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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Hearing Clerk

IN THE MATTER OF: The London Mine Source Area Within the Bonita Peak Mining District Site, San Juan County, Colorado Houghton Mountain Mines LLC, Philip M. Bennett, and Houghton Mountain Lands, LLC Respondents Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	Docket No. CERCLA-08-2021-0006 **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Houghton Mountain Mines LLC, Philip M. Bennett, and Houghton Mountain Lands, LLC ("Respondents"). This Settlement provides for the performance of a removal action by Respondents in connection with the historic London Mine Source Area in the Burrows Creek drainage within the Bonita Peak Mining District Superfund Site (the "BPMD Site"), generally located near Silverton, San Juan County, Colorado. Respondents shall perform, at a minimum, all actions necessary to implement the removal action to reduce, to the extent practicable, concentrations of metals in Burrows Creek associated with the historic operation of the London Mine Source Area.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-A (Determinations of Imminent and Substantial Endangerment), 14-14-C (Administrative Actions Through Consent Orders) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders). These authorities were further redelegated to the undersigned official.

3. EPA has notified the State of Colorado (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). With respect to this Settlement, for purposes of notice under Section 106(a) and involvement by the State under 40 C.F.R. § 300.500 in any response activity at the BPMD Site, EPA has been advised that the Colorado Department of Public Health and Environment's Hazardous Materials and Waste Management Division ("HMWMD") is the designated State agency acting on behalf of the State.

4. EPA and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

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

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

7. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

8. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Respondents with respect to the London Mine Source Area or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

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

"Affected Property" shall mean all real property at the London Mine Source Area and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the removal action, including, but not limited to, the following properties: the London Lode mining claim patent (Mineral Survey 5961), the Greenfield Lode mining claim patent (Mineral Survey 49), and the Family mining claim patent (Mineral Survey 4801).

"Bennett" shall mean Philip M. Bennett, one of three Respondents to this Settlement.

"Bonita Peak Mining District Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the BPMD Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"BPMD Site" shall mean the Bonita Peak Mining District Superfund Site located in San Juan County, Colorado.

"CDMG" n/k/a the Colorado Division of Mine Reclamation, Mining and Safety (DRMS) shall mean the Colorado Division of Minerals and Geology within the Colorado Department of Natural Resources and any successor department or agencies of the state.

"CDPHE" shall mean the Colorado Department of Public Health and Environment and any successor departments or agencies of the State.

"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, 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.

"DRMS" shall mean the Colorado Division of Reclamation, Mining and Safety within the Colorado Department of Natural Resources and any successor department or agencies of the state.

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXIX.

"EPA" shall mean the United States 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.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 87 (Work Takeover), including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XIV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the London Mine Source Area.

"Houghton Mountain" shall mean Houghton Mountain Mines LLC, a limited liability company registered to do business in Colorado, and one of three Respondents to this Settlement.

"Houghton Mountain Lands" shall mean Houghton Mountain Lands, LLC, a limited liability company registered to do business in Colorado, and one of three Respondents to this Settlement.

"HMWMD" shall mean the Hazardous Materials and Waste Management Division within CDPHE.

"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.

"London Mine Source Area" or "Property" shall mean the property in the northern part of San Juan County, Colorado (Township 43 North, Range 7 West, Sections 25 and 36, New Mexico Principal Meridian; Latitude 37°56'55.1" North, Longitude 107°35'2.6" West), approximately 10.5 miles north-northeast of Silverton, within the BPMD Site.

"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.

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

"Parties" shall mean EPA and Respondents.

"Post-Removal Site Control" shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(*l*) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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

"Respondents" shall mean Houghton Mountain Mines LLC, Philip M. Bennett, and Houghton Mountain Lands, LLC.

"Restrictive Notice" shall mean a Notice of Environmental Use Restrictions pursuant to Colorado's Environmental Covenants Statute, C.R.S. § 25-15-317, *et seq.*

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

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVIII (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"State" shall mean the State of Colorado.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to implement the removal action pursuant to this Settlement, as set forth in Appendix A, and any modifications made thereto in accordance with this Settlement.

"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.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

10. The London Mine Source Area is situated on a relatively gentle, rocky slope within an alpine tundra biome. It is located at an elevation of 11,930 feet in the remote northern part of San Juan County, Colorado (Township 43 North, Range 7 West, Sections 25 and 36, New Mexico Principal Meridian; Latitude 37°56'55.1" North, Longitude 107°35'2.6" West), approximately 10.5 miles north-northeast of Silverton, the county seat of San Juan County, adjacent to County Road 18 and on the north side of Burrows Creek.

11. Vehicular access to the mine is provided by unpaved roads requiring four-wheel drive vehicles. By road, it is located roughly13.8 miles from Silverton and 11.4 miles from Ouray. Access to the mine is limited by snowfall, steep grades, narrow roads with sharp turns, and rough, rocky road conditions. Due to the significant amount of snowfall in the area, the London Mine Source Area often is inaccessible to vehicular traffic from late October to early June.

12. No external sources of potable water or power are available at the London Mine Source Area.

Mine Workings and Geology

13. The London Mine comprises four sets of workings. The mine was located in 1877 (Colorado Mining Directory, 1879) and prior to 1900 was operated through a shaft (collar at 37°56'54.6" North, 107°35'2.3" West) on a vein of about N 30° W strike. The shaft is reported to be about 180 feet deep and to have levels at 100 feet and 200 feet. On the 100-foot level, drifting extended about 200 feet south and 100 feet north. Drifts on the 200-foot level were short. Sometime between 1900 and World War I, the London tunnel was driven.

14. A main waste dump associated with the shaft and portal DM-7, consists of two lobes. A smaller dump is associated with open cut DM-6; no waste is associated with caved adit DM-5. Waste rock contains pyrite, sphalerite, and galena in a quartz matrix. A portion of the waste rock extends into a wetland below the mine. The CDMG estimated the volume of waste rock to be 3,300 cubic yards of material. However, volumetric calculations from aerial

photography completed in 2020 indicates that the volume associated with the main waste dump is roughly 2,440 cubic yards and with DM-6 approximately 280 cubic yards.

Recorded Production

15. The London Mine periodically recorded production from 1921 through to 1966 as indicated in United States Bureau of Mines records. It has produced zinc, lead, copper, gold, and silver. In 1921, an unknown operator produced 11 tons of ore. In 1943, its production was lumped with four other mines posted as the Burrows Mine. Recorded production in 1948 amounted to 130 tons of ore under a lease to Herring and Kendall. Washington Mining Co. leased the mine in 1951 and 1952, producing 623 tons and 653 tons of ore, respectively. In 1957, Martin Connors and Donald B. McQuade leased the London Mine, and produced 25 tons of ore. North Silver Milling of Silverton leased the mine in 1966, producing 150 tons of ore. Noranda Exploration, Inc. had the property under option and drilled a single exploration hole off the east lobe of the waste dump in 1976, the option was terminated in 1978.

Property Ownership

16. The workings occur principally on two patented mine claims located in the Eureka Mining District. The London Lode mining claim patent (Mineral Survey 5961) was issued on June 6, 1893 to the London Lode Mining Company. The Greenfield Lode mining claim patent (Mineral Survey 49) was issued on May 1, 1879 to the New York and San Juan Mining Company.

17. London, Inc., was incorporated in Colorado in March 1929. London, Inc. acquired the Washington and London mining claims that year for the purpose of leasing them to the United States Smelting, Refining, and Mining Exploration Company ("USSRME"), a subsidiary of the United States Smelting Company. USSRME planned to extend the Frisco tunnel through the Property, but this never occurred given the economic environment at the time. The Evergreen lease, which commenced in 1929, was canceled by London, Inc. in 1935.

18. London, Inc., lost title to the Property in 1993 because of delinquent property taxes.

19. Respondent Bennett acquired the London and Greenfield Lode mining claims through a Treasurer's Deed on March 2, 1993 and transferred it to Respondent Houghton Mountain on August 11, 2015. Respondents represent that, other than maintaining the portal closure on DM-7, Bennett conducted no operations at the Property. Respondents further represent that Houghton Mountain continues to maintain the DM-7 portal closure, but has conducted no other activities at the Property.

20. A small amount of waste rock is located on the Family Lode mining claim patent. The Family Lode mining claim patent (Mineral Survey 4801) was issued on May 22, 1891 to Thomas Cahill, Patrick Grady, Thomas McEneny, John Murphy, James Smith, and Mary Ellen Sullivan. Sunnyside Gold held the Family until 1991 when it sold it to Gregg and Jean Harlow. Houghton Mountain Lands acquired the Family mining claim through a Quitclaim Deed on December 13, 2017. Respondents represent that Houghton Mountain Lands has not conducted mining operations at the Property.

Reclamation Activities

21. The Mined Land Reclamation Division of the Colorado Department of Natural Resources conducted stabilization and closure of the London shaft and DM-7 portal as part of the San Juan Mine Closure Project. Work was completed on September 7, 1990. The shaft work consisted of backfilling around a vertical culvert with a secure grate at the collar. The portal is safeguarded with a grated bulkhead seal.

Environmental Investigation

22. The London Mine Source Area was part of a sampling program conducted by the CDMG in 1997 and 1998, resulting in a reclamation feasibility investigation report (Herron, et al. 1999). The report identified water quality impacts from adit/open cut discharges and the waste rock pile.

23. At that time, flow from DM-5 varied from 0.15 to 6.5 gallons per minute ("gpm"), and flow from DM-6 and DM-7 varied from 0.15 to 3.6 gpm and 1 to 1.5 gpm, respectively. The pH of the discharges were circumneutral. Zinc was the principal dissolved metal in the drainages CDMG surveyed. Drainage from DM-6 contacts the waste rock below the open cut, while drainage from DM-7 contacts the westernmost lobe of the main waste rock pile.

24. CDMG indicated that the waste rock pile had elevated concentrations of lead and zinc. It also observed several seeps and springs at the base of the main waste rock pile, but surface-water flow rates were too low to sample by conventional means. The source of the springs is unknown. CDMG indicated that the springs may be from mine drainage flowing through fracture systems or simply background water. Numerous springs along the valley bottom indicate that the source likely is groundwater inflow.

25. EPA conducted additional sampling in 2015, 2016, and 2017. Four total water quality sampling locations were collected from the London Mine Source Area over those three years. Samples were collected at the open cut (DM-6), the portal (DM-7), an upstream location in Burrows Creek (A07B1), and a downstream location in Burrows Creek (A07B). Location A07B was the only location sampled in 2015 in September. The upstream location in Burrows Creek (A07B1) was sampled only once at the correct location, during June 2016. Flow rates were measured at DM-6 and DM-7 in June 2016. The open cut (DM-6) had a higher flow rate of 3.2 gpm compared to the portal (DM-7) at 1.1 gpm. Flow was not measured at either during the September 2016, July or September 2017 events and were noted as too low to measure at DM-6 and DM-7 in September 2016. The open cut pH was 6.13 in June 2016, and the east adit pH was 6.69 and 6.41 in June and September 2016, respectively. In June 2016, the upstream location in Burrows Creek (A07B1) had a flow rate of 1,329 gpm and a pH of 4.28, and the downstream location (A07B) had a flow rate of 1,206 gpm and a pH of 4.32. During low-flow conditions in September 2015, the downstream location in Burrows Creek had a flow rate of 21 gpm and a pH of 4.3, and in September 2016 had a flow rate of 186 gpm and a pH of 4.08. In June 2016, a sample collected from a standing pool in front of the open cut exceeded acute standards for cadmium, copper, lead, and zinc, and the chronic standard for aluminum and the east adit samples exceeded acute standards for cadmium and zinc, and chronic standards for iron. Zinc and cadmium in both discharges, and lead in DM-6, exceeded ambient in-stream levels.

Upstream and downstream samples in Burrows Creek from June 2016 exceeded acute standards for aluminum, cadmium, copper, manganese, and zinc, and chronic standards for lead, although concentrations of all metals decreased from upstream to downstream in this event. No appropriate upstream location was sampled in September 2016 or in 2017 (the A07B1 location sampled in 2017 inadvertently was located on a tributary near the planned sampling location, not on Burrows Creek).

26. CDMG collected one leachate sample from waste rock at the London Mine Source Area. This sample exceeded the acute standards for cadmium, copper, lead, and zinc, and the chronic standard for aluminum. Three SPLP samples were analyzed from waste rock samples collected by EPA in August 2015 and July 2016 at the London Mine Source Area (WR1-LND, WR2-LND, and AE18). CDMG and EPA reported that these waste rock pile leachate samples had elevated concentrations of aluminum, cadmium, copper, lead, and zinc.

27. EPA's Terrestrial Baseline Ecological Risk Assessment found that the London Mine, and similarly categorized mine features, posed moderate to high risks to plants, birds, and mammals. These risks are largely driven by lead, and to a lesser degree zinc, manganese, molybdenum, and thallium. These metals may impact the growth, reproduction, or survival of these receptors.

28. DRMS has advised the EPA of its intent to conduct a safety closure of the London Mine. This action will be taken by DRMS pursuant to its independent statutory authority under State statute and regulations.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

29. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The London Mine Source Area is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the London Mine Source Area, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. Respondent Houghton Mountain is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

f. Respondent Bennett was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of

CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

g. Respondent Houghton Mountain Lands is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

h. The conditions described in Paragraphs 22, 23, and 26 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

i. The conditions described in Paragraphs 22, 23, 24, 26 and 27 of the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

j. The removal action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

30. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER

31. Respondents shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 30 days after the Effective Date. Respondents shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 15 days prior to commencing such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 30 days after EPA's disapproval. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

32. Respondents have designated, and EPA has not disapproved, the following individuals as Project Coordinators, who shall be responsible for administration of all actions by Respondents required by this Settlement:

Margaret “Poppy” Staub
Jeff Kurtz
Geosyntec Consultants
5670 Greenwood Plaza Blvd., Suite 540
Greenwood Village, Colorado 80111
Phone: (303) 790-1340
Poppy Staub Cell Number: 202-550-3337
Jeff Kurtz Cell Number: 303-775-1726
PStaub@Geosyntec.com
JKurtz@Geosyntec.com

To the greatest extent practicable, a Project Coordinator shall be present on-site or readily available during Work at the London Mine Source Area. EPA retains the right to disapprove of the designated Project Coordinator(s) who does not meet the requirements of Paragraph 31. If EPA disapproves of a designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person’s name, title, contact information, and qualifications within 15 days following EPA’s disapproval. Notice or communication relating to this Settlement from EPA to Respondents’ Project Coordinator(s) shall constitute notice or communication to all Respondents.

33. EPA has designated Athena Jones of EPA Region 8 as its Remedial Project Manager (RPM). EPA and Respondents shall have the right, subject to Paragraph 32, to change their respective designated RPM or Project Coordinator. Respondents shall notify EPA 10 days before such a change is made. The initial notification by Respondents may be made orally but shall be promptly followed by a written notice.

34. The RPM shall be responsible for overseeing Respondents’ implementation of this Settlement. The RPM shall have the authority vested in an OSC or RPM by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the London Mine Source Area. Absence of the RPM from the London Mine Source Area shall not be cause for stoppage of work unless specifically directed by the RPM.

35. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

VIII. WORK TO BE PERFORMED

36. Respondents shall perform, at a minimum, all actions necessary to implement the SOW, attached as Appendix A, which is designed to reduce, to the extent practicable, concentrations of metals in Burrows Creek associated with the historic operation of the London Mine.

37. **Work Plan and Implementation**

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a. Within 30 days after the Effective Date, in accordance with Paragraph 38 (Submission of Deliverables), Respondents shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Appendix A. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. Respondents shall commence implementation of the Work in accordance with the schedule included therein. Respondents shall not commence or perform any Work except in conformance with the terms of this Settlement.

c. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the SOW or Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

d. Respondents shall notify the EPA RPM at least 14 days prior to commencement of the Work.

38. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to the RPM, Athena Jones, U.S. EPA, Region 8, jones.athena@epa.gov. Concurrently, Respondents shall send copies of all submissions required by the Settlement to Mark Rudolph, Project Manager, Colorado Department of Health and Environment, mark.rudolph@state.co.us. Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 38.b. All other deliverables shall be submitted to EPA in the form specified by the RPM.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented.

Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://edg.epa.gov/EME/.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the London Mine Source Area.

39. **Health and Safety Plan.** Within 15 days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at https://www.epa.gov/nscep, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaRPM.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning, shall incorporate all changes to the plan recommended by EPA, and shall implement the plan during the pendency of the removal action.

40. **Quality Assurance, Sampling, and Data Analysis**

a. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with the Bonita Peak Mining District Quality Assurance Project Plan ("QAPP"), Final Revision 4 (SEMS# 1953739), or current version. Further, Respondent shall submit for EPA approval a Sampling and Analysis Plan ("SAP"). Combined the QAPP and SAP will comply with the EPA guidance on Quality Assurance Project Plans (EPA, 2002; EPA QA/G-5) and EPA Requirements for Quality Assurance Project Plans (EPA, 2001; EPA QA/R-5).

b. Respondents shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the

competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www3.epa.gov/ttnamti1/airtox.html).

c. However, upon approval by EPA, after a reasonable opportunity for review and comment by the State, Respondents may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

d. Upon request, Respondents shall provide split or duplicate samples to EPA and the State or their authorized representatives. Respondents shall notify EPA and the State not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall provide to Respondents split or duplicate samples of any samples they take as part of EPA's oversight of Respondents' implementation of the Work.

e. Respondents shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the London Mine Source Area and/or the implementation of this Settlement.

f. Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State, or Respondents in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondents object to any other data

relating to the Work, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after Respondents receive the report containing the data.

41. **Community Involvement Plan**. EPA has prepared a Bonita Peak Mining District Superfund Site Community Involvement Plan (August 2017), in accordance with EPA guidance and the NCP. If requested by EPA, Respondents shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the London Mine Source Area. Respondents' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondents at EPA's request are subject to EPA's oversight.

42. **Post-Removal Site Control**. In accordance with Paragraph 46 and the SOW, or as otherwise directed by EPA, Respondents shall submit a proposal for Post-Removal Site Control. This proposal shall include measures to restrict access to the waste rock piles and engineered features or structures to be constructed under this Settlement, as identified in Appendix A. Upon EPA approval, Respondents shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondents shall provide EPA with documentation of all Post-Removal Site Control commitments.

43. **Final Report and Annual Reports**.

a. **Final Report.** Within 45 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 108, Respondents shall submit for EPA and CDPHE review a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports," and EPA's "Removal Response Reporting: POLREPs and OSC Reports," Publication 9360.3-15FS. The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off the London Mine Source Area or handled on the London Mine Source Area, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondents' Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information

submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. **Annual Reports.** Respondents shall submit for EPA review an annual report on or before November 30, summarizing the actions taken to comply Section 1.2 of the SOW for a period of five (5) years beginning the year following the submission of the final report.

44. **Off-Site Shipments**

a. Respondents may ship hazardous substances, pollutants and contaminants from the London Mine Source Area to a facility off the BPMD Site (off-Site) only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material from the London Mine Source Area to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the London Mine Source Area to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

IX. PROPERTY REQUIREMENTS

45. **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to Affected Property: (i) provide the EPA, the State, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 45.a. (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action.

a. **Access Requirements**. The following is a list of activities for which access is required regarding the Affected Property:

(1) Monitoring the Work;

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

(3) Conducting investigations regarding contamination at or near the London Mine Source Area;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 87 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section X (Access to Information);

(9) Assessing Respondents' compliance with the Settlement;

(10) 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; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

46. **Environmental Covenants Statute**. Respondents agree to comply with the substantive requirements of the Colorado Environmental Covenants Statute, C.R.S. § 25-15-317, *et seq*. Compliance with this requirement will be achieved by adding portions of the property with engineered features to the inventory of Remediated Mine Waste Source Areas subject to San Juan County Ordinance No. 2020-01, enacted pursuant to C.R.S. § 25-15-320(3)(b). Respondents shall comply with the Ordinance's land use restrictions imposed on those portions of the property to sustain the integrity of the Work.

47. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

48. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

49. Notwithstanding any provision of the Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

50. Respondents shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the London Mine Source Area or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

51. **Privileged and Protected Claims**

a. Respondents may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 51.b, and except as provided in Paragraph 51.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA and the State with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the London Mine Source Area, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the London Mine Source Area; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

52. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA and the State under this Section or Section XI (Record Retention) is business confidential 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). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records that Respondents claim to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

53. Notwithstanding any provision of this Settlement, EPA and the State 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.

XI. RECORD RETENTION

54. Until ten (10) years after EPA provides Respondents with notice, pursuant to Section XXVII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the London Mine Source Area, provided, however, that Respondents who are

potentially liable as owners or operators of the London Mine must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the London Mine Source Area. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

55. At the conclusion of the document retention period, Respondents shall notify EPA and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in Paragraph 51 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA or the State.

56. Each Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the London Mine Source Area since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the London Mine Source Area pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

57. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. The ARARs for the removal action being conducted under this Settlement are listed in Appendix B.

58. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This

Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

59. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the London Mine Source Area that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 303-293-1788 of the incident or London Mine Source Area conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

60. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 303-293-1788, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

61. For any event covered under this Section, Respondents shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF RESPONSE COSTS

62. **Payments for Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills**. On a periodic basis, EPA will send Respondents an electronic billing notification to the following email address: pmbennett36@gmail.com, with copies sent to joel.benson@dgslaw.com, dean.miller@dgslaw.com, and rtb@sanjuanland.com. The billing notification will include a standard regionally prepared cost report with the direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within 30 days of receipt of the electronic bill, except otherwise provided in Paragraph 64 of this Settlement Agreement. Respondents shall make payments using one of the payment methods set forth in the electronic billing notification. Respondents may change its email billing address by providing notice of the new address to:

Financial Management Officer
US EPA Region 8 (TMS-FMP)
1595 Wynkoop Street
Denver, Colorado 80202

If the electronic billing notification is undeliverable, EPA will mail a paper copy to the billing notification to Respondents to:

Houghton Mountain Mines LLC
Philip M. Bennett
1931 Oakland Avenue
Sun Prairie, Wisconsin 53590

Houghton Mountain Lands, LLC
PO Box 98
Breckenridge, Colorado 80424

b. Payment shall be made to EPA on-line by www.Pay.gov. Pay.gov is the EPA's preferred method for receiving all payments due to the EPA, which accepts debit and credit cards and bank account ACH. On the www.Pay.gov main page, enter sfo 1.1 in the search field to obtain EPA's Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form with the bill number, the due date, Site name "Bonita Peak Mining District Site" and Site/Spill ID Number: A8-M5. Once the form is completed email an acknowledgement of payment to CINWD_AcctsReceivable@epa.gov.

c. Alternatively, Respondents may remit payment by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA: 021030004
Account: 68010727
SWIFT address: FRNYUS33

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site/Spill ID Number A8-M5 and the EPA docket number for this action.

d. At the time of payment, Respondents shall send notice that payment has been made to EPA's RPM; to Shawn McCaffrey, Enforcement Specialist, by email at Mccaffrey.Shawn@epa.gov or by mail to Shawn McCaffrey, U.S.EPA Region 8, Mailcode SEM-PA-CR, 1595 Wynkoop, Denver, CO 80202-1129; and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

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

Such notice shall reference Site/Spill ID Number A8-M5 and the EPA docket number for this action.

e. **Deposit of Future Response Costs Payments**. The total amount to be paid by Respondents pursuant to Paragraph 62.a (Periodic Bills) shall be deposited by EPA in the Bonita Peak Mining District Site Special Account to be retained and used to conduct or finance response actions at or in connection with the BPMD Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Bonita Peak Mining District Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the BPMD Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

63. **Interest.** In the event that any payment for Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

64. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section XIV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 62 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the RPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 62, and (b) 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 remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 62. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 62. Respondents shall be disbursed any balance of

the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

65. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

66. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within 10 days after such action. EPA and Respondents shall have 30 days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

67. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 30 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within 30 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Program Director level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

68. Except as provided in Paragraph 64 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph 77, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

69. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to

anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

70. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 8, within 5 days of when Respondents first knew that the event might cause a delay. Within 10 days thereafter, Respondents shall provide in writing to EPA 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; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents 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 69 and whether Respondents have exercised their best efforts under Paragraph 69, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

71. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

72. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents 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, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 69 and 70. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

73. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XVII. STIPULATED PENALTIES

74. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 75.a for failure to comply with the obligations specified in Paragraph 75.b, unless excused under Section XVI (Force Majeure). "Comply" as used in the previous sentence include compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

75. **Stipulated Penalty Amounts - Payments, Major Deliverables, and Other Milestones**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 75.b:

Penalty Per Violation Per Day	Period of Noncompliance
$125.00	1st through 14th day
$250.00	15th through 30th day
$750.00	31st day and beyond

b. **Obligations.**

(1) Payment of any amount due under Section XIV (Payment of Response Costs).

(2) Failure to submit timely or adequate deliverables pursuant to this Settlement

76. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $10,000.00.

77. All 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. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 36 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Program Director level or higher, under Paragraph 67 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding

such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

78. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

79. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 62 (Payments for Future Response Costs).

80. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 77 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 79 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

81. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Settlement.

82. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is collected pursuant to this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 (Work Takeover).

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

XVIII. COVENANTS BY EPA

84. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections

106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

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

86. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the London Mine Source Area; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the London Mine Source Area not paid as Future Response Costs under this Settlement.

87. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 87.a, Respondents 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 portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 87.b.

c. Respondents may invoke the procedures set forth in Paragraph 67 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 87.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 87.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 67 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY RESPONDENTS

88. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through 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 under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the London Mine Source Area, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

89. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 86.a (liability for failure to meet a requirement of the Settlement), 86.d (criminal liability), or 86.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

90. Nothing in this Settlement 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).

91. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, 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, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

XXI. OTHER CLAIMS

92. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

93. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

94. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

95. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), 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 London Mine Source Area against any person not a Party hereto. Nothing in this Settlement 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).

96. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States 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. The "matters addressed" in this Settlement are the Work.

97. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent 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).

98. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent 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.

99. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the BPMD Site, Respondents 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 were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants by EPA).

XXIII. INDEMNIFICATION

100. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and 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 Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this

Settlement. Further, Respondents agree to pay the United States all costs it incurs, 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 based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

101. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

102. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the London Mine Source Area, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the London Mine Source Area, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

103. No later than 10 days before commencing any Work on the London Mine Source Area, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVII (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, until the first anniversary after issuance of Notice of Completion of Work, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, until the first anniversary after issuance of Notice of Completion of Work, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to

EPA under this Paragraph identify the London Mine Source Area, San Juan County, Colorado and the EPA docket number for this action.

XXV. MODIFICATION

104. The RPM may modify any plan, schedule, or SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

105. If Respondents seek permission to deviate from any approved SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 104.

106. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVI. ADDITIONAL REMOVAL ACTION

107. If EPA determines that additional removal actions not included in the SOW or other approved plan(s) are necessary to protect public health, welfare, or the environment, and such additional removal actions are consistent with the SOW, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 36 (Work Plan and Implementation), Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the RPM's authority to make oral modifications to any plan or schedule pursuant to Section XXV (Modification).

XXVII. NOTICE OF COMPLETION OF WORK

108. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including Post-Removal Site Controls, use restrictions, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondents. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the SOW if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved SOW and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified SOW shall be a violation of this Settlement.

XXVIII. INTEGRATION/APPENDICES

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

a. "Appendix A" is the SOW.

b. "Appendix B" is the state and federal ARARs.

XXIX. EFFECTIVE DATE

110. This Settlement shall be effective upon execution by the Parties.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

BY: Thompson, Christopher Thompson, Christopher 2021.08.24 09:27:12 -06'00' DATE: _____

Christopher Thompson,
Assistant Regional Counsel for Enforcement
Office of Regional Counsel
Region 8
U.S. Environmental Protection Agency

BY: BETSY SMIDINGER Digitally signed by BETSY SMIDINGER Date: 2021.08.23 14:44:31 -06'00' DATE: _____

Betsy Smidinger
Director
Superfund and Emergency Management Division
Region 8
U.S. Environmental Protection Agency

PHILIP M. BENNETT AND HOUGHTON MOUNTAIN MINES LLC

BY: Philip M. Bennett DATE: august 16, 2021

Philip M. Bennett
Individually and as Manager of Houghton Mountain Mines LLC,
1931 Oakland Avenue
Sun Prairie, Wisconsin 53590

HOUGHTON MOUNTAIN LANDS, LLC

BY: SAN JUAN LAND HOLDING COMPANY, LLC, its sole member and sole manager

BY: Ryan T. Bennett DATE: August 16, 2021

Ryan T. Bennett, Manager
4936 South Fillmore Court
Englewood, Colorado 80113

APPENDIX A
Statement of Work for
London Mine DM-6 and DM-7

- **London Mine (Burrows Creek)**

The London Mine is located within the Burrows Creek drainage and consists of two adits, DM-5, DM-7, and open cut DM-6. DM-6 and DM-7 are included in this Statement of Work because of their physical condition and drainage. DM-5 is collapsed with little to no flow and low metals concentrations and therefore is not considered in this Statement of Work. DM-6 intermittently drains water through a waste rock pile before entering the wetlands below. DM-7 requires repair to prevent further collapse and to reduce the potential to impound water. According to DRMS, drainage from DM-6 and DM-7 have elevated metal concentrations. Drainage from DM-6 and DM-7 flows across the County road into the adjacent wetland. DM-7 bypasses most of the waste rock piles. The work envisioned under the Administrative Settlement Agreement and Order on Consent and this Statement of Work is generally depicted in the annotated photograph included as part of this Statement of Work.

- **Proposed Work Plan**

  - Prior to initiating the removal action, provide EPA with a conceptual site model with supporting information as necessary, and a Notification and Emergency Action Plan, to support a fluid hazard consultation determination.[1] If a fluid hazard consultation is required, Respondents will assist in EPA's development of a fluid hazard consultation package by providing, if requested, on-site reconnaissance and supplemental documentation
  - DM-6: Flows from the DM-6 open cut range from 0.15 to 3.6 gpm. The pH of the water is slightly acidic ranging from 5.73 to 6.41. Water from the open cut flows into a small pool before crossing the road (see attached photo) and then continues to flow across a small waste rock pile before comingling with the wetlands associated with Burrows Creek.

    DM-6 Work Plan

    - Install a limestone or propylitically altered volcanic rock drain in the small pool in front of the DM-6 open cut to provide passive buffering of the mine water.
    - Channel DM-6 open cut flow across or under the county road by way of a channel or culvert.

[1] *See* Memorandum from James E. Woolford, Director, Office of Superfund Remediation and Technology Innovation and Reggie Cheatham, Director, Office of Emergency Management, to Regional Superfund Division Directors *Re: Developing Consultation Packages for CERCLA Activities at Abandoned Hardrock Mining and Mineral Processing Sites in Preparation for the Fiscal Year (FY) 2017 Consultation Season* (April 4, 2017).

- Direct flow from the DM-6 open cut around the waste rock pile, if feasible, or dig a channel through the waste rock pile down to native soils/bedrock to minimize interaction with any anthropogenically derived mineralized material.

- DM-7: Flows from DM-7 range from 1 to 1.5 gpm. pH is near neutral ranging from 6.1 to 8.1. Fractured rock has sloughed in front of the DM-7 portal and, if not addressed, has the potential to restrict flow out of the mine (see attached photo). The portal will be rehabilitated by DRMS.

  DM-7 Work Plan

  - To the extent necessary, rehabilitate the DM-7 portal and adit to reduce the potential for collapse. Excavate the portal area until competent rock is encountered and remove the existing safety closure of the London Mine portal to facilitate DRMS's rehabilitation of the portal opening and adit. Following DRMS's closure of the DM-7 portal and adit, channel adit flow from DM-7 across or under the road and away from waste rock piles. Use crushed limestone or propylitically altered volcanic rock in the channel to provide passive buffering of mine water.

- Collect a baseline sample from DM-6 and DM-7 discharges prior to initiating the work.

- **Post Removal Action Monitoring**

  - Monitor water quality for five years during high-flow and low-flow conditions at: (i) the DM-6 and DM-7 discharges prior to comingling with Burrows Creek wetlands following the Work; and (ii) Burrows Creek sampling locations A07B (downstream) and A07B1 (upstream).

    - Collect samples of flowing discharge during high- (when accessible) and low-flow conditions to assess the seasonal effects of the open cut and adit.

    - Collect quantitative flow measurements for these four locations at the same time as water-quality sampling to assess metal loading over time.

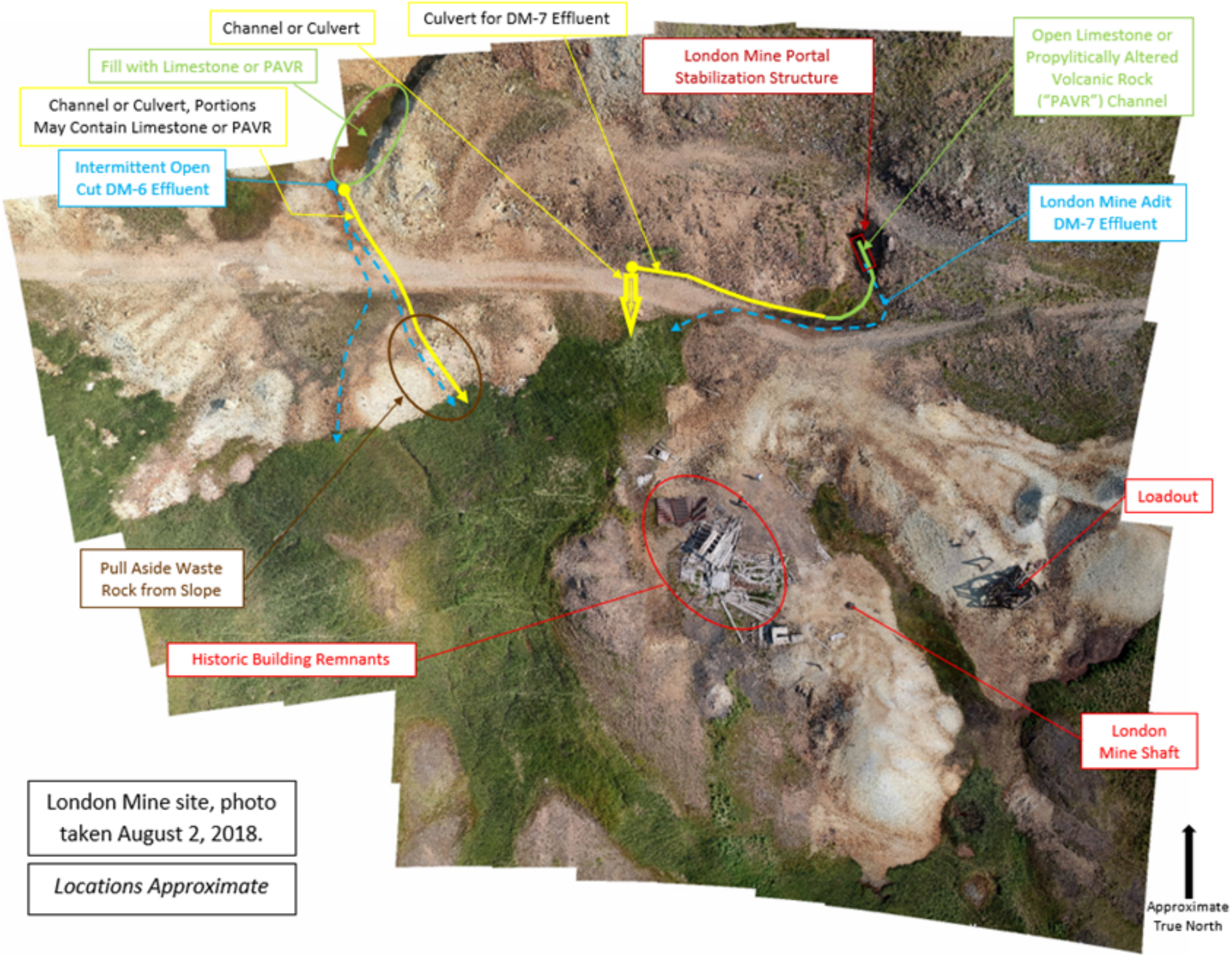
    - The parameter list will only include analysis for total recoverable and dissolved aluminum, arsenic, cadmium, copper, iron, manganese, lead, silver, zinc; dissolved sulfate; and calcium and magnesium to calculate hardness.

  - Place boulders along the side of County Road 18 adjacent to the main waste rock pile in a manner that restricts vehicle access to the waste rock pile.

  - **Maintenance**

    - During sampling events, check condition of the portal and channels, when accessible.

- Review data trends and recharge crushed limestone or propylitically altered volcanic rock at portals and in channels, if needed, to continue passive buffering of mine water.


Channel or Culvert
Culvert for DM-7 Effluent
Fill with Limestone or PAVR
London Mine Portal Stabilization Structure
Open Limestone or Propylitically Altered Volcanic Rock ("PAVR") Channel
Channel or Culvert, Portions May Contain Limestone or PAVR
Intermittent Open Cut DM-6 Effluent
London Mine Adit DM-7 Effluent
Loadout
Pull Aside Waste Rock from Slope
Historic Building Remnants
London Mine Shaft
London Mine site, photo taken August 2, 2018.
Locations Approximate
Approximate True North

Appendix B
State and Federal Applicable or Relevant and Appropriate Requirements (ARARs)
Bonita Peak Mining District Superfund Site
London Mine Removal Action

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
Federal ARARs							
1	National Historic Preservation Act (NHPA) 16 United States Code (U.S.C.) § 470 and Implementing Regulations 36 Code of Federal Regulations (CFR) §§ 800.4, 800.5., 800.6, and 800.10(a)	Applicable	This statute and implementing regulations require federal agencies to take into account the effect of this response action upon any district, site, building, structure, or object that is included in or eligible for the National Register of Historic Places (generally, 50 years old or older).	Only the substantive requirements of the NHPA are applicable to this on-site response action. A cultural resource survey has been completed for the London Mine. The Colorado State Historic Preservation Office has agreed that the work that will be carried out under this Administrative Settlement Agreement and Order on Consent will result in no adverse impact to this National register of Historic Places-eligible property.		✓	
2	Bald and Golden Eagle Protection Act 16 U.S.C. § 668(a)	Applicable	This statute makes it unlawful, among other prohibited actions, for anyone to take any bald or golden eagle, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to federal regulations. In addition to immediate impacts, this requirement also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an	If bald or golden eagles are identified at these mining-related sources during design and action, activities must be modified and conducted to conserve the species and their habitat.		✓	

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location - Specific	Action-Specific
			eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.				
3	Endangered Species Act 16 U.S.C. § 1536, and Implementing Regulations 50 CFR §§ 17.21, 17.31, 17.61, 17.71 and 17.82.	Applicable	This statute and implementing regulations provide that federal activities do not jeopardize the continued existence of any threatened or endangered species. 16 U.S.C. § 1536(a) of the Endangered Species Act requires consultation with the U.S. Fish and Wildlife Service to identify the possible presence of protected species and mitigate potential impacts on such species. Substantive compliance with the ESA means that the lead agency must identify whether a threatened or endangered species, or its critical habitat, will be affected by a proposed response action. If so, the agency must avoid the action or take appropriate mitigation measures so that the action does not affect the species or its critical habitat. If, at any point, the conclusion is reached that endangered species are not present or will not be affected, no further action is required.	Canada lynx (federally threatened mammal) and southwestern willow flycatcher (federally endangered bird) have been identified in San Juan County, but not necessarily identified at the London Mine source area. Surveys to identify threatened and endangered species at the London Mine have not been completed. If threatened or endangered species are identified at the London Mine during design and action, activities must be modified and conducted to conserve the species and their habitat.		✓	

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4	Migratory Bird Treaty Act 16 U.S.C. § 703(a)	Applicable	This statute makes it unlawful for anyone to, among other prohibited acts, take any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to these regulations.	If migratory birds are identified at the London Mine during design and action, activities must be modified and conducted to conserve the species and their habitat.		✓	
5	Statement of Procedures on Floodplain Management and Wetlands Protection 40 CFR Part 6, Appendix A	Relevant and Appropriate	40 CFR Part 6, Appendix A contains EPA's statement of procedures for carrying out the provisions of Executive Order 11988 (Floodplain Management) and 11990 (Protection of Wetlands).	If the removal involves activities that affect identified floodplains or wetlands, activities will be carried out in a manner to avoid adversely affecting them or mitigating the impact.		✓	✓
6	Floodplain Management Regulations; Executive Order No. 11988 as amended by 13690	To Be Considered	This Executive Order requires that actions be taken to avoid, to the extent possible, adverse effects associated with direct or indirect development of a floodplain, or to minimize adverse impacts if no practicable alternative exists.	If floodplains are delineated within areas designated for the removal activities, actions will be carried out in a manner to avoid adversely affecting them.		✓	
7	Protection of Wetlands Regulations Executive Order No. 11990	To Be Considered	This Executive Order requires federal agencies to avoid, to the extent possible, the adverse impacts associated with the destruction or loss of wetlands and to avoid support of new construction in wetlands if a practicable alternative exists.	If jurisdictional wetlands are delineated within areas designated for the removal, activities will be carried out in a manner to avoid adversely affecting such wetlands.		✓	✓

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
State ARARs							
1	Colorado Fugitive Dust Control Plan/Opacity, Regulation No. 1., 5 CCR § 1001-3(III)(D)(2)(b) (Particulate Matter – Construction Activities), pursuant to Colorado Air Pollution Prevention and Control Act, CRS §§ 25-7-101, *et. seq.*	Applicable	If more than 5 acres of land are cleared in attainment areas, or more than one acre of land is cleared in nonattainment areas, then any owner or operator engaged in clearing land, or owners or operators of land that has been cleared, shall "use all available and practical methods which are technologically feasible and economically reasonable" in order to minimize fugitive emissions. Construction activities shall not result in fugitive emissions that exceed 20% opacity or result in off-property transport of emissions. Control measures or operational procedures to be employed may include, but are not necessarily limited to, planting vegetation cover, providing synthetic cover, watering, chemical stabilization, furrows, compacting, minimizing disturbed area in the winter, wind breaks and other methods or techniques approved by CDPHE's Air Quality Control Division.	Applicable to all activities generating dust.			✓

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2	MLRB Regulations, Rule 3.1.5(5), (10), (11)[2]	Relevant and Appropriate	Acid forming or toxic producing mined materials must be handled and disposed in a manner that will control unsightliness and protect the surface and groundwater drainage system from pollution.			✓	✓
3	MLRB Regulations Rule 3.1.6	Relevant and Appropriate	Reclamation activities must minimize disturbances to the prevailing hydrologic balance of the mined land and surrounding area by complying with all laws pertaining to water rights, water quality and dredge and fill activities. Minimizing measures also include removing temporary or large siltation structures from drainageways after stabilization and rehabilitation.			✓	✓
4	MLRB Regulations Rule 3.1.7	Relevant and Appropriate	Reclamation activities that may affect the quality of any groundwater must comply with all state-wide groundwater quality standards and standards for classified areas. For unclassified areas, reclamation activities must protect the existing and reasonably potential future uses of such groundwater.			✓	✓

[2] Pursuant to the Solid Wastes Disposal Sites and Facilities Act, C.R.S. § 30-20-102(4), mining operations including reclamation activities with approved reclamation plans under a Colorado Mined Land Reclamation Board (MLRB) permit may dispose of solid wastes generated by such operations within the permitted area without obtaining a Certificate of Designation. CDPHE interprets this provision to allow CERCLA response actions performed consistently with the MLRB regulation 2 CCR 407-1 Rule 3 (Reclamation Performance Standards) to be compliant with Colorado's regulations pertaining to solid waste disposal.

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
5	MRLB Regulations Rule 3.1.8	Relevant and Appropriate	Reclamation activities must take into account the safety and protection of wildlife on the mined site and along access roads with special attention given to critical periods in the life cycle of species requiring special consideration (elk calving, migration routes, peregrine falcon nesting, grouse strutting grounds).			✓	✓
6	MLRB Regulations Rule 3.1.5(1), (3)	Relevant and Appropriate	Any grading shall be done in a manner to control erosion and siltation and protect from slides and other damage. High walls shall be stabilized or eliminated. Grading shall create a final topography appropriate to the future land use. Slopes and slope combinations shall be compatible with the configuration of surrounding conditions and future land use.			✓	✓
7	MLRB Regulations Rule 3.1.5(2)	Relevant and Appropriate	Backfilling shall ensure adequate compaction for stability and prevent leaching of toxic or acid forming materials			✓	✓
8	MLRB Regulations Rule 3.1.5(7)	Relevant and Appropriate	Lakes or ponds shall be constructed with slopes no steeper than a ratio of 3:1 for slopes between 5 feet above to 10 feet below the expected waterline. All other slopes shall be no steeper than a ratio of 2:1.			✓	✓

9	Colorado Discharge Permit System (CDPS) Regulations 5 C.C.R. 1002-61.3(2)(a) and (f)(ii), and CDPS general permit No. COR400000 (Stormwater discharges associated with construction activity), pursuant to CRS § 25-8-501 Permit available (as of April 13, 2021) at: https://drive.google.com/file/d/1CsnfVYo-sTVmStX9pwtnpKoN7DYmumYP/view	Applicable or Relevant and Appropriate	The Colorado Discharge Permit System general permit COR40000 includes the following substantive requirements: 1. Control measures must be installed before the commencement of activities at the site that could contribute pollutants to stormwater discharges. Such control measures should minimize the discharge of pollutants at the site. The control measures must meet the following requirements: a. Where vehicle tracking occurs, vehicle tracking controls that minimize vehicle tracking of sediment from disturbed areas. b. Containment or filtration of stormwater flows from disturbed areas and soil storage areas, such that flows from such areas must go to at least one control measure. c. Where there are discharges from basins and impoundments, outlets that withdraw water from or near the	If greater than one acre but less than five acres are disturbed from the response action, the substantive requirements are applicable to the response action pursuant to 5 CCR § 1002-61.3(2)(a) and (f)(ii). If less than one acre is disturbed from the response action, the substantive requirements are relevant and appropriate.			✓

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location - Specific	Action-Specific
			surface (unless infeasible). d. Maintenance of pre-existing vegetation or equivalent control measures for areas within 50 horizontal feet from receiving waters. e. Minimization of soil compaction where there are infiltration control measures, or final stabilization, from vegetative cover. f. In areas where vegetative final stabilization is utilized, preservation of topsoil (unless infeasible). g. Minimization of soil exposed during construction activity. h. Where there is bulk storage of liquid chemicals (including petroleum products), secondary containment or equivalent protection. i. Concrete washout				

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			control measures sufficient to ensure the washing activities do not add pollutants to stormwater runoff or receiving waters. Discharges to the ground of concrete washout waste must go through soil with buffering capacity, and cannot occur in areas near natural drainages, shallow groundwater, springs, or wetlands. j. For earth disturbing activities, temporary stabilization measures such as tarps, soil tackifier, and hydroseed, which must be implemented wherever construction activity disturbed the ground and has ceased for fourteen days or is permanently ceased. k. For all construction sites after all ground surface disturbing activities have ceased, final stabilization that achieves vegetative				

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			cover with plant density at least 70% of pre-disturbance levels, or an equivalent stabilization measure. 2. All control measures must remain in effective operating condition and be protected from activities that would make them less effective. 3. The adequacy of control measures must be monitored, and corrective action must be taken when a measure becomes inadequate. 4. Discharges may not cause, have the reasonable potential to cause, or measurably contribute to an exceedance of any applicable water quality standard. 5. Site inspections with one of the following minimum frequencies: a. One per every 7 calendar days. b. One per every 14 calendar days, and post storm event inspections within 24 hours after the end of any precipitation or				

Statute and Regulatory Citation		ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
			snowmelt event that causes surface erosion. c. If the two options above are impractical, an alternate schedule. If the site is temporarily idle or completed, less frequent inspections depending on the circumstances.				

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10	Colorado Noise Abatement Statute, CRS §§ 25-12-103 (Maximum Permissible Noise Levels)	Applicable	Sound levels that exceed the below limits at a distance of 25 feet from the property line or greater are prima facie evidence of a public nuisance. Activities must be conducted in a manner so that any noise produced is not objectionable due to intermittence, beat frequency, or shrillness. For construction projects, maximum noise levels will be those specified for industrial zones for the time period within which construction is to be completed. For industrial zones, the maximum permissible sound level from 7:00 am to the next 7:00 pm is 80 A-weighted decibels (db[A]) and from 7:00 pm to the next 7:00 am is 75 db(A).	Applicable to all construction, transport and backfilling activities.			✓
11	Colorado Noxious Weed Act CRS § 35-5.5-104 (Duty to Manage Noxious Weeds)	Applicable	Requires use of integrated methods to manage noxious weeds if noxious weeds are likely to be materially damaging to the land of neighboring landowners. Integrated methods include: biological management, chemical management, cultural management, and mechanical management (as defined in C.R.S. § 35-5.5-103(9)(a-d)).	Applicable to response activities in an area with noxious weeds.		✓	✓

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location - Specific	Action-Specific
12	Rules Pertaining to the Administration and Enforcement of the Colorado Noxious Weed Act, 8 C.C.R. 1206-2, Sections 3.3, and 3.4	Applicable	Prohibits allowing any plant of any population on "List A" to produce seed or develop other reproductive propagules. (Section 3.1 sets forth "List A.")	Applicable to response activities in an area with "List A" noxious weeds. Prescribed management techniques for individual noxious weed species on "List A" provided at 8 C.C.R. 1206-2, Section 3.6		✓	✓
13	Rules Pertaining to the Administration and Enforcement of the Colorado Noxious Weed Act, 8 CCR 1206-2, Sections.4.4 and 4.5.	Applicable	Prohibits allowing any plant of any population on "List B" to produce seed or develop other reproductive propagules after the time specified in the San Juan County elimination Plan. (Section 4.1 sets forth "List B.")	Applicable to response activities in an area with "List B" noxious weeds. Prescribed management techniques for individual noxious weed species on "List B" provided at 8 C.C.R. 1206-2, Section 4.8. San Juan County Plan B Species elimination plan, available on April 13, 2021 at: https://docs.google.com/spreadsheets/d/1fHXmYI_VY0MGNqe0ZZzJ8NwXON-Lr3Rs8i_KvBY0Vug/edit?pref=2&pli=1#gid=156907804		✓	✓

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14	Colorado Environmental Covenant Statute, C.R.S. § 25-15-317, *et seq*.	Relevant and Appropriate	Requires environmental covenants (ECs) or notices of environmental use restrictions (RNs) for environmental remediation projects resulting in: residual contamination at levels that have been determined to be safe for one or more specific uses, but not all uses; or incorporation of engineered features or structures requiring monitoring, maintenance, or operation, or that will not function as intended if disturbed.	The substantive requirements of the Colorado Environmental Covenant Statute are applicable to components of the removal action which incorporate engineered features. C.R.S. § 25-15-321 authorizes CDPHE to accept, refuse to accept, conditionally accept, hold, modify and terminate ECs and RNs. Compliance with this requirement will be achieved by adding portions of the property with engineered features to the inventory of Remediated Mine Waste Source Areas subject to San Juan County Ordinance No. 2020-01, enacted pursuant to C.R.S. § 25-15-320(3)(b).		✓	✓

The EPA has evaluated the following ARARs and has determined that, pursuant to 40 CFR 300.415(j)(2), compliance with these requirements is not practicable given the scope of the removal action: (1) Clean Water Act 33 U.S.C. §§ 1342, *et seq.* (Point Source Discharges Requirements, Section 402); (2) Colorado Basic Standards and Methodologies for Surface Water, 5 CCR § 1002-31, pursuant to CRS §§ 25-8-101-703; (3) Colorado Surface Water Quality Classifications and Numeric Standards, 5 CCR § 1002-34, pursuant to CRS §§ 25-8-203 and 204; (4) Colorado Discharge Permit System Regulations, 5 CCR § 1002-61, Regulation No. 61, pursuant to CRS § 25-8-501 -509; and (5) Colorado Effluent Limitations, 5 CCR § 1002-62, pursuant to CRS § 25-8-205.