

UNITED STATES DEPARTMENT OF JUSTICE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
UNITED STATES DEPARTMENT OF THE INTERIOR, AND  
THE STATE OF UTAH NATURAL RESOURCE TRUSTEES

March 17, 2021  
7:12 AM  
Received by  
EPA Region VIII  
Hearing Clerk

IN THE MATTER OF: )  
)  
Richardson Flat Tailings Site )  
Operable Units 2 and 3 )  
Park City, Utah )  
)  
Big Hoss Properties, LLC )  
)  
Respondent )  
)  
Proceeding Under Sections 104, 106, )  
107, and 122 of the Comprehensive )  
Environmental Response, Compensation, )  
and Liability Act, as amended, )  
42 U.S.C. §§ 9604, 9606, 9607, )  
and 9622. )  
\_\_\_\_\_ )

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER  
ON CONSENT

U.S. EPA Region 8

CERCLA Docket No. CERCLA-08-2021-0005

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## I. JURISDICTION

1. This Settlement Agreement is issued under the authority vested in the President of the United States by Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9622, as amended (CERCLA). This authority was delegated to the Administrator of EPA and the Secretary of the Interior on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to EPA Regional Administrators by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). This authority was further redelegated by the Regional Administrator of EPA Region 8 to the undersigned EPA officials. The authority delegated to the Secretary of the Interior is delegated to the Fish and Wildlife Service (FWS) for this Site. This Settlement Agreement is also issued under the authority vested in the State for natural resources within the State of Utah by Section 107(f) of CERCLA. The Governor of the State of Utah designated the State of Utah Natural Resource Lead Trustee and the State of Utah Natural Resource Co-Trustee (State Trustees) to act on behalf of the public as trustees for Utah's natural resources under CERCLA, 42 U.S.C. § 9601 *et seq.*, the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1251 *et seq.*, and the Oil Pollution Act (OPA), 33 U.S.C. § 2701 *et seq.* pursuant to Section 107(f)(2)(B) of CERCLA. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

2. This Settlement Agreement is made and entered into by EPA and, the Department of Interior (DOI), through FWS (the Federal Trustee), and the State Trustees (collectively, EPA, the Federal Trustee, and the State Trustees are referred to as "Agencies"), and Big Hoss Properties, LLC (Settling Party). Settling Party consents to and will not contest the authority of the Agencies to enter into this Settlement Agreement or to implement or enforce its terms.

## II. BACKGROUND

3. This Settlement Agreement concerns operable unit 2 (OU2) and operable unit 3 (OU3) of the Richardson Flat Tailings Superfund Site (Site), which comprise approximately 2700 acres of land located in Summit County, Utah. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

7. In response to the release or threatened release of hazardous substances at or from the Site, the Federal Trustee and State Trustees alleges Natural Resource Damages at the Site pursuant to Section 107 of CERCLA, 42 U.S.C § 9607.

8. In order to restore such Natural Resource Damages, the Federal Trustee and the State Trustees have incurred Natural Resource Damage costs and will incur additional Natural Resource Damage costs in the future.

9. Settling Party is the owner of a portion of the Site (Property) and desires to develop a portion of the Property in accordance with the Statement of Work for Development Plan attached hereto as Appendix A.

10. The Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

### **III. PARTIES BOUND**

11. This Settlement Agreement shall be binding upon the Agencies and upon Settling Party and its successors, and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the Party represented by him or her.

### **IV. STATEMENT OF PURPOSE**

12. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make cash payments, perform work, and implement land use restrictions requested by the State Trustees to resolve its alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) with regard to the Site as provided in the Covenants by the Agencies in Section X, subject to the Reservations of Rights by the Agencies in Section XI.

### **V. DEFINITIONS**

13. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement 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 Settlement Agreement or its appendices, the following definitions shall apply:

“Action Memorandum” or “Action Memoranda” shall mean the Action Memorandum or Memoranda that may be issued by EPA in the future for OU2 and OU3.

“Affected Property” shall mean all real property at the Site and any other real property, owned or controlled by Settling Party, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, any portion of Summit County parcel SS-65-A-3.

“Agencies” shall mean EPA, the Federal Trustee, and the State Trustees.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOI” shall mean the U.S. Department of Interior and its successor departments, agencies, or instrumentalities, including the U.S. Fish and Wildlife Service, which has asserted that there may be natural resource injuries at the Site.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

“Existing Contamination” shall mean:

- i. any hazardous substances, pollutants or contaminants present or existing on the Property as of the Effective Date;
- ii. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- iii. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

“Federal Trustee” shall mean the Department of Interior, acting through FWS. “FWS” shall mean the U.S. Fish and Wildlife Service and any successor departments or agencies of the United States.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

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

“Natural Resource Damages” shall mean the cost of restoring injured resources to their baseline condition, compensation for the interim loss of injured resources pending recovery, and the reasonable cost of a damage assessment.

“Natural Resource Trustees” shall mean the Federal Trustee and the State Trustees.

“OU2” shall mean Lower Silver Creek, an area bounded by Highway 40 on its southern end and Interstate 80 on its northern end, ranging in width from 2,100 feet at the southern boundary to 3,800 feet near Pivotal Promontory Road, in Township 1 South Range 4 East, in Sections 10, 11, 15, 14, 22, 23, 26, 27, and 35 and approximately 500 feet in Section 2 of Township 2 South Range 4 East, Summit County, Utah and excluding any areas within OU3. OU2 is depicted generally on the map attached as Appendix B.

“OU3” shall mean an area beginning at the southern and most up gradient portion of the Silver Maple Claims and then proceeding downstream to the Middle Reach and including parcels formerly addressed by the RI/FS for OU3 identified as all or a portion of Summit County parcel numbers SS-28-A-1-X, SS-27-B-X, SS-28-A-X, SS-56, SS-56-UP-X, SS-56-A, SS-64-A, SS-64-100-UP-X, SS-65-A-3-1, SS-65-A-5, SS-65-A-3, SS-65-1, SS-65-A-6, SS-88 and excluding any areas within OU4. OU3 is depicted generally on the map attached as Appendix B.

“Oversight Costs” shall mean all direct and indirect costs incurred by EPA or the United States after the Effective Date in monitoring and supervising Respondent’s implementation of the SOW, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Agreement, as well as costs incurred in overseeing implementation of the SOW.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower-case letter.

“Parties” shall mean EPA, the Federal Trustee, the State Trustees, and the Settling Party.

“Property” shall mean parcel SS-65-A-3, approximately 7 acres in size, which is within the Site and is described on Appendix C hereto.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Removal Actions” shall mean all necessary actions to implement the removal action remedy to be selected in the Action Memorandum or Memoranda for OU2 and OU3.

“Richardson Flat Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Party” shall mean Big Hoss Properties, LLC, a limited liability company registered in the State of Utah.

“Site” shall mean the Richardson Flat Tailings Superfund Site, located in and around Park City, Utah, in Summit County.

“State” shall mean the State of Utah.

“State Trustees” shall mean the Executive Director of the Utah Department of Environmental Quality as the Natural Resource Lead Trustee and the Executive Director of the Utah Department of Natural Resources as the Utah Natural Resource Co-Trustee.

“Statement of Work for Development Plan” or “SOW” shall mean the document describing the activities Settling Party must perform in the event Settling Party seeks to develop the Property or any portion thereof.

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

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

## VI. PAYMENT OF RESPONSE COSTS

14. **Payment by Settling Party for EPA Response Costs.** Within 30 days after the Effective Date, Settling Party shall pay to EPA \$75,000.

15. Settling Party shall make payment at <https://www.pay.gov> to the U.S. EPA account in accordance with payment instructions found at <https://www.pay.gov>.

16. **Deposit of Payment.** The total amount to be paid by Settling Party pursuant to Paragraph 14 shall be deposited by EPA in the Richardson Flat Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

17. **Notice of Payment.** At the time of payment, Settling Party shall send notice that payment has been made to EPA in accordance with Section XV (Notices and Submissions) and to the EPA Cincinnati Finance Center by email or by regular mail at:

**Email:** cinwd\_acctsreceivable@epa.gov

**Regular mail:** EPA Cincinnati Finance Office  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 0894 and EPA docket number for this action.

18. **Payment to Federal Trustee.** Within 30 days after the Effective Date, Settling Party shall pay to the Federal Trustee \$32,170.

- a. Settling Party shall make the payment to the Federal Trustee in accordance with the payment instructions attached as Appendix E. The payment shall reference “Richardson Flat Tailings Site (OU2 and 3).

At the time of payment, Settling Party shall send a written notice of payment and a copy of any transmittal documentation to:

Field Supervisor  
U.S. Fish and Wildlife Service Utah Ecological Services Field Office  
2369 W. Orton Circle, Suite 50  
West Valley City, UT 84119

With a copy to:

Chief  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
DJ # 90-5-1-1-11456

19. **Payment to State Trustees.** Within 30 days after the Effective Date, Settling Party shall pay to the State Trustees \$3,727.72. Such payment shall be made payable to the Utah Department of Environmental Quality and mailed to:

Utah Department of Environmental Quality  
Kimberly Shelley, Natural Resource Damage Lead Trustee  
P.O. Box 144810  
Salt Lake City, Utah 84114-4810

Or hand delivered to:

Utah Department of Environmental Quality  
Kimberly Shelley, Natural Resource Damage Lead Trustee  
195 North 1950 West  
Salt Lake City, Utah

A notation on the check shall indicate that the payment is for the State Natural Resource Damage Ground Water Settlement at the Richardson Flats Superfund Site (Stoly, Summit County).

20. **Payment of Oversight Costs by Settling Party.** Settling Party shall pay EPA Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send Settling Party a bill to the email address for Settling Party at [danb@burtonlumber.com](mailto:danb@burtonlumber.com) and [bobb@burtonlumber.com](mailto:bobb@burtonlumber.com). If the electronic notification is undeliverable, EPA will mail a paper copy of the billing notification to the mailing address set forth in Section XV. Settling Party shall make all payments required by this Paragraph to EPA in accordance with the billing instructions included in the billing notification. All payments shall reference Site/Spill ID Number 0894 and the EPA docket number for this action.



- a. In the event that a payment for Oversight Costs is not made within 30 days of Settling Party's receipt of a bill, Settling Party shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment.
- b. The total amount to be paid by Settling Party under this Section may be deposited by EPA in the Richardson Flat Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
- c. At the time of each payment, Settling Party shall send notice that such payment has been made to:

Enforcement Specialist, Richardson Flat Site (8ENF-RC)  
EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202

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

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

**21. Resolution of Disputes with Settling Party Concerning Payment of Oversight Costs**

- a. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding Settling Party's obligation to pay EPA for Oversight Costs. The dispute resolution procedures in this Paragraph are limited to disputes regarding recovery of Oversight Costs. Nothing in this Paragraph shall be deemed to create a right to pre-enforcement review of response actions taken by EPA.
- b. Settling Party may dispute all or part of a bill for Oversight Costs submitted under this Settlement Agreement if Settling Party determines that EPA has made a mathematical error or included a cost item that is not within the definition of Oversight Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Settling Party shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 20 (Payment of Oversight Costs by Settling Party) on or before the due date. Within the same time period, Settling Party shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and shall remit to that escrow account funds

equivalent to the amount of the contested Oversight Costs. Settling Party shall simultaneously transmit a copy of both checks in accordance with Paragraph 17 (Notice of Payment). Settling Party shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 7 days after the dispute is resolved.

- c. If Settling Party objects to any billing for Oversight Costs, it shall notify EPA in writing of its objection(s) within 7 days after such action, unless the objection(s) has/have been resolved informally. EPA and Settling Party shall have 30 days from EPA's receipt of Settling Party's written objection(s) to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA.
- d. Any agreement reached by EPA and the Settling Party pursuant to this Section shall be in writing and shall, upon signature by the parties to the dispute, be incorporated into and become an enforceable part of this Settlement Agreement. If EPA and Settling Party are unable to reach an agreement within the Negotiation Period, an EPA management official at the Supervisory level or higher will issue a written decision on the dispute to Settling Party, which shall not constitute final agency action for purposes of judicial review. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Following resolution of the dispute, as provided by this Section, Settling Party shall make payment in accordance with the agreement reached or with EPA's decision, whichever occurs, in accordance with the instructions in Paragraphs 15 and 17, and EPA shall deposit the payment in accordance with Paragraph 16.

## **VII. ENVIRONMENTAL COVENANT**

22. As additional consideration for the covenant not to sue provided by the State Trustees in Paragraph 29, Settling Party shall file an environmental covenant on the Property for the benefit of the State Trustees within 30 days of the Effective Date. Settling Party shall record the environmental covenant in the Summit County Recorder's Office and provide the State Trustees with a certified copy of the recorded environmental covenant. The environmental covenant is attached hereto as Appendix D.

## **VIII. DEVELOPMENT WORK**

23. Settling Party shall comply with all requirements set forth in the SOW, attached hereto as Appendix A.

## **IX. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

24. **Interest on Late Payments.** If Settling Party fails to make any payment required by Paragraphs 14, 18, or 20 (Payment of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

25. **Stipulated Penalty**

- a. If any amounts due to EPA under Paragraph 14 or 20 are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 24 (Interest on Late Payments), \$250 per violation per day that such payment is late.

If Settling Party does not comply with Section XIV (Property Requirements), Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$250 per violation per day of such noncompliance.

- b. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Party's receipt from EPA of a demand for payment of the penalties. Settling Party shall make all payments required by this Section to EPA by Fedwire EFT to:

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

Each such payment shall reference "stipulated penalties," Site/Spill ID Number 0894, and the EPA docket number for this action.

- c. At the time of payment, Settling Party shall send notice that payment has been made as provided in Paragraph 17 (Notice of Payment).
- d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.
- e. If any amount due to the Federal Trustee under Paragraph 18 is not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to the Federal Trustee, as a stipulated penalty, in addition to the Interest required by Paragraph 24 (Interest on Late Payments), \$250 per violation per day that such payment is late.
- f. If any amount due to the State Trustees under Paragraph 19 is not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to the State Trustees, as a stipulated penalty, in addition to the Interest required by Paragraph 24 (Interest on Late Payments), \$250 per violation per day that such payment is late.

26. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, Settling Party's failure or refusal to comply with any term or condition of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

27. Notwithstanding any other provision of this Section, EPA and the Natural Resource Trustees may, in their unreviewable discretion, waive payment of any portion of the respective stipulated penalties that have accrued to them pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Section VI or from performance of any other requirements of this Settlement Agreement.

## **X. COVENANTS BY THE AGENCIES**

28. **Covenants for Settling Party by EPA.** Except as specifically provided in Section XI (Reservations of Rights by The Agencies), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to OU2 and OU3 of the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. These covenants extend only to Settling Party and do not extend to any other person.

29. **Covenants for Settling Party by Natural Resource Trustees.** Except as specifically provided in Section XI (Reservations of Rights by Agencies), the Natural Resource Trustees covenant not to sue or take administrative action against Settling Party pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for natural resource damages within OU2 and OU3 of the Site. With respect to present and future liability, this covenant shall take effect upon the Effective Date. This covenant is conditioned upon the satisfactory performance by Settling Party of all obligations under this Settlement Agreement. This covenant extends only to Settling Party and does not extend to any other person.

## **XI. RESERVATIONS OF RIGHTS BY THE AGENCIES**

30. The Agencies reserve, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within Paragraph 28 (Covenants for Settling Party by EPA) and Paragraph 29 (Covenants for Settling Party by Natural Resource Trustees). Notwithstanding any other provision of this Settlement Agreement, the Agencies reserve all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement including the SOW;
- b. criminal liability;
- c. liability for performance of response actions outside OU2 and OU3 of the Site;

- d. liability based on the ownership or operation of the Site by Settling Party when such ownership or operation commences after signature of this Settlement Agreement by Settling Party;
- e. liability based on Settling Party's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of OU2 and OU3 of the Site.

31. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that EPA may have against any person, firm, corporation, or other entity not a signatory to this Settlement Agreement.

32. Notwithstanding any other provisions of this Settlement Agreement, the Natural Resource Trustees reserve, and this Settlement Agreement is without prejudice to, the right to institute proceedings against Settling Party and its successors and assigns for:

- a. additional Claims for Natural Resource Damages related to the Site if conditions, factors or information not known to the Natural Resource Trustees at the time of the execution of this Settlement Agreement are discovered that, together with any other relevant information, indicates that there is a quantifiable: (1) injury to, (2) destruction of, or (3) loss of a natural resource of a type unknown or of a magnitude unknown, or of a magnitude significantly greater than was known or should have been known at the time of execution of this Settlement Agreement; or
- b. liability for damages for injury to, destruction of, or loss of natural resources resulting from any new incident, event or release of oil or hazardous substances not caused by or resulting from Existing Contamination or brought onto the Property as part of the Removal Action, or caused by or resulting from an EPA-approved work plan, or otherwise ordered by EPA.

## **XII. COVENANTS BY SETTLING PARTY**

33. **Covenants by Settling Party.** Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, the Agencies, or their contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

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

- b. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or
- c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

34. Except as provided in Paragraph 36 (claims against other PRPs) and Paragraph 41 (res judicata and other defenses), the covenants in this Section shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section XI (Reservations of Rights by the Agencies), other than in Paragraph 30.a (liability for failure to meet a requirement of the Settlement Agreement) or 30.b (criminal liability), but only to the extent that Settling Party's claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

35. Nothing in this Settlement Agreement 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).

36. Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs and for natural resource damages and assessment costs relating to the Site against any other person who is a potentially responsible party (PRP) under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

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

37. Except as provided in Paragraph 36 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XII (Covenants by Settling Party), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

38. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all

response costs incurred or to be incurred, at or in connection with the Property, by the United States or by any other person, except for the State; provided, however, that if any of the Agencies exercise rights under the reservations in Section XI (Reservations of Rights by the Agencies), other than in Paragraphs 30.a (liability for failure to meet a requirement of the Settlement Agreement) or 30.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

39. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party 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).

40. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

41. In any subsequent administrative or judicial proceeding initiated by EPA, or the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA, or the United States on behalf of EPA, in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the Agencies set forth in Section X.

42. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA or the Federal Trustee receives from such Settling Party the respective payment(s) required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 38, and that, in any action brought by the United States related to the “matters addressed,” Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

#### **XIV. PROPERTY REQUIREMENTS**

43. **Agreements Regarding Access and Non-Interference.** Settling Party shall, with respect to its Affected Property:

a. Provide the United States, the State, potentially responsible parties who have entered or may enter into an agreement with the United States or the State for performance of response actions at the Site (hereinafter “Performing Parties”), and their representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) verifying any data or information submitted to the United States or the State;
- (2) conducting investigations regarding contamination at or near the Site;
- (3) obtaining samples;
- (4) assessing the need for, planning, implementing, or monitoring response actions;
- (5) inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents;
- (6) assessing Settling Party’s compliance with the Settlement Agreement;
- (7) determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement; and
- (8) implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site.

44. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Settling Party shall cooperate with EPA’s and the State’s efforts to secure and ensure compliance with such institutional controls.

**45. Notice to Successors-in-Title.**

Settling Party shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

- a. notify the proposed transferee that EPA is performing a response action regarding the Site; and
- b. notify the Agencies of the name and address of the proposed transferee and provide the Agencies a copy of the above notice that it provided to the proposed transferee.



46. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Settling Party shall continue to comply with its obligations under the Settlement Agreement.

47. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## **XV. NOTICES AND SUBMISSIONS**

48. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. 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 this Settlement Agreement regarding such Party.

### **As to EPA:**

Rob Parker  
EPR-SR  
1595 Wynkoop St.  
Denver, CO, 80202  
[Parker.robert@epa.gov](mailto:Parker.robert@epa.gov)

With copy to:

Amelia Piggott  
[Piggott.amelia@epa.gov](mailto:Piggott.amelia@epa.gov)

### **As to Respondent:**

Big Hoss Properties, LLC  
c/o Burton Lumber  
1170 South 4400 West  
Salt Lake City, Utah 84104  
Attn: Dan Burton and Bob Burton

### **As to DOI:**

Field Supervisor  
U.S. Fish and Wildlife Service Utah Ecological Services Field Office  
2369 W. Orton Circle, Suite 50  
West Valley City, UT 84119

With a copy to:

Chris Cline  
NRDAR Project Manager  
U.S. Fish and Wildlife Service Utah Ecological Services Field Office  
2369 W. Orton Circle, Suite 50  
West Valley City, UT 84119  
Phone: (385) 285-7910

Email: [chris\\_cline@fws.gov](mailto:chris_cline@fws.gov)

**As to the State Natural Resource Lead Trustee:**

Kimberly Shelley, Executive Director  
Utah Department of Environmental Quality 195 North  
1950 West  
Salt Lake City, UT 84111

With a copy to:

Kimberlee McEwan  
Utah Attorney General's Office  
P.O. Box 140873  
Salt Lake City, UT 84114-0837

With a copy to:

Doug Bacon, Project Manager  
Richardson Flat OU2 & 3  
DERR P.O. Box 144840  
Salt Lake City, Utah 84114-4840

**As to the State Natural Resource Co-Trustees:**

Brian Steed, Executive Director  
Utah Department of Natural Resources  
1594 West North Temple  
P.O. Box 145610  
Salt Lake City, UT 84114-5610

With a copy to:

Fredric Donaldson  
Utah Attorney General's Office  
1594 West North Temple, Suite 300  
Salt Lake City, UT 84114-0873

## **XVI. INTEGRATION/APPENDICES**

49. This Settlement Agreement and its appendices constitute the final, complete, and exclusive Settlement Agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A is the Statement of Work for Development;

Appendix B is a map of the Site;

Appendix C is a legal description of the Property;

Appendix D is the Environmental Covenant; and

Appendix E is the Federal Trustee Payment Instructions.

#### **XVII. PUBLIC COMMENT**

50. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

#### **XVIII. EFFECTIVE DATE**

51. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 50 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

Digitally signed by BETSY  
SMIDINGER  
Date: 2021.03.17  
03:16:23 -06'00'

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Betsy Smidinger  
Assistant Regional Administrator  
Office of Ecosystems Protection and Remediation  
U.S. EPA Region 8

Digitally signed by  
KENNETH SCHEFSKI  
Date: 2021.03.16  
16:57:18 -06'00'

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Kenneth C. Schefski  
Regional Counsel  
U.S. EPA Region 8

IT IS SO AGREED:

**UNITED STATES DEPARTMENT OF JUSTICE**

1/15/2021  
Dated

/s/ Nathaniel Douglas  
Nathaniel Douglas  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

IT IS SO AGREED:

**FEDERAL TRUSTEE**

**UNITED STATES DEPARTMENT OF THE INTERIOR**

**PEG ROMANIK** Digitally signed by PEG ROMANIK  
Date: 2021.01.19 12:04:58 -05'00'

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Dated

Peg Romanik  
Associate Solicitor  
Division of Parks and Wildlife  
Office of the Solicitor  
United States Department of the Interior

Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

**FEDERAL TRUSTEE**

**MATTHEW HOGAN** Digitally signed by MATTHEW  
HOGAN  
Date: 2021.02.02 14:22:54 -07'00'

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Dated

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Noreen A. Walsh  
Regional Director  
U.S. Fish and Wildlife Service  
Department of Interior Regions 5 and 7  
134 Union Boulevard, Suite 400  
Lakewood, CO 80228

Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

**STATE TRUSTEES**

02/11/2021

  
Kim Shelley (Feb 11, 2021 17:18 MST)

Dated

Kimberly Shelley  
State of Utah Natural Resources Lead Trustee

3/2/2021



Dated

Brian Steed  
State of Utah Natural Resources Co-Trustee



Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

**BIG HOSS PROPERTIES LLC**

January 4, 2021

Dated



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Robert A. Burton  
Manager  
Big Hoss Properties, LLC

## APPENDIX A

### ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

Richardson Flat Tailings Site Park City, Utah  
Operable Units 2 and 3

#### **Statement of Work for Development**

##### General Expectations

1. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work contained herein.
2. All Work shall be completed in a manner consistent with federal, state, and local regulations.
3. All data collection activities (characterization or confirmation) shall be conducted pursuant to an approved Quality Assurance Project Plan (QAPP), which defines the environmental data collection procedures. All developed QAPPs shall be consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5),” EPA/240/B-01/003, March 2001 (reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5),” EPA/240/R-02/009 (December 2002), and “Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3,” EPA/505/B-04/900A-900C (March 2005).
4. Subject to location and project specific criteria, which should be presented and discussed in a project specific scoping meeting and documented in a QAPP, to be submitted for review and approval by EPA, the following general considerations will need to be incorporated during potential assessment actions:
  - a. Initial property characterization (sampling) shall include decision units on the property not to exceed 0.25 acres.
  - b. Each decision unit, at a minimum, will have a five point composite sample collected from a depth of 0-6 inches. Each subsample will be collected from five separate and distinct locations within each decision unit.
  - c. Identified areas of exposed tailings or features, such as ditches, that are predominantly different than the rest of the property shall be a different decision unit(s).
  - d. Where appropriate, a biased subset of decision units will have one depth-profiling sample collected from three depths: 0 to 6 inches, 6 to 12 and 12 to 18 inches. Preference will be given to bias the sample locations to areas in each decision unit that may have greater impacted material (e.g. tailings or soils).
  - e. All characterization and confirmation samples will be analyzed for the list of targeted metals plus Mercury using CLP Method ISM02.4, or other appropriate

EPA methodology, that allows for comparison with applicable land use action values, as described in paragraphs 9, 10 and 11.

5. Prior to or during any development, Settling Party should use all reasonable attempts to segregate clean material (e.g. soils compliant with applicable land use action levels) from impacted material during the response action. If off-site disposal is necessary for any materials (e.g. soils, tailings), Settling Party shall characterize the material sufficiently in accordance with the receiving facility's requirements and applicable state and local regulations.
6. After or in conjunction with characterization reporting, necessary soil management actions should be proposed in a response action and soil management plan (to be reviewed and approved prior to implementation), which should consider the following items, subject to location and project specific criteria:
  - a. The current site specific, interim residential land use action levels are 19 mg/kg arsenic and 260 mg/kg lead.
  - b. Land use action levels for non-residential land uses will be assessed by EPA, in coordination with DEQ, on a case by case basis. At the discretion of the Settling Party, the Settling Party may elect to respond using residential land use action levels regardless of actual proposed use and forgo development of non-residential use action levels.
  - c. Identified tailings material with concentrations that exceed the applicable land use action levels or exceeding the applicable Toxic Characteristic Leaching Procedure (TCLP) criteria shall be excavated, consolidated, sampled, managed, transported, and disposed of at an appropriate Treatment, Storage and Disposal Facility (TSDF) in compliance with all applicable regulations.
  - d. Soils with concentrations that exceed the applicable TCLP criteria shall be properly segregated and disposed of at an appropriate TSDF in compliance with all applicable regulations.
  - e. Soils with concentrations that exceed the applicable land use action levels but do not exceed applicable TCLP criteria can be managed one of two ways:
    - i. encapsulate the soils on site under an engineered cap or soil cover, incorporating a delineation barrier along with at least 18 inches of soil that is compliant with the applicable land use action level. A long-term site maintenance or management plan will be required to ensure the integrity of the cover/cap and to ensure soils are managed if excavated in the future; or
    - ii. properly segregate and dispose soils at an appropriate TSDF in compliance with all applicable regulations.
  - f. Engineered Caps and Covers may include (but are not limited to): (a) asphalt, cement or other impervious material; or (b) at least 18 inches of soil compliant with all applicable land use action levels.
  - g. For decision units where excavation work occurs, including, but not limited to underground utility corridors, basement or foundation work:
    - i. If the subject decision unit where the excavation work occurs and all contiguous decision units have soil concentrations below the subject

decision unit's applicable land use action level, no additional characterization is needed.

- ii. If the subject decision unit or any contiguous decision unit have soil concentrations above the subject decision unit's applicable land use action level:
  1. During excavation, excavated soils should be characterized and if greater than the subject decision unit's applicable land use action level, segregated, managed, transported and disposed in an appropriate TSDf in compliance with all applicable regulations.
  2. Once the full excavation depth has been attained, soils representing the floor and walls of the excavated areas or soils to remain accessible at the surface should be characterized. If concentrations remain above the applicable land use action levels, backfilling shall incorporate a delineation barrier along with at least 18 inches of soil that is compliant with the applicable land use action level. A long-term site maintenance or management plan will be required to ensure the integrity of the cover/cap and to ensure soils are managed if excavated in the future.

7. The following steps are necessary for areas where soils exceeding applicable land use action levels are consolidated, and covered or capped in place, pursuant to a response action plan:
  - a. Confirmation sampling to verify that cover soils comply with the applicable land use action levels. The results of the confirmation sampling will be included in a post response action report.
  - b. A site management plan will be required to ensure the cover or cap is maintained and to ensure adequate controls exist to address management of soils due to future erosion or excavation that occurs in the covered or capped areas.
8. Settling Party shall file the Environmental Covenant on the Property in accordance with the AOC. In the event that Settling Party elects to develop groundwater resources on the Property, or take any action not otherwise specified in this SOW or the AOC, Settling Party shall work with UDEQ to amend the covenant as necessary.

#### Characterization Activities

9. Within sixty (60) days after the Effective Date in the AOC, Settling Party shall submit a development plan that identifies the anticipated use of the Property and areas within the Property that will be disturbed during the future development.
  - a. In accordance with the Summit County Snyderville Basin General Plan and Federal Emergency Management Agency flood plain maps, no areas identified in a wetland or floodplain may be developed or disturbed and Settling Party is not required to characterize or remediate any such portions of the Property as part of this Scope of Work or in conjunction with the AOC.

10. In conjunction with submitting a development plan, Settling Party shall convene a scoping meeting with EPA and DEQ to discuss the assessment and management considerations for potentially mining impacted material, for the full scope of the Property.
11. Within 30 days after the scoping meeting, Settling Party shall submit a QAPP for initial assessment activities to the Agencies for review and approval, in accordance with the AOC.
12. Within thirty (30) days after the scoping meeting, Settling Party shall submit a Health and Safety Plan that ensures the protection of the public health and safety during on-site Work to the Agencies for review and comment. The plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all applicable Occupational Safety and Health Administration (OSHA) regulations, including 29 C.F.R. Part 1910.
13. After a QAPP has been approved by the Agencies, Settling Party shall provide written notice to the Agencies regarding sampling activities at least 10 days prior to field work. This notice should include a description of anticipated work days, work times, and number of field personnel.
14. Within 90 days after data collection activity, Settling Party shall submit a report (which may be stand-alone or combined with the response action and soil management plan) for Agencies review and approval, in accordance with the AOC. At minimum, a report on the analytical results shall include:
  - a. Description of the sampling investigation(s) performed;
  - b. Deviations from the approved SAP and QAPP;
  - c. Summary of sampling results;
  - d. Narrative interpretation of data and results;
  - e. Summary of validated data (i.e., tables and graphics);
  - f. Data validation reports and laboratory data reports;
  - g. Results of any pertinent statistical and modeling analyses;
  - h. Photographs documenting the sampling action;
  - i. Sampling conclusions; and
  - j. Other facts pertinent to the Work.

#### Response Action

15. Within 90 days of completing an initial site characterization, if the characterization informs that certain soils require management prior to or during development, Settling Party shall submit, for Agencies review and approval, pursuant to the AOC, a response

action and soil management plan delineating the response actions that will be taken to manage soils exceeding applicable land use action levels.

- a. The response action/soil management plan will include a QAPP for post response action confirmation sampling.
- 16.** Settling Party shall implement the actions included in an approved response action and soil management plan.
  - 17.** Settling Party shall provide written notice to the Agencies regarding response activities at least 10 days prior to taking a response action. This notice should include a description of anticipated work, the anticipated start date and anticipated duration.
  - 18.** Settling Party shall provide written notice to the Agencies that a response action is completed no later than 3 days after completion, in addition to any notification requirements as directed within the response action and soil management plan.
  - 19.** At any time prior to, but no later than, 30 days after completing a response action where material with soil concentrations greater than an applicable land use action level is managed on site and in part left on site at depth or at the surface, the Settling Party shall implement the QAPP for confirmation sampling prior to constructing any caps/covers.

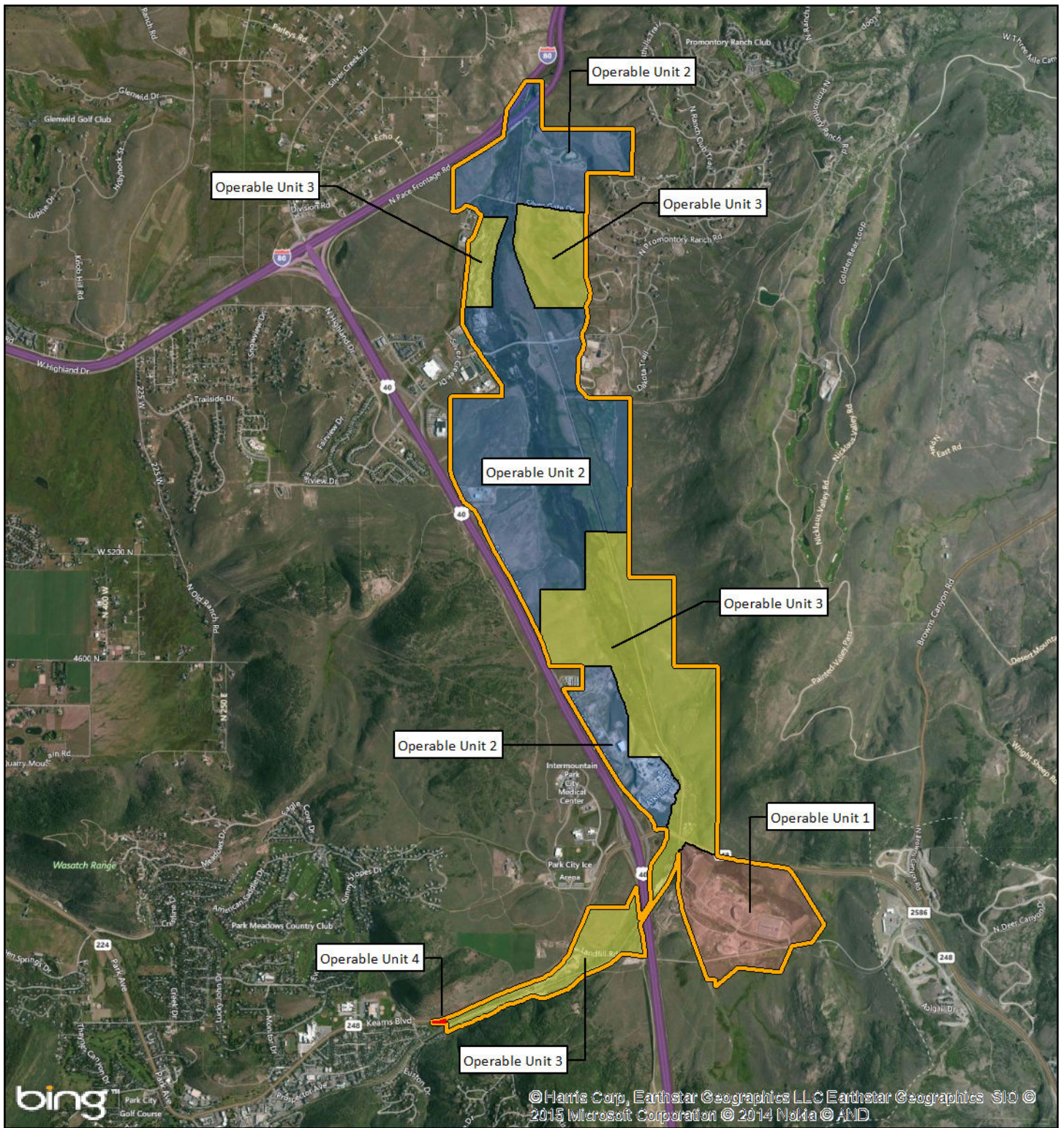
#### Post Response Action Confirmation, Reporting, and Institutional Control

- 20.** Within 30 days after response actions are complete, or within 90 days if confirmation sampling is conducted, Settling Party shall submit, for Agencies review and approval, a post response action completion report including (but not limited to):
  - a. Detailed description of all aspects of soil and water management tasks,
  - b. All relevant analytical records,
  - c. Confirmation sampling results, if applicable.
  - d. Description of soil management,
  - e. Description of soil disposal activities, volumes, and locations,
  - f. Description of water management,
  - g. Geo-referenced as-built drawings (or electronic GIS files),
    - i. The as-built drawings should indicate locations of temporary or permanent above ground and below ground structures, areas of soil excavation, backfill, and cover materials and other similar features.
  - h. Description and figures documenting the location of material in exceedance of the overall applicable land use action levels, and

- i. A plan for any required maintenance activities for areas with material in excess of the applicable land use action levels.
- 21.** Upon completion of development, for any areas where a soil cover or engineered cap are installed, and underlying contamination remains at levels above applicable land use action levels, Settling Party shall provide to the Agencies for review and approval, pursuant to the AOC, a site management plan which the Settling Party will implement or ensure is implemented, to maintain the cover/cap and Settling Party shall coordinate with the Agencies to amend the environmental covenant to require land use restrictions to preserve and maintain such soil cover or engineered cap.
- a. The site management plan will ensure adequate controls exist to address any soil management needed due to future erosion or excavation that occurs in the covered or capped areas.







## Richardson Flat Tailings Site

Operable Units  
Summit County, Utah

Boundary

OU 1 OU 2 OU 3 OU 4

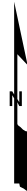
Map Date: January 22, 2015

Map Projection: UTM, Meters, 12 North, NAD83

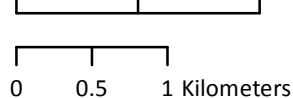
Data Sources: Boundaries - U.S. EPA Region 8 (2015);  
Imagery - Microsoft Bing web services (2015).

\*Institutional Controls do not exist for this site.

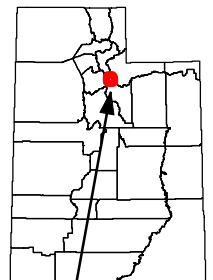
\*\*Boundaries are based on the nature and extent of contamination and are subject to change.



0 0.5 1 Miles



Utah



Area Enlarged

## Appendix C

BEGINNING at a point which is North 1086.15 feet and West 2109.32 feet from the Southeast Corner of Section 35, Township 1 South, Range 4 East, Salt Lake Base and Meridian, and running thence North  $47^{\circ}00'23''$  East, a distance of 112.55 feet; thence South  $66^{\circ}49'00''$  East, a distance of 436 feet; thence North  $47^{\circ}00'23''$  East, a distance of 273 feet; thence South  $66^{\circ}49'00''$  East, a distance of 272.53 feet; thence South  $03^{\circ}47'00''$  West, a distance of 637.80 feet to a point on a curve to the Northerly right of way of the Utah Highway US 40; thence Northwesterly along said curve; a chord having a bearing of North  $53^{\circ}47'39''$  West, a length of 1106.29 feet and a radius of 5629.70 feet to the point of beginning.

WHEN RECORDED RETURN TO:  
Big Hoss Properties, LLC  
c/o Burton Lumber  
1170 South 4400 West  
Salt Lake City, UT 84104  
Attn: Dan Burton and Bob Burton

WITH COPY TO:  
Project Manager, Richardson Flats OU2 & 3  
Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
P.O. Box 144840  
Salt Lake City, UT 84114-4840

Parcel No. SS-65-A-3

### ENVIRONMENTAL COVENANT FOR GROUNDWATER

Pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, et seq. (the “**Utah Act**”), **Big Hoss Properties LLC**, as grantor (“**Grantor**”) makes and imposes this environmental covenant (the “**Environmental Covenant**”) upon the property more particularly described in Exhibit 1 attached hereto (referred to as the “**Property**” or as Exhibit 1 herein). This Environmental Covenant shall run with the land, pursuant to and subject to the Utah Act.

1. Notice. Notice is hereby given that the Property is or may be contaminated with a regulated substance, and therefore this Environmental Covenant is imposed to mitigate the risk to public health, safety and the environment.
2. Environmental Response Project. An environmental response project is being conducted under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). The Property is included within the Richardson Flat Superfund Alternative Site (“**Site**”) overseen by the United States Environmental Protection Agency (“**EPA**”), and there are potential impacts to natural resources in the vicinity of the Property within the State of Utah, specifically to the groundwater. The Property is also within the jurisdiction of Summit County and subject to Summit County’s contaminated soils ordinance found in the Summit County Code, Section 4-7-1 *et seq.* This environmental covenant Environmental Covenant applies only to the Property.
3. Grantor. Grantor is an Owner of the Property as defined in Paragraph 4, and a Holder as described in Paragraph 5, below.
4. Owner. An “**Owner**” of the Property is a person who controls, occupies, or holds an interest (other than this Environmental Covenant) in the Property at any given time. Because this Environmental Covenant runs with the land, the obligations of the Owner are transferred to

assigns, successors-in-interest, including without limitation to future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this Environmental Covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof (“**Transferees**”). Upon transfer of an Owner’s interest in the Property, the Transferee shall have all obligations as an Owner and the transferor (the prior Owner) shall have no further rights or obligations hereunder as an Owner. Notwithstanding the foregoing, nothing herein shall relieve an Owner during the time it holds an interest in the Property of its responsibilities to comply with the terms hereof and all other provisions of applicable law or of responsibility for its failure to comply during the time it held an interest in the Property.

5. Holder. Grantor is also the grantee (“**Holder**”) of this Environmental Covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Holder may enforce this Environmental Covenant. Holder’s obligations hereunder are limited to the specific provisions and the limited purposes described herein. Holder may be removed and replaced through an amendment to this Environmental Covenant executed by Holder and the Utah Department of Environmental Quality (“**UDEQ**”). Holder’s rights and obligations survive the transfer of the Property.

6. Agency. UDEQ is the Agency (as defined in the Utah Act) under this Environmental Covenant. UDEQ may be referred to herein as an “**Agency**” or the UDEQ. The Agency may enforce this Environmental Covenant. The Agency assumes no affirmative obligations through the execution of this Environmental Covenant.

7. Administrative Record. The Administrative Record (“**Administrative Record**”) for the environmental response project is the “Richardson Flat Site OU2/3 Administrative Record” and it is available by appointment at the EPA Superfund Record Center at 1595 Wynkoop Street, Denver, CO 80202-1129. Information about contamination on the Property is also available for review at the UDEQ, Division of Environmental Response and Remediation (“**DERR**”), located at 195 North 1950 West, Salt Lake City, UT 84116.

8. Activity and Use Limitations to Groundwater. The Property is known to have deposits of mine tailings primarily in the vicinity of the flood plain of Silver Creek, although the entirety of the Property has not been fully characterized. Mine tailings are known to contain concentrations of arsenic, lead and zinc in concentrations that prohibit unlimited use/unlimited exposure. As of the date of this Environmental Covenant, the underlying shallow and deep groundwater aquifers are suspected to have been influenced by mining related surface wastes. In the event that Owner elects to access the underlying aquifers for the extraction of groundwater, prior to implementation and use of the groundwater, the Owner shall assess and present to the Agency representative data that documents compliance with an applicable action level for the intended use of the groundwater. This effort will be performed with oversight by the Agency.

9. Compliance Enforcement. This Environmental Covenant may be enforced pursuant to the Utah Act. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein shall not bar subsequent enforcement, and shall not be deemed a waiver of a right to take subsequent action to enforce compliance. Nothing in this Environmental Covenant shall restrict the Agency from exercising any authority under applicable law.

10. Rights of Access. The right of ingress, egress, and access to the Property is permanently and irrevocably granted to the Agency and the Holder and their respective agents for necessary response actions, inspections, implementation, and enforcement of this Environmental Covenant.

11. Notice upon Conveyance. Owner shall notify the Agency and Holder within twenty (20) days after each transfer of ownership of all or any portion of the Property. Owner's notice to the Agencies and Holder shall include the name, address and telephone number of the Transferee, a copy of the deed or other documentation evidencing the proposed conveyance, and an unsurveyed plat that shows the boundaries of the Property to be transferred. Instruments that convey any interest in the Property (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that the Property is subject to this Environmental Covenant and shall identify the date, entry number, book and page number at which this document is recorded in the records of the Summit County Recorder in the State of Utah. Failure to provide notification shall have no effect upon the enforceability and duty to comply with this Environmental Covenant.

12. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:

- a. That it is the sole fee simple owner of the Property;
- b. That it has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- c. That it has identified all other persons that own an interest in or hold an encumbrance on the Property, has notified such persons of its intention to enter into this Environmental Covenant, and has notified the Agencies of the names and contact information of the persons holding such encumbrances as provided in Paragraph 18, below, entitled: "Notice"; and,
- d. That this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which it is a party or by which it may be bound or affected.

13. Covenant Running with the Land. As provided in the Utah Act, this Environmental Covenant shall be maintained in perpetuity and shall run with the land and be binding on Transferees and all successors in interest of the Owner, unless or until it is modified or terminated as provided for in the Utah Act, or as otherwise provided for in this Environmental Covenant.

14. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Utah Act. Except as set forth herein, Grantor and Holder waive any and all rights to consent or notice of amendment concerning any parcel of the Property to which Grantor or Holder has no fee simple interest at the time of amendment or termination.

15. Effective Date, Severability and Governing Law. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Summit County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

16. Recordation and Distribution of Environmental Covenant. Within twenty (20) days after the date of the final required signature upon this Environmental Covenant, Grantor shall file this Environmental Covenant for recording in the same manner as a deed to the Property with the Summit County Recorder's Office. Grantor shall distribute a file-and-date stamped copy of the recorded Environmental Covenant to the Agency.

17. Reimbursement of Enforcement Costs. Consistent with the Act and other applicable law, the Owner, if invoiced, shall reimburse Agency for its costs related to this Environmental Covenant. The invoice may be based on actual costs incurred by the Agency or on the fee scheduled approved by the legislature, or both, as applicable.

18. Notice. Unless otherwise notified in writing by or on behalf of the pertinent party any document or communication required by this Environmental Covenant shall be submitted to:

*If to the UDEQ:*

Project Manager, Richardson Flats OU2 & 3  
Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
P.O. Box 144840  
Salt Lake City, UT 84114-4840

*If to (Grantor/Owner):*

Big Hoss Properties, LLC  
c/o Burton Lumber  
1170 South 4400 West  
Salt Lake City, UT 84104  
Attn: Dan Burton and Bob Burton

19. Grantor and Owner and Holder represent and certify that he or she is authorized to execute this Environmental Covenant on behalf of the entity he or she represents.

**IT IS SO AGREED:**

Big Hoss Properties, LLC

\_\_\_\_\_  
Robert A. Burton, Manager  
As Grantor, Owner, and Holder

\_\_\_\_\_  
Date

State of Utah )  
 ) : ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ appeared before me, Robert A. Burton as Manager of Big Hoss Properties, LLC, which entity is the Grantor, Owner and Holder herein, who, his identity and position having been satisfactorily established to me, affirmed to me upon oath that the he/she is authorized to execute the foregoing Environmental Covenant, and did duly acknowledge in my presence having executed the same for the purposes stated therein.

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

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

\_\_\_\_\_  
Brent H. Everett, Director  
Division of Environmental Response and Remediation  
Utah Department of Environmental Quality

\_\_\_\_\_  
Date

State of Utah                    )  
                                          : ss  
County of Salt Lake            )

On this \_\_\_\_\_ day of \_\_\_\_\_, appeared before me Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, personally known to me, or whose identity has been satisfactorily established to me, who acknowledged to me that he executed the foregoing Environmental Covenant.

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



**Exhibit 1**

(Legal Description of the Property)

BEGINNING at a point which is North 1086.15 feet and West 2109.32 feet from the Southeast Corner of Section 35, Township 1 South, Range 4 East, Salt Lake Base and Meridian, and running thence North 47°00'23" East, a distance of 112.55 feet; thence South 66°49'00" East, a distance of 436 feet; thence North 47°00'23" East, a distance of 273 feet; thence South 66°49'00" East, a distance of 272.53 feet; thence South 03°47'00" West, a distance of 637.80 feet to a point on a curve to the Northerly right of way of the Utah Highway US 40; thence Northwesterly along said curve; a chord having a bearing of North 53°47'39" West, a length of 1106.29 feet and a radius of 5629.70 feet to the point of beginning.

**U.S. Department of the Interior**

**Natural Resource Damage Assessment and Restoration Fund**

**Assessment and Settlement Deposit Remittance Procedures**

**The Department of Interior Business Center (IBC) has established procedures with the Department of Treasury to provide two electronic options for remitting payments to the Natural Resource Damage Assessment and Restoration Fund. Procedures for using these processes are attached.**

**The preferred electronic method is the Department of Treasury's Automated Clearing House (ACH)/Remittance Express. If your bank does not have ACH deposit transmission capabilities, then Treasury's Federal Wire (FedWire) Transfer procedure is the required alternative. Use the attached forms to assist in preparing your remittance.**

**All remitters are encouraged to use these electronic methods. Non-electronic remittances (checks) are acceptable as well, and should be written payable to the Department of Interior and forwarded to:**

**DOI Restoration Fund  
IBC Division of Financial Management Services  
Branch of Accounting Operations  
Attn: Collection Officer  
Mail Stop D-2770  
7401 West Mansfield Ave.  
Lakewood, CO 80235**

**Please reference "NRDA 14X5198" and the site name on check or transmittal letter**

**U.S. Department of the Interior**

**Natural Resource Damage Assessment and Restoration Fund**

**Assessment and Settlement Deposit Remittance Procedures**

In order to accomplish electronic transfers, in addition to other settlement or billing information, please provide the following information to the remitter:

**Preferred method of electronic transfer:** Automated Clearing House (ACH)

**Receiver name:** DOI Restoration Fund  
ALC 14010001

**Receiver Tax ID Number:** 53-0196949

**Receiver address:** 7301 West Mansfield Ave.  
Mailstop D-2770  
Lakewood, CO 80235

**Receiver bank:** Federal Reserve Bank  
New York, NY  
ABA # 051036706

**Receiver ACH Account No.:** 312024 (See Attachment I-3)

-----  
**Receiver Fedwire Acct No.:** Treasury NYC 021030004  
(To be used only for Fedwire transfers) (See Attachment I-4)

**Payment Related Data:** Should at a minimum reference site location

Attachments I-3 and I-4 provide more technical specifics which can be provided to the remitter's banking institution. Questions concerning electronic deposit procedures should be directed to Lorraine Willoughby at (303) 969-5335.

## U.S. Department of the Interior

### Natural Resource Damage Assessment and Restoration Fund

#### Assessment and Settlement Deposit Remittance Procedures

The following information is provided to assist Remitters in giving complete and accurate data to their financial institution for use in originating Automated Clearing House payments. The industry name for the following format is CCD+.

#### ACH CCD+ Format

Data Element Name	Contents	Size	Position
<i>Record Type Code</i>	'6'	1	01-01
<i>Transaction Code</i>	'22'	2	02-03
<i>Receiving ABA</i>	'05103670'	8	04-11
<i>Check Digit</i>	'6'	1	12-12
<i>Account Number</i>	'312024'	17	13-29
<b>Payment Amount</b>		12	30-41
<b>Identification #</b>		13	42-54
<i>Receiver Name</i>	<i>DOI Restoration Fund</i>	22	22-76
Discretionary	N/A	2	77-78
<i>Addenda Indicator</i>	'2'	1	79-79
Trace Number	Assigned by Remitters Bank	15	80-94

#### ACH Addenda Record Format

Data Element Name	Contents	Size	Position
<i>Record Type Code</i>	'7'	<b>1</b>	<b>01-01</b>
<i>Addenda Type Code</i>	'05'	<b>2</b>	<b>02-03</b>
<b>Payment Related</b>		<b>80</b>	<b>04-83</b>
<i>Sequence Number</i>	'0001'	<b>4</b>	<b>84-87</b>
Addenda Trace	Assigned by Remitters Bank	17	88-94

The data items in bold must be provided to the bank by the Remitter. Those items bolded and italicized must be provided verbatim. The **Payment Amount** is the judgement or settlement amount being remitted; dollars and cents must be separated by a decimal point, do not use commas or any other punctuation. The **Identification Number** is the case Court Number. The **Payment Related** data should include the paying potentially responsible party(ies) name, site or case name and site location.

## U.S. Department of the Interior

### Natural Resource Damage Assessment and Restoration Fund

#### Assessment and Settlement Deposit Remittance Procedures

##### Federal Wire (FedWire) Transfer

The following information is provided to assist Remitters in giving complete and accurate data to their financial institution for use in originating FedWire payments (**in the event ACH is not available**). The industry name for the following format is FedWire Transfer Format.

##### Required Fields and Tags

Field Tag Name	Field Tag Number	Field Tag Contents
Message Disposition	(1100)	Assigned by Federal Reserve Bank
Acceptance Time Stamp	(1110)	Assigned by Federal Reserve Bank
OMAD	(1120)	Assigned by Federal Reserve Bank
IMAD	(1520)	Assigned by Remitters Bank
<b>Amount</b>	<b>(2000)</b>	
Sender FI	(3100)	Assigned by Remitters Bank
Sender Reference	(3320)	Assigned by Remitters Bank
<i>Receiver FI</i>	<i>(3400)</i>	<i>'Treasury NYC 021030004'</i>
<i>Beneficiary</i>	<i>(4200)</i>	<i>'DOI Restoration Fund ALC 14010001'</i>
<b>Ref for Beneficiary</b>	<b>(4320)</b>	
<b>Originator</b>	<b>(5000)</b>	
Originator Financial Institution	(5100)	Assigned by Remitters Bank
<b>Orig to Beneficiary</b>	<b>(6000)</b>	

The data items in bold must be provided to the bank by the Remitter. Those bolded and italicized must be provided verbatim. The **Amount** is the judgement or settlement amount being remitted; dollars and cents must be separated by a decimal point, do not use commas or any other punctuation. The **Reference for Beneficiary** is the case Court Number. **Originator** is the paying potentially responsible party(ies). **Originator to Beneficiary** should include the site or case name and site location.