IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA AND THE STATE OF MONTANA, Plaintiffs, v. ATLANTIC RICHFIELD COMPANY and The City and County of BUTTE-SILVER BOW, a Municipal Corporation And Political Subdivision of the State of Montana, Defendants.	)	Civil Action No. CV 89-039-BU-SEH

CONSENT DECREE
FOR THE BUTTE PRIORITY SOILS OPERABLE UNIT

PARTIAL REMEDIAL DESIGN/REMEDIAL ACTION and OPERATION AND MAINTENANCE

TABLE OF CONTENTS

Page

I. BACKGROUND

The United States' Complaint

A. In 1989, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint (the "Complaint") in this matter (the "Federal Action") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9607, against the Atlantic Richfield Company ("AR").

B. In the Complaint, which was subsequently amended on October 14, 1992, October 31, 1994, August 2, 2003, and November 5, 2004, the United States sought to recover its past response costs together with accrued interest and a declaratory judgment on liability for future response costs paid and incurred at or in connection with the Original Portion of the Silver Bow Creek / Butte Area National Priorities List ("NPL") Site, the Milltown Reservoir Sediments NPL Site (now referred to as the "Milltown Reservoir / Clark Fork River NPL Site"), and the Anaconda Smelter NPL Site. The November 5, 2004 amendment added to the Complaint an area known as the Butte Priority Soils Operable Unit ("BPSOU"). The BPSOU is the focus of this Consent Decree.

C. In response to the United States' Complaint, AR asserted several defenses and filed counterclaims against the United States, naming several Settling Federal Agencies ("SFAs"), seeking cost recovery, contribution, contractual indemnity, equitable indemnification, recoupment, and declaratory relief. Among AR's defenses to the United States' claims is AR's assertion that the United States' CERCLA claims are in the nature of contribution under CERCLA § 113 rather than CERCLA § 107, and thus AR's CERCLA liability is several rather

than joint and several. This defense is addressed in a Report and Recommendation issued by the Magistrate in this case.

D. The United States is filing, contemporaneously with the lodging of this Consent Decree, an amended complaint to name the City and County of Butte Silver Bow ("BSB") as a potentially responsible party for the BPSOU under Section 107 of CERCLA, 42 U.S.C. § 9607.

E. The State of Montana (the "State"), acting by and through the Montana Department of Environmental Quality ("DEQ"), has filed a motion to intervene and a complaint in intervention in the Federal Action. The State's amended complaint alleges claims under CERCLA and the Montana Comprehensive Environmental Cleanup and Responsibility Act ("CECRA"), §§ 75-10-701, MCA, et seq. relating to the BPSOU. The State's claims are expressly limited to the BPSOU and the matters addressed in the Consent Decree. The United States, AR, and BSB agree and the Court finds by entering this Consent Decree that the State's waiver of sovereign immunity is solely limited to the matters set forth in the State's complaint in intervention and this Consent Decree, and includes the State's waiver of sovereign immunity and consent to this Court's jurisdiction for resolution of any reserved claim brought by AR under Paragraph 96.f (Restoration Reservation).

Settlement Framework

F. In November of 1998, the United States and AR reached a settlement regarding the response claims of the United States at the Streamside Tailings Operable Unit, which is part of the Silver Bow Creek / Butte Area NPL Site. The Streamside Tailings consent decree, together with a consent decree entered in the case of *Montana v. Atlantic Richfield*, a related case, both of which were entered on April 19, 1999, also resolved the majority of the Clark Fork River Basin natural resource damages claims of the United States and the State against AR. The

Streamside Tailings consent decree also established a framework for resolving the United States' remaining claims throughout the Clark Fork River Basin in Montana. Under Section VII of the Streamside Tailings consent decree, the parties agreed to resolve the remaining areas in six groups or "baskets" of operable units:

1. Rocker Site;
2. Butte Mine Flooding (Berkeley Pit) Site and the Butte Active Mining Area Site;
3. Anaconda Smelter NPL Site;
4. Clark Fork River Operable Unit, Warm Spring Ponds Operable Units, and the Milltown Reservoir Operable Units;
5. Butte Priority Soils Operable Unit (towns of Butte and Walkerville); and
6. The West Side Soils Operable Unit, formerly referred to as the Non-Priority Soils Operable Unit (rural Butte), as described in paragraph 31(F) of the Streamside Tailings consent decree (which states EPA would follow notice and negotiations procedures under Section 122 of CERCLA, 42 U.S.C. § 9622, for the West Side Soils Operable Unit).

The United States, the State and AR have already successfully concluded their negotiations for the Rocker, Butte Mine Flooding, Milltown Reservoir and Clark Fork River sites. This Court entered the Rocker Site consent decree in November of 2000, the Butte Mine Flooding Site consent decree in August of 2002, the Milltown Site consent decree in February of 2006, and the Clark Fork River consent decrees in August of 2008 (the Clark Fork River consent decree also addressed remaining State and federal natural resource damage claims against AR).

G. In addition, the United States and AR negotiated a consent decree entitled Consent Decree for Settlement of Remaining Sites Past Response Costs that was entered by this Court on January 24, 2005 ("Past Costs Consent Decree"). The Past Costs Consent Decree addressed response costs incurred responding to hazardous substance contamination at certain Operable Units known as the so-called "Remaining Sites," defined in that consent decree as the Anaconda Smelter NPL Site, the Butte Priority Soils Operable Unit, the Clark Fork River

Operable Unit, and the Warm Springs Ponds Operable Units. It provided, *inter alia*, for reimbursement of EPA costs paid through July 31, 2002, and the United States Department of Justice ("DOJ") costs incurred through October 7, 2002 (the subsequent Clark Fork River Operable Unit Consent Decree settled DOJ costs through April 28, 2007, and certain EPA costs) pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. The Past Costs Consent Decree also resolved, subject to AR's reservations found in Paragraph 20 of the Past Costs Consent Decree, all counterclaims and most defenses asserted by AR against the United States in this action, and addressed related covenants and reservations for the "Remaining Sites" as defined in that Consent Decree. Paragraph 20 of the Past Costs Consent Decree reserved certain specific counterclaims and defenses for AR relating to the BPSOU. This Consent Decree resolves those reserved counterclaims and defenses, subject to the reservations of the Parties concerning the BPSOU that are set forth in Sections XVII (Covenants and Reservations by the United States and the State) and Section XVIII (Covenants and Reservations by the Settling Defendants and SFAs) of this Consent Decree.

H. In September of 2013, this Court also entered a consent decree resolving certain of the United States' past response cost claims against AR relating to Anaconda Smelter Site and the Warm Springs Ponds operable units (the "Interim Past Costs Consent Decree"). The Interim Past Costs Consent Decree did not further address the BPSOU, but did resolve the United States' claims for DOJ costs incurred in litigating the Federal Action from April 29, 2007, through December 31, 2010.

I. The Streamside Tailings consent decree describes the baskets of operable units to be negotiated in the order described above, but it also provides the parties with flexibility to

change this order. Consistent with this flexible framework, the United States, the State and AR commenced negotiations to next address the BPSOU, rather than the Warm Springs Ponds operable units or the Anaconda Smelter Site. Concurrently with these discussions, the United States and the State also commenced negotiations regarding the BPSOU with BSB, Inland Properties, Inc., RARUS Railway LLC ("RARUS"), Union Pacific Railroad Company ("UP"), and BNSF Railway Company ("BNSF"), who, among others, have also been named by EPA as potentially responsible parties under Section 107 of CERCLA, 42 U.S.C. § 9607, for the BPSOU, based on the current and past ownership and/or operation of certain facilities at or from which a release or substantial threat of release of Hazardous Substances occurred or is occurring within the BPSOU. Inland, RARUS, UP and BNSF are not parties to this Consent Decree but may be parties to subsequent consent decrees or administrative orders addressing BPSOU.

J. The parties to this Consent Decree agree to resolve in this Consent Decree:

1. The United States' claims against AR and BSB (the "Settling Defendants") concerning liability for future and ongoing response actions at the BPSOU, including the design and implementation of the Remedial Action and subsequent Operation and Maintenance at the BPSOU, subject to the Parties' reservations that are set forth in Section XVII (Covenants and Reservations by the United States and the State) and Section XVIII (Covenants and Reservations by the Settling Defendants and SFAs) of this Consent Decree;

2. The United States' claims against the Settling Defendants for response costs relating to the BPSOU paid by EPA after July 31, 2002, including: (a) interim response costs incurred by EPA at the BPSOU; (b) interim response costs paid by EPA that EPA has allocated to the BPSOU from the Silver Bow Creek / Butte Area NPL Site-wide account and a

general account covering all of the named sites within the Clark Fork River Basin; (c) future response costs, including allocated costs, to be paid by EPA at the BPSOU; and (d) past costs incurred by the DOJ from January 1, 2011, through September 30, 2016, in pursuing the claims filed in the Complaints in this action;

3. The State's claims against the Settling Defendants for past, interim, and future response costs and for future response actions relating to the BPSOU, subject to the Parties' reservations that are set forth in Section XVII (Covenants and Reservations by the United States and the State) and Section XVIII (Covenants and Reservations by the Settling Defendants and SFAs) of this Consent Decree; and

4. Subject to the Parties' reservations that are set forth in Section XVIII (Covenants and Reservations by the Settling Defendants and SFAs) of this Consent Decree, the Settling Defendants' reserved defenses and counterclaims that have been asserted or could be asserted against the United States and/or the State relating to response costs or response actions at the BPSOU.

The Butte Priority Soils Operable Unit

K. Butte, Montana was the site of mining, milling and smelting activities from the 1860s to the present. In response to the release and threatened release of Hazardous Substances from facilities in and around Butte and Anaconda, Montana, EPA placed the original Silver Bow Creek Superfund Site on the NPL by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. The original listing of the Silver Bow Creek Superfund Site focused on contamination within and along Silver Bow Creek from the confluence of Silver Bow Creek and Blacktail Creek in Butte through the Warm Springs Ponds, approximately 28 miles downstream from the headwaters. The original Silver

Bow Creek Superfund Site was amended on July 22, 1987, 52 Fed. Reg. 27627, to include large areas in and around Butte, and is now known as the Silver Bow Creek / Butte Area Superfund Site ("SBCB"). This addition is known as the Butte portion of SBCB, and includes the area later designated as the BPSOU. As noted earlier, the BPSOU is the focus of this Consent Decree.

L. The extensive mining, milling, and smelting activities that occurred within the BPSOU included over 300 mines (which produced contaminated overburden and other wastes), over 19 mills and smelters (which produced tailings, fines, and other contaminated wastes), and an extensive network of railroad beds and lines (some of which were created with contaminated materials in some areas and which received spills of contaminated concentrate and waste in some areas). At least 197 contaminated source areas, or facilities, were created from these operations within the BPSOU. Aerial emissions from the mills and smelters contributed to the spread of contamination throughout the BPSOU, including residences, yards, and business locations within and adjacent to the BPSOU. Stormwater is impacted by run-off from the source areas and Railroad Properties, which contributes to the spread of Hazardous Substances throughout the BPSOU, including the alluvial groundwater aquifer, Blacktail Creek and Silver Bow Creek. The stormwater conveyance system within the BPSOU is a source of continuing contaminated storm water discharges to lower Silver Bow Creek. All of these mechanisms contributed to the release or substantial threat of release of Hazardous Substances in and from the BPSOU. Naturally occurring metals and arsenic are also present within the BPSOU, which has resulted in contributions of metals and arsenic to stormwater, surface water, soils, and groundwater in BPSOU, although the Parties disagree as to the extent of such contributions.

M. After conducting other data collection and liability searches, and in response to the release or substantial threat of release of Hazardous Substances in and from the BPSOU, EPA, in consultation with the DEQ, initiated a series of removal actions at the BPSOU beginning in 1988. The list of those removal actions is as follows, with EPA administrative order numbers indicated where potentially responsible parties performed all or part of the work:

1. Walkerville Time Critical Removal Action (TCRA) I (1988) (Order No. CERCLA-VIII-88-05);

2. Timber Butte TCRA (1989) (Order No. CERCLA-VIII-89-21);

3. BPSOU TCRAs (1990 and 1991) (Orders No. CERCLA-VIII-90-11 and CERCLA-VIII-90-12);

4. BPSOU EE/CA Administrative Order on Consent (Order No. CERCLA-VIII-91-13);

5. Colorado Smelter TCRA (1992) (Order No. CERCLA-VIII-92-04);

6. Anselmo Mine Yard and Late Acquisition / Silver Hill TCRA (1992) (Order No. CERCLA-VIII-92-23);

7. Walkerville TCRA II (1994) (EPA performed);

8. Railroad Beds TCRA (2000 to the present) (Order No. CERCLA-VIII-2000-02);

9. Stormwater TCRA (1995 to the present) (Order No. CERCLA-VIII-95-58);

10. Walkerville TCRA III (2000) (EPA performed);

11. Lower Area One EE/CA Administrative Order on Consent (Order No. CERCLA-VIII-90-14);

12. Lower Area One Non-Time Critical Removal Action (NTCRA) (1992 to the present) (Order No. CERCLA-VIII-92-17);

13. Manganese TCRA (1992) (EPA performed); and

14. BPSOU Residential Soils / Waste Dumps NTCRA (1994 to the present) (Order No. CERCLA-VIII-94-21).

In addition, EPA and AR participated in the following associated actions:

1. Clark Tailings RCRA action (1998); and

2. Mine Flooding related pump vault interceptor (2002).

N. In 1992, certain potentially responsible parties conducted a Remedial Investigation and Feasibility Study ("RI/FS") for the BPSOU in accordance with 40 C.F.R. § 300.430 and Administrative Order on Consent Docket No. CERCLA-VIII-92-18. The RI/FS was completed in 2004. The BPSOU RI/FS, as well as a subsequent supplemental focused feasibility report, examined alternatives for final remedial actions at the BPSOU.

O. In December of 2004, EPA, in consultation with DEQ, analyzed the various remedial action alternatives and proposed what it deemed to be the most appropriate remedy for the BPSOU and adjacent residential areas in a Proposed Plan ("2004 Proposed Plan"). Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the 2004 Proposed Plan in a major local newspaper of general circulation. It then provided an opportunity for written and oral comments from the public on the 2004 Proposed Plan. A copy of the transcript of public meetings on the 2004 Proposed Plan is available to the public as part of the administrative

record upon which the EPA Regional Administrator's delegate based the selection of the response actions for the BPSOU in 2006.

P. On September 25, 2006, EPA issued a Record of Decision ("2006 Record of Decision") establishing the remedial action to be implemented at the BPSOU and published notice of the decision in a major local newspaper of general circulation in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). The 2006 Record of Decision contains a responsiveness summary to the public comments received on the 2004 Proposed Plan. Certain portions of the BPSOU remedy were then implemented under various existing orders described above. After the receipt of new information and other considerations, on July 18, 2011, EPA issued an Explanation of Significant Differences ("2011 ESD"), which modified the 2006 Record of Decision and described changes to the residential and non-residential remedial requirements, as well as the ground water monitoring requirements, of the 2006 Record of Decision. The 2011 ESD was followed on July 20, 2011, by EPA's issuance of a unilateral administrative order, EPA Docket No. CERCLA-08-2011-0011, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for partial remedial design/remedial action and certain operation and maintenance activities at the BPSOU. On April 11, 2019, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of a Proposed Plan ("2019 Proposed Plan") to further amend the 2006 Record of Decision in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the 2019 Proposed Plan. A copy of the transcript of public meetings on the 2019 Proposed Plan is available to the public as part of the administrative record upon which the EPA Administrator issued a BPSOU Record of Decision Amendment in 2020. On February 4, 2020, after

considering the public comments and other information in the administrative record, EPA issued a Record of Decision Amendment ("2020 Record of Decision Amendment") further modifying the 2006 Record of Decision, to provide for, among other things, certain changes in surface water standards within the BPSOU and to further define certain remedial requirements at the BPSOU and residential areas outside the BPSOU, but within Silver Bow County. The 2020 Record of Decision Amendment includes a responsiveness summary to the public comments received on the 2019 Proposed Plan. Notice of the 2020 Record of Decision Amendment was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

Q. The 2006 Record of Decision as modified by the 2011 ESD and the 2020 Record of Decision Amendment embodies EPA's decision for the response actions to be implemented at the BPSOU. The 2006 Record of Decision, the 2011 ESD, and the 2020 Record of Decision Amendment are attached as Appendix A to this Consent Decree. DEQ had a reasonable opportunity to review and comment on the 2006 Record of Decision and gave its partial concurrence thereto on behalf of the State. DEQ also partially concurred on the 2011 ESD and concurred on the 2020 Record of Decision Amendment.

R. Based on information presently available to EPA and DEQ, EPA and DEQ believe that the Work and the BTC Riparian Actions will be properly and promptly conducted by the Settling Defendants and the State, respectively, if conducted in accordance with this Consent Decree and its appendices.

S. Solely for the purposes of Section 113(j) of CERCLA, the Remedy set forth in the 2006 Record of Decision, the 2011 ESD, and the 2020 Record of Decision Amendment, the response actions required to date of the Settling Defendants, the Work to be performed by the

Settling Defendants and the BTC Riparian Actions to be performed by DEQ shall constitute response actions taken or ordered by the President for which judicial review shall be limited to the administrative record.

Notice

T. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified DEQ of negotiations with the Settling Defendants regarding the BPSOU. EPA also provided DEQ, on behalf of the State, with an opportunity to participate in such negotiations and to be a party to this Consent Decree. DEQ has since participated in these negotiations, and the State is a party to this action and a signatory to this Consent Decree.

U. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of the Interior, the State and the Confederated Salish and Kootenai Tribes ("Tribes") of negotiations with a potentially responsible party regarding the release of Hazardous Substances relating to the BPSOU that may have resulted in injury to natural resources under federal, State, and/or the Tribes' trusteeship. DOI and the Tribes did not participate in these negotiations and are not signatories to this Consent Decree, as they had previously resolved their natural resource damages claims at the BPSOU against AR, subject to certain reservations. The State as Trustee did participate in these negotiations and is a party to this action and a signatory to this Consent Decree.

No Admission of Liability

V. By entering into this Consent Decree, AR, BSB, the United States, and the State (the "Parties") do not admit to any liability arising out of the transactions or occurrences either that were alleged, or could have been alleged, in the complaints, amended complaints, or counterclaims filed in the Federal Action. In addition, the Settling Defendants do not admit or

acknowledge that any alleged release or threatened release of Hazardous Substances at or from the BPSOU constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The SFAs do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by AR. The form of this Consent Decree (which is related to the prior consent decrees entered in the Federal Action) and the interpretation of certain legal requirements supporting the Work are unique to the site-specific circumstances occurring at the BPSOU and are not precedent for any other Consent Decree.

The Proposed Settlement

W. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith; that implementation of this Consent Decree will expedite the cleanup of the BPSOU and will avoid prolonged and complicated litigation between the Parties; and that this Consent Decree is fair, reasonable and in the public interest.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1367, and 42 U.S.C. §§ 9606, 9607 and 9613(b). In addition, this Court has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying complaints, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Each Party hereby agrees not to oppose entry of this Consent Decree by this Court unless the

United States or the State has notified the other Parties in writing that it no longer supports entry of this Consent Decree after consideration of public comment, as provided in Section XXVII (Lodging and Opportunity for Public Comment) below.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the State, AR and its successors and assigns, and BSB. Any change in ownership or corporate status or other legal status of AR, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter AR's responsibilities under this Consent Decree. Any change in the status of BSB, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter BSB's responsibilities under this Consent Decree. AR and BSB are hereinafter referred to collectively as the "Settling Defendants."

3. Each Settling Defendant shall provide a copy of this Consent Decree to each contractor hired by that Settling Defendant to perform the Work (as defined below) or any portion of the Work required by this Consent Decree and to each person representing that Settling Defendant with respect to the BPSOU or the Work. Each Settling Defendant shall also condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The Settling Defendants or their respective contractors shall provide written notice of the Consent Decree to all subcontractors hired by that Settling Defendant or its contractor to perform any portion of the Work required by this Consent Decree. The Settling Defendants shall nonetheless be responsible for ensuring that their respective contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling

Defendant with which it has contracted, within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). DEQ shall conduct all BTC Riparian Actions in accordance with this Paragraph.

IV. DEFINITIONS

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

"ARAR" shall mean an applicable or relevant and appropriate requirement, criterion, standard, or limitation of federal or state law within the meaning of Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), identified in the ROD.

"AR" shall mean the Defendant, Atlantic Richfield Company, its divisions and subsidiaries, including ARCO Environmental Remediation L.L.C. (AERL), and any predecessors in interest. It shall also mean any successors in interest to the extent that any such successor's liability at the BPSOU derives from the liability of the Atlantic Richfield Company, its divisions and subsidiaries, including AERL, and any predecessors in interest.

"BTC Riparian Actions" shall mean the Blacktail Creek remedial elements that DEQ, on behalf of the State, will complete, as described in Appendix H and the Blacktail Creek Remediation and Contaminated Groundwater Hydraulic Control Further Remedial Elements description, SOW Attachment C, Section 5 (except the groundwater remedy elements which Settling Defendants will complete), including the removal of sediments from Silver Bow Creek (east of Montana Avenue to the confluence of Silver Bow Creek and Blacktail Creek) and

Blacktail Creek. The State, through DEQ, will similarly remove tailings, waste, and contaminated soils and reconstruct Blacktail Creek and Silver Bow Creek and its 100-year floodplain in the "Confluence Area" north of George Street and east of Montana Avenue as shown in the Blacktail Creek Remediation and Contaminated Groundwater Hydraulic Control Further Remedial Elements description, SOW Attachment C, Section 5 and Figure BTC-1. Confluence Area work will be included in the activities DEQ will conduct in the BTC, and is part of the BTC construction project. The Blacktail Creek and Confluence Area activities are on-site and will be completed as remedy or restoration integrated with remedy under EPA oversight and are described further in Appendix H to this Consent Decree.

"BTC Riparian Actions Performance Standards" shall mean the construction performance standards that DEQ will attain in conducting the BTC Riparian Actions, including the reclamation and revegetation ARARs and quantitative measures of vegetation performance, as further outlined in Appendix H. The BTC Riparian Actions Performance Standards do not include the groundwater or in-stream surface water ARAR standards.

"BTC Riparian Action Remedial Action Work Plans" shall mean, for purposes of this Consent Decree, the documents described in the Appendix H or developed pursuant to this Consent Decree which detail the implementation plans for the BTC Riparian Actions, and any amendments thereto, as approved by EPA in accordance with this Consent Decree.

"Butte Area One Restoration Plan" or "BAO Plan" shall mean the document prepared by the State, and any amendments thereto adopted by the State, entitled the "Butte Area One Restoration Plan," describing natural resource restoration actions implemented or to be implemented at the BPSOU. Prior to the December 2016 Butte Area One Restoration Plan

Amendment for the Parrot Tailings Waste Removal, the most recent version of this plan is dated January 8, 2014.

"BSB" shall mean the City and County of Butte Silver Bow, a municipal corporation and political subdivision of the State of Montana.

"Butte Priority Soils Operable Unit" or "BPSOU" shall mean the Butte Priority Soils Operable Unit, the surface area and surface boundary of which is shown on Appendix B. The BPSOU includes: the surface area as defined in the 2006 Record of Decision as modified in the 2020 Record of Decision Amendment; the portions of Silver Bow Creek and Blacktail Creek that run through the area shown in Appendix B; the Granite Mountain Memorial Interpretive Areas shown in Appendix B; and the alluvial groundwater that contains Hazardous Substances originating from the various facilities and sources that are within the BPSOU. The BPSOU does not include (1) the Butte Mine Flooding Site, as defined in the Butte Mine Flooding Site consent decree, CV 02-35-BU-RFC, entered in August of 2002; (2) the Butte Active Mine Area Site, as defined in the Response Decision Document attached to the Butte Mine Flooding Site consent decree as appendix B to that document and as amended in the Response Decision Deferral Document issued by EPA and DEQ in 2001; (3) the West Side Soils operable unit, the boundaries of which have not been defined; or (4) the Montana Pole and Treating Plant Site, as defined in the Montana Pole and Treating Plant Site consent decree, CV 90-75-BU-SEH, entered in July 1996.

"BPSOU Account" shall mean the account created and managed by the State Board of Investments pursuant to Paragraphs 20 and 21 of the CD.

"CECRA" shall mean the Montana Comprehensive Environmental Cleanup and Responsibility Act, as amended, §§ 75-10-701 et seq., MCA.

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

"Certification of Completion of the Remedial Action" shall mean EPA's certification, in consultation with the State, pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that the Remedial Action and any modifications thereto have been completed at the BPSOU in accordance with the requirements of CERCLA, the NCP, and the ROD, including certification that Performance Standards have been attained or that the requirements of Paragraph 4.7 of the SOW otherwise have been satisfied.

"CFRSSI LAP" shall mean the Clark Fork River Superfund Site Investigations Laboratory Analytical Protocol (AR/PTI, April 1992), as subsequently amended as of the Effective Date, or alternative laboratory analytical protocols approved by EPA in consultation with DEQ for use in place of the CFRSSI LAP.

"CFRSSI QAPP" shall mean the Clark Fork River Superfund Site Investigations Quality Assurance Project Plan (AR/PTI and EPA, May 1992), as subsequently amended as of the Effective Date, or alternative quality assurance plans approved by EPA in consultation with DEQ for use in place of the CFRSSI QAPP.

"Clark Fork Site Consent Decrees" shall mean the consent decrees entered in this Federal Action and in the State Action on August 21, 2008, resolving, inter alia, the response action claims of the United States at the Clark Fork Site; and natural resource damages claims of the

United States at the Clark Fork Site; and the natural resource damages claims of the State at the Clark Fork Site, the Anaconda Site and the BPSOU.

"Clark Fork NPL Sites" shall mean the Anaconda Smelter Site, the Silver Bow Creek/Butte Area Site, the Milltown Reservoir/Clark Fork River Site and the Montana Pole and Treating Plant Site.

"Continuation of Existing Migration" shall mean the downstream movement of contamination from and through the BPSOU after the Settling Defendants have obtained KRECCR approval and at all times when Settling Defendants are in compliance with relevant O&M and other obligations under this Consent Decree and its attachments. "Continuation of Existing Migration" of Hazardous or Deleterious Substances as defined within this Consent Decree has the same meaning as within the Streamside Tailings Operable Unit and Federal and Tribal Natural Resource Damages Consent Decree entered in the Federal Action in 1999 (SST CD, Paragraph 7.ss.i).

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

"Cost Documentation" shall mean a cost package for EPA's costs which consists of applicable: (1) payroll information, consisting of the SCORPIO$ report or an equivalent cost summary, and any time sheets that exist, if requested by AR; (2) indirect cost information, consisting of an overall and an employee-by-employee SCORPIO$ report or equivalent cost summary; (3) travel information, consisting of a SCORPIO$ report or an equivalent cost summary, travel authorizations, and travel vouchers or their equivalent that exist; (4) EPA

contractor (including Contract Laboratory Program contracts) information, consisting of site and/or Operable Unit specific vouchers, any existing progress reports, Treasury schedules, tasking documents for contractors not required to provide progress reports, Annual Allocation Reports and the SCORPIO$ report or an equivalent cost summary; (5) EPA Interagency Agreements ("IAGs") information, consisting of SCORPIO$ reports or an equivalent cost summary, IAGs and any amendments thereto, invoices or the equivalent, proof of payment documents, and any existing progress reports or their equivalent; (6) EPA Cooperative Agreements information, consisting of SCORPIO$ reports or an equivalent cost summary, cooperative agreements and any amendments thereto, drawdown documentation, State quarterly progress reports; (7) prejudgment interest information, consisting of an interest cost report showing methodologies and calculations; and (8) Operable Unit allocated cost information, consisting of a narrative of allocation methodologies and spreadsheets implementing such methodologies. Because the State has incurred costs and may continue to incur costs under cooperative agreements with EPA which relate to or are allocated to the BPSOU, Cost Documentation, if requested by the Settling Defendants, shall also include: (a) State contractor invoices; (b) any existing contractor progress reports; and (c) SABHRS Report 106 information (if not included in the State quarterly progress reports) or its equivalent. EPA may also provide the information described in the foregoing list of "Cost Documentation" in the form of printouts from electronic databases or systems that have been developed or may be developed by EPA in the future. "Cost Documentation" for response costs incurred by the Department of Justice shall consist of a cost summary of: (a) direct labor costs; (b) other direct costs (invoices, travel, etc.);

and (c) indirect costs, and upon request by AR, shall also consist of the supporting reports for each of these three types of Department of Justice costs.

"Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or State of Montana or Federal holiday, the period shall run until the close of business of the next working day.

"DEQ" shall mean the Montana Department of Environmental Quality and any predecessor or successor departments or agencies of the State.

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

"Earnings" shall mean the net earnings on the principal paid into the BPSOU Account and compounded on the BPSOU Account as managed by the State Board of Investments or any successor agency, and any Interest paid by AR pursuant to Paragraph 20.h.

"Effective Date" shall mean 60 days from the date that this District Court enters the Consent Decree, unless an appeal of the entry and judgment is filed during the 60-day period; if an appeal is taken, the Effective Date shall mean the date on which the District Court's judgment is affirmed.

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

"EPA Site Record" shall mean the files maintained in EPA's Montana Office records center (located in Helena) for the BPSOU that are neither privileged nor confidential and that are not contained within the administrative record for the BPSOU.

"Federal Action" shall mean *United States v. Atlantic Richfield Company et al.*, No. CV-89-039-SEH (D. Mont.).

"Federal BPSOU Future Response Costs" shall mean all response costs (excluding Oversight Costs for the BPSOU) that the United States incurs after the Effective Date relating to the BPSOU, including but not limited to direct and indirect costs that the United States pays, and the State pays through funding from the United States pursuant to a cooperative agreement, in reviewing or developing plans, reports, and other items pursuant to this Consent Decree, including but not limited to payroll costs, contractor costs, travel costs, laboratory costs, the costs paid pursuant to Sections IX (Remedy Review), XI (Access and Institutional Controls), Paragraph 4.4 of the SOW (Emergency Response and Reporting), and the work takeover provisions of Section XVII (Covenants and Reservations of the United States and the State) of this Consent Decree; and including allocable Clark Fork General and Silver Bow Creek/Butte Area site wide costs. Section VI (Payment of Response Costs) of this Consent Decree requires the Settling Defendants to reimburse EPA for all of its Federal BPSOU Future Response Costs relating to the BPSOU, including Federal BPSOU Future Response Costs paid by EPA to the State (including DEQ) under cooperative agreement. Federal BPSOU Future Response Costs shall not include Oversight Costs for the BPSOU, as that term is defined in this Consent Decree, whether paid by EPA either directly or through a cooperative agreement with the State (including DEQ). Federal BPSOU Future Response Costs shall also not include funds for BTC Riparian Actions, State Restoration, or end land use activities described in the SOW (Addendum 1 to SOW Attachment C).

"Federal BPSOU Interim Response Costs" shall mean all costs of response, including direct and indirect costs, as well as costs allocated from the Silver Bow Creek / Butte Area site-wide account and the Clark Fork General account, that are: (a) paid by EPA at or in connection with the BPSOU (including RMAP-related costs) after July 31, 2002, through the Effective Date; (b) incurred by EPA at or in connection with the BPSOU (including RMAP-related costs) through the Effective Date, but paid by EPA after that date; or (c) incurred or paid by DOJ relating to the Federal Action from January 1, 2011, through September 30, 2016, and any claim for interest accrued on such costs. Notwithstanding the foregoing, the Settling Defendants shall pay $3,500,000 in full settlement of "Federal BPSOU Interim Response Costs" pursuant to Paragraph 12 (Settling Defendants Payment of Federal BPSOU Interim Costs) of this Consent Decree.

"Federal BPSOU Past Response Costs" shall mean all response costs, including but not limited to direct and indirect costs, that EPA paid at or in connection with the BPSOU through July 31, 2002, including, without limitation, oversight costs (including RMAP-related costs), allocable Clark Fork General and Silver Bow Creek / Butte Area Site-wide Costs, Interest on all such costs which accrued pursuant to 42 U.S.C. § 9607(a) through such date, and costs incurred by the State paid through funding from the United States pursuant to cooperative agreements.

"Hazardous Substance" shall mean a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or a hazardous or deleterious substance within the meaning of Section 75-10-701(8), MCA.

"Indemnitee" shall mean Inland Properties, Inc. ("Inland"), in its capacity as an owner of record of real property in the BPSOU that it acquired in a chain of title with Atlantic Richfield

Company, after December 18, 1985, and prior to December 30, 1997, when Atlantic Richfield Company agreed to indemnify Inland for certain liabilities that are "matters addressed" in this Consent Decree. For purposes of this Consent Decree, "Indemnitee" refers to Inland, a corporation, and does not extend to: (i) its officers, directors, shareholders, employees, affiliates, subsidiary or parent, except to the extent of Inland's potential liability as an owner of record of real property in BPSOU after December 18, 1985, and prior to October 16, 2019; or (ii) any entity that Inland may subsequently merge or consolidate with, exchange shares with, or acquire, or otherwise combine with in any manner, except to the extent of Inland's potential liability as an owner of record of real property in BPSOU after December 18, 1985, and prior to October 16, 2019.

"Interest" on federal claims shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund, 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. That rate of interest is subject to change on October 1 of each year. Rates are available online at http://www.epa.gov/ocfpage/finstatement/superfund/int_rate.htm.

"KRECCR" is the key remedial elements construction completion report, a deliverable required by and described in Paragraph 4.6(g) of the SOW, Appendix D.

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

"NPL" shall mean the National Priorities List set forth at 40 C.F.R. Part 300, appendix B.

"Operable Unit" shall mean an area, geographic or otherwise, for which there is a response action, whether removal or remedial, that is subject to a separate administrative record and response selection decision.

"Operation and Maintenance" or "O & M" shall mean all activities performed by the Settling Defendants that are required to operate, maintain and monitor the effectiveness of Remedial Action as specified in the SOW or any EPA-approved O & M Plan to implement the SOW.

"Oversight Costs for the BPSOU" shall mean, for purposes of this Consent Decree only, those response costs incurred by EPA or the State (either as lead agency or support agency) after the Effective Date in monitoring and/or overseeing the development and implementation of the Work and the BTC Riparian Actions pursuant to the requirements of this Consent Decree, including costs incurred by EPA in consulting with the State and costs paid by EPA to the State under cooperative agreement, in reviewing plans, reports, and other documents submitted by the Settling Defendants pursuant to this Consent Decree, allocable Clark Fork General and Silver Bow Creek / Butte Area Site-wide costs, and costs incurred in conducting the reviews of the Remedy and any modifications thereto required by Section IX (Remedy Review) in accordance with Section IX (Remedy Review) and Section 121(c) of CERCLA after the Effective Date. Oversight Costs for the BPSOU also includes response costs incurred by EPA or the State after the Effective Date for oversight of RMAP. However, Oversight Costs for the BPSOU shall not include:

(1) The costs of direct action by EPA and/or the State to respond to a release, threat of release, or danger at the BPSOU;

(2) The costs of litigation or other enforcement activities relating to the BPSOU;

(3) The cost of enforcing the terms of this Consent Decree against the Settling Defendants, including all costs incurred in connection with Dispute Resolution pursuant to Section XV (Dispute Resolution);

(4) Costs of determining the need for, or taking, direct response actions by EPA and/or the State pursuant to: Section IX (Remedy Review) that are outside the scope of the remedy, Section XI (Access and Institutional Controls), Paragraph 4.4 of the SOW (Emergency Response and Reporting), and Section XVII (Covenants and Reservations by the United States and the State) of this Consent Decree, except that the following costs shall be included in the definition of Oversight Costs for the BPSOU:

(A) The costs incurred by EPA and the State in overseeing additional response actions at the BPSOU that may be required pursuant to the five-year reviews of the Work;

(B) The costs incurred by EPA and the State regarding the monitoring and/or overseeing of any additional response actions to be undertaken at the BPSOU pursuant to Paragraph 27 (Modification of SOW or Related Deliverables as to Settling Defendants' Work); and

(C) The costs incurred by EPA and the State for any coordination of State Restoration with Remedial Action and Operation and Maintenance at the BPSOU, and in monitoring and/or overseeing such coordination.

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

"Parrot Tailings Waste Removal" shall mean the activities described in the December 2016 Butte Area One Restoration Plan Amendment for the Parrot Tailings Waste Removal, any amendments thereto, and as implemented. For purposes of this Consent Decree only, the Parrot Tailings Waste Removal shall be considered State Restoration.

"Parties" shall mean the United States, the State, AR, and BSB.

"Past Costs Consent Decree" shall meant the Consent Decree entered in this Federal Action on January 24, 2005, which resolved certain of the United States' past response cost claims against AR relating to the Anaconda Smelter NPL Site, the Butte Priority Soils Operable Unit including "Federal BPSOU Past Response Costs", the Clark Fork River Operable Unit and the Warm Springs Ponds Operable Units.

"Performance Standards" shall mean the cleanup standards, levels and other measures of achievement of the remedial action objectives contained in the ROD, including ARARs. Appendix D (SOW) and Attachment A to Appendix D (BPSOU Surface Water Compliance Determination Plan) provide an explanation of how in-stream surface water Performance Standards are to be measured and addressed under this Consent Decree. The Parties acknowledge that the terms and conditions of the BPSOU Surface Water Compliance Determination Plan are site-specific to BPSOU and this Consent Decree and do not constitute precedent for other settlements involving the Parties at other sites. The Performance Standards in this definition are distinct from the BTC Riparian Actions Performance Standards.

"Plaintiffs" means the United States and the State of Montana.

"Railroad Properties" shall mean those facilities owned, operated, and/or controlled by the BNSF Railway Company and/or the Union Pacific Railroad Company, including their

divisions, subsidiaries, and any successors in interest, shown for illustrative purposes only in the map attached as Appendix F. Facilities owned and operated by RARUS are not Railroad Properties for purposes of this Consent Decree. If and to the extent that any real property parcel owned by BNSF Railway Company and/or Union Pacific Railroad Company is transferred to and a Settling Defendant becomes the record owner of said property after the Effective Date, such real property parcel will be thereafter excluded from Railroad Properties for purposes of this Consent Decree.

"RARUS" shall mean RARUS Railway, LLC, d/b/a Butte, Anaconda & Pacific Railway Company, a subsidiary of Patriot Rail Company, LLC.

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

"Remaining Sites" for purposes of this Consent Decree shall mean the areas left to be settled under the April 19, 1999 Streamside Tailings Consent Decree settlement framework, as of the Effective Date of this Consent Decree; namely the Anaconda Smelter Site and the Warm Springs Ponds Operable Units including the Mill Willow Bypass. As noted above, the West Side Soils Operable Unit is not addressed under the Streamside Tailings Consent Decree framework and response action at the Butte Active Mining Area is currently deferred subject to State law regulation.

"Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, that the Settling Defendants and the State have undertaken or will undertake as required under this Consent Decree and its attachments to implement the remedial action selected in the ROD (excluding the Residential Solid Media Remedial Action).

"Remedial Action Work Plans" shall mean, for purposes of this Consent Decree, the documents described in the SOW, and attached to the SOW or developed pursuant to this Consent Decree which detail the implementation plans for the Remedy, and any amendments thereto, as approved by EPA in accordance with this Consent Decree.

"Remedial Design" or "RD" shall mean those activities undertaken or to be undertaken to develop the final plans and specifications for the Remedial Action selected in the ROD. The Settling Defendants' and the State's Remedial Design commitments under this Consent Decree are defined in the SOW and Appendix H, respectively, and any amendments or modifications thereto, as provided in this Consent Decree.

"Remedy" shall mean the response actions at the BPSOU set forth in the ROD, including monitoring and oversight, Remedial Design, Remedial Action, and Operation and Maintenance (excluding the Residential Solid Media Remedial Action).

"Residential Solid Media Remedial Action," for purposes of this Consent Decree, shall mean remedial actions to address residential exposures described in the 2006 Record of Decision, the 2011 ESD, and the 2020 Record of Decision Amendment. Remedial action to address such residential exposure is implemented, as of the Effective Date, through the Residential Metals Abatement Program (RMAP) on residential properties.

"ROD," for purposes of this Consent Decree, shall mean the BPSOU Record of Decision signed on September 21, 2006, by the Assistant Regional Administrator for Ecosystems Protection and Remediation, EPA Region 8, and partially concurred on by the Director of the Montana Department of Environmental Quality on behalf of the State and all attachments, the 2011 ESD, the 2020 Record of Decision Amendment and all ESDs and nonsignificant/minor

modifications thereto, when effective. The 2006 Record of Decision, the 2011 ESD, and the 2020 Record of Decision Amendment are attached to this Consent Decree as Appendix A. The 2020 Record of Decision Amendment is effective on the Effective Date of this Consent Decree. The ROD, as defined for purposes of this Consent Decree only, does not include Residential Solid Media Remedial Action.

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

"Settling Defendants" shall mean AR and BSB.

"Settling Federal Agencies" or "SFAs" shall mean the United States Department of Justice, the United States Department of the Interior, the United States Department of Treasury, the United States Department of Commerce, the United States Department of Agriculture, the United States Department of Agriculture Forest Service, the General Service Administration, the National Aeronautics and Space Administration, the United States Department of Defense, the United States Environmental Protection Agency, the United States Department of Health and Human Services, the United States Public Health Service, the Atomic Energy Commission, the Defense Minerals Exploration Administration, the Defense Minerals Administration, the Office of Minerals Exploration, and the Defense Minerals Procurement Agencies, any agencies, bureaus, or services of such entities, and any predecessor and successor departments, agencies, bureaus, or services of such entities.

"Source Area Property" shall mean any real property within the BPSOU where any source area or floodplain waste described in Section 5.2.2 (Non-Residential Soil/Waste Characterization) of the 2006 Record of Decision or this Consent Decree related to historic mining is located, including that real property identified as a "Source Area Property" in

Appendix G, and any other real property where EPA and DEQ determine, after providing notice and an opportunity to comment to the Settling Defendants, that any source area or floodplain waste described in Section 5.2.2 (Non-Residential Soil/Waste Characterization) of the 2006 Record of Decision is located, and which was not specifically identified as such in Appendix E or subject to future actions pursuant to the SOW, Appendix D.

"State" shall mean the State of Montana, including all of its departments, agencies, and instrumentalities. For purposes of this Consent Decree, "State" does not include Defendant BSB.

"State Action" shall mean *State of Montana v. Atlantic Richfield Company*, No. CV-83-317-HLN-SEH (D. Mont.).

"State BPSOU Future Response Costs" shall mean all response costs (excluding Oversight Costs for the BPSOU) that the State incurs after the Effective Date relating to the BPSOU, including but not limited to direct and indirect costs that the State pays in reviewing or developing plans, reports, and other items for Remedial Design and Remedial Action required by this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing the Remedial Design and Remedial Action required by this Consent Decree, including but not limited to payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections IX (Remedy Review), XI (Access and Institutional Controls), and Paragraph 4.4 of the SOW (Emergency Response and Reporting). Such costs are State BPSOU Future Response Costs if they are not reimbursed by EPA via cooperative agreement expenditures. Pursuant to the terms of the EPA-DEQ BPSOU Memorandum of Agreement, EPA shall endeavor to provide adequate federal funding to the State for all these activities. Section VI (Payment of Response Costs) of this Consent Decree requires the Settling Defendants to

reimburse the State for all of its State BPSOU Future Response Costs relating to the BPSOU. State BPSOU Future Response Costs shall not include Oversight Costs for the BPSOU, as that term is defined in this Consent Decree, costs for BTC Riparian Actions or Parrot Tailings Waste Removal costs and other costs related to State Restoration actions for the BPSOU.

"State Interest" shall mean interest at a rate of 4% compounded annually.

"State Restoration" shall mean the activities set forth in the BAO Restoration Plan, including the Parrot Tailings Waste Removal.

"State Site Record" shall mean the files for or related to the BPSOU that are maintained in the records center of DEQ, the Montana Bureau of Mines and Geology (MBMG), the Montana Department of Transportation or the Department of Natural Resources and Conservation (DNRC) and that are neither privileged nor confidential.

"Statement of Work" or "SOW" shall mean the document describing the activities the Settling Defendants must perform to implement the Remedial Design, Remedial Action and Operation and Maintenance. The SOW is attached to this Consent Decree as Appendix D, including its attachments and any amendments thereto, and is referenced as the "BPSOU SOW" throughout those documents. The SOW also includes reference to all final designs and work plans approved prior to lodging for Remedy implementation. The SOW, at Attachment C, Section 6 (Blacktail Creek Remediation and Contaminated Groundwater Hydraulic Control Remedial Elements description), also contains a description of BTC Riparian Actions that DEQ will perform (which excludes groundwater remedy elements that the Settling Defendants will complete). The BTC Riparian Actions are also described in Appendix H to the Consent Decree.

"Subdrain" shall mean the subdrain system as of the Effective Date, as shown on Appendix C (Figures of the Subdrain), and as it may be modified by Remedy implementation.

"Subparagraph" shall mean a portion of a Paragraph identified by an upper or lower case letter or by a lower case Roman numeral.

"Supervising Contractors" shall mean the principal contractors or Settling Defendant employees retained or utilized by the Settling Defendants, and the principal contractors or DEQ employees retained or utilized by the State, all as approved by EPA, in consultation with the DEQ, to supervise and direct the implementation of the Work or DEQ-designated activities under this Consent Decree.

"Superfund Memorandum of Agreement" or "SMOA" shall mean the agreement between EPA and the State which, in addition to the provisions of the Consent Decree, memorializes the manner in which the DEQ-designated activities will be performed by DEQ and overseen by EPA, among other issues. Only the State and the United States may enforce the terms of the SMOA. Nothing in this Consent Decree shall be deemed to create a right of any other party, including, but not limited to any Settling Defendant or any third party, against the State or the United States to enforce the terms of the SMOA.

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

"Waste Material" shall mean: (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous or deleterious substance" under Section 75-10-701(8), MCA.

"Work" shall mean all activities the Settling Defendants are required to perform under this Consent Decree, including, without limitation, the Remedial Design, Remedial Action, Operation and Maintenance and emergency response actions undertaken pursuant to Paragraph 4.4 of the SOW (Emergency Response and Reporting); provided, however, that Work does not include those activities required under Section XXI (Retention of Records). Work also does not include the BTC Riparian Actions, State Restoration, Residential Solid Media Remedial Action (which is implemented through the RMAP as of the Effective Date), end land use actions described in the SOW (Addendum 1 to SOW Attachment C), and/or any activities on Railroad Properties.

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are:

a. To protect public health and welfare and the environment at the BPSOU through the design and implementation of response actions selected in the ROD, as provided for in this Consent Decree;

b. To reimburse the United States for its past response costs, interim response costs, and the United States and the State for their future response costs, at the BPSOU, as provided in this Consent Decree;

c. To resolve the response claims of the United States and the State against the Settling Defendants with regard to the BPSOU, as provided in this Consent Decree;

d. To resolve the remaining claims and defenses of AR, and the claims and defenses of BSB, which have been or could have been asserted against the United States and the State with regard to the BPSOU, as provided in this Consent Decree;

e. For AR, on behalf of the Settling Defendants, to provide a $20,500,000.00 cash payment to the State of Montana to fund the State's BTC Riparian Actions and other State Restoration work to be coordinated with the Remedy;

f. For the State, with the funds provided by AR, to complete the BTC Riparian Actions and, if and to the extent there are excess funds available, to support State Restoration actions coordinated with the Remedy.

6. Commitments by the Settling Defendants. In accordance with the terms in this Consent Decree, the Settling Defendants shall:

a. Reimburse the United States for Federal BPSOU Interim Response Costs, Federal BPSOU Future Response Costs, and pay Oversight Costs at the BPSOU, and to reimburse the State for State BPSOU Future Response Costs, as provided in this Consent Decree;

b. Finance and perform the Work in accordance with this Consent Decree and all deliverables developed by the Settling Defendants and approved or modified by EPA, in consultation with DEQ, pursuant to this Consent Decree; and

c. AR, on behalf of the Settling Defendants, provide a $20,500,000.00 cash payment to the State of Montana.

7. Nature of Settling Defendant Liability. The Settling Defendants' obligation to finance and perform the Work and obligations to pay amounts due under this Consent Decree and perform other response actions required by this Consent Decree are joint and several. In the event of the insolvency or other failure of one Settling Defendant to implement a Settling Defendant obligation or requirement of this Consent Decree, the remaining Settling Defendants

shall complete all such obligations or requirements. The State has agreed to perform the BTC Riparian Actions. In consideration for the payments made pursuant to Paragraph 20, the Settling Defendants and SFAs are not obligated to perform the BTC Riparian Actions or provide additional funds to finance DEQ's performance of the BTC Riparian Actions.

8. Compliance with Applicable Law. Nothing in this Consent Decree limits Settling Defendants' obligations to comply with the requirements of all applicable federal and state laws and regulations. The Settling Defendants must also comply with all ARARs as set forth in the ROD including any future ESD, and in the manner described by the SOW and its attachments, Appendix D to this Consent Decree. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP. In performing the BTC Riparian Actions, DEQ shall also comply with all applicable federal and state laws and regulations, and shall also comply with ARARs applicable to such activities, and in the manner described by Appendix H and SOW Attachment C, Section 5.

9. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within or in close proximity to the Clark Fork NPL Sites). Where any portion of the Work that is not on-site requires a federal or state permit or approval, the Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The BTC Riparian Actions are on-site and no

permit is required for this work, as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.430(e) of the NCP.

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

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

10. Notice to Successors in Title.

a. The Settling Defendants each individually maintain surface ownership of real property within the BPSOU. With respect to any Source Area Property owned by a Settling Defendant (or where access is controlled by a Settling Defendant) the Settling Defendants shall jointly post and make available for public inspection a notice with a copy of Appendix G (Map of Source Areas) to illustrate Source Area Property within the BPSOU, including Settling Defendants' surface ownership or control of such real property within the BPSOU. The notice, which is subject to review and approval by EPA, in consultation with DEQ, shall indicate: (i) that EPA issued the Record of Decision for the BPSOU in 2006, the ESD for the BPSOU in 2011; and the Record of Decision amendment in 2020; and (ii) that the Settling Defendants have entered into a Consent Decree (including the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court) requiring implementation of Work associated with the ROD. Settling Defendants shall submit the notice for review and approval to EPA and DEQ within 60 days of

the Effective Date. The approved notice and a copy of Appendix G (Map of Source Areas) shall be posted and made available for public inspection at the locations and in the manner described in Appendix E (Institutional Controls Implementation and Assurance Plan) within 30 days of EPA's approval, in consultation with DEQ, of the notice.

b. At least twenty-one (21) days prior to the conveyance by any Settling Defendant of its interest in any Source Area Property located within the BPSOU, including but not limited to fee interests, leasehold interests, and mortgage interests, that Settling Defendant shall give the grantee written notice of: (i) this Consent Decree, (ii) any instrument specific to said real property by which an interest in real property has been conveyed that confers a right of access to the BPSOU (hereinafter referred to as "access agreements") pursuant to Section XI (Access and Institutional Controls) or pursuant to any other conveyance, and/or (iii) any instrument specific to said property by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "deed restrictions / restrictive easements") pursuant to Section XI (Access and Institutional Controls) or pursuant to any other conveyance. At least twenty-one (21) days prior to such conveyance, the Settling Defendant intending to make any conveyance within the scope of this Paragraph shall also give written notice to EPA, DEQ, and the other Settling Defendants of the planned conveyance, including the name and address of the grantee, and the date on which notice of this Consent Decree, access easements, and/or deed restrictions / restrictive easements are given to the grantee. Nothing in this Consent Decree shall be construed to require the approval of EPA, DEQ, the State or other Settling Defendants before a Settling Defendant conveys a Source Area Property.

c. In the event of such conveyance, the Settling Defendants' obligations under this Consent Decree, including but not limited to the obligation to implement and abide by institutional controls pursuant to Section XI (Access and Institutional Controls), shall continue to be met by the Settling Defendants. In no event shall the conveyance release or otherwise affect the liability of the Settling Defendants to comply with all provisions of this Consent Decree, absent the prior written consent of EPA in consultation with DEQ. If the United States, in consultation with DEQ, approves, the grantee may perform some or all of the Work under this Consent Decree. If the conveyance instrument to the grantee provides for access by EPA and DEQ, the Settling Defendants obligation to provide access to such property is no longer required.

VI. PAYMENT OF RESPONSE COSTS

11. The Silver Bow Creek Butte Area Site Special Account. EPA has established a special account within the EPA Hazardous Substances Superfund called the Silver Bow Creek Butte Area Site Special Account. The amounts paid to the United States under Paragraph 12 (Settling Defendants' Payment of Federal BPSOU Interim Response Costs), Paragraph 16 (Settling Federal Agencies' Payment of Response Costs for the BPSOU), and Paragraph 17 (Settling Defendants' Payment of BPSOU Future Response Costs) shall be deposited in the Silver Bow Creek Butte Area Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with any of the sites or operable units within the Silver Bow Creek Butte Area NPL Site or to the Clark Fork River Basin Special Account to be used to conduct or finance response actions at the Anaconda Smelter NPL Site, the Milltown Reservoir/Clark Fork River NPL Site, the Silver Bow Creek/Butte Area NPL Site or the Montana Pole NPL Site; or to be transferred by EPA to the EPA Hazardous Substance Superfund.

12. Settling Defendants' Payment of Federal BPSOU Interim Response Costs. Within thirty (30) days following the Effective Date, AR, on behalf of the Settling Defendants, shall pay $3,500,000 to the Silver Bow Creek Butte Area Site Special Account in settlement of the United States' claim for reimbursement of Federal BPSOU Interim Response Costs, in the manner provided in Paragraph 15 (Instructions for Payment of Federal BPSOU Interim Response Costs and Certain Oversight Costs for the BPSOU) of this Consent Decree. The amount paid by the Settling Defendants under this Paragraph shall be deposited into the Silver Bow Creek Butte Area Site Special Account as described in Paragraph 11 (The Silver Bow Creek Butte Area Site Special Account) above.

13. The Butte Site Special Account. EPA has established a special account within the EPA Hazardous Substance Superfund called the Butte Site Special Account. The amounts paid by the Settling Defendants to the United States under Paragraph 14 (Settling Defendants' Payment of Oversight Costs for the BPSOU) shall be deposited in the Butte Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the BPSOU or to be transferred by EPA to the Silver Bow Creek Butte Area Special Account or to EPA Hazardous Substance Superfund.

14. Settling Defendants' Payment of Oversight Costs for the BPSOU. In full satisfaction and settlement of the obligation to pay Oversight Costs for the BPSOU, AR, on behalf of the Settling Defendants, shall make the payments set forth below in this Paragraph 14.

a. Within thirty (30) days after the Effective Date, AR, on behalf of the Settling Defendants, shall pay $2,000,000 to the Butte Site Special Account for Oversight Costs for the BPSOU. The amount paid by the Settling Defendants under this Paragraph shall be

deposited into the Butte Site Special Account as described in Paragraph 13 (The Butte Site Special Account) above.

b. Within one year and thirty days after the Effective Date, AR, on behalf of the Settling Defendants, shall also pay $2,000,000 plus Interest to the Butte Site Special Account for Oversight Costs for the BPSOU. Interest on such payment shall be calculated from the Effective Date through and including the date on which the payment is received in the Butte Site Special Account.

c. Within two years and thirty days after the Effective Date, AR, on behalf of the Settling Defendants, shall also pay $2,400,000 plus Interest to the Butte Site Special Account for Oversight Costs for the BPSOU. Interest on such payment shall be calculated from the Effective Date through and including the date on which the payment is received in the Butte Site Special Account.

d. Within three years and thirty days after the Effective Date, AR, on behalf of the Settling Defendants, shall also pay $2,400,000 plus Interest to the Butte Site Special Account for Oversight Costs for the BPSOU. Interest on such payment shall be calculated from the Effective Date through and including the date on which the payment is received in the Butte Site Special Account.

e. Within four years and thirty days after the Effective Date, AR, on behalf of the Settling Defendants, shall also pay $2,400,000 plus Interest to the Butte Site Special Account for Oversight Costs for the BPSOU. Interest on such payment shall be calculated from the Effective Date through and including the date on which the payment is received in the Butte Site Special Account.

f. The United States may not recover from the Settling Defendants any Oversight Costs for the BPSOU that the United States or the State incurs at the BPSOU in excess of the amount paid by the Settling Defendants pursuant to this Paragraph except for additional oversight costs the United States or the State incurs based on their respective reserved rights to take additional actions under this Consent Decree pursuant to Section XVII (Covenants and Reservations by the United States and the State).

g. AR shall have the right to pre-pay the payments described in Subparagraphs 14.b, 14.c and 14.d above. However, should AR make a decision to pre-pay, it shall provide the United States with 15 days advance notice of its intent to do so.

15. Instructions for Payment of Federal BPSOU Interim Response Costs and Certain Oversight Costs for the BPSOU. The Financial Litigation Unit (FLU) of the United States Attorney's Office for the District of Montana shall provide Settling Defendants, in accordance with Paragraph 115 (Individuals and Addresses), with instructions regarding making payments to DOJ on behalf of EPA, for payments described pursuant to Paragraph 12 (Settling Defendants' Payment of Federal BPSOU Interim Response Costs) and Subparagraph 14.a (Settling Defendants' Payment of Oversight Costs for the BPSOU). The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this Consent Decree. For the payments required by Paragraph 12 and Subparagraph 14.a, Settling Defendants shall make such payments by Fedwire Electronic Funds Transfer (EFT), in accordance with the instructions provided under this Paragraph and including references to the CDCS Number, Site/Spill ID Number 08-22, and DJ Number 90-11-2-430. For payments made pursuant to Subparagraph 14.b through 14.e, payment shall be made in the manner described in

Paragraph 17. For each payment made under Paragraphs 12 and 14, Settling Defendants shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA and the EPA Cincinnati Finance Center, all in accordance with Paragraph 115 (Individuals and Addresses).

16. Settling Federal Agencies' Payment of Response Costs for the BPSOU. As soon as reasonably practicable after the Effective Date of this Consent Decree, the United States, on behalf of the Settling Federal Agencies, shall pay to EPA $10,000,000 to the Silver Bow Creek Butte Area Site Special Account for reimbursement of Federal BPSOU Past Response Costs, Oversight Costs for the BPSOU and Federal BPSOU Future Response Costs to be incurred by EPA at the BPSOU. The total amount to be paid by the Settling Federal Agencies pursuant to this Paragraph shall be deposited in the Silver Bow Creek Butte Area Site Special Account within the EPA Hazardous Substance Superfund described above in Paragraph 11 (The Silver Bow Creek Butte Area Site Special Account). If the payment to the EPA Hazardous Substances Superfund required by this Paragraph is not made as soon as reasonably practicable, the Director, Legal Enforcement Program, EPA Region 8, may raise any issues relating to payment to the appropriate Department of Justice Assistant Section Chief for the Environmental Defense Section. In the event that payment required by this Paragraph is not made within one hundred and twenty (120) days after the Effective Date, the United States, on behalf of SFAs, shall pay Interest on the unpaid balance, with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment. The Parties acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from the appropriated funds legally available for such purpose. Nothing in this Consent Decree

shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

17. Settling Defendants' Payment of BPSOU Future Response Costs.

a. The Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Federal BPSOU Future Response Costs that are not inconsistent with the NCP. The amount paid by the Settling Defendants under this Paragraph shall be deposited into the Silver Bow Creek Butte Area Site Special Account as described in Paragraph 11 (The Silver Bow Creek Butte Area Special Account) above. In the year following the Effective Date and in other years where BPSOU Future Response Costs are paid, the United States will exercise best efforts to send to the Settling Defendants an annual bill, including Cost Documentation, requiring payment of Federal BPSOU Future Response Costs. Any failure by the United States to provide such annual billing and/or complete Cost Documentation, however, shall not relieve the Settling Defendants of any obligation under this Consent Decree. The Settling Defendants shall make all payments within sixty (60) days of its receipt of each bill requiring payment, except as otherwise provided in Paragraph 18 (Dispute of BPSOU Future Response Costs). The Settling Defendants shall make all payments required by this Paragraph in the form of a wire transfer as described above, made payable to "EPA Silver Bow Creek Butte Area Special Account Hazardous Substance Superfund" and referencing the EPA Region and Site / Spill ID # 08-22, the DOJ case number 90-11-2-430, and the name and address of the party making payment. The Settling Defendants shall send a notice of such payment to the current EPA Site Attorney, the Cost Recovery Coordinator and the Director of Financial Management Programs,

both at the following address: US EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. The Fedwire EFT payment shall be sent as follows:

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"

In addition to the notices described above, for each payment made under Paragraphs 12, 14 and 17.a, Settling Defendants shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with Paragraph 115 (Individuals and Addresses).

b. The Settling Defendants shall reimburse the State for all independently incurred State BPSOU Future Response Costs that are not inconsistent with the NCP. In the year following the Effective Date and in other years where State BPSOU Future Response Costs are paid, the State will exercise best efforts to send the Settling Defendants as appropriate an annual bill, including Cost Documentation, requiring payment of the State's BPSOU Future Response Costs. Any failure by the State to provide such annual billing and/or complete Cost Documentation, however, shall not relieve the Settling Defendants of any obligation under this Consent Decree. The Settling Defendants shall make all payments within sixty (60) days of its receipt of each bill requiring payment, except as otherwise provided in Paragraph 18 (Dispute of BPSOU Future Response Costs). All payments to the State of Montana under this Section shall be paid by electronic funds transfer in accordance with the instructions provided by the State with the bill. The Settling Defendants shall contact the DEQ Project Officer at least 48 hours

prior to initiating the transfer to provide notice of the date and time of the expected transfer and to confirm the wiring instructions and account and bank routing numbers. If the DEQ Project Officer is unavailable, the Settling Defendants shall contact DEQ Legal Counsel identified in Section XXII (Notices and Submissions). Written confirmation of the payment shall be sent to the State as provided in Section XXII (Notices and Submissions).

18. Dispute of BPSOU Future Response Costs. The Settling Defendants may contest payment of any Federal or State BPSOU Future Response Costs under Paragraph 17 (Settling Defendants' Payment of BPSOU Future Response Costs) solely on the basis that: (a) the United States or the State has made an accounting error including attribution of BPSOU Future Response Costs to the Settling Defendants in a manner inconsistent with this Consent Decree and/or the SOW attached to this Consent Decree as Appendix D; (b) the United States or the State is seeking reimbursement of Oversight Costs for the BPSOU, costs for BTC Riparian Actions, Parrot Tailings Waste Removal costs or other State Restoration costs, other restoration or end land use costs, inconsistent with this Consent Decree; (c) the United States or the State is seeking reimbursement of costs that otherwise do not fall within the definition of Federal or State BPSOU Future Response Costs; (d) a cost item demanded for reimbursement represents costs that are inconsistent with the NCP; or (e) EPA or the State has failed to provide complete Cost Documentation as required by Paragraph 17 (Settling Defendants' Payment of BPSOU Future Response Costs). The failure of the United States or the State to provide complete Cost Documentation shall not relieve the Settling Defendants of any obligation under this Consent Decree, but it may provide the basis for the Settling Defendants to seek, through the dispute resolution provisions of Section XV (Dispute Resolution), a reduction in the Settling

Defendants' obligation to reimburse EPA or the State for those costs which the Settling Defendants claims are not fully supported by Cost Documentation. Any objection made under this Paragraph shall be made in writing within sixty (60) days of receipt of the bill and must be sent to the United States or the State. Any such objection shall specifically identify the contested Federal and State BPSOU Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 60-day period pay all uncontested Federal and State BPSOU Future Response Costs to the United States or the State in the manner described in Paragraph 17 (Settling Defendants' Payment of BPSOU Future Response Costs) and shall initiate the dispute resolution procedures in Section XV (Dispute Resolution). Any such payment made by the Settling Defendants shall be credited by the United States or the State only to the payment of the uncontested costs. If the United States or the State prevails in the dispute, within thirty (30) days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States or the State, in the manner described in Paragraph 17 (Settling Defendants' Payment of BPSOU Future Response Costs). If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest), if any, for which they did not prevail to the United States or the State, in the manner described in Paragraph 17 (Settling Defendants' Payment of BPSOU Future Response Costs). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States and/or the State for their respective BPSOU Future Response Costs.

19. Interest.

a. In the event that the payments required by (a) Paragraph 12 (Settling Defendants Payment of Federal BPSOU Interim Response Costs), (b) Paragraph 14 (Settling Defendants Payment of Oversight Costs for the BPSOU), (c) Paragraph 17 (Settling Defendants' Payment of BPSOU Future Response Costs); (d) Section XVI (Stipulated Penalties) or Paragraph 20 (Payment to the State) are not made within the time period specified in these Paragraphs or Sections, the Settling Defendants shall pay Interest or State Interest, respectively, on the unpaid balance consistent with the obligations described in Paragraphs 12, 14, 17, 20 and Section XVI (Stipulated Penalties).

b. The Interest and the State Interest, respectively, to be paid on the amounts due under Paragraphs 14 (Settling Defendants Payment of Oversight Costs for the BPSOU) and 20 (Payment to the State) shall begin to accrue thirty (30) days after the Effective Date.

c. The Interest to be paid on the amounts due under Paragraph 12 (Settling Defendants Payment of Federal BPSOU Interim Response Costs) shall begin to accrue sixty (60) days after the Effective Date. The Interest and the State Interest, respectively, to be paid on the amounts due under Paragraph 17 (Settling Defendants Payment of BPSOU Future Response Costs) shall begin to accrue sixty (60) days after the date of receipt by the Settling Defendants of the bill submitted by EPA or the State for such costs. The Interest and State Interest, respectively, to be paid on the amounts due under Section XVI (Stipulated Penalties) shall begin to accrue thirty (30) days after receipt of the stipulated penalty demand; provided, however, for disputed matters involving the performance of Work only, the accrual of interest is stayed if Settling Defendants initiate the dispute resolution procedures in Section XV (Dispute

Resolution), and interest shall not accrue until EPA issues a decision resolving the dispute as provided in Section XV (Dispute Resolution).

d. Interest and State Interest, respectively, shall continue to accrue through the date of the Settling Defendants' payment, except as provided above for accrual of interest on a stipulated penalty demand for matters involving the performance of Work.

e. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States or the State by virtue of the Settling Defendants' failure to make timely payments under this Section.

f. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 17 (Settling Defendants' Payment of BPSOU Future Response Costs).

20. AR Payment to the State of Montana. In full satisfaction and settlement of the obligation to fund BTC Riparian Actions under this Consent Decree, acknowledging AR's desire for flexibility to meet the timing of financial obligations under this Consent Decree, and in consideration for the State's performance of the BTC Riparian Actions in accordance with this Consent Decree, AR shall make and agrees it will not withhold the payments set forth below in this Paragraph 20.

a. Within thirty (30) days after the Effective Date, AR, on behalf of the Settling Defendants, shall provide a $10,500,000 cash payment to the State of Montana. Payment shall be made via wire transfer in accordance with instructions to be provided by the State of Montana for deposit in the BPSOU Account.

b. Within one year and thirty days after the Effective Date, AR, on behalf of the Settling Defendants, shall also pay $5,000,000 plus State Interest to the BPSOU Account. State Interest on such payment shall be calculated from the Effective Date through and including the date on which the payment is received in the BPSOU Account.

c. Within two years and thirty days after the Effective Date, AR, on behalf of the Settling Defendants, shall also pay $5,000,000 plus State Interest to the BPSOU Account. State Interest on such payment shall be calculated from the Effective Date through and including the date on which the payment is received in the BPSOU Account.

d. AR, on behalf of Settling Defendants, shall contact Ms. Jenny Chambers, Waste Management Division Director, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, (406) 444-6383, jchambers@mt.gov at least 48 hours prior to initiating a transfer to provide notice of the date, time, and amount of the expected transfer and to confirm the wiring instructions, bank routing, and account numbers.

e. AR shall have the right to pre-pay the payments described in Subparagraphs 20.b and 20.c above. However, should AR make a decision to pre-pay any amount, it shall contact Ms. Jenny Chambers, Waste Management Division Director, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, (406) 444-6383, jchambers@mt.gov at least 15 days in advance of its intent to do so.

f. Prior to making the payments described in Subparagraphs 20.b and 20.c above, AR, on behalf of Settling Defendants, shall contact Ms. Jenny Chambers, Waste Management Division Director, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, (406) 444-6383, jchambers@mt.gov and request the

State's invoice owed on each payment (which will include State Interest), which AR may review prior to payment for mathematical accuracy and consistency with the terms of this Consent Decree. In the event of any dispute between AR and the State over the amount of interest owed, such dispute shall not delay AR's payment of the amounts due under this Paragraph and any amount of interest owed on those amounts that AR does not dispute. Any dispute over interest owed by AR shall be subject to dispute resolution under Paragraph 78 (Disputes Solely Between the State and AR).

g. AR agrees to identify and provide a disposal location acceptable to the State for up to 200,000 cubic yards of tailings, waste, contaminated soils, and contaminated sediments (collectively referred to in this Paragraph 20.g as Waste Materials) from DEQ's BTC Riparian Actions upon the terms set forth in this Consent Decree. The State agrees that development of a repository at the Timber Butte location, generally shown on Appendix H, Figure 1, would be acceptable. In the event a repository at Timber Butte is not developed, the State agrees that the Butte Mine Waste Repository (BMWR) would be acceptable, with AR's additional payments outlined in this Paragraph. If developed by AR, AR is responsible for all costs associated with the development, construction and closure of any repository. AR is also responsible for all costs of construction, resurfacing, and maintenance of roads along the final haul route, the development, operation, and final stabilization of the selected repository, and outreach to the community along the proposed haul route to the selected repository.

(i) By July 2, 2020, AR will confirm in writing to DEQ whether a repository at Timber Butte will be developed and made available to DEQ for disposal of up to 200,000 cubic yards of Waste Materials. If the Timber Butte repository is not developed,

AR will provide DEQ with a 30% design for what would have been the haul route to the repository at Timber Butte and a 30% design for the proposed haul route to the BMWR. The 30% designs must be in sufficient detail for a contractor bidding on the project to determine accurately the distance and conditions of transport over the two haul routes, the grades of the two haul routes, and any other information that may affect the cost of the two haul routes, such as railroad crossings. DEQ will review and provide comments to AR within 30 days following DEQ's receipt of the submitted 30% designs and related information. Within 30 days following receipt of DEQ's comments, AR will incorporate DEQ's comments or invoke the dispute resolution procedures set forth in Section XV, Paragraph 78 (Disputes Solely Between the State and AR).

(ii) If the BMWR is selected by AR as the repository for BTC Riparian Actions Waste Materials, the haul route to the BMWR is generally shown on Appendix H, Figure 1.

(iii) DEQ will use the 30% designs and related information prepared by AR, with DEQ's changes incorporated, in its bid documents. The bid sheet will specify that the contractor must provide unit prices and resultant bid costs on a deductive bid alternative for disposal at the Timber Butte repository versus disposal at the BMWR. The unit prices will be per cubic yard of BTC Riparian Actions Waste Materials disposed of at the repository.

(iv) Following DEQ's selection of the lowest responsible and responsive bidder, DEQ will notify AR of the deductive bid alternative unit prices per cubic yard and resultant costs for disposal at the Timber Butte repository and for disposal at the

BMWR. DEQ will attach the bid documents that show the DEQ-selected contractor's bid on the deductive bid alternative and that the bid was based on and is consistent with the 30% design and other information provided by AR that is described in Subparagraph 20.g.(i), above. AR shall have no involvement in DEQ's selection of DEQ's contractor; provided, however, DEQ commits to award the contract in compliance with state procurement laws.

(v) Within 30 days after DEQ starts the transport of BTC Riparian Actions Waste Materials to the BMWR, AR will pay DEQ an amount equal to 50% of the resultant cost difference between the deductive bid alternative for BMWR less the deductive bid alternative for the Timber Butte repository based on DEQ's estimate of the total cubic yards to be hauled to BMWR. AR shall have no ability to dispute this required payment. AR shall follow the procedure described in Paragraph 20.d and make such payments, and the payment described in subparagraph 20.g.(vii) below, by wire transfer to the BPSOU Account.

(vi) DEQ will develop prescriptive requirements in its bid documents on the methodology for determining volume estimates of BTC Riparian Actions Waste Materials removed and require its contractor to maintain records of the volume of Waste Materials that are transported to the repository. Following completion of the BTC Riparian Actions work, DEQ will provide AR with a final estimate of the total cubic yards of Waste Materials transported to and disposed of at the selected repository, and an invoice for the remaining payment balance, if any, for transport and disposal of Waste Materials at BMWR in excess of AR's payment made under Subparagraph 20.g.(iv) above. DEQ shall provide to Settling Defendants supporting documentation to describe and corroborate the

total volume of Waste Materials hauled to the BMWR in the same manner and timing that it submits documentation to EPA. DEQ will not object to AR's ability to audit the quantify of estimated volume following an off-load at the BMWR, so long as such audit procedures do not delay or inhibit DEQ's contractor means and methods. If AR believes the estimated volume is not correct, AR must provide DEQ notice of its assertion and documentation of the survey, including photos if any, within 48 hours of conducting the audit.

(vii) AR shall make the payment to DEQ within thirty (30) days of receipt of the invoice from DEQ or within thirty (30) days of DEQ's documentation described in subparagraph 20.g.(vi)., above, whichever is later, unless AR invokes the dispute resolution procedures set forth in Section XV, Paragraph 78 (Disputes Solely Between the State and AR). AR may contest DEQ's invoice only on the basis that the invoice amount is: (a) not supported by DEQ's provided documentation described in subparagraph 20.g.(vi) above; or (b) incorrect due to a mathematical error. In the event of any dispute between AR and the State over the amount owed, such dispute shall not delay AR's payment of any undisputed amount due under this Paragraph 20.g.

21. Use of the BPSOU Account. The State of Montana shall use the principal amount and any interest or Earnings on the BPSOU Account solely for implementation of the BTC Riparian Actions; and, if and to the extent funds are not required for the BTC Riparian Actions, such funds can be used for (i) other State Restoration actions coordinated with the Remedy and (ii) end land use actions identified in the SOW (Attachment C, Addendum 1 (Further Remedial Elements Scope of Work – End Land Use Additions)). The BPSOU Account shall be a State special revenue fund, as provided for in Mont. Code Ann. § 17-2-102(1)(b)(i), and no portion of

the amounts deposited in the BPSOU Account under this Consent Decree, or any State Interest or Earnings thereon, is to be treated as State General Fund money, nor is any portion to be converted or transferred to the State General Fund.

VII. PERFORMANCE OF THE WORK BY THE SETTLING DEFENDANTS

22. Settling Defendants' Work. Work described in the SOW is designated as Work to be performed by the Settling Defendants. The BTC Riparian Actions that DEQ has agreed to perform are addressed separately and do not fall within the definition of "Work" under this Consent Decree. Unless otherwise specified, references to any approval in this Consent Decree or attachments means that the approval is by EPA *in consultation with the DEQ*, even when EPA or DEQ is not explicitly mentioned. The following provisions apply to Work to be performed by the Settling Defendants.

23. Coordination and Supervision.

a. Project Coordinators.

(i) Settling Defendants' Project Coordinator must have sufficient technical expertise to coordinate the Work. Settling Defendants' Project Coordinator may not be an attorney representing any Settling Defendant in this matter and may not act as the Supervising Contractor. Settling Defendants' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(ii) EPA shall designate and notify the Settling Defendants of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the

NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the BPSOU constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(iii) The State shall designate and notify EPA and the Settling Defendants of its Project Coordinator and Alternate Project Coordinator. The State may designate other representatives, including its employees, contractors and/or consultants to oversee the Work. For any meetings and inspections in which EPA's Project Coordinator participates, the State's Project Coordinator also may participate. Settling Defendants shall notify the State reasonably in advance of any such meetings or inspections.

(iv) Settling Defendants' Project Coordinators shall meet with EPA's and the State's Project Coordinators at least monthly until the Certification of Remedial Action Completion pursuant to Paragraph 4.7 of the SOW.

(v) Supervising Contractor. Settling Defendants may propose one or more Supervising Contractors to supervise different elements of the Work. Settling Defendants' proposed Supervising Contractor(s) must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

b. Procedures for Disapproval/Notice to Proceed.

(i) Settling Defendants shall designate, and notify EPA, within 30 days after the Effective Date, of the names, contact information, and qualifications of the

Settling Defendants' proposed Supervising Contractor(s). Settling Defendants Project Coordinators are Josh Bryson for AR and Julia Crain and Eric Hassler for BSB, as provided below.

(ii) EPA, after a reasonable opportunity for review and comment by DEQ, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Supervising Contractor(s), and any subsequently named Project Coordinator, as applicable. If EPA issues a notice of disapproval, Settling Defendants shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators or Supervising Contractor(s), as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. Settling Defendants may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of Settling Defendants' selection.

(iii) Settling Defendants may change their Project Coordinators and/or Supervising Contractor(s), as applicable, by following the procedures of Subparagraph 23.b.(i) and (ii).

(iv) Notwithstanding the procedures of stated in this Paragraph, Settling Defendants have proposed, and EPA has authorized Settling Defendants to proceed, regarding the following Project Coordinators: Josh Bryson for Atlantic Richfield Company and Julia Crain and Eric Hassler for BSB.

24. Settling Defendants Performance of Work in Accordance with SOW. Settling Defendants shall: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and

monitor the effectiveness of the RA; all in accordance with the SOW and its attachments, and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Consent Decree or SOW shall be subject to approval by EPA in accordance with Paragraph 6.6 (Approval of Deliverables) of the SOW.

25. Emergencies and Releases for Settling Defendants. Settling Defendants shall comply with the emergency and release response and reporting requirements under Paragraph 4.4 (Emergency Response and Reporting) of the SOW. Subject to Section XVII (Covenants and Reservations by the United States and the State), nothing in this Consent Decree, including Paragraph 4.4 of the SOW (Emergency Response and Reporting), limits any authority of Plaintiffs: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the BPSOU, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the BPSOU. If, due to Settling Defendants' failure to take appropriate response action under Paragraph 4.4 of the SOW (Emergency Response and Reporting), EPA or, as appropriate, the State takes such action instead, Settling Defendants shall reimburse EPA and the State under Paragraph 17 (Settling Defendants' Payment of BPSOU Future Response Costs) for all costs of the response action in accordance with the terms of Paragraph 17.

26. Community Involvement by the Settling Defendants. If requested by EPA, Settling Defendants shall conduct community involvement activities under EPA's oversight as

provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator.

27. Modification of SOW or Related Deliverables as to Settling Defendants' Work.

a. If EPA, in consultation with DEQ, determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the scope of the remedy set forth in Paragraph 1.3 of the SOW (Scope of the Remedy), then EPA may notify Settling Defendants of such modification. If Settling Defendants object to the modification, they may, within 30 days after EPA's notification, seek dispute resolution under Section XV (Dispute Resolution).

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Settling Defendants invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Defendants shall implement all work required by such modification. Settling Defendants shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Paragraph 1.3 of the SOW may only be amended or modified by written agreement of the United States, the State and Settling Defendants, with approval from the Court, as a material modification under Paragraph 119 of this Consent Decree.

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

28. No Warranty for Settling Defendants. Nothing in this Consent Decree, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW or related deliverables will achieve the Performance Standards.

VIII. PERFORMANCE OF THE BTC RIPARIAN ACTIONS BY DEQ

29. DEQ BTC Riparian Actions. The following provisions apply to BTC Riparian Actions to be performed by the DEQ. This Section describes how DEQ, with additional oversight from EPA, will oversee, manage, coordinate, and implement the BTC Riparian Actions and obtain all EPA approvals required by Appendix H using the funds provided by AR under Paragraph 20 of this Consent Decree. Except as provided in Paragraphs 33 (EPA, Settling Defendants, and DEQ Disputes) and 38 (Modification of Appendix H or Related Deliverables for BTC Riparian Actions) of this Consent Decree, the duties and requirements described in this Section are enforceable only by the State and the United States, and nothing in this Section shall be deemed to create a right of any other party, including, but not limited to any Settling Defendant or any third party, against the State or the United States to enforce the terms of this Section.

30. Performance of BTC Riparian Actions in Accordance with Appendix H. DEQ shall: (a) develop the DEQ-designated RD and (b) perform the DEQ-designated RA; all in accordance with Appendix H and all EPA-approved, conditionally-approved, or modified deliverables. All deliverables from DEQ required to be submitted for approval under the

Consent Decree or Appendix H shall be subject to approval by EPA in accordance with Paragraph 6.6 (Approval of Deliverables) of Appendix H. Copies of all draft and final deliverables described in Appendix H shall be shared with Settling Defendants' Project Coordinators when DEQ transmits such documents to EPA. Upon submission of any plan, report, or other document by the DEQ to EPA for review and comment as required by this Consent Decree or the SMOA, EPA shall conduct its review and submit comments, if any, based only on technical adequacy and on consistency with CERCLA, the NCP, the ROD, the SMOA and this Consent Decree. Settling Defendants may also review DEQ deliverables and submit comments, if any, to EPA and DEQ, based only on technical adequacy and on consistency with CERCLA, the NCP, the ROD, and this Consent Decree. DEQ shall incorporate or attempt to resolve all comments submitted by EPA and Settling Defendants, and DEQ shall notify EPA and Settling Defendants of the disposition of comments prior to completing or revising the document. State Restoration activities that are in addition to Remedy, such as the Parrot Tailings Waste Removal, are not a State Restoration project integrated with the Remedy and do not require approval by EPA. EPA's oversight of the restoration work integrated with the Remedy at the Confluence Area will be conducted only to the extent needed to oversee and coordinate remedial actions at the BPSOU. DEQ's commitment to implement the BTC Riparian Actions is limited to attainment of BTC Riparian Actions Performance Standards, as described in Appendix H and Attachment C to the SOW, Section 5 (the Blacktail Creek Remediation and Contaminated Groundwater Hydraulic Control) (Settling Defendants will complete groundwater remedy elements). Unless EPA agrees otherwise, DEQ shall not commence physical Remedial Action

construction activities on the Site unless the Remedial Action Work Plan(s) have been approved by EPA.

31. Contractor Interaction. DEQ shall be responsible for procuring contractors throughout the Remedial Design and Remedial Action process for the BTC Riparian Actions, and all other matters related to implementing and directly overseeing the project. DEQ agrees to coordinate its contractors' activities with Settling Defendants and their contractors performing Work within and adjacent to the BTC Riparian Actions project area to promote project efficiencies and safe work practices and to prevent adverse impacts to existing or planned Work and/or BTC Riparian Actions. During Remedial Design and Remedial Action for the BTC Riparian Actions, EPA and DEQ will oversee the performance of the BTC Riparian Action, but EPA shall not supervise or direct DEQ's contractors or modify the work that the contractors have been directed by the State to perform. Upon agreement by DEQ and by EPA that a modification to a particular construction contract is warranted (except for the contract changes that pertain only to State Restoration that is not a restoration project integrated with the Remedy which require DEQ approval only), DEQ shall make the necessary changes through work directive, change order or contract amendment.

32. DEQ Procurement. DEQ shall undertake all procurement actions in implementing the BTC Riparian Actions in a manner consistent with State law.

33. EPA, Settling Defendants, and DEQ Disputes. Any disagreement between EPA and DEQ regarding approvals or implementation of the BTC Riparian Action shall be the subject of the dispute resolution procedures section of the SMOA in accordance with its terms. Disputes among EPA, DEQ, and Settling Defendants regarding approvals of the BTC Riparian Actions,

which are limited to Paragraphs 3.8 (Final (100%) RDs), 4.1 (RA Work Plans), 4.6 (RA Completion), or 4.7 (Certification of BTC Riparian Actions Completion) of Appendix H, shall be subject to the dispute resolution procedures in Paragraphs 70 through 76 of this Consent Decree.

34. United States and State Cooperation. The United States and the State shall cooperate to the fullest extent possible to maximize the use of the resources available for and the environmental benefits to the BPSOU in the successful and cost-effective completion of the DEQ-designated Remedial Design, Remedial Action, Operation and Maintenance, and any modifications thereto. When the State provides EPA with a submittal regarding the BTC Riparian Actions and/or State Restoration for the BPSOU that is neither privileged nor confidential, the State shall concurrently provide a copy of that submittal to AR's and BSB's Project Coordinator designated under Paragraph 22 (Settling Defendants' Work).

35. Settling Defendants and State Cooperation. Settling Defendants and the State agree to cooperate on scheduling and coordination of their respective work obligations. As outlined in Paragraph 20.g of this Consent Decree, AR shall provide an acceptable disposal location or locations for up to 200,000 cubic yards of tailings, waste, and contaminated soils removed by DEQ from the BTC Riparian Actions (as shown in Section 5 of the Remedial Elements Work Plan Attachment to the SOW, Attachment C), and DEQ shall be responsible for transporting that waste to the disposal site(s). DEQ will transport to and dispose of all municipal wastes it encounters at an appropriate permitted facility. DEQ shall manage construction de-watering water from the BTC Riparian Actions on site where feasible. AR will take the State's BTC Riparian Actions construction de-watering water at the Butte Treatment Lagoons to the extent treatment is needed and at times when the volume and chemistry of such water will not

overwhelm the Butte Treatment Lagoons' capacity and/or prevent it from meeting discharge standards, as approved by EPA during Remedial Design. Construction water meeting temporary variance standards does not require treatment.

36. Emergencies and Releases for DEQ. For BTC Riparian Actions, DEQ shall comply with the emergency and release response and reporting requirements under Paragraph 4.4 (Emergency Response and Reporting) of Appendix H. Nothing in this Consent Decree or the SOW limit any authority of EPA or DEQ to

(a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the BPSOU, or

(b) direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

37. Community Involvement. If requested by EPA, DEQ shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of Appendix H.

38. Modification of Appendix H or Related Deliverables for BTC Riparian Actions.

a. If EPA, after conferring with DEQ, determines that it is necessary to modify the BTC Riparian Actions specified in Appendix H and/or in deliverables developed under Appendix H in order to achieve and/or maintain the BTC Riparian Actions Performance Standards for which DEQ is responsible (which do not include surface water or ground water ARAR performance standards for which the Settling Defendants are responsible) or to carry out

the BTC Riparian Actions, and such modification is consistent with the scope of the remedy set forth in Paragraph 1.3 of Appendix H (Scope of the Remedy) and SOW Attachment C, Section 5 (Blacktail Creek Remediation), then EPA may notify DEQ of such modification, and contemporaneously inform Settling Defendants of such modification. In addition, with EPA approval, DEQ may make modifications consistent with this Paragraph, Paragraph 1.3 of Appendix H, and SOW Attachment C, Section 5 (Blacktail Creek Remediation) and contemporaneously inform Settling Defendants of any such modifications. If DEQ objects to the modification or to EPA's disapproval of a proposed modification, DEQ may, within 30 days after EPA's notification, seek dispute resolution under the SMOA. If Settling Defendants object to EPA's modification or to EPA's approval or disapproval of a modification proposed by DEQ, but only the modification, approval, or disapproval covered by this Paragraph as to Paragraphs 3.8 (Final (100%) RDs), 4.1 (RA Work Plans), 4.6 (RA Completion), or 4.7 (Certification of BTC Riparian Actions Completion) of Appendix H, or to EPA's approval of a modification that changes the requirements of SOW Attachment C, Section 5 (Blacktail Creek Remediation), Settling Defendants may seek dispute resolution under Paragraphs 72 through 76 of this Consent Decree.

b. Appendix H and/or related work plans shall be modified: (1) in accordance with the modification issued or approved by EPA; or (2) if DEQ invokes dispute resolution under the SMOA or if Settling Defendants invokes dispute resolution under Paragraphs 72 through 76 of this Consent Decree, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree,

and DEQ shall implement all activities required by such modification. DEQ shall incorporate the modification into the deliverable.

39. State Implementation of Parrot Tailings Waste Removal. The State is implementing the Parrot Tailings Waste Removal as outlined in the BAO Plan. For purposes of this Paragraph, the Parties will work cooperatively and coordinate the Settling Defendants' Work and Parrot Tailings Waste Removal during implementation of the Parrot Tailings Waste Removal.

40. No Warranty by DEQ. Nothing in this Consent Decree, Appendix H or any deliverable required under Appendix H constitutes a warranty or representation of any kind by EPA or the State that compliance with the BTC Riparian Actions requirements set forth Appendix H, including BTC Riparian Actions Performance Standards, or related deliverables, will achieve the Performance Standards.

IX. REMEDY REVIEW

41. Periodic Review. Settling Defendants shall conduct, in accordance with Paragraph 4.8 (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

42. EPA Selection of Further Response Actions. If EPA, in consultation with DEQ, determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the BPSOU in accordance with the requirements of CERCLA and the NCP.

43. Opportunity To Comment. The Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, shall be provided with an opportunity to comment on

any further response actions proposed by EPA, in consultation with DEQ, as a result of the review conducted pursuant to Section 121(c) of CERCLA, and to submit written comments for the record during the comment period.

44. Settling Defendants' Obligation To Perform Further Response Actions Pursuant to this Consent Decree. In addition to requirements for further or additional response actions contained in this Consent Decree, if EPA, in consultation with DEQ, selects further response actions for the BPSOU pursuant to an ESD or minor modification memorandum, the Settling Defendants shall undertake such further response actions to the extent that such further actions may be required under this Consent Decree because the further response selection may be lawfully required under an ESD or minor modification to the ROD and the reopener conditions in Paragraph 89 or Paragraph 90 (Pre-certification and Post-certification Reservations) are satisfied. The Settling Defendants may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute (1) EPA's determination that such further actions may be required under this Consent Decree pursuant to an ESD or minor modification to the ROD and/or the reopener conditions of Paragraph 89 or Paragraph 90 (Pre-certification and Post-certification Reservations) of XVII (Covenants and Reservations by the United States and the State) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions, including whether such actions may only be selected through amendment of the ROD or EPA's action is inconsistent with the NCP or this Consent Decree. Disputes pertaining to (1) EPA's determination that such further actions may be required under this Consent Decree pursuant to an ESD or minor modification to the ROD and/or the reopener conditions of Paragraph 89 or

Paragraph 90 (Pre-certification and Post-certification Reservations) of XVII (Covenants and Reservations by the United States and the State) are satisfied, and/or (2) EPA's determination that the Remedial Action is not protective of human health and the environment, shall be resolved pursuant to Paragraph 75 (Record Review); disputes pertaining to (3) EPA's selection of the further response actions, including whether such actions may only be selected through amendment of the ROD, or EPA's action is inconsistent with the NCP or this Consent Decree, shall be resolved pursuant to Paragraph 76 (Other Review). Nothing in this Paragraph affects or alters EPA's or DEQ's reservations under Paragraph 89 (United States' and State's Pre-Certification Reservations) or Paragraph 90 (United States' and the State's Post-Certification Reservations); or the United States' reservations under Paragraph 92 (General Reservation of Rights), including but not limited to EPA's or DEQ's authority to assert new claims in the Federal Action (but not under this Consent Decree) or bring a new action or issue an administrative order for further response action in accordance with Paragraph 89 (United States' and States' Pre-Certification Reservations) or Paragraph 90 (United States' and State's Post-Certification Reservations); or the United States' reservations under Paragraph 92 (General Reservation of Rights).

45. Submissions of Plans. If the Settling Defendants are required to perform further response actions pursuant to Paragraph 44 (Settling Defendants' Obligation To Perform Further Response Actions Pursuant to this Consent Decree), they shall submit to EPA for approval, in consultation with DEQ, a schedule and plan for such work. After approval of the schedule and plan by EPA, following a reasonable opportunity for comment by DEQ, the Settling Defendants shall implement the plan in accordance with the provisions of this Consent Decree.

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

46. Sampling QA/QC. The Settling Defendants shall use applicable portions of the approved quality assurance, quality control, and chain of custody procedures for all samples in accordance with the CFRSSI QAPP and any amendments made thereto or alternative plan approved for use in place of the CFRSSI QAPP during the course of the implementation of this Consent Decree. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA in consultation with DEQ shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. The Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the Settling Defendants in implementing this Consent Decree. In addition, the Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA and the State pursuant to the QAPP for quality assurance monitoring. The Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the CFRSSI LAP and any amendments made thereto or alternative protocol approved for use in place of the CFRSSI QAPP during the course of the implementation of this Consent Decree. The Settling Defendants shall ensure that all laboratories they utilize for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree will be conducted in accordance with the procedures set forth in the QAPP or approved protocol.

47. Sampling. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and DEQ or their authorized representatives. The Settling Defendants shall notify EPA and DEQ not less than ten (10) days in advance of any non-routine sample collection activity unless shorter notice is agreed to by EPA and DEQ. In addition, EPA and the State shall have the right to take any additional samples that EPA or DEQ deem necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of any samples they take as part of EPA's oversight of the Settling Defendants' implementation of the Work.

48. Data Submittal. The Settling Defendants shall submit to both EPA and DEQ one paper copy and an electronic copy of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Settling Defendants with respect to the BPSOU and/or the implementation of this Consent Decree in the next monthly progress report, unless EPA, after consultation with DEQ, agrees otherwise or unless otherwise provided for in the SOW, RD/RA Work Plan or resulting plans.

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

XI. ACCESS AND INSTITUTIONAL CONTROLS

50. Access and Use of Settling Defendant Property. If any Settling Defendant owns, or has a property interest that confers the legal ability to control access on real property within the BPSOU, where access and/or land/water use restrictions are needed to implement this Consent Decree, that Settling Defendant shall, with respect to those properties:

a. Commencing on the date of lodging of this Consent Decree, provide the United States, the State, the other Settling Defendants, and their representatives and contractors, access at all reasonable times to any real property to which access is required for the implementation of this Consent Decree, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(i) Monitoring the Work and the BTC Riparian Actions;

(ii) Implementing the Work and the BTC Riparian Actions;

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

(iv) Conducting investigations relating to contamination at or near the BPSOU;

(v) Obtaining samples;

(vi) State Restoration planning, including the Parrot Tailings Waste Removal; provided however, access for State Restoration planning does not include access for construction or any other activities that involve physical disturbance of real property outside the Parrot Tailings Waste Removal and BTC Riparian Actions project areas. The Parties agree that surface sampling is not considered to be "physical disturbance of real property";

(vii) Coordinating the design and implementation of the Work with State Restoration, including the Parrot Tailings Waste Removal, and BTC Riparian Actions;

(viii) Assessing the need for, planning, or implementing additional response actions at or near the BPSOU;

(ix) Implementing the Work pursuant to the conditions set forth in Paragraph 93 (Work Takeover) of this Consent Decree;

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

(xi) Determining whether the BPSOU is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

Prior to obtaining access to any real property, the United States, the State and the Settling Defendants shall consider any health and safety limitations previously identified by the other Settling Defendants for the BPSOU. The United States and the State acknowledge that Source Area Property often is located in industrial areas of the BPSOU and due care should be taken by agency officials and representatives when accessing such property.

b. Commencing on the date of lodging of this Consent Decree, refrain from using any real property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree (including but not limited to utilization of the ground water for potable domestic use; interference with or destruction of monitoring wells or equipment; interference with or destruction of stormwater conveyance ditches or other similar systems and stormwater basins; interference with or destruction of waste caps and cap vegetation; interference or destruction of any interception, pumping, or treatment plant facilities; or other uses contrary to

restrictions on the use or development of property contained in the Institutional Controls Implementation and Assurance Plan for the BPSOU described in Paragraph 54 (Institutional Controls)), except as required to implement the SOW and its Attachments, or as EPA and DEQ authorize in writing after receipt of a written request from a Settling Defendant or property owner to engage in an otherwise restricted activity; and

c. For that Source Area Property only, where new use restrictions are required as is described on Figure 6 in the Institutional Controls Implementation and Assurance Plan for the Butte Site, execute and record in the Recorder's Office of Silver Bow County in the State of Montana, an easement or deed restriction consistent with Montana law, running with the land, which grants a right of access for the purpose of implementing the Remedy and any modifications thereto, and which contains the applicable restrictions referenced in Subparagraph 50.b; provided however, such restrictions shall not interfere with that Settling Defendant's ability to satisfy any response action required by EPA or DEQ. Each Settling Defendant for their Source Area Property shall grant the access rights and the rights to enforce the land and water use restrictions and easements to the United States (on behalf of EPA), the State, and their representatives for certain of their real property, all as described in the Institutional Controls Implementation and Assurance Plan for the Butte Site described in Paragraph 54. Where appropriate to meet the objectives of this Consent Decree, the United States and the State, or their designees, may agree to be the beneficiary of deed restrictions or accept a conservation easement and may enforce such restrictions or covenants which will run with the land.

d. The placement of new use restrictions and the recording of easements or deed restrictions described in Subparagraph 50.c, respectively, shall not be required for any real

property within the BPSOU where a right of access and use restrictions have been granted by the property owner in a conveyance of record or will be granted by a Settling Defendant in a conveyance described in the Institutional Controls Implementation and Assurance Plan. Prior to lodging of this Consent Decree, EPA and DEQ have reviewed the list of certain prior and anticipated conveyances provided by the Settling Defendants and included in Appendix E to this Consent Decree, and approved the conveyances described in Appendix E as meeting the requirements of Subparagraph 50.c.

e. For that Source Area Property that each Settling Defendant owns or has the legal ability to control within the BPSOU for which new restrictions are required, as described in Appendix E to this Consent Decree, that Settling Defendant shall, within 60 days following the Effective Date of this Consent Decree, record the easement required by Subparagraph 50.c and provide EPA and DEQ with a copy of the original recorded easement.

51. Access and Use of Third-Party Property. If any part of the BPSOU where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than the Settling Defendants, the Settling Defendants, as applicable, shall use best efforts to secure from such persons an agreement to provide access thereto for the Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives and contractors, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Subparagraph 50.a of this Consent Decree. Settling Defendants shall provide a copy of such access and use restriction agreement(s) to EPA and the State. Settling Defendants also shall use best efforts to enforce land and/or water use restrictions established in the ROD as required by the Institutional Controls

Implementation and Assurance Plan for the BPSOU, attached as Appendix E to this Consent Decree, to ensure the protectiveness of or non-interference with the Remedy and any modifications thereto. EPA has ordered certain actions relating to the Remedial Action to be performed by the owners/operators of Railroad Properties in a separate enforcement proceeding. The provisions and requirements of Paragraphs 51 and 52 are not applicable to access and use of any part of the Railroad Properties unless access or use on Railroad Properties is required for implementation of the Work, which does not include the actions that person(s) who own, operate, and/or control the Railroad Properties are required to perform.

52. Best Efforts. For purposes of Paragraph 51 (Access and Use of Third Party Property) of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access agreements, land/water use restrictions, and/or easements or deed restrictions (collectively "Access"). For the BPSOU, "reasonable sums" shall be determined by considering, among other factors, the potentially responsible party status of the current owners and the degree of general cooperation shown by these parties. The United States may, as it deems appropriate, assist the Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of deed restrictions running with the land. The Settling Defendants shall reimburse the United States in accordance with the procedures in Section XV (Payment of Response Costs), for all costs incurred by the United States in obtaining such access and/or land/water use restrictions.

53. Controlled Ground Water Area Petition. BSB has obtained from the State Department of Natural Resources a petition for a controlled ground water area for the BPSOU alluvial aquifer. The petition also addresses the Butte Mine Flooding operable unit and the

ground water contamination associated with the Montana Pole Site. AR has funded BSB, and the other Settling Defendants shall continue to cooperate with BSB, in: (i) the enforcement of the controlled ground water area; and (ii) the funding of any monitoring and enforcement of any water well use restrictions required by the ground water control petition. The Settling Defendants shall also fund BSB's public education and related activities related to the controlled ground water area, as those activities are described in the SOW.

54. Institutional Controls. In addition to the ground water control petition described above in Paragraph 53 (Controlled Ground Water Area Petition), certain land or water use restrictions, in the form of local laws, regulations, ordinances, or other governmental or private controls ("Institutional Controls") are described in the 2006 Record of Decision. Implementation of Institutional Controls is an element of the Work Settling Defendants are required to perform under this Consent Decree, as described in the Institutional Controls Implementation and Assurance Plan for the Butte Site, attached as Appendix E to this Consent Decree; provided, however, Work does not include Residential Solid Media Remedial Action which is implemented through the RMAP-related activities which are described in the Institutional Control Implementation and Assurance Plan for the BPSOU Site. If EPA, in consultation with DEQ, determines that additional land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, the Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

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

XII. FINANCIAL ASSURANCE

56. Financial Assurance Requirements. In order to ensure completion of the Work, Settling Defendants shall secure financial assurance, initially in the amount of $125 million ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents (if any) available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Settling Defendants may use multiple mechanisms of surety bonds guaranteeing payment, letters of credit, trust funds and/or insurance policies as described below.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; or

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that is eligible to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency.

e. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Settling Defendant or has a "substantial business relationship" (as defined in 40 C.F.R. §264.141(h)) with a Settling Defendant; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 57.

57. Settling Defendants have selected the combination of financial assurance mechanisms described in Paragraph 59 below. In the event Settling Defendants seek to provide financial assurance by means of a guarantee under Subparagraph 56.e, Settling Defendants must at that time:

a. Demonstrate that:

(i) the guarantor has:

(1) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total

liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(2) Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations (including but not limited to obligations under CERCLA, RCRA, and CECRA) financially assured through the use of a financial test or guarantee; and

(3) Tangible net worth of at least $10 million; and

(4) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations (including but not limited to CERCLA, CECRA and RCRA obligations) financially assured through the use of a financial test or guarantee; or

(ii) The guarantor has:

(1) A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(2) Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations (including but not limited to CERCLA, CECRA and RCRA obligations) financially assured through the use of a financial test or guarantee; and

(3) Tangible net worth of at least $10 million; and

(4) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations (including but not limited to CERCLA, CECRA and RCRA obligations) financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

c. Settling Defendants shall not seek to provide financial assurance by means of a guarantee under Subparagraph 56.e before EPA has approved the KRECCR.

58. Settling Defendants providing financial assurance by means of a guarantee under Subparagraph 56.e must also:

a. Annually resubmit the documents described in Subparagraph 57.b within 90 days after the close of the guarantor's fiscal year;

b. Notify EPA within 30 days after the guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the guarantor in addition to those specified above; EPA may make such a request at any time based on a belief that the affected guarantor may no longer meet the financial test requirements of this Section.

59. Financial Assurance Mechanism. Settling Defendants have selected, and EPA has found satisfactory, as an initial financial assurance a combination of (i) trust funds established to fund Work and for the benefit of EPA and (ii) one or more irrevocable letters of credit and/or surety bonds prepared in accordance with Paragraph 56 (Financial Assurance Requirements). If not previously approved, within 30 days after the Effective Date, or 30 days after EPA's approval of the form and substance of Settling Defendants' financial assurance, whichever is later, Settling Defendants shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Region 8 financial assurance specialist, to the United States, and to EPA and the State as specified in Section XXII (Notices and Submissions).

60. Diligent Monitoring of Financial Assurance. Settling Defendants shall diligently monitor the adequacy of the financial assurance. If any Settling Defendant becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Settling Defendant shall notify EPA of such information within 15 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Settling Defendant of such determination. Settling Defendants shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Settling Defendant, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Settling Defendants shall follow the procedures of Paragraph 62 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Settling Defendants' inability to secure financial assurance in accordance with this Section shall not excuse performance of any other obligation under this Consent Decree including, without limitation, the obligation of Settling Defendants to complete the Work in accordance with the terms of this Consent Decree.

61. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Subparagraph 93.b (Work Takeover) then, in accordance with any applicable financial assurance

mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed for that Work be paid in accordance with Subparagraph 61.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected Settling Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Subparagraph 61.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 93 (Work Takeover), either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a guarantee under Subparagraph 56.e, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Settling Defendants shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 61 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Butte Site Special Account within the EPA

Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the BPSOU, or to be transferred by EPA to the Silver Bow Creek/Butte Area Special Account or the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 61 must be reimbursed as Future BPSOU Response Costs under Section VI (Payments for Response Costs).

62. Modification of Financial Assurance. Settling Defendants may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form (subject to the temporal limitation in Paragraph 57.c) or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 59 (Financial Assurance Mechanism), and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Settling Defendants of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Settling Defendants may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XV (Dispute Resolution). Settling Defendants may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Settling Defendants shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 59 (Financial Assurance Mechanism).

63. Release, Cancellation, or Discontinuation of Financial Assurance. Settling Defendants may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under Paragraph 4.9 (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XV (Dispute Resolution).

XIII. INDEMNIFICATION AND INSURANCE

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

a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of the Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA or state law. The Settling Defendants shall indemnify, save, and hold harmless the United States and the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Settling Defendants and their respective officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of the Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA or state law. Further, the Settling Defendants agree to pay the United States and the State all costs they incur, including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against

the United States or the State based on negligent or other wrongful acts or omissions of the Settling Defendants, their respective officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities relating to the BPSOU pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of one or any combination of the Settling Defendant(s) in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States or the State, respectively, shall give the Settling Defendants notice of any third-party claim for which the United States or the State plans to seek indemnification pursuant to this Paragraph 62 (Settling Defendants' Indemnification of the United States and the State), and shall consult with the Settling Defendants prior to settling such claim.

65. Waiver of Claims. The Settling Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State arising from or on account of any contract, agreement, or arrangement between the Settling Defendants, individually or collectively, and any person for past performance of response activities at the BPSOU or performance of activities required under this Consent Decree, including, but not limited to, claims on account of construction delays. In addition, the Settling Defendants shall indemnify, save and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Settling Defendants and any

person for performance of any activities relating to the BPSOU under this Consent Decree, including, but not limited to, claims on account of construction delays. For purposes of this Paragraph, Settling Defendants have no obligation to indemnify the State for construction delays related to the BTC Riparian Actions.

66. Comprehensive General Liability and Automobile Insurance.

a. Prior to lodging of this Consent Decree, AR has provided the United States and the State with information that satisfied the United States and the State that its financial resources and ability to provide the equivalent of comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit, which it shall maintain for the duration of the Work at the BPSOU. BSB has provided the United States and the State with information that satisfied the United States and the State that its financial resources and ability to provide the equivalent of comprehensive general liability insurance and automobile insurance with limits of $750,000 per claim and $1.5 million per occurrence, which it shall maintain for the duration of the Work at the BPSOU.

b. If, prior to the first anniversary of EPA's Certification of Completion of Remedial Action pursuant to Paragraph 4.7 (Certification of RA Completion) of the SOW, any material change occurs in the financial resources of any Settling Defendant such that the Settling Defendant may no longer be able to assure its ability to provide the equivalent of comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit, that Settling Defendant shall promptly notify the United States and the State in accordance with Paragraph 115 (Individuals and Addresses) of Section XXII (Notices and Submissions). Upon receipt of such notice, EPA may, in its sole and unreviewable discretion,

after reasonable opportunity for review by the State, require that Settling Defendant obtain that insurance.

c. If, prior to the first anniversary of EPA's Certification of Completion of Remedial Action pursuant to Paragraph 4.7 (Certification of RA Completion) of the SOW, the United States or the State obtains information regarding any material change in the financial resources of a Settling Defendant that leads the United States, in consultation with the State, to believe that Settling Defendant may no longer have the financial ability to provide the equivalent of comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit, the United States shall so notify that Settling Defendant in accordance with Paragraph 115 (Individuals and Addresses) of Section XXII (Notices and Submissions). The Settling Defendant shall have sixty (60) days after receiving any such written notice to respond and provide corrected or supplemental information or otherwise assure the United States and the State that it has the ability to provide the equivalent of comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit.

d. If the Settling Defendant does not satisfactorily resolve the United States' concerns that a material change has occurred in its financial resources such that the Settling Defendant may no longer have the financial ability to provide the equivalent of comprehensive general liability and automobile insurance with limits of two million dollars, combined single limit, EPA, in consultation with the State and in its sole and unreviewable discretion, may require that Settling Defendant to obtain such insurance which names the United States and the State as additional beneficiaries and/or additional insureds.

e. In addition, for the duration of the Consent Decree, the Settling Defendants shall also satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing activities required of the Settling Defendants by this Consent Decree. Until EPA issues its notice of completion of remedial action pursuant to Paragraph 4.7 (Certification of RA Completion) of the SOW, the Settling Defendants shall provide to EPA and the State certificates of such insurance. The Settling Defendants shall resubmit such certificates each year on or before January 30th. If a Settling Defendant demonstrates by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, that Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIV. FORCE MAJEURE

67. Definition. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants or DEQ, of any entity controlled by the Settling Defendants or DEQ, or of the Settling Defendants' or DEQ's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Defendants' or DEQ's best efforts to fulfill the obligation. The requirement that the Settling Defendants and/or DEQ exercise "best efforts to fulfill the obligation" under this Paragraph includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest

extent possible. "Force Majeure" does not include financial inability of Settling Defendants to complete the Work or a failure to attain the Performance Standards. A Force Majeure event may, however, include a labor strike or work stoppage directly related to remedial construction activities at the BPSOU.

68. Notification. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants and/or DEQ shall notify orally EPA's Project Coordinator or, in his or her absence, the Director, Superfund and Emergency Management Division, EPA Region 8, and, for Settling Defendants, shall also notify orally the State Project Coordinator, within seven (7) days of when the Settling Defendants or DEQ first knew that the event might cause a delay. Within twelve (12) days thereafter, the Settling Defendants and/or DEQ shall provide in writing to EPA, and, for Settling Defendants, the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' and/or DEQ's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants or DEQ, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants and/or DEQ shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. The Settling Defendants and DEQ shall be deemed to know of any circumstance of which the Settling Defendants or DEQ, any entity controlled by any Settling Defendants or DEQ, or the Settling Defendants' or DEQ's

contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendants or DEQ from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 67 (Definition) and whether Settling Defendants or DEQ have exercised their best efforts under Paragraph 67 (Definition), EPA, in consultation with DEQ, may excuse in writing Settling Defendants' failure to submit timely or complete notices under this Paragraph.

69. EPA Response. If EPA, after a reasonable opportunity for review and comment by DEQ, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by DEQ, for such time as is necessary to complete those obligations. If EPA, after a reasonable opportunity to review and comment by DEQ agrees that the delay or anticipated delay is attributable to a force majeure event, EPA will notify the Settling Defendants or DEQ in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by DEQ, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants or DEQ in writing of its decision.

70. Dispute. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution) regarding EPA's decision, it shall do so

no later than 15 days after receipt of EPA's notice. In any such proceeding, the Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts to fulfill the obligation were exercised to avoid and mitigate the effects of the delay, and that the Settling Defendants complied with the requirements of Paragraphs 67 (Definition) and 68 (Notification), above. If the petitioning Settling Defendant(s) carry this burden, the delay at issue shall be deemed not to be a violation by the Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court. Any dispute of EPA's decision by DEQ shall be done in accordance with the SMOA.

71. EPA Timely Completion. The failure by EPA to timely complete any obligation under the Consent Decree or under the SOW or under Appendix H is not a violation of the Consent Decree, provided, however, that if such failure prevents Settling Defendants or DEQ from meeting one or more deadlines in the SOW, Settling Defendants or DEQ may seek relief under this Section.

XV. DISPUTE RESOLUTION

72. Exclusivity. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between: (1) the United States and the Settling Defendants arising under or with respect to this Consent Decree; or (2) among the United States, the State, and the Settling Defendants collectively arising under or with respect to this Consent Decree, including the disputes that arise under Section VIII (Performance of the BTC Riparian Actions by DEQ). The procedures set forth in this Section shall not apply to actions by the United States or the State to enforce

obligations of the Settling Defendants that have not been disputed in accordance with this Section. EPA's decisions under these procedures, except for EPA's final administrative decision under Paragraph 76 (Other Review), will be made in consultation with the State.

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

74. Statement of Positions.

a. In the event that the parties to the dispute cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, one or more of the Settling Defendants invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the petitioning Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 75 (Record Review) or Paragraph 76 (Other Review).

b. Within thirty (30) days after receipt of the Settling Defendants' Statement of Position, EPA, after consulting with the State, will serve on the Settling Defendants EPA's

Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 75 (Record Review) or Paragraph 76 (Other Review). Not more than thirty (30) days after receipt of EPA's Statement of Position, the Settling Defendants may submit a further statement of position in reply.

c. If there is disagreement between EPA and the petitioning Settling Defendants as to whether dispute resolution should proceed under Paragraph 75 (Record Review) or Paragraph 76 (Other Review), the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. If the petitioning Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 75 (Record Review) and 76 (Other Review).

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

allow any dispute by any Settling Defendant(s) regarding the validity of the ROD's provisions except as specifically provided in Section IX (Remedy Review).

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

b. The Regional Counsel, EPA Region 8, will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph 75.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Subparagraphs 75.c and d.

c. Any administrative decision made by EPA pursuant to Subparagraph 75.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on the Parties within thirty (30) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the petitioning Settling Defendants' motion within 30 days of receipt of that motion.

d. In proceedings on any dispute governed by this Paragraph, the petitioning Settling Defendants shall have the burden of demonstrating that the decision of the Regional Counsel, EPA Region 8, is arbitrary and capricious or otherwise not in accordance with law.

Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Subparagraph 75.a.

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

a. Following receipt of the petitioning Settling Defendants' Statement of Position submitted pursuant to Paragraph 74 (Statement of Positions), the Regional Counsel, EPA Region 8, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under Paragraph 74 (Statement of Positions). The Regional Counsel's decision shall be binding on Settling Defendants unless, within thirty (30) days of receipt of the decision, one or more Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the petitioning Settling Defendants' motion within 30 days of receipt of the motion.

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

77. No Postponement. The invocation of formal dispute resolution procedures under this Section does not extend, postpone or affect in any way any obligation of any Settling

Defendant(s) under this Consent Decree, not directly in dispute, unless EPA agrees or the Court orders otherwise or unless specifically provided in this Consent Decree. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 84 (Penalty Accrual). Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the petitioning Settling Defendant(s) do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in this Section and Section XVI (Stipulated Penalties). Stipulated penalties shall not be assessed by the United States nor paid by the Settling Defendants to the extent that the Settling Defendants prevail on the disputed issue.

78. Dispute Resolution Solely Between the State and AR.

a. In the event a dispute should arise solely between AR and the State regarding the interpretation or implementation of Paragraph 20 (AR Payment to the State of Montana), Paragraph 35 (Settling Defendants and State Cooperation), or Section XVI (Stipulated Penalties), AR and the State shall make a good faith effort to resolve the dispute prior to invoking the continuing jurisdiction of the Court. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of AR under this Consent Decree that is not directly in dispute, unless the State agrees or the Court orders otherwise. In the event that AR and the State cannot resolve the dispute by informal negotiations under the preceding Paragraph, then the position advanced by the State shall be considered binding unless, not more than twenty (20) days after the conclusion of the informal negotiation period, AR invokes the formal dispute resolution procedures of this Section by

serving on the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by AR.

b. Within twenty (20) days after receipt of AR's Statement of Position, the State will serve on AR the State's Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the State. Not more than ten (10) days after receipt of the State's Statement of Position, AR may submit a further Statement of position in reply. Copies of all papers submitted by either AR or the State in connection with a dispute shall also be served on the other Parties to this Consent Decree.

c. Following receipt of AR's Statement of Position and any further reply submitted by AR pursuant to Subparagraph 78.b, the Attorney General of the State will issue a final decision within twenty (20) days resolving the dispute. The Attorney General's decision shall be binding on AR unless, within twenty (20) days of receipt of the decision, AR files with the Court and serves on the Parties a motion for judicial review of the Attorney General's decision. AR's motion, supporting briefs and evidence shall set forth the matter in dispute, arguments supporting its position, the efforts made by the parties to resolve the dispute, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The State may file a response to AR's motion within 20 days of receipt of the motion. Judicial review of any dispute arising under this section shall be governed by applicable principles of law and the provisions of this Consent Decree.

XVI. STIPULATED PENALTIES

79. Stipulated Penalties. The Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 80 (Amounts and Triggering Events) to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIV (Force Majeure). The Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 80 (Amounts and Triggering Events) to the State only for failure to comply with the requirements of Paragraph 20 of this Consent Decree, unless excused under Section XIV (Force Majeure). "Compliance" by the Settling Defendants shall include completion of the activities and obligations, including payments, required under this Consent Decree or any work plan or other deliverable approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

80. Amounts and Triggering Events.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 80.b:

Penalty Per Violation Per Day	Period of Noncompliance
$5,000	1st through 14th day
$6,500	15th through 30th day
$8,500	31st day and beyond

b. Failure to comply with any of the requirements in Section VI (Payment of Response Costs), Section VII (Performance of the Work by the Settling Defendants) including

Section 3 of the SOW (Remedial Design) and Section 4 (except Paragraph 4.4.) of the SOW (Remedial Action), Section IX (Remedy Review), Section XI (Access and Institutional Controls), and Section XII (Financial Assurance), except as provided in the following sentence. Stipulated penalties shall not be assessed for: (i) noncompliance with Paragraph 35 (Settling Defendants and State Cooperation); (ii) an exceedance or other noncompliance with in-stream surface water Performance Standards under this Consent Decree, as provided in Attachments A and D to SOW, Appendix D; or (iii) noncompliance with any Work requirements described in Sections 2, 4, and 7 of Attachment A (Compliance Determination Plan, including the Surface Water Management Plan) to the SOW, except that stipulated penalties may be assessed by the United States for the Settling Defendants' failure to perform additional work requirements under Section 7 of Attachment A to the SOW and Paragraph 27 of this Consent Decree after the Settling Defendants have been ordered to perform such additional work by the United States or, if the Settling Defendants dispute any such additional work requirement, stipulated penalties may be assessed after the Settling Defendants have been ordered by the Court to perform such additional work and do not timely perform.

c. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 80.d:

Penalty Per Violation Per Day	Period of Noncompliance
$3,000	1st through 14th day
$4,500	15th through 30th day
$6,000	31st day and beyond

d. Failure to comply with any of the requirements in Section X (Quality Assurance, Sampling, and Data Analysis), Section XIII (Indemnification and Insurance), Section XX (Access to Information), Section XXI (Retention of Records), Section XXII (Notices and Submissions), Paragraph 4.4 of the SOW (Emergency Response and Reporting), Section 5 of the SOW (Reporting), and Section 6 of the SOW (Deliverables).

e. Except as provided below, the following stipulated penalties shall accrue per violation per day for any violation of the Performance Standards for the Butte Treatment Lagoon ("BTL") discharge, as described in the Compliance Determination Plan, Attachment A to the SOW:

Penalty Per Violation Per Day	Period of Noncompliance
$1,500	5th through 14th day
$2,000	15th through 30th day
$3,000	31st day and beyond

During the Interim Monitoring Period for BTL, described in Attachment A to the SOW, BPSOU Surface Water Compliance Determination Plan, no stipulated or statutory penalties apply to the BTL discharge. After completion of the optimization period described in Attachment A, stipulated penalties shall not accrue during the first four consecutive days of violations of any of the Performance Standards for the BTL discharge; provided, however, that neither the United States nor the State waive their respective rights at any time to enforce the BTL discharge Performance Standards and/or, after the optimization period described in Attachment A to the SOW, to seek civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, for any violation of the BTL discharge Performance Standards. There are no stipulated or statutory penalties applicable to exceedances of in-stream surface water Performance Standards; provided, however,

that neither the United States nor the State waive their respective rights at any time to enforce these in-stream Performance Standards in accordance with the provisions of this Consent Decree and Attachment A to the SOW.

f. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 93 (Work Takeover) of Section XVII (Covenants and Reservations by the United States and the State), the Settling Defendants shall be liable for a stipulated penalty in the amount of $1,000,000; provided, however, that this stipulated penalty shall not exceed 30% of the present value of the Work to be taken over, based on EPA's cost estimates and a discount rate of 5%. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraph 61 (Access to Financial Assurance) and 93 (Work Takeover).

g. Except as provided in Paragraph 80.e, all stipulated penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity; provided, however, that stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section 6 of the SOW (Deliverables), during the period, if any, beginning on the twenty-first (21st) day after EPA's receipt of such submission until five days after the date that EPA notifies the Settling Defendants of any deficiency; (2) with respect to a decision by the Regional Counsel, EPA Region 8, under Subparagraph 75.b or 76.b of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that the Settling Defendants' reply to EPA's Statement of Position is received until five days after the date that the Regional Counsel, EPA Region 8 issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court or the Court of Appeals of any

dispute under Section XV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until five days after the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree. Any violation of the compliance milestones set forth in Section 3 (Remedial Design) of the SOW, however, shall not also constitute a separate violation of the compliance milestones set forth in Section 4 (Remedial Action) of the SOW.

81. Notice. Following EPA's or the State's determination, in consultation with the other governmental party, that the Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA or the State shall give the Settling Defendants written notification of the same and describe the noncompliance. If EPA or the State determine that stipulated penalties are applicable to a noncompliance event, EPA or the State may send the Settling Defendants a written demand for the payment of the penalties. However, stipulated penalties shall accrue as provided in Paragraph 77 (No Postponement) and Paragraph 80 (Amounts and Triggering Events) regardless of whether EPA has provided a written demand to Settling Defendants for the payment of penalties.

82. Payment. All penalties accruing under this Section shall be due and payable to the United States or the State within thirty (30) days of any Settling Defendants' receipt from EPA or the State of a demand for payment of the stipulated penalties, unless the Settling Defendants invoke the Dispute Resolution procedures under Section XV (Dispute Resolution). All payments to the United States or the State under this Section shall be made in accordance

with Paragraph 17 (Settling Defendants' Payment of BPSOU Future Response Costs) or Paragraph 20 (AR Payment to the State of Montana).

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

84. Penalty Accrual. Penalties shall continue to accrue as provided in Paragraphs 81 (Notice) during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, the Settling Defendants shall pay accrued stipulated penalties determined to be owing to EPA and Interest in accordance with Paragraph 19 (Interest) within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States or the State, as appropriate, prevails in whole or in part, the Settling Defendants shall pay all accrued stipulated penalties determined by the Court and Interest in accordance with Paragraph 19 (Interest) to be owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph 84.c, below; and

c. If the District Court's decision is appealed by any Party, Interest (in accordance with Paragraph 19 (Interest)) shall accrue on the stipulated penalties determined by the District Court to be owing to the United States or the State. Within fifteen (15) days of receipt of the final appellate court decision, the Settling Defendants shall pay all accrued stipulated penalties and Interest (in accordance with Paragraph 19 (Interest)) determined to be owed by the Settling Defendants to the United States or the State.

85. United States' and State's Collection of Stipulated Penalties.

a. If the Settling Defendants fail to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as Interest in accordance with Paragraph 19 and the cost of enforcing the requirements of this Consent Decree, including attorney's fees. The Settling Defendants shall pay Interest on the unpaid balance of any stipulated penalty, which shall begin to accrue in accordance with Paragraph 19 (Interest).

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of the Settling Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA; provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein or for any violation excluded from stipulated penalties under Paragraph 80.b(i)-(ii) , except in the case of a willful violation of this Consent Decree. For any violation excluded from stipulated penalties under Paragraph 80.b(iii), the United States may only seek civil penalties pursuant to Section 122(l) of CERCLA after (i) it has provided written notice to Settling Defendants of any such violation and provided Settling Defendants 60 days from the date the notice is received by the Settling Defendants to cure the violation or otherwise resolve the violation on terms acceptable to the Parties, and (ii) the Settling Defendants fail to cure or otherwise resolve the violation within the 60-day period.

86. Stipulated Penalty Waiver. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XVII. COVENANTS AND RESERVATIONS BY THE UNITED STATES AND THE STATE

87. Covenants to Settling Defendants.

a. United States' Covenant to the Settling Defendants. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 89 (Pre-Certification Reservations), 90 (Post-Certification Reservations) and 92 (General Reservations of Rights) of this Section, the United States covenants not to sue or to take administrative action against the Settling Defendants, Indemnitee, any of the Settling Defendants' parent or affiliate corporations providing the financial assurances required under Section XII (Financial Assurance) of this Consent Decree, the subsidiaries of such parent or affiliate corporations, their respective officers, directors and employees, to the extent that the liability of such parent or affiliate companies, subsidiaries, officers, directors, and employees arises solely from their status as parent or affiliate companies, subsidiaries, officers, directors, and employees, pursuant to Sections 106, 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(f); Sections 3004(u) and (v), 3008 and 7003 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928 and 6973; and Sections 309(b), 311 and 504 of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1321 and 1364 relating to the BPSOU, including claims or actions for Federal BPSOU Interim Response Costs, Oversight Costs for the BPSOU, or Federal BPSOU Future Response Costs. Notwithstanding the previous sentence, the United States' covenant to Settling

Defendants does not include Railroad Properties and BPSOU Residential Solid Media Remedial Action, which is implemented as of the Effective Date through the RMAP. Provided, however, the United States acknowledges that Federal BPSOU Interim Response Costs and Oversight Costs for the BPSOU each include payments for Residential Solid Media Remedial Action prior to the Effective Date, and this covenant to Settling Defendants and Indemnitee includes claims or actions for Residential Solid Media Remedial Action costs that are Federal BPSOU Interim Response Costs or Oversight Costs for the BPSOU. As to BSB, these covenants do not extend to any of BSB's existing or future obligations under the Clean Water Act for activities or actions associated with the Metro Treatment Plant; for obligations relating to municipal stormwater control (except for stormwater control obligations within the BPSOU site boundary that are related to any contaminant of concern identified in Table 2-1 of Attachment A to the Statement of Work); or for any future point source discharges created or related to BSB's standard municipal functions. Except with respect to future liability, these covenants shall take effect upon the receipt by EPA of the payments required by Paragraphs 12 (Settling Defendants' Payment of Federal BPSOU Interim Response Costs) and 14 (Settling Defendants' Payment of Oversight Costs for the BPSOU) of Section VI (Payment of Response Costs). With respect to future liability, these covenants shall take effect upon Certification of RA Completion by EPA pursuant to Paragraph 4.7 of the SOW (Certification of RA Completion). These covenants are conditioned upon the satisfactory performance by the Settling Defendants of their obligations under this Consent Decree. These covenants extend only to the Settling Defendants, Indemnitee, the Settling Defendants' parent or affiliate corporations providing the financial assurances required under Section XII (Financial Assurance) of this Consent Decree, the subsidiaries of

such parent or affiliate corporations, and their respective officers, directors, and employees, and do not extend to any other person.

b. State's Covenant to Settling Defendants. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 89 (Pre-Certification Reservations), 90 (Post-Certification Reservations) and 92 (General Reservations of Rights) of this Section, the State covenants not to sue or to take administrative action against the Settling Defendants, Indemnitee, the Settling Defendants' parent or affiliate corporations providing the financial assurances required under Section XII (Financial Assurance) of this Consent Decree, the subsidiaries of such parent or affiliate corporations, their respective officers, directors and employees, to the extent that the liability of such parent or affiliate companies, subsidiaries, officers, directors, and employees arises solely from their status as parent or affiliate companies, subsidiaries, officers, directors, and employees, pursuant to Sections 106, 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(f); Sections 3004(u) and (v), 3008 and 7002 of RCRA, 42 U.S.C. §§ 6924 (u) and (v), 6928 and 6972; Sections 309(a), 311, 504 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(a), 1321, 1364 and 1365; Sections 601, 602, 611, 613, 614 (except with respect to enforcement of an emergency order under 75-5-621), 615, 617, 631 and 635 of the Montana Water Quality Act, MCA §§ 75-5-601, 602, 611, 613, 614 (except with respect to enforcement of an emergency order under MCA § 75-5-621), 615, 617, 631 and 635; Section 415 of the Montana Hazardous Waste Act, MCA § 75-10-415; and Sections 711, 715, 722 and 726 of CECRA, MCA §§ 75-10-711, 712, 722 and 726 relating to the BPSOU. Notwithstanding the previous sentence, the State's covenant to Settling Defendants does not

include Railroad Properties and BPSOU Residential Solid Media Remedial Action, which is implemented as of the Effective Date through the RMAP. Provided, however, the State acknowledges that Federal BPSOU Interim Response Costs and Oversight Costs for the BPSOU each include payments for Residential Solid Media Remedial Action prior to the Effective Date, and this covenant to Settling Defendants and Indemnitee includes claims or actions for Residential Solid Media Remedial Action costs that are Federal BPSOU Interim Response Costs and Oversight Costs for the BPSOU. As to BSB, these covenants do not extend to any of BSB's existing or future obligations under the Clean Water Act or the Montana Water Quality Act for activities or actions associated with the Metro Treatment Plant; for obligations relating to municipal stormwater control (except for stormwater control obligations within the BPSOU site boundary that are related to any contaminant of concern identified in Table 2-1 of Attachment A to the SOW); or for any future point source discharges created or related to BSB's standard municipal functions. Except with respect to future liability, the covenants shall take effect upon the receipt by EPA of the payments required by Paragraph 12 (Settling Defendants Payment of Federal BPSOU Interim Response Costs) and 14 (Settling Defendants Payment of Oversight Costs for the BPSOU) and the receipt by the State of payments required by Paragraph 20 of Section VI (Payment of Response Costs). With respect to future liability, these covenants shall take effect upon Certification of RA Completion pursuant to Paragraph 4.7 of the SOW (Certification of RA Completion). The covenants are conditioned upon the satisfactory performance by the Settling Defendants of their obligations under this Consent Decree. These covenants, as described in this Subparagraph, extend only to the Settling Defendants, Indemnitee, the Settling Defendants' parent or affiliate corporations providing the financial

assurances required under Section XII (Financial Assurance) of this Consent Decree, the subsidiaries of such parent or affiliate corporations, their respective officers, directors, and employees, and do not extend to any other person.

88. Covenants for SFAs.

a. EPA Covenants for SFAs. Except as provided in Paragraphs 89 (Pre-Certification Reservations), 90 (Post-Certification Reservations), and 92 (General Reservations of Rights), EPA covenants not to take administrative action against SFAs pursuant to Sections 106, 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(f); Sections 3004(u) and (v), 3008 and 7003 of RCRA, 42 U.S.C. §§ 6924(u)and (v), 6928 and 6973; Sections 309(b), 311 and 504 of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1321 and 1364 relating to the BPSOU (excluding Residential Solid Media Remedial Action outside the BPSOU). Except with respect to future liability, EPA's covenant shall take effect upon the Effective Date. With respect to future liability, EPA's covenant shall take effect upon Certification of RA Completion by EPA pursuant to Paragraph 4.7 of the SOW (Certification of RA Completion) of the SOW. EPA's covenant is conditioned upon the satisfactory performance by SFAs of their obligations under this Consent Decree. EPA's covenant extends only to SFAs and does not extend to any other person.

b. State Covenants for SFAs. Except as provided in Paragraphs 89 (Pre-Certification Reservations), 90 (Post-Certification Reservations) and 92 (General Reservations of Rights), the State covenants not to take any action pursuant to Sections 106, 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(f); Sections 3004(u) and (v), 3008 and 7002 of RCRA, 42 U.S.C. §§ 6924 (u) and (v), 6928 and 6972; Sections 309(a), 311, 504 and 505 of the

Clean Water Act, 33 U.S.C. §§ 1319(a), 1321, 1364 and 1365; Sections 601, 602, 611, 613, 614, 615, 617, 631 and 635 of the Montana Water Quality Act, MCA §§ 75-5-601, 602, 611, 613, 614, 615, 617, 631 and 635; Section 415 of the Montana Hazardous Waste Act, MCA § 75-10-415; and Sections 711, 715, 722 and 726 of CECRA, MCA §§ 75-10-711, 715, 722 and 726 relating to the BPSOU (excluding Residential Solid Media Remedial Action outside the BPSOU). Except with respect to future liability, the State's covenant shall take effect upon the Effective Date. With respect to future liability, the State's covenant shall take effect upon Certification of RA Completion by EPA pursuant to Paragraph 4.7 (Certification of RA Completion) of the SOW.

89. Pre-certification Reservations.

a. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action as provided in this Consent Decree, or in a new action, or to issue an administrative order seeking to compel the Settling Defendants and/or the Indemnitee, and EPA reserves the right to issue an administrative order to compel SFAs:

(i) to perform further response actions relating to the BPSOU, and/or (ii) to reimburse the United States for additional costs of response relating to the BPSOU

if, prior to Certification of RA Completion:

(A) Conditions at the BPSOU, previously unknown to EPA, are discovered, or

(B) Information, previously unknown to EPA, is received, in whole or in part,

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

b. State's Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action as provided in this Consent Decree, in a new action against the Settling Defendants and/or the SFAs and/or the Indemnitee, or in an administrative order seeking to compel the Settling Defendants and/or the Indemnitee:

(i) to perform further response actions relating to the BPSOU, and/or (ii) to reimburse the State for additional costs of response relating to the BPSOU

if, prior to Certification of RA Completion:

(A) Conditions at the BPSOU, previously unknown to the State, are discovered, or

(B) Information, previously unknown to the State, is received, in whole or in part,

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

90. Post-certification Reservations.

a. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action pursuant to this Consent Decree, or in a new action, or to issue an administrative order seeking to compel the Settling Defendants and/or the Indemnitee, and EPA reserves the right to issue an administrative order to the SFAs:

(i) to perform further response actions relating to the BPSOU; and/or (ii) to reimburse the United States for additional costs of response relating to the BPSOU

if, subsequent to Certification of Completion of the Remedial Action:

(A) Conditions at the BPSOU, previously unknown to EPA, are discovered, or

(B) Information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

b. State's Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action pursuant to this Consent Decree, in a new action against Settling Defendants and/or SFAs and/or the Indemnitee, or in an administrative order seeking to compel the Settling Defendants and/or the Indemnitee:

(i) to perform further response actions relating to the BPSOU; and/or (ii) to reimburse the State for additional costs of response relating to the BPSOU

if, subsequent to Certification of Completion of the Remedial Action:

(A) Conditions at the BPSOU, previously unknown to the State, are discovered, or

(B) Information, previously unknown to the State, is received, in whole or in part,

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

91. Information and Conditions Known.

a. Information and Conditions Known to the United States. For purposes of Subparagraph 89.a (United States' Pre-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree that are described or contained in: (1) the ROD; (2) all administrative records supporting the ROD; (3) the EPA Site Record as of the date of lodging of the Consent Decree, except for risk assessment information related to lead and arsenic; and (4) the non-confidential or non-privileged EPA site record for the Butte Mine Flooding Operable Unit as of the date of lodging of the Consent Decree. For purposes of Subparagraph 90.a (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA

as of EPA's acceptance of the Settling Defendants' Certification of RA Completion of the Remedial Action and described or contained in: (1) the ROD; (2) the administrative records supporting the ROD; (3) the EPA Site Record as of the date of the Certification of RA Completion for the BPSOU; (4) the non-confidential or non-privileged EPA site record for the Butte Mine Flooding Operable Unit Site as of the date of Certification of RA Completion for the BPSOU; and (5) any other information received or discovered by EPA pursuant to the requirements of this Consent Decree as of the date of the Certification of RA Completion. Information and conditions known to the United States does not include BPSOU-related, human health risk assessment information related to lead and arsenic received or discovered by EPA after the 2006 Record of Decision; provided, however, that for all such BPSOU-related, human health risk assessment information which is part of the BPSOU administrative records or EPA Site Record, Settling Defendants may dispute any proceeding in this action under Paragraphs 89 and 90 based on BPSOU-related, human health risk assessment information related to lead and arsenic in the BPSOU administrative records or EPA Site Record that is received or discovered by EPA or the State before or after the 2006 Record of Decision.

b. Information and Conditions Known to the State. For purposes of Subparagraph 89.b (State's Pre-Certification Reservations), the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of lodging of this Consent Decree that are described or contained in: (1) the ROD; (2) the administrative records supporting the ROD; (3) the State Site Record as of the date of lodging of the Consent Decree, except for risk assessment information related to lead and arsenic; and (4) the non-confidential or non-privileged State site record for the Butte Mine

Flooding Operable Unit Site as of the date of lodging of the Consent Decree; (5) the State site record for State Restoration and conduct of the Parrot Tailings Waste Removal; and (6) the files and records related to the State Action. For purposes of Subparagraph 90.b (State's Post-Certification Reservations), the information and the conditions known to the State shall include only that information and those conditions known to the State as of EPA's acceptance of the Settling Defendants' Certification of Completion of the Remedial Action and described or contained in: (1) the ROD; (2) the administrative records supporting the ROD; (3) the State Site Record as of the date of Certification of RA Completion for the BPSOU; (4) the non-confidential or non-privileged State site record for the Butte Mine Flooding Operable Unit Site as of the date of Certification of RA Completion for the BPSOU; (5) the State site record for State Restoration and conduct of the Parrot Tailings Waste Removal as of the date of Certification of RA Completion for the BPSOU; (6) the files and records related to the State Action; (7) any other information received or discovered by the State pursuant to the requirements of this Consent Decree as of the date of the Certification of RA Completion. Information and conditions known to the State does not include BPSOU-related, human health risk assessment information related to lead and arsenic received or discovered by the State or EPA after the 2006 Record of Decision; provided, however, that for all such BPSOU-related, human health risk assessment information which is part of the BPSOU administrative records or State Site Record, Settling Defendants may dispute any proceeding in this action under Paragraphs 89 and 90 based on BPSOU-related, human health risk assessment information related to lead and arsenic in the BPSOU administrative records or State Site Record that is received or discovered by EPA or the State before or after the 2006 Record of Decision.

92. General Reservations of Rights.

a. United States' General Reservations of Rights. The covenants set forth in Paragraph 87 (Covenants to Settling Defendants) and Paragraph 88 (Covenants for SFAs) do not pertain to any matters other than those expressly specified in Paragraph 87 (Covenants to Settling Defendants) and Paragraph 88 (Covenants for SFAs). With respect to all other matters, the United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendants and/or the Indemnitee, and EPA reserves the right to issue an administrative order seeking to compel the SFAs to take action in certain circumstances, including, but not limited to, the following:

(i) Claims or actions to enforce this Consent Decree based on a failure by any Settling Defendant or SFA to meet a requirement of this Consent Decree;

(ii) Claims or actions for activities on Railroad Properties, which shall be brought in the Federal Action (but not under this Consent Decree), in an administrative order, or in a new action;

(iii) Liability for response costs and injunctive relief under CERCLA Sections 106, 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(f); and Sections 3004(u) and (v), 3008 and 7003 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928 and 6973; Sections 309(b), 311 and 504 of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1321 and 1364 arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the BPSOU, other than as provided in the ROD or the Work. The

"Continuation of Existing Migration" of contamination is not a release of Waste Materials outside of the BPSOU;

(iv) Liability for response costs and injunctive relief under CERCLA Sections 106, 107(a), and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(f); and Sections 3004(u) and (v), 3008 and 7003 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928, and 6973; Sections 309(b), 311 and 504 of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1321 and 1364 for future acts of disposal of Waste Material at the BPSOU by the Settling Defendants or SFAs, other than as provided in the ROD, the Work, or for response actions otherwise ordered by EPA, and specifically excluding any claims for violations of existing or future permits under such statutes;

(v) Criminal liability;

(vi) Liability for violations of federal or state law by any Settling Defendant or SFAs or the Indemnitee which occur during or after implementation of the Work;

(vii) Liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 27 (Modification of SOW or Related Deliverables by Settling Defendants) because they are outside the scope of the remedy selected in the ROD as defined in Paragraph 1.3 of the SOW (Appendix D). The rights reserved under this Subparagraph 92.a.(vii) shall be exercised only in a separate judicial proceeding

in the Federal Action (but not under this Consent Decree) or a new action, or a new administrative order;

(viii) Liability for damages for injury to, destruction of, or loss of, natural resources and for the costs of assessing and litigating any claims for natural resource damages relating to the BPSOU against BSB; and

(ix) Liability for damages for injury to, destruction of, or loss of, natural resources and for the costs of assessing and litigating any claims for natural resource damages relating to the BPSOU against AR, but only to the extent such claims are reserved in Paragraph 114 of the Clark Fork Site Consent Decree or Paragraph 77 of the Streamside Tailings Consent Decree (the Streamside Tailings Consent Decree is described in Section I (Background) Paragraph F of this Consent Decree).

b. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in the Federal Action (but not under this Consent Decree), to file a new action, or to issue an administrative order seeking to compel the Settling Defendants and/or the Indemnitee to perform response actions and reimburse response costs related to Residential Solid Media Remedial Action (excluding Oversight Costs), including, but not limited to, implementation of the RMAP on residential properties, and any modification after the Effective Date of the soil, dust, and/or vapor action levels set forth in the ROD. Any such modification to the soil, dust, and/or vapor action levels may only be lawfully required under a ROD amendment.

c. State's General Reservations of Rights. The covenants set forth in Paragraph 87 (Covenants to Settling Defendants) and Paragraph 88 (Covenants for SFAs) do not pertain to any matters other than those expressly specified in Paragraph 87 (Covenants to Settling Defendants) and Paragraph 88 (Covenants for SFAs). With respect to all other matters, the State reserves, and this Consent Decree is without prejudice to all rights against the Settling Defendants or SFAs and/or the Indemnitee, including but not limited to the following:

(i) Claims or actions to enforce this Consent Decree based on a failure by the Settling Defendants or SFAs to meet a requirement of this Consent Decree;

(ii) Claims or actions for activities on Railroad Properties, which shall be brought in the Federal Action (but not under this Consent Decree), in an administrative order, or in a new action;

(iii) Liability for response costs and injunctive relief under CERCLA Sections 106, 107, and 9613(f), 42 U.S.C. §§ 9606, 9607(a) and 9613(f); Sections 3004(u) and (v), 3008 and 7002 of RCRA, 42 U.S.C. §§ 6924 (u) and (v), 6928 and 6972; Sections 309(a), 311, 504 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(a), 1321, 1364 and 1365; Sections 601, 602, 611, 613, 614, 615, 617, 631 and 635 of the Montana Water Quality Act, MCA §§ 75-5-601, 602, 611, 613, 614, 615, 617, 631 and 635; Section 415 of the Montana Hazardous Waste Act, MCA § 75-10-415; Sections 711, 715, 722 and 726 of CECRA, MCA §§ 75-10-711, 715, 722 and 726 arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the

BPSOU, other than as provided in the ROD or the Work. The "Continuation of Existing Migration" of contamination is not a release of Waste Materials outside of the BPSOU;

(iv) Liability for response costs and injunctive relief under CERCLA Sections 106, 107, and 9613(f), 42 U.S.C. §§ 9606, 9607(a) and 9613(f); Sections 3004(u) and (v), 3008 and 7002 of RCRA, 42 U.S.C. §§ 6924 (u) and (v), 6928 and 6972; Sections 309(a), 311, 504 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(a), 1321, 1364 and 1365; Sections 601, 602, 611, 613, 614, 615, 617, 631 and 635 of the Montana Water Quality Act, MCA §§ 75-5-601, 602, 611, 613, 614, 615, 617, 631 and 635; Section 415 of the Montana Hazardous Waste Act, MCA § 75-10-415; Sections 711, 715, 722 and 726 of CECRA, MCA §§ 75-10-711, 715, 722 and 726 for future acts of disposal of Waste Material at the BPSOU by the Settling Defendants or SFAs, other than as provided in the ROD, the Work, or otherwise ordered by EPA, and specifically excluding any claims for violations of existing or future permits under such statutes;

(v) Criminal liability;

(vi) Liability for violations of federal or state law by any Settling Defendant or SFAs or the Indemnitee which occur during or after implementation of the Work;

(vii) Liability, prior to Certification of Completion of the Remedial Action, for additional response actions that the State determines are necessary to

achieve Performance Standards, but that cannot be required pursuant to Paragraph 27 (Modification of SOW and Related Deliverables by Settling Defendants) because they are outside the scope of the remedy selected in the ROD and as defined in Paragraph 1.3 of the SOW (Attachment D). The rights reserved under this Subparagraph 92.c.(vii) shall be exercised only in a separate judicial proceeding in the Federal Action (but not under this Consent Decree) or a new action, or a new administrative order;

(viii) Liability for damages for injury to, destruction of, or loss of, natural resources and for the costs of assessing and litigating any claims for natural resource damages relating to the BPSOU against BSB;

(ix) Liability for damages for injury to, destruction of, or loss of, natural resources and for the costs of assessing and litigating any claims for natural resource damages and other liability relating to the BPSOU against AR, but only to the extent such claims are reserved in consent decrees previously entered in the State Action; and

(x) Any claim, defense or counterclaim by the State against AR related to Subparagraphs 96.f and 96.g (Settling Defendants' Reservation of Rights); and

(xi) the right to seek from this Court an award of any costs, fees or damages (including reasonable attorney's fees) incurred by State resulting or arising from such claims or causes of action reserved in Paragraph 92.c.(x).

d. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in the Federal Action (but not under this Consent Decree), to file a new action, or to issue an administrative order seeking to compel the Settling Defendants and/or the Indemnitee to perform response actions and reimburse response costs related to Residential Solid Media Remedial Action (excluding Oversight Costs), including, but not limited to, implementation of the RMAP on residential properties and any modification after the Effective Date of the soil, dust, and/or vapor action levels set forth in the ROD. Any such modification to the soil, dust, and/or vapor action levels may only be lawfully required under a ROD amendment.

93. Work Takeover

a. In the event EPA, in consultation with DEQ, determines that the Settling Defendants have (i) ceased implementation of any portion of the Work, are (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a "Work Takeover Notice" to the Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide the Settling Defendants a period of 30 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 30 day notice period specified in Subparagraph 93.a, the Settling Defendants have 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 the Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Subparagraph 93.b.

c. The Settling Defendants may invoke the procedures set forth in Section XV (Dispute Resolution), Paragraph 75 (Record Review) to dispute EPA's implementation of a Work Takeover under Subparagraph 93.b. However, notwithstanding the Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA, in consultation with DEQ, may in its sole discretion commence and continue a Work Takeover under Subparagraph 93.b until the earlier of (i) the date that the Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (ii) the date that a final decision is rendered in accordance with Section XV (Dispute Resolution), Paragraph 75 (Record Review) requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any financial assurance mechanism provided pursuant to Section XII (Financial Assurance), pursuant to the terms of said form of performance guarantee and pursuant to Paragraph 61 (Access to Financial Assurance) of that Section. Any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered BPSOU Future Response Costs that the Settling Defendants shall pay pursuant to Section VI (Payment of Response Costs).

XVIII. COVENANTS AND RESERVATIONS BY SETTLING DEFENDANTS AND SFAS

94. Settling Defendants' Covenants.

a. Settling Defendants' Covenant Not to Sue the United States. Subject to the reservations in Paragraph 96 (Settling Defendants' Reservation of Rights), each Settling Defendant hereby covenants not to sue and agrees not to assert any past, present, or future claims or causes of action against the United States, its agencies, instrumentalities, officials, employees, agents, and contractors relating to the BPSOU, as defined herein, including:

(i) Any direct or indirect claim related to the BPSOU for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

(ii) Any claims under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613; under RCRA Sections 3004(u) and (v), 3008 and 7002, 42 U.S.C. §§ 6924(u) and (v), 6928 and 6972; under Section 311, 504 and 505 of the Clean Water Act, 33 U.S.C. §§ 1321, 1364 and 1365; or under CECRA, including Sections 711, 715, 719, 722, 724 and 726, MCA §§ 75-10-711, 75-10-715, 75-10-719, 75-10-722, 75-10-724, 75-10-726 and any other theory of recovery or provision of law relating to the BPSOU (excluding Residential Solid Media Remedial Action); or

(iii) Any claims arising out of response activities at the BPSOU, including claims based on EPA's selection of response actions, oversight of response activities, or approval of plans for such activities, including any claim

under the United States Constitution, the State of Montana Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

b. Settling Defendants' Covenant Not to Sue the State. Subject to the reservations in Paragraph 96 (Settling Defendants' Reservation of Rights), each Settling Defendant hereby covenants not to sue and agrees not to assert any past, present, or future claims or causes of action against the State, its agencies, instrumentalities, officials, employees, agents, and contractors relating to the BPSOU, as defined herein, including:

(i) Any direct or indirect claim for reimbursement or funding under State law, including any direct or indirect claim related to the BPSOU for reimbursement from the Environmental Quality Protection Fund (established pursuant to MCA 75-10-704), the Orphan Share Account (established pursuant to MCA 75-10-743), or any other provision of law;

(ii) Any claims under CERCLA Sections 107 or 113, 42 U.S.C. Sections 9607 and 9613; under RCRA Sections 3004(u) and (v), 3008 and 7002, 42 U.S.C. §§ 6924(u) and (v), 6928 and 6972; under Sections 311, 504 and 505 of the Clean Water Act, 33 U.S.C. §§ 1321, 1364 and 1365; or under CECRA, including Sections 711, 715, 719, 722, 724 and 726, MCA §§ 75-10-711, 75-10-715, 75-10-719, 75-10-722, 75-10-724, 75-10-726 and any other theory of recovery or provision of law relating to the BPSOU (excluding Residential Solid Media Remedial Action); or

(iii) Any claims arising out of response activities at the BPSOU, including claims based on selection of response actions, oversight of response activities, or approval of plans for such activities including any claim under the United States Constitution, the State of Montana Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

95. Covenant by SFAs.

a. SFA's Covenants to EPA. SFAs except for EPA agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113 or any other provision of law with respect to the BPSOU and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a SFA in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the NCP.

b. SFA's Covenants to State. Subject to the reservations in Paragraph 97 (SFA's Reservation of Rights) and except for the rights of EPA (subject to the Dispute Resolution provisions of Paragraph 33) to require the State to comply with the State's obligations to implement the BTC Riparian Actions as set forth in the BTC Riparian Actions Remedial Action Work Plans pursuant to this Consent Decree, the SFAs hereby covenant not to sue and agree not to assert any of the following claims or causes of action against the State, its agencies, instrumentalities, officials, employees, agents, and contractors arising in the past, present or future relating to the BTC Riparian Actions:

(1) Any direct or indirect claim for reimbursement or funding under State law, including any direct or indirect claim for reimbursement from the Environmental Quality Protection Fund (established pursuant to MCA 75-10-704), the Orphan Share Account (established pursuant to MCA 75-10-743), or any other provision of law; and

(2) Any claims under CERCLA Sections 106, 107 or 113, 42 U.S.C. Sections 9606, 9607 and 9613; under RCRA Sections 3004(u) and (v), 3008 and 7002, 42 U.S.C. §§ 6924(u) and (v), 6928, and 6972; under Section 309(b), 311, 504 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1321, 1364 and 1365; or under CECRA, including Sections 711, 715, 719, 722, 724 and 726, MCA 75-10-711, 75-10-715, 75-10-719, 75-10-722, 75-10-724, 75-10-726.

96. Settling Defendants' Reservation of Rights. The Settling Defendants reserve, and this Consent Decree, is without prejudice to:

a. Claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and claims against the State under Chapter 9 of Title 2 of Montana Code Annotated for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States or the State while acting within the scope of his office or employment under circumstances where the United States or the State, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is

defined in 28 U.S.C.§ 2671, or an employee, as that term is defined in 2-9-101, MCA; nor shall any such claim include a claim based on EPA's selection of response actions that may be required under this Consent Decree, the State's commitment to perform BTC Remedial Actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any Federal or State statute other than CERCLA or CECRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or CECRA.

b. As to AR only, in the event the United States or the State initiates a new claim, new action, or administrative order seeking to compel AR to perform and/or pay for further response actions pursuant to the reservations of the United States and the State under Paragraph 89 (Pre-Certification Reservations), Paragraph 90 (Post-Certification Reservations), or Paragraph 92 (General Reservations of Rights) (excluding Subparagraphs 92.a.(i) (claims for failure to meet a requirement of the Consent Decree), 92.a.(iv) (criminal liability), and 92.a.(v) (violations of federal/state law during or after implementation of the Work) (collectively the "Reserved Claims"), then AR reserves the defenses, contribution claims, counterclaims and other claims that AR reserved in and did not settle under paragraph 20 of the Past Costs Consent Decree, including, but not limited to, contribution claims against any person or entity not a party to the Past Costs Consent Decree, but only for those defenses, contribution claims, counterclaims and other claims arising from the same matters, transactions, or occurrences that are raised in or directly related to the United States' or the States' Reserved Claims against AR. The United States acknowledges that the cost caps contained in paragraph 20 of the Past Costs Consent Decree were exceeded prior to the Effective Date of this Consent Decree;

c. As to BSB only, in the event the United States or State initiates a new claim, new action or administrative order seeking to compel BSB to perform and/or pay for further response actions pursuant to the reservations of the United States and the State under Paragraph 89 (Pre-Certification Reservations), Paragraph 90 (Post-Certification Reservations), or Paragraph 92 (General Reservations of Rights) (excluding Subparagraphs 92.a.(i) (claims for failure to meet a requirement of the Consent Decree), 92.a.(iv) (criminal liability), and 92.a.(v) (violations of federal/state law during or after implementation of the Work) (collectively the " Reserved Claims"), then BSB reserves any defenses, contribution claims, counterclaims and other claims including, but not limited to, contribution claims against AR, the Settling Federal Agencies, the State, and/or owners and operators of Railroad Property, and/or any person or entity not a party to this Consent Decree, but only for those defenses, contribution claims, counterclaims and other claims arising from the same matters, transactions, or occurrences that are raised in or directly related to the United States' or the State's Reserved Claims against BSB;

d. As to AR only, any claim, defense, or counterclaim by AR against the State which is expressly reserved in a consent decree previously entered in the State Action;

e. As to AR only, any defenses to any claim by the United States or the State for civil penalties under Section 109 or 122(l) of CERCLA, 42 U.S.C. §§ 9609, 9622(l), but only for defenses arising from the same matters, transactions, or occurrences that are raised in or directly related to the United States' claims or the State's claims against AR in such an action.

f. AR's reservation of certain claims, defenses, and causes of action against the State under CERCLA, CECRA, and any other federal or state law, including common law, as

further described herein ("Restoration Reservation"). The Restoration Reservation applies to actions performed by the State that cause (in whole or in part) EPA to require additional remedial action and/or AR to perform remedial action that is approved by EPA to satisfy any AR obligation under this Consent Decree or to ensure the protectiveness of the Remedy, thereby causing AR to incur the additional response costs, fees, or damages listed below:

(i) To recover response costs, fees, or damages associated with repair or maintenance of the Subdrain required to address conditions caused (in whole or in part) by the Parrot Tailings Waste Removal Project, but only for the State's allocable share of such costs, fees or damages that AR incurs following implementation of Subdrain optimization, as described in Attachment B.1 (Section 2.2.2.1) and Attachment C to the SOW. The parties agree that the costs and damages that are reserved in this Paragraph are solely for repair or maintenance and do not include any capital expenditures on any remedial component of the Subdrain.

(ii) To recover response costs, fees, or damages for remedial action at the Butte Treatment Lagoons (BTL) required to address the following conditions caused by or attributable (in whole or in part) to the Parrot Tailings Waste Removal Project, but only for the State's allocable share of such additional costs, fees or damages arising from or related to:

(A) an increase in concentration of any contaminant of concern in groundwater that was treated at the BTL as of the Effective Date of this Consent Decree; and/or

(B) the introduction of a new contaminant of concern in groundwater treated at the BTL that was not treated at the BTL as of the Effective Date of this Consent Decree; and/or

(C) an increase in the quantity of water captured for treatment at the BTL in a volume greater than that treated at the BTL as of the Effective Date of this Consent Decree

(iii) To recover response costs, fees, or damages for remedial action at the BPSOU to address adverse impacts to the Remedy caused (in whole or in part) by any State Restoration project funded by payments made to the State under Paragraph 20 of this Consent Decree and described in Paragraph 21 of this Consent Decree (other than the Parrot Tailings Waste Removal Project), but only for the State's allocable share of such additional costs, fees, or damages arising from or related to such adverse impacts to the Remedy.

(iv) To seek from this Court and recover an award of any costs, fees or damages (including reasonable attorney's fees) incurred by AR resulting or arising from any such claims or causes of action reserved in this Subparagraph 96.f. and Subparagraph 96.g.

g. The following limitations apply to the Restoration Reservation in Paragraph 96.f:

(i) AR's reservation of rights to bring a claim, defense, or cause of action against the State pursuant to Paragraph 96.f is only triggered if AR has or will

incur $1 million in response costs, fees, or damages under one or more of the claims, defenses, or causes of action enumerated in Paragraph 96.f.

(ii) In asserting any claim, defense, or cause of action reserved in Paragraph 96.f, AR shall have the burden of proof.

(iii) Any claim, defense, or cause of action asserted by AR against the State pursuant to Paragraph 96.f.(i)-(ii) must be brought within five years after the later of the following occurrences: (1) the State's issuance of a final project completion report for the Parrot Tailings Waste Removal Project; or (2) the State's completion of all Parrot Tailings Waste Removal Project-related activities, including any interim groundwater pumping, other than Project-area monitoring. Any claim, defense, or cause of action asserted by AR against the State pursuant to Paragraph 96.f.(iii) must be brought within five years after the later of the following occurrences: (1) the State's issuance of a final project completion report for the State Restoration project that is the subject of AR's claim; or (2) the State's completion of all project-related activities other than monitoring for the State Restoration project that is the subject of AR's claim.

h. The State's intervention in this matter serves to waive State sovereign immunity against future claims, defenses, and causes of action and rights asserted by AR against the State in this Court pursuant to AR's enumerated reservations in this Consent Decree. By intervening as a plaintiff in this action, the State of Montana and its State signatories acknowledge that the State has waived the State's sovereign immunity from future suit, including waiving any immunity the State might have under the Eleventh Amendment against suit in this Court. On behalf of and for the State of Montana, the State signatories to this Consent Decree

further affirm and agree they knowingly and voluntarily consent to future suit in this Court, and consents to the jurisdiction of this Court, for resolution of the potential future claims, defenses, or causes of action reserved under this Consent Decree, and agree that the State is estopped from raising, and will not attempt to raise, any immunity defense in such a future suit (including a defense under the Eleventh Amendment) or raise any objection to this Court's jurisdiction, and consents and agrees that this Court may, and will, dismiss and reject any attempt to raise such an immunity defense or objection to jurisdiction or venue in the event such future suit is brought by AR against the State, as reserved under this Consent Decree.

i. For purposes of this Paragraph, the Parties agree:

(A) As of the Effective Date, the BTL treats the following contaminants of concern in collected groundwater: cadmium, copper, lead, and zinc present in influent to the BTL in concentrations that exceed BTL Performance Standards. The BTL treatment system, a passive water treatment system that settles out contaminants following lime addition, also removes lesser concentrations of other substances, including aluminum, arsenic, barium, (total) boron, fluoride, iron, mercury, nitrogen compounds, silver, sulfate and uranium-238.

(B) As of the Effective Date, the State is pumping 100 gallons per minute from the groundwater system at the Parrot Tailings Waste Removal Project area; the Parties agree that the State's cessation of groundwater pumping and withdrawal of groundwater from the Parrot Tailings Waste Removal Project

area will not be an "increase in the quantity of water captured for treatment at the BTL" under Paragraph 96.f.(ii)(C).

(C) Reduced concentrations of contaminants in groundwater entering the Subdrain cannot be used as a basis for a claim under Paragraph 96.f.

(D) AR and the State will each timely provide the other with all data and other information received or generated at the BPSOU after the Effective Date that may be relevant to any claim, defense, or cause of action under Paragraph 96.f.

97. SFAs' Reservation of Rights For State Claims. The SFA's reserve, and this Consent Decree, is without prejudice to, any defenses and claims of the SFAs in the event the State brings a cause of action or issues an order pursuant to any of the reservations under Paragraph 89 (Pre-Certification Reservations), Paragraph 90 (Post-Certification Reservations), or Paragraph 92 (General Reservations of Rights), other than in Subparagraphs 92.c.(i) (claims for failure to meet a requirement of the Consent Decree), 92.c.(iv) (criminal liability), and 92.c.(v) (violations of federal/state law during or after implementation of the Work), but only to the extent that the SFAs' defenses or claims arise from the same response action, response costs, or damages that the State is seeking pursuant to the applicable reservation.

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

99. Waiver of Claims. The Settling Defendants individually or as a whole or partial group agree not to assert any claims and to waive all CERCLA, CECRA, and RCRA claims or

causes of action that they may have for all matters relating to the BPSOU, including for contribution, against any person where the person's liability to the Settling Defendants with respect to the BPSOU is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the BPSOU, or having accepted for transport for disposal or treatment of hazardous substances at the BPSOU, if the materials contributed by such person to the BPSOU containing hazardous substances did not exceed the greater of: (A) 0.002% of the total volume of waste at the BPSOU, or (B) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the BPSOU by such person contributed or could contribute significantly to the costs of response at the BPSOU, or if EPA has named such parties as potentially responsible parties for the BPSOU pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. This waiver shall also be void to the extent that the United States or the State institutes new claims in the Federal Action (but not under this Consent Decree) or a new action, or issues a new administrative order to the Settling Defendants, pursuant to Subparagraphs 92.a.(vii), 92.b, 92.c.(vii), or 92.d (General Reservations of Rights) of this Consent Decree. In addition, this waiver and agreement not to assert claims also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the BPSOU against any Settling Defendant, or if legal action to enforce any Remedy requirement, including Institutional Controls (to support the ICIAP, Appendix E to this Consent Decree) is filed in this action.

XIX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

100. Effect on Nonparties. Except as provided in Paragraphs 87 (Covenants to Settling Defendants) and 99 (Waiver of Claims), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraph 99 (Waiver of Claims), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the matters addressed in this Consent Decree against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States or the State, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

101. Contribution Protection. By entering this Consent Decree this Court finds that this Consent Decree constitutes a judicially-approved settlement pursuant to which the State, each Settling Defendant, the Indemnitee, and each Settling Federal Agency has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) and/or Section 719(1) of CECRA, 75-10-719(1), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, Section 719(1) of CECRA, or as may be otherwise provided by law, for the "matters addressed" in this Consent Decree. For purposes of this Paragraph, the "matters addressed" in this Consent Decree as to all Parties and the Indemnitee include: the

Federal BPSOU Interim Response Costs, Federal BPSOU Future Response Costs, Oversight Costs for the BPSOU, Work, State Restoration at the BPSOU, including the Parrot Tailings Waste Removal, BTC Riparian Actions, as well as all approved response actions at the BPSOU taken and to be taken by any Party pursuant to this Consent Decree. As to the United States and the State, the "matters addressed" in this Consent Decree also includes: response actions taken or to be taken on Railroad Properties and the implementation of the Residential Solid Media Remedial Action within the BPSOU as defined in the 2006 Record of Decision, the 2011 ESD, and the 2020 Record of Decision Amendment (excluding Residential Solid Media Remedial Action outside the BPSOU). The contribution protection set forth in this Paragraph is intended to provide the broadest protection afforded by CERCLA and CECRA for matters addressed in this Consent Decree.

102. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaints filed by the United States and the State in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant and each SFA has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

103. Notification. Each Settling Defendant(s) agrees that with respect to any suit or claim for contribution brought by any one of them for matters related to this Consent Decree, they will notify the United States and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim. The Settling Defendants agree that with respect to any suit or claim for contribution brought against any one of them for matters related to this Consent

Decree, they will notify in writing the United States and the State within ten (10) days of service of the complaint on any Settling Defendant. In addition, the Settling Defendants shall notify the United States and the State within ten (10) days of service or receipt of any motion for summary judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

104. Waiver of Claim-Splitting Defenses.

a. In any subsequent administrative or judicial proceeding initiated by (i) the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the BPSOU or any of the remaining Operable Units within the Clark Fork NPL Sites, or (ii) the United States or the State for other claims reserved in Paragraph 89 (Pre-Certification Reservations), 90 (Post-Certification Reservations), and 92 (General Reservations of Rights), the Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding by the United States or the State were or should have been brought in the Federal Action or in the State Action; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVII (Covenants and Reservations by the United States and the State).

b. In any subsequent administrative or judicial proceeding initiated by the United States or the State, for injunctive relief, recovery of response costs, or other appropriate relief relating to the BPSOU, neither the United States nor the State, shall use any provision of this Consent Decree to assert and maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based

upon any contention that the claims raised by the Settling Defendants in the subsequent proceeding were or should have been brought in the Federal Action or in the State Action; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVIII (Covenants and Reservations by the Settling Defendants).

XX. ACCESS TO INFORMATION

105. Obligation to Provide Documents. Subject to the assertion of privilege claims in accordance with Paragraph 106 (Claims of Privilege), the Settling Defendants shall each provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to the BPSOU or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, and correspondence; provided, however, that the Settling Defendants shall not be required to re-produce any documents already provided to the United States. In response to reasonable requests by EPA, in consultation with the State, the Settling Defendants shall cooperate in making available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work, subject to their right to counsel or any other right under State and Federal law.

106. Claims of Privilege.

a. A Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to the United States, EPA, or the State under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.§ 9604(e)(7), and 40 C.F.R.§ 2.203(b). Documents or information

determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to the United States, EPA, or the State, and if EPA has notified the Settling Defendant asserting such a claim that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to the Settling Defendants.

b. Each Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by state or federal law. If any Settling Defendant asserts such a privilege in lieu of providing documents over which it asserts a privilege, and if that Settling Defendant has not previously provided a privilege log to the United States for the documents subject to the request, that Settling Defendant shall provide the United States and/or EPA, and the State, with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by the Settling Defendant. However, no documents, reports or other information the Settling Defendants are required to create or generate by this Consent Decree shall be withheld on the grounds that they are privileged.

107. No Data Claim. No claim of confidentiality shall be made by any Party with respect to any data, including, but not limited to, all sampling, analytical, monitoring,

hydrogeologic, scientific, chemical, or engineering data, or any other non-privileged documents or information evidencing conditions relating to the BPSOU.

108. Previously Provided Documents. Nothing in this Section shall require the Settling Defendants to produce any documents, records, or other information that any Settling Defendant(s) have previously produced to the United States, although the Settling Defendants shall cooperate with the United States to identify the approximate date(s) of such previous production or other information to assist the United States in locating previously produced documents.

109. Admissibility. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree.

110. Plaintiffs Retention of Rights. Notwithstanding any provision of this Consent Decree, Plaintiffs retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XXI. RETENTION OF RECORDS

111. Preservation of Records. Until 5 years after the Settling Defendants' receipt of EPA's last notification pursuant to Paragraph 4.9 of SOW (Certification of Work Completion), each Settling Defendant shall preserve and retain all non-identical records and documents (including records or documents in electronic form) now in their possession or control or which come into their respective possession or control that relate to the BPSOU Work or liability of any person for response actions conducted and to be conducted at the BPSOU, regardless of any

corporate retention policy to the contrary. The Settling Defendants shall each also instruct their contractors and agents to preserve for the same period of time all documents and records relating to the performance of the Work at the BPSOU.

112. Notification. At the conclusion of this document retention period, each Settling Defendant shall notify the United States and the State at least ninety (90) days prior to the destruction of any such records or documents. A Settling Defendant may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by state or federal law. If a Settling Defendant asserts such a privilege, it shall provide the United States and the State with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Settling Defendant. However, no final documents, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

113. Certification. The Settling Defendants each hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability or the potential liability of any other Settling Defendant regarding the BPSOU since the notification of potential liability by the United State or the State, and that they have fully complied with any and all EPA requests for information pursuant to Section 104(e) and

122(e)(3)(b) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(b), and Section 3007 of RCRA, 42 U.S.C. § 6927 and state law.

114. SFA Acknowledgement. The United States acknowledges that each SFA (a) is subject to all applicable federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XXII. NOTICES AND SUBMISSIONS

115. Individuals and Addresses. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this Consent Decree, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to the United States:

EES Case Management Unit, U.S. Department of Justice
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ #90-11-2-430

and

Chief, Environmental Defense Section
U.S. Department of Justice
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ #90-11-2-430

As to EPA:

Nikia Greene (RPM and Project Coordinator)
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 8 Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59624

D. Henry Elsen, Attorney
U.S. Environmental Protection Agency
Region 8 Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59624

As to the Regional Financial Management Officer:

Ben Bielenberg
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
bielenberg.ben@epa.gov

As to EPA Cincinnati Finance Center:

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to the State or DEQ:

Daryl Reed (State Project Officer and Project Officer)
BPSOU CERCLA Site
Department of Environmental Quality
Remediation Division
P.O. Box 200901
Helena, Montana 59620-0901

Jonathan Morgan
DEQ Legal Counsel
Montana Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

Jim Ford, State NRD Project Coordinator
Montana Natural Resource Damage Program
Montana Department of Justice
P.O. Box 201425
1720 Ninth Avenue
Helena, Montana 59620-1425

As to AR:

Josh Bryson (Project Coordinator)
Operations Project Manager
Atlantic Richfield Company
317 Anaconda Road
Butte, Montana 59701

Jean A. Martin, Senior Counsel
Atlantic Richfield Company
501 Westlake Park Blvd., Low Rise Room 3.664A
Houston, Texas 77079

As to BSB:
Eric Hassler and Julia Crain
Butte Silver Bow County
155 West Granite Street
Butte, Montana 59701

XXIII. RETENTION OF JURISDICTION

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

XXIV. APPENDICES

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

Appendix A – The 2006 BPSOU Record of Decision, the 2011 Explanation of Significant Differences, and the 2020 Record of Decision Amendment
Appendix B – Figure of the BPSOU Surface Boundary
Appendix C – Subdrain Figures
Appendix D – BPSOU SOW
Appendix E – Institutional Controls Implementation and Assurance Plan for the BPSOU Site
Appendix F – Figure of Railroad Properties
Appendix G – Map of Source Areas
Appendix H – BTC Riparian Actions Outline

XXV. EFFECTIVE DATE

118. The Effective Date of this Consent Decree shall be 60 days from the date that this District Court enters the Consent Decree, unless an appeal of the entry and judgment is filed during the 60-day period; if an appeal is taken, the Effective Date shall mean the date on which the District Court's judgment is affirmed.

XXVI. MODIFICATION

119. Except as provided in Paragraph 27 (Modification of SOW or Related Deliverables), material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the United States and Settling Defendants, and shall be effective upon approval by the Court. Except as provided in Paragraph 27, non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and Settling Defendants. All modifications to the Consent Decree, and any material modification of the SOW except as provided in Paragraph 27, shall also be signed by the State, or a duly authorized representative of the State, as appropriate. A modification to the SOW shall be considered material if it: (a) further waives an ARAR; (b) modifies Paragraph 1.3 of the SOW; or (c) implements an ESD that significantly alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(i), except as provided in Paragraph 27 and Section IX (Remedy Review). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

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

XXVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

123. Upon entry of this Consent Decree, EPA will terminate unilateral administrative order or administrative order on consent Docket Nos. CERCLA-VIII-88-05, CERCLA-VIII-89-21, CERCLA-VIII-90-11, CERCLA-VIII-90-12, CERCLA-VIII-90-14, CERCLA-VIII-91-13, CERCLA-VIII-92-04, CERCLA-VIII-92-17, CERCLA-VIII-92-18, CERCLA-VIII-92-23, CERCLA-VIII-94-21, CERCLA-VIII-95-58, CERCLA-VIII-2000-02 and CERCLA-08-2011-0011 (except as to obligations pertaining to Group 1 Respondents for Residential Solid Media Remedial Action and all obligations pertaining to the Remedy on Railroad Properties (Group 2 Respondents' obligations).

XXVIII. SIGNATORIES / SERVICE

124. The undersigned representatives of the Settling Defendants, the Environment and Natural Resources Division of the United States Department of Justice, the United States Environmental Protection Agency, the State of Montana, including the Montana Department of

Environmental Quality, and the State of Montana Natural Resource Damage Program each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

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

126. The Settling Defendants shall each identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. The Settling Defendants each hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendants need not file any response to the United States' Fifth Amended Complaint or the State's Complaint filed in this action, if the State's Motion to Intervene is granted, unless and until 30 days after the Court expressly declines to enter this Consent Decree as a final judgement.

127. Upon the Court's approval of this Consent Decree, the Decree shall be entered as a final judgment under Fed. R. Civ. P. 54(b), and shall serve to satisfy the settlement negotiation requirements contained in paragraph 31(e) of the Streamside Tailings Consent Decree with respect to the BPSOU. The Court expressly determines that there is no just reason for delay in entering this judgment.

SO ORDERED THIS ___ DAY OF _____, 2020.

_____
UNITED STATES DISTRICT COURT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, *et al*. v. Atlantic Richfield Company, *et al*., Civil No. CV-89-39-BU-SEH, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA:

_____ Date: _____

JONATHAN BRIGHTBILL
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

_____ Date: _____

JAMES D. FREEMAN
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
999 Eighteenth Street
South Terrace Suite 370
Denver, CO 80202

_____ Date: _____

KURT G. ALME
United States Attorney
District of Montana
316 N 26th St #5018
Billings, MT 59101

_____ Date: _____

VICTORIA FRANCIS
Assistant United States Attorney
District of Montana
316 N 26th St #5018
Billings, MT 59101

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, *et al*. v. Atlantic Richfield Company, *et al*., Civil No. CV-89-39-BU-SEH, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

_____ Date: _____

KENNETH C. SCHEFSKI
Regional Counsel
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

_____ Date: _____

BETSY SMIDINGER
Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

_____ Date: _____

D. HENRY ELSEN
Legal Enforcement Program
U.S. Environmental Protection Agency
Region 8 Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59624

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, *et al*. v. Atlantic Richfield Company, *et al*., Civil No. CV-89-39-BU-SEH, subject to the public notice and comment requirements of 28 C.F.R. § 50.7 and § 75-10-713, MCA.

FOR THE STATE OF MONTANA:

_____ Date: _____
STEVE BULLOCK
Governor of the State of Montana

_____ Date: _____
TIM FOX
Montana Attorney General

_____ Date: _____
GEORGE MATHIEUS
Deputy Director
Montana Department of Environmental Quality

_____ Date: _____
JONATHAN MORGAN
Special Assistant Attorney General
DEQ Legal Counsel
Montana Department of Environmental Quality
1100 North Last Chance Gulch
P.O. Box 200901
Helena, Montana 59620-0901

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, *et al*. v. Atlantic Richfield Company, *et al*., Civil No. CV-89-39-BU-SEH, subject to the public notice and comment requirements of 28 C.F.R. § 50.7 and § 75-10-713, MCA.

_____ Date: _____

HARLEY HARRIS
Supervising Assistant Attorney General

_____ Date: _____

KATHERINE M. HAUSRATH
Assistant Attorney General
Montana Natural Resource Damage Program
Montana Department of Justice
P.O. Box 201425
1720 Ninth Avenue
Helena, Montana 59620-1425

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, *et al*. v. Atlantic Richfield Company, *et al*., Civil No. CV-89-39-BU-SEH.

FOR THE CITY AND COUNTY OF BUTTE-SILVER BOW

_____ Date: _____

DAVID PALMER
(authorized to accept service of process by mail on behalf of BSB as noted in Paragraph 126)
Chief Executive
Butte-Silver Bow County

ATTEST:

_____
SALLY HOLLIS / OR LINDA SAJOR
CLERK AND RECORDER /
DEPUTY CLERK AND RECORDER

APPROVED AS TO FORM:

_____ Date: _____

EILEEN JOYCE
County Attorney
Butte-Silver Bow County
155 W. Granite
Butte, MT 59701

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, *et al.* v. Atlantic Richfield Company, *et al.*, Civil No. CV-89-39-BU-SEH.

FOR THE ATLANTIC RICHFIELD COMPANY:

_____ Date: _____
PATRICIA GALLERY
Vice President

_____ Date: _____
WILLIAM J. DUFFY
(authorized to accept service of process by mail on behalf of AR as noted in Paragraph 126)
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

_____ Date: _____
JEAN A. MARTIN
Senior Attorney
Atlantic Richfield Company
501 Westlake Park Blvd., Low Rise Room 3.664A
Houston, Texas 77079