

UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY  
 REGION 6

FILED  
 2012 MAR -8 AM 10:32  
 REGIONAL HEARING CLERK  
 EPA REGION VI

In the Matter of:  Chevron Mining Inc.,  Respondent.	§ § § § § § § §	CERCLA Docket No. 06-09-12  Administrative Settlement Agreement and Order on Consent for Removal Actions  Proceeding Under CERCLA §§ 104, 106, § 107, 122
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## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent for Removal Actions (Agreement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Chevron Mining Inc. (CMI or Respondent). This Agreement provides for the performance of removal actions by Respondent and the payment of certain response costs incurred by EPA in connection with the Chevron Questa Mine site (Site) located in Taos County, New Mexico.

2. This Agreement is entered into pursuant to the authority vested in the President of the United States by sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9604, 9606(a), 9607, 9622.

3. EPA has notified the State of New Mexico (State) of these actions pursuant to CERCLA § 106(a), 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Agreement has been negotiated in good faith and that entry into this Agreement and the actions undertaken by Respondent in accordance with this Agreement do not constitute and shall not be considered an admission of liability under CERCLA § 107 or any other federal or State law. Respondent does not acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Respondent does not admit and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Agreement, the validity of the findings of facts, conclusions of law and determinations in Sections IV and V of this Agreement. Respondent agrees to comply with and be bound by the terms of this Agreement and further agrees that it will not contest the validity of this Agreement or its terms.

## II. PARTIES BOUND

5. This Agreement applies to and is binding upon EPA and Respondent and their successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.

6. Respondent shall ensure that its agents, contractors, subcontractors and representatives receive a copy of this Agreement and comply with its terms and conditions. Respondent shall be responsible for any noncompliance with this Agreement.

## III. DEFINITIONS

7. Unless otherwise expressly provided in this Agreement, the words, phrases and terms appearing in this Agreement which are defined in CERCLA or CERCLA regulations shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this

Agreement or the attached appendices, the following definitions shall apply, solely for the purposes of this Agreement:

a. "Agreement" shall mean this Administrative Settlement Agreement and Order on Consent for Removal Actions and all appendices and attachments to this document. In the event of a conflict between this document and an appendix or attachment, this document shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 to 9675.

c. "Chevron Questa Mine Removal Special Account" shall mean the Special Account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to CERCLA § 122(b)(3), 42 U.S.C. § 9622(b)(3).

d. "CMI Property" shall mean the areas within the yellow property lines depicted by Figures 1-2 and 1-3 of Attachments 1 and 2, respectively, to the Statement of Work (SOW) attached hereto as Appendix A and incorporated herein by reference.

e. "Day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday or federal or State holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday or federal or State holiday, the period shall run until the close of business on the next working day.

f. "Document" shall mean any object that records, stores, contains or presents information and includes writings of any kind, formal or informal, whether wholly or partially handwritten and whether created or maintained in paper or electronic form.

g. "Eagle Rock Lake" shall mean the area depicted by Figure 12-30 in Attachment 5 to Appendix A.

h. "Effective Date" shall be the date on which this Agreement is filed with the EPA Region 6 Hearing Clerk.

i. "EMNRD" shall mean the New Mexico Energy, Minerals and Natural Resources Department and its successor departments, agencies or instrumentalities.

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

k. "Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising CMI's performance of the Work to determine whether such performance is consistent with the requirements of this Agreement, including costs incurred in reviewing plans, reports and other deliverables submitted pursuant to this Agreement, as well as costs incurred in overseeing implementation of the Work. Future Oversight Costs do not include, *inter alia*, costs incurred by EPA pursuant to Paragraph 27. c., Section IX (Access to the Site and Other Property), Section XIII (Emergency Response) or Paragraph 30 (Work Takeover) or the costs incurred by EPA in enforcing the terms of this Agreement, including all costs incurred in connection with Dispute Resolution pursuant to Section XVI (Dispute Resolution) and all litigation costs.

l. "Future Response Costs" shall mean all costs incurred by EPA in implementing this Agreement, including, but not limited to, the costs of (1) overseeing the implementation of the Work and other activities to be performed under this Agreement, (2) collecting and analyzing samples, including split samples, (3) reviewing, developing and revising plans, reports, notices and other Documents submitted to EPA under this Agreement, (4) enforcing this Agreement, (5) obtaining or assisting in obtaining access to the Site or other property under Section IX (Access to the Site and Other Property), including any just compensation paid for such access,

(6) securing, monitoring, maintaining or enforcing institutional controls including any just compensation paid for such institutional controls, (7) responding to emergencies under Section XIII (Emergency Response), (8) implementing the Work under Paragraph 30 (Work Takeover), and (9) furthering community participation and community relations. "Future Response Costs" also includes, without limitation, payroll costs, contractor costs, travel costs, laboratory costs, attorney's fees and other legal costs, overhead and other indirect costs and interest incurred by EPA under this Agreement.

m. "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.

n. "Mill Area" shall mean the area depicted by Figure 12-1 in Attachment 3 to Appendix A.

o. "Mine Site Area" shall mean the area within the yellow boundary lines as depicted by Figure 1-2 and designated as the "Questa Mine Site" in Attachment 1 to Appendix A.

p. "Mining Facility" shall mean the underground mine workings, milling facility, tailing pipeline and tailing disposal ponds at the tailing facility.

q. "MMD" shall mean the Mining and Minerals Division of the New Mexico Energy, Minerals and Natural Resources Department.

r. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to CERCLA § 105, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300.

s. "NMED" shall mean the New Mexico Environment Department and any successor departments, agencies or instrumentalities.

t. "O & M" shall mean operation and maintenance.

u. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or an upper or lower case letter.

v. "Parties" shall mean EPA and CMI.

w. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Removal Actions set forth in Part 2, Section 12, of the ROD and Section 5.0 of Appendix A and any modified standards established pursuant to this Agreement.

x. "Record of Decision" and "ROD" shall mean the EPA Record of Decision relating to the Site issued on December 20, 2010, and all attachments thereto.

y. "Red River Riparian Area" shall mean the area depicted by Figure 5-85 in Attachment 4 to Appendix A.

z. "Removal Actions" shall mean all activities Respondent is required to perform under this Agreement, excluding the activities required under Section XI (Record Retention).

aa. "Respondent's Project Coordinator or designee" shall mean the principal contact for CMI to supervise and direct implementation of the Work under this Agreement.

bb. "Section" shall mean a part of this Agreement identified by a Roman numeral.

cc. "Site" shall mean the Chevron Questa Mine Superfund Site, located in Taos County, New Mexico. The Site consists of a molybdenum mine and milling facility located approximately four miles east of the Village of Questa on approximately three square miles of land owned and operated by CMI (lat. 36°41' 54" N., long. 105°30' 18" W). The mine includes underground mine workings, an historic open pit, nine waste rock dumps or piles surrounding the

open pit and a subsidence area which represents a surface-collapse feature above the ore extraction area. The Site also includes a tailing pipeline running parallel to State Highway 38, the area in the vicinity of the pipeline and the Tailing Facility in 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.). The Site also includes all other areas where any hazardous substance, pollutant or contaminant from the Molycorp, Inc. (or successor) mining, milling and tailings disposal operations is located.

dd. "Special Account" shall mean the Chevron Questa Mine Removal Special Account.

ee. "State" shall mean the State of New Mexico.

ff. "Statement of Work" and "SOW" shall mean the Statement of Work for implementation of the Removal Actions at the Site, as set forth in attached Appendix A, and any modifications made in accordance with this Agreement.

gg. "SWDA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901- 6992k.

hh. "Tailing Facility Area" shall mean the area within the yellow boundary lines depicted on Figure 1-3 and designated as the "Questa Tailing Facility" in Attachment 2 to Appendix A.

ii. "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.

jj. "Waste Material" shall mean a "hazardous substance" as defined by CERCLA § 101(14), 42 U.S.C. § 9601(14), a "pollutant or contaminant" as defined by CERCLA § 101(33), 42 U.S.C. § 9601(33), and a "solid waste" as defined by SWDA § 1004(27), 42 U.S.C. § 6903(27).



kk. "Work" shall mean all activities Respondent is required to perform under this Agreement, except those activities required under Section XI (Record Retention).

ll. "WQA" shall mean the New Mexico Water Quality Act, NMSA 1978 §§ 74-6-1 to 74-6-17.

#### IV. FINDINGS OF FACT

8. Respondent Chevron Mining Inc. is a Missouri corporation and an indirect, wholly-owned subsidiary of Chevron Corporation.

9. From 1919 to August 31, 2007, Molycorp, Inc., owned and operated a molybdenum mine on what is now the CMI Property.

10. On August 31, 2007, Respondent acquired Molycorp, Inc., by merger and became the owner of the CMI Property and operator of the Mining Facility.

11. The Mine Area, Mill Area and Tailing Facility Area are located on CMI Property and have been so located during Respondent's ownership of the CMI Property and Respondent's operation of the Mining Facility.

12. Respondent conducted a Remedial Investigation/Feasibility Study (RI/FS) at the Site pursuant to an Administrative Order on Consent for RI/FS, dated September 2001. EPA conducted a baseline human health risk assessment and baseline ecological risk assessment for the Site concurrently with Respondent's RI/FS.

13. As part of the EPA-approved RI and EPA risk assessments, sampling and analysis were performed of soil, sediment, surface water, ground water and terrestrial and aquatic biota at the Site.

14. Based on the findings of the RI, mining operations conducted prior to and during Respondent's ownership of the CMI Property and operation of the Mining Facility have resulted

in the release of hazardous substances, as defined by CERCLA § 101(14), 42 U.S.C. § 9601(14), on and from the CMI Property to soil, sediment, ground water or surface water, including surface water of the Red River and Eagle Rock Lake. Such hazardous substances include polychlorinated biphenyls (PCBs), arsenic, cadmium, copper, zinc and sulfuric acid.

15. The actual and potential releases on and from the CMI Property to soil, sediment, ground water or surface water prior to and during Respondent's ownership of the CMI Property and operation of the Mining Facility include uncontrolled storm water run-off, acid rock drainage, seepage from tailing impoundments, tailing spills from breaks in the tailing pipeline along the Red River riparian corridor and hazardous substances mobilized to ground water from buried tailing material at the Tailing Facility as a result of percolation of irrigation water flowing in the Eastern Diversion Channel.

16. There may be an imminent and substantial endangerment to the public health or welfare or the environment because of the actual or threatened releases of hazardous substances described above.

## V. CONCLUSIONS OF LAW

17. Based on the Findings of Fact set forth above and the Administrative Record supporting the Removal Actions, EPA has determined that:

- a. The Site is a "facility" as defined by CERCLA § 101(9), 42 U.S.C. § 9601(9).
- b. The contamination at the Site, as identified in the Findings of Fact, includes "hazardous substances" as defined by CERCLA § 101(14), 42 U.S.C. § 9601(14).
- c. Respondent is a "person" as defined by CERCLA § 101(21), 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), and is liable for the performance of a response action and for response costs incurred and to be incurred at the Site.

e. The conditions described in the Findings of Fact constitute an actual or threatened “release” of a hazardous substance from the facility as defined by CERCLA § 101(22), 42 U.S.C. § 9601(22).

f. The Removal Actions required by this Agreement are necessary to protect the public health or welfare and the environment and, if carried out in compliance with the terms of this Agreement, will be consistent with the NCP, as provided in 40 C.F.R. § 300.700(c)(3)(ii).

## VI. SETTLEMENT AGREEMENT AND ORDER

18. Based upon the foregoing Findings of Fact, Conclusions of Law and the Administrative Record for the Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Agreement, including all attachments to this Agreement and all documents incorporated by reference into this Agreement.

## VII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

19. Within 10 days after the Effective Date, Respondent shall notify EPA in writing of the names and qualifications of the contractors and subcontractors which Respondent proposes to retain to perform the Work. EPA may disapprove a proposed contractor or subcontractor and in that event shall so notify Respondent in writing within five days of receiving Respondent’s notice. In the event of a disapproval, Respondent shall retain a different contractor or subcontractor and notify EPA in writing of the name of the contractor or subcontractor within 30 days after Respondent’s receipt of EPA’s disapproval notice.

20. The proposed contractors must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP must be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002) or equivalent documentation as required by EPA. The proposed subcontractors can work under the hiring contractors' QMP and do not have to have an individual QMP.

21. Within five days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for the administration of all actions by Respondent required by this Agreement and shall submit the Project Coordinator's name, address, telephone number and qualifications to EPA in writing. If EPA disapproves of the Project Coordinator, Respondent shall propose a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 21 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Agreement shall constitute receipt by Respondent.

## VIII. PERFORMANCE OF THE WORK

22. Respondent shall perform all actions necessary to implement the Statement of Work. The actions to be implemented are described in detail in Section 4.0 of the SOW.

### 23. Work Plan and Implementation

a. Within 30 days after the Effective Date Respondent shall submit to EPA for approval draft work plans for performing the Removal Actions described in Sections 4.1 and 4.3 of the SOW. Within 30 days after submitting the first two work plans, Respondent shall submit

to EPA for approval draft work plans for performing the Removal Actions described in Sections 4.2 and 4.4 of the SOW. Each draft work plan shall provide a description of, and a schedule for, the actions required by this Agreement. Within 60 days after the Effective Date, Respondent shall also submit to EPA for approval a Quality Assurance Project Plan (QAPP) as part of the Site-specific plans required by the SOW. The QAPP shall be prepared in accordance with “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” (EPA/240/B-01/003, March 2001, Reissued May 2006), and “EPA Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/240/R-02/009, December 2002). The QAPP prepared for the RI/FS and previously approved by EPA may be updated and resubmitted to EPA for approval to use for the removal actions.

b. EPA may approve, disapprove, require revisions to or modify in writing the draft Removal Action work plans. If EPA requires revision of a draft work plan, Respondent shall submit a revised draft work plan within 14 days after receipt of EPA’s notification of the required revision or within a time period established by the Project Coordinators. EPA shall not modify a draft work plan without first providing Respondent with at least one notice of deficiency and an opportunity to cure the deficiency within 14 days or such greater period determined by EPA in writing, except with respect to previous submissions which have been disapproved due to material defects. Respondent shall implement the work plans as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved or approved with modifications, the work plans, schedules and any subsequent modifications shall be deemed to be incorporated into this Agreement and fully enforceable under the Agreement.

c. Respondent shall not commence any Work except in conformance with the terms of this Agreement. Respondent shall not commence implementation of the work plans developed

under this Agreement until it has received EPA's written notice of approval pursuant to Paragraph 23. b.

#### 24. Health and Safety Plan

Within 30 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Agreement. The plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Mine Safety and Health Administration (MSHA) regulations at 30 C.F.R. Parts 1-199 and Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910. The plan shall comply with MSHA regulations with respect to that portion of the Work performed on CMI Property. Respondent shall consider EPA's comments, revise the plan, if appropriate and implement the plan during the removal actions.

#### 25. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Agreement shall conform to EPA direction, approval and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation and chain of custody procedures. Respondent shall ensure that the laboratory selected by Respondent participates in a QA/QC program that complies with applicable EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall use laboratories that have a documented quality system that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for

Environmental Data Collection and Environmental Technology Programs” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001; Reissued May 2006),” or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such laboratories analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 10 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent’ implementation of the Work. Circumstances permitting, EPA shall notify CMI not less than 10 days in advance of any sample collection activity unless shorter notice is agreed to by CMI.

## 26. Post-Removal Site Control

In accordance with the work plan schedules or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with 40 C.F.R. § 300.415(*I*) and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site

control arrangements. However, if the Parties execute and the Court enters a Consent Decree for RD and RA at the Site, the requirements of the Consent Decree shall supersede this Paragraph 26.

#### 27. Reporting

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Agreement by the 15<sup>th</sup> day of every month following the Effective Date, beginning the month following the Effective Date and ending the month following issuance of the Certificate of Completion, unless otherwise directed in writing by EPA's Project Coordinator. The reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems and planned resolutions of past or anticipated problems.

b. Respondent shall submit all plans, reports and other Documents required by this Agreement or any work plan to be submitted to EPA in electronic form, unless EPA requests that a Document be submitted in paper form.

c. At least 30 days prior to Respondent's conveyance of any interest in CMI Property, Respondent shall give written notice to the transferee that the property is subject to this Agreement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondent shall require that its successor comply with the immediately preceding sentence and Sections IX (Access to the Site and Other Property) and X (Access to Information).



## 28. Final Report

Within 60 days after each final inspection following completion of construction and field verification of the Work for each of the four removal actions (i.e., Mill Area soil, Tailing Facility Area irrigation water piping, Eagle Rock Lake sediment and inlet controls and Riparian Area tailing spill deposits) Respondent shall submit a draft Removal Action Completion Report to EPA summarizing the actions performed to comply with this Agreement. The Removal Action Completion Report for each of the four removal actions shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and the "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final Removal Action Completion Reports shall include (a) a good faith estimate of total costs or a statement of actual costs incurred in complying with the Agreement, (b) a listing of quantities and types of materials removed off-Site or handled on-site, a discussion of removal and disposal options considered for those materials, (c) a listing of the ultimate destination of those materials, (d) a presentation of the analytical results of all sampling and analyses performed and (e) accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts and permits). The final removal action reports shall also include the following certification signed by a person who supervised or directed the preparation of the report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including

the possibility of fine and imprisonment for knowing violations.

## 29. Off-Site Shipments

a. Prior to any off-Site shipment of Waste Material generated by the Work performed under this Agreement to an out-of-state waste management facility Respondent shall provide written notification of the shipment to the appropriate state environmental official in the receiving facility's state and to EPA. This notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

b. Respondent shall include the following information in the notification: (1) the name and location of the facility to which the Waste Material is to be shipped, (2) the type and quantity of the Waste Material to be shipped, (3) the expected schedule for the shipment of the Waste Material and (4) the method of transportation. Respondent shall notify the state in which the receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state or to a facility in another state.

c. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal actions. Respondent shall provide the information required by Paragraph 29. b. as soon as practicable after the award of the contract and before the Waste Material is shipped.

d. Before shipping any Waste Material generated by the Work performed under this Agreement to an off-Site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA § 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only ship Waste Material generated by the Work performed under this Agreement to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

### 30. Work Takeover

In the event that EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to Respondent. Any Work Takeover Notice issued by EPA will specify the grounds on which the notice was issued and provide Respondents a period of 14 days within which to remedy the circumstances giving rise to issuance of the notice. After expiration of the 14-day notice period, if Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary (Work Takeover). EPA shall notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that the takeover of the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## IX. ACCESS TO THE SITE AND OTHER PROPERTY

31. If the Site, a part of the Site or other real property where access is necessary for the Work is CMI Property or is property controlled by CMI:

a. Commencing on the Effective Date, Respondent shall provide EPA and the State and their representatives, contractors and subcontractors with access to the Site or such other real property owned or controlled by Respondent at all reasonable times to conduct any activity relating to the Agreement, including, but not limited to, the following:

- (1) monitoring the Work,
- (2) verifying any data or information submitted to EPA or the State,
- (3) conducting investigations regarding contamination at or near the Site,
- (4) taking samples,
- (5) assessing the need for, planning, or implementing additional response actions at or near the Site,
- (6) assessing implementation of quality assurance and quality control practices as defined in the approved QAPPs,
- (7) implementing the Work pursuant to the conditions set forth in Paragraph 30 (Work Takeover),
- (8) inspecting and copying records, operating logs, contracts or other documents maintained or generated by Respondent or its agents, consistent with Section X (Access to Information),
- (9) assessing Respondent's compliance with the Agreement, and
- (10) determining whether 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 the this Agreement.

b. Commencing on the Effective Date, Respondent shall not use the Site or such other real property in any manner in the performance of the Work which EPA determines will pose an

unacceptable risk to human health or the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity or protectiveness of the Removal Actions.

c. If the Site or other real property where access is necessary for the Work is owned or controlled by persons other than Respondent, the United States or the State, Respondent shall use its best efforts to secure from such persons:

(1) an agreement to provide such access for EPA, the State and Respondent and their representatives, contractors and subcontractors to conduct any activity relating to this Agreement including, but not limited to, the removal activities described in the SOW and

(2) an agreement enforceable by EPA, the State and Respondent that such persons will refrain from using the Site or such other real property in any manner which EPA determines will pose an unacceptable risk to human health or the environment due to exposure to Waste Materials or will interfere with or adversely affect the implementation, integrity or protectiveness of the Removal Actions.

d. For the purposes of Paragraph 31. c. "best efforts" include the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access.

e. EPA may assist Respondent in gaining access to the extent necessary to effectuate the response actions described in this Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by EPA in obtaining such access in accordance with the procedures in Section XV (Payment of Response Costs).

32. Notwithstanding any provision of this Agreement, EPA and the State retain all of their access authorities and rights, as well as all their rights to require land or water use

restrictions, including related enforcement authority under CERCLA, SWDA, WQA and other federal and State law.

## X. ACCESS TO INFORMATION

33. Upon request, Respondent shall provide EPA with copies of all Documents and information in Respondent's possession or control or the possession or control of its contractors or agents relating to the implementation of this Agreement, including, but not limited to, sampling, the results of any scientific testing of samples taken at the Site, chain of custody records, manifests, trucking logs, receipts, reports, correspondence and other Documents relating to the Work. Respondent shall make its employees, agents or representatives with knowledge of facts relevant to the Work available to EPA and the State for purposes of investigation, information gathering or testimony.

34. Respondent may assert a business confidentiality claim under CERCLA § 104(e)(7), 42 U.S.C. § 9604(e)(7), or 40 C. F. R. Part 2, Subpart B, with respect to all or part of a Document submitted to EPA under this Agreement. A Document determined by EPA to be confidential will be afforded the protection provided by law. If no claim of confidentiality is made at the time a Document is submitted to EPA or, if EPA has notified Respondent that the Document is not confidential under CERCLA § 104(e)(7) or 40 C.F.R. Part 2, Subpart B, the public may be given access to the Document without further notice to Respondent.

35. Respondent may assert that a Document required to be submitted to EPA under this Agreement is privileged under the attorney-client privilege, the attorney work product doctrine or any other privilege or exemption from disclosure recognized under federal law (or New Mexico law as to any Documents required to be submitted to the State under this Agreement)(collectively referred to as "privilege" for purposes of this Agreement). If

Respondent asserts such a privilege in lieu of providing EPA and the State with the Document, it shall provide EPA and the State in writing with (a) a description of the Document, including the title, date, author and nature of the contents, (b) the name, title and address of each addressee and recipient of the Document and (c) identification of the privilege asserted by Respondent.

Respondent may not assert a privilege with respect to a Document required by this Agreement to be created or generated.

36. No claim of privilege or confidentiality shall be made with respect to data evidencing conditions on or near the Site, including, sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, generated pursuant to this Agreement.

## XI. RECORD RETENTION

37. For 10 years after receipt of EPA's Notice of Completion of Work pursuant to Section XXIX (Notice of Completion of Work) Respondent shall preserve and retain all non-identical copies of Documents now in its possession or control or which come into its possession or control which relate to the performance of the Work, notwithstanding a corporate retention policy to the contrary. During the 10-year period Respondent shall instruct its contractors and agents to preserve all such Documents relating to performance of the Work. After the conclusion of the 10-year period Respondent shall notify EPA at least 90 days prior to the destruction of any Document retained under this Paragraph and shall deliver such Document or other retained Document to EPA upon request. However, if the Parties execute and the Court enters a Consent Decree for RD and RA at the Site, the requirements of the Consent Decree shall supersede this Paragraph 37.

38. Respondent represents that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any

Document, other than identical copies, relating to its potential CERCLA liability for any removal or remedial actions relating to the Site since Respondent's receipt of EPA's Special Notice Letter or the filing of suit against Respondent relating to the Site and that it has fully complied with all EPA requests for information pursuant to CERCLA §§ 104(e), 122(e), 42 U.S.C. §§ 9604(e), 9622(e), and SWDA § 3007, 42 U.S.C. § 6927.

## XII. COMPLIANCE WITH OTHER LAWS

39. Respondent shall perform all actions required pursuant to this Agreement in accordance with all applicable state and federal laws and regulations, except as provided in CERCLA § 121(e), 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e), 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Agreement shall, to the extent practicable as determined by EPA, considering the exigencies of the situation, comply with applicable or relevant and appropriate requirements under federal environmental, State environmental or facility siting laws.

## XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

40. In the event of any action or occurrence during performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate actions. Respondent shall take these actions in accordance with all applicable provisions of this Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall immediately notify EPA's and NMED's Project Coordinators. If Respondent fails to take appropriate response action as required by this



Paragraph and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action consistent with the NCP pursuant to Section XV (Payment of Response Costs).

41. In the event of any release of a hazardous substance from the Site during performance of the Work, Respondent shall immediately notify EPA's and NMED's Project Coordinator and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven days after each release, setting forth the events that occurred and the action taken or to be taken to mitigate a release or any endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to the duty to report under CERCLA § 103(a), 42 U.S.C. § 9603(c), and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

#### XIV. AUTHORITY OF EPA PROJECT COORDINATOR

42. EPA's Project Coordinator shall have the authority of an On-Scene Coordinator as provided by the NCP, including the authority to stop, conduct or direct Work or to direct any other removal action undertaken at the Site. Absence of EPA's Project Coordinator from the Site shall not be cause for stoppage of work unless authorized by EPA's Project Coordinator.

#### XV. PAYMENT OF RESPONSE COSTS

##### 43. Future Response Costs

a. Within 45 days of the Effective Date, Respondent shall pay to EPA \$560,000 in prepayment of Future Response Costs. The total amount paid shall be deposited by EPA in the Chevron Questa Mine Removal Special Account, within the EPA Hazardous Substance Superfund. These funds shall be retained and used by EPA for Future Response Costs as provided in this Order. Payment shall be made by FedWire Electronic Funds Transfer (EFT) according to Paragraph 45.

b. Respondent shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On at least an annual basis, EPA will send Respondent a bill requiring payment that includes certified cost documentation. On or about the time a bill and certified cost documentation package are provided under this Paragraph, EPA shall provide available monthly progress reports from contracts used for the oversight of work performed under this Agreement. If a progress report is not available, EPA shall timely provide the report once it is available to EPA. Respondent shall make all payments within 45 days of Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 48. Respondent shall make all payments required by this Paragraph in the manner required by Paragraph 45 with notice as required by Paragraph 46. The total amount paid will be deposited by EPA in the Chevron Questa Mine Removal Special Account within the EPA Hazardous Substance Superfund. These funds will be retained and used by EPA for Future Response Costs, provided, however, that any amounts remaining in the Chevron Questa Mine Removal Special Account upon completion of the Work will be disbursed or credited in accordance with Paragraph 43. d.

c. In the event that EPA's use of the Chevron Questa Mine Removal Special Account results in there being \$200,000 or less in the Chevron Questa Mine Removal Special Account and EPA provides a cost estimate that demonstrates that the remaining amount will be exhausted before receipt of the next reimbursement payment under Paragraph 43. b. even with timely issuance of a bill under Paragraph 43. b., Respondent agrees, within 45 days of EPA's notice that the Chevron Questa Mine Removal Special Account has reached \$200,000 or less, to remit \$200,000 to EPA for deposit in the Chevron Questa Mine Removal Special Account, in accordance with the payment procedure described in Paragraph 45. Any amounts received under

this Subparagraph will be disbursed or credited to Respondent in the final accounting in accordance with Subparagraph 43. d.

d. After EPA issues its written Certification of Completion of Work pursuant to Section XXIX (Notice of Completion of Work) EPA shall timely perform a final accounting of Future Response Costs and provide the accounting and final certified cost documentation to Respondent. Within 45 days after receipt of the final accounting, Respondent may dispute expenditures of any amounts paid by Respondent pursuant to Paragraph 43. c., if Respondent determines that EPA or the State has made a mathematical error or if Respondent alleges that a cost item that is included represents costs that are inconsistent with the NCP or outside the definition of Future Response Costs. EPA shall either apply any unused amount paid by the Respondent pursuant to Paragraphs 43. a. or 43. c. (and any amount paid by Respondent pursuant to Paragraph 43.c. that is successfully disputed by Respondent after the final accounting) to any other unreimbursed response costs or response actions remaining at the Site for which the Respondent is liable, or remit and return to Respondent any unused amount of the funds paid by Respondent pursuant to Paragraphs 43. a. or 43. c. (and any amount paid by Respondent pursuant to Paragraph 43. c. that is successfully disputed by Respondent after the final accounting), as elected by Respondent.

44. Respondent may contest payment of any Future Response Costs under Paragraph 43 that were incurred during the time period that any prepaid amounts were received under Paragraph 43. b., with the exception of amounts due under Paragraphs 43. a. and 43. c., if Respondent determines that EPA or the State has made a mathematical error or if Respondent alleges that a cost item that is included represents costs that are inconsistent with the NCP or outside the definition of Future Response Costs.

45. Respondent shall make all payments required by Paragraph 43 to EPA by Fedwire

Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental  
Protection Agency"

and shall reference Site/Spill ID Number 06DL and the EPA docket number for this action.

46. At the time of payment Respondent shall send a notice of the payment to the

Enforcement Assessment Section Chief:

Section Chief  
Enforcement Assessment Section (6SF-TE)  
1445 Ross Ave, Suite 1200  
Dallas, TX 75202

and to the EPA Cincinnati Finance Office by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov) or by mail  
to:

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

Such notice shall reference the Site/Spill ID Number 06DL and EPA docket number for this  
action.

47. Interest

If Respondent fails to pay and does not dispute a Future Response Costs within 45  
days after Respondent's receipt of an EPA billing statement, Respondent shall pay Interest on the  
unpaid balance. Interest on Future Response Costs which are not paid within the 45-day period  
shall accrue beginning on the 46th day following Respondent's receipt of the bill and continue to

accrue until paid. Such payment of Interest shall be in addition to other remedies or sanctions for Respondent's failure to make timely payments under this Agreement, including the payment of stipulated penalties.

48. Respondent may dispute the payment of a Future Response Cost if Respondent determines that EPA or the State has made a mathematical error or if Respondent alleges that a cost item that is included represents costs that are inconsistent with the NCP or outside the definition of Future Response Costs. Respondent may object to a cost item by notifying EPA in writing within 45 days after receipt of a billing statement for the item. The objection shall identify each disputed item and state the basis for objecting to each item.

49. Within 45 days after notifying EPA of the objection, Respondent shall pay all billed and due uncontested Future Response Costs to EPA in the manner described in Paragraph 43. At that time, Respondent shall establish an interest-bearing escrow account with a domestic bank or trust company which is insured by the Federal Deposit Insurance Corporation and deposit funds equal to the amount of contested costs in the account. Simultaneously, Respondent shall send copies of the check paying the uncontested Future Response Costs and the bank documents opening the account to EPA.

50. Simultaneously with the opening of the escrow account, Respondent shall initiate the dispute resolution procedures in Section XVI (Dispute Resolution). If EPA prevails with respect to any part of the disputed costs, Respondent shall pay EPA the cost items resolved in EPA's favor with accrued interest within seven days after resolution of the dispute in the manner described in Paragraph 45. Any funds remaining in the escrow account shall be returned to Respondent. The dispute resolution procedures set forth in this Paragraph and the procedures set

forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

## XVI. DISPUTE RESOLUTION

51. Unless otherwise expressly provided in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes under or relating to this Agreement. The procedures set forth in this Section shall not apply to actions by EPA to enforce obligations of Respondent that have not been disputed in accordance with this Section.

52. Any dispute under or relating to this Agreement shall initially be the subject of informal negotiations between the Parties. The Parties may use a neutral facilitator to assist in their informal negotiations. Informal negotiations shall not exceed 20 days from the time the dispute arises, unless the 20-day period is extended by written agreement of the Parties. A dispute arises when one Party receives a written notice of dispute from the other Party.

### 53. Statements of Position

a. If the Parties cannot resolve a dispute by informal negotiations under Paragraph 52, EPA's position shall be considered binding unless within 14 days after the informal negotiation period Respondent invokes the formal dispute resolution procedures of this Section by serving EPA with a statement of position regarding the matter in dispute. The statement shall include an analysis of the relevant facts and law and Respondent's arguments supporting its position. Respondent shall also submit any documents supporting its position.

b. Within 30 days after receipt of Respondent's statement of position, EPA shall serve Respondent with a statement of position responding to Respondent's statement.

c. An administrative record of any dispute under this Section shall be maintained by EPA and shall contain any statement of position, response, and reply, including supporting

documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties to the dispute.

54. Based on the administrative record of the dispute, the Director of the Superfund Division for EPA Region 6 (Director) will issue a final decision resolving the dispute, which shall be binding on Respondent.

55. Invocation of formal dispute resolution procedures under this Section XVI shall not extend, postpone or affect Respondent's responsibilities under this Agreement which are not the subject of the dispute, unless EPA agrees otherwise. Stipulated penalties relating to a disputed matter shall accrue from the first day of noncompliance with any applicable provision of this Agreement. If Respondent does not prevail, stipulated penalties shall be assessed and paid as provided in Section XVIII (Stipulated Penalties).

56. Any agreement reached by the Parties pursuant to this Section shall be in writing and incorporated into and become an enforceable part of this Agreement. Following resolution of the dispute, as provided by this Section, Respondent shall comply with the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision.

## XVII. FORCE MAJEURE

57. Respondent agrees to perform all requirements of this Agreement within the time limits set forth herein, unless performance is delayed by a force majeure. A force majeure event (Event) is defined as any event arising from causes beyond the control of Respondent or any entity controlled by Respondent, including Respondent's contractors and subcontractors, which delays or prevents performance of Work or compliance with a requirement of this Agreement despite Respondent's best efforts to perform or comply with the requirement. An Event does not

include Respondent's financial inability to complete the Work, the increased cost of performance or Respondent's failure to meet performance standards set forth in this Agreement.

58. If an event occurs or has occurred that may delay compliance with a requirement of this Agreement or the performance of Work, whether or not caused by an Event, Respondent shall notify EPA orally within five working days of when Respondent becomes aware that the event might cause a delay. Within five working days thereafter, Respondent shall provide EPA with a written explanation and description of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay, the factual basis for Respondent's attributing such delay to an Event (if Respondent has asserted or intends to assert such a claim) and a statement as to whether the event may cause or contribute to an endangerment to public health or welfare or the environment. Failure to comply with the requirements of this Paragraph shall preclude Respondent from asserting a force majeure claim for the event for the period of time of such failure to comply and for an additional delay caused by such failure.

59. If EPA agrees that the delay or anticipated delay is attributable to an Event, the time for compliance with the requirement or performance of Work affected by the Event will be extended by EPA as necessary. An extension shall not extend the time for compliance of any other requirement performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by an Event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to an Event, EPA will notify Respondent in writing of an extension, if any, for compliance with the requirement or performance of the Work affected by the Event.



## XVIII. STIPULATED PENALTIES

60. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 61 and 63 for the failure to comply with the requirements of this Agreement, unless excused under Section XVII (Force Majeure). Compliance by Respondent shall include completion of the activities under this Agreement or any work plan or other plan approved by EPA under this Agreement identified below in accordance with applicable requirements of law, this Agreement, the SOW or any plan or other document approved by EPA pursuant to this Agreement within the specified time schedules established and approved under this Agreement.

### 61. Stipulated Penalty Amounts - Work (Including Payments)

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the milestones identified in Paragraph 61. b:

\$1,500	1st through 14th day
\$2,500	15th through 30th day
\$3,500	31st day and thereafter

### b. Compliance Milestones

The specific components of the Work set forth below are compliance milestones. Respondent shall have achieved each milestone at the time Respondent performs a final construction inspection and notifies EPA that the Work has been timely completed in compliance with EPA-approved work plans, the ROD, this Agreement and the SOW according to EPA-approved schedules, as required by Section 6.3.4.8.3 of the SOW.

(1) Completion of field activities relating to the removal of PCB-contaminated soil from the Mill Area and the off-Site treatment/disposal of the contaminated soil.

(2) Completion of field activities relating to the installation of piping in the Eastern Diversion Channel to prevent unused irrigation water from contacting historic, buried tailing at the Tailing Facility.

(3) Completion of field activities relating to the installation of inlet storm water controls for Eagle Rock Lake, the removal of sediment from the lake and the on-Site disposal of the sediment.

(4) Completion of field activities in the Red River Riparian Area relating tailing spill deposits and the on-Site disposal of the deposits.

62. In the event Respondent disputes a stipulated penalty, the disputed costs must be paid by Respondent into an escrow account while the dispute is pending.

63. Stipulated Penalty Amounts – Reports

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Section VIII

(Performance of the Work):

\$1,000	1st through 14th day
\$1,500	15th through 30th day
\$2,000	31st day and thereafter

64. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 30 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$500,000.

65. All penalties shall accrue beginning on the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or violation. Stipulated penalties shall not accrue with respect to a deficient submission under Section VIII (Performance

of the Work) during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date EPA notifies Respondent of a deficiency, or with respect to a decision by the Deputy RA under Section XVI (Dispute Resolution), during the period beginning on the 21st day after the date that EPA's Statement of Position is received until the date that the Deputy RA issues a final decision regarding such dispute. Nothing in this Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

66. Following EPA's determination that Respondent has failed to comply with a requirement of this Agreement, EPA may serve Respondent written notice of the failure, describing the noncompliance, and a demand for payment of penalties. Penalties shall accrue as provided in the preceding Paragraph, regardless of whether EPA has notified Respondent of a violation.

67. A penalty accruing under this Section shall be due and payable to EPA within 60 days after Respondent's receipt of an EPA demand for payment of the penalty, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). Respondent shall make payments required by this Paragraph to EPA by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference stipulated penalties, Site/Spill ID Number 06DL, and the EPA docket number for this action. At the time of payment, Respondent shall notify EPA Region 6 that payment has been made as provided in Paragraph 46 above.

68. The payment of penalties shall not affect Respondent's obligation to complete performance of the Work.

69. Penalties shall continue to accrue as provided in Paragraph 65 during any dispute resolution period, but need not be paid until 30 days after the dispute is resolved by agreement or by receipt of the Deputy RA's decision.

70. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties and Interest. Respondent shall pay Interest on the unpaid balance as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date the payment of stipulated penalties is due pursuant to Paragraph 67 until the date of payment, or (b), if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand made pursuant to Paragraph 66 until the date of payment.

71. Nothing in this Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Agreement or the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to CERCLA §§ 106(b), 122(l), 42 U.S.C. §§ 9606(b), 9622(l), and punitive damages pursuant to CERCLA § 107(c)(3), 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek such penalties or punitive damages for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Agreement or in the event that EPA takes over performance of a portion or all of the Work pursuant to Paragraph 30 (Work Takeover). Notwithstanding any other

provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Agreement.

#### XIX. EPA'S COVENANT NOT TO SUE

72. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Agreement and except as otherwise specifically provided in this Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to CERCLA § 106 or § 107(a), 42 U.S.C. § 9606 or § 9607(a), or SWDA § 7003, 42 U.S.C. § 6973, for the Work and Future Response Costs. This covenant shall take effect on the Effective Date and is conditioned on Respondent's complete and satisfactory performance of all its obligations and responsibilities under this Agreement, including payment of Future Response Costs pursuant to Section XV (Payment of Response Costs). This covenant applies only to CMI and not any other person.

#### XX. EPA'S RESERVATIONS OF RIGHTS

73. Except as specifically provided herein, nothing in this Agreement shall limit the power and authority of EPA or the United States to take, direct or order all actions necessary to protect public health, welfare or the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants or hazardous or solid waste on, at or from the Site. Nothing in this Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Agreement, taking other legal or equitable action as it deems appropriate and necessary or requiring Respondent to perform additional activities in the future pursuant to CERCLA or other applicable law.

74. The covenant not to sue set forth in Section XIX does not pertain to any matters other than those expressly identified therein. EPA reserves and this Agreement is without prejudice to

all rights EPA has or may have with respect to Respondent relating to all other matters, including, but not limited to:

- a. liability for failure by Respondent to meet a requirement of this Agreement,
- b. liability for costs not included within the definition of Future Response Costs,
- c. liability for performance of response action other than the Work,
- d. criminal liability,
- e. liability for damages for injury to, destruction of or loss of natural resources and for the costs of any natural resource damage assessments,
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site which are not paid as Future Response Costs under this Agreement.

## XXI. RESPONDENT'S COVENANT NOT TO SUE

75. Except as specifically provided in this Agreement, Respondent covenants not to sue and agrees not to assert any claim or cause of action against the United States, EPA or EPA's contractors or employees with respect to the Work, Future Response Costs or this Agreement, including:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on CERCLA § 106(b)(2), § 107, § 111, § 112 or § 113, 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 New Mexico Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law or

c. any claim made pursuant to CERCLA § 107 or § 113, 42 U.S.C. § 9607 or § 9613, SWDA § 7002(a), 42 U.S.C. § 6972(a), or State law relating to the Work or Future Response Costs. The covenant not to sue in this Paragraph 75 does not include, and CMI specifically reserves, its right to assert claims pursuant to CERCLA, 42 U.S.C. § 9601, *et seq.*, relating to the Work, Future Response Costs or this Agreement against the U.S. Department of Agriculture, the U.S. Department of the Interior and/or the General Services Administration and their components, predecessors, successors and assigns, provided that the U.S. Department of Agriculture, the U.S. Department of the Interior and/or the General Services Administration and their components, predecessors, successors and assigns have not each resolved their potential liability at the Site with EPA as of the time Respondent asserts such claims. These covenants not to sue shall not apply in the event EPA or the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 74, but only to the extent that Respondent's claims arise from the same response action, response costs or damages that the United States is seeking pursuant to the applicable reservation.

d. CMI reserves and this Agreement is without prejudice to claims against the United States subject to the provisions of Chapter 171 of Title 28, United States Code, and brought pursuant to any statute other than CERCLA or SWDA and for which a waiver of sovereign immunity is provided by a statute other than CERCLA or SWDA for money damages for injury or loss of property or personal injury or death caused by a negligent or wrongful act or omission

of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the alleged act or omission occurred. The foregoing shall not include any claim based on EPA's selection of response actions or EPA's oversight of the Work or approval of CMI's plans, reports, other deliverables or activities. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of CERCLA § 111, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

76. Respondent agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

## XXII. OTHER CLAIMS

77. By entering into this Agreement EPA does not assume liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Agreement.

78. Except as expressly provided in Section XIX (EPA's Covenant Not to Sue), nothing in this Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Agreement for any liability such person may have under CERCLA, other statutes or common law, including any claims the United States may have for costs, damages and interest under CERCLA § 106 or § 107, 42 U.S.C. § 9606 or § 9607.



79. No action or decision by EPA pursuant to this Agreement shall create any right to judicial review, except as provided in CERCLA § 113(h), 42 U.S.C. § 9613(h).

### XXIII. EFFECT OF SETTLEMENT AND CONTRIBUTION

80. This Agreement constitutes an administrative settlement for purposes of CERCLA §§ 113(f)(2), 122(h)(4), 42 U.S.C. §§ 9613(f)(2), 9622(h)(4), and as of the Effective Date Respondent is entitled to protection from contribution actions or claims as provided by CERCLA §§ 113(f)(2), 122(h)(4), 42 U.S.C. §§ 9613(f)(2), 9622(h)(4), or as may be otherwise provided by law for “matters addressed” in this Agreement. “Matters addressed” in this Agreement are the Work and Future Response Costs. This Agreement constitutes an administrative settlement for purposes of CERCLA § 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to EPA for the Work and Future Response Costs.

81. With respect to any suit or claim relating to this Agreement, Respondent shall notify EPA in writing (a) not later than 60 days prior to the initiation of such suit or claim brought by Respondent, (b) not later than 10 days after the service of a complaint or claim on Respondent, (c) not later than 10 days after service on Respondent of a motion for summary judgment or (d) not later than 10 days after Respondent’s receipt of a court order setting a case for a hearing on a dispositive motion filed by an opposing party or for trial.

82. In any subsequent administrative or judicial proceeding initiated by EPA or the United States on behalf of EPA for injunctive relief, recovery of response costs or other relief relating to the Site, Respondent agrees that it will not assert and or maintain any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting or other defenses based upon any contention that the claims raised in the subsequent

proceeding were or should have been brought in the instant case, provided that nothing in this Paragraph affects the enforceability of the EPA's covenant set forth in Section XIX (EPA's Covenant Not to Sue).

83. Respondent agrees that the time period commencing on the Effective Date and ending on the date EPA receives Respondent's full payment required by Section XV (Payment of Response Costs) and, if any, Section XVIII (Stipulated Penalties) shall not be included in computing the limitation period applicable to any action brought by EPA or the United States on EPA's behalf relating to "matters addressed" as defined in Paragraph 80 and that in any action brought by the United States related to the "matters addressed," Respondent will not assert or maintain any defense or claim based upon principles of limitations, waiver, laches, estoppel or other defense based on the passage of time during such period.

#### XXIV. INDEMNIFICATION

84. Respondent shall indemnify and save and hold harmless the United States and its employees, agents, contractors, subcontractors and representatives from any and all claims or causes of action arising from or on account of negligent or other wrongful acts or omissions of Respondent or its officers, directors, employees, agents, contractors or subcontractors in carrying out actions pursuant to this Agreement. Respondent agree to pay the United States all costs incurred by the United States, including, but not limited to, attorney's fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent or its officers, directors, employees, agents, contractors, subcontractors or any other persons acting on its behalf or under its control in performing, conducting or carrying out obligations, responsibilities or activities pursuant to this Agreement. The United States shall not be held out as a party to any contract

entered into by or on behalf of Respondent in carrying out activities pursuant to this Agreement. Neither Respondent nor any such contractor or other representative of Respondent shall be considered an agent of the United States.

85. EPA shall notify Respondent of any claim for which the United States intends to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

86. Respondent waives all claims against the United States for damages or reimbursement for or set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement or arrangement between Respondent and any person for performance of Work relating to the Site, including, but not limited to, claims on account of construction delays.

87. Respondent shall indemnify and save and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement or arrangement between Respondent and any person for performance of Work relating to the Site, including, but not limited to, claims on account of construction delays.

## XXV. INSURANCE

88. No later than seven days prior to commencing any on-site work under this Agreement, Respondent shall secure and maintain comprehensive general liability insurance and automobile insurance with limits of \$ 2 million combined single limit, in force for the duration of this Agreement, naming EPA as a co-insured. Respondent shall provide a copy of each insurance policy to EPA. On or about each anniversary of the Effective Date Respondent shall provide EPA with certificates of such insurance coverage and, if there is any change to an insurance policy, a copy of the changed insurance policy. For the duration of the Agreement, Respondent

shall satisfy or ensure that its contractors and subcontractors comply with all applicable laws and regulations regarding worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Agreement. If Respondent demonstrates by evidence satisfactory to EPA that a contractor or subcontractor maintains insurance equivalent to that described above or insurance covering some or all of the same risks, but in an equal or lesser amount, Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## XXVI. FINANCIAL ASSURANCE

89. Within 30 days after the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$5,000,000 in one or more of the following forms in order to secure the full and final completion of Work by Respondent; provided that, if CMI intends to use multiple mechanisms, such mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds and insurance policies.

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work,
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by a financial institution acceptable to EPA,
- c. a trust fund administered by a trustee acceptable to EPA,
- d. a policy issued by an insurance carrier acceptable to EPA which ensures the payment and/or performance of the Work,
- e. written guarantee to pay for or perform the Work provided by one or more parent companies of Respondent or by one or more unrelated companies that have a substantial business

relationship with Respondent and a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. § 264.143(f) and/or

f. a demonstration by Respondent of sufficient financial resources to pay for the Work which includes a demonstration that satisfies the requirements of 40 C.F.R. § 264.143(f).

90. Respondent shall provide copies of all Documents relating to the financial assurance proposed by Respondent. Within 30 days of receipt of the Documents EPA shall approve, approve with modifications or disapprove the financial assurance proposed by Respondent and so notify Respondent in writing. If disapproved, Respondent shall submit a revised proposal which cures the deficiencies noted by EPA within 30 days of Respondent's receipt of EPA's notice of disapproval. If EPA notifies Respondent that the estimated cost of completing the Work has increased, Respondent shall submit a revised form of financial assurance for EPA approval which is adequate to assure performance of the Work at the revised cost estimate within 30 days after receiving EPA's notice of the increased cost estimate. If an alternative or revised financial assurance is required as described in this Paragraph, if CMI cannot obtain such alternative or revised form of financial assurance within such 30-day period, and provided further that CMI shall have commenced to obtain such revised or alternative form of financial assurance within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for CMI in the exercise of due diligence to obtain such revised or alternative form of financial assurance, such additional period not to exceed 60 days. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any Work.

91. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Paragraph 89. e. of this Agreement, Respondent shall (a) demonstrate to EPA's satisfaction

that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f) and (b) resubmit sworn statements to EPA setting forth the information required by 40 C.F.R. § 264.143(f) on the anniversary of the Effective Date or such other date as provided in 40 C.F.R. § 264.143(f)(5) or as otherwise determined by EPA. For the purposes of this Agreement, wherever 40 C.F.R. § 264.143(f) refers to “sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates,” the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of \$5,000,000 for the Work at the Site and any other SWDA, CERCLA, TSCA or other federal environmental obligations financially assured by Respondent or a guarantor by means of passing a financial test.

92. If Respondent can show after the Effective Date that the estimated cost to complete the remaining Work is less than the amount set forth in Paragraph 91, Respondent may on or about any anniversary date of the Effective Date or at any other time agreed to by the Parties reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA in accordance with the requirements of this Section and may reduce the amount of financial assurance after receiving EPA’s written approval. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Respondent may reduce the amount of financial assurance in accordance with EPA’s written decision resolving the dispute.

93. Respondent may change the form of financial assurance provided under this Section upon notice to and prior written approval by EPA. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

## XXVII. MODIFICATIONS

94. This Agreement and Appendix A may be modified only by the written agreement of the Parties.

95. To modify a work plan, schedule or the SOW, Respondent shall submit a written request to EPA which includes a detailed description of the proposed modification and the need for the modification. Respondent may not proceed with the requested modification without EPA's written approval.

96. No informal advice, guidance, suggestion or comment by an EPA employee or representative regarding reports, plans, specifications, schedules or other Documents submitted by Respondent to EPA shall relieve Respondent of its obligation to obtain EPA formal approval required by this Agreement or relieve Respondent of its duty to comply with all requirements of this Agreement

## XXIX. NOTICE OF COMPLETION OF WORK

97. Upon review of the last Removal Action Completion Report submitted by Respondent under this Order and Section 6.3.4.10 of the SOW, EPA will provide written notice to Respondent of whether EPA has determined that all the Work required by this Agreement has been fully performed. If EPA determines that the Work has not been so performed, it will provide Respondent with a description of the deficiencies and require that Respondent modify the Work Plan, if appropriate, to correct the deficiencies. If EPA requires Respondent to modify the Work Plan, Respondent shall implement the modified Work Plan and submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Agreement.

### XXX. SERVICE OF DOCUMENTS

98. True and correct copies of all Documents which Respondent is required by this Agreement to submit to EPA shall be contemporaneously provided to the State electronically and by first-class mail or, if requested by the recipient, overnight delivery addressed to NMED and MMD as indicated in Paragraph 99.

99. Whenever one Party is required by this Agreement to submit a Document to the other Party, the Document shall be sent to the following addressees:

- EPA:        Laura Stankosky  
              U.S. Environmental Protection Agency  
              1445 Ross Avenue (6SF-RL)  
              Dallas, Texas 75202-2733
- NMED:      Chief, Ground Water Quality Bureau  
              New Mexico Environment Department  
              1190 St. Francis Drive  
              Suite N4050  
              Santa Fe, New Mexico 87505
- MMD:      Project Manager  
              Mining Act Reclamation Program  
              Mining and Minerals Division  
              Energy, Mining and Natural Resources Department  
              1220 S. St. Francis Drive  
              Santa Fe, New Mexico 87505
- CMI:        Michael D. Coats  
              Project Manager  
              Chevron Environmental Management Company  
              116 Inverness Drive East, Suite 207  
              P.O. Box 6518  
              Englewood, Colorado 80155  
              Phone: (303) 930-4082  
              E-mail: [michaelcoats@chevron.com](mailto:michaelcoats@chevron.com)



XXXI. INTEGRATION/APPENDIX

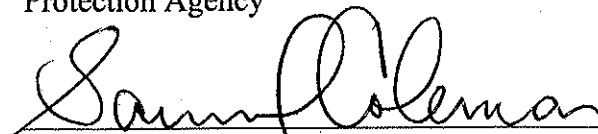
100. This Agreement and Appendix A constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement set forth in this Agreement. The Parties acknowledge that there are no promises, representations or agreements relating to the settlement which are not set forth in this Agreement and Appendix A.

XXXII. EFFECTIVE DATE

101. This Agreement is effective upon filing with the EPA Region 6 hearing clerk. EPA shall provide Respondent with a file-stamped copy of the Agreement by 5:00 p.m. (Central Time) on the date of filing.

So Agreed and Ordered.

For the United States Environmental  
Protection Agency



Samuel Coleman, P.E.  
Director  
Superfund Division

7 March 2012  
Date

For Chevron Mining Inc.



Mark G. Premo  
President and Chief Executive Officer

MARCH 7 2012  
Date

APPENDIX A  
TO ADMINISTRATIVE SETTLEMENT AGREEMENT AND  
ORDER ON CONSENT FOR REMOVAL ACTIONS

STATEMENT OF WORK

## APPENDIX A

### STATEMENT OF WORK FOR REMOVAL ACTIONS

#### CHEVRON QUESTA MINE SUPERFUND SITE QUESTA, NEW MEXICO

##### 1.0 INTRODUCTION

This Statement of Work (SOW) sets forth the framework and requirements for implementation of the work (Work) described in the Administrative Order on Consent (AOC) for Removal Actions (the "Order") at the Chevron Questa Mine Superfund site (hereinafter the "Site"), CERCLIS ID No. NMD002899094.

##### 2.0 PURPOSE

The purpose of this SOW is to set forth the framework, requirements and time frames for implementing non-time-critical removal actions in accordance with the United States Environmental Protection Agency's (EPA's) December 20, 2010 Record of Decision (ROD) for the Site, as further delineated in this SOW. The ROD describes the remedy selected by EPA. The removal actions are defined as those activities to be undertaken to mitigate conditions that may present an imminent and substantial endangerment to human health or the environment.

##### 3.0 ROLE OF EPA

EPA will provide oversight of CMI's Work. This will include the review and comment on deliverables such as work plans, reports, and other submittals related to the removal actions. EPA's acceptance of deliverables is administrative in nature and allows CMI to proceed to the next steps in implementing the Work. EPA's acceptance does not imply any warranty of performance, nor does it imply that the Work, when completed, will meet performance standards and be accepted by EPA. Acceptance of plans, reports, and other required submittals by EPA does not relieve CMI or its contractors of responsibility for the adequacy of the submittal or from their professional responsibilities. Pursuant to Section VIII (Performance of the Work) of the Order, EPA retains the right to not accept any of the deliverables, including submittals associated with contractor selection, work plans, reports, schedules, or any other deliverables required by the Order, including this SOW. EPA may require that CMI submit detailed information to demonstrate that any contractor, subcontractor, or analytical laboratory selected is qualified to conduct the Work, including information on personnel qualifications, equipment and material specifications.

CMI shall simultaneously submit copies of all deliverables to the New Mexico Environment Department (NMED) and New Mexico Energy, Minerals and Natural Resources Department's

Mining and Minerals Division (MMD) for their review and comment in accordance with Section XXX, Paragraph 99 of the Order. EPA will ensure that NMED and MMD have had an opportunity to comment on all deliverables before they are accepted by EPA. EPA will compile all comments, remove redundant comments, and reconcile conflicting comments prior to submittal to CMI.

CMI will support EPA's initiation and conduct of activities related to the implementation of oversight activities.

### **3.1 Community Relations**

EPA will conduct community relations activities throughout Removal Actions, including (1) developing and maintaining a community relations plan that identifies EPA's community involvement and outreach efforts and community concerns, (2) holding community meetings, availability sessions and/or open houses, (3) preparing community fact sheets to keep the community informed of ongoing Site activities, and (4) maintaining the existing Site information repositories at the Village of Questa Municipal Offices in Questa, New Mexico, the NMED office in Santa Fe, New Mexico, and the EPA Region 6 office in Dallas, Texas. CMI shall provide community relations support to EPA throughout the Removal Actions as described in Section 6.1.9 of this SOW.

## **4.0 OVERVIEW OF REMOVAL ACTIONS**

Removal Actions are to be conducted by CMI in accordance with the Order and the Work required by this SOW and in accordance with the requirements described in the ROD as further delineated in this SOW. As described in the AOC, Attachments 1 through 5 have been included as figure attachments to this SOW. Attachments 1 (Figure 1-2) and 2 (Figure 1-3) depict CMI property including the Mine Site and the Tailing Facility. The Removal Actions to be performed by CMI are as follows:

### **4.1 PCB Soil Removal and Off-Site Treatment/Disposal – Mill Area**

Attachment 3 (Figure 12-1) depicts the Mill Area. The major components of the removal action in the Mill Area to be performed by CMI under this SOW that are related to soil removal and off-Site treatment/disposal are as follows:

- Excavate soil contaminated by polychlorinated biphenyls (PCBs) in concentrations above the Toxic Substances Control Act (TSCA) cleanup level of 25 mg/kg for low occupancy (commercial/industrial) use;
- Perform confirmation sampling;
- Import clean fill and grade;
- Transport PCB soil to EPA-approved off-Site facilities for treatment and/or disposal.

#### **4.2 Piping of Unused Irrigation Water in Eastern Diversion Channel to Prevent Infiltration through Historic Buried Tailing – Tailing Facility Area**

Attachment 2 (Figure 1-3) depicts the Tailing Facility Area; the historic buried tailing is located along the east side of the tailing facility. The major component of the removal action for the Tailing Facility Area related to the piping of unused irrigation water in the Eastern Diversion Channel to be performed by CMI under this SOW is as follows:

- Construct piping in Eastern Diversion Channel to convey unused irrigation water past the historic buried tailing and discharge near Dam No. 1.

#### **4.3 Tailing Spill Deposits Along Red River Riparian Corridor including the Large Tailing Pile at the Lower Dump Sump – Red River Riparian Area**

Attachment 4 (Figure 5-85)<sup>1</sup> depicts the tailing spill deposits along the Red River riparian corridor. The major components of the removal action for tailing spill deposits along the Red River riparian corridor, including the large tailing pile at the Lower Dump Sump, to be performed by CMI under this SOW are as follows:

- Excavate historic tailing spill deposits along the Red River riparian corridor to a visual standard plus a negotiated amount of over-excavation, including the large tailing pile at the Lower Dump Sump;
- Transport and dispose excavated tailing deposits into tailing facility impoundment; and
- Backfill excavations with alluvial soil.

#### **4.4 Eagle Rock Lake - Inlet Storm-Water Controls, Dredge Sediment and On-Site Disposal**

Attachment 5 (Figure 12-30) depicts Eagle Rock Lake. The major components of the removal action for Eagle Rock Lake to be performed by CMI under this SOW are as follows:

- Install inlet controls to reduce storm event sediment loading from the river to the lake;
- Remove sediment from the lake to the greatest extent practicable based on the technology selected for sediment removal; transport and dispose excavated sediment at an appropriate on-Site facility.

### **5.0 PERFORMANCE STANDARDS**

Performance Standards for the Removal Actions are the standards by which EPA will determine whether CMI's Work has been satisfactorily completed. Performance Standards include, but are

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<sup>1</sup> Maps of the historic tailing spills are available in a larger scale than Figure 5-85 in the Final Feasibility Study on Figures 4-6a-d.

not limited to, the Remedial Action Objectives (RAOs) and remediation goals set forth in Section 8.0 of the ROD that are applicable to these Removal Actions to be performed by CMI under this SOW or other measures of achievement of the RA as defined in the ROD, the Order, this SOW, and other EPA-accepted submissions, including without limitation, the Removal Action work plan(s). They are also based on the standards, standards of control, and other substantive requirements, criteria and limitations representing applicable or relevant and appropriate requirements (ARARs) set forth in the ROD.

### **5.1 Remedial Action Objectives**

RAOs were developed in the ROD to protect human health and the environment. They provide general descriptions of the objectives of the cleanup. They are medium-specific goals that specify the contaminants of concern (COCs), exposure routes and receptors, and an acceptable contaminant level or range of levels for each exposure route (*i.e.*, remediation goal). The RAOs are established on the basis of the nature and extent of the contamination, the resources that are currently and potentially threatened, and the potential for human and environmental exposure.

### **5.2 Remediation Goals**

Remediation goals are media-specific, quantitative goals that define the extent of cleanup required to achieve the RAOs. They are based primarily on health- or ecological-based criteria developed by EPA in risk assessment or federal/state numeric criteria or standards identified by EPA to be ARARs for the Site. These goals represent the cleanup levels set forth in the ROD for the COCs targeted in each medium being addressed by the Removal Actions.

## **6.0 WORK TO BE PERFORMED**

CMI shall perform the Work to mitigate PCB contamination in soil at the Mill Area, a potential source of tailing seepage to ground water at the Tailing Facility Area, tailing spills at the Red River Riparian Area, and sediment contamination at Eagle Rock Lake.

### **6.1 General Requirements**

#### **6.1.1 Deliverables**

All plans, reports and other deliverables required by the Order or this SOW shall be submitted to EPA, NMED and MMD in accordance with the Order, including Section VIII (Performance of the Work) of the Order. CMI shall prepare work plans in order to implement the Removal Actions set forth in Section 4.0 above. Deliverables being submitted for meetings shall be submitted five working days in advance of the meeting, to EPA, NMED, MMD and other stakeholders as appropriate, to allow for review prior to the meeting, unless otherwise agreed upon by the Project Coordinators.

### **6.1.2 Document Distribution**

CMI shall submit a minimum of one hard copy and five electronic copies of all plans, reports, and other major deliverables to the EPA Project Coordinator, the EPA Oversight Contractor, and the NMED and MMD project coordinators. The electronic copies shall be submitted in both MS Office® (Word®, Excel®, Project®, etc.) and portable document format (pdf). The number of actual copies required by EPA and the State of New Mexico will periodically be reassessed throughout performance of Removal Actions by the EPA Project Coordinator, and CMI shall be notified if additional or fewer copies are needed. Additional electronic copies and/or hard copies if requested, of final submissions shall also be provided to other key stakeholders (*e.g.*, Village of Questa, Taos County, U.S. Forest Service, Amigos Bravos, and other interested non-governmental organizations) as well as other EPA technical consultants and regulatory officials as directed by EPA.

### **6.1.3 Personnel, Materials and Services**

CMI shall furnish all necessary and appropriate personnel, materials, and services needed for, or incidental to, performing and completing the Removal Actions.

### **6.1.4 Communication**

The Project Coordinator for CMI shall communicate at least weekly with the EPA Project Coordinator, either in face-to-face meetings, through conference calls, or through electronic mail, unless otherwise agreed to in writing. CMI shall document all decisions that are made in meetings and conversations with EPA. CMI shall forward this documentation, which may be in the form of an email, to the EPA Project Coordinator within five working days of the meeting or conversation.

### **6.1.5 Monthly Progress Reports**

CMI shall prepare and send to the EPA Project Coordinator monthly progress reports documenting the status of the Work, beginning in the month following issuance of the Order and ending with the month following issuance of the Certificate of Completion. CMI shall provide copies of the monthly progress reports to NMED and MMD.

### **6.1.6 Attendance at Meetings**

CMI shall attend periodic project meetings as requested by EPA, unless otherwise agreed to in writing or through e-mail. Such meetings and events shall be attended by at least one representative of EPA, EPA's Oversight Contractor, NMED and/or MMD. All meetings, site visits, and conference call meetings shall be coordinated by CMI with EPA, NMED, and MMD Project Coordinators. CMI shall also attend all construction meetings at the Site with EPA, unless otherwise agreed in writing or through e-mail. CMI shall provide documentation of all meeting results to EPA within 5 working days following the meeting.

### **6.1.7 Retention of Records**

CMI shall maintain all technical and financial records for the Removal Actions in accordance with Section XI (Record Retention) of the Order.

### **6.1.8 Field Operations Office and Equipment**

CMI shall provide office space for the EPA Project Coordinator and EPA authorized oversight officials/contractors, as well as NMED and MMD personnel, at the Site if CMI or its contractors have office space at the Site. If no office space is established at the Site, CMI shall provide office space for the EPA Project Coordinator, EPA-authorized oversight officials/contractors, and NMED/MMD personnel in proximity to CMI's field-operation office near the Site. Minimum office requirements shall include an air-conditioned, heated, well-lighted, private office, two office desks with chairs, one four-drawer file cabinet, a telephone with a private line, and Internet access availability. In addition, CMI shall provide access to a facsimile transmission machine, a photocopier, and sanitation facilities. CMI shall also provide the field operation office with a refrigerator, a table to review full sized drawings, and other reasonable accessories needed to conduct oversight activities. CMI shall provide the field operation office space and equipment no later than one week prior to the start of field activities. CMI shall notify EPA in writing upon completion of these field support activities.

### **6.1.9 Community Relations Support**

#### **6.1.9.1 Attendance at Community Relations Events**

CMI shall attend community relations events such as community meetings, availability sessions and open houses as requested by EPA, unless otherwise agreed to in writing or through e-mail.

#### **6.1.9.2 Logistics and Presentation Support**

CMI shall help EPA in selecting and reserving meeting space for EPA to hold community meetings, availability sessions and open houses, as well as the logistics for such events. This includes helping to set up the seating arrangements, tables, presentation equipment, and any visual displays and then take down such arrangements after the meetings. CMI shall also prepare presentation materials/handouts (*i.e.*, transparencies, slides, and/or handouts) as instructed by EPA. Such materials/handouts shall be reviewed and approved by the EPA Project Coordinator before distribution or use.

#### **6.1.9.3 Technical Support**

CMI shall provide technical support for community relations, including community meetings, availability sessions and open houses. This support may include preparing technical input to news releases, briefing materials, and other community relations vehicles, arranging for Site tours upon request, and helping the EPA Project Coordinator to coordinate with local agencies as requested.



#### 6.1.9.4 Fact Sheet Preparation Support

CMI shall help EPA prepare fact sheets that inform the public about activities related to the Removal Action work plans, project schedules, activities to be expected during construction, measures to be taken to protect the community, provisions for responding to emergency releases and spills, any potential inconveniences such as excess traffic and noise that may affect the community during the Removal Actions, and other topics as required by the EPA Project Coordinator. EPA will determine the final content of all fact sheets related to the Work.

#### 6.1.9.5 Information Repository Support

CMI shall support EPA in maintaining the Site information repositories by providing hard and electronic copies of all Removal Action-related documents to the repositories as directed by EPA. CMI shall periodically visit the Questa repository at EPA's request to verify that Site-related documents are being maintained and available for review by the public.

### **6.2 Planning and Scoping**

CMI shall perform the activities described below as part of project planning and scoping for the Work. In light of the multiple areas and various types of Removal Actions, planning and scoping activities will be required for each Removal Action, including attendance at scoping meetings, conducting Site visits, and the preparation of Removal Action work plans and schedules. The preparation of Site-specific plans and detailed work plans is described below. During scoping meetings CMI and EPA may agree to reduce the number of plans or reports that would be developed for each of the areas during the Removal Actions. In some cases, existing plans may be updated or modified for a subsequent element of the Work. Plans or reports that appear to be duplicative may be deleted.

#### **6.2.1 Attend Scoping Meetings**

Scoping meetings shall be scheduled for each Removal Action, as appropriate. A scoping meeting may address more than one Removal Action. CMI shall contact the EPA, NMED, and MMD Project Coordinators within 3 working days after the Effective Date of the Order to schedule the first scoping meeting. The first scoping meeting shall be held no later than 5 days after the Effective Date of the Order, unless otherwise agreed to by the Project Coordinators. CMI and its principal contractors shall attend all scoping meetings. The scoping meetings are to be held at locations to be determined by the EPA Project Coordinator and may include the EPA Region 6 Office in Dallas, TX, or the NMED or MMD offices in New Mexico.

#### **6.2.2 Conduct Site Visits**

CMI shall conduct Site visits during project planning and scoping, as appropriate, to help new contractors and regulatory officials that have not previously toured the Site to familiarize themselves with the Site, as well as to develop a conceptual understanding of how the scope and requirements will be accomplished. Information gathered during the visits shall be used to better scope the Work and to help determine the extent of additional data requirements.

The Site Health and Safety Plan must be updated and located on Site before any Site visits can be conducted (see Section 6.2.4 below).

### **6.2.3 Develop Draft Work Plans**

Within 30 days of the Effective Date of the Order, CMI shall prepare and submit draft work plans for these Removal Actions in accordance with Section VIII, Paragraph 23 of the Order, this SOW, and the appropriate EPA guidance. The work plans to be submitted shall be for the Mill Area PCB soil removal and the removal of tailing spill deposits along the Red River Riparian Area. Within 30 days after submitting the first two work plans, CMI shall prepare and submit a work plan for the Tailing Facility Area piping of irrigation water in the Eastern Diversion Channel and an initial work plan for Eagle Rock Lake.

The initial work plan for Eagle Rock Lake shall address design and installation of the inlet controls, and shall provide for CMI performance of an analysis that will evaluate and compare sediment removal and disposal methods, including use of the tailing facility. Once EPA notifies CMI of the selected sediment removal and disposal method, CMI shall prepare and submit within 30 days a second draft work plan for design of Eagle Rock Lake sediment removal and disposal, including a Post Sediment Removal Monitoring Plan and any necessary updates consistent with the requirements of Sections 6.2.3, 6.2.4, and 6.2.5 of this SOW.

The Removal Action work plans shall include a detailed description of the design, technical approach, and overall management strategy for the Removal Action activities in accordance with the ROD. The necessary procedures, inspections, deliverables, and Removal Action schedules shall be specified. A comprehensive construction management schedule for completion of each major activity and submittal shall also be included. The Removal Action work plans will identify any additional data collection and evaluation of activities to be performed. In addition, the work plans shall include information related to the execution of contracts for construction and the identification of and satisfactory compliance with permitting requirements.

CMI shall make revisions to the Removal Action work plans as a result of EPA's comments or agreements. Copies of the draft final work plans and, if necessary, final work plans shall be submitted within 14 days after receipt of EPA comments or within a time frame determined by the Project Coordinators.

#### **6.2.3.1 Work Plan Content**

The Removal Action work plans shall include the following:

##### *6.2.3.1.1 Narrative*

A narrative containing a comprehensive description of Work, the assumptions used and procedures to accomplish the Work and project documentation;

#### 6.2.3.1.2 *Background*

A background summary that provides, as appropriate: (1) a brief description of the area of the Site being remediated, including the geographic location and a description of the physiographic, hydrologic, geologic, demographic, ecological, cultural and natural resource features, as appropriate; (2) a brief synopsis of the history of the area, including a summary of past disposal practices and a description of previous responses that have been conducted by local, state, federal, or private parties; and, (3) a summary of the existing data including physical and chemical characteristics of the COCs identified and their distribution among the environmental media;

#### 6.2.3.1.3 *Project Elements*

Project elements, including, as appropriate, planning and activity reporting documentation, field sampling and analysis activities, excavation and construction activities, transportation and treatment/disposal activities and all required approvals/authorizations for off-Site treatment/disposal activities, and any necessary coordination/communication with other state or federal regulatory agencies (e.g., U.S. Forest Service and New Mexico Department of Game and Fish for the Eagle Rock Lake sediment removal). A narrative shall be provided which discusses the technical and management approach for the Work, including (1) the identification of any technical uncertainties (with a proposal for the resolution of those uncertainties), (2) the data or other information needed for completing the Removal Action, (3) any information to be produced during and at the conclusion of the Removal Action, and (4) a description of the Work products that will be submitted to EPA, including the deliverables set forth in the remainder of this SOW;

#### 6.2.3.1.4 *Design Elements*

Design assumptions and technical parameters, including, as appropriate: waste characterization; pretreatment requirements; volume and types of each medium requiring treatment or removal; on-Site disposal locations for excavated soil and sediment; borrow source for cover; treatment schemes (including all media and byproducts), rates, and required qualities of waste streams (i.e., input and output rates, influent and effluent qualities, potential air emissions, and so forth); performance standards; long-term post-construction performance monitoring requirements; other monitoring requirements; compliance with all ARARs, pertinent codes and standards; consideration of To-Be-Considered (TBCs) material; work zone transportation and management strategies; work zone impacts, and technical factors of importance to the design and construction, including use of currently accepted environmental control measures, constructability of the design, and use of currently acceptable construction practices and techniques.

#### 6.2.3.1.5 *Design Drawings and Specifications*

Design drawings and specifications shall include, as appropriate: (1) an outline or listing of drawings and schematics; (2) a general arrangement diagram; (3) complete set of

construction drawings and specifications (general specifications, drawings, and schematics); and (4) site drawings. Engineering drawings shall be provided for excavation activities, as well as backfilling and grading activities. Engineering drawings shall be submitted in full size (approximately 24 inches by 36 inches) and half size reproductions. The engineering drawings shall represent an accurate depiction of existing conditions in the Work area(s) and an illustration of the Work proposed. The drawings shall also include the following: all roadways and man-made structures, including buildings, wells, and facilities, if any, within the Work areas; all known utilities within the Work area; decontamination areas, staging areas, borrow areas and stockpiling areas; and security and access control measures.

#### *6.2.3.1.6 Basis of Design*

The work plan shall include a “Basis of Design” which provides a detailed description of the evaluations conducted to select the design approach. This report shall include the following elements, as appropriate:

Summary and Detailed Justification of Assumptions - A summary and detailed justification of all key design assumptions, including but not limited to the following: calculations supporting the assumptions; and a detailed evaluation of how all applicable performance standards and ARARs will be met; a plan for minimizing environmental and public impacts; and a plan for meeting all off-Site transportation, treatment, and/or disposal requirements, as appropriate.

Identification of Easement and Access Requirements - This includes identification of access agreements with owners of property where the Work is to be performed. Additionally, the need for land acquisitions for access and easement requirements shall be identified.

Survey Work - All survey work shall be appropriately marked, recorded and interpreted for mapping, property easements and design completion. The surveys shall include the distance and bearing of all property lines that identify and define the Work areas, as appropriate.

#### *6.2.3.1.7 Project Schedule*

A project schedule for completion of each major activity and submittal, including information regarding timing, initiation, and completion of all critical path milestones for each activity and deliverable and the expected review time for EPA; the project schedule shall also identify the activity which signifies the completion of the field component of the Work; copies of the project schedule shall be submitted to EPA, NMED and MMD electronically in Microsoft® Project® and pdf formats<sup>2</sup>. The project schedule shall be updated as needed, and as agreed upon, by the Project Coordinators.

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<sup>2</sup> Both formats are required as not all agencies use Microsoft Project or pdf.

#### *6.2.3.1.8 Identification of Contractors and Subcontractors*

Names of all contractors and subcontractors CMI proposes to use to accomplish all or any part of the Work if known at the time. If the need for additional contractors or subcontractors is determined during the implementation of the work plan, the EPA Project Coordinator will be notified for approval prior to their use.

#### **6.2.4 Updated Health and Safety Plan**

Within 30 days of the Effective Date of the Order, CMI shall update the Health and Safety Plan (HASP) for Removal Action activities to be prepared in conformance with applicable Mine Safety and Health Administration (MSHA)<sup>3</sup>, Occupational Safety and Health Administration (OSHA), and EPA requirements, including, but not limited to, 29 C.F.R. § 1910. EPA shall not approve or disapprove the HASP, but shall review it to assure its existence and shall require compliance by CMI with its terms as part of the Order.

The HASP shall specify employee training, protective equipment, medical surveillance requirements, and standard operating procedures, and include an Emergency Response Plan in accordance with 40 C.F.R. § 300.150 of the NCP and 29 C.F.R. §§ 1910.120 1(1) and (1)(2). A task-specific section of the HASP shall also be included to address health and safety requirements for Site visits. Since the Site is an operating mining facility, the HASP shall identify health and safety requirements specified under MSHA for Site visitors. The Emergency Response Plan describes how to handle emergencies at the Site and minimize risks associated with a response. This response plan should be reviewed and rehearsed regularly, and a copy should be provided to local emergency response facilities.

#### **6.2.5 Develop Overall Site Plan**

CMI has the overall responsibility to prepare, update, and/or maintain the necessary Overall Site Plan for implementation of the Removal Actions. CMI shall submit the draft of the Overall Site Plan to EPA for review within 60 days of the Effective Date of the Order. The Overall Site Plan is defined below. CMI shall review the existing Site-specific plans that were prepared as part of the CERCLA Remedial Investigation and Feasibility Study (RI/FS), and update, as necessary, to implement the Removal Actions. Plans not prepared during the RI/FS, but needed to implement the Removal Actions, shall also be prepared by CMI. Since CMI's contractors or subcontractors may prepare their own plans, CMI will incorporate such plans and procedures into the Overall Site Plan submitted to EPA for review and approval in accordance with the Order and this SOW.

CMI shall make revisions to the Overall Site Plan as a result of EPA's comments or agreements. Copies of draft final and, if necessary, final Overall Site Plan shall be submitted within 14 days after receipt of EPA comments or within the time frames determined by the Project Coordinators. The Overall Site Plan shall consist of the following components described in Sections 6.2.5.1 through 6.2.5.9. Each of those "plans" may be a section of the Overall Site Plan, rather than a separate document.

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<sup>3</sup> Conformance with MSHA requirements shall be for that portion of the Site on CMI property.

#### 6.2.5.1 Site Management Plan

CMI shall prepare a Site Management Plan (SMP) that provides EPA with a written understanding of how ingress/egress, security, contingency procedures, management responsibilities, and waste disposal are to be handled during all removal activities.

##### 6.2.5.1.1 *Pollution Control and Mitigation Plan*

The SMP shall include a Pollution Control and Mitigation Plan (PCMP) that outlines the process, procedures, and safeguards that will be used to ensure contaminants or pollutants are not released off Site.

##### 6.2.5.1.2 *Waste Management Plan*

The SMP shall include a Waste Management Plan (WMP) that outlines how wastes that are encountered during the Removal Actions will be managed and disposed. CMI shall specify the procedures that will be followed when wastes are managed, including on-Site and off-Site storage, treatment, and/or disposal.

##### 6.2.5.1.2.1 *Decontamination Plan*

A plan that describes the equipment and methods that will be used for decontamination procedures shall be included in the WMP.

##### 6.2.5.1.2.2 *Water Control Plan*

A plan that addresses methods for collection, treatment, disposal or discharge of decontamination water, dust control water, storm water, and other surface water shall be included in the WMP.

##### 6.2.5.1.2.3 *Transportation and Disposal Plan*

A plan that establishes procedures for any Waste Material that is to be transported off-Site for treatment and/or disposal as described in Section VIII, Paragraph 29 of the Order. The Transportation and Disposal Plan shall be consistent with the Off-site Rule, 40 CFR § 300.440, meet all ARARs, and meet any applicable U.S. Department of Transportation regulations.

#### 6.2.5.2 Sampling and Analysis Plan

CMI shall prepare a sampling and analysis plan (SAP). The SAP shall be written to reflect the specific objectives of any data acquisition conducted during the Removal Actions. The SAP will outline the data collection and quality assurance requirements of any sampling and analysis conducted by CMI. It will be designed in a manner that ensures that sample collection and analytical activities are conducted in accordance with technically acceptable protocols, as determined by EPA, and that the data meet data quality objectives (DQOs). The SAP shall

include laboratory analyses for all COCs identified in the ROD for the appropriate media, including TAL metals, molybdenum, uranium, pH, total dissolved solids (TDS), sulfate, and other inorganic chemicals as appropriate. The SAP provides a mechanism for planning field activities and will include a Field Sampling Plan (FSP).

#### *6.2.5.2.1 Quality Assurance Project Plan*

CMI shall update or prepare a Site-wide quality assurance project plan (QAPP) as part of the SAP. The QAPP shall be prepared in accordance with EPA QA/R-5 (latest draft or revision). The QAPP shall describe the project objectives and organization, functional activities, and quality assurance/quality control (QA/QC) protocols that shall be used to achieve the desired (DQOs). The DQOs shall, at a minimum, reflect use of analytical methods for identifying and remediating contamination consistent with the levels for the RAOs and cleanup levels set forth in the ROD. The QAPP will address sampling procedures, sample custody, analytical procedures, and data reduction, validation, reporting and personnel qualifications.

#### *6.2.5.2.2 Field Sampling Plan*

CMI shall prepare a FSP as part of the SAP that defines the sampling and data collection methods that shall be used for Removal Action activities. The FSP shall include sampling objectives, sampling media, sampling locations, depths and frequency; sampling equipment and procedures; sample handling, analytical methods, analytical parameters and constituents, and a breakdown of samples to be analyzed through Contract Laboratory Program (CLP) and other sources, as well as the justification for those decisions. The FSP shall include tables of geographical coordinates and the appropriate maps showing locations of previous sampling locations and proposed sampling locations. The FSP shall be written so that a field sampling team unfamiliar with the Site would be able to gather the samples and field information required.

#### 6.2.5.3 Data Management Plan

CMI shall prepare a Data Management Plan that outlines the procedures for storing, handling, accessing, retaining and securing data collected during the Removal Actions. CMI will consistently document the quality and validity of field and laboratory data compiled during the Removal Actions. All data compiled will be electronically supplied to EPA in ArcView® format or other electronic format as directed by the EPA Project Coordinator in accordance with the Data Management Plan. All Geographic Information System (GIS) data sets will be in a Universal Transverse Mercator (UTM) or State Plane coordinate system.

#### 6.2.5.4 Contingency Plan

CMI shall prepare a Contingency Plan that will provide contingency measures for potential spills and discharges from materials handling or transportation. The Contingency Plan should describe methods, means, and facilities required to prevent contamination of soil, water, atmosphere, uncontaminated structures, equipment or material from the discharge of waste due to spills. CMI

shall provide for equipment and personnel to perform emergency measures required to contain a spill and to remove and properly dispose of any media that become contaminated due to spillage, and provide for equipment and personnel to perform decontamination measures that may be required to remove spillage from previously uncontaminated structures, equipment, or material. CMI shall include the name and telephone number of the person or entity that is responsible for responding in the event of an emergency situation or incident. The Contingency Plan shall include a Spill Prevention, Control and Countermeasures Plan as required by 40 CFR Part 112.

#### 6.2.5.5 Construction Quality Assurance Project Plan

CMI shall prepare a draft Construction Quality Assurance Project Plan (CQAPP). The CQAPP shall be prepared in accordance with "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities" (EPA, October, 1986). It shall detail the approach for quality assurance by addressing quality assurance requirements and standards related to construction activities, including installation, excavation, and decontamination. At a minimum, the draft CQAPP shall include the following elements:

##### *6.2.5.5.1 Personnel and Qualifications*

CMI shall provide to EPA an organizational structure, including an organizational chart, which outlines the responsibilities and/or authority of all CMI representatives, proposed contractors and subcontractors and their key personnel who are to perform the Work, as appropriate. CMI shall also provide the curricula vitae of proposed contractors, subcontractors and their key personnel. Selection of any engineer, contractor, or subcontractor shall be subject to approval by EPA.

##### *6.2.5.5.2 Inspection Activities*

Inspection activities shall be described, including observations and tests necessary to monitor and certify completion of the Removal Actions. The scope and frequency of each type of inspection to be conducted shall be specified. Inspections shall be required to verify compliance with environmental and permitting requirements and include, but not be limited to, air quality and emissions monitoring records, waste disposal records (e.g., transportation manifests for PCB waste), etc. Inspections shall also ensure compliance with all health and safety procedures described in the HASP.

##### *6.2.5.5.3 Sampling Requirements*

Requirements shall be included for sampling activities, sample size, sample locations, frequency of testing, criteria for acceptance and rejection, and plans for correcting problems as addressed in the project specifications.

##### *6.2.5.5.4 Documentation*

Reporting requirements shall be described for all CQAPP activities. This shall include such items as daily logs and/or summary reports and inspection data sheets. Written



daily field log books are required as the primary record for field activities. These log books will contain all field measurements and observations as directly recorded in the field, and entries regarding:

- all field measurements, including pH, temperature, conductivity, water flow, air quality parameters, and soil and tailing characteristics;
- health and safety monitoring performed by CMI pursuant to the HASP;
- written entries describing sampling locations, their geographical coordinates, sampling techniques, and a general description of CMI's daily activity; and
- any unusual occurrences or circumstances.

Daily activities shall be recorded directly and legibly in field log books with entries signed and dated by CMI or its contractors. Original written field log book entries may not be obscured when CMI makes changes in written log book entries, and CMI or its agent will sign and date any changes. CMI will use standard format information sheets for its written daily log entries.

#### 6.2.5.6 Restoration Plan

CMI shall prepare a Restoration Plan that specifies site-specific procedures for regrading and revegetation activities for areas disturbed during construction of the Eastern Diversion Channel piping, removal of the historic tailing spill deposits, and Eagle Rock Lake sediment removal. Elements of the Restoration Plan, as appropriate, should describe methods to ensure that post-construction areas will be regraded to produce erosionally stable and well-drained landforms, and covered with adequate quality and depth of soil material to produce an effective vegetative cover. Methods to establish a vegetative cover shall include lists of the species used and the rates of application of transplanted stock or seed, descriptions of the timing of application, and descriptions of the placement and protection of plant materials. The Restoration Plan shall describe practices to control erosion and sediment transport during construction, sampling, restoration, and post construction inspection and monitoring, until adequate vegetative cover is established to control erosion.

#### 6.2.5.7 Wetlands Assessment and Restoration Plan

CMI shall prepare a draft Wetlands Assessment and Restoration Plan in accordance with federal and State of New Mexico guidance. The plan shall outline actions to be taken to assess/verify the presence of wetlands at areas subject to the Removal Actions, avoid disruption of wetlands, minimize impacts to wetlands and/or compensate for wetlands potentially affected by the Work.

#### 6.2.5.8 Identification of Data Requirements

In scoping and preparation of the Overall Site Plan and Removal Action work plans, CMI shall identify what Site environmental data are needed to perform the Removal Actions. CMI shall evaluate existing data to determine what additional data are necessary, including data to adequately delineate the lateral extent and depth of contaminated media to be removed as well as confirmatory sample data to verify that cleanup levels are achieved. CMI shall propose data

quality objectives (DQOs) consistent with “Guidance for the Data Quality Objectives Process,” EPA/600/R96/055, QA/G4, August 2000.

If EPA determines that data are needed in addition to those data proposed by CMI, EPA shall notify CMI in writing. CMI shall be responsible for fulfilling the additional data and analysis needs identified by EPA consistent with the general scope and objectives of this SOW.

#### 6.2.5.9 Post Construction Inspection and Monitoring Plan

CMI shall submit to EPA for review a draft Post Construction Inspection and Monitoring Plan for the Removal Actions for the piping of unused irrigation water in Eastern Diversion Channel, tailing spill deposits along Red River riparian corridor, including the large tailing pile at the Lower Dump Sump, and Eagle Rock Lake. The plan should include the following, as appropriate:

- a description of normal operation and maintenance, including initial start-up procedures and testing, tasks for operation, tasks for maintenance, prescribed treatment or operation conditions, and schedule for each task;
- a description of potential operating problems, including common and/or anticipated remedies and useful-life analysis of significant components and replacement costs;
- a Quality Assurance Plan, including a description of routine monitoring tasks, required data collection, location of monitoring points comprising the points of compliance monitoring, and tasks for monitoring the inlet controls at Eagle Rock Lake during a storm event in the upper Red River watershed after initial testing and start-up;
- alternate procedures to prevent releases or threatened releases of hazardous substances, pollutants, or contaminants, which may endanger health or the environment or cause an exceedance of any cleanup levels during system or equipment malfunction or failure, temporary shutdowns, power outages, etc.;
- corrective action to be implemented in the event that cleanup levels or standards are exceeded and a schedule for implementing these corrective actions;
- a Safety Plan for, including a description of precautions and necessary equipment for Site personnel and safety tasks required in event of systems failure;
- a description of equipment, including the equipment identification numbers, installation of monitoring components, maintenance of site equipment, and replacement schedule for equipment and installed components; and
- records and reporting mechanisms, including daily operating logs, laboratory records, records for operating costs, personnel and maintenance records, and reports submitted to EPA, NMED and MMD.

### 6.3 **Removal Actions**

CMI shall execute and manage all Work set forth in the Order, this SOW and the EPA-accepted final Removal Action work plans and Overall Site Plan that are developed during the previous

planning and scoping phase. CMI shall perform the Work in accordance with the EPA-approved RA work plan schedules. Activities which shall be conducted by CMI include, but are not limited to, the following:

### **6.3.1 Attend Pre-construction Meeting**

CMI shall hold a pre-construction meeting with EPA, NMED and MMD prior to the start of field activities. Participants at the pre-construction meetings shall include CMI's Project Coordinator, QA Official, a representative of each of CMI's contractors and subcontractors. Other participants for the pre-construction meeting may include local emergency responders to implement the HASP (e.g., police and fire departments), State Department of Transportation officials (for potential road closures or vehicular traffic on state highways), or any other local or State government officials whose presence is appropriate for the nature of the Work to be performed. At the meeting, CMI shall provide participants with a detailed schedule that includes the actual dates for mobilization to the site and start up of field activities.

### **6.3.2 Coordinate with Local Emergency Response Teams**

CMI shall coordinate with local emergency responders to ensure the proper implementation of the HASP and, specifically, the Emergency Response Plan. CMI shall review and complete the emergency responder agreement, if necessary, conduct a pre-construction meeting at the Site with all local emergency responders (see Section 6.3.1), and notify the responders of any changes to the Emergency Response Plan throughout the Removal Actions.

### **6.3.3 Coordinate with Mining Personnel**

CMI and its contractors shall coordinate all field activities and schedules for the Removal Actions with the appropriate mining personnel.

### **6.3.4 Perform Removal Actions**

Within 3 working days after conducting each kick-off meeting, CMI and its contractors shall commence the following Removal Action activities:

#### **6.3.4.1 Mobilization and Demobilization**

CMI shall provide the necessary personnel, equipment, and materials for mobilization and demobilization to and from the Site for the purpose of performing the Removal Action activities, including all required field testing, confirmatory sampling and performance monitoring. The following mobilization and demobilization Work shall be performed:

- identify field support equipment, supplies and facilities;
- mobilization;
- site preparation;
- installation of utilities;

- construction of temporary utilities;
- demobilization.

#### 6.3.4.2 Provide Site Access

CMI shall provide EPA, NMED, MMD, and other regulatory officials and their designated representatives with access to the Site, including all private property and federal lands utilized by CMI or its contractors or agents in carrying out the Work, as provided in Section IX of the Order.

#### 6.3.4.3 Maintain Field Logs and Daily Records

CMI or its contractor(s) shall maintain field logs and daily records documenting activities occurring in the field during construction in accordance with the EPA-approved CQAPP.

#### 6.3.4.4 Perform Field Testing and Confirmatory Sampling

To the extent required by the Removal Action work plans, CMI shall provide the necessary personnel and equipment to collect any confirmatory samples, perform any necessary field testing, and conduct inspections of work. Such field testing shall include testing of materials used during construction to determine if they are consistent with all screening criteria and specifications contained in the EPA-accepted CQAPP and construction contract documents. Confirmatory sampling/methods shall be performed for the Mill Area PCB soil Removal Action and Eagle Rock Lake sediment Removal Action to verify that final cleanup levels or performance standards, as set forth in the ROD and as further delineated in this SOW, have been achieved. Confirmation of Eagle Rock Lake sediment removal will use physical or visual methods and will occur prior to placement of a layer of clean material on the Lake bottom. Placement of clean material on the Lake bottom is intended to mitigate future water loss from the Lake through the native alluvial soils underlying the Lake. CMI shall confirm through physical means the thickness of the placed material.

##### *6.3.4.4.1 Verification and Testing of Eagle Rock Lake Inlet Structure for Controlling Storm Water Entering Lake*

CMI shall complete initial testing of the inlet control structure for controlling storm water entering Eagle Rock Lake within 30 days after installation of the inlet structure. CMI shall also verify that the inlet controls operate as intended during storm events within the upper Red River watershed following testing. Testing and verification shall be performed in accordance with the EPA-approved Post-Construction Inspection and Monitoring Plan. CMI, in coordination with the United States Forest Service (USFS), will ensure proper operation of the inlet control structure for a period of at least five years following the Effective Date of the Order. Following this five year period, CMI will continue to operate and maintain the inlet control structure in coordination with the USFS for an additional five years, unless otherwise requested by the USFS. CMI shall, in consultation with the EPA and USFS, transition the sole operational responsibility of the inlet control structure to the USFS by the end of this second five-year

period if agreed to by the USFS. If the USFS elects not to take over the operation and maintenance of the inlet control structure by the end of the second five-year period, EPA may require CMI to continue to operate and maintain the inlet control structure as part of the Remedial Action outside of this SOW.

#### **6.3.4.5 Perform Data Acquisition, Analysis, Validation, and Evaluation**

CMI and its contactors shall perform all sample acquisition, sample analysis, data validation, and data evaluation in conformance with the Site-specific SAP, QAPP, and FSP.

CMI shall arrange for the conduct of the appropriate combination of CLP analytical tests for any materials and/or confirmatory samples taken at the Site in accordance with the Site-specific SAP, QAPP and FSP. CMI shall also ensure the proper management of samples in the field and arrange for shipment to the designated laboratory. Accurate chain-of-custody procedures for sample tracking, protective sample packing techniques, and proper sample-preservation techniques will be used in accordance with the SAP, QAPP and FSP.

Within 3 days of receiving analytical laboratory results, CMI shall evaluate the data and notify EPA of the results and identify what additional response actions are necessary, if any, to achieve cleanup levels (e.g., additional excavation of soil). CMI shall compile the sampling and analytical results and submit a copy to EPA at the time of notification.

#### **6.3.4.6 Perform Additional Work and Confirmatory Sampling As Needed**

If initial confirmatory sampling (or other confirmatory work) shows cleanup levels or objectives have not been attained after Work is conducted, CMI shall perform additional Work necessary to achieve the cleanup levels. CMI shall provide 7-day advance notification to EPA, NMED, and MMD prior to start up of the additional Work, or as agreed to by the Project Coordinators. Following performance of the Work, CMI shall repeat the activities for confirmatory sampling, analysis, validation and evaluation to assess attainment of the cleanup levels. This process shall be repeated until the cleanup levels are attained or EPA determines that the Work performed is adequate.

#### **6.3.4.7 Field Change Request**

During performance of field activities, CMI may identify and request approval for field changes to final Removal Action work plans or EPA-approved schedules as necessary to complete the Work. EPA will approve, disapprove or require modification of any requests for field changes in accordance with the procedures set forth in Sections VIII and XXVII of the Order.

#### **6.3.4.8 Removal Action Completion Determination**

CMI shall conduct the following activities to verify completion of construction activities for the Removal Actions:

#### *6.3.4.8.1 Conduct Pre-final Inspections*

Within 14 days after CMI concludes that all construction and field verification/testing activities of a Removal Action has been completed and the pertinent performance standards have been attained, CMI shall conduct a pre-final inspection to be attended by CMI and its contractor(s), EPA, NMED, MMD and any other federal, state, and/or local governmental agency or department whose presence is appropriate for the nature of the Work to be performed. CMI shall develop a punch list of deficiencies as part of the pre-final inspection.

Within 7 days after conducting a pre-final inspection, CMI shall prepare and submit a pre-final inspection report which includes the list of deficiencies and completion dates for outstanding items, and the proposed date for a final inspection. The date for final inspections shall be scheduled within 14 days after completion of the corrective measures.

#### *6.3.4.8.2 Perform Corrective Measures to Address Punch List Items*

CMI shall perform corrective measures to adequately address all outstanding punch list items identified during the pre-final inspection.

#### *6.3.4.8.3 Conduct Final Inspections*

CMI shall conduct final construction inspections for each Removal Action with its contractors, EPA and its representatives, NMED, MMD, and any other federal, state, and/or local governmental agency or department whose presence is appropriate for the nature of the Work to be performed. The final inspections will consist of a walk-through of each project to determine the completeness of the Removal Action and its consistency with the EPA-accepted final Removal Action work plans, the ROD, and this SOW. The inspections will also be used to determine if all punch list items have been adequately addressed. All confirmatory sample analytical data will also be reviewed and discussed at the time of the inspections, if appropriate. Based on the final inspection, CMI shall provide written notification that all field activities have been completed in accordance with EPA-approved work plans and the date such work was completed.

#### *6.3.4.8.4 Finalize and Certify As-Built*

Within 60 days after the final inspection, CMI shall finalize and certify all as-built drawings based on the inspections and punch-list corrections and submit them to EPA, NMED and MMD. As-built drawings shall be certified by a qualified professional engineer licensed in the State of New Mexico.

#### 6.3.4.9 Update Post Construction Inspection and Monitoring Plan

Within 60 days after each final inspection, CMI shall submit to EPA an updated Post Construction Inspection and Monitoring Plan which include the certified as-built drawings. This Overall Site Plan component shall be updated for the inspection of the backfilling and/or revegetation of the disturbed areas associated with piping of unused irrigation water in the Eastern Diversion Channel, removal of tailing spill deposits along the Red River riparian corridor, including the large tailing pile at the Lower Dump Sump, and sediment removal at Eagle Rock Lake. It shall also include plans for the restoration or repair of any man-made recreational structures damaged during the Work and the inspection, monitoring and maintenance of the inlet control structure at Eagle Rock Lake.

##### 6.3.4.9.1 Performance Monitoring Plan for Eagle Rock Lake

As part of the update to the Post-Construction Inspection and Monitoring Plan for the Eagle Rock Lake Removal Action, CMI shall prepare a monitoring plan. This plan will include physical, chemical and biological monitoring of Eagle Rock Lake under the conditions described below to assess the long-term effectiveness of the remedy. Monitoring within Eagle Rock Lake will be performed a total of three times over a period of ten years after completion of Eagle Rock Lake Removal Action construction. The three monitoring events will occur at the following intervals: one month (baseline), five years, and ten years after the completion of the Removal Action construction. The plan will also include monitoring of potential releases from the Mine Site, and turbidity monitoring and monitoring of other appropriate parameters of the Red River upstream and downstream of the Mine Site, for the duration of the Work under this SOW. The plan will also include monitoring the continuing performance and integrity of the inlet storm-water controls in limiting contamination entering the lake during storm and other high-flow events.

After the second Five-Year Review, EPA will assess the need to continue Eagle Rock Lake monitoring beyond the 10-year monitoring period established in this SOW. If EPA determines based on the above monitoring that a release from the Mine Site or from a CMI mining-related activity to the Red River has occurred which was not authorized by an EPA-issued permit and which has contaminated the sediment of Eagle Rock Lake, EPA may require CMI to perform monitoring of the lake under this SOW in addition to the monitoring described above. If EPA determines that such a release has not contaminated Eagle Rock Lake sediment during the 10-year monitoring period, no further monitoring of the lake will be required under this SOW. EPA may require additional monitoring of physical, chemical, and biological parameters of Eagle Rock Lake as part of a Remedial Action outside of this SOW.

Operation of the inlet control structure to control the water level in Eagle Rock Lake will be coordinated with the USFS through the completion of the work described in Section 6.3.4.4.1.

#### 6.3.4.10 Removal Action Completion Reports

Within 60 days after each final inspection, CMI shall submit a draft Removal Action Completion Report. The Removal Action Completion Reports shall include, as appropriate, the following elements:

- Introduction;
- Site Background, including summary of requirements specified in ROD, the Order, this SOW and the EPA-accepted Removal Action work plans;
- Chronology of all Removal Action events/activities;
  - Location of hazardous substance, pollutant or contaminant;
  - Initial conditions;
  - Type of response taken to abate, prevent, minimize, stabilize, mitigate, or eliminate the threat to public health or welfare or the environment;
  - Listing of quantities and types of materials removed off-Site or handled on-Site and the ultimate destination of those materials;
  - Restoration and erosion control activities
  - Public information/community relations activities;
  - Effectiveness of Removal Actions taken;
  - Difficulties encountered;
- Performance standards and ARARs;
- Construction quality control;
- Analytical Results Summary Reports;
- As-built drawings;
- Inspection documentation;
- O&M activities;
- Summary of project costs;
- Certification from Paragraph 28 of the Order; and
- Other relevant information, as appropriate.

CMI shall make revisions to the draft Removal Action Completion Reports as a result of EPA's comments. Copies of the revised reports shall be submitted to EPA within 30 days after receipt of EPA comments and in accordance with Section VIII, Paragraph 28 of the Order.



## **7.0 REMOVAL POST CONSTRUCTION INSPECTION AND PERFORMANCE MONITORING**

Following completion of the Removal Actions, CMI shall perform post-removal post construction inspection and monitoring to protect the integrity of the Removal Actions pending implementation of the remainder of the RD/RA for the Site, in accordance with the EPA-approved Post Construction Inspection and Monitoring Plan. These activities shall include the maintenance of the inlet control structure at Eagle Rock Lake for ten years following the Effective Date of the Order. During this period CMI will perform any required maintenance of the inlet control structure, which may include equipment replacement and technology upgrades, after which maintenance of the structure may be conducted by the USFS. The USFS may operate the inlet control structure after the period described in Section 6.3.4.4.1., for controlling water levels in Eagle Rock Lake.

Post-removal construction inspection and monitoring shall mean all activities required to maintain the effectiveness of the Removal Actions after the Performance Standards are met, as required under the Post Construction Inspection and Monitoring Plan approved by EPA.

ATTACHMENT 1 TO APPENDIX A

ROD FIGURE 1-2

MINE SITE AREA





REVISION	DATE	APPLICATION	PROJECT
2.0	8/25/2008	ArcGIS 9.3 mine_area.fs.mxd DRAWN BY DenverGIS DATE 08/12/2008	22236247
<p>NOTES: Aerial photograph provided by MolyCorp - Questa Mine (2007)</p> <p>Map Features:  <span style="color: blue;">—</span> River  <span style="color: blue;">—</span> Creek  <span style="color: blue;">—</span> Gulch  <span style="color: yellow;">—</span> Tailing Pipeline  <span style="color: yellow;">—</span> Rock Pile  <span style="color: red;">—</span> Property Boundary</p>		<p>CHEVRON MINING INC. - QUESTA MINE</p>	
<p>Scale 1:24000 or 1 in = 2000 ft</p>		<p><b>QUESTA MINE SITE</b></p>	
<p>QUESTA</p>		<p>FIGURE 1-2 Final Feasibility Study Report</p>	
<p>U.S. ENVIRONMENTAL PROTECTION AGENCY RECORD OF DECISION MOLYCORP, INC</p>		<p>FIGURE 1-2 DECEMBER 2010</p>	

ATTACHMENT 2 TO APPENDIX A

ROD FIGURE 1-3  
TAILING FACILITY AREA





<p>NOTES: Aerial photograph provided by Chevron Mining Inc. - Questa Mine (2007).</p> <p>Map Features          River ———          Creek ———          Gulch - - -          Canyon - - -          Property Boundary ———          Tailing Pipeline ———</p> <p>Scale 1:24,000 or 1 in = 2000 ft          0 2000 Feet</p>		<p>REVISION</p> <p>2.0</p>	<p>DATE</p> <p>8/25/2008</p>	<p><b>URS</b>          URS Center          8181 East Turk's Avenue          Denver, CO 80237-2837          (303) 694-2773</p>	<p>APPLICATION</p> <p>ArcGIS 9.3</p> <p>FILENAME          tailing_area_fs.mxd</p> <p>DRAWN BY          Denver/GIS</p> <p>DATE          08/12/2008</p>	<p>CHEVRON MINING INC. - QUESTA MINE</p>	<p>PROJECT</p> <p>22236247</p>
<p>QUESTA          TAILING FACILITY</p>				<p><b>FIGURE 1-3</b>          Final          Feasibility Study Report</p>			
<p>U.S. ENVIRONMENTAL PROTECTION AGENCY          RECORD OF DECISION</p>				<p>DECEMBER 2010</p>			
<p>MOLYCORP, INC</p>				<p>QUESTA          TAILING FACILITY</p>			

ATTACHMENT 3 TO APPENDIX A

ROD FIGURE 12-1

MILL AREA





NOTES 1. Aerial photograph provided by Chevron Mining Inc. - Questa Mine (2007). Scale 1:3000 or 1 in = 250 ft. Feet 0 250 	REVISION 2.0	DATE 8/25/2009	<b>URS</b> URS Center 8181 East Tullis Avenue Denver, CO 80237-2637 (303) 694-2770	APPLICATION ArcGIS 9.3 FILENAME mill_alt3_ls.mxd DRAWN BY Denver/GIS DATE 08/12/2008	CHEVRON MINING INC. - QUESTA MINE 22236247
	MILL AREA (ALTERNATIVE 3)			<b>FIGURE 6-11</b> <i>Final</i> Feasibility Study Report	

U.S. ENVIRONMENTAL PROTECTION AGENCY  
**RECORD OF DECISION**  
 MOLYCORP, INC.

**FIGURE 12-1**  
 DECEMBER 2010

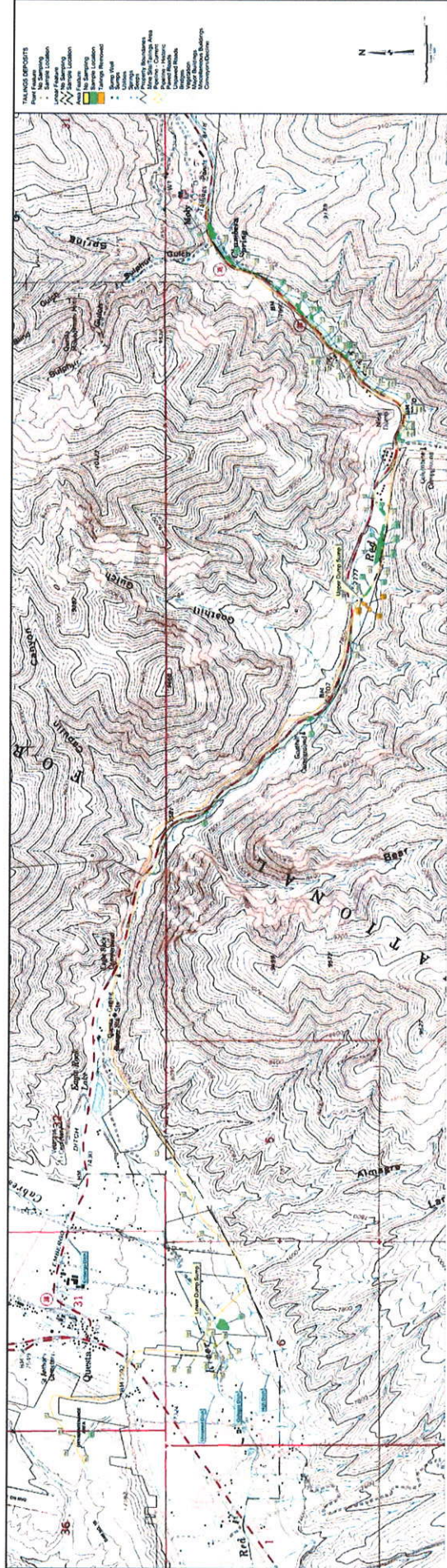


ATTACHMENT 4 TO APPENDIX A

ROD FIGURE 5-85

RED RIVER RIPARIAN AREA





U.S. ENVIRONMENTAL PROTECTION AGENCY  
**RECORD OF DECISION**  
 MOLYCORP, INC

**FIGURE 5-85**

DECEMBER 2010



ATTACHMENT 5 TO APPENDIX A

ROD FIGURE 12-30

EAGLE ROCK LAKE





<p>APPLICATION: ArcGIS 9.3          FILE NAME: fig11_en_ait3.mxd          DRAWN BY: GIS - Denver          DATE: 12/14/2009</p>		<p>PROJECT: CHEVRON MINING INC. - QUESTA MINE</p>	
<p><b>URS</b>          URS Center          8181 East 11th Avenue          Denver, CO 80231-2537          (303) 984-2770</p>		<p><b>Figure 11</b> Proposed Plan</p>	
<p>REVISION</p>		<p><b>EAGLE ROCK LAKE AREA - ALTERNATIVE 3</b></p>	
<p>DATE</p>		<p><b>FIGURE 12-30</b></p>	
<p>U.S. ENVIRONMENTAL PROTECTION AGENCY  <b>RECORD OF DECISION</b>          MOLYCORP, INC</p>			
<p>DECEMBER 2010</p>			

