

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

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**CLEANUP AND ABATEMENT ORDER NO. R5-2014-XXXX**

**ATLANTIC RICHFIELD COMPANY  
UNITED STATES DEPARTMENT OF AGRICULTURE,  
UNITED STATES FOREST SERVICE**

**WALKER MINE TAILINGS  
PLUMAS COUNTY**

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**CLEANUP AND ABATEMENT ORDER NO. R5-2014-YYYY**

**ATLANTIC RICHFIELD COMPANY**

**WALKER MINE  
PLUMAS COUNTY**

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**PROSECUTION TEAM'S RESPONSE TO ATLANTIC RICHFIELD COMPANY'S  
PREHEARING MOTION NO. 9**

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## **I. Introduction**

Discharger Atlantic Richfield's (ARCO's) Prehearing Motion No. 9 seeks a ruling excluding and striking portions of the expert witness statement and conclusions submitted by the Prosecution Team's expert witness, Dr. Fredric Quivik, on the grounds that Dr. Quivik's testimony regarding the corporate structure of Newmont USA Limited is irrelevant and that other portions of his testimony are speculative as to the activities of ARCO's predecessors at the Walker Mine facility.

ARCO's motion should be denied. Dr. Quivik's testimony regarding the Newmont matter is relevant to the Board's examination of ARCO's liability as a successor to Anaconda Copper Company (Anaconda) and International Smelting and Refining Company (International) under the direct operator liability theory. Furthermore, the information Dr. Quivik relies on to form the basis of his expert opinion regarding Anaconda and International's control and direct involvement over mining operations at Walker Mine provides a reasonable basis for his conclusions and is not based on a leap of logic or conjecture.

## **II. Dr. Quivik's testimony regarding Newmont USA Limited's corporate structure is relevant to the direct operator liability theory**

ARCO argues that Dr. Quivik's observations regarding corporate structure and management derived from his experience serving as an expert witness in the *United States v. Newmont* matter are irrelevant in the present matter and cannot be considered by the Board in determining whether the *Bestfoods* direct operator theory of liability applies to ARCO.

While it is true that the Newmont USA Limited (Newmont) and Walker Mine matters involve different companies, the theory of liability at issue in each of the matters is identical. The threshold for determining what constitutes relevant evidence in an administrative proceeding is specified in Government Code section 11513 subdivision (c) which states, "[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over civil objection."

As an general matter, Dr. Quivik's testimony regarding the *Newmont* case tends to show Dr. Quivik's special knowledge, skill, experience, training or education sufficient to qualify him as an expert on the *Bestfoods* direct operator legal theory and its application in legacy mine cases similar to the Walker Mine and Tailings matter. (See California Evidence Code, §§ 720, 801.)

Furthermore, Dr. Quivik's testimony sheds light on specific facts surrounding Newmont's corporate structure, management, and operation of its subsidiaries which established Newmont's management and control over its subsidiary, Dawn Mining Company, LLC,

triggering Newmont's liability as the parent corporation in *United States v. Newmont*. (cited as E.D. Wash., Oct. 17, 2008, CV-05-020-JLQ) 2008 WL 4621566.) This testimony is relevant to answering the threshold question as to whether ARCO is liable as a successor corporation to parent companies Anaconda and International due to the parent companies' operation and control over subsidiary Walker Mining Company.

ARCO has already lost a challenge like this involving Dr. Quivik. In *Pinal Creek Group v. Newmont Mining Corporation*, ARCO similarly objected to Dr. Quivik's expert testimony in that matter on the basis that his proffered testimony was not relevant to the issue of direct operator liability. (352 F.Supp.2d 1037, 1047.) Dr. Quivik's expert report in *Pinal Creek Group* discussed Anaconda's involvement in geology, engineering, metallurgy, exploration and mine planning, purchasing, and transportation activities at the Inspiration mining facility. (*Id.*) The Court determined that the operator analysis set forth in *Bestfoods* allowed the consideration of evidence of Anaconda's involvement in these types of activities in determining operator liability, and thus, found Dr. Quivik's proposed testimony relevant. (*Id.*)

Dr. Quivik's proposed testimony in this matter covers similar topics including, but not limited to, how Anaconda and International made decisions about exploration and development at Walker Mine (Quivik Declaration, at p. 26, et seq), authorized work such as sequencing of the excavation winzes and/or raises linking levels of mine workings (Quivik Declaration, at p. 29), made decisions and rendered advice on implementing land acquisitions (Quivick Declaration, at p. 31), and specified actions to be taken at the mine including driving drifts and crosscuts (Quivik Declaration at p. 37). This testimony is relevant in determining Anaconda and International's degree of involvement and control over such activities and decision making at the Walker Mine facility in order to determine operator liability under *Bestfoods* and should not be excluded from the record.

ARCO's objection to Dr. Quivik's testimony on the basis of relevance should be denied.

**III. Dr. Quivik's testimony regarding analogous cases and his knowledge and experience on corporate structures and mine management hierarchies does not rely on speculative or unsupported opinions and conclusions regarding Anaconda and International's activities at Walker Mine**

ARCO argues that Dr. Quivik's proposed testimony regarding the Newmont USA Limited matter, Anaconda and International's corporate structure and mine management and communication through hierarchies including correspondence between key individuals within the Anaconda, International, and Walker Mining Companies results in opinions regarding their control and direct involvement over mining operations at Walker Mine that are speculative and unsupported by evidence in the record. ARCO is incorrect.

Under Evidence Code sections 801 and 802, the trial court acts as a gatekeeper to exclude expert opinion testimony that is (1) based on matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by the material on which the expert relies, or (3) speculative. (*Sargon Enterprises, Inc. v. Univ. of Southern California* (2012) 55 Cal.4<sup>th</sup> 747, 771-772.)

To determine whether the expert's opinion is based on sound logic, a court must simply determine whether the matter relied on can provide a reasonable basis for the opinion or whether that opinion is based on a leap of logic or conjecture. (*Sargon Enterprises, Inc.*, at 772.) The court conducts a "circumscribed inquiry to determine whether, as a matter of logic, the studies and other information cited by experts adequately support the conclusion that the expert's general theory or technique is valid." (*Id.* citing Imwinkelried & Faigman, *Evidence Code Section 802: The Neglected Key to Rationalizing the California Law of Expert Testimony* (2009) 42 Loyola L.A.L.Rev. 427.)

Based on the evidence and Dr. Quivik's expert testimony regarding that evidence, there is a reasonable basis for Dr. Quivik's opinion that "ACM and International officials and managers were directing operations at the Walker mine" (Quivik Declaration, at p. 47) and "ACM and its subsidiary International managed the Walker mine concurrently with the Walker Mining Company from 1918 to 1941" (Quivik Declaration, at p. 8), with respect to geology, mining operations, metallurgy and other areas (see the above section and illustrative examples demonstrating the extent of Anaconda and International's involvement in operations at Walker Mine.)

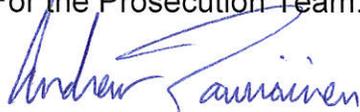
Dr. Quivik's declaration is replete with references to documents and correspondence between officials and managers of Anaconda, International, and Walker Mining Company, as referenced above, where employees of Anaconda and International direct, manage and conducted geological, mining, metallurgical and other operations at the Walker Mine facility. This evidence is bolstered by Dr. Quivik's testimony regarding the two typical corporate structures of mining operations during the early twentieth century (Quivik Declaration, at pp. 20-24), which describes the degree to which the activities of Anaconda and International went beyond the norms of corporate behavior befitting a parent's status as an investor in a subsidiary.

This information is the foundation upon which Dr. Quivik rests upon to fashion his opinion which is the result of a logical step-wise approach towards his ultimate opinion and conclusion. (see *People v. Lawley* (2002) 27 Cal. 4<sup>th</sup> 102, 132.) Collectively, the evidence and proposed testimony based on Dr. Quivik's special knowledge and experience adequately and logically support his conclusion that Anaconda and International officials directed operations at Walker Mine and do not involve leaps of logic or conjecture. Therefore, Dr. Quivik's testimony is admissible and should be considered by Board.

#### **IV. Conclusion**

For the reasons state above, the Central Valley Water Board should deny Atlantic Richfield's Prehearing Motion No. 9.

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