

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

|                               |             |   |                  |
|-------------------------------|-------------|---|------------------|
| <hr/>                         |             | ) |                  |
| UNITED STATES OF AMERICA, and |             | ) |                  |
| STATE OF NEW MEXICO,          |             | ) |                  |
|                               |             | ) |                  |
|                               | Plaintiffs, | ) |                  |
|                               |             | ) |                  |
| v.                            |             | ) | Civil Action No. |
|                               |             | ) |                  |
| CHEVRON MINING INC.,          |             | ) |                  |
|                               |             | ) |                  |
|                               |             | ) |                  |
|                               | Defendant.  | ) |                  |
| <hr/>                         |             | ) |                  |

**CONSENT DECREE**

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## SIGNATURE PAGES

APPENDIX A - Description and map of the Site.

APPENDIX B - Index to Administrative Record

APPENDIX C - Form of warranty deed and legal description of real property

APPENDIX D - Fencing Specifications

This Consent Decree is made and entered into by and among (i) the United States of America ("United States"), on behalf of the United States Department of the Interior ("DOI"), and the United States Department of Agriculture ("USDA") Forest Service; (ii) the State of New Mexico ("State"), acting through the New Mexico Natural Resources Trustee and the New Mexico Office of Natural Resources Trustee (jointly "ONRT"), and the New Mexico Attorney General and the New Mexico Attorney General's Office (jointly "AGO"); and (iii) Chevron Mining Inc. (the "Settling Defendant").

## **I. BACKGROUND**

### **WHEREAS:**

A. The Molycorp Site ("Site") is located near Questa, New Mexico. The Site includes a molybdenum mine and mill, its associated tailings ponds, and a tailings slurry pipeline that transports tailings to the ponds. The mine is located east of Questa on approximately six square miles of land owned by the Settling Defendant. The tailings ponds are located west of the mine on three square miles of land also owned by the Settling Defendant. The pipeline is located between the mine and tailings facility on land owned by the Settling Defendant as well as public and other private property. The Red River flows to the west, south of the mine and tailings ponds, and flows into the Rio Grande downstream of the tailings ponds. A map of the Site and the vicinity is Appendix A to this Consent Decree;

B. Small-scale underground mining operations began at the Site in 1918. By 1954 the underground complex contained over 35 miles of mine workings. An open pit was developed



in 1965 and was operated until 1982. During open pit mining operations, approximately 328 million tons of overburden rock, some of which had the potential to generate acidic drainage, was excavated to expose the molybdenum ore. This overburden was deposited in engineered rock pile structures on the Site. Following the extraction of molybdenite at the Site through milling and concentrating operations, tailings and water were transported to the tailings ponds via multiple 9-mile long pipelines. Between 1966 and 1976, up to 80 spills were reported from the pipeline, which runs parallel to and crosses the Red River in four locations. There are more than 100 million tons of fine-grained tailings in the tailings ponds;

C. In 1992, the New Mexico Water Quality Control Commission submitted a report to the United States Congress documenting the elevated levels of numerous metals within the vicinity of the Site, including cadmium, copper, lead, silver, and zinc. The United States Environmental Protection Agency ("EPA") proposed the Site for listing on the National Priorities List in May 2000. After the proposed listing, the Settling Defendant entered into an Administrative Order on Consent with EPA in 2001 to perform a Remedial Investigation on the Site;

D. The Red River is a popular multiple-use watershed, and is home to a State fish hatchery located 3 miles downstream of the tailings facility. In addition, the River provides water for irrigation and livestock and serves as a wildlife habitat. In 1983, the Bureau of Land Management designated the Red River and the Rio Grande River in the vicinity of their confluence (which is six miles downstream from the tailings facility) as a Wild and Scenic River.

The Mine is surrounded by the Carson National Forest and is approximately 2 miles from the Latir Peak Wilderness;

E. Historical studies have shown injuries to natural resources in the vicinity of the Site. These studies have shown hazardous substances in surface water, upstream and downstream of the Site, at levels that exceed State water quality standards. Ground water in the vicinity of the Site has been contaminated with hazardous substances at levels which exceed state ground water quality standards. Studies also have shown elevated levels of hazardous substances and contaminants of concern in sediments in the Red River, decreased fish population in the river, and impaired health of the fish in the river. Based on these historical studies and additional assessment work, DOI, USDA and ONRT (collectively, the "Trustees") have determined that releases of hazardous substances at or from the Site are likely to have caused injuries to natural resources at and in the vicinity of the Site including but not limited to injuries to surface water, ground water, terrestrial habitats, terrestrial receptors, the aquatic invertebrate community, and fish populations;

F. Plaintiffs allege that the Settling Defendant is liable for damages for injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances at or from the Site;

G. Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300, the Secretary of the DOI and the Secretary of the USDA have been delegated authority to act as the Federal Trustees for natural resources arising under their respective programs and impacted by the release of hazardous substances at or from the Site;

H. The United States, through DOI and USDA ("Federal Trustees"), is authorized to seek natural resource damages and related assessment costs;

I. The State, acting through the ONRT and the AGO, is authorized to seek Natural Resource Damages, including the reasonable costs to assess the damages pursuant to, among other authorities, the New Mexico Natural Resources Trustee Act ("NMNRTA"), N.M. Stat. Ann. Section 75-7-1 through -5 (1978);

J. The ONRT has been delegated authority to act as State Trustee for natural resources impacted by the release of hazardous substances at and from the Site;

K. Article XVI of the Constitution of the State of New Mexico declares that the unappropriated water of every natural stream, perennial or torrential, within the State of New Mexico belongs to the public and is subject to appropriation for beneficial use, in accordance with the laws of the State;

L. Groundwater from the Site in New Mexico underlies portions of the Carson National Forest and BLM-managed land near the Red River, and contributes to the flow of the Red River – four miles of which have been designated a National Wild and Scenic River which runs through the Carson National Forest and BLM-managed land.

M. The Pre-assessment Screen and Determination documented that hazardous substances concentrations have exceeded State of New Mexico or Federal water quality standards;

N. The Federal Trustees and the ONRT formed a Trustee Council to coordinate activities relating to this matter;



O. The Trustees assert claims for recovery of Natural Resource Damages (including for recovery of natural resource damage assessment costs) against the Settling Defendant;

P. The Trustees and the Settling Defendant have negotiated regarding the extent of and appropriate compensation for alleged injuries to Natural Resources. This settlement follows an investigation by the Trustees of natural resource injuries related to the release of hazardous and non-hazardous substances into the environment from acid rock drainage and operations at the Questa mine site, pipeline, and tailings facility;

Q. The Trustees evaluated potential impacts to all natural resources as defined in the DOI regulations at 43 C.F.R. Section 11.14(z). These included geological (*e.g.*, terrestrial and riparian soils, aquatic sediments, etc.), biological (*e.g.*, aquatic, riparian, and terrestrial ecosystems), and hydrological, comprised of both water resources and ground water resources, which include, among other things, water in a saturated zone or stratum beneath the surface of land or water and the rocks or sediments through which ground water moves - all as defined in the DOI natural resource damage regulations at 43 C.F.R. Section 11.14. In particular, the Trustees reviewed possible injuries to the resources noted in 43 C.F.R. Section 11.14(z) at: the Site; the aquatic habitat and ecosystem of the Red River, extending from the eastern boundary of the Questa Mine Site to a location 0.3 miles north of the Red River Hatchery (Station LR-16); the riparian habitat and ecosystem of the Red River; selected areas outside the Red River Riparian habitat where historical information suggested releases from the tailings pipeline may have occurred; and selected areas south of the tailings facility where information indicated ground water has been affected by the substances from the tailings facility;

R. The parties recognize that significant improvement has been made to the Site and to the Red River, and the parties have made reasonable conservative assumptions to assure that the public will be appropriately compensated. Among those assumptions is that releases of hazardous and non-hazardous substances from the Site to the Red River area will continue indefinitely into the future; and

S. This Consent Decree represents a settlement of a contested matter, and neither payment nor the acceptance of any consideration represents an admission of liability or responsibility by any Party. Nothing contained in this Consent Decree shall be considered an admission by any Party, or a finding of any fault, fact, wrong doing or liability by any Party. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that implementation of this Consent Decree will expedite the restoration of injured natural resources and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest; THEREFORE, it is ORDERED, ADJUDGED, and DECREED as follows:

## **II. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345. The Court also has personal jurisdiction over the Settling Defendant. Venue is proper here; the Site is in this judicial district. Solely for the purposes of this Consent Decree and the Complaint, the Settling Defendant waives all objections and defenses that it may have to jurisdiction of this Court or to venue in this District. The Settling



Defendant shall not challenge: i) that plaintiffs have stated a claim upon which relief could be granted, ii) the terms of this Consent Decree, and iii) 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, the State, and the Settling Defendant and their respective successors and assigns. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Defendant's responsibilities under this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or the Clean Water Act, or in regulations promulgated under CERCLA and the Clean Water Act, shall have the meaning assigned to them in CERCLA, the Clean Water Act or such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply:

a. "Administrative Record" means the information contained in the collection of documents known as "Administrative Record for Molycorp NRDA: Final as of February 2009" - the index to which is Appendix B.

b. "AGO" means the New Mexico Attorney General, the New Mexico Attorney General's Office and any successor officers, departments or agencies.

c. “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

d. “Consent Decree” means this Consent Decree and all appendices attached hereto (listed in Section XV (Appendices)). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

e. “Day” means a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than Saturday, Sunday, or a federal holiday. In computing any period of time under this Consent Decree, when the last day falls on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

f. “DOI” means the United States Department of the Interior and any successor departments or agencies.

g. “Effective Date” means the effective date of this Consent Decree as provided by Section XVI (Effective Date and Retention of Jurisdiction).

h. “Federal Trustees” means DOI and USDA.

i. “Forest Service” means the United States Department of Agriculture Forest Service.

j. “Future Costs” means the reasonable costs that the Trustees have incurred or will incur after the lodging of the Consent Decree in connection with planning, implementing, monitoring, and completing the restoration activity or activities funded through this Consent Decree. Future Costs include administrative and other costs or expenses associated with

providing for public participation that are incurred incident to or in support of the restoration process.

k. "Interest," means 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.

l. "Natural Resource" or "Natural Resources" means 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.

m. "Natural Resource Damages" means, at the MolyCorp Site and stemming from mining activity described in the Administrative Record, any damages recoverable by the United States or the State for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources resulting from the release of hazardous substances at or from the Site, including, but not limited to: (i) the costs of assessing such injury, destruction, loss, loss of use, or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of identifying and planning such restoration, rehabilitation, replacement or acquisition 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.



- n. “NRDAR Fund” means DOI’s Natural Resource Damage Assessment and Restoration Fund.
- o. “ONRT” means the New Mexico Natural Resources Trustee, the New Mexico Office of Natural Resources Trustee and any successor officers, departments or agencies.
- p. “Paragraph” means a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.
- q. “Parties” means the United States, the State and the Settling Defendant.
- r. “Past Costs” means the reasonable costs incurred by the Trustees prior to the lodging of the Consent Decree in assessing the Natural Resources actually or potentially injured, destroyed, or lost as a result of releases of hazardous substances at or from the Site, and in identifying and planning for restoration actions to compensate for such injuries and losses.
- s. “Section” means a portion of this Consent Decree identified by an uppercase Roman numeral.
- t. “Settling Defendant” or “Chevron” means Chevron Mining Inc., a corporation doing business in the State of New Mexico, which acquired the Molycorp Site when Union Oil Company of California (“UNOCAL”) merged with Chevron Corporation in 2005, and Chevron Corporation then combined its mining subsidiary P&M Mining Company with Molycorp to become Chevron Mining Inc. in 2007.
- u. “Site” means the Molycorp Site. The Site consists of a molybdenum mine and milling facility approximately four miles east of the village of Questa in Taos County, New Mexico, on approximately six square miles of land owned by the Settling Defendant (lat. 36°41'

54" N., long. 105°30' 18" W). In addition, the Site includes a tailings pipeline running along State Highway 38, the area in the vicinity of the pipeline, and four tailings ponds above the village of Questa (lat. 36°42' 13" N., long. 105°36' 40" W.; and lat. 36°42' 08" N., long. 105°37' 54" W.), as well as all other areas where any hazardous substance, pollutant, or contaminant from mining, milling, and tailings disposal operations have come to be located. The Site and vicinity are generally depicted on the map attached as Appendix A.

v. "State" means the State of New Mexico, and its officers, departments, agencies and instrumentalities, including the ONRT and the AGO.

w. "Subparagraph" means a portion of this Consent Decree identified by a lower case letter or an Arabic numeral in parenthesis.

x. "Trustees" means DOI, USDA and ONRT.

y. "United States" means the United States of America, including all of its departments, agencies and instrumentalities.

z. "USDA" means the United States Department of Agriculture.

## **V. STATEMENT OF PURPOSE**

4. The mutual objectives of the Parties in entering into this Consent Decree are to: (i) contribute to the restoration, replacement, or acquisition of the equivalent of the Natural Resources injured, destroyed, or lost as a result of hazardous substances releases at and from the Site; (ii) reimburse natural resource damage assessment costs incurred by DOI, USDA and the

State; (iii) resolve the Settling Defendant's liability for Natural Resource Damages as provided herein; and (iv) to avoid potentially costly and time-consuming litigation.

**VI. PAYMENT BY THE SETTLING DEFENDANT**

5. Prior Payments by Chevron Mining, Inc.

Chevron has already paid \$3.4 million for the cooperative, restoration-based natural resource damage assessment activities undertaken by DOI, USDA, the State, and their consultants.

Chevron will not be required to pay any other assessment expense that was incurred by Plaintiffs prior to the date of lodging of this Consent Decree.

6. Payments to be Made by Chevron Within Thirty Days

Within 30 days after the Effective Date, the Settling Defendant must pay \$4,207,223.00, as described below and include Defendant's Taxpayer identification number with each payment:

(a) To the United States Attorney's Office, District of New Mexico, per wire instructions that may be obtained from that office, the sum of \$ 171,180.57, of which:

(1) \$116,407.00, less applicable charges, will then be directed to the United States DOI NRDAR Fund, as compensation for DOI Past Costs that the Settling Defendant has not already paid, either by wire transfer or as specified below:

United States Department of the Interior NRDAR Fund  
Department of Interior, NBC/Division of Financial Management Services,  
Branch of Accounting Operations, Mail Stop D-2777,  
7401 W. Mansfield Avenue, Lakewood, CO 80235.  
Account No. – "14X5198 (NRDAR)



Site name - Molycorp Mine,  
Location of site - Taos County, New Mexico  
Settling Defendant - Molycorp, Inc.

(2) \$37,267.84, less any applicable charges, will then be directed to the USDA Forest Service, as compensation for Forest Service Past Costs that the Settling Defendant has not already paid, either by wire transfer or as specified below:

USDA Forest Service  
ASC – B&F  
101B Sun Ave., N.E.  
Attn.: Judie L. Wilson  
TSA & Collections  
Albuquerque, NM 87109  
[Ref. Molycorp Mine, Acc't. RICW]; and

(3) \$17,505.73, less any applicable charges, will then be directed to the USDA Office of the General Counsel ("OGC"), as compensation for USDA OGC Past Costs that the Settling Defendant has not already paid, either by wire transfer or as specified below:

USDA / OGC  
USDA Office of the General, Attn: Charlene Buckner,  
1400 Independence Ave, S.W.  
Room 2038,  
Washington, DC 20250;

(b) To State agencies, as follows:

(1) \$13,019.24, to the ONRT as compensation for ONRT Past Costs that the Settling Defendant has not already paid. This disbursement should be made

payable to "New Mexico Office of Natural Resources Trustee," should be designated as "Molycorp Past Costs," and should be sent to Cash Receipts, c/o Elysia Martinez, Business Operations Specialist, Office of Natural Resources Trustee, 4910-A, Alameda Blvd., NE, Albuquerque, New Mexico 87113; and

(2) \$13,022.76 to the AGO, as compensation for AGO Past Costs that the Settling Defendant has not already paid. This disbursement should be made payable to "New Mexico Attorney General," should be designated as "WEUD / Molycorp Past Costs," and should be sent to Evangeline Tinajero, Director, Administrative Services Division, New Mexico Attorney General's Office, P.O. Drawer 1508, Santa Fe, NM 87504;

(c) The balance, after completing the payments required by subparagraphs (a) through (b) -- at least \$4,000,000.00 -- shall be placed in an interest-bearing court registry account of the United States District Court for the District of New Mexico, in the manner specified by the Clerk of the Court for use in compliance with the terms of this Decree, as follows: \$2,500,000 (including any interest earned on that sum) designated for use by ONRT to plan and implement projects designed to restore, replace, and / or acquire the equivalent of the ground water resources injured, destroyed, or lost as a result of the release of hazardous substances at or from the Site, and the remainder (including any interest earned thereon) designated for use by the Trustees jointly to plan and implement projects designed to restore, replace, and/or

acquire the equivalent of habitat resources injured, destroyed, or lost as a result of the release of hazardous substances at or from the Site.

- (d) Upon request to the Court from the ONRT or the Trustees, as provided by Paragraph 6(c), that is accompanied by the restoration plan conforming to Section IX of this Decree and 43 C.F.R. Section 11.93 and bearing approval of the Trustees, the Clerk of the Court shall pay from the registry to the Trustees sums requested, in accordance with this Consent Decree and the restoration plan.

7. Notice of Payment. Upon making any payment under this Decree, Settling Defendant shall send written notice that payment has been made to:

FOR THE UNITED STATES:

Chief, Environmental Enforcement Section  
U.S. Department of Justice  
DJ # 90-11-2-07579  
P.O. Box 7611  
Washington, DC 20044-7611

Department of the Interior  
Natural Resource Damage Assessment  
and Restoration Program  
Attn: Restoration Fund Manager  
1849 C Street, NW  
Mailstop 4449  
Washington, D.C. 20240

United States Fish & Wildlife Service  
NRDAR Coordinator - Region 2  
Attn: Karen Cathey  
P.O. Box 1306  
Albuquerque, New Mexico 87103



USDA, Office of the General Counsel  
1400 Independence Ave., SW, Room 2038  
Washington, D.C. 20250  
Attn: Charlene Buckner

USDA Forest Service - Region 3  
Attn: Penny Luehring  
333 Broadway SE  
Albuquerque, NM 87102

FOR THE STATE:

Cathy Atencio, Director  
Administrative Services Division  
New Mexico Environment Department  
P.O. Box 5469  
Santa Fe, NM 87502

Evangeline Tinajero, Director  
Administrative Services Division  
New Mexico Attorney General's Office  
P.O. Drawer 1508  
Santa Fe, NM 87504

with copies to:

Rebecca Neri Zagal  
New Mexico Office of Natural Resources Trustee  
4910-A Alameda Blvd. NE  
Albuquerque, NM 87113

Judith Ann Moore  
New Mexico Attorney General's Office  
P.O. Drawer 1508  
Santa Fe, NM 87504

8. Non-Exclusive Remedies for Untimely or Inadequate Payment of Money or

Performance of Other Obligations.

a. Interest. In the event any payment required by Paragraph 6 is not made when due, the Settling Defendant shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment.

b. Stipulated Penalties. In addition to the Interest required to be paid under the preceding Subparagraph, if any payment required by Paragraph 6 is not made within 14 days after it is due, or if the Settling Defendant fails to perform any non-monetary duties or obligations under this Consent Decree, then the Settling Defendant shall also pay stipulated damages of \$2,000 per day through the date of the respective full payment or full compliance with each such non-monetary duty or obligation.

c. Payment of Interest and Stipulated Penalties. Settling Defendant must pay any Interest payments under Subparagraph 8(a) to the United States and the State in the same manner and form as Settling Defendant should have paid the overdue principal amount. Interest shall be allocated to the United States, the State and to natural resource restoration activities in accordance with the proportions that the payment amounts specified in Subparagraphs 6(a), 6(b), and 6(c), bear to the total payment required by Paragraph 6. Settling Defendant must divide any stipulated penalty payments under Subparagraph 8.b evenly between the United States and the State and must make such payments in the manner and form that Settling Defendant should have paid the principal amounts in Paragraph 6. All payments to the State under this Subparagraph 8.c shall be further divided and paid evenly to the ONRT and AGO and shall: (i) be certified or cashier's check(s); (ii) indicate that the payment is for stipulated penalties or interest, as applicable, (iii) reference the United States District Court docket number and the name and

address of the party making the payment. Copies of check(s) paid to the State pursuant to this Subparagraph 8.c, and any accompanying transmittal letter(s), shall be sent to the State as provided in Section XIV ("Notices").

d. The payment of stipulated penalties shall not alter in any way Settling Defendant's other obligations required under this Consent Decree.

## **VII. FORCE MAJEURE**

9. For purposes of Section VIII of this Decree, Force Majeure is defined as an event or events arising from a cause or causes beyond the reasonable control of Settling Defendant which could not have been prevented by the exercise of reasonable due diligence and that delay the performance, in whole or in part, of any obligation under this Consent Order.

Notwithstanding the foregoing, "Force Majeure" does not include Settling Defendant's financial inability to perform any obligation under this Consent Decree.

10. Settling Defendant shall notify the Trustees of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. When any event occurs or has occurred that may delay or prevent the performance of any obligation under Section VIII Consent Decree, Settling Defendant shall notify the Trustees initially by telephone, facsimile, email, or other means as soon as reasonably practicable after Settling Defendant's discovery of the commencement of such event.

11. Initial notification shall be followed by written notification within fifteen (15) Days of the date of initial notification. The written notification shall fully describe the reasons for the delay, the reasons the delay is beyond Settling Defendant's control, the anticipated



duration of the delay, actions taken or to be taken to prevent or minimize the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to any endangerment to public health, welfare, or the environment. Settling Defendant shall adopt all practicable measures to avoid or minimize such delay.

12. Any delay that Settling Defendant demonstrates results from Force Majeure, shall not be deemed to be a violation of its obligations under Section VIII of this Consent Decree and shall not make it liable for stipulated penalties. To the extent a delay is attributable to Force Majeure the schedule affected by the delay shall be extended for a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the terms of this Order, changed economic circumstances, or the failure of Settling Defendant to make timely and complete application for any required approval shall not be considered a Force Majeure.

#### **VIII. TRANSFER OF CERTAIN ANDERSON RANCH PROPERTY**

13. The Settling Defendant warrants that it owns a property approximately 8 miles north northwest of Questa, New Mexico, commonly known as "Anderson Ranch." As one component of the settlement embodied in this Consent Decree, the Settling Defendant must execute and record a warranty deed transferring to the Bureau of Land Management of DOI approximately 225 acres of the ranch and must do so in compliance with the requirements of this Decree, any other applicable law, and the U.S. Department of Justice Title Standards ([http://www.justice.gov/enrd/2001\\_Title\\_Standards.html](http://www.justice.gov/enrd/2001_Title_Standards.html)) (last visited April 22, 2010) and U.S. Department of Interior Departmental Directives: Part 602: Land Acquisition, Exchange, and

Disposal, Chapters 1 and 2 ([http://elips.doi.gov/app\\_dm/index.cfm?fuseaction=home](http://elips.doi.gov/app_dm/index.cfm?fuseaction=home)) (last visited April 22, 2010). The purposes of the transfer of ownership is to generate benefits from natural resources to offset benefits lost on account of the damage to natural resources allegedly caused by Settling Defendant.

14. The form of deed is included in Appendix C to this Consent Decree. Appendix C also includes the legal description of the property to be transferred. Prior to the transfer, the Settling Defendant shall construct a fence around the parcel that meets the specifications set forth in Appendix D, or an equivalent design that is satisfactory to both Settling Defendant and the Trustees. Settling Defendant shall also reasonably cooperate with the BLM regarding that agency's process for due diligence and acquisition of the parcel. Within one year of the Effective Date, the Settling Defendant and the BLM shall execute and record the deed, in substantially the form attached hereto as Appendix C, with the Taos County Clerk's Office, unless the parties file a joint stipulation with this Court which reflects their agreement to a different deadline for completion of the tasks required by this paragraph.

#### **IX. TRUSTEE-SPONSORED NATURAL RESOURCE RESTORATION PROJECTS**

15. Management and Application of Funds. All funds disbursed from the court registry accounts pursuant to Subparagraphs 6.c and 6.d shall be used to pay for Future Costs and Trustee-sponsored natural resource restoration activities in accordance with this Consent Decree and applicable law. All such funds shall be applied toward the costs of restoration, rehabilitation, or replacement of injured Natural Resources, and/or acquisition of equivalent resources, including but not limited to any administrative costs and expenses for, and incidental to,



restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken.

16. Restoration Planning. The Trustees intend to prepare the separate restoration plan describing how the funds dedicated for trustee-sponsored natural resource restoration efforts under this Section will be used. In the course of that preparation, ONRT will prepare the portion of the restoration plan that relates to ground water resources. As provided by 43 C.F.R. Section 11.93, the plan will identify how funds will be used for restoration, rehabilitation, replacement, or acquisition of equivalent resources. The plan may also identify how funds will be used to address services lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed. The Trustees intend to solicit public review and comment on the restoration plan and in no event will any project proceed without the public first receiving the opportunity to review the proposed project and submit comments on the proposal to the Trustees and Trustees' considering the comments and finalizing the restoration plan. Funds disbursed pursuant to this paragraph to the ONRT then shall be deposited into the Natural Resource Trustee Fund and shall be used in a manner consistent with the New Mexico Natural Resources Trustee Act, NMSA 1978, Section 75-7-5 (2007), to restore, replace, or acquire equivalent natural resources in the area of the Site where natural resource injuries occurred.

17. The Settling Defendant shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of funds or restoration efforts under this Section, provided that Settling Defendant may exercise whatever rights it may have as a member of the



general public concerning such decisions, without reference to the terms of this Decree or the settlement negotiations that led to this Decree but without violating any term of this Decree.

**X. COVENANTS NOT TO SUE BY THE UNITED STATES AND THE STATE**

18. Covenant by the United States. Except as specifically provided by Paragraph 20 (General Reservations) and Paragraph 21 (Limitations on Covenant Not to Sue), the United States covenants not to sue or take any civil or administrative action against the Settling Defendant for Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607, or Section 311(f)(4) & (5) of the Clean Water Act, 33 U.S.C. § 1321(f)(4) & (5). This covenant shall take effect upon receipt by the Court Registry Account of the Settling Defendant's principal payment pursuant to Paragraph 6(c) of this Consent Decree. This covenant is conditioned upon the Settling Defendant's full and satisfactory performance of its duties and obligations under this Consent Decree.

19. Covenant by the State. Except as specifically provided by Paragraph 20 (General Reservations) and Paragraph 21 (Limitations on Covenant not to Sue), the State covenants not to sue or take any civil or administrative action against the Settling Defendant for Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607, Section 311(f)(4) & (5) of the Clean Water Act, 33 U.S.C. § 1321(f)(4) & (5), or the NMNRTA or other state statute or common law. This covenant shall take effect upon receipt by the Court Registry Account of the Settling Defendant's principal payment pursuant to Paragraph 6(c) of this Consent Decree. This covenant not to sue is conditioned upon the Settling Defendant's full and satisfactory

performance of its duties and obligations under this Consent Decree.

**XI. RESERVATION OF RIGHTS BY THE UNITED STATES**  
**AND THE STATE OF NEW MEXICO**

20. General Reservations. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against the Settling Defendant and with respect to all matters not expressly included within Paragraph 18 (Covenant by the United States) and Paragraph 19 (Covenant by the State). Notwithstanding any other provisions of this Consent Decree, the United States and the State reserve all rights against the Settling Defendant with respect to:

a. claims based on a failure by the Settling Defendant to meet a requirement or fulfill a duty or obligation of this Consent Decree;

b. liability for injunctive relief or administrative order enforcement under CERCLA Section 106, 42 U.S.C. § 9606, the Clean Water Act Section 311, 33 U.S.C. § 1321, or applicable state law;

c. liability under CERCLA Section 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), the Clean Water Act Section 311, 33 U.S.C. § 1321, or applicable state law for the costs of removal or remedial actions by the United States, the State or an Indian tribe;

d. liability under Section 107(a)(4)(D), 42 U.S.C. § 9607(a)(4)(D), for costs of any health assessment or health effects study carried out under 42 U.S.C. § 9604(i);

e. liability for any other costs incurred or to be incurred by the United States or by the State that are not within the definition of Natural Resource Damages;

f. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances other than at or from the Site;

g. liability arising from any disposal or release of hazardous substances at or from the Site after the lodging of this Consent Decree, as limited by paragraph 21 of this Decree; and

h. criminal liability.

21. Limitations on Covenant Not To Sue.

a. Limitation on Covenant Regarding Natural Resource Damages: Other Information or Conditions. Notwithstanding any other provision of this Consent Decree, the United States and the State each separately reserves and retains the right to institute proceedings against the Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, including the costs of damages assessment, based on:

(i) any condition not described in the Administrative Record which results in, or resulted in, release of hazardous substances that causes or contributes to injury to, destruction of, or loss of natural resources materially greater than or materially different from that described in the Administrative Record;

(ii) any information which is not part of the Administrative Record and which indicates that releases of hazardous substances result in, or resulted in, injury to, destruction of, or loss of Natural Resources materially greater



than or materially different from that described in the Administrative Record;  
or

(iii) any condition or information within the meaning of (i) or (ii), above, which, in combination with information contained in the Administrative Record, indicates injury to, destruction of, or loss of Natural Resources materially greater than or materially different from that described in the Administrative Record.

An immaterial increase in the assessment of the size of injury described in the Administrative Record, or an immaterial increase in the rate or quantity of release of hazardous substances described in the Administrative Record, is not, standing alone, a basis for invoking the limitation on covenant established in this paragraph.

b. Limitation on Covenant Regarding Natural Resource Damages: Timely Performance of CERCLA Response Actions. Notwithstanding any other provision of this Consent Decree, the United States and the State each separately reserves and retains the right to institute proceedings against the Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, including the costs of damages assessment if -- after completion of remedial investigation and feasibility study for the Site under CERCLA -- (i) Defendant fails to perform timely any CERCLA response action selected or approved for the Site, by the United States and (ii) Defendant's failure to perform or its untimely performance contributes to an injury to, a destruction of, or loss of Natural Resources materially greater than or materially different from that described in the Administrative Record.

22. While this Consent Decree requires Settling Defendant to make a single payment into a court registry account to be jointly administered by all Trustees to restore, replace, or

acquire equivalent habitat resources, as between the Trustees each Trustee reserves its rights concerning its trustee status with respect to specific trust resources.

## **XII. COVENANTS BY SETTLING DEFENDANT**

23. Covenants by the Settling Defendant. The Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States and the State, or their respective contractors, agents, officials or employees, with respect to Natural Resource Damages or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement of any payment for Natural Resource Damages from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, Section 311 of the Clean Water Act, 33 U.S.C. § 1321, or any other provision of law; and

b. any claim against the United States or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and Section 311 of the Clean Water Act, 33 U.S.C. § 1321, with respect to Natural Resource Damages.

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

**XIII. EFFECT OF SETTLEMENT - CONTRIBUTION PROTECTION AND  
OTHER ISSUES**

24. 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. 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 that 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.

25. The Parties agree, and by entering into this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Natural Resource Damages.

26. The Settling Defendant agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, the Settling Defendant shall notify the persons identified in Section XIV (Notices) in writing within 30 days of service of the complaint or claim upon it. In addition, the Settling Defendant shall notify the persons identified in Section XIV (Notices) within 15 days of service or receipt of any motion for summary judgment (or within 5 business days of receipt if a response would be due in less than 15 days, and within 15 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree).

27. Waiver of Claim-Splitting Defenses. In any subsequent administrative or judicial



proceeding initiated by the United States or the State for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the Site, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised 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 by the United States and the State set forth in Section X.

28. Nothing in the Consent Decree is intended or should be construed to alter: (a) any right to withdraw and use water, (b) any ownership of water, (c) the legal standards that govern any right to withdraw, use, or own water, and (d) the adjudication of any such rights.

#### **XIV. NOTICE**

29. Whenever, under the terms of this Consent Decree, notice is required to be given or a 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. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree.

##### **AS TO THE UNITED STATES:**

As to the Department of Justice:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ# 90-11-2-07579)  
U.S. Mail Only                      Overnight Mail Only  
P.O. Box 7611                      601 D Street, N.W. - ENRD Mailroom, Room 2121  
Washington, DC 20044-7611      Washington, DC 20004

As to U.S. DOI:

United States Fish & Wildlife Service  
NRDAR Coordinator – Region 2  
Attn: Karen Cathey  
P.O. Box 1306  
Albuquerque, New Mexico 87103

Office of the Solicitor  
United States Department of the Interior  
Regional Office, Southwest Region  
505 Marquette Avenue NW, Suite 1800  
Albuquerque, NM 87102

As to USDA:

Kirk Minckler  
USDA Office of the General Counsel  
740 Simms Street, Room 309  
Golden, CO 80401

AS TO THE STATE:

Rebecca Neri Zagal  
New Mexico Office of Natural Resources Trustee  
4910-A Alameda Blvd., NE  
Albuquerque, NM 87113

Judith Ann Moore  
New Mexico Attorney General's Office  
P.O. Drawer 1508  
Santa Fe, NM 87504

AS TO SETTLING DEFENDANT:

Eve W. Barron  
Senior Counsel, Environmental and Safety Law Group  
Corporate Law Department  
Chevron U.S.A. Inc.  
1400 Smith Street, 5th Floor  
Houston, Texas 77002

Richard E. Schwartz  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004-2595

**XV. APPENDICES**

30. The following appendices are attached to and incorporated into this Consent

Decree:

“Appendix A” is a map generally depicting the Site and surrounding land in the vicinity.

“Appendix B” is the index to the Administrative Record

“Appendix C” is a form of deed and a legal description of real property.

“Appendix D” is fencing specifications.

**XVI. EFFECTIVE DATE AND RETENTION OF JURISDICTION**

31. This Consent Decree shall take effect upon entry by the Court.

32. This Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.



**XVII. CONSENT DECREE MODIFICATIONS**

33. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect until filed with the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

34. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

35. Economic hardship or changed financial circumstances of the Settling Defendant shall not serve as a basis for modifications of this Consent Decree.

**XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

36. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States and the State reserve the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Settling Defendant consents to the entry of this Consent Decree in the form presented without further notice. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such

approval and entry, this Consent Decree is voidable at the sole discretion of any Party and the terms of this Consent Decree may not be used as evidence in any litigation among the Parties.

**XIX. SIGNATORIES / SERVICE**

37. The undersigned representatives of the Settling Defendant, the United States, and the State each certify that he or she is fully authorized to enter into this Consent Decree and to execute and legally bind such Party to this Consent Decree. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

38. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree (in the form presented) by this Court or to challenge any provision of this Consent Decree unless the United States or the State has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

39. The Settling Defendant shall identify, on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Settling Defendant with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4, Fed. R. Civ. P. and any applicable local rules of this Court, including but not limited to the requirements for service of a summons.

## **XX. FINAL JUDGMENT**

40. This Consent Decree and its appendices constitute the final, complete, and exclusive 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 Decree.

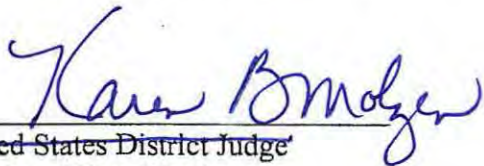
41. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State and the Settling Defendant. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under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

43. Confirmation of Elements of this Final Judgment in Light of *Chevron Mining Inc. v. United States*. In light of Defendant's filing a complaint against the United States on matters related to those settled in this Decree (*Chevron Mining Inc. v. United States*, No. 13-cv-00328 (MCA/ACT) (D.N.M.)), the parties to this Decree confirm expressly the following, which are among the results that flow from paragraphs 3, 18, 20, and 23 of this Decree: (1) this Decree does not preclude Defendant from pursuing any claim it may hold against the United States for CERLCA response costs incurred in connection with the Site but does preclude Defendant from pursuing any claim it may have against the United States with respect to Natural Resource Damages in connection with the Site; and (2) nothing in this Decree precludes the United States from pursuing any claim against Defendant for matters falling outside the scope of the covenant not to sue that is extended to Chevron Mining Inc. in this



Decree, including but not limited to any claim for CERCLA-based, injunctive relief or response costs.

SO ORDERED this 30<sup>th</sup> day of September, 2015:

  
United States District Judge  
District of New Mexico

United States Chief Magistrate Judge  
Presiding by Consent

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States & State of New Mexico v. Chevron Mining, Inc.

---

**FOR THE UNITED STATES OF AMERICA:**



Sam Hirsch  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20530



Thomas A. Mariani, Jr.  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
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Phone: (202) 514-4620  
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tom.mariani@usdoj.gov

Damon P. Martinez  
United States Attorney  
District of New Mexico



Howard Thomas  
Assistant United States Attorney  
District of New Mexico  
P.O. Box 607  
Albuquerque, NM 87103


THE UNDERSIGNED PARTIES enter into this Consent Decree in United States & State of New Mexico v. Chevron Mining, Inc.

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**FOR THE STATE OF NEW MEXICO:**

New Mexico Attorney General

Date: 8-22-14

  
Judith Ann Moore  
Assistant Attorney General  
Water, Environment & Utilities Division  
New Mexico Attorney General's Office  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508  
Phone: (505) 827-7481  
Fax: (505) 827-4440

Date: 8/21/2014


  
Ryan Flynn  
Natural Resources Trustee  
N.M. Office of Natural Resources Trustee  
4910-A Alameda Blvd. NE  
Albuquerque, NM 87113



THE UNDERSIGNED PARTIES entered into this Consent Decree in United States & State of New Mexico v. Chevron Mining, Inc.

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**FOR CHEVRON MINING, INC:**

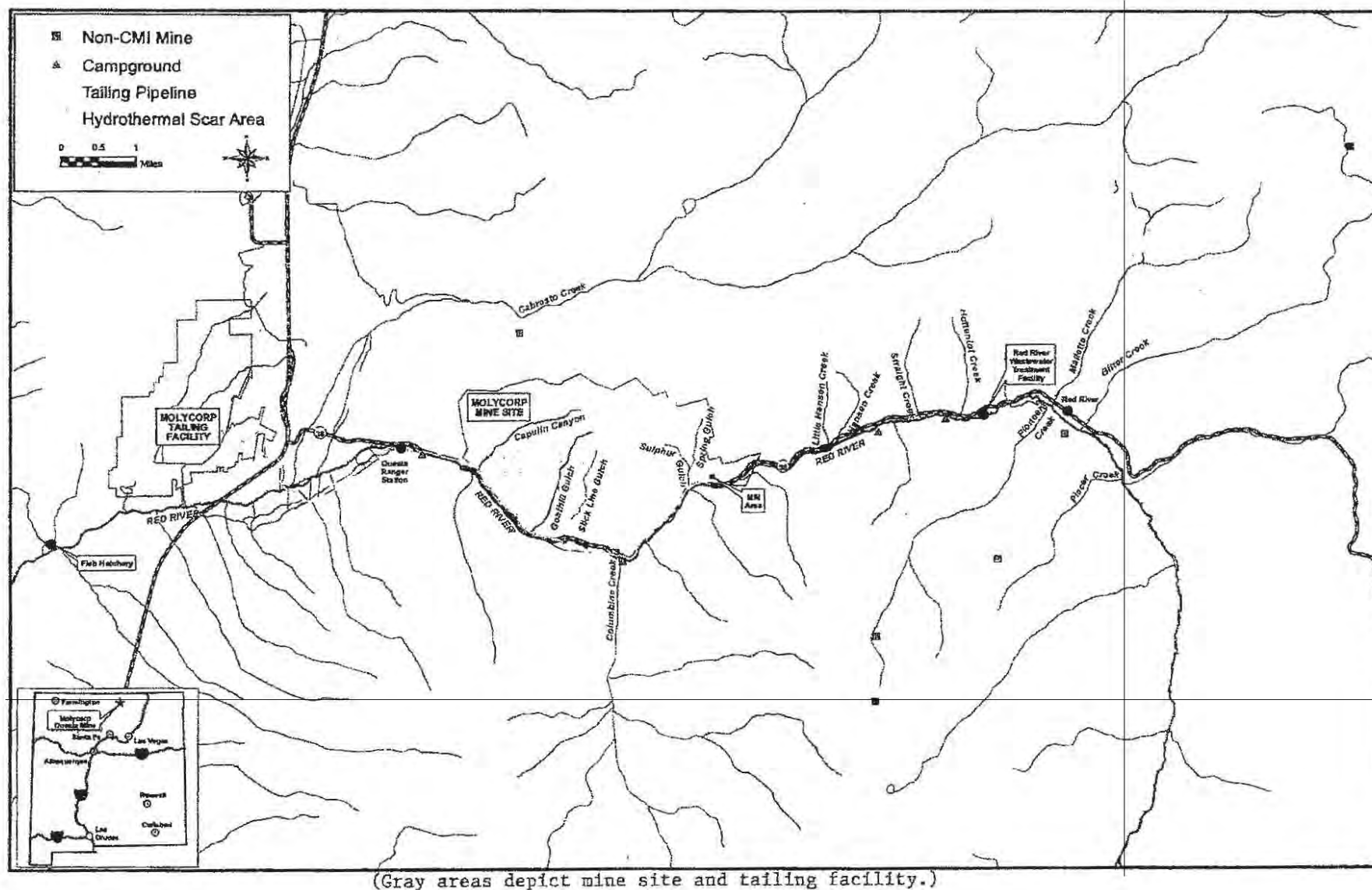
  
Name: Dave Partridge  
Title: President and CEO  
Address: 116 Inverness Drive East, Suite 207  
Englewood, CO 80112

Designated Agent per Section XIX:  
Eve W. Barron  
Senior Counsel, Environmental and Safety Law Group  
Corporate Law Department  
Chevron U.S.A. Inc.  
1400 Smith Street, 5<sup>th</sup> Floor  
Houston, TX 77002

# APPENDIX A

U.S. v. Chevron Mining Inc.  
Consent Decree

APPENDIX A: Map of Molycorp Site





# APPENDIX B

## APPENDIX B

### 1. Background

Code of Federal Regulations. 2003. United States. 43 CFR, Part 11: Natural Resource Damage Assessments.

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

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|----------------------------|-------------|---|
| <hr/>                      |             | ) |
| UNITED STATES OF AMERICA & |             | ) |
| STATE OF NEW MEXICO,       |             | ) |
|                            |             | ) |
|                            | Plaintiffs, | ) |
|                            |             | ) |
|                            | v.          | ) |
|                            |             | ) |
| CHEVRON MINING INC.,       |             | ) |
|                            |             | ) |
|                            |             | ) |
|                            | Defendant.  | ) |
| <hr/>                      |             | ) |

APPENDIX C

Below is a form of deed for the transfer of the Anderson Ranch property referred to in Paragraph 13 of the Consent Decree, including the legal description of that property:

GENERAL WARRANTY DEED

Chevron Mining Inc., a Missouri Corporation ("Grantor"), successor by merger to Molycorp, Inc., formerly known as Molybdenum Corporation of America, whose address is 116 Inverness Drive East, Englewood, CO 80112, for consideration paid, grants to the United States of America, and its assigns, the United States Department of Interior, Bureau of Land Management, as authorized by Section 205 of the Federal Land Policy and Management Act of 1976 as amended (43 U.S.C. 1715), ("Grantee"), whose address is 226 Cruz Alta Road, Taos, New Mexico 87571 the following described real estate in Taos County, New Mexico (the "Property"):

A tract or parcel of land situated within Sections 1 and Section 2, Township 30 North, Range 12 East, of the New Mexico Principal Meridian, Taos County, New Mexico. Said tract or parcel of land being wholly contained within Section 1 and 2 lying southwest of the Sangre de Christo Grant, and being a portion of the lands conveyed in a Warranty Deed dated December 5, 1963, and filed December 23, 1963, in Book A-95, Page 168, Taos County, New Mexico; said tract or parcel of land being more particularly described as follows:

All Bearings are based on a line connecting the NE corner of Section 2, Township 30



U.S. & State of New Mexico v. Chevron Mining, Inc.  
Appendix C

North, Range 12 East, of the NMPM, said corner being marked by a BLM Brass Cap stamped " S35 S36 T31N R12E, S2 S1 T30N 1948", on a 1 1/2 " Iron Pipe, and the SE corner of said Section 2, said corner being marked by a #5 Rebar with an Aluminum Cap stamped Red Tail NMPS 11170, as bearing S. 00°27'27" E., a distance of 5322.09 feet.

Commencing at the Northeast corner of said Section 2; thence S. 00°27'27" E., along the east line of said Section 2, a distance of 1953.99 feet to the True point of Beginning;

Thence N 57°04'29" E., a distance of 1225.65 feet to a #5 Rebar with a Yellow Plastic Cap, stamped URS Elliott PLS 13838;

Thence N 87°38'34" E., a distance of 1836.96 feet to a #5 Rebar with a Yellow Plastic Cap, stamped URS Elliott PLS 13838;

Thence S 05°43'57" W., a distance of 1569.95 feet to a #5 Rebar with a Yellow Plastic Cap, stamped URS Elliott PLS 13838;

Thence S 67°01'40" W., a distance of 5594.15 feet to a #5 Rebar with a Yellow Plastic Cap, stamped URS Elliott PLS 13838;

Thence N 14°59'36" W., a distance of 1254.20 feet to a #5 Rebar with a Yellow Plastic Cap, stamped URS Elliott PLS 13838;

Thence N 57°04'29" E., a distance of 3297.18 feet to the True point of Beginning, and containing an area of 224.674 acres, more or less.

THIS CONVEYANCE is made with general warranty covenants and subject to all reservations, restrictions, encumbrances, easements, rights-of-way and possessory estates held by third parties that appear of record or would be revealed by a diligent inspection and survey of the Property, together with the reservation of a private easement for ingress and egress more particularly described below.

EXCEPTING AND RESERVING, HOWEVER, UNTO GRANTOR, ITS SUCCESSORS AND ASSIGNS all water rights appurtenant to or severed from the Property or which are in the process of being severed from the Property as of the date of filing of this General Warranty Deed and which severance Grantee consents to and agrees not to challenge, impair or impede in any manner;

SUBJECT THAT the Property shall not be available for use or access by members of the general public, except as expressly permitted in writing by Grantee. Such written permission shall indicate the member(s) of the general public to whom Grantee is granting use or access, and set forth the specific date(s) and purpose(s). This restriction shall attach to and run with the land.

**Easement**

The Property shall include a permanent, non-exclusive, private easement (the "Easement") for



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Appendix C

ingress and egress to and from the Property by Grantee over and across the following described real estate (the "Easement Premises"):

Commencing at the Northeast corner of said Section 2; thence S. 00°27'27" E., along the east line of said Section 2, a distance of 1953.99 feet; Thence N 57°04'29" E., a distance of 1225.65 feet to a #5 Rebar with a Yellow Plastic Cap, stamped URS Elliott PLS 13838; Thence N 87°38'34" E., a distance of 1836.96 feet to a #5 Rebar with a Yellow Plastic Cap, stamped URS Elliott PLS 13838; Thence S 05°43'57" W., a distance of 1569.95 feet to a #5 Rebar with a Yellow Plastic Cap, stamped URS Elliott PLS 13838, said point being the True point of Beginning;

Thence S 00°24'51" E., a distance of 1611.36 feet;

Thence S 00°26'35" E., a distance of 494.51 feet;

Thence S 00°09'47" W., a distance of 423.99 feet to the south line of Section 1, T30N, R12E, NMPM, from which the SW corner of said Section 1, bears S 89°37'15" W, a distance of 2664.81 feet;

Thence S 89°37'15" W., along said south line, a distance of 30.00 feet;

Thence N 00°09'47" E., a distance of 423.96 feet;

Thence N 00°26'35" W., a distance of 494.51 feet;

Thence N 00°24'51" W., a distance of 1598.91 feet;

Thence N 67°01'40" E., a distance of 32.49 feet to the True point of Beginning, and containing an area of 1.738 acres, more or less.

The Easement shall be subject to the following covenants, conditions, and restrictions:

1. Grantee's use of the Easement Premises shall be restricted to ingress and egress to and from the Property by Grantee, its employees, and express invitees. Grantee may permit use of the Easement Premises to access the Property by members of the general public by written permission. The Grantee shall limit use of the Easement Premises to access the Property by members of the general public as provided for on page 2 of this General Warranty Deed.

2. Grantor may, but Grantee shall not, place boundary fences or barriers along the Easement Premises. Grantee shall not require Grantor to place any fence along the Easement Premises.

3. Provided that Grantee's access to the Easement Premises is maintained, Grantor may restrict access to the Easement premises by one or more gates with locking devices, in which case, Grantee shall lock each such gate immediately after passing through the gate.

4. Grantee and Grantor may maintain the Easement at its own cost, and neither party shall have any right to contribution from the other party for maintenance or improvements. Grantee may improve the easement at its own cost so long as any improvement is consistent with its use as a ranch road, not suitable for passenger or commercial vehicles other than those

U.S. & State of New Mexico v. Chevron Mining, Inc.  
Appendix C

customarily used for ranch purposes.

5. Grantor reserves the rights to any use not impairing Grantee's rights and the authority to grant others similar rights.

6. Grantor reserves the right to relocate the Easement Premises, but shall record such relocated easement in the appropriate land title office and bear any associated costs. In the event Grantor relocates such easement, notice and the recorded easement shall be submitted to the Grantee.

7. Grantee and Grantor each shall be responsible for providing notice to their own invitees of any hazards or other conditions associated with the Easement Premises, and for informing their respective invitees that use of the Easement Premises is at the invitees' own risk.

This Easement and each of the covenants, conditions, and restrictions to which it is subject shall run with the land benefited and burdened thereby and shall be binding upon and inure to the benefit of Grantee and its assigns, successors, and tenants and personal representatives as owner of the Property and Grantor and its assigns, successors, tenants and personal representatives as owner of the Easement Premises.

WITNESS this \_\_\_ day of \_\_\_\_\_, 2010.

STATE OF NEW MEXICO)

)ss.

COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 2010, by  
as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
Witness

# APPENDIX D



UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

|                              |             |   |                  |
|------------------------------|-------------|---|------------------|
| <hr/>                        |             | ) |                  |
| UNITED STATES OF AMERICA,    |             | ) |                  |
| and the STATE OF NEW MEXICO, |             | ) |                  |
|                              |             | ) |                  |
|                              | Plaintiffs, | ) |                  |
|                              |             | ) |                  |
| v.                           |             | ) | Civil Action No. |
|                              |             | ) |                  |
| MOLYCORP, INC.,              |             | ) |                  |
|                              |             | ) |                  |
|                              |             | ) |                  |
|                              | Defendant.  | ) |                  |
| <hr/>                        |             | ) |                  |

**APPENDIX D**

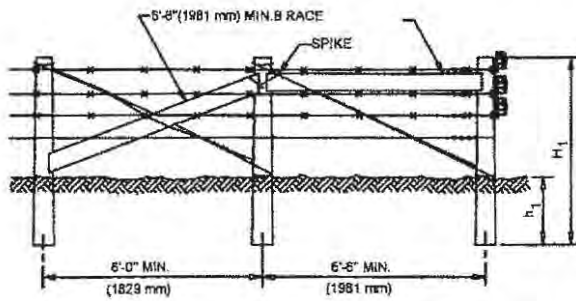
Below are the fencing specifications for the Anderson Ranch property, which are designed to permit the unrestricted movement of wildlife in the local area and also provide for significant restriction to common-place livestock breeds. Molycorp shall construct a fence around the conveyed parcel described in Appendix B (the Anderson Ranch property) that meets the specifications set forth below, or an equivalent design that is satisfactory to both Molycorp and the Trustees.

The fencing specifications are:

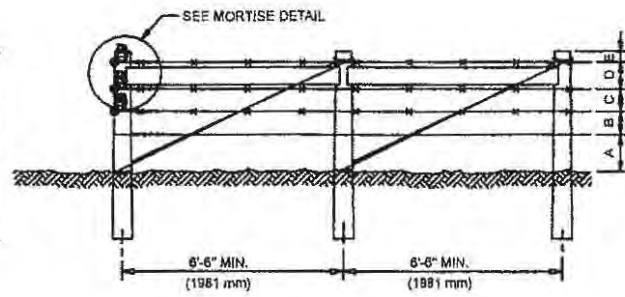
Bottom wire smooth at 16" from the ground, second wire barbed at 10" from the first wire, third wire barbed at 10" from the second wire, and the fourth wire barbed at 12" from the third wire. The bottom wire should be 12-1/2 gauge barless; the others should be 12-1/2 gauge two-point barbed wire.

The steel posts should be spaced at 16' intervals with two wire stays placed between spans.

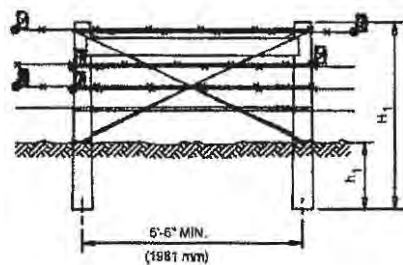
The specific standards for corner braces, gates and for line posts are set forth in the attached drawing.



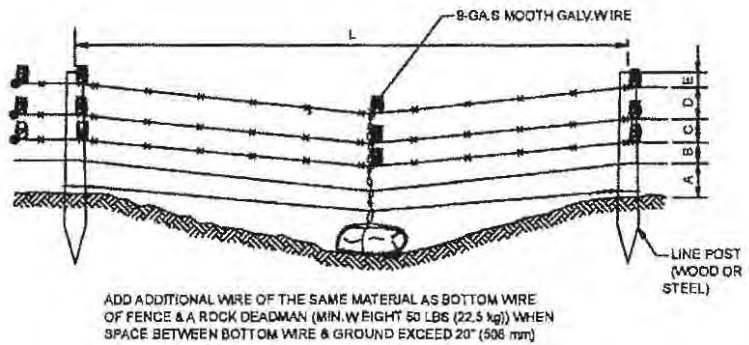
END PANEL-TYPE I



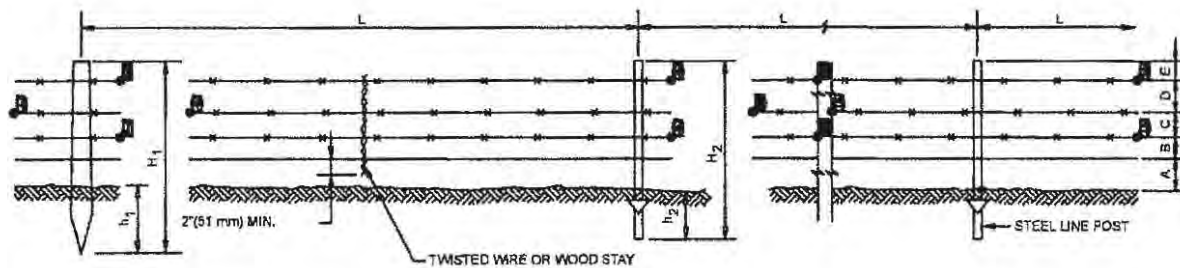
END PANEL-TYPE II



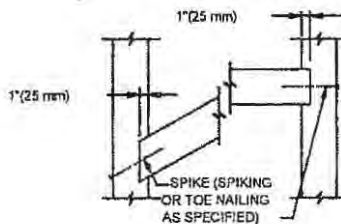
STRESS PANEL



PANEL AT MINOR DEPRESSION



LINE PANELS



MORTISE DETAIL

# NOTES:

1.5 SEE SPECIFICATIONS FOR THE FOLLOWING:

- A. RATIO OF STEEL TO WOOD LINE POSTS
- B. POST SPACING, LENGTH & DEPTH IN GROUND.
- C. TYPE OF END PANEL TO BE USED.
- D. TYPE OF WIRE TO BE USED.
- E. SPACING BETWEEN WIRES.
- F. NUMBER OF STAYS PER SPAN (L).

2. THE METRIC CONVERSIONS ARE PROVIDED IN PARENTHESIS FOLLOWING THE ENGLISH UNITS.