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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIV. NO. S-05-00686 GEB-DAD
v.)	
)	CONSENT DECREE
ATLANTIC RICHFIELD COMPANY,)	
)	
Defendant.)	
_____)	

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the United States Department of Agriculture, Forest Service (“Forest Service”), has filed a complaint in this matter concurrently herewith, pursuant to Sections 104 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9604, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by the Forest Service at the Walker Tailings Site located in the Plumas National Forest, Plumas County, California (“Site”), together with accrued interest; and (2) performance of studies and response work by the defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. This Consent Decree is entered into under the authority vested in the President of the United States by Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, 9622. The President’s authority relative to this Site was delegated to the Secretary of the United States Department of Agriculture (“Secretary”) by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 23, 1987). The Secretary’s authority was further delegated to the Chief of the Forest Service (“Chief”) by 7 C.F.R. 23 § 2.60(a)(39). The Chief redelegated the Secretary’s authority to enter into this Consent Decree to the Forest Service Region 5. Regional Forester (“Regional Forester”) by letter dated April 14, 1997. The Chief redelegated the Secretary’s authority to issue a Record of Decision under CERCLA to the Regional Forester by Forest Service Manual Region 5 2164.04, 2b, effective November 10, 1994. The Regional Forester redelegated the Secretary’s authority to issue a Record of Decision under CERCLA to the Forest Service Region 5 Director of Engineering by Forest Service Manual – Region 5 Supplement 2164.04c-2b.

D. The Site is located within Pacific Southwest Region 5, Plumas National Forest, Plumas County, California. The Plumas National Forest is under the administrative jurisdiction of the Forest Service.

E. The defendant does not admit any liability to the plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. The Site was a tailings reservoir for mine and mill tailings from the Walker Mine, located on private lands nearby. Plaintiff alleges that the Walker Mine was owned and operated by the Walker Mining Company (“Walker”) from approximately 1915 through 1941. Plaintiff further alleges that the Walker Mine was also operated concurrently by the International Smelting Company and the International Smelting and Refining Company (collectively “International”) and their parent corporation, the Anaconda Copper Mining Company, which subsequently changed its name to The Anaconda Company (collectively “Anaconda”), during most or all of its period of operation. Plaintiff further alleges that tailings, as well as acid mine drainage, both of which contain hazardous substances, were released from the Walker Mine onto the Site during the time that the Walker Mine was operated by Walker and International, and that hazardous substances contained in the tailings on the Site and acid mine drainage from the Walker Mine continue to be released from the Site today.

G. After the Walker Mine closed, International merged into Anaconda, and Anaconda merged into Atlantic Richfield Company (“Atlantic Richfield”). Settling Defendants deny that International, Anaconda or Atlantic Richfield engaged in any act or omission that would make them liable for hazardous substances released at or from the Walker Mine or the Site.

H. In 1990, in response to a release or a substantial threat of a release of one or more hazardous substances at or from the Site, the Forest Service commenced a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430.

I. The Forest Service completed a Remedial Investigation (“RI”) Report and a Feasibility Study (“FS”) Report for the Site in August 1993.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the Forest Service published notice of the completion of the FS and of the proposed plan for remedial action, on September 17, 1993 and February 24, 1993, in major local newspapers of general circulation. The Forest Service provided an opportunity for written and oral comments from the State of California (“State”) and the public on the proposed plan for remedial action. A copy of the

transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Forester based the selection of the response action.

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

L. The ROD selected the following preferred remedial alternative: treatment of the tailings material on-site, reconstruction of a portion of the Dolly Creek channel to stabilize it and revegetate its banks, construction of aerobic and anaerobic wetlands to act as a passive water treatment system to reduce the metals content of contaminated waters, construction of wind barriers to control erosion and air releases, and neutralization of 10 acres of tailings and revegetation of 60 acres of tailings to reduce acidity. The amended ROD added the diversion of Dolly Creek around the tailings to ensure the effectiveness of the wetland treatment system and reduce releases of hazardous substances during heavy flows. The amended ROD also contemplates the possible construction of a 15-acre passive water treatment system and the diversion of Little Grizzly Creek as contingent remedial actions, to be implemented as needed.

M. Following issuance of the original ROD, the Forest Service completed construction of the aerobic wetland portion of the remedial action, using its own funding, together with other work to reduce erosion and wind dispersion of the tailings. To date, the Forest Service alleges that it has expended approximately \$1.24 million in response costs for Site investigation and engineering studies, construction of the aerobic wetlands and other work, and enforcement activities. Under the amended ROD, the remaining work required at the Site includes the diversion of Dolly Creek, along with the possible construction of the passive water treatment system and diversion of Little Grizzly Creek. Implementation of that work is projected to cost an estimated \$2.09 million. With the estimated cost of 30 years of operation and maintenance of the remedial action, the future costs of work required by the amended ROD are expected to total approximately \$3.3 million.

N. The Parties acknowledge that there are factual disputes with respect to the history of the Site, the condition of the Site, the remediation efforts, costs incurred in connection with the Site, and future remediation needs. Without admitting or denying the facts in dispute, the Parties have agreed that it is in their best interests to resolve these disputes through this Consent Decree.

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

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9604, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of Settling Defendants including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Defendants' responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the

meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

“Consent Decree” shall mean this Consent Decree [and the appendix and other attachments hereto]. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

“CWA” shall mean the Clean Water Act, as amended, 33 U.S.C. § 1251, *et seq.*

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

“DOJ” shall mean the United States Department of Justice and any of its successor departments, agencies or instrumentalities.

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments, agencies or instrumentalities.

“Escrow Account” shall mean the interest-bearing account established as a qualified settlement fund pursuant to Internal Revenue Code of 1986 § 468B, as amended, and Treasury Regulations promulgated thereunder.

“Escrow Agreement” is the instrument that establishes and governs the Escrow Account and is attached as Appendix A.

“Forest Service” shall mean the United States Department of Agriculture, Forest Service, and any of its successor departments, agencies or instrumentalities.

“Future Response Costs” shall mean all costs incurred, on or after the effective date of this consent Decree, in connection with the performance of environmental Response Actions by the United States or its designated contractor(s) at or in connection with the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Natural Resource Damages" shall mean damages or other relief for injury to, destruction of, or loss of any and all Natural Resources, including the costs of assessing such injury, destruction or loss, and including interest and litigation costs.

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States and Settling Defendants.

“Past Response Costs” shall mean all costs incurred prior to the effective date of this Consent Decree, in connection with the performance of environmental Response Actions by the United States or its designated contractor(s) at or in connection with the Site.

“Plaintiff” shall mean the United States of America.

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

“Response Action” shall mean remove, removal, remedy and remedial action, as those terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601; all such terms (including the terms “removal action” and “remedial action”) include enforcement activities related thereto.

“Response Costs” shall mean “Past Response Costs” and “Future Response Costs.”

“Section” shall mean a portion of this Consent Decree identified by a roman numeral.

“Settling Defendants” shall mean defendant Atlantic Richfield Company and its affiliate ARCO Environmental Remediation, L.L.C.

“Site” shall mean the Walker Mine Tailings Site, encompassing approximately 100 acres, located in the Plumas National Forest in Plumas County.

“United States” shall mean the United States of America, together with all departments and agencies thereof.

V. PAYMENT OF FUTURE RESPONSE COSTS

4. Within 30 business days after Settling Defendants receive notice that this Consent Decree has been lodged, Settling Defendants shall deposit the amount of \$2.5 Million into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank, which Settling Defendants shall qualify as a qualified settlement fund (“QSF”) pursuant to Internal Revenue Code § 468B (the “Escrow Account”), in payment for Future Response Costs to be incurred by the United States at or in connection with the Site. Notice that payment has been made shall be made pursuant to Section XI of this Decree (Notices and Submissions) and shall reference U.S. DOJ No. 90-11-2-1320 and the Forest Service Account number to be provided by the Forest Service. Such monies shall be disbursed from the Escrow Account pursuant to the terms of Section VI of this Decree. The Forest Service has approved the Escrow Account as of the date that this Consent Decree is executed by a representative of the Forest Service, subject, however, to the Forest Service’s further review of such approval in accordance with, and to the extent permitted by, Section XIV of this Consent Decree. The Escrow Account also shall be subject to the continuing jurisdiction of the Forest Service in accordance with Section VI of this Consent Decree. If this Decree is not entered by the District Court, and the time for any appeal of that decision has run, or if the District Court’s denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendants.

5. In the event that the payment required by the preceding Paragraph is not made as required, Settling Defendants shall pay Interest on the amount owing. The Interest to be paid under this Paragraph shall begin to accrue thirty (30) days after the date payment was to be made and shall continue to accrue until payment is made. 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 Settling Defendants’ failure to make timely payments under this Section. Settling Defendants shall make all payments required by this Paragraph in the manner described in the preceding Paragraph. Any Interest payable under this Paragraph shall be paid into the Escrow Account.

6. In addition to Interest, if payment of any portion of the amount due under this Section is not made by the 30th day after the payment was due to be made, Settling Defendants shall pay a stipulated penalty of \$1000 per day for each day the payment is late, until payment is made in full. Payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "U.S. Department of Justice" and delivered to the office of the United States Attorney, Eastern District of California, Financial Litigation Unit, 501 "I" Street, Suite 10-100, Sacramento, California 95814, along with a transmittal notice indicating that the payment is for stipulated penalties and referencing the Forest Service Account number provided, U.S. DOJ No. 90-11-2-1320, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XI (Notices and Submissions). Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by this Section or from performance of any other requirements of this Consent Decree.

VI. DISBURSEMENTS FROM ESCROW ACCOUNT

7. The amount deposited in the Escrow Account pursuant to Section V of this Decree shall be disbursed, subject to the provisions of the following Paragraph, in accordance with escrow instructions executed by the Parties and the bank in which the Escrow Account is established. The Escrow Account shall be established prior to the lodging of this Decree, pursuant to an Escrow Agreement in substantially the form set out in Appendix A to this Decree.

8. The Forest Service shall submit an application for payment of Future Response Costs ("Application"), on a semi-annual or quarterly basis, to implement the CERCLA response activities at the Site. Such Application shall include documentation identifying each cost (actual or projected), including the amount incurred; the date incurred or to be incurred; the contractor or vendor performing the response activity, if applicable; and the items or services purchased or to

be purchased, if applicable. In the case of intramural costs or activities, the Application shall provide documentation sufficient to identify such costs or activities as being associated with Site response actions. The Application shall be submitted to the Escrow Agent for the Escrow Account, with a copy to Settling Defendants. Settling Defendants may, within 30 days of the Application's submission, serve an objection to the Application on the Forest Service, with a copy to the Escrow Agent, opposing the Application. Such an objection shall be limited to opposing costs identified in the Application on the grounds that the costs requested in the Application:

- (1) were not incurred at the Site, or
- (2) are not Future Response Costs within the definition set out in Section IV of this Consent Decree.

9. The Forest Service may thereupon withdraw or modify the Application. If the Forest Service submits a modified Application, Settling Defendants may treat it as an original Application and may serve an objection within 30 days of the Application on the grounds specified above. In the case of any Application as to which an objection is pending, the Escrow Agent shall not make disbursement except in accordance with the following Paragraph. Any pending objection to an Application shall be resolved by the Dispute Resolution provisions of this Paragraph. If the Parties are unable to informally resolve the dispute within 15 days from the date the pending objection was submitted, the Forest Service may make a motion to the Court requesting that its application or modified application be approved. Settling Defendants may oppose that motion, pursuant to the Local Rules of Court. In any such dispute brought to the Court, Settling Defendants shall bear the burden of demonstrating that the costs requested in the application: (1) were not incurred at the Site, or (2) are not Future Response Costs within the definition set out in Section IV of this Consent Decree.

10. By agreement of the Parties, and after payment has been made pursuant to Section V of this Decree, the escrow instructions governing disbursements from the Escrow Account may be modified by written agreement between the Parties and the bank in which the Escrow Account is established. Settling Defendants shall cooperate in the execution of such

documents as are necessary to effectuate such changes, provided that such changes do not affect the substantive rights of Settling Defendants with respect to the Escrow Account.

11. The Forest Service shall use the funds in the Escrow Account to properly implement the ROD and any amendments to the ROD required to remediate current conditions at the Site.

VII. COVENANTS NOT TO SUE BY THE UNITED STATES

12. In consideration of the payment, covenants and other promises made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 13 of this Section, the Forest Service covenants not to bring suit for any and all claims within the scope of its authority for Response Costs, Response Actions, or Natural Resources Damages at or to address the Site. The United States specifically covenants not to sue or to take administrative action for any of the following actions relating to the Site:

- (1) injunctive relief, Response Actions, Response Costs, contribution, or other relief under Sections 106 (including, without limitation, claims for penalties under Section 106(b)), 107, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, or
- (2) common law and/or other statutory claims based upon any alleged failure of Settling Defendants or their predecessors to pay Response Costs, Conduct Response Actions or remediate conditions at the Site, or
- (3) any action under Section 7003 of RCRA, 42 U.S.C. § 6973.

Except as provided in Paragraph 13 of this Section, the covenants not to sue set forth in this Paragraph include both past and future liability for those claims enumerated above arising from or relating to all conditions at or in connection with the Site. These covenants not to sue extend to the Settling Defendants, and to each such entity's respective officers, directors, and employees acting in their capacities as such. These covenants not to sue also extend to Settling Defendants' parents, affiliates, successors and assigns, and to each such entity's respective officers, directors and employees acting in their capacities as such, but only to the extent their liability derives from Settling Defendants' potential liability and only to the extent such entities provide covenants not to sue identical to those provided by Settling Defendants pursuant to Section VIII of this Consent

Decree. These covenants not to sue shall take effect upon the payment in full of the amount due under Section V of this Consent Decree (Payment of Future Response Costs), provided that Settling Defendants remain in compliance with the terms of Section VI (Disbursements from Escrow Account) of this Consent Decree until the Escrow Account is closed.

13. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 12. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including, but not limited to, the following:

(1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) criminal liability;

(3) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments at the Site, on behalf of a federal agency other than the Forest Service;

(4) liability based upon Settling Defendants' ownership or operation of the Site after signature of this Consent Decree; and

(5) liability based upon Settling Defendants' transportation, treatment, storage, or disposal of, or arrangement for the transportation, treatment, storage, or disposal of, any hazardous substance or solid waste after signature of this Consent Decree.

14. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all Response Actions authorized by law.

VIII. COVENANTS BY SETTLING DEFENDANTS

15. Except as specifically provided in Paragraph 17 of this Section, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, Response Costs as defined herein, or this Consent Decree, including, but not limited to:

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

b. any claim arising out of Response Actions at or in connection with the Site, including any claim under the United States Constitution, the California State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, in connection with the Site.

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

17. General Reservation of Rights by Settling Defendants. The Settling Defendants reserve any defenses to any order or claim brought by the United States pursuant to the reservations contained in Paragraph 13. In addition, the Settling Defendants reserve any cross-claims, counterclaims, or third-party claims against the United States in response to any claims brought by the United States against the Settling Defendants pursuant to the reservations contained in Paragraph 13.

IX.EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

18. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Settling Defendants expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

19. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection

from costs, damages, actions, or other claims (whether seeking contribution, indemnification, or however denominated) for matters addressed in this Consent Decree as provided by (1) CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and (2) any other applicable law. The “matters addressed” in this Consent Decree are all Response Actions taken or to be taken and all Response Costs incurred or to be incurred by the United States or any other person with respect to the Site, and specifically include without limitation those matters governed by the covenants contained in Sections VII and VIII of this Consent Decree. The “matters addressed” in this Consent Decree shall not include those Response Costs or Response Actions as to which Plaintiff has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that Plaintiff asserts against Settling Defendants rights coming within the scope of such reservations.

20. Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, Settling Defendants will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

21. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, Settling Defendants will notify the United States in writing within ten (10) days of service of the complaint on Settling Defendants. In addition, Settling Defendants shall notify the United States within ten (10) days of service or receipt of any motion for summary judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

22. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of Response Costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue or claim preclusion, claim splitting, or any other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VII (Covenants Not to Sue by the United States).

X. CERTIFICATION

23. Settling Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site and that they have fully complied with any and all Forest Service requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e).

XI. NOTICES AND SUBMISSIONS

24. Unless otherwise specified in this Consent Decree, whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States and Settling Defendants.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
6 Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-1320

David B. Glazer
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105

and

Rose Miksovsky
Office of the General Counsel
33 New Montgomery Street, 17th Floor
San Francisco, California 94105

As to the Forest Service:

Dennis Geiser
Regional Environmental Engineer
Forest Service, Pacific Southwest Region
1323 Club Drive
Vallejo, California 94592

As to Settling Defendants:

Jean A. Martin
Environmental Counsel
Atlantic Richfield Company
6 Centerpointe Drive, 5th Floor
La Palma, CA 90623

Michael J. Gallagher
Davis Graham & Stubbs LLP
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Denver, CO 80202

Robin J. Bullock
Regional Manager
Atlantic Richfield Company
317 Anaconda Road
Butte, Montana 59701

Mark Brekhus
Regional Manager
Atlantic Richfield Company
6 Centerpointe Drive, 1ST Floor
La Palma, CA 90623

XII. EFFECTIVE DATE

25. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XIII. RETENTION OF JURISDICTION

26. This court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

27. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XV. SIGNATORIES/SERVICE

29. The undersigned representative of Settling Defendants, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the Regional Forester, Region 5, Forest Service certify they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind Settling Defendants and the United States, respectively, to this document.

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

31. Settling Defendants shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Settling Defendants with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and

any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the Complaint in this Action unless or until thirty days after the Court expressly declines to enter this Consent Decree.

XVI. FINAL JUDGMENT

32. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants, and among other things, resolves all claims filed in the above-captioned cases between and among those Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58

33. Retaining Jurisdiction. The Court shall retain jurisdiction over this case, until termination of this Consent Decree, to resolve disputes arising under the Consent Decree, enter orders modifying the Consent Decree, and effectuate and enforce compliance with the terms of the Consent Decree.

SO ORDERED THIS _____ DAY OF _____, 2004.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v ATLANTIC RICHFIELD COMPANY, relating to the Walker Mine Tailings Site.

FOR THE UNITED STATES OF AMERICA

Date: April 8, 2005

KELLY JOHNSON
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

/s/ _____
DAVID B. GLAZER
Environment and Natural Resources Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105

/s/ _____
KENT CONNAUGHTON
Deputy Regional Forester, for
JACK BLACKWELL
Regional Forester
U.S. Department of Agriculture
Forest Service
1323 Club Drive
Vallejo, California 94592

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. ATLANTIC RICHFIELD COMPANY, relating to the Walker Mine Tailings Site.

FOR THE ATLANTIC RICHFIELD COMPANY
AND ARCO ENVIRONMENTAL
REMEDICATION, L.L.C.

Date: January 18, 2005

/s/ _____
Luke Keller
President of Operations, The Americas
Atlantic Richfield Company
21800 Torch Parkway
Warrenville, IL 60555

/s/ _____
Jean A. Martin
Environmental Counsel
Atlantic Richfield Company
6 Centerpointe Drive
5th Floor
Palma, CA 90623

/s/ _____
Michael A. Gallagher
Davis Graham & Stubbs LLP
1550 Seventeenth Street
Suite 500
Denver, CO 80202

Agent Authorized to Accept Service of Complaint, Consent Decree and pleadings and orders related to entry of the Consent Decree on Behalf of Above-signed Parties:

Name: Jean Martin
Title: Environmental Counsel
Address: 6 Centerpointe Drive, LPC 6-557
Tel. Number: 714-228-6736

