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22 UNITED STATES DISTRICT COURT
23 FOR THE EASTERN DISTRICT OF CALIFORNIA

24	_____)	No. CIV
25	UNITED STATES OF AMERICA)	
26)	
27	Plaintiff,)	
28	vs.)	COMPLAINT FOR COST
)	RECOVERY
	ATLANTIC RICHFIELD COMPANY)	
)	
	Defendant.)	
	_____)	

1
2 Plaintiff United States of America, on behalf of the United States
3 Department of Agriculture, United States Forest Services (“USFS”), by authority of the
4 Attorney General, and by and through its undersigned attorneys, hereby pleads as follows:
5

6 INTRODUCTION

7 1. This is a civil action brought against defendant under Section 107 of
8 the Comprehensive Environmental Response, Compensation, and Liability Act of 1980
9 (“CERCLA”), 42 U.S.C. § 9607, as amended by the Superfund Amendments and
10 Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, for recovery of costs
11 incurred and to be incurred by the United States in response to the release or threatened
12 release of hazardous substances at and from the Walker Tailings Site (“Site”).
13
14

15 JURISDICTION AND VENUE

16 2. This Court has jurisdiction over this action pursuant to 28 U.S.C.
17 §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b).
18

19 3. Venue is properly in this Court pursuant to 28 U.S.C. § 1391(b) and
20 (c) and 42 U.S.C. § 9613(b).
21

22 DEFENDANT

23 4. Defendant Atlantic Richfield Company (“Atlantic Richfield”) is a
24 corporation organized under the laws of the State of Delaware. On April 18, 2000,
25 Atlantic Richfield became a wholly owned subsidiary of BP Amoco, PLC and is currently
26 a wholly owned subsidiary of BP America, Inc.
27
28

1 5. Atlantic Richfield is the successor by merger to the Anaconda
2 Company (doing business, until 1955, as the Anaconda Copper Mining Company)
3 (“Anaconda”). In 1928, Anaconda merged with its wholly owned subsidiary, the
4 International Smelting and Refining Company (“International”).
5

6 6. At times relevant to this complaint, Atlantic Richfield, Anaconda,
7 and International did business within the State of California and this judicial district.
8

9 GENERAL FACTUAL ALLEGATIONS

10 The Walker Tailings Site

11 7. The Walker Tailings Site comprises approximately 100 acres of
12 tailings located within Forest Service Pacific Southwest Region 5, Plumas National
13 Forest, Plumas County, California, approximately 15 miles east of Quincy, California.
14 The Site is located on National Forest System lands under the jurisdiction and control of
15 the USFS, pursuant to 16 U.S.C. § 1609(a).
16
17

18 8. The Site is approximately 3/4 of a mile downstream of the Walker
19 Mine (“Mine”), which is located on adjacent private lands, and at the confluence of Dolly
20 Creek and Little Grizzly Creek, which is a tributary to Indian Creek, which is a tributary
21 to the East Branch North Fork Feather River. Dolly Creek flows across the tailings area.
22 Little Grizzly Creek flows along the southern edge of the tailings area.
23
24

25 9. The Site served as a tailings reservoir for mill tailings from the Mine.
26 From approximately 1915 through 1941, the Walker Mine produced copper, as well as
27 gold and silver, and was owned and operated by the Walker Mining Company
28

1 (“Walker”). Production at the Mine ended in 1941, and all operations ceased in 1943
2 when Walker ended its exploratory activities. Walker filed for bankruptcy in 1944, and
3 its assets were sold to satisfy its creditors in 1945.
4

5 10. Ore from the Walker Mine was processed, or “concentrated,” at the
6 Walker Mill (“Mill”), which was located adjacent to the Mine on private lands. The Mill
7 produced tailings as a byproduct of the milling process. The fine-grained tailings,
8 produced as a slurry, flowed by gravity to the tailings disposal area, where they were
9 impounded by a dam on Dolly Creek, which had been constructed for that purpose in
10 1919. Over time, this process deposited tailings materials over 100 acres of National
11 Forest System lands, to an average depth of 28 feet and approximate volume of
12 4.5 million cubic yards.
13
14

15 11. Hazardous substances, including copper and zinc, are released from
16 the tailings. Such releases include seepage along the base of the levee separating Little
17 Grizzly Creek from the tailings material and surface and seepage flow over and through
18 the tailings retention dam. Dolly Creek flows along the northern portion of the tailings,
19 picking up leachate water and resulting in the release of hazardous substances, including
20 copper and zinc. The releases of hazardous substances from the Site adversely affect the
21 water quality of Dolly Creek and Little Grizzly Creek and pose harm or the threat of harm
22 to aquatic organisms and vegetation.
23
24

25
26 Operation by International and Anaconda
27

28 12. During virtually all of its period of active operations, the Walker

1 Mine and Mill were operated concurrently by Walker, Anaconda, and International,
2 which by 1918 had acquired a controlling interest in Walker.
3

4 13. To secure payment by Walker of substantial monies owed to
5 International, International and Walker entered into an Operating Agreement, originally
6 signed in 1916 and renewed periodically, that called for International's oversight of
7 activities at the Walker Mine. The Operating Agreement further provided that a Plant
8 Manager, nominated by or satisfactory to International, would oversee all mining and
9 milling activities. That Plant Manager reported on an ongoing basis directly to
10 International and Anaconda.
11

12 14. In tandem with the Operating Agreement, Walker and International
13 also entered into an Output Contract, according to which Walker would sell to
14 International its entire output of ore concentrate, which International would process at its
15 smelter in Tooele, Utah.
16
17

18 15. Through and by virtue of the Operating Agreement and Output
19 Contract, International and Anaconda became day-to-day participants in the integrated
20 operations of Walker Mine, which encompassed the exploration for and mining of ore,
21 together with the processing of that ore at the Walker Mill for shipment to International's
22 Tooele smelter.
23
24

25 16. At the Walker Mill, as generally at all milling facilities, tailings were
26 the necessary byproduct of the ore-milling process. The production of ore concentrate
27 entails the production and disposal of a relatively much larger volume of waste tailings,
28

1 which were deposited in the nearby tailings reservoir, which exposed the tailings to the
2 elements, including wind, rain, and snow-melt.

3
4 Clean-up Activities

5 17. From approximately May 1990 until approximately August 1993, the
6 USFS undertook a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site,
7 pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

8
9 18. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the USFS
10 published notice of the completion of the feasibility study and of the proposed plan for
11 the remedial action and provided opportunity for public comment on the proposed
12 remedial action.

13
14 19. The decision by the USFS on the remedial action to be implemented
15 at the Site is embodied in a final Record of Decision (“ROD”), executed on June 10,
16 1994, and amended on August 2, 2001. The State of California was given an opportunity
17 to review and comment on the ROD and amended ROD and has concurred in the
18 proposed remedial actions.

19
20 20. The ROD selected as the preferred remedial alternative treatment of
21 the tailings material on-site, reconstruction of a portion of the Dolly Creek channel to
22 stabilize it and revegetate its banks, construction of aerobic and anaerobic wetlands to act
23 as a passive water treatment system to reduce the metals content of contaminated waters,
24 construction of wind barriers to control erosion and air releases, and neutralization of 10
25 acres of tailings and revegetation of 60 acres of tailings to reduce acidity. The amended
26
27
28

1 ROD added the diversion of Dolly Creek around the tailings to ensure the effectiveness of
2 the wetland treatment system and reduce releases of hazardous substances during heavy
3 flows. The amended ROD also contemplates the possible construction of a 15-acre
4 passive water treatment system and the diversion of Little Grizzly Creek as contingent
5 remedial actions, to be implemented as needed.
6
7

8 21. Following issuance of the original ROD, the USFS completed
9 construction of the aerobic wetland portion of the remedial action, using its own funding,
10 together with other work to reduce erosion and wind dispersion of the tailings. To date,
11 the USFS has expended approximately \$1.24 million in response costs for Site investiga-
12 tion and engineering studies, construction of the aerobic wetlands and other work, and
13 enforcement activities. The remaining work at the Site includes the diversion of Dolly
14 Creek, along with the possible construction of the passive water treatment system and
15 diversion of Little Grizzly Creek. Implementation of that work is projected to cost an
16 estimated \$2.09 million. With the estimated cost of 30 years of operation and
17 maintenance of the remedial action, future costs are expected to total approximately
18 \$3.3 million.
19
20
21

22 CLAIM FOR RELIEF
23

24 22. Paragraphs 1 through 21 are incorporated herein by reference as if
25 fully set forth below.
26

27 23. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, inter
28 alia, that the following persons shall be liable under CERCLA for the costs incurred by

1 the United States in responding to releases or threatened releases of hazardous
2 substances:

3
4 (2) any person who at the time of disposal of any
5 hazardous substance owned or operated any facility at
6 which such hazardous substances were disposed of[.]

7 24. The Walker Tailings Site is a “facility” within the meaning of
8 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

9 25. Defendant Atlantic Richfield, through its corporate predecessors, is
10 liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as an operator of the
11 Walker Tailings Site at the time that hazardous substances were disposed of.

12 26. The substances present and released at or from the Walker Tailings
13 Site, including copper and zinc, are “hazardous substances” within the meaning of
14 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and as listed at 40 C.F.R. § 302.4
15 (Table).
16

17 27. There have been and continue to be “releases” or “threatened
18 releases” of hazardous substances at or from the Site, within the meaning of Section
19 101(22) of CERCLA, 42 U.S.C. § 9601(22).
20

21 28. In response to the releases or threatened releases of hazardous
22 substances at or from the Site, the United States has incurred and continues to incur
23 “response” costs within the meaning of Section 101(25) of CERCLA, 42 U.S.C.
24 § 9601(25). Such costs include the costs of investigation, monitoring and construction,
25 including all activities taken pursuant to Section 104(b) of CERCLA, 42 U.S.C.
26
27
28

1 § 9604(b), and of prosecuting this action, together with prejudgment interest, as provided
2 for by Section 107 of CERCLA, 42 U.S.C. § 9607.
3

4 29. As a person liable under Section 107 of CERCLA, Atlantic Richfield
5 is liable for “all costs of removal or remedial action incurred by the United States
6 Government . . . not inconsistent with the national contingency plan [40 C.F.R. Part
7 300].” Under Sections 101(23), 101(25), 104(b) and 107(a) of CERCLA, 42 U.S.C.
8 §§ 9601(23), (25), 9604(b) and 9607(a), such response costs include the costs of all
9 investigatory, clean-up, and enforcement activities, together with prejudgment interest on
10 all such costs.
11

12
13 30. The response actions taken by the USFS and its contractors with
14 respect to the Walker Tailings Site and the costs incurred in connection with those
15 response actions are not inconsistent with the National Contingency Plan.
16

17
18 PRAYER FOR RELIEF

19
20 WHEREFORE, Plaintiff United States of America respectfully requests this
21 Court to:

22 1. Enter judgment against defendant Atlantic Richfield in favor of the
23 United States for all response costs incurred in connection with response actions relating
24 to the Walker Tailings Site, together with prejudgment interest on those sums;
25

26 2. Enter a declaratory judgment against Atlantic Richfield pursuant to
27 Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), as to its liability for response
28

1 costs that will be binding in any subsequent action or actions to recover further response
2 costs at the site;

3
4 3. Award the United States the costs of this action; and

5 4. Grant such other relief as may be appropriate.
6

7 Dated: 10.28.03

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13 4-7-05

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