

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

MASCOT MINES, INC.; UNITED RESOURCE  
HOLDINGS GROUP, INC.; NABOB  
SILVER-LEAD COMPANY; and ZANETTI  
BROTHERS, INC.

Defendants.

Case No. CV08-383-N-EJL

**CONSENT DECREE BETWEEN THE UNITED STATES, THE COEUR D'ALENE  
TRIBE AND DEFENDANTS MASCOT MINES, INC. AND NABOB SILVER-LEAD  
COMPANY**

## **I. BACKGROUND**

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607(a), alleging that Settling Defendants are jointly and severally liable for costs incurred and to be incurred by EPA in responding to the release or threat of release of hazardous substances at or in connection with Operable Unit 3 (“Coeur d’Alene Basin Site”) of the Bunker Hill Mining and Metallurgical Complex Superfund Site (“Site”) in Northern Idaho.

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Coeur d’Alene Basin Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Coeur d’Alene Basin Site. As of November 30, 2008, EPA has incurred approximately \$183,568,322.73 in connection with the Coeur d’Alene Basin Site.

C. The United States, acting by and through the United States Department of the Interior (“DOI”) and United States Department of Agriculture (“USDA”), and the Coeur d’Alene Tribe (“Tribe”) are co-trustees of injured natural resources at the Coeur d’Alene Basin Site, including but not limited to certain migratory natural resources such as fish, wildlife, birds, biota, and water. The Tribe filed a complaint prior to lodging of this Consent Decree alleging that Settling Defendants are liable for natural resource damages pursuant to Section 107(a) of CERCLA in connection with the Coeur d’Alene Basin Site.

D. Defendant Mascot Mines, Inc., incorporated in Idaho in 1950, is the successor in interest to the Pine Creek Lead-Zinc Mining Company, incorporated in Idaho in 1929, and has owned or operated and continues to own or operate mining or milling related properties, including the Little Pittsburg mine and mill site, within the Site. Defendant Nabob Silver-Lead Company, incorporated in Idaho in 1923, has owned or operated and continues to own or operate mining or milling related properties, including the Nabob mine and mill site, within the Site.

E. In accordance with Section 122(g)(7) of CERCLA, the United States has reviewed the Financial Information submitted by Settling Defendants to determine whether they have an inability or a limited ability to pay natural resource damages and response costs incurred and to be incurred at the Coeur d'Alene Basin Site, taking into consideration the ability of Settling Defendants to pay response costs and natural resource damages and still maintain their basic business operations, including their overall financial condition and demonstrable constraints on their ability to raise revenues. Based upon this Financial Information, the United States has determined, and the Tribe concurs, that Settling Defendants qualify for a reduction in settlement amount and/or an alternative payment method within the meaning of Section 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g)(7), and are able to make the payment(s) specified in Section VI.

F. Settling Defendants do not admit any liability to the United States or the Tribe arising out of the transactions or occurrences alleged in the complaints.

G. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is 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. §§ 9607 and 9613(b) and also has personal jurisdiction over 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 is binding upon the United States, the Tribe and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

**IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

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

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Coeur d'Alene Basin Institutional Controls Program" or "Basin ICP" shall mean the program administered by Panhandle Health District 1 that requires the use of contaminant management practices to minimize exposure of human and environmental receptors to site-related contaminants of concern, as defined in Idaho Administrative Code IDAPA 41.01.01 Rules of the Panhandle Health District (<http://adm.idaho.gov/adminrules/rules/idapa41/0101.pdf>).

d. "Coeur d'Alene Basin Site" shall mean Operable Unit 3 of the "Site," as defined in the EPA Record of Decision relating to Operable Unit 3 of the Site signed on September 12, 2002, by the Regional Administrator, EPA Region 10, or his delegate.

e. "Day" shall mean a calendar day. 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.

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

g. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

h. "Effective Date" shall mean the date this Consent Decree is entered by the Court.

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

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

k. "Financial Information" shall mean those financial documents provided by Settling Defendants to the United States identified in Appendix A.

l. "Institutional Controls" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that:

(i) limit land, water and/or resource use to minimize the potential for human exposure to Waste Materials at the Site; (ii) limit land, water and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (iii) provide information intended to modify or guide human behavior at the Site.

m. "Insurance Policies" shall mean all insurance policies issued to the Settling Defendants prior to 1988 together with all environmental insurance policies or policies providing for coverage of environmental claims, however named or titled, including, but not limited to, the insurance policies listed on Appendix C to this Consent Decree, together with any and all additional insurance policies in which Settling Defendants are subsequently determined to have any interest.

n. "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.

o. "Natural Resource Damages" shall have the meaning set forth in Section 107 of CERCLA, 42 U.S.C. § 9607.

p. "Natural Resource Trustees" shall mean DOI, USDA and the Coeur d'Alene Tribe.

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

r. "Parties" shall mean the United States, the Coeur d'Alene Tribe and Settling Defendants.

s. "Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

t. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

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

v. "Settling Defendants" or "Defendants" shall mean Nabob Silver-Lead Company and Mascot Mines, Inc.

w. "Settling Defendant's Property" shall mean all portions of the Site owned by Settling Defendant as of the date of signature of the Consent Decree by Settling Defendant.

x. "Site" shall mean the Bunker Hill Mining and Metallurgical Complex Superfund Site located in Northern Idaho.

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

z. "Tribe" shall mean the federally-recognized Indian tribe known as the Coeur d'Alene Tribe, including its departments, agencies and instrumentalities.

aa. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

bb. "USDA" shall mean the United States Department of Agriculture, Forest Service and any successor departments, agencies or instrumentalities of the United States.

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

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objectives of the Parties are for the Settling Defendants to make cash payments and provide other valuable consideration to resolve their liability for Response Costs and Natural Resource Damages as provided in the Covenant Not to Sue by the United States and the Tribe in Section X, and subject to the Reservations of Rights by the United States and the Tribe in Section XI.

**VI. PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES**

5. Settling Defendants' Liability. EPA has incurred past response costs of more than \$183 million and expects to incur future response costs of more than \$2.05 billion, and the Natural Resource Trustees have assessed over \$800 million in potential natural resource damages, in connection with the Coeur d'Alene Basin Site. It is the position of the United States and the Tribe that Settling Defendants are jointly and severally liable for the full amounts stated above. The cash payments made under Section VI shall be credited toward these amounts. This Consent Decree provides Settling Defendants with a Covenant Not to Sue by the United States and the Tribe (Section X), subject to the Reservation of Rights by United States and the Tribe (Section XI). However, the Coeur d'Alene Basin Insurance Recovery Trust will seek to satisfy Settling Defendants' remaining liability to the United States and the Tribe for the amounts stated above from the Insurance Policies.

6. Payment of Past Response Costs to EPA. Settling Defendants shall pay the following to EPA:

a. Mascot Mines, Inc. shall pay the principal sum of \$29,550, plus an additional sum for Interest as explained below. Payment shall be made in three installments:

- i. \$4,550 within 30 days of the Effective Date;
- ii. \$15,000 within 12 months of the Effective Date; and
- iii. \$10,000 within 24 months of the Effective Date.

Each installment, except for the first, on which no interest shall be due, shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the Effective Date of this Consent Decree. Settling Defendant may

accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly.

b. Nabob Silver-Lead Company shall pay \$2,800 within 30 days of the Effective Date.

7. The total amounts to be paid pursuant to Paragraph 6 shall be deposited in the Bunker Hill Mining and Metallurgical Complex 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.

8. Payment to the Natural Resource Trustees. Within 30 days of the Effective Date, Settling Defendants shall pay the following to the Natural Resource Trustees:

a. Mascot Mines, Inc. shall pay \$1,800.

b. Nabob Silver-Lead Company shall pay \$1,100.

9. Payments in accordance with Paragraphs 6 and 8 above may be made by certified or cashier's check made payable to "U.S. Department of Justice," referencing the name and address of the party making payment, the Coeur d'Alene Basin Site, DOJ Case Number 90-11-3-128/7, and the civil action number 08-383-N-EJL; provided however, any payments of \$10,000 or more shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice Account in accordance with EFT instructions to be provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Idaho. Settling Defendant shall send checks to: Financial Litigation Unit, U.S. Attorney's Office District of Idaho, WGI Plaza IV, 800 Park Blvd., Suite 600, Boise, Idaho 83712.

10. Payment to the Coeur d'Alene Basin Insurance Recovery Trust. Within thirty (30) days of the Effective Date of this Consent Decree, Settling Defendants shall pay to the Coeur d'Alene Basin Insurance Recovery Trust ("Trust") the following amounts:

- a. Mascot Mines, Inc. shall pay \$23,650.
- b. Nabob Silver-Lead Company shall pay \$26,100.

The payments shall be made in the form of a certified or cashier's check made payable to the Coeur d'Alene Basin Insurance Recovery Trust and mailed to Dan Silver, Coeur d'Alene Basin Insurance Recovery Trust Trustee ("Trustee"), at 606 Columbia Street NW, Suite 212, Olympia, WA 98501.

11. Payments Based on Future Production. Commencing on the Effective Date of the Consent Decree, and continuing until fifty (50) years after the Effective Date of the Consent Decree, each Settling Defendant shall pay to the United States and the Tribe, on or before the thirtieth (30<sup>th</sup>) day ("due date") after the conclusion of each annual period (with the first annual period commencing on the Effective Date of this Consent Decree), an amount equal to the sum of two (2) percent of the value of the Net Smelter Returns for the annual period for Settling Defendant's Property ("NSR Payment"). This obligation is intended to apply to any gold, silver, lead, zinc, copper, or other metal or metal concentrate produced by each Settling Defendant or for each Settling Defendant's account, including but not limited to, subsidiaries and joint ventures of each Settling Defendant. In the event a Settling Defendant fails to make a payment by the due date, the Settling Defendant shall pay Interest from the due date until full payment has been made. This provision shall not expressly or impliedly obligate Settling Defendants to operate to produce a NSR.

a. Definitions.

i. “Net Smelter Returns” shall mean the amount paid to each Settling Defendant by a smelter, refiner, or other purchaser for minerals mined by the Settling Defendant or for the Settling Defendant’s account after deductions of the following costs paid by or charged to the Settling Defendant: a.) all smelting, refining, treatment, selling and other costs, charges, and penalties charged by the smelter or other purchaser for such minerals; b.) all costs for loading, transporting, and insuring such minerals or mineral bearing concentrates from the mining operation to the smelter or other purchaser; and c.) all taxes paid by the Settling Defendant on such minerals or concentrates, except income taxes, including, but not limited to production, severance, sales, and privilege taxes.

ii. “concentrates” means materials containing commercial quantities of metals or other minerals which are produced from ore by milling or other processing of the ore.

iii. “mill” means the whole mineral treatment plant, in which crushing, grinding, screening, flotation, drying, and other physical and chemical processing techniques are used to separate valuable minerals from waste. In metal ore processing, milling usually results in one or more concentrates that are stockpiled and then sent to smelters or refineries for further processing.

iv. “ore” means material extracted from the Settling Defendant’s Property which contains commercial quantities of other mineral constituents and which has not been subjected to any milling or other processing except crushing and screening.

v. “ounces” means troy ounces of 31.1035 grams.

vi. “tailings” means material that has been mined, processed, and

disposed of on the Settling Defendant's Property.

vii. "tons" means short tons of 2000 pounds avoirdupois.

viii. "waste dumps" means material that has been previously mined and placed in piles on the Settling Defendant's Property without further processing.

b. Sampling and Testing. Each Settling Defendant shall have the right to mine amounts of minerals and mineral-bearing material reasonably necessary for sampling, assaying, metallurgical testing, and evaluating the minerals potential of the Property, not to exceed twenty-five (25) tons-per-year of raw in-place material, without initiating the obligation to make payments pursuant to this Paragraph.

c. Documentation. For each annual period in which a Settling Defendant receives Net Smelter Returns, the Settling Defendant shall submit to the United States and the Tribe a calculation sheet detailing the calculation of the payment amount. This calculation sheet will include the relevant metal prices, production quantities, NSR costs (as identified in subparagraph a.(i.) above), and a specific description of how the Settling Defendant arrived at the payment amount. At that time, the Settling Defendant shall provide the source materials and references supporting the computations.

d. Records. Each Settling Defendant shall maintain true and correct records of all minerals and mineral-bearing substances mined and sold from any relevant mining operation and each Settling Defendant shall allow the United States or the Tribe to inspect the books and records of the Settling Defendant which are pertinent to the determination of the payments due. Such inspection shall be conducted at any reasonable time during normal business hours, provided such inspection is conducted by the United States or the Tribe, or their representatives,

and provided such inspection does not interfere unreasonably with the Settling Defendant's operations or procedures.

e. Tailings and waste rock. Any metal or non-metallic product produced through the re-working of old tailings, waste rock, re-processing, or by any other means shall be included in the produced ounces, pounds, tons, or cubic yards, for purposes of the NSR payment calculation.

f. Method of Payment. Payments shall be divided 75% to EPA and 25% to the Natural Resource Trustees. Payments to EPA and the Natural Resource Trustees shall be made in accordance with Paragraph 9 above.

g. Property Sales or Leases. If a Settling Defendant sells, leases, or otherwise conveys full or partial title or interest in the designated Property to a third party, the transaction shall be encumbered by a recorded NSR Payment obligation so that any new owner shall be responsible for all payments, record keeping, and all other obligations incurred by the Settling Defendant under this Consent Decree. The Parties agree that this encumbrance is intended to (a) provide notice to third parties of the Settling Defendant's obligations under this Paragraph; and (b) create a secured interest in the income from the sale of metals from the Property. The Parties also agree that the intent of the encumbrance is not to create any possessory or ownership interest in the mining operations.

12. At the time of each payment pursuant to this Section, Settling Defendants shall also send notice that payment has been made to the United States and the Tribe in accordance with Section XIX (Notices and Submissions). Such notice shall reference the Coeur d'Alene Basin Site, DOJ case number 90-11-3-128/7, and the civil action number 08-383-N-EJL. For payments

to EPA, the notice shall also reference EPA Region 10 and Site/Spill Identification Number 2Q. For payments to the Natural Resource Trustees, the notice shall also reference “Natural Resource Damages for the Coeur d’Alene Basin Site” and NRDAR Account No. 14X5198. For NSR Payments pursuant to Paragraph 11, such notice shall also reference “Net Smelter Returns Payment.”

**VII. THE COEUR D’ALENE BASIN INSURANCE RECOVERY TRUST**

13. Each Settling Defendant shall fully comply with the Coeur d’Alene Basin Insurance Recovery Trust Agreement, which is attached to this Consent Decree as Appendix B and incorporated herein by reference.

14. Each Settling Defendant shall fully cooperate in the following tasks related to the Coeur d’Alene Basin Insurance Recovery Trust (“Trust”):

a. complete a diligent, good faith search to identify any evidence of Insurance Policies (including, but not limited to, a review of business records, insurance related invoices, Certificates of Insurance, accounting ledgers, correspondence, or any other insurance related documentation) in which Settling Grantor may have an interest within 30 days from the effective date of this Agreement, and immediately notify Trustee of the discovery of any evidence of additional Insurance Policies (even if such discovery occurs more than 30 days after the effective date of this Agreement);

b. take such actions and execute and deliver such documents and instruments as may be necessary or appropriate to transfer, convey, release, compromise, and/or assign the Settling Defendant’s interest pursuant to any or all of the Insurance Policies;

c. cooperate with Trustee's efforts to pursue claims and/or causes of action under the Insurance Policies and to avoid any interference with Trustee's recovery efforts or management of the Trust;

d. identify any documents or sources of documents that, to the Settling Defendant's knowledge, may relate to operations, activities, or corporate histories of entities that conducted operations at the Site ("Site Records");

e. provide Trustee and the Trust's representatives with full access to Site Records; and

f. provide Trustee and the Trust's representatives with any other assistance necessary to accomplish the duties, purposes, and goals of the Trust, including but not limited to the execution of any documents associated with the Trust and its recovery activities in a timely fashion.

#### **VIII . FAILURE TO COMPLY WITH THE CONSENT DECREE**

15. Interest on Late Payments. If a Settling Defendant fails to make any payment under Section VI (Payments) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

16. Stipulated Penalties.

a. If a Settling Defendant does not pay any amounts due to EPA under Paragraph 6 by the required date, the Settling Defendant shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, in addition to the Interest required by Paragraph 15, \$250 per violation per day that such payment is late.

b. If a Settling Defendant does not pay any amounts due to the United States and the Tribe under Paragraphs 8, 10, and 11 by the required date or does not comply with the requirements of Paragraphs 11, 13 or 14 of this Consent Decree or the terms of the Trust Agreement, attached hereto as Appendix B, the Settling Defendant shall be in violation of this Consent Decree and shall pay to the United States and the Tribe, as a stipulated penalty, \$250 per day of such noncompliance. Settling Defendant shall pay 75% of the stipulated penalty to EPA and 25% to the Tribe.

17. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by the United States and/or the Tribe.

All payments to EPA under this Section shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Coeur D’Alene Basin Site, EPA Region 10 and Site Spill ID Number 2Q, DOJ Case Number 90-11-3-128/7, and the civil action number 08-383-N-EJL.

The Settling Defendant shall send the check (and any accompanying letter) to:

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

All payments to the Tribe under this Section shall be paid by certified or cashier’s check made payable to the “Coeur d’Alene Tribe” and sent to:

Coeur d'Alene Tribe  
Finance Department  
850 A Street  
P O Box 408  
Plummer, ID 83851

The check, or a letter accompanying the check, shall identify the payment as “stipulated penalties” and shall reference the name and address of the party(ies) making payment, the Coeur d'Alene Basin site, the civil action number 08-383-N-EJL and this Consent Decree.

18. At the time of each payment, the Settling Defendant shall also send notice that payment has been made to the United States and the Tribe in accordance with Section XIX (Notices and Submissions). Such notice shall include the information required by Paragraph 12 and shall identify payments as “stipulated penalties.”

19. Penalties shall accrue as provided in this Paragraph regardless of whether the United States or the Tribe has notified the Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

20. If the United States or the Tribe brings an action to enforce this Consent Decree, the Settling Defendant shall reimburse the United States and the Tribe for all costs of such action, including but not limited to costs of attorney time.

21. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States or the Tribe by virtue of a Settling Defendant's failure to comply with the requirements of this Consent Decree.

22. Notwithstanding any other provision of this Section, the United States and the Tribe each may, in its unreviewable discretion, waive payment of any portion of its share of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payments as required by Section VI or from performance of any other requirements of this Consent Decree.

23. Stipulated penalties shall continue to accrue as provided in Paragraph 19, during any Dispute Resolution, but need not be paid until the following:

a.a If the dispute is resolved by agreement of the Parties or by a decision of the United States, in consultation with the Tribe, that is not appealed to the Court, the Settling Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States and the Tribe within 30 Days of the effective date of the agreement or the receipt of the United States' decision or order.

a.b If the dispute is appealed to the Court and the United States and/or the Tribe prevails in whole or in part, the Settling Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

a.c If any Party appeals the District Court's decision, the Settling Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

**IX. CERTIFICATION OF SETTLING DEFENDANT**

24. By signing this Consent Decree, each Settling Defendant certifies that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to the United States and the Tribe, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, that relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site;

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e), 122(e)(3)(B), and 122(g)(8) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e)(3)(B), and 9622(g)(8);

d. has and will fully disclose any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to the United States or the Tribe upon request such insurance policies, indemnity agreements, and information; and

e. has submitted financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed

between the time the financial information was submitted to the United States and the time Settling Defendant executes this Consent Decree.

**X. COVENANT NOT TO SUE BY UNITED STATES AND THE COEUR D'ALENE TRIBE**

25. Covenant Not to Sue by the United States and the Tribe. Except as specifically provided in Section XI of the Consent Decree (Reservations of Rights), the United States and the Tribe covenant not to sue or take administrative action against Settling Defendants pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Settling Defendant upon receipt of each Settling Defendant's payments as required by Section VI of the Consent Decree (Payment). This covenant not to sue is conditioned upon: a) the satisfactory performance by the Settling Defendant of all obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI of the Consent Decree and compliance with the Coeur d'Alene Basin Insurance Recovery Trust Agreement, including assignment to the Trust of Settling Defendant's interest pursuant to the Insurance Policies; and b) the veracity of the information provided to the United States by the Settling Defendant relating to the Settling Defendant's involvement with the Site. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to the United States by the Settling Defendant and the financial, insurance, and indemnity certification made by the Settling Defendant in Section IX. If the Financial Information provided by the Settling Defendant, or the financial, insurance, or indemnity certification made by the Settling

Defendant in Section IX, is subsequently determined by the United States or the Tribe to be false or, in any material respect, inaccurate, the Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 32 of the Consent Decree shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' or the Tribe's right to pursue any other causes of action arising from the Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

**XI. RESERVATIONS OF RIGHTS BY UNITED STATES AND THE COEUR D'ALENE TRIBE**

26. The United States and the Tribe reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by the United States and the Tribe in Section X. Notwithstanding any other provision of this Consent Decree, the United States and the Tribe reserve all rights against each Settling Defendant with respect to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability as a result of failure by Settling Defendant to exercise due care with respect to hazardous substances at the Site;
- c. liability resulting from exacerbation by Settling Defendant of the release or threat of release of hazardous substances from the Site;
- d. criminal liability;

e. liability based upon the ownership or operation of any portion of the Site outside of Settling Defendant's Property, after signature of this Consent Decree by the Settling Defendant;

f. liability based upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and

g. liability arising from the past, present and future disposal, release or threat of release of a hazardous substance, pollutant or contaminant outside of the Site.

27. Notwithstanding any other provision of this Consent Decree, the United States and the Tribe reserve, and this Consent Decree is without prejudice to, the right to reinstitute or reopen proceedings against any Settling Defendant in this action or in a new action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by the Settling Defendant, or the financial certification made by the Settling Defendant in Section IX, Paragraph 24.e. of this Consent Decree is false or, in an material respect, inaccurate.

## **XII. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

28. Each Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, or the Tribe with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement 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, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Idaho, 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

c. any claim against the United States or the Tribe pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

29. 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).

30. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against such Settling Defendant.

### **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

31. 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. Except as provided in

Paragraph 30 (Waiver of Claims), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States or the Tribe, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

32. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are natural resource damages and all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the Tribe or any other person except for the State; provided, however, that if the United States or the Tribe exercises rights under the reservations in Section XI (Reservation of Rights by the United States and the Coeur d’Alene Tribe), other than in Paragraphs 26.a. (claims for failure to meet a requirement of the settlement) and 26.d. (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

33. In any subsequent administrative or judicial proceeding initiated by the United States or the Tribe for injunctive relief, recovery of response costs, or other 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, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Tribe in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by the United States and the Tribe set forth in Section X.

#### **XIV. ACCESS AND INSTITUTIONAL CONTROLS**

34. If any real property located within the Site is owned or controlled by a Settling Defendant, the Settling Defendant shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including contractors and subcontractors, and the Tribe, with access at all reasonable times to the real property within the Site, or such other real property, to conduct any response activity related to the Site, including, but not limited to the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
2. Verifying any data or information submitted to the United States or the Tribe;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;

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

6. Assessing the Settling Defendant's compliance with this Consent Decree;

7. Determining whether real property within the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under this Consent Decree; and

8. Implementing, monitoring, maintaining, reporting on and enforcing any Institutional Controls.

b. commencing on the date of lodging of this Consent Decree, Settling Defendants shall not use the real property within the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures to be performed at the Site.

35. Basin ICP. With respect to any real property located within the Site that is owned by a Settling Defendant, the Settling Defendant shall comply with the Basin ICP.

36. With respect to any real property located within the Site that is owned by a Settling Defendant, the Settling Defendant shall:

(1) execute and record in the appropriate land records office Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 34.a and (ii) grant the right to enforce land/water use restrictions set forth in Paragraph 34.b, as further specified in Paragraph 36(2)-

(4). The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State of Idaho and its representatives, and/or (iii) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a “third-party beneficiary,” allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

(2) upon request by EPA, submit to EPA for review and approval regarding such real property: (i) a draft Proprietary Control that is enforceable under state law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens and encumbrances or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens and encumbrances). If, within 30 days of EPA’s request for Proprietary Controls, Settling Defendants have not obtained agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 36. The United States may, as it deems appropriate, assist Settling Defendants in obtaining the release or subordination of a prior lien or encumbrance.

(3) within 15 days of EPA’s approval and acceptance of the Proprietary Control and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely,

record the Proprietary Control with the appropriate land records office. Within 30 days of recording the Proprietary Control, such Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

37. If EPA determines Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions or other governmental controls are needed, Settling Defendants shall cooperate with EPA's efforts to secure and ensure compliance with such governmental controls.

38. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto under CERCLA, RCRA and any other applicable statute or regulations.

**XV. NOTICE TO SUCCESSORS-IN-TITLE AND TRANSFERS OF REAL PROPERTY**

39. For any real property owned or controlled by a Settling Defendant that is located within the Site, within 15 days of the Effective Date of this Consent Decree, the Settling Defendant shall submit to EPA for review and approval a proposed notice to be filed with the land records office that provides a description of the real property and provides notice to all successors-in-title that the real property is part of the Site and that EPA selected an interim

remedy for the Coeur d'Alene Basin Site on September 12, 2002. The notice shall also describe the land use restrictions, if any, set forth in Paragraph 34.b. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Defendant shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Settling Defendant shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

40. Settling Defendant shall at least 60 days prior to the Transfer of any real property located within the Site, give written notice: (i) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property; and (ii) to EPA and the Tribe regarding the proposed Transfer, including the name and address of the transferee, and the date on which the transferee was notified of the Consent Decree and Institutional Controls.

41. A Settling Defendant may Transfer any real property located within the Site only if: (1) any Proprietary Controls required by Paragraph 36 have been recorded with respect to the real property; or (2) Settling Defendant has obtained an agreement from the transferee, enforceable by Settling Defendant, the United States and the Tribe, to (i) allow access and restrict land/water use, pursuant to Paragraphs 34.a and 34.b, (ii) record any Proprietary Controls on the real property, pursuant to Paragraph 36, and (iii) subordinate its rights to any such Proprietary Controls, pursuant to Paragraph 36, and EPA and the Tribe have approved in writing the agreement. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph, the Settling Defendant shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the

transferee's compliance with the agreement and/or assist the Settling Defendant in obtaining compliance with the agreement. Settling Defendant shall reimburse the United States and the Tribe, for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

42. In the event of any Transfer of real property located within the Site, unless the United States and the Tribe otherwise consent in writing, the Settling Defendants shall continue to comply with their obligations under the Consent Decree, including, but not limited to, their obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls and to abide by such Institutional Controls.

#### **XVI. DUE CARE AND COOPERATION**

43. Nothing in this Consent Decree shall be construed to relieve Settling Defendants of their duty to exercise due care with respect to hazardous substances at the Site or their duty to comply with all applicable laws and regulations.

44. Settling Defendants agree to cooperate fully with EPA and the Tribe in the implementation of response actions at the Site and further agree not to interfere with such response actions. EPA and the Tribe agree, consistent with their responsibilities under applicable law, to use reasonable efforts to minimize interference with Settling Defendants' operations by such entry and response. In the event that Settling Defendants become aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants or contaminants at or 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 immediately take all appropriate action to prevent, abate, or minimize such release or threat of

release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA and the Tribe of such release or threatened release.

## **XVII. RETENTION OF RECORDS**

45. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records, reports, or information (hereinafter referred to as “records”) now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

46. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants shall notify the United States and the Tribe at least 90 days prior to the destruction of any such records, and, upon request by the United States or the Tribe, Settling Defendants shall deliver any such records to the United States or the Tribe. Settling Defendants may assert that certain records 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 United States or the Tribe with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to the United States or the Tribe in redacted form to mask the privileged information only. Settling Defendants shall retain all records that

they claim to be privileged until the United States or the Tribe has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the Tribe pertaining to the Site shall be withheld on the grounds that they are privileged.

### **XVIII. DISPUTE RESOLUTION**

47. 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. A Settling Defendant's failure to seek resolution of a dispute under this Section shall preclude the Settling Defendant from raising any such issue as a defense to an action by the United States or the Tribe to enforce any obligation of the Settling Defendant arising under this Decree.

48. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when one Party sends the other Parties a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, in consultation with the Tribe, shall be considered binding unless, within 10 Days after the conclusion of the informal negotiation period, the Settling Defendant invokes formal dispute resolution procedures as set forth below.

49. Formal Dispute Resolution. The Settling Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the Tribe a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the Settling Defendant's position and any supporting documentation relied upon by the Settling Defendant.

50. The United States and the Tribe shall serve a joint or separate Statement(s) of Position within 45 Days of receipt of the Settling Defendant's Statement of Position. The United States' and the Tribe's Statement of Position(s) shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States and/or the Tribe. The United States' Statement of Position shall be binding on the Settling Defendant, unless the Settling Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

51. The Settling Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and the Tribe, in accordance with Section XIX of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' and the Tribe's Statement(s) of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the Settling Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

52. The United States and the Tribe shall respond to the Settling Defendant's motion within the time period allowed by the Local Rules of this Court. The Settling Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

53. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 51, the Settling Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

54. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 23. If the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

#### **XIX. NOTICES AND SUBMISSIONS**

55. 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 herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the Tribe and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-128/7)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Cara Steiner-Riley  
Kelly Cole  
U.S. Environmental Protection Agency  
1200 Sixth Avenue  
Seattle, Washington 98101

As to the federal Natural Resource Trustees:

Barry Stein  
U.S. Department of the Interior  
805 SW Broadway Ste. 600  
Portland Oregon 97201

As to the Coeur d'Alene Tribe:

Phillip Cerner  
Lake Management Director  
Coeur d'Alene Tribe  
850 A Street  
P.O. Box 408  
Plummer, ID 83851

As to Settling Defendants:

Gary D. Babbitt  
Hawley, Troxell Ennis & Hawley  
PO Box 1617  
Boise, Idaho 83702

**XX. RETENTION OF JURISDICTION**

56. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XXI. INTEGRATION/APPENDICES**

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

“Appendix A” is the list of financial documents submitted to the United States by Settling Defendants.

“Appendix B” is the Coeur d’Alene Basin Insurance Recovery Trust Agreement referenced in Paragraph 13.

“Appendix C” is the list of Insurance Policies.

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

58. 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 Tribe reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

59. If for any reason this 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.

**XXIII. SIGNATORIES/SERVICE**

60. The undersigned representatives of Settling Defendants to this Consent Decree and the Tribe and the Acting Assistant Attorney General of the Environment and Natural Resources Division of the United States Department of Justice each certify that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

61. Settling Defendants hereby agree 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 Tribe has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

62. Settling Defendants shall identify, on the attached signature page, the name and address 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 complaints filed in this action unless or until the Court expressly declines to enter this Consent Decree.

**XXIV. FINAL JUDGMENT**

63. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the Parties. 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.



DATED: **April 12, 2010**

A handwritten signature in black ink, appearing to read "Edward J. Lodge". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Edward J. Lodge  
U. S. District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Mascot Mines, Inc., et al., CV08-383-N-EJL, relating to the Bunker Hill Mining and Metallurgical Complex Superfund Site in Northern Idaho:

FOR THE UNITED STATES OF AMERICA

Date: 12/3/2009

/s/ IGNACIA S. MORENO

JOHN C. CRUDEN

IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division

U.S. Department of Justice

Date: 12/3/2009

/s/ ERIKA M. ZIMMERMAN

ERIKA M.

ZIMMERMAN

ERIKA M. ZIMMERMAN  
Oregon Bar #055004  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
c/o NOAA, Damage Assessment  
7600 Sandpoint Way, N.E.  
Seattle, Washington 98115  
Telephone:(206) 526-6608  
Facsimile: (206) 526-6665  
erika.zimmerman@usdoj.gov

THOMAS E. MOSS  
United States Attorney  
District of Idaho

Date: 10-29-09

/s/ NICHOLAS J. WOYCHICK

NICHOLAS J. WOYCHICK  
Civil Chief  
U.S. Attorney's Office

District of Idaho  
WGI Plaza IV  
800 Park Blvd., Suite 600  
Boise, Idaho 83712  
(208) 334-1211  
Nick.Woychick@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Mascot Mines, Inc., et al., CV08-383-N-EJL, relating to the Bunker Hill Mining and Metallurgical Complex Superfund Site in Northern Idaho:

Date: 11/4/2009

/s/ Lori Cohen

LORI COHEN

Acting Director, Office of Environmental Cleanup  
U.S. Environmental Protection Agency, Region 10

1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Date: 11/2/2009

/s/ Kelly Cole

CARA STEINER-RILEY

KELLY COLE

Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10

1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Mascot Mines, Inc., et al., CV08-383-N-EJL, relating to the Bunker Hill Mining and Metallurgical Complex Superfund Site in Northern Idaho:

FOR THE COEUR D'ALENE TRIBE

Date: 11-12-09

/s/ Howard A. Funke

HOWARD A. FUNKE  
Special Counsel  
Coeur d'Alene Tribe  
Howard Funke & Associates, P.C.  
P.O. Box 969  
Coeur d'Alene, Idaho 83816-0969  
hfunke@indian-law.org

Date: 11-12-09

/s/ Chief J. Allan

CHIEF J. ALLAN, Chairman  
Coeur d'Alene Tribal Council  
Coeur d'Alene Tribe  
P.O. Box 408  
Plummer, Idaho 83851

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. Mascot Mines, Inc., et al., CV08-383-N-EJL, relating to the Bunker Hill Mining and Metallurgical Complex Superfund Site in Northern Idaho:

FOR DEFENDANT MASCOT MINES, INC.

Date: 11/3/2009

/s/ Joseph Wallace  
JOSEPH

WALLACE  
JOSEPH WALLACE  
President, Mascot Mines, Inc.  
PO Box 660  
Kellogg, Idaho 83837

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

FOR DEFENDANT NABOB SILVER-LEAD  
COMPANY

Date: 11/2/2009

/s/ Martin Clemets

JOSEPH

WALLACE  
MARTIN CLEMETS  
President, Nabob Silver-Lead Company  
PO Box 463  
Silverton, Idaho 83867

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_

**APPENDIX A**  
**Financial Documents Provided by Settling Defendants to the United States**

**Nabob Silver-Lead Company**

April 16, 2008 Letter from Gary D. Babbitt to the U.S. re Nabob Silver-Lead Company financial information

Letter Regarding Nabob Ore Production from 1923-1983, dated October 14, 2008

Unaudited Financial Statements for the years ended December 31, 2001 through December 31, 2004

U.S. Corporation Income Tax Returns, Form 1120, 2006 and 2007

Financial Statement for the period ending August 31, 2008

May 1, 2009 Letter from Gary D. Babbitt to the U.S. re Nabob Silver-Lead Company financial information

**Mascot Mines, Inc.**

April 16, 2008 Letter from Gary D. Babbitt to the U.S. re Mascot Mines, Inc. financial information

Unaudited Balance Sheets for the years ended December 31, 2004 through December 31, 2007

Unaudited Income Statements for the years ended December 31, 2002 through December 31, 2007

Unaudited Cash Flow Statements for the years ended December 31, 2003 through December 31, 2007

U.S. Corporation Income Tax Returns, Form 1120, 2001 through 2007

Copy of Mascot Mine, Inc.'s Stock Certificate of New Jersey Mining Company shares and Summary of Pennaluna and Company portfolio

