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**UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION**

UNITED STATES OF AMERICA,

and

STATE OF MONTANA

Civil Action No. 9:26-cv-00099-KLD

Plaintiffs,

v.

COLUMBIA FALLS ALUMINUM
COMPANY, LLC,

Defendant.

UNOPPOSED MOTION TO ENTER CONSENT DECREE

Exhibits

Exhibit A: *Public Comments*

Plaintiffs, the United States of America and the State of Montana, hereby move for entry of the proposed Consent Decree that Plaintiffs lodged with this Court on July 2, 2026 (ECF No. 2). This Motion is unopposed, pursuant to Paragraph 81 of the proposed Consent Decree.

The proposed Consent Decree resolves the United States' and the State of Montana's claims against Defendant Columbia Falls Aluminum Company, LLC ("CFAC") under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607(a), and the Montana Comprehensive Environmental Cleanup and Responsibility Act ("CECRA"), §§ 75-10-701, et seq., for the recovery of costs related to the release of hazardous substances at the Anaconda Aluminum Co. Columbia Falls Reduction Plant National Priorities List Site (also known as the Columbia Falls Aluminum Company Site) (the "Site") near Columbia Falls, Montana.

In the proposed Consent Decree, CFAC agrees to reimburse the United States Environmental Protection Agency ("EPA") for \$1,800,000.00 in past response costs and to pay future response costs that will be incurred at the Site. CFAC also agrees to reimburse any independent State future response costs incurred by the Montana Department of Environmental Quality. CFAC will complete all cleanup work required under the Record of Decision issued by EPA

for the Site in January 2025. EPA estimates the cost of the work required of CFAC under the Consent Decree is \$57,634,528.00.

In return for CFAC's agreement to perform the work required by the Consent Decree and pay EPA's past and future response costs and the State's future response costs, the United States will provide a standard covenant not to sue under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a). The State will also provide a covenant under sections 711, 715(2)(a), 722, and 726 of CECRA.

As discussed herein, the proposed Consent Decree is fair, adequate, reasonable, and consistent with the goals of CERCLA, and the United States, the State of Montana, and CFAC have consented to this settlement without the trial of any issues. Therefore, Plaintiffs respectfully request that the Court approve and sign page 33 of the Consent Decree and enter it as an order of the Court.

BACKGROUND

Site Background: The Site is located approximately two miles northeast of Columbia Falls, Montana and consists of approximately 1,340 acres. The Site is bounded by Cedar Creek Reservoir to the north, Teakettle Mountain to the east, the Flathead River to the south, and Cedar Creek to the west. Compl. ¶ 10, ECF No.1. The Site is the location of a former aluminum reduction plant. Site operations began in 1955 with two "potlines," which constitute interconnected rows of

reduction pots used in aluminum smelting. *Id.* ¶ 11. By the 1960s, the plant expanded to ten potlines. CFAC and its predecessor operated the facility from 1985 to 2016.

Primary products and wastes from activities at the Site included spent potliner material, which contained fluoride, sodium, aluminum, and cyanide. *Id.* ¶ 12. The aluminum production process also generated air emissions, including particulate fluoride. *Id.* ¶ 13. Wet scrubbers controlled air pollution from the smelting process until the 1990s. During this time, the spent potliner, scrubber sludge, and other solid wastes were disposed of in on-Site landfills. Wastewater was discharged into groundwater via state-issued discharge permits that remained effective until the facility's permanent closure. *Id.* ¶ 14. The Site includes seven closed landfills, one open landfill, leachate ponds, percolation ponds, buildings and operational areas, and surface water features. *Id.* ¶ 15.

EPA placed the Site on the National Priorities List on September 9, 2016. The Site is also listed on the Montana CECRA Priority List. *Id.* ¶ 21. CFAC conducted a Remedial Investigation and Feasibility Study in response to the release or threat of release of hazardous substances at the Site. *Id.* ¶ 22. As a result of the Remedial Investigation and Feasibility Study, EPA determined that additional response actions were necessary to protect human health and the environment. EPA's selected remedy is embodied in the Record of Decision executed on January

10, 2025. *Id.* ¶ 27. The selected remedy applies a strategy emphasizing sitewide consolidation and encapsulation of contaminant sources to eliminate exposure pathways, reduce the transfer of contaminants of concern to groundwater, and prevent contaminant migration to the Flathead River. *Id.* ¶ 28.

The Complaint: On July 2, 2026, the United States, on behalf of EPA, and the State of Montana, by and through the Montana Department of Environmental Quality (“MDEQ”), filed a complaint against CFAC for injunctive relief and recovery of costs under CERCLA Sections 106, 107, and 113, 42 U.S.C. §§ 9606, 9607, and 9613, and CECRA Sections 701 through 757, Mont. Code Ann. §§ 75-10-701 through 757. *Id.* ¶¶ 1-3. The Complaint asserts that CFAC and its corporate predecessor owned and operated a facility from which there were releases or threatened releases of hazardous substances, which caused the incurrence of response costs within the meaning of CERCLA and CECRA. *Id.* ¶¶ 8-9.

The Complaint alleges three claims for relief. First, that CFAC is liable for certain response costs incurred by the United States and the State. *Id.* ¶¶ 29-34. Second, that CFAC is subject to injunctive relief to abate the danger or threat presented by hazardous substances. *Id.* ¶¶ 35-41. Third, that CFAC is subject to a declaratory judgment for future response costs. *Id.* ¶¶ 42-47.

The Consent Decree’s Terms: Simultaneously with the Complaint, the United States lodged the proposed Consent Decree between the United States, the

State of Montana, and CFAC. Notice of Lodging (ECF No. 2). The Proposed Consent Decree requires CFAC to fully perform the selected remedy for the Site in accordance with the Record of Decision and approved Statement of Work. See Consent Decree Section VI, ECF No. 2-1, at ¶ 16. The remedy is detailed in the Record of Decision attached as Appendix B to the Consent Decree. To ensure completion of the required work, CFAC must secure financial assurance, initially in the amount of \$57,634,528.00. See Consent Decree Section VIII, ECF No. 2-1, ¶ 26. The Consent Decree also requires CFAC to pay past EPA response costs incurred at the Site in the amount of \$1,800,000.00. CFAC will also pay EPA and State future response costs incurred to oversee implementation of the work. *Id.* ¶¶ 37-38.

In return for CFAC's agreement to perform the work and pay response costs, the United States covenants not to sue CFAC under Sections 106 and 107(a) of CERCLA, and the State covenants not to sue CFAC under Section 107(a) of CERCLA and Sections 711, 715(1), (2)(a), 722, and 726 of CECRA, regarding the work, past response costs, and future response costs, subject to certain specified reservations of rights. *Id.* Section XIV, ECF No. 2-1, at ¶ 57.

Public Comment Period: The United States published a notice of lodging of the settlement in the Federal Register on July 7, 2026, in accordance with CERCLA Section 122(d)(2), 42 U.S.C. § 9622(d)(2), Department of Justice

regulations, 28 C.F.R. § 50.7, and Paragraph 80 of the Consent Decree. The Federal Register notice informed the public that the Department of Justice would accept comments relating to the proposed Consent Decree for a period of thirty days. *See* 91 Fed. Reg. 41,663 (July 7, 2026). The public comment period ended on August 6, 2026, and the United States received two sets of comments, which are attached as Exhibit A. The first set of comments was submitted by attorneys for CFAC, and the second set was submitted by the Coalition for a Clean CFAC (“Coalition”), a community group with interests in monitoring the implementation of the Decree. Additional community involvement activities to publicize the lodging of the Consent Decree and associated public comment period included wide distribution of a press release; public notice posted on EPA’s website and in local publications (Daily Interlake and Hungry Horse News); email notification to 7,000 subscribers that have voluntarily signed up for Site’s mailing list; and website updates in the “Announcements and Key Topics” section of the Site profile page.

The State of Montana independently solicited public comment for 30 days on the Consent Decree under Mont. Code Ann. § 75-10-713, and received one comment from CFAC, identical to CFAC’s comment submitted to the United States. The State of Montana also provided notice of the Consent Decree and the State’s public comment period to the County Commissioners and City government.

LEGAL STANDARD

In reviewing a proposed settlement, a district court assesses whether the settlement is fair, adequate, reasonable, and consistent with the objectives of the statute being enforced by the action. *United States v. Montrose Chem. Corp. of Cal.*, 50 F.3d 741, 743 (9th Cir. 1995); *United States v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990); *see also United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 85 (1st Cir. 1990) (the trial court's review function for CERCLA consent decrees is "only to 'satisfy itself that the settlement is reasonable, fair, and consistent with the purposes that CERCLA is intended to serve'") (quoting legislative history).

Whether to approve a proposed consent decree is committed to the discretion of the court. *Oregon*, 913 F.2d at 580. The court "has an obligation to independently scrutinize the terms of [the agreement]." *Arizona v. City of Tucson*, 761 F.3d 1005, 1012 (9th Cir. 2014). However, the court's discretion must be informed by the "public policy strongly encourag[ing] the settlement of cases." *Ho v. Martin Marietta Corp.*, 845 F.2d 545, 547 n.2 (5th Cir. 1988); *see also United States v. Coeur d'Alenes Co.*, 767 F.3d 873, 877–78 (9th Cir. 2014) (discussing how the encouragement of early settlements "is an integral part of [CERCLA's] statutory plan"). When EPA is a party to a proposed consent decree, the Court should "'refrain from second-guessing the Executive' and defer to the EPA's expertise." *Arizona*, 761 F.3d at 1013. This deference is especially strong

when, as here, the “government agency charged with protecting the public interest has pulled the laboring oar in constructing the proposed settlement.” *Montrose*, 50 F.3d at 746.

ARGUMENT

I. The Consent Decree Meets the Standard for Entry

CERCLA encourages the settlement of cases to expedite cleanup work and minimize litigation. *See* 42 U.S.C. § 9622(a). The Consent Decree holds CFAC accountable for significant cleanup obligations at the Site and will ensure that the relevant cleanup work will be finished with appropriate dispatch according to the terms of the Consent Decree, consistent with EPA standards, and with minimal need for the use of public funds. The proposed Consent Decree meets the applicable judicial standards set forth above and should be approved and entered as an order of this Court.

A. The Consent Decree is Fair, Adequate, and Reasonable

In determining whether a proposed settlement is fair, a court need only ascertain whether the terms of the proposed consent decree reflect a reasonable compromise of the litigation. *See Montrose*, 50 F.3d at 747. Courts consider both procedural and substantive fairness in reviewing the fairness of a proposed settlement. *Coeur d’Alenes Co.*, 767 F.3d at 876. Procedural fairness assesses the “candor, openness, and bargaining balance” of the negotiation process. *United*

States v. Placer Mining Co., Inc., No. 04-cv-126, 2018 WL 7352423, *2 (D. Idaho June 19, 2018). “Procedural fairness is generally met where a proposed settlement is negotiated at arm’s length and is conducted forthrightly and in good faith.” *Id.* (citing *Cannons Eng’g Corp.*, 899 F.2d at 84). Substantive fairness does not concern “whether the settlement is one which the court itself might have fashioned, or considers ideal.” *United States v. Pacific Gas & Elec.*, 776 F. Supp. 2d 1007, 1025 (N.D. Cal. 2011). “The court need only be satisfied that the decree represents a reasonable factual and legal determination.” *Oregon*, 913 F.2d at 581 (internal quotation marks omitted).

The settlement reflected in the Consent Decree is procedurally fair. It is the result of many months of arms-length negotiation between the United States, the State of Montana, and CFAC, following issuance of the Record of Decision in 2025. The parties were advised by experienced counsel and had the opportunity to evaluate the strengths and weaknesses of each other’s cases. The parties negotiated the Consent Decree in good faith, in lieu of expending resources or protracted litigation.

The Consent Decree is also substantively fair, reasonable, and adequate. It ensures that the remedy set forth in the Record of Decision will be implemented, reimburses the government for past response costs, and provides for recovery of future response costs. In exchange, CFAC will receive covenants not to sue for the

work that it is agreeing to perform under the Consent Decree. The Consent Decree will ensure that necessary actions will be taken to protect the public and the environment from threats posed by contamination at the Site, and that the costs of doing so will be paid by a party deemed responsible under CERCLA instead of taxpayers. *See United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1437 (6th Cir. 1991) (in evaluating the reasonableness of an environmental consent decree, the most important factor is the decree's effectiveness as a vehicle for cleaning the environment); *Cannons Eng'g Corp.*, 899 F.2d at 87 (substantive fairness requires that settlement terms be "based upon, and roughly correlated with, some acceptable measure of comparative fault," and "what constitutes the best measure of comparative fault at a particular Superfund site under particular factual circumstances should be left largely to the EPA's expertise").

Further, the United States received two public comments in response to public notice of the proposed Consent Decree. The comments were generally supportive of the proposed Consent Decree. *See* Exhibit A. The first set of comments were submitted by attorneys representing CFAC itself and explain why CFAC believes the Consent Decree meets the standard for entry because it is substantively and procedurally fair, adequate, reasonable, and consistent with the public interest objectives of CERCLA.

The second set of comments was submitted by the Coalition for a Clean CFAC, a community group that “look[s] forward to the conclusion of the Consent Decree and moving ahead with the mitigation of toxic waste at the” Site, while also expressing concern about a perceived lack of specifics regarding long-term components of the proposed Consent Decree governing monitoring, maintenance, financial assurance, and discovery of new hazards. The Coalition acknowledged that the proposed Consent Decree gives the EPA and MDEQ discretion to make adjustments as construction progresses and new monitoring data come in, and indicates that it will also closely monitor these issues in accordance with a Technical Assistance Grant (“TAG”) that was awarded by EPA, which enables the Coalition to contract with a technical advisor with expertise at the Site. The United States agrees that the Proposed Consent Decree provides appropriate flexibility and oversight to ensure that the remedy at the Site remains protective of human health and the environment, and that the TAG will support continued community engagement at the Site and enable the Coalition and the entire community to closely monitor progress and address any concerns throughout the remedial process at the Site.

B. The Consent Decree is Consistent with the Public Interest and CERCLA’s Goals

The goal of CERCLA is “to protect and preserve public health and the environment” from the threat or effects of a release of hazardous substances into

the environment. *Hanford Downwinders Coalition Inc. v. Dowdle*, 71 F.3d 1469, 1473-74 (9th Cir. 1995), citing *Dedham Water Co. v. Cumberland Farms Dairy, Inc.*, 805 F.2d 1074, 1081 (1st Cir. 1986). The proposed Consent Decree serves the purposes of CERCLA because it ensures protection of human health and the environment, requires a responsible party to bear the cost of remedying the contamination, and allows Superfund resources to be put toward cleanup rather than transaction and litigation costs. See 42 U.S.C. § 9622(a) (settlements should be facilitated in the public interest where they “expedite effective remedial actions and minimize litigation”); *In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 119 (2d Cir. 1992) (CERCLA is intended to “encourage settlements that would reduce the inefficient expenditure of public funds on lengthy litigation”); *Cannons Eng’g*, 899 F.2d at 90-91 (CERCLA’s primary objectives include prompt cleanup of hazardous waste and ensuring that the costs of remedying the harm are borne by responsible parties).

CONCLUSION

The Consent Decree is a fair, adequate, and reasonable resolution of Defendant’s specific cleanup liabilities addressed by the settlement. For the foregoing reasons, Plaintiffs respectfully request that the Court grant this unopposed motion, sign the proposed Consent Decree, and enter it as a final order of the Court.

Respectfully submitted,

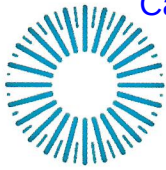
FOR THE UNITED STATES OF AMERICA

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July 23, 2026

Re: *United States and the State of Montana v Columbia Falls Aluminum Company, LLC*, D.J.
Ref. No. 90-11-3-12932

Dear Assistant Attorney General:

These are the comments of the Columbia Falls Aluminum Company, LLC ("CFAC") on the Remedial Design/Remedial Action Consent Decree ("RD/RA CD") (Doc 2-1) lodged in the above referenced matter.

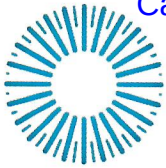
1. The District Court of Montana Must Defer to EPA Expertise When Reviewing a CERCLA Consent Decree to which the EPA is a Party.

The District Court of Montana has held that "a district court reviewing a proposed CERCLA consent decree must assess whether the settlement is fair, adequate, reasonable, and consistent with the objectives of CERCLA" *U.S. v. Atl. Richfield Co.*, No. CV-23-50-GF-BMM, 2023 WL 8107627, at *2 (D. Mont. Nov. 20, 2023) (citations omitted). While the District Court must independently scrutinize the terms of the agreement, because the U.S. Environmental Protection Agency ("EPA") is a party to the decree, the court must "refrain from second-guessing the Executive and defer to EPA's expertise." (*Id.*) (internal citations omitted).

Recent CERCLA jurisprudence and Supreme Court cases reinforce this deferential standard of review. In *August Mack Env't, Inc. v. U.S. EPA*, the District Court for the Northern District of West Virginia distinguished between EPA interpretations of statutes, which are reviewed *de novo* under the recent Supreme Court decision *Loper Bright Enterprises v. Raimondo*, 630 U.S. 369, 479 (2024) and exercises of EPA discretion generally, which are reviewed under the more deferential arbitrary and capricious standard. *August Mack*, 2025 U.S. Dist. LEXIS 253470 (N.D.W.Va Sep. 30, 2025) at *11.

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This arbitrary and capricious standard of review is more analogous to the deferential standard of review afforded EPA decisions involving issues of fact and predictive or scientific judgement. See, *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, 605 U.S. 168, 203 (2025).

The development and approval by EPA of the RD/RA CD includes findings of fact within EPA's expertise and implements EPA's prediction and exercise of scientific judgement in its January 2025 Record of Decision ("ROD") for the site (Document 2-1 pp. 38-642). These predictions and exercises of scientific judgment in the ROD include EPA's fact-based determination that its chosen remedies to address environmental issues at the CFAC site and described therein will protect human health and the environment and are cost-effective. The EPA exercised the discretion given to the President to enter into settlement agreements under CERCLA Section 122(a) (42 U.S.C. §9622) and delegated by the President to EPA under Executive Order 12,580 (52 F.R. 2923 (1987)) when it entered into the RD/RA CD.

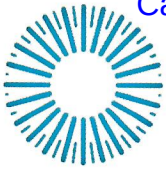
This deferential standard in reviewing EPA's discretion when entering into the RD/RA CD is consistent with and supported by the rulings in *August Mack* and *Seven Cnty. Infrastructure*. The court's review of the EPA's exercise of this discretion in entering into the RD/RA CD does not include reviewing EPA's statutory interpretation and thus does not in any way implicate the heightened *de novo* review standard articulated in *Loper Bright*.

2. The Proposed RD/RA CD is fair, adequate, and reasonable.

a. The RD/RA CD is Substantively Fair

The RD/RA CD provides for the completion of the EPA chosen remedies in the ROD for the site at the sole cost of the Defendant, CFAC. The RD/RA CD requires CFAC to "finance, develop, implement, operate, maintain and monitor the effectiveness of the Remedial Action...." (Doc 2-1 at p. 9). The RD/RA CD also requires CFAC to bear the cost of the remediation by requiring that CFAC not seek reimbursement for remediation expenses from any federal or state source. (*Id.* at p. 27.) Furthermore, the RD/RA CD requires CFAC to pay to EPA \$1,800,000 in past response costs and to pay the EPA and State of Montana future response costs going forward. (Doc 2-1 at pp. 18-19.) In addition, CFAC has, since 2015, and will continue to monitor water quality at residential drinking water wells at no cost to homeowners. Monitoring well results show that site impacts are largely confined to the site do not and will not impact these residences (see *Id.* at p. 80)

The RD/RA CD provisions that protect against inadequate performance by CFAC also demonstrate its substantive fairness. Under the RD/RA CD, CFAC has an ongoing obligation to monitor groundwater quality and the effectiveness of the remedy (See 2-1 pp 9, 578-612 and 623-642.) The RD/RA CD also allows EPA to take over the work required by the CD if it determines that CFAC has ceased to perform, is seriously deficient or late in performing, or is



performing in a manner that may endanger public health, welfare or the environment such work. (*Id.* at p. 10.) CFAC must provide the full estimated cost of the work, \$57,634,528.00, in financial assurance (*Id.* at p. 13) and has committed to pay a stipulated penalty of \$750,000 if EPA exercises its right to take over the work. (*Id.* at p. 24).

b. The RD/RA CD is Procedurally Fair

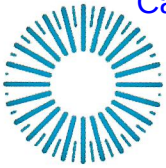
The RD/RA resulted from years of following the site assessment, alternative evaluation, and remedy selection process required by CERCLA (42 U.S.C. §9604) and the National Contingency Plan (40 CFR Part 300). This process culminated in arms-length agreement between the parties over the key terms of the RD/RA CD.

Furthermore, the substance of the RD/RA CD, the Statement of Work and the ROD was the subject of extensive public engagement and public comments. In addition to tripling the length of the comment period from the thirty (30) days required under 40 CFR §300.430(f)(3)(C) to ninety (90) days for its June 2023 Proposed Plan, the EPA engaged in significant public outreach leading up to the release of its Proposed Plan. The EPA issued numerous fact sheets and hosted public meetings and open houses, both providing information to and receiving information from numerous individuals and representatives of local groups. The EPA held multiple in person and virtual meetings with self-identified local activists and the leadership and representatives of the Confederated Salish and Kootenai Tribes ("CSKT").

The EPA even hired a consultant to help members of the public with technical aspects of the plan. The EPA engaged in additional public outreach during the 18-month period between the release of its Proposed Plan in June 2023 and the release of its ROD in January 2025. During 2024, the EPA held public meetings, office hours, staffed a booth at the local farmer's market and participated in a site tour hosted by CFAC. The EPA received some 135 individual comments on the ROD addressing 46 separate topics. (See, generally, EPA ROD Doc 2-1 pp. 63-65 and Responsiveness Summary pp. 257 – 470) The EPA continued public outreach after issuing the ROD by continuing to engage with interested groups and the CSKT.

Furthermore, a Community Liaison Panel ("CLP") consisting of interested members of the public met over 20 times in the 11 years between May 2015 and May 2026 to provide local residents with up-to-date information and provide them with a forum to express their views regarding site assessment, remedy evaluation, early remedial action and the development of the ROD and subsequent RD/RA CD. The CLP received regular briefings from EPA staff, project engineers and managers and the site owner. (See, generally, [Community - Columbia Falls Aluminum Company Project](#))

The scope and cost of remediation, the comprehensive, sophisticated, arms-length negotiations conducted between the EPA, the State of Montana and CFAC, and the extensive



opportunities for input and participation made available to interested community members render the RD/RA CD fair, adequate, and reasonable.

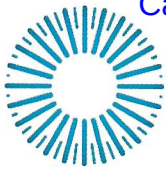
3. The RD/RA CD Is Consistent with the Public Interest Objectives of CERCLA.

- a. The remedial actions identified in the ROD that will be implemented through the CD are consistent with the CERCLA objective to protect public health and the environment.

The remediation required by the RD/RA CD will address soil and groundwater impacts from former site aluminum smelter operations. These include controlling fluoride and cyanide releases from legacy site landfills to local groundwater through the installation of effective caps and a slurry wall below the site surface that will fully encompass those landfills. The control of the release of constituents of concern from the landfills will result not only in the cleanup of site groundwater but will achieve remedial action objectives and reduce constituents of concern below remedial goals and applicable, relevant and appropriate requirements ("ARARs") identified in the ROD. (Doc 2-1 pp 112-113 and Appendix A pp 175 – 240). The remedy also requires CFAC to install paired extraction/monitoring wells within and outside of the slurry wall to determine whether the slurry wall is controlling releases from the landfills to groundwater as expected. If the monitoring results show that the slurry wall is not controlling releases from the landfills as expected, CFAC will be required to construct a facility to pump and treat impacted groundwater from within the slurry wall and discharge clean groundwater outside of the slurry wall. (*Id.* at p. 150).

Other remedies include the excavation of approximately 57,500 total cubic yards of impacted site soil and the consolidation and disposal of that material in an approved existing waste management facility. Approximately 35,000 cubic yards of soil associated with former percolation ponds impacted with arsenic, polycyclic aromatic hydrocarbons, and metals above applicable standards will also be excavated and disposed of at an onsite waste management facility. (Doc 2-1 pp 154-155.)

Consistent with the requirements of the NCP, remedial options were developed for each operable unit and compared with each other considering NCP required factors including protection of human health and environment, compliance with ARARs, and cost effectiveness. Options were also evaluated based on whether they used permanent solutions and alternative treatments with a preference for treatment as a principal element. (See, Doc 2-1, pp. 135 – 146.) A numerical scoring system was used to compare options across NCP-required criteria within individual decision units (*Id.* at p. 172).



HERBERT SMITH
FREEHILLS
KRAMER

July 23, 2026

- b. Approval of the RD/RA CD is consistent with the objective of CERCLA to promote settlement of liability and timely remediation and reuse of remediated properties.

The approval of the RD/RA CD would avoid the prospect of years of protracted litigation that would delay the remediation of the site. Much of the site has already been sold to a local developer and the approval of the RD/RA CD will facilitate the remediation of the impacted portions of the site and its efficient return to productive use. Furthermore, approving the RD/RA CD would further CERCLA's public interest objectives because it would allow Superfund resources to be used to clean up other contaminated sites, rather than to cover litigation costs. See *U.S. v. BNSF Ry. Co.*, No. CV 20-126-M-DLC, 2020 WL 9048798, at *6 (D. Mont. Nov. 30, 2020) (citing *U.S. v. Montrose Chem. Corp. of Cal.*, 50 F.3d 741, 748 (9th Cir. 1995) ("CERCLA's primary goal is to encourage early settlement of what would otherwise be extended and costly environmental lawsuits.")).

Sincerely,

Andrew D. Otis
Partner



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August 3, 2026

Assistant Attorney General
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Subject: United States and the State of Montana v. Columbia Falls Aluminum Company, LLC, D.J.
Ref. No. 90-11-3-12932

The Coalition for a Clean CFAC is a community-based, grass roots organization established in February 2024 “to secure the comprehensive cleanup of the Columbia Falls Aluminum Company (CFAC) Superfund site for the health, enjoyment, and economic benefit of the local community and the protection of the Flathead [River] watershed.”

Members of the Coalition for a Clean CFAC have spent two and one half years studying in-depth the Proposal for Cleanup of the CFAC Superfund site. We, along with 2,000 community members and 13 community groups representing over 20,000 individuals signed petitions expressing our opposition to the Proposed Remedy, and offered an alternative based on extensive research. While we continue to believe there are other options more favorable to the long-term effectiveness for the protection of human health and the environment, we understand the Record of Decision has been made and the Proposed Remedy is moving forward. In December 2024 the Coalition for a Clean CFAC was awarded a Technical Assistance Grant (TAG) by the EPA enabling the organization to contract with a technical advisor with expertise in issues particular to this Superfund site.

This is a letter to provide public comments on the proposed Consent Decree. The Coalition continues to hold the confidence of the above-mentioned community members and groups and offers the following comments.

In reviewing the Consent Decree and Statement of Work we find a number of issues of concern including lack of specifics on:

- 1.) Long term monitoring & maintenance;
- 2.) Long term financial assurance;
- 3.) Discovery of new hazards; and
- 4.) Enforceable requirements for maintenance, monitoring, repair, and corrective action

We understand this “lack of specifics” gives the Environmental Protection Agency (EPA) and MT Department of Environmental Quality (DEQ) discretion to adjust the actual process as construction progresses, and new monitoring data comes in. We intend, through the professional guidance of our technical advisor, to closely monitor the above issues and bring concerns and issues to the attention of the EPA and DEQ as they arise, as well as the public. We meet monthly with EPA and DEQ representatives and are relying on them to be forthcoming with specific information as the process progresses. We look forward to the conclusion of the Consent Decree and moving ahead with the mitigation of toxic waste at the Columbia Falls Aluminum Company site.

Thank you for the opportunity to provide comments on this important Consent Decree.

Sincerely,

Board of Directors, Tony Haag, Chair
Coalition for a Clean CFAC
cleancfac@gmail.com