days after Settling Defendants conclude that all phases of the Work at the California Gulch Superfund Site (including O&M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and the State. If, after the pre-certification inspection, Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

> "To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is 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."

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work; provided, however, that EPA may require Settling Defendants to perform such activities pursuant to this Paragraph only to the extent that such activities are consistent with the scope of the response actions set forth in the OU1 Work Plan and the O&M Plan for OUs 4, 8, and 10. EPA will set forth in the notice a reasonable schedule for performance of such activities consistent with the Consent Decree and the OU1 Work Plan or require Settling Defendant to submit a

schedule to EPA for approval pursuant to Section XIV. Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to the applicable expenditure caps and subject to their right to invoke the dispute resolution procedures set forth in Section XXV (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion of the Work by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendants in writing.

XX. EMERGENCY RESPONSE

74. In the event of (i) any action or occurrence within OU1 during the performance of the Work or (ii) any failure of the constructed remedies in OUs 4, 8 or 10, any of which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 75 immediately take all appropriate action to prevent, abate, or minimize such release or threat of release and shall immediately notify the EPA's and the State's Project Coordinators, or, if EPA's Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendants shall notify the EPA National Response Center at 1-800-424-8802. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the work plans, including the OU1 Contingency Plan, and any other applicable plans or documents approved pursuant to this Consent Decree. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State take such action instead, Settling Defendants shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XXI (Payments for Response Costs).

75. Nothing in the preceding Paragraphs or in this Consent Decree shall be deemed to limit any authority of the United States or the State a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXVII (Covenants Not to Sue by Plaintiffs).

XXI. PAYMENTS FOR RESPONSE COSTS

76. Payment of United States' Past Response Costs

a. Within 30 days of the Effective Date, Settling Defendants shall pay to EPA $1,813,200, plus an additional sum for Interest on that amount calculated from the date of lodging this Consent Decree through the date of payment, as full payment for Past Response Costs.

b. Payment shall be made in accordance with the provisions of Paragraph 80 below.

c. The total amount to be paid by Settling Defendants pursuant to subparagraph 76(a) shall be deposited in the California Gulch Superfund 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.

77. Payment of State's Past Response Costs. Within 30 days of the Effective Date, Settling Defendants shall pay to the State $186,800, plus an additional sum for Interest on the amount calculated from the date of lodging this Consent Decree through the date of payment, as full payment for State Past Response Costs. Payment shall be made by (a) Electronic Funds Transfer to the State of Colorado pursuant to instructions provided to Settling Defendants by the State following lodging of the Consent Decree or (b) certified or cashier's check or checks payable to "Treasurer, State of Colorado" and sent to Mr. Joe E. Montoya, Office of the Attorney General, Natural Resources & Environment Section, 1525 Sherman Street, 7th Floor, Denver, Colorado 80203.

78. Cash Out Payment for OU 12 and Additional Source Control in OUs 4, 8 & 10.

a. Within 30 days of the Effective Date, Settling Defendants shall pay to EPA $1,000,000 for OUs 4, 8 & 10 and $2,500,000 for OU 12 (for a total of $3,500,000), plus an additional sum for Interest on the amount calculated from the date of lodging through the date of payment.

b. Payment shall be made in accordance with the provisions of Paragraph 80.

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 78(a) shall be deposited in the California Gulch Superfund 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.

79. Cash Out Payment for OU11.

a. Within 30 days of the Effective Date, Settling Defendants shall pay to EPA $3,000,000, plus an additional sum for Interest on the amount calculated from the date of lodging through the date of payment.

b. Payment shall be made in accordance with the provisions of Paragraph 80.

c. The total amount to be paid by Settling Defendants pursuant to this Paragraph shall be deposited in the California Gulch Superfund Site OU 11 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with Operable Unit 11 or to be transferred by EPA to the EPA Hazardous Substance Superfund.

80. Payment Instructions for Past Costs and Cash Out Payments.

a. Settling Defendants shall pay the amounts set forth in Paragraphs 76, 78 & 79 by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures referencing EPA Site/Spill ID Number 08-29 and DOJ Case Number 90-11-3-138. EFT instructions will be provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Colorado following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited to the next business day.

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXXIII (Notices and Submissions).

81. Payments for Future Oversight Costs

a. Settling Defendants shall pay to EPA all Future Oversight Costs not inconsistent with the NCP. On a periodic basis, the United States will send Settling Defendants a bill requiring payment that includes a regionally-prepared financial summary, which shall serve as the basis for payment demands. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 83. Settling Defendants shall make all payments required by this Paragraph by certified or cashier's check(s), wire transfer or on-line payment made payable to "EPA Hazardous Substance Superfund," referencing the name and address of Settling Defendants and EPA Site/Spill ID number 08-29 and DOJ Case Number 90-11-3-138.

For certified or cashier's check(s), payment must be received by 11:00 AM Eastern Time for same day credit and should be forwarded to one of the following addresses:

REGULAR MAIL
US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

EXPRESS MAIL
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
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 "

ONLINE PAYMENT
WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open EPA Miscellaneous Payments form and complete required fields.

b. At the time of payment, Settling Defendants shall send notice that payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

Dana Anderson, NWD
EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

c. At the time of payment, Settling Defendants shall also send notice that payment has been made to:

Enforcement Specialist 8ENF-RC
California Gulch Superfund Site
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Martha Walker, FMO
Financial Management Program
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

d. The total amount to be paid by Settling Defendants pursuant to Subparagraph 81(a) shall be deposited in the California Gulch Superfund 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. Settling Defendants shall reimburse the State for all State Future Oversight Costs not inconsistent with the NCP. On a periodic basis, the State will send Settling Defendants a bill requiring payment and a cost summary, which includes direct and indirect costs incurred by the State and its contractors. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 83. Settling Defendants shall make all payments to the State required by this Paragraph by certified or cashier's check or checks made payable to "Treasurer, State of Colorado," referencing the name and address of the party making the payment for Response Costs for the California Gulch Superfund Site. Settling Defendants shall send the check(s) to Mr. Joe E. Montoya, Office of the Attorney General, Natural Resources & Environment Section, 1525 Sherman Street, 7th Floor, Denver, Colorado 80203.

82. The Parties agree that they will, to the extent practicable, minimize oversight costs and avoid duplication. As part of this effort, the Parties agree, as part of the annual meeting set out in Paragraph 54, they will discuss work at the Site, goals, and expectations for the coming year, the opportunity to transfer oversight to one lead agency, and other measures to minimize Future Oversight Costs.

83. Settling Defendants may contest payment of any Future Oversight Costs under Paragraph 81 if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included (a) does not meet the definition of Future Oversight Costs, or (b) represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXXIII (Notices and Submissions). Any such objection shall specifically identify the contested Future Oversight Costs and the basis for objection. In the event of an objection, Settling Defendants shall within the 30-day period pay all uncontested Future Oversight Costs to the United States or the State in the manner described in Paragraph 81. Simultaneously, Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Colorado and remit to that escrow account funds equivalent to the amount of the contested Future Oversight Costs. Settling Defendants shall send to the United States, as provided in Section XXXIII (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Future Oversight 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. Simultaneously with establishment of the escrow account, Settling Defendants shall initiate the Dispute Resolution procedures in Section XXV (Dispute Resolution). If the United States or the State prevails in the dispute, within 5 days of the resolution of the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the United States or the State, if State costs are disputed, in the manner described in Paragraph 81. If Settling Defendants prevail concerning any aspect of the contested costs, Settling Defendants shall pay that portion of the costs (plus associated accrued Interest) for which it did not prevail to the United States or the State, if State costs are disputed, in the manner described in Paragraph 81; Settling Defendants 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 XXV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling

Defendants' obligation to reimburse the United States and the State for their Future Oversight Costs.

84. In the event that the payments required by Paragraph 81 are not made within 30 days of Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest on Future Oversight Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section. Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 81.

XXII. PAYMENTS FOR NATURAL RESOURCE DAMAGES

85. Payment to the United States for Natural Resource Damages. Within 30 days of the Effective Date, Settling Defendants shall pay to the United States $5,250,000, plus accrued Interest from the date of lodging through the date of payment, for Natural Resource Damages relating to the Site. This money will be used by DOI for the assessment, planning, restoration, rehabilitation, replacement or acquisition of the equivalent Natural Resources injured by releases of hazardous substances from the Site, and long-term management of Natural Resources in accordance with a final restoration plan to be developed by the State and DOI. The total amount to be paid by Settling Defendants pursuant to this Paragraph shall be managed as part of, and held in a distinct account within, DOI's NRDAR Fund. The payment required by this Paragraph shall be made by FedWire EFT to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-3-138, NRDAR Account No. 14X5198, and "Natural Resource Damages in California Gulch Superfund Site." Payment shall be made in accordance with instructions provided to Settling Defendants following lodging by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Colorado. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. At the time of payment, Settling Defendants shall send written notice of payment and a copy of any transmittal documentation to Plaintiffs in accordance with Section XXXIII (Notices and Submissions).

86. Payment to the State for Natural Resource Damages. Within 30 days of the Effective Date, Settling Defendants shall pay to the State $5,250,000, plus accrued Interest from the date of lodging through the date of payment, for Natural Resource Damages relating to the Site. This money will be used by the State for the planning, restoration, rehabilitation, replacement or acquisition of the equivalent Natural Resources injured by releases of hazardous substances from the Site, and long-term management of Natural Resources in accordance with a final restoration plan or plans to be developed by the State and DOI. The total amount to be paid by Settling Defendants pursuant to this Paragraph shall be deposited by the State in a segregated sub-account of the State's NRDR Fund.

87. Settling Defendants shall make payment by Electronic Funds Transfer to the State of Colorado pursuant to instructions provided to Settling Defendants by the State following lodging of the Consent Decree.

XXIII. INDEMNIFICATION AND INSURANCE

88. Settling Defendants' Indemnification of the United States and the State

a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or 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 Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States and the State all costs they incur 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 or the State based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf and under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to this Paragraph and shall consult with Settling Defendants prior to settling such claim.

89. Settling Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants 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, Settling Defendants shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

90. No later than 15 days after the Effective Date of the Consent Decree , Settling Defendants shall secure, and shall maintain until the second anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 72(b) of Section XIX and until the MLRB releases the Performance Guarantee for the Reclamation Plan and Schedule for the Black Cloud Mine comprehensive general liability insurance with limits of one (1) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure

that their 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 Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXIV. FORCE MAJEURE

91. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

92. If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Settling Defendants shall (i) with respect to an event affecting obligations involving the California Gulch Superfund Site notify orally EPA's and the State's Project Coordinators or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, EPA Region 8, and (ii) with respect to an event affecting Settling Defendants' obligations involving the Black Cloud Mine, the State's Project Coordinator within seven days of when Settling Defendants first knew that the event might cause a delay. Within seven days thereafter, Settling Defendants shall provide in writing to EPA and the State, as applicable, 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; Settling Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any

circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

93. If EPA, in the case of an obligation involving the California Gulch Superfund Site, or the State in the case of an obligation involving the Black Cloud Mine, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended 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 event shall not, of itself, extend the time for performance of any other obligation. If EPA or the State, as applicable, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA or the State will notify Settling Defendants in writing of its decision. If EPA or the State agrees that the delay is attributable to a force majeure event, EPA or the State will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

94. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XXV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's or the State's notice. In any such proceeding, Settling Defendants 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 event, 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 Settling Defendants complied with the requirements of Paragraphs 91 and 92, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA or the State and the Court.

XXV. DISPUTE RESOLUTION

95. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section. Disputes involving the California Gulch Superfund Site will be resolved in accordance with Paragraphs 96 through 99. Disputes involving the Black Cloud Mine will be resolved in accordance with Paragraphs 96 and 100.

96. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

97. Statements of Position

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, the position advanced by EPA shall be considered binding unless, within 21 days after the conclusion of the 20-day informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 98 or Paragraph 99.

b. Within 21 days after receipt of Settling Defendants' Statement of Position, EPA after consultation with the State will serve on Settling Defendants with a copy to the State its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 98 or 99. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 98 or 99, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the provisions set forth in Paragraphs 98 and 99.

98. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the provisions of the RODs.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation, EPA Region 8, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 98(a). This decision shall be binding upon the parties to the dispute, subject only to the right of Settling Defendant to seek judicial review pursuant to Paragraph 98(c) and (d).

c. Any administrative decision made by EPA pursuant to Paragraph 98(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all parties to the dispute within 21 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States and the State may file a response to Settling Defendants' motion within 21 days after service of the motion, and Settling Defendants may file a reply to any response within 14 days after service of the response.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 98(a).

99. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 97, the Assistant Regional Administrator for the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, will issue a final decision resolving the dispute. The decision of the Assistant Regional Administrator for the Office of Enforcement, Compliance and Environmental Justice shall be binding on the parties to the dispute unless, within 21 days of receipt of the decision, the Settling Defendants file with the Court and serves on the parties to the dispute a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion within 21 days after service of the motion, and Settling Defendants may file a reply to any response within 14 days after service of the response.

b. Notwithstanding Paragraph K of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

100. Formal dispute resolution for disputes as to the Black Cloud Mine shall be governed by this paragraph. In the Event Settling Defendants and DRMS cannot resolve a dispute by informal negotiations under Paragraph 96, the position advanced by DRMS shall be considered binding unless, within 21 days after the conclusion of the 20-day informal negotiation period, Settling Defendants apply in writing to the DRMS Director to be heard before the MLRB. Such application will be set for the MLRB's next regularly scheduled meeting that is thirty days or more beyond the date of the Settling Defendants' written application. At the MLRB meeting, DRMS and the Settling Defendants will present their positions to the MLRB. If the MLRB disagrees with DRMS, the matter will be considered resolved in favor of Settling Defendants. If the MLRB agrees with DRMS, the decision of the MLRB shall be binding on the

Settling Defendants unless, within 21 days of Settling Defendants' receipt of the MLRB's written decision, the Settling Defendants file with the Court and serve on the parties to the dispute a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The DRMS and MLRB may file a response to Settling Defendants' motion within 21 days after service of the motion, and Settling Defendants may file a reply to any response within 14 days after service of the response. The invocation of formal dispute resolution procedures under this Paragraph shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless DRMS, the MLRB or the Court agrees otherwise. 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 111. Notwithstanding the stay of payment, any applicable stipulated penalties shall accrue as provided in Section XXVI below. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXVI (Stipulated Penalties).

XXVI. STIPULATED PENALTIES

101. Settling Defendants shall be liable for stipulated penalties associated with the California Gulch Superfund Site in the amounts set forth in Paragraphs 102 through 105 below (in 2007 Dollars) to the United States and the State, to be divided equally between EPA and CDPHE, for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XXIV (Force Majeure).

102. The following Tier I stipulated penalties shall be payable per violation per day for any noncompliance identified in Paragraph 102(b):

a. Tier I Amounts

Penalty Per Violation Per Day	Period of Noncompliance
$2,000	1st through 15th day
$7,500	16th through 30th day
$15,000	31st day and beyond

b. Tier I Violations

i. Failure to meet effluent limitations in Table 1 of the OU 1 Work Plan;

ii. Failure to pay response costs as described in Section XXI (Payments for Response Costs);

iii. Failure to pay Natural Resource Damages as described in Section XXII (Payments for Natural Resource Damages);

iv. Failure to perform work as provided in Section X (Remedy Review) after 45 days notice from EPA of such failure;

v. Failure to provide access to the United States, the State, or their authorized representatives to property owned or controlled by a Settling Defendant within the California Gulch Superfund Site as provided in Section XII (Access and Institutional Control); and

vi. Failure to establish and maintain the Performance Guarantee as required in Sections XVI (Performance Guarantee for Work at OU1), provided that any such penalty shall not be payable if the Plaintiffs call in the Performance Guarantee for OU1.

103. The following Tier II stipulated penalties shall be payable per violation per day for any noncompliance identified in Paragraph 103(b):

a. Tier II Amounts

Penalty Per Violation Per Day	Period of Noncompliance
$750	1st through 15th day
$2,000	16th through 30th day
$7,000	31st day and beyond

b. Tier II Violations

i. Failure to execute and record approved Environmental Covenants within the timeframes set out in Section XII;

ii. Failure to submit timely or adequate deliverables as specified in the OU1 Work Plan, the O&M Plan for OUs 4, 8, and 10, and any other work plan approved pursuant to this Consent Decree;

iii. Failure to follow the approved Standard Operating Procedures (SOP) in sampling or reporting sampling data to the extent required in the OU1 Work Plan;

iv. Failure to maintain insurance or worker's compensation coverage as provided in Section XXIII (Indemnification and Insurance); and

v. Failure to establish and maintain the Performance Guarantee as required in Section XVII (Performance Guarantee for Work at OUs 4, 8, and 10), provided that any such penalty shall not be payable if the Plaintiffs call in the Performance Guarantee for the subject OU.

104. In the event that EPA assumes performance of a portion or all of the Work in OU1 pursuant to Paragraph 122 (Work Takeover), Settling Defendants shall be liable for, in addition to the Future Oversight Costs referenced in Paragraph 122 and in lieu of any penalty under Paragraphs 102 and 103, a stipulated penalty as follows:

a. For each day the EPA performs the Work in OU1 pursuant to Paragraph 122, an amount equal to $10,000 (in 2007 dollars) until the earlier of (i) 180 days or (ii) such time that Settling Defendants resume performance of the Work;

b. If Settling Defendants have not resumed performance of the Work within 180 days after EPA assumed performance of the Work, Settling Defendants shall pay a lump sum amount equal to 25% of the most current OU1 Performance Guarantee amount established pursuant to Section XVI (Performance Guarantee for Work at OU1), less the amount that Settling Defendants have already paid pursuant to Paragraph 104(a).

105. In the event that EPA assumes performance of a portion or all of the Work in OUs 4, 8, and 10 pursuant to Paragraph 122 (Work Takeover), Settling Defendants shall be liable for, in addition to the Future Oversight Costs referenced in Paragraph 122 and in lieu of any penalty under Paragraphs 102 and 103, a stipulated penalty as follows:

a. For each day the EPA performs the Work in OUs 4, 8, and 10 pursuant to Paragraph 122 (Work Takeover), an amount equal to $500 (in 2007 dollars) until the earlier of (i) 180 days or (ii) such time that Settling Defendants resume performance of the Work;

b. If Settling Defendants have not resumed performance of the Work within 180 days after EPA assumed performance of the Work, Settling Defendants shall pay a lump sum amount equal to 25% of the most current amount of the Performance Guarantee for OUs 4, 8, and 10 established pursuant to Section XVII (Performance Guarantee for Work at OUs 4, 8, and 10), less the amount that Settling Defendants have already paid pursuant to Paragraph 105(a).

106. Settling Defendants shall be liable for stipulated penalties to the State associated with the Black Cloud Mine in the amounts set forth in this Paragraph, for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XXIV (Force Majeure).

a. The following Tier I stipulated penalties shall be payable to the State per violation per day for any noncompliance identified in Paragraph 106(a)(ii):

i. Tier I Amounts

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 15th day
$1,000	16th through 30th day
$2,000	31st day and beyond

ii. Tier I Violations

a. Failure to provide access to DRMS or their authorized representatives to property owned or controlled by a Settling Defendant within the Black Cloud Mine as provided in Section XII (Access and Institutional Controls);

b. Failure to establish and maintain the Performance Guarantee as required in Section XVIII (Performance Guarantee for Reclamation of Black Cloud Mine); and

c. Failure to complete reclamation Work within the deadlines provided in Section 6.1 of the Reclamation Plan and Schedule.

b. The following Tier II stipulated penalties shall be payable to DRMS per violation per day for any noncompliance identified in Paragraph 106(b)(ii):

i. Tier II Amounts

Penalty Per Violation Per Day	Period of Noncompliance
$100	1st through 15th day
$500	16th through 30th day
$1,000	31st day and beyond

ii. Tier II Violations

a. Failure to submit a timely or complete annual report as required by the Reclamation Plan and Schedule;

b. Failure to collect required ground water monitoring samples and submit those samples for laboratory analysis as provided in the Reclamation Plan and Schedule; and

c. If, during the implementation of the Reclamation Plan and Schedule and as part of the Work associated with reclaiming the Black Cloud Mine, the Settling Defendants cause disturbance to areas outside the Black Cloud Mine that is not authorized by the Reclamation Plan and Schedule, Tier II penalties shall be payable for the following:

(i) Failure to stabilize the disturbance by (a) November 15 of the calendar year in which the disturbance occurred, or such other date agreed to by DRMS and Settling Defendants, if the disturbance occurred between June 1 and November 1; or (b) the date agreed to by the DRMS and Settling Defendants if the disturbance occurred between November 2 and May 31; and

(ii) Failure to reclaim the disturbance as required by DRMS prior to DRMS and MLRB's release of the Black Cloud Mine Performance Guarantee.

c. Any stipulated penalties that accrue under Subparagraph 106(a)(ii)(c) shall be capped at 30 days, provided that Settling Defendants submit to DRMS, by December 15 of the calendar year in which the violation occurs, a proposed modification to the reclamation schedule set forth in the Reclamation Plan and Schedule, which modification provides for completion of the overdue reclamation Work. If Settling Defendants fail to submit such a proposed modification within such period, the stipulated penalties that accrue under Subparagraph 106 (a)(ii)(c) shall be capped at 90 days. In any event, if the Settling Defendants cure the violation prior to either the end of the 30 day or 90 day cap period, as applicable, stipulated penalties under Subparagraph 106(a)(ii)(c) shall be payable only for the number of days that the violation occurred.

107. Subject to Paragraph 108 below, 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. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XIV (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (2) with respect to a decision by the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation, EPA Region 8, under Paragraph 98(b) or 99(a) of Section XXV (Dispute Resolution), during the period, if any, beginning on the day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Assistant Regional Administrator issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XXV (Dispute Resolution), during the period, if any, beginning on the day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

108. Following EPA's determination, or the State's determination with respect to the Black Cloud Mine, that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA or the State, as applicable, will give Settling Defendants written notification of the same and describe the noncompliance. EPA and the State may send the Settling Defendants a written demand for the payment of penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA or the State has notified the Settling Defendants of a violation, provided however, that if Settling Defendants did not have actual knowledge of a violation and could not have reasonably known of such violation until being notified that a violation occurred by EPA or the State, then stipulated penalties shall not accrue until Settling Defendants receives such notice.

109. All penalties accruing under this Section shall be due and payable to the United States and the State within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XXV (Dispute Resolution).

a. Settling Defendants shall make all payments to the United States required by this Paragraph by a certified check(s) or wire transfer payment made payable to "EPA Hazardous Substance Superfund," referencing the name and address of Settling Defendants, EPA Site/Spill ID number 08-29 and DOJ Case Number 90-11-183, and indicating the payment is for stipulated penalties.

For certified check, payment must be received by 11:00 AM Eastern Time for same day credit and should be forwarded to one of the following addresses:

REGULAR MAIL
US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

EXPRESS MAIL
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

or to such other address as EPA may designate in writing.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
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 "

b. At the time of payment, notice that payment has been made, copies of check payment(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and EPA as provided in XXXIII (Notices and Submissions).

c. All payments to the State under Paragraphs 102 through 105 should be made by certified or cashier's check or checks made payable to "Treasurer, State of Colorado," referencing the name and address of the party making the payment for the California Gulch Superfund Site, stipulated penalties. Settling Defendants shall send the check(s) to Mr. Joe E. Montoya, Office of the Attorney General, Natural Resources & Environment Section, 1525 Sherman Street, 7th Floor, Denver, Colorado 80203. All payments to the State regarding the Black Cloud Mine under Paragraph 106 shall be made payable to the State of Colorado, Mined Land Reclamation Board and shall be paid by certified or cashier's check.

110. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

111. Except as provided in Paragraphs 107 and 108, Penalties shall continue to accrue as provided in Paragraph 107 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or the MLRB that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA and the State, as applicable, within 15 days of the agreement or the end of the appeal period;

b. If the dispute is appealed to this Court and the United States or the State prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA and the State within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owed to the United States and the State into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow

agent shall pay the balance of the account to EPA and the State, as applicable, or to Settling Defendant to the extent that it prevails.

112. If Settling Defendants fail to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 109.

113. Except as otherwise provided in this Paragraph, nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA; provided, however, that (i) the United States or the State shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree, and (ii) the amount of any other penalties required to be paid shall be offset by the amount of Stipulated Penalties paid by Settling Defendants. DRMS and MLRB may not seek penalties for any violation of the requirements of this Consent Decree relating to the Black Cloud Mine, including the requirements under the Reclamation Plan and Schedule, except for the stipulated penalties provided in Paragraph 106.

114. Notwithstanding any other provision of this Section, the United States and the State may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXVII. COVENANTS NOT TO SUE BY PLAINTIFFS

115. United States' Covenant Not To Sue For Response Costs Or Response Actions.

a. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 116 and 121 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to (i) Sections 106, 107(a), or 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), or 9613(f), and (ii) Section 7003 of RCRA, 42 U.S.C. § 6973, for response costs or response actions relating to the Site.

b. This covenant not to sue shall take effect upon the receipt by EPA of the payments required by Paragraphs 76 (Payment of United States' Past Response Costs), 78 (Cash Out Payment for OU12 and Additional Source Control at OUs 4, 8 & 10), 79 (Cash Out Payment for OU11) and 85 (Payment to the United States for Natural Resource Damages), and are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

116. United States' Reservations of Liability for OU1 and Black Cloud Mine Based On Unknown Conditions or New Information. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to

institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants:

a. to perform further response actions relating to OU1 or the Black Cloud Mine, or

b. to reimburse the United States for additional costs of response incurred in connection with OU1 or the Black Cloud Mine

if:

i) conditions at OU1 or the Black Cloud Mine, previously unknown to EPA, are discovered, or

ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action at OU1 or the reclamation at the Black Cloud Mine is not protective of human health or the environment.

117. For purposes of Paragraph 116, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging this Consent Decree with the Court as set forth in the OU1 ROD, the administrative record supporting the OU1 ROD and the post-ROD administrative record, and all other documents or data in the possession of EPA or the State prior to the date of lodging.

118. State's Covenants Not to Sue.

a. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided below in Paragraphs 119 and 121 of this Section, the State covenants not to sue or to take administrative action against Settling Defendants pursuant to (i) Sections 106, 107(a), or 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), or 9613(f); (ii) Section 7003 of RCRA, 42 U.S.C. § 6973; (iii) the State's authority under the Clean Water Act; (iv) Title 25, article 8, part 6 of the Colorado Revised Statute; and (v) the common law, for violations, response costs or response actions relating to the Site.

b. The covenants provided under Paragraphs 118(a)(iii) and 118(a)(iv) do not apply to any claims relating to any activities that Settling Defendants undertake at the Site after the Effective Date. In any action brought by the State against Settling Defendants under the authorities referenced in Paragraphs 118(a)(iii) and 118(a)(iv), Settling Defendants shall bear the burden of proving that any new discharges or changes in the water quality of discharges at the Site are not related to activities undertaken by Settling Defendants after the Effective Date.

c. The covenants provided under Paragraphs 118(a)(iii) and 118(a)(iv) do not apply to the Black Cloud Mine. Discharges of pollutants from the Black Cloud Mine to Iowa Gulch, if any, are subject to regulation under the Clean Water Act (e.g. Colorado Discharge

Permit No. CO-0000591). The State reserves all of its water quality authorities with respect to any changed conditions, new information, new activities, or new standards relating to any such discharges after the date of lodging this Consent Decree with the Court.

d. In consideration of full and satisfactory performance of the Black Cloud Mine Reclamation Plan and Schedule or satisfaction of the Reclamation Cap by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in this Paragraph and Paragraph 121 (General Reservations of Rights), DRMS and the MLRB covenant not to sue or to take judicial or administrative action against the Settling Defendants pursuant to their authority under the MLRA in regard to reclamation of the Black Cloud Mine. DRMS and MLRB agree that enforcement of Settling Defendants' reclamation obligations at the Black Cloud Mine shall be pursuant to the terms of this Consent Decree. This covenant does not include any liability for violation of any state or federal law during or after implementation of the Reclamation Plan and Schedule by Settling Defendants.

e. These covenants not to sue shall take effect upon the receipt by the State of the payments required by Paragraphs 77 (Payment of State's Past Response Costs) and 86 (Payment to the State for Natural Resource Damages), and are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants and do not extend to any other person.

119. States' Reservations for OU1. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action seeking to compel Settling Defendants:

a. to perform further response actions relating to OU1, or

b. to reimburse the State for additional costs of response incurred in connection with OU1

if :

i) conditions at OU1, previously unknown to the State, are discovered, or

ii) information, previously unknown to the State, is received, in whole or in part,

and the State determines that these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action at OU1 is not protective of human health or the environment.

120. For purposes of Paragraph 119, the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of lodging this Consent Decree with the Court as set forth in the OU1 ROD, the administrative record supporting the OU1 ROD and the post-ROD administrative record, and all other documents or data in the possession of the State or EPA prior to the date of lodging.

121. General Reservations of Rights of the United States and the State. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendants with respect to:

a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon the Settling Defendants' future operations at the Site or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the Consent Decree or other documents governing Settling Defendants' response actions and reclamation at the Site or as otherwise ordered by EPA or the State, after the Effective Date;

d. criminal liability; and

e. liability for violations of federal or state law which occur during or after implementation of Settling Defendants' response actions or reclamation activities, except as otherwise expressly provided in the United States' and the State's covenants not to sue.

122. Work Takeover.

a. In the event EPA determines that Settling Defendants (i) have ceased implementation of any portion of the Work at the California Gulch Superfund Site, (ii) are seriously or repeatedly deficient or late in their performance of the Work at the California Gulch Superfund Site, or (iii) are implementing the Work at the California Gulch Superfund Site in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of that Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XXV (Dispute Resolution), Paragraph 98, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Oversight Costs that Settling Defendants shall pay pursuant to Section XXI (Payments for Response Costs), only to the extent such costs are not covered by any performance guarantee that EPA or the State calls in.

b. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee provided pursuant to this Consent Decree.

123. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXVIII. COVENANTS NOT TO SUE BY PLAINTIFFS FOR NATURAL RESOURCE DAMAGES

124. Except as specifically provided in Paragraphs 125 and 126, Plaintiffs covenant not to sue or to take civil or administrative action against Settling Defendants under Section 107 of CERCLA, 42 U.S.C. § 9607, Section 311(f) of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1321(f), or other federal, State or common law for Natural Resource Damages occurring in the Site resulting from the release of hazardous substances at or from the Site. This covenant not to sue shall take effect on the Effective Date and is conditioned on the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

125. Plaintiffs' Reservations of Rights. Notwithstanding any other provision of this Consent Decree, Plaintiffs reserve the right to institute proceedings against Settling Defendants in this action or in a new action for recovery of Natural Resource Damages with respect to (a) Iowa Gulch between the Black Cloud Mine and its confluence with the Arkansas River and (b) the Pueblo Reservoir. Any claim under Paragraph 125(a) may be brought only where it is (i) based on injury to, destruction of, or loss of natural resources resulting from conditions that were unknown to the Plaintiffs as of the date of lodging of this Consent Decree or that materially change after the date of lodging of this Consent Decree ("Unknown or Changed Conditions") or (ii) based on information received by Plaintiffs after the date of lodging of this Consent Decree that indicates that there is injury to, destruction of, or loss of Natural Resources of a type unknown to Plaintiffs as of the date of lodging of this Consent Decree ("New Information"). No condition shall be deemed an "Unknown Condition" if the condition is identified in, or could be reasonably determined from, documents and data in the possession of CDPHE, the Colorado Department of Natural Resources, DOI, or EPA on or before the date of lodging of this Consent Decree, including any information developed by one or more of the Plaintiffs based thereon. No information shall be "New Information" if the information is contained in, or could be reasonably determined from, documents and data in the possession of CDPHE, Colorado Department of Natural Resources, DOI or EPA on or before the date of lodging of this Consent Decree, including any information developed by one or more of the Plaintiffs based thereon. "Unknown or Changed Conditions" or "New Information" shall not include or pertain to a change only in Plaintiffs' quantification of Natural Resource Damages resulting from past and/or continuing releases of hazardous substances at and/or from the Site. Any claim under Paragraph 125(b) may be brought only in the event the Pueblo Reservoir ceases to be operated as a reservoir and human or other biological receptors are exposed to sediments within the Pueblo Reservoir attributable to the Site in a manner that creates health or environmental risks.

126. Notwithstanding any other provision of this Consent Decree, the covenant not to sue in Paragraph 124 shall apply only to matters addressed in that Paragraph and specifically shall not apply to the following claims:

a. claims for recovery of Natural Resource Damages in any area outside of the Site;

b. claims based on a failure by Settling Defendants to satisfy any requirement imposed upon them by this Consent Decree;

c. claims for criminal liability;

d. claims arising from any active disposal of hazardous substances at or from the Site after the date of lodging of this Consent Decree other than as explicitly authorized pursuant to any EPA approved work plan, or otherwise explicitly directed or approved by EPA; and

e. claims arising from the disposal of hazardous substances at any place that does not fall within the definition of the Site.

XXIX. COVENANTS BY SETTLING DEFENDANTS

127. Covenant Not to Sue. Subject to the reservations in Paragraph 128, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Site, the Reclamation Plan and Schedule, Past Response Costs and Future Oversight Costs and Natural Resource Damages as defined herein or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

b. any claims against the United States or the State, including any department, agency or instrumentality of the United States or the State under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to the Site;

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

d. any direct or indirect claim for disbursement from the California Gulch Superfund Special Account, except as provided in Paragraph 135 (Waiver of Claim Splitting Defenses), these covenants not to sue shall not apply in the event that the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 116, 119 or 121(b) – (d), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

128. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the Plaintiffs, subject to the provisions of Chapter 171 of Title 28 of the United States Code, 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 or State while acting within the scope of his 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, any such claim shall not include a claim for any damages caused in whole by the act or omission of any person, including any contractor, who is

not a federal employee as that term is defined in 28 U.S.C. § 2671 or a State employee; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

129. Nothing in this Consent Decree shall be deemed to constitute 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).

XXX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

130. This Consent Decree supersedes and replaces the 1994 Decree and all prior EPA and State orders or other directives to Settling Defendants or the Res-Asarco Joint Venture with respect to the Site.

131. Except as encompassed by the definition of “Settling Defendants”, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action 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.

132. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. For purposes of this Consent Decree, "matters addressed in this Consent Decree" are defined as all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person, with respect to the Site, as well as natural resource damages resulting from releases of hazardous substances at or from the Site. The “matters addressed” in this settlement do not include those damages, response costs or response actions as to which the United States or the State has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States or the State asserts rights against Settling Defendants coming within the scope of such reservations.

133. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify in writing the United States and the State no later than 60 days prior to the initiation of such suit or claim.

134. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the State within 15 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within 15 days of

service or receipt of any Motion for Summary Judgment and within 15 days of receipt of any order from a court setting a case for trial.

135. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claimsplitting, or other defenses based upon any contention that the claims raised by the United States or the State 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 covenants not to sue set forth in Section XXVII (Covenants Not to Sue by Plaintiffs).

XXXI. ACCESS TO INFORMATION

136. Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, 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 related to the Work. Settling Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

137. Business Confidential and Privileged Documents

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree 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). Documents or information 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 documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information 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 documents or information without further notice to Settling Defendants.

b. With respect to documents and information submitted to the State, Settling Defendants may assert confidentiality claims covering part or all of those documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with the Colorado Open Records Act at Colorado Revised Statutes, 24-72-201, *et seq*. Documents or information determined by the State to be confidential will be afforded the protection specified in such Act. If no claim of confidentiality accompanies documents or information when they are submitted to the State, or if the State has notified Settling Defendants that the documents or information are not confidential, the public may be given access to such documents or information without further notice to Settling Defendants.

c. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

138. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXXII. RETENTION OF RECORDS

139. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 73(b) and, for records and documents relating to the Black Cloud Mine, until 10 years after receipt of MLRB's notice of the release of the Performance Guarantee for reclamation of the Black Cloud Mine each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site; provided, however, that Settling Defendants must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant 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 documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (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 documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

140. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State delivered within 90 days after receipt of such notice, Settling Defendants shall deliver any such records or documents to EPA or the State. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling

Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

141. Each Settling Defendant hereby 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, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 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.

XXXIII. NOTICES AND SUBMISSIONS

142. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-138

And

Assistant Regional Administrator
Office of Ecosystems Protection and Remediation
United States Environmental Protection Agency
Region 8
(8EPR)
1595 Wynkoop Street
Denver, CO 80202-1129

As to EPA:

EPA Remedial Project Manager
California Gulch Superfund Site
United States Environmental Protection Agency, Region 8
(8EPR-SR)
1595 Wynkoop Street
Denver, CO 80202-1129

With copies to:

EPA Enforcement Specialist
California Gulch Superfund Site
United States Environmental Protection Agency, Region 8
(8ENF-RC)
1595 Wynkoop St.
Denver, CO 80202-1129

And

EPA Site Attorney
California Gulch Superfund Site
United States Environmental Protection Agency, Region 8
(8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

Notice Regarding Financial Assurance:

Financial Analyst
California Gulch Superfund Site
United States Environmental Protection Agency, Region 8
(8ENF-RC)
1595 Wynkoop St.
Denver, CO 80202-1129

Notice Regarding Payments:

Regional Financial Management Officer
Martha Walker, FMO
Financial Management Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

As to the State:

For CERCLA matters:

State Project Manager
California Gulch Superfund Site
Colorado Department of Public Health and the Environment
Hazardous Materials & Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 8022-1530

Counsel of Record
California Gulch Superfund Site
Office of the Attorney General
Natural Resource and Environment Section
1525 Sherman Street, 5th Floor
Denver, CO 80203

For Black Cloud Mine Reclamation:

DRMS Project Coordinator
Division of Reclamation, Mining and Safety
1313 Sherman St., Room 215
Denver, CO 80203

Administrator for MLRB
1313 Sherman St., Room 215
Denver, CO 80203

As to Settling Defendants:

Law Department
Resurrection Mining Company
1700 Lincoln Street, Suite 3600
Denver, CO 80203

And

Director of Reclamation and Closure
Resurrection Mining Company
1700 Lincoln Street, Suite 3600
Denver, CO 80203

XXXIV. EFFECTIVE DATE

143. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXXV. RETENTION OF JURISDICTION

144. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXV (Dispute Resolution) hereof.

XXXVI. APPENDICES

145. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the OU1 Work Plan.

"Appendix B" is the definition of OUs 4, 8, and 10.

"Appendix C" is a map of the California Gulch Superfund Site and the OUs.

"Appendix D" is the O&M Plan for OUs 4, 8, and 10

"Appendix E" is Black Cloud Mine Reclamation Plan and Schedule

"Appendix F" is a description of the zones and prescriptions for Environmental Covenants.

"Appendix G" are the draft Environmental Covenants referenced in Paragraph 37.

"Appendix H" describes the model that has been and will be used for calculating and updating the amount of the Performance Guarantee for OU1.

"Appendix I" is the form Access Agreement for granting DRMS access to borrow sites for reclamation of the Black Cloud Mine

XXXVII. COMMUNITY RELATIONS

146. Settling Defendants shall cooperate with EPA and the State in providing information regarding the Work to the Public. As requested by EPA or the State, Settling Defendants shall participate in preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

XXXVIII. MODIFICATION

147. Schedules and work plans specified in this Consent Decree for completion of the Work at the California Gulch Superfund Site may be modified by agreement of EPA and Settling Defendants. All such modifications shall be made in writing. The Black Cloud Mine Reclamation Plan and Schedule may be modified by agreement of MLRB, DRMS and Settling Defendants as provided in this Consent Decree.

148. Except as provided in Paragraph 13 (Modification of the OU1 Work Plan), Paragraph 17 (Modification of the O&M Plans for OUs 4, 8, and 10) and the OU1 Contingency Plan, no material modifications shall be made to any work plan governing Work at the California Gulch Superfund Site without written notification to and written approval of the United States, Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to any work plan that do not materially alter that document, or material modifications to any work plan that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

149. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

150. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

151. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XL. SIGNATORIES/SERVICE

152. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

153. Each undersigned representative of a Settling Defendant to this Consent Decree, each undersigned representative of the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she

is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

154. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States or the State has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

155. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XLI. FINAL JUDGMENT

156. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

157. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2008.

_____

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Asarco Inc., *et al.*, relating to the California Gulch Superfund Site.

FOR THE UNITED STATES OF AMERICA:

U.S. DEPARTMENT OF JUSTICE

RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

26 June 2008
Date

JEREL ("JERRY") L. ELLINGTON
MARK C. ELMER
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294

6/26/2008
Date

UNITED STATES ATTORNEY'S OFFICE
FOR THE DISTRICT OF COLORADO

TROY A. EID
United States Attorney

Stephen D. Taylor
Assistant United States Attorney
District of Colorado
U.S. Department of Justice
1225 Seventeenth Street, Suite 700
Denver, CO 80202

6/24/08
Date

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ 6/18/08
BILL MURRAY, Director Date
Superfund Remedial Response Program
Office of Ecosystems Protection and Remediation
U.S. Environmental Protection Agency, Region 8

By: _____ 6/24/08
MATTHEW D. COHN, Legal Supervisor Date
Legal Enforcement Program
U.S. Environmental Protection Agency, Region 8

By: _____ 6/24/08
SHARON L. KERCHER, Director Date
Technical Enforcement Program
U.S. Environmental Protection Agency, Region 8

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Intentionally Omitted

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Asarco Inc., *et al.*, relating to the California Gulch Superfund Site.

FOR THE STATE OF COLORADO

JOHN W. SUTHERS
Attorney General as State Natural Resource Trustee

6/24/08
Date

VICTORIA L. PETERS, Counsel of Record
Senior Assistant Attorney General
Hazardous and Solid Waste/CERCLA Litigation Unit
Natural Resources and Environment Section
1525 Sherman Street, 7th Floor
Denver, CO 80203

6/23/08
Date

JAMES B. MARTIN
Executive Director
Colorado Department of Public Health & Environment,
and State Natural Resource Trustee

Date

RONALD W. CATTANY
Director, Division of Reclamation, Mining and Safety,
And State Natural Resource Trustee

Date

Chair of the MLRB

Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Asarco Inc., *et al.*, relating to the California Gulch Superfund Site.

FOR THE STATE OF COLORADO

JOHN W. SUTHERS
Attorney General as State Natural Resource Trustee

Date

VICTORIA L. PETERS, Counsel of Record
Senior Assistant Attorney General
Hazardous and Solid Waste/CERCLA Litigation Unit
Natural Resources and Environment Section
1525 Sherman Street, 7th Floor
Denver, CO 80203

Date

JAMES B. MARTIN
Executive Director
Colorado Department of Public Health & Environment,
and State Natural Resource Trustee

6/23/08
Date

RONALD W. CATTANY
Director, Division of Reclamation, Mining and Safety,
And State Natural Resource Trustee

Date

Chair of the MLRB

Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Asarco Inc., *et al.*, relating to the California Gulch Superfund Site.

FOR THE STATE OF COLORADO

JOHN W. SUTHERS
Attorney General as State Natural Resource Trustee

Date

VICTORIA L. PETERS, Counsel of Record
Senior Assistant Attorney General
Hazardous and Solid Waste/CERCLA Litigation Unit
Natural Resources and Environment Section
1525 Sherman Street, 7th Floor
Denver, CO 80203

Date

JAMES B. MARTIN
Executive Director
Colorado Department of Public Health & Environment,
and State Natural Resource Trustee

Date

/Ronald W. Cattany

RONALD W. CATTANY
Director, Division of Reclamation, Mining and Safety,
And State Natural Resource Trustee

June 24, 2008
Date

/Harry J. Janecek

Chair of the MLRB

06-24-2008
Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Asarco Inc., *et al.*, relating to the California Gulch Superfund Site.

FOR NEWMONT USA LIMITED:

BRITT D. BANKS
Chairman of the Board

June 26, 2008
Date

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Corporation Service Company
1560 Broadway, Suite 2090
Denver, CO 80202-5139

Phone: 303-860-7052
Fax: 303-832-9050

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Asarco Inc., *et al.*, relating to the California Gulch Superfund Site.

FOR RESURRECTION MINING COMPANY:

DAVID A. BAKER
President

June 26, 2008
Date

Agent Authorized to Accept Service on Behalf of Above-signed Party:

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1560 Broadway, Suite 2090
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