

STATE OF CALIFORNIA  
 ENVIRONMENTAL PROTECTION AGENCY  
 DEPARTMENT OF TOXIC SUBSTANCES CONTROL &  
 CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:	)	DTSC Docket No. HAS-CO 08/09-122
	)	
Empire Mine State Historic Park	)	
10556 East Empire Street	)	RWQCB Order No. R5-2006-0731
Grass Valley, CA	)	
Nevada County	)	
Project Respondents:	)	<b>AMENDMENT #2 TO</b>
	)	<b>CLEANUP AND ABATEMENT</b>
California Department of	)	<b>ORDER, IMMINENT AND/OR</b>
Parks & Recreation	)	<b>SUBSTANTIAL ENDANGERMENT</b>
1416 Ninth Street	)	<b>DETERMINATION AND</b>
Sacramento, CA 95814	)	<b>PARTIAL CONSENT ORDER</b>
Newmont USA Limited	)	Health and Safety Code
A Delaware Corporation	)	Sections 25355.5(a)(1)(C)
1700 Lincoln Street	)	And 25358.3
Denver, CO 80203	)	Water Code
	)	Sections 13267 & 13304

**I. INTRODUCTION**

**A.** Whereas the California Environmental Protection Agency, Department of Toxic Substances Control (“DTSC”), Central Valley Regional Water Quality Control Board (“Regional Board”), California Department of Parks and Recreation (“Parks”) and Newmont USA Limited, a Delaware Corporation (“Newmont”) are parties to the Order referenced in the caption to this agreement (“Agreement” or “Amendment #2”). The 2006 Order and Amendment #1 are referred to herein, collectively, as the “Amended Order.”

**B.** Whereas, the parties executed Amendment #1 in July 2007 to address various agreed upon changes to the Order and the 2007 work schedule.

**C.** Whereas, the parties now want to amend the Amended Order to schedule additional work by Parks and Newmont in 2008, and to ensure that all regulatory requirements related to Park cleanup activities have been satisfied.

## **II. MODIFICATIONS TO THE AMENDED ORDER**

- A.** Section 4.1 of the Amended Order is amended and replaced as follows:

4.1 Scope of Work. The Work that is identified in Exhibit C-6-1 (“2008 Work”) and consistent with work plans submitted and approved by DTSC and the Regional Board, pursuant to Section D of Amendment #1.

- B.** Section 4.1.4 of the Amended Order is amended and replaced as follows:

The Respondents shall complete and transmit drafts of the initial 2008 submittals set forth in Exhibit C-6-1 to DTSC and the Regional Board for their review, comment and approval according to the following schedule:

Historic Mine and Mill Survey Data Transmittal Report, 3/19/08

Cyanide Plant/Adit Project Alternative Analysis, 4/21/08

Trails Alternative Analysis, 4/21/08

2008 Work Plans, 5/1/08

Surface Water and Empire Well 1st Qtr 2008 Water Monitoring Report, 5/15/08

Magenta Drain 1st Qtr 2008 Water Monitoring Report, 5/15/08

Other deliverables will be submitted in accordance with approved work plans and other agreed upon schedules.

- C.** Section 4.1.10 of the Amended Order is amended and replaced as follows:

Respondents shall meet with DTSC and the Regional Board on or before January 31, 2009, to discuss the results of the 2008 Work, Respondents’ plans for implementation of work in 2009 (“2009 Work”), and execution of the amendment of this Order to provide for conduct of the 2009 Work.

- D.** Section 4.3 is amended to replace “Steve Rosenbaum” with “Victor Izzo”, and “Pam Armas” with “Dan Millsap.”

E. Section 4.5.1, 4.5.2 and 4.5.3 are changed and replaced in their entirety as follows:

4.5.1 To DTSC:

Perry Myers, P.E. (2 copies)  
Project Manager  
Brownfields and Environmental Restoration Program  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

With copies of transmittal letter or if none, cover page only, to:

Vivian Murai, Senior Staff Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
1001 I Street, 23d Floor, MS-23A  
P.O. Box 806  
Sacramento, California 95812-0806

4.5.2 To the Regional Board:

Victor Izzo, Senior Engineering Geologist  
Title 27 Permitting and Mining  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670

With copies of transmittal letter or if none, cover page only, to:

Lori Okun, Senior Staff Counsel  
Office of the Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22nd Floor  
Sacramento, CA 95814-2828

4.5.3 To the Respondents:

Dan Milsap, Empire Mine Project Manager  
Northern Service Center  
California Department of Parks and Recreation  
One Capitol Mall, Suite 500  
Sacramento, CA 95814

William Lyle, Director of Closure & Reclamation  
c/o Newmont USA, Limited

1700 Lincoln Street, 36th Floor  
Denver, Colorado 80203

With Copies To:

Kathryn Tobias, Senior Staff Counsel  
California Department of Parks and Recreation  
1416 Ninth Street  
Sacramento, CA 95814

Ronald Munson, Superintendent, or his designee  
Gold Sector  
California Department of Parks and Recreation  
10556 East Empire Street  
Grass Valley, CA 95945

Jacqueline Beckett, Esq.  
c/o Newmont USA, Limited  
1700 Lincoln Street, 36th Floor  
Denver, Colorado 80203

Elizabeth H. Temkin, Esq.  
Temkin Wielga Hardt & Longenecker LLP  
1900 Wazee Street, Suite 303  
Denver, Colorado 80202

**F.** The second, third and fourth sentences of Section 4.10 of the Amended Order are amended and replaced by the following language:

An initial estimate of DTSC's portion of Oversight Costs, as defined below, associated with the 2008 Work, is attached as Exhibit F-2. An initial estimate of the Regional Board's portion of Oversight Costs, as defined below, associated with the 2008 Work, is attached as Exhibit G-2. The parties acknowledge that Exhibits F-2 and G-2 are non-binding estimates and are not reliable final cost figures, because actual costs will vary depending on actual circumstances beyond the execution date of this Amendment #2.

**G.** The address in Section 4.10.3 is amended and replaced as follows:

Department of Toxic Substances Control  
Accounting/Cashier  
1001 I Street, 21st Floor, MS-21A  
P.O. Box 806  
Sacramento, California 95812-0806

H. The phrase “this Amendment #1 to the Order,” in Section I of Amendment #1 (amending Section 4.18), is amended and replaced as follows:

“this Amendment #2 to the Order”

I. Section 4.19 of the Amended Order is amended to add the following exhibits and attachment:

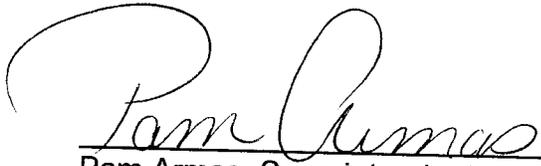
Exhibit C-6-1	2008 Work
Exhibit F-2	DTSC Estimated Oversight Costs (April 1, 2008-June 30, 2009)
Exhibit G-2	Regional Board Estimated Oversight Costs (April 1, 2008 - June 30, 2009)
Exhibit H	Unsigned incorporation of the terms of Amendment #1 and Amendment #2 into the 2006 Order

For the convenience of the parties, Exhibit H is an unsigned document reflecting the terms of Amendment #1 and this Amendment #2, as incorporated into the 2006 Order.

J. Section 4.27 of the Amended Order is amended and replaced as follows:

4.27. Compliance with CEQA. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations. DTSC, the Regional Board, and/or Parks will comply with CEQA to the extent that any activities required by this Order are subject to CEQA. Upon request, Respondents shall provide DTSC and the Regional Board with any non-privileged information that the agencies deem necessary to facilitate compliance with CEQA. The costs incurred by DTSC and the Regional Board in complying with CEQA are response costs, and Respondents shall reimburse DTSC and the Regional Board for such costs pursuant to Section 4.10.

**AGREED:**



Pam Armas, Superintendent  
Sierra District  
California Department of Parks & Recreation

Date: 3/2/09

**AGREED:**

\_\_\_\_\_  
Blake M. Rhodes  
Vice President, General Counsel  
Newmont USA Limited

Date: \_\_\_\_\_

**AGREED AND ORDERED:**

\_\_\_\_\_  
Anthony J. Landis, P.E.  
Supervising Hazardous Substances Engineer II  
Sacramento Office  
Brownfields and Environmental Restoration Program  
Department of Toxic Substances Control

Date: \_\_\_\_\_

\_\_\_\_\_  
Pamela C. Creedon, Executive Officer  
Central Valley Regional Water Quality Control Board

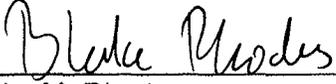
Date: \_\_\_\_\_

**AGREED:**

\_\_\_\_\_  
Ruth Coleman, Director  
California Department of Parks & Recreation

Date: \_\_\_\_\_

**AGREED:**

  
\_\_\_\_\_  
Blake M. Rhodes  
Vice President, General Counsel  
Newmont USA Limited

Date: 12/15/08

**AGREED AND ORDERED:**

\_\_\_\_\_  
Anthony J. Landis, P.E.  
Supervising Hazardous Substances Engineer II  
Sacramento Office  
Brownfields and Environmental Restoration Program  
Department of Toxic Substances Control

Date: \_\_\_\_\_

\_\_\_\_\_  
Pamela C. Creedon, Executive Officer  
Central Valley Regional Water Quality Control Board

Date: \_\_\_\_\_

**AGREED:**

\_\_\_\_\_  
Ruth Coleman, Director  
California Department of Parks & Recreation

Date: \_\_\_\_\_

**AGREED:**

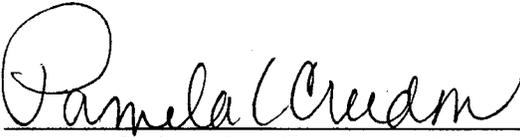
\_\_\_\_\_  
Blake M. Rhodes  
Vice President, General Counsel  
Newmont USA Limited

Date: \_\_\_\_\_

**AGREED AND ORDERED:**

  
\_\_\_\_\_  
Anthony J. Landis, P.E.  
Supervising Hazardous Substances Engineer II  
Sacramento Office  
Brownfields and Environmental Restoration Program  
Department of Toxic Substances Control

Date: 3-11-09

  
\_\_\_\_\_  
Pamela C. Creedon, Executive Officer  
Central Valley Regional Water Quality Control Board

Date: 2-13-09

## **EXHIBIT C-6-1**

### **2008 Work Activities Summary Sheet**

#### **Work from 2006 Work Plans**

1. Magenta Drain Sampling Plan
  - a. Flow/in-situ monitoring
2. Residences

#### **Work from 2007 Work Plans**

1. Cyanide Plant  
Soils and Foundation Ruins Characterization
  - a. Alternative Actions Report
2. Trails  
Osborne Hill Trail Network (i.e., Prescott Hill, Daisy, Conlon, Betsy, etc.)
  - a. Alternative Actions Report
  - b. Implementation Plan
  - c. Field Implementation
3. Magenta Drain Assessment
  - a. Bench/Pilot-scale water treatability testing
  - b. Empire Mine Pump Test
  - c. Hydrogeologic Data Transmittal Report
  - d. Water Treatability Transmittal Report
4. Surface Water/Empire Shaft Irrigation Water Monitoring
  - a. Water Quality Monitoring (End 3<sup>rd</sup> Quarter 2008)

#### **2008 Plans/Activities**

1. Conveyance Corridor
  - a. Work Plan Development
  - b. Site characterization
  - c. Data Transmittal Report
  - d. Alternative Actions Report
2. Magenta Drain
  - a. Alternative Actions Report
3. Sand Dam
  - a. Work Plan Development
  - b. Site characterization
  - c. Data Transmittal Report
  - d. Alternative Actions Report
4. Stacy Lane Pond
  - a. Work Plan Development
  - b. Site characterization

## **EXHIBIT C-6-1**

- c. Data Transmittal Report
  - d. Alternative Actions Report
5. Historic Mine and Mill Survey/Inventory
- a. Work Plan Development
  - b. Mine/Mill material characterization
  - c. Data Transmittal Report
  - d. Alternative Actions Report
6. Mine Yard/Historic Grounds
- a. Historic Grounds Work Plan Development
  - b. Historic Grounds Site Characterization
  - c. Historic Grounds Data Transmittal Report
  - d. Mine Yard/Historic Grounds Alternative Actions Report

CEQA

DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
**COST ESTIMATE: Empire Mine SHP**

Exhibit F-2

TITLE	Project Manager	Legal	Toxicology	Geology	HQ CEQA	Industrial Hygiene	Public Participation	Supervisor	Tech. Sr.	Clerical
CLASSIFICATION	HSE	Staff Counsel	Staff Toxicologist	EG	AEP	AIH	PPS	SHSS/SHSE	SHSE/SHSS	WPT
TASKS										
Agreement Negotiation/Preparation										
Site Visit										
PEA Equiv. Eval										
Baseline Risk Assessment										
Public Participation										
CEQA										
RAP/RAW										
Response to Comments										
Remedial Design										
Implementation Oversight	680	180	120	40	100		75	40		15
Completion/Implementation Report										
Deed Restriction										
O&M Agreement										
Certification										
O&M Manual										
<b>Total Hours/Class</b>	<b>680</b>	<b>180</b>	<b>120</b>	<b>40</b>	<b>100</b>	<b>0</b>	<b>75</b>	<b>40</b>	<b>0</b>	<b>15</b>
<b>Hourly Rate/Class</b>	<b>\$166</b>	<b>\$206</b>	<b>\$168</b>	<b>\$166</b>	<b>\$122</b>	<b>\$143</b>	<b>\$116</b>	<b>\$195</b>	<b>\$195</b>	<b>\$65</b>
<b>Total Cost/Class</b>	<b>\$112,880</b>	<b>\$37,080</b>	<b>\$20,160</b>	<b>\$6,640</b>	<b>\$12,200</b>	<b>\$0</b>	<b>\$8,700</b>	<b>\$7,800</b>	<b>\$0</b>	<b>\$975</b>

Total Estimated Costs	<b>\$206,435</b>
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For DTSC oversight of ongoing and proposed 2008 Site work as estimated on 3/14/08 (approx time frame is 4/1/08-6/30/09)

Note: For purposes of cost estimation it is assumed documents will only need 1 review by DTSC

Exhibit G-2

Central Valley Regional Water Quality Control Board

**COST RECOVERY ESTIMATE  
2008 Work  
Empire Mine State Historic Park**

<b>Oversight Personnel</b>	<b>Hrs. Worked January-March 2008</b>	<b>Estimated Hrs. for Proposed 2008 Work<sup>1</sup></b>	<b>CVRWQCB Cost/Hr.<sup>2</sup></b>	<b>Estimated Costs</b>
Technical Staff	50	300	\$ 130.00	\$ 45,500.00
Management	10	45	\$ 130.00	\$ 7,150.00
Legal	10	45	\$ 130.00	\$ 7,150.00
<b>Total Costs</b>				<b>\$ 59,800.00</b>

<sup>1</sup>For consistency with DTSC's estimated ongoing and proposed 2008 oversight costs, the Regional Water Board has used the same time frame (4/1/08-6/30/09) here.

<sup>2</sup>Due to various personnel working on the EMSHP project, an average of \$130.00 per hour was used for projection purposes.

EXHIBIT H

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL &  
CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:	)	DTSC Docket No. HAS-CO 08/09-
	)	No. HSA-CO 07/08-035
Empire Mine State Historic Park	)	No. HSA-CO 06/07-101
10556 East Empire Street	)	
Grass Valley, CA	)	RWQCB Order No. R5-2006-0731
Nevada County	)	
	)	<b>AS AMENDED 2008</b>
Project Respondents:	)	<b>CLEANUP AND ABATEMENT</b>
	)	<b>ORDER, IMMINENT AND/OR</b>
California Department of	)	<b>SUBSTANTIAL ENDANGERMENT</b>
Parks & Recreation	)	<b>DETERMINATION AND</b>
1416 Ninth Street	)	<b>PARTIAL CONSENT ORDER</b>
Sacramento, California 95814	)	
	)	Health and Safety Code
Newmont USA Limited	)	Sections 25355.5(a)(1)(C)
A Delaware Corporation	)	and 25358.3
1700 Lincoln Street	)	
Denver, CO 80203.	)	Water Code
	)	Sections 13267 &13304

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I. INTRODUCTION

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) and Central Valley Regional Water Quality Control Board (Regional Board) enter into this Cleanup and Abatement Order, Imminent and/or Substantial Endangerment Determination and Partial Consent Order (Order) with California Department of Parks and Recreation (Parks) and Newmont USA Limited, a Delaware Corporation (Newmont) (together, Respondents).

1.2 Site. The property that is the subject of this Order is known as the Empire Mine State Historic Park (Park), located at 10791 East Empire Street, Grass Valley California 95945, in Nevada County (Site). The Site consists of approximately 856 acres and is identified by Nevada County Assessor's Parcel numbers 09-610-14, 09-610-17, 09-610-34, 29-260-01, 29-260-02, 29-350-13, 09-620-04, 09-620-09, 09-620-13, 09-620-18, 22-200-02, 22-200-25, 22-200-43, 22-200-53, 09-610-18, 09-560-21, 09-560-24, 09-320-37, 09-630-09, 09-610-01, 22-200-03, 09-320-34, 09-610-16, 09-610-24, 09-610-07, 09-610-10, 09-320-36, 09-610-25, 09-610-26, 09-620-06, 09-620-19, 09-610-35, 09-610-15, 09-610-30, 09-610-38, 09-560-40, 09-560-41, 09-560-42, 09-560-

## EXHIBIT H

43. A location map and diagram of the Site are attached as Exhibit A and Exhibit B, respectively.

1.3 Jurisdiction. This Order is entered into by DTSC, the Regional Board and Respondents pursuant to Health and Safety Code (H&SC) Sections 25355.5(a)(1)(C), 25358.3, 58009, and 58010; and Water Code Sections 13267 and 13304. These sections authorize DTSC and the Regional Board to enter into an enforceable agreement or order with Respondents requiring the characterization, associated cost reimbursement for oversight and remediation of the Site and any off-site discharges; order appropriate work and take various actions.

1.4 Purpose. The purpose of this Order is to protect public health and safety, the waters of the state, and the environment, and to govern, with the oversight of DTSC and the Regional Board, Respondents' implementation of certain response activities at the Site, including site characterization, environmental monitoring, work plan development and implementation, evaluation and analysis of response action alternatives, implementation of response actions and reporting. Building on the work completed in 2006, the parties currently anticipate that the comprehensive program of Site investigation and cleanup, as needed, set out in Exhibit C-6 (2007 – 2010 Plan/Activities list), will be implemented over a 4-year timeframe, from 2007-2010 ("Work"). The anticipated Work and its elements constitute response actions, as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. §9601, et seq.), consistent with Chapter 6.8 of Division 20 of the H&SC, Sections 25300 et seq., as amended ("Chapter 6.8"), and cleanup and abatement actions, as set forth in Water Code Section 13304. The Work is intended and will be designed and implemented consistent with State law and CERCLA, so that, during and upon completion of the Work, the data, analysis, and response actions taken are consistent with CERCLA's National Contingency Plan and its requirements for a Remedial Investigation/Feasibility Study and response action selection in accordance with NCP and State criteria for remedy selection.

1.5 Contribution. The Parties agree that this Order constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to DTSC and the Regional Board only for actual work performed as detailed in the Work Plans, past costs, Oversight Costs actually paid, all as defined *infra* in and implemented in accordance with this Order.

## II. BACKGROUND

2.1 Ownership. Parks owns the surface of the Site to various depths, primarily 100-250 feet, below the surface. Parks purchased the Site in 1975 from Newmont Exploration Limited. Newmont USA Limited is successor in interest to

## EXHIBIT H

Newmont Exploration Limited. New Verde Mines LLC, a subsidiary of Newmont USA Limited, still retains certain mineral rights at the Site.

2.2 Physical Description. The Site includes the Empire Mine State Historic Park and the corridor of the unnamed creek, historically referred to as Woodpecker Ravine, which is also referred to as the “Magenta Drain.” After the Magenta Drain leaves State Park property, it flows through a residential area and Memorial Park before entering a concrete channel. The Empire Mine State Historic Park is approximately 856 acres in size and located on the western slope of the north-central Sierra Nevada mountains, approximately 50 miles northeast of Sacramento in Nevada County. Two irregularly shaped areas comprising the Site straddle East Empire Street and Highway 174, east of Highway 49 and Wolf Creek near Grass Valley, California. The larger area that includes the primary historic section is south of Highway 174 and East Empire Street while the smaller area lies to the north of Highway 174. Historical buildings and foundations of former buildings remain on the Site and are open for public touring. An extensive trail system runs throughout the Site. Little Wolf Creek traverses the southern portion of the Site before joining with Wolf Creek. Piles of waste rock from past mining activities exist at several locations within the Site. Storm water from the Site drains to Wolf Creek. Wolf Creek flows into the Bear River, which feeds Camp Far West Reservoir, and then connects to the Feather River, which connects to the Sacramento River. Magenta Drain discharges water containing pollutants to the unnamed creek that flows through downtown Grass Valley and eventually to Wolf Creek.

2.3 Site History. Mining operations began within the present boundaries of the Park in 1851. In 1929, the Empire Mine and North Star Mine were acquired under the common ownership of the Empire Star Mines Company, one of the mine operators before 1957. In 1957, the mines ceased operations and the assets of the Empire Star Mines Company were transferred to New Verde Mines Company. During the life of the Empire Mine, it produced 5.6 million troy ounces (187 tons) of gold, using mercury amalgamation and cyanide extraction processes, during its operation. During the operating life of the mine, tailings from the milling process were stockpiled south of the former cyanide plant. Piles of waste rock were deposited, and still remain, in several areas of the Site. Parks purchased the Site from Newmont Exploration Limited in 1975. Various state regulatory and park personnel from 1977 to present have conducted site investigations. Parks’ contractor, Argo Minerals West, Inc., removed an estimated 46,000 tons of mill tailings from the Site in 1986.

### 2.3.1 DTSC Enforcement History:

2.3.1.1 DTSC issued an Order to Post to Parks for portions of the Site on July 27, 1989, based on chemical analyses of certain soils near the old cyanide plant. DTSC’s predecessor, Department of Health Services, had sampled soils there and found high concentrations of lead, arsenic, and mercury at hazardous waste levels as set forth in Title 22 of the California Code of Regulations. The Order to Post required notices for trails and/or paths leading into and around contaminated areas below the former cyanide plant to direct visitors away from and prevent their exposure to hazardous substances. DTSC advised Parks to conduct a Preliminary Endangerment

## EXHIBIT H

Assessment (PEA) and comply with the Order to Post on May 18, 1990. DTSC verified Parks' compliance with the Order to Post by letter dated March 7, 1991.

2.3.1.2 DTSC entered an Interagency Agreement with Parks on October 19, 1990, to oversee Parks' preparation of the PEA. The PEA addressed the area roughly bounded by the sand dam to the west, Little Wolf Creek to the south, the former cyanide plant to the north and the stamp mill to the east. DTSC provided additional comments on the PEA, and conditionally approved the PEA on January 6, 1993, with certain requirements, including additional sampling of Little Wolf Creek, potable and groundwater supplies, soil remediation, community and visitor awareness activities and protection measures, and development of a risk assessment during the remedial investigation and feasibility study (RI/FS) process.

2.3.1.3 In July 2004, DTSC received additional inquiries from Site users regarding the mill tailing contamination and imposed additional requirements on the Site by letter dated July 29, 2005. DTSC noted that the mill tailings in this area appeared disturbed and also appeared to have migrated onto a trail. DTSC repeated that Parks needed to characterize fully the nature and extent of contamination with appropriate agency oversight.

### 2.3.2 Regional Board Enforcement History:

2.3.2.1 The Regional Board, on December 17, 2004, issued an Order pursuant to Water Code Section 13267 (13267 Order) requiring Parks to submit a technical report, including a report of waste discharge to apply for an NPDES permit for the discharge of pollutants from the Magenta Drain. On September 23, 2005, Parks submitted a report of waste discharge to comply with the 13267 Order. On June 23, 2006, the Regional Board issued Parks an NPDES permit regulating the discharge from the Magenta Drain.

2.3.2.2 On June 28, 2005, Parks submitted a Notice of Intent to Comply (NOI) to the Regional Board to obtain coverage under the State Water Resources Control Board (State Water Board) General NPDES Permit for Discharges of Storm Water Associated with Industrial Activities. Parks also obtained coverage under the State Water Board General NPDES Permit for Discharges of Storm Water Associated with Construction Activity, for its Public Mine Tour Tunnel Project. Parks has developed Storm Water Pollution Prevention Plans to comply with these permits, and is in the process of evaluating and revising the plans. The Regional Board enforces compliance with those permits. The permits, including enforcement, are outside the scope of this Order.

2.4 Substances Found at the Site. The 1993 PEA by Harding Lawson Associates determined that soils in the area below the former cyanide plant contain elevated levels of metals that are hazardous substances listed in Title 40, Code of Federal Regulations (40 CFR Section 302.4, Table 302.4). The PEA determined that arsenic, lead, mercury, and cadmium were present in soils at levels above U.S. EPA Region 9 residential Soil Preliminary Remediation Goals (PRGs). Arsenic was detected

## EXHIBIT H

at a maximum concentration of 2290 mg/kg just south of the former cyanide plant. Lead was detected at a maximum concentration of 13,200 mg/kg inside the foundation of the former cyanide plant. Mercury was detected at a maximum concentration of 37 mg/kg near the Hard Rock Trail. Cadmium was detected at a maximum concentration of 99 mg/kg inside the foundation of the former cyanide plant. The constituents described in this Paragraph are “wastes” as defined in Water Code section 13050. The Site also contains at least one point source of pollutants, as defined in the federal Clean Water Act to waters of the State and navigable waters of the United States, known as the Magenta Drain.

### 2.5 Health/Environmental Threats at Site.

2.5.1 Arsenic. Acute ingestion may lead to a burning sensation in the mouth, nausea and vomiting. Chronic exposure to arsenic is associated with a persistent metallic taste in the mouth, hyperkeratosis, anemia, and peripheral nerve disease, and may increase the risk of developing skin cancer, aplastic anemia and leukemia.

2.5.2 Lead. Lead is a heavy metal that was used in paints, gasoline, and industrial purposes. Intake of lead is toxic to the nervous system, blood, heart, liver, and reproductive system. Children and pregnant women are particularly vulnerable. Lead exposure during pregnancy can cause premature births, smaller babies, decreased mental ability in the infant, learning difficulties, and reduced growth in children. These effects are more common if the mother or baby is exposed to high levels of lead. Adults can suffer from reproductive problems (in both men and women), high blood pressure, digestive problems, nerve disorders, memory and concentration problems, muscle and joint pain. If not detected early, children with high levels of lead in their bodies can suffer from damage to the brain and nervous system, behavior and learning problems (such as hyperactivity), slowed growth, hearing problems, and headaches.

2.5.3 Mercury. Skin contact with mercurous compounds of mercury can cause a hypersensitive skin rash called acrodynia or “pink disease.” In children, this is accompanied by a fever, hyperkeratosis and swelling of the spleen, lymph nodes and fingers.

2.5.4 Cadmium. Chronic oral exposure to cadmium is associated with heart and kidney disease, decreased fertility, and impaired decreased immune function. Chronic inhalation of cadmium fumes/dust is associated with the development of emphysema, bronchitis and an increased risk of lung cancer.

2.5.5 Water Quality. The substances described in Paragraph 2.4 may discharge to waters of the state and cause or threaten to cause pollution or nuisance, including causing impacts to beneficial uses of waters of the state.

2.6 Routes of Exposure. Potential routes of exposure at the Site for waste and/or hazardous substances which may affect public health, the environment or water quality include direct contact with contaminated soil, air routes for dust, consumption of

## EXHIBIT H

food grown in contaminated soil, migration of waste and/or hazardous substances to groundwater, and offsite migration of waste and/or hazardous substances in soil and surface water runoff from rain into surface water bodies. If the drinking water source is impacted, direct exposure could be through bathing or drinking the water or breathing vapors while using the water. Ecological habitat receptors may be more sensitive to waste and/or hazardous substances than are human receptors.

2.7 Public Health and/or Environmental Risk. There is potential exposure to the public, Site workers and residents living on the Site to waste and/or hazardous substances via soil, air, water and food grown on the Site. Although the area of the Site between the former cyanide plant and the sand dam is posted closed there is no barrier to prevent access, DTSC personnel has observed members of the public in the posted area. Potentially contaminated soil has migrated on to trails in active use near the sand dam. Several trails at the Site cross over or are adjacent to waste rock piles from mining activities, which may contain waste and/or hazardous substances. Trail use during dry times generates dust, which may be inhaled. Runoff from the Site, which may contain waste and/or hazardous substances, flows into both Little Wolf Creek and Wolf Creek, which flow into the Sacramento River.

### III. AGENCY FINDINGS AND DETERMINATIONS

3.1 DTSC: As described in Section II of this Order, and further described in its records:

3.1.1 DTSC hereby makes the findings enumerated in section II above, and that each Respondent is a responsible party or liable person as defined in Health and Safety Code section 25323.5.

3.1.2 DTSC hereby concludes that:

3.1.2.1 Respondents are responsible parties or liable persons as defined in Health and Safety Code section 25323.5.

3.1.2.2 Each of the substances listed in Section 2.4 is a "hazardous substance" as defined in Health and Safety Code section 25316.

3.1.2.3 There has been a "release" and/or there is a "threatened release" of hazardous substances listed in Section 2.4 at the Site, as defined in Health and Safety Code section 25320.

3.1.2.4 The actual and threatened release of hazardous substances at the Site may present an imminent and substantial endangerment to the public health or welfare or to the environment.

3.1.2.5 Response action is necessary to abate a public nuisance and/or to protect and preserve the public health.

## EXHIBIT H

3.1.3 Based on the foregoing findings of fact and conclusions of law, DTSC hereby determines that response action is necessary at the Site because there has been a release and/or there is a threatened release of a hazardous substance.

3.1.4 Based on the foregoing findings of facts and conclusions of law, DTSC hereby determines that there may be an imminent and/or substantial endangerment to the public health or welfare or to the environment because of the release and or the threatened release of the hazardous substances at the Site.

3.2 Regional Board: As described in Section II of this Order, and further described in its records:

3.2.1 The Regional Board hereby finds that:

3.2.1.1 The Site contains waste, as defined in Water Code section 13050. The waste at the Site was discharged and continues to discharge to waters of the state and it has caused and threatens to continue to cause pollution or nuisance. Parks is subject to Water Code Section 13304 because it currently owns the land where the Empire Mine is located and where waste has been discharged and continues to discharge, and therefore, is causing or permitting the discharge or threatened discharge of waste.

3.2.1.2 As the current landowner of the mine site, Parks has an obligation to prevent an ongoing discharge caused by the movement of wastes even if the current landowner did not cause the wastes to be present on the property.

3.2.1.3 Newmont is subject to Water Code Section 13304 because it, or its predecessor, formerly owned and operated the mine and discharged mine waste at the site. Mine waste continues to discharge and threaten to discharge to waters of the state.

3.2.1.4 Parks and Newmont are subject to Water Code section 13267 because they each have discharged waste, are discharging waste, and/or are suspected of having discharged or discharging waste within the Central Valley Region, and, therefore, the Regional Board may order Parks and Newmont to submit technical and/or monitoring program reports consistent with Water Code section 13267.

## IV. CONSENT ORDER

4.0 IT IS HEREBY AGREED AND ORDERED THAT THE RESPONDENTS shall conduct all activities under this Order consistent with Chapter 6.8 of Division 20 of the H&SC, Sections 25300 et seq., as amended; Water Code, Division 7, as amended; the National Contingency Plan (40 Code of Federal Regulations (CFR) Part 300), as amended; U.S. EPA and DTSC Superfund guidance documents regarding site investigation and remediation; the Water Quality Control Plan for the Sacramento and

## EXHIBIT H

San Joaquin River Basins, as amended; State Water Resources Control Board Resolution No. 92-49; and other applicable law. The Respondents shall conduct activities in the manner specified in the site-specific Health & Safety Plan, at Exhibit D. Having implemented the Communication Strategy, the Respondents shall implement the Public Participation Plan, at Exhibit E-1. Exhibits D and E-1 shall be amended from time to time, if necessary, to meet, respectively, health and safety or communications objectives as set forth in each document.

4.1 Scope of Work. The Work that is identified in Exhibit C-6-1 (“2008 Work”) and consistent with work plans submitted and approved by DTSC and the Regional Board, pursuant to Section D of Amendment #1.

4.1.1 Respondents shall implement the Communication Strategy (Exhibit E), conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest. Respondents shall work cooperatively with DTSC and the Regional Board to ensure that the affected and interested public and community are involved in DTSC’s and the Regional Board’s decision-making process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7 and the DTSC Public Participation Policy and Procedures Manual.

4.1.2 Respondents shall meet with DTSC and the Regional Board on or before January 31, 2007 (meeting date to be set by agreement of the parties) to discuss the Respondents’ completion reports required under the Work Plan(s); and propose additional, future response measures for the Site. At the meeting, Respondents shall also provide an outline of proposed additional response measures.

4.1.3 The Parties will use the following procedures to provide technical review, comment, approval, and response to comments on the Respondents’ submittals pursuant to Section 4.1 of this Order. All notices and documents required from the Respondents under this Order shall be given and submitted, respectively, to both DTSC and the Regional Board.

4.1.4. The Respondents shall complete and transmit drafts of the initial 2008 submittals set forth in Exhibit C-6-1 to DTSC and the Regional Board for their review, comment and approval according to the following schedule:

Historic Mine and Mill Survey Data Transmittal Report, 3/19/08

Cyanide Plant/Adit Project Alternative Analysis, 4/21/08

Trails Alternative Analysis, 4/21/08

2008 Work Plans Submittal, 5/1/08

## EXHIBIT H

Surface water and Empire Well 1st Qtr 2008 Water Monitoring Report, 5/15/08

Magenta Drain 1st Qtr 2008 Water Monitoring Report, 5/15/08

Other deliverables will be submitted in accordance with approved work plans and other agreed upon schedules.

4.1.5 The Respondents shall revise any submittals to address the DTSC's and the Regional Board's written comments. Revised submittals are subject to DTSC's and the Regional Board's approval or disapproval.

### 4.1.6 Review and Comment on Draft Documents

a. DTSC and the Regional Board shall provide their comments to Respondents within 30 days of receipt of the draft document.

b. The Respondents shall, within 30 days of receipt of the DTSC's and the Regional Board's comments, transmit a final document, with a response to all written comments received, to the DTSC and the Regional Board. Upon request from either Respondent, DTSC or the Regional Board, project managers may authorize, in writing, a more limited final submittal that satisfies DTSC's and the Regional Board's comments as the final submittal.

c. DTSC and the Regional Board may issue conditional approvals as appropriate at their discretion. In that event, DTSC and the Regional Board shall advise the Respondents whether an additional partial or complete submittal is necessary under section 4.1.7 below.

d. The Parties may agree to time periods other than as set forth in this section.

### 4.1.7 Final Document Approval

a. DTSC and the Regional Board have approval authority over all final documents. DTSC and the Regional Board shall approve, disapprove, or conditionally approve a final document within 30 days after it receives the final document.

b. Upon receipt of DTSC's and the Regional Board's written approval, the Respondents shall commence work and implement any approved submittal as approved and in accordance with the schedule and provisions contained therein.

c. Any DTSC- and the Regional Board-approved work plan, report, DTSC's and the Regional Board's work plan approval letters, or schedule required under this Order shall be deemed incorporated into this Order.

## EXHIBIT H

d. The Respondents may seek to modify a final document by submitting a written request to DTSC and the Regional Board's project managers. DTSC and the Regional Board may approve or disapprove the request.

4.1.8 Having completed the activities in 4.1.1, Respondents shall implement the approved Public Participation Plan (Exhibit E-1) and conduct appropriate public participation activities in accordance with Health and Safety Code sections 25358.7 and the DTSC Public Participation Policy and Procedures Manual. Respondents shall work cooperatively with DTSC and the Regional Board to ensure that the affected and interested public and community are involved in DTSC's and the Regional Board's decision-making process.

4.1.9 Operation & Maintenance. Respondents agree to operate and maintain response actions implemented pursuant to the Order or any amendment thereto in accordance with the remedy selection decision documents approved by DTSC and the Regional Board. Respondents may not terminate Operation and Maintenance measures without DTSC's or Regional Board's advance written approval.

4.1.10 Respondents shall meet with DTSC and the Regional Board on or before January 31, 2009, to discuss the results of the 2008 Work, Respondents' plans for implementation of work in 2009 ("2009 Work"), and execution of the amendment of this Order to provide for conduct of the 2009 Work.

4.2 Additional Activities. The Work is intended to result in the implementation of a comprehensive set of response actions required at the Site to protect public health and the environment from unacceptable risks or impacts associated with historic mining and mineral processing operations at the Site. If additional response actions are necessary to achieve this objective, Respondents may conduct additional response actions with DTSC/Regional Board oversight under this Order by further amendment of this Order or the Exhibits hereto in accordance with Paragraph 4.18.

4.3 Project Managers. Perry Myers, P.E., is the designated DTSC Project Manager for this Order. Victor Izzo is the designated Regional Board Project Manager for this Order. Dan Millsap and Bill Lyle are the designated Respondents' Project Managers for this Order for Parks and Newmont, respectively. At least one of the Respondents' Project Managers shall have expertise in hazardous substance site cleanup. The Respondents shall submit: (a) the name and address of the Project Managers, and (b) the resume of the Project Manager(s) demonstrating expertise in hazardous substance site cleanup. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code Sections 6735 and 7835. The Respondents shall each provide at least ten (10) days advance written notice to the other parties of any change in its designated manager. See paragraph 4.4 regarding other specialized expertise for reports under this Order.

## EXHIBIT H

4.4 Reports. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, Respondents shall have appropriate reports prepared by, or under the supervision of, a registered professional engineer or geologist (Respondent's Workplan Engineer/Geologist) and signed by and showing the seal or stamp of the registered professional. All technical reports submitted by the Respondents shall include a statement signed by the authorized representative certifying under penalty of law that the representative has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Respondents shall submit: (a) the name and address of the Respondent's Workplan Engineer/Geologist; and (b) the resume of the Respondent's Workplan Engineer/Geologist, who must demonstrate appropriate expertise in hazardous substance site cleanup to DTSC's satisfaction and appropriate expertise in cleanups to protect surface and groundwater to the Regional Board's satisfaction. The Respondents shall each provide at least ten (10) days advance written notice to the other parties of any change in its designated Respondent's Workplan Engineer/Geologist.

4.5 Notices and Submittals. All notices, documents and communications required to be given under this Order, unless otherwise specified herein, shall be sent to the respective parties at the following addresses in a manner that produces a record of the sending of the notice, document or communication such as certified mail, overnight delivery service, facsimile transmission or courier hand delivery service:

### 4.5.1 To DTSC:

Perry Myers, P.E. (2 copies)  
Project Manager  
Brownfields and Environmental Restoration Program  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

With copies of transmittal letter or if none, cover page only, to:

Vivian Murai, Senior Staff Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
1001 I Street, 23d Floor, MS-23A  
P.O. Box 806  
Sacramento, California 95812-0806

### 4.5.2 To the Regional Board:

Victor Izzo, Senior Engineering Geologist  
Title 27 Permitting and Mining  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, #200

## EXHIBIT H

Rancho Cordova, CA 95670

With copies of transmittal letter or if none, cover page only, to:

Lori Okun, Senior Staff Counsel  
Office of the Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22nd Floor  
Sacramento, CA 95814-2828

4.5.3 To the Respondents:

Dan Millsap, Empire Mine Project Manager  
Northern Service Center  
California Department of Parks and Recreation  
One Capitol Mall, Suite 500  
Sacramento, CA 95814

William Lyle, Director of Closure & Reclamation  
c/o Newmont USA, Limited  
1700 Lincoln Street, 36th Floor  
Denver, Colorado 80203

With Copies To:

Kathryn Tobias, Senior Staff Counsel  
California Department of Parks and Recreation  
1416 Ninth Street  
Sacramento, CA 95814

Ronald Munson, Superintendent, or his designee  
Gold Sector  
California Department of Parks and Recreation  
10556 East Empire Street  
Grass Valley, CA 95945

Jacqueline Beckett, Esq.  
c/o Newmont USA, Limited  
1700 Lincoln Street, 36th Floor  
Denver, Colorado 80203

Elizabeth H. Temkin, Esq.  
Temkin Wielga Hardt & Longenecker LLP  
1900 Wazee Street, Suite 303  
Denver, Colorado 80202

## EXHIBIT H

4.6 Enforceability. Respondents' compliance with the requirements of this Order is enforceable by either DTSC or the Regional Board. DTSC and the Regional Board agree to coordinate any enforcement effort to avoid unnecessarily duplicative legal proceedings in ensuring compliance.

4.7 Dispute Resolution. The Respondents agree that the procedures contained in this Section are the required informal administrative procedures for resolving disputes arising under this Order. If a Proponent fails to follow the procedures contained in this Section, it shall have waived its right to further contest the disputed issue. Respondents shall follow Paragraphs 4.7.1 through and including 4.7.3 to resolve disputes other than billing and cost recovery issues. Paragraph 4.7.4 addresses billing and cost recovery disputes.

4.7.1 The parties agree in the first instance to attempt to resolve informally, among the Project Managers, any disagreement as to the Respondents' compliance with the requirements of this Order. The DTSC or Regional Board Project Manager shall memorialize the decision and rationale resulting from these discussions (4.7.1 decision), and provide it to the parties.

4.7.2 If any or both Respondents wish to contest the 4.7.1 decision, the Respondents shall provide an initial written notice to the parties of their intent to dispute that decision within fourteen (14) days of the date of issuance of the Section 4.7.1 decision. This initial dispute notice shall include sufficient information to identify the disputed 4.7.1 decision. Within twenty-one (21) days, the Respondents shall present to the DTSC branch chief (presently Jim Tjosvold), or designee, and/or the Regional Board's Site and Groundwater Cleanup Program Manager (presently Antonia Vorster), or designee, a written explanation of the issues in dispute, the nature of the dispute, the legal or other basis for Respondent's position(s), and the remedy sought. The DTSC branch chief or Regional Board program manager shall issue a written decision with an explanation for the decision within thirty (30) days after receipt of the letter from the Respondents (Initial Informal Administrative Decision). The Parties may meet and confer prior to the written decision and may mutually agree to extend the days for resolution of the dispute. Where the dispute involves both agencies, DTSC and the Regional Board agree to make reasonable efforts to issue a joint written decision.

4.7.3 If any Respondent disagrees with the Initial Informal Administrative Decision, the Respondent(s) may seek a second level of review with the agencies. The second level reviewers shall be the DTSC Division Chief and the Regional Board Assistant Executive Officer or their designee(s). Within thirty (30) days of the Initial Informal Administrative Decision, the Respondents shall provide to these second level reviewers a written notice stating the reasons why the Initial Informal Administrative Decision is not acceptable and the remedy sought. The notice shall include (a) Proponent's original statement of dispute, (b) supporting documents, including the section 4.7.1 decision, and (c) copies of any responses prepared by the Project Managers, DTSC branch chief and Regional Board program manager. These reviewers shall consider the issues raised in Proponent(s)' notice, and render a written decision to Respondents within thirty (30) days of receipt of Proponent's notice. The Parties may

## EXHIBIT H

meet and confer prior to the written decision and may mutually agree to extend the days for resolution of the dispute. The decision shall constitute DTSC's and/or the Regional Board's Final Informal Administrative Decision on the issues in dispute. Where the dispute involves both agencies, DTSC and the Regional Board agree to make reasonable efforts to issue a joint written decision. Respondents reserve their legal rights to contest or defend against any final informal administrative decision rendered by DTSC or by the Regional Board under this section, including but not limited to those rights under Water Code Section 13320, and 23 CCR Sections 2050-2068. DTSC and the Regional Board reserve their rights as set forth throughout this Order.

4.7.4 If any Respondent disputes a DTSC or Regional Board billing, or any part thereof, the Respondent shall notify the assigned Project Manager and attempt to informally resolve the dispute with the agency whose bill is disputed. If the Respondent desires to formally request dispute resolution with regard to the billing, the Respondent shall file a request for dispute resolution in writing within 30 days of receipt of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the invoice, the Respondent shall pay all costs that are undisputed in accordance with Section 4.10. The filing of a notice of dispute pursuant to this Section shall not stay the accrual of interest on any unpaid costs pending resolution of the dispute. The written request for dispute resolution shall be sent to:

For DTSC:  
Special Assistant for Cost Recovery and Reimbursement Policy  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806.

For the Regional Board:  
Assistant Executive Officer  
Regional Water Quality Control Board, Central Valley Board  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670

A copy of the written request for dispute resolution shall also be sent to the person designated by DTSC or the Regional Board to receive submittals under this Order. A decision on the billing dispute will be rendered by the DTSC Special Assistant for Cost Recovery and Reimbursement Policy, Assistant Executive Officer, or other DTSC or Regional Board designee, respectively.

4.8 Communications. All DTSC and Regional Board approvals and decisions made regarding submittals and notifications will be communicated to the Respondents in writing by DTSC's and the Regional Board's Project Managers or their respective designees. No informal advice, guidance, or suggestions or comments by DTSC or the Regional Board regarding reports, plans, specifications, schedules or any other writings

## EXHIBIT H

by the Respondents shall be construed to relieve the Respondents of the obligation to obtain such written approvals.

4.9 Endangerment During Implementation. In the event DTSC or the Regional Board determines that any activity (whether or not pursued in compliance with this Order) may pose an imminent or substantial endangerment to the health and safety of people on the Site or in the surrounding area or to the environment, DTSC or the Regional Board may order the Respondents to stop further implementation of this Order for such period of time as may be needed to abate the endangerment. In the event that DTSC or the Regional Board determines that any site activities (whether or not pursued in compliance with this Order) are proceeding without DTSC or Regional Board authorization, DTSC or the Regional Board may order Respondents to stop further implementation of this Order or activity for such period of time needed to obtain DTSC or Regional Board authorization, if such authorization is appropriate. Any deadline in this Order directly affected by a Stop Work Order shall be extended for the term of the Stop Work Order.

4.10 Payment. The Respondents agree to pay DTSC and the Regional Board for their costs as provided in this section. An initial estimate of DTSC's portion of Oversight Costs, as defined below, associated with the 2008 Work, is attached as Exhibit F-2. An initial estimate of the Regional Board's portion of Oversight Costs, as defined below, associated with the 2008 Work, is attached as Exhibit G-2. The parties acknowledge that Exhibits F-2 and G-2 are non-binding estimates and are not reliable final cost figures, because actual costs will vary depending on actual circumstances beyond the execution date of this Amendment #2.

DTSC and the Regional Board will bill the Respondents quarterly. To the extent Respondents desire additional billing detail beyond the standard invoice information, DTSC and the Regional Board shall provide upon request readily available detail on the oversight activities conducted during that quarter.

### 4.10.1 DTSC and Regional Board Oversight Costs

4.10.1.1 The Respondents agree to pay any remaining balance due of the **\$111,069.62** already invoiced, with the associated interest noted in 4.10.2 if applicable, to DTSC to reimburse and to resolve fully DTSC's claim for past costs incurred through March 31, 2006 for the Site (site codes 100235 and 100236). The Respondents also agree to pay (1) all costs incurred thereafter by DTSC in association with preparation of this Order and for review of documents submitted prior to the effective date of the Order that are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Part 300 of title 40 of the Code of Federal Regulations), and (2) all future costs incurred by DTSC and the Regional Board in providing oversight pursuant to this Order that are not inconsistent with the NCP, including review of the documents described in Exhibit C and associated documents, and in providing oversight of field activities (together with costs in 4.10.2, "Oversight Costs"). Respondents agree to make payment to DTSC within sixty (60) days of receipt of billing.

## EXHIBIT H

4.10.1.2 The Respondents agree to pay to the Regional Board all oversight costs consistent with Water Code section 13304 and 13365 incurred beginning July 1, 2006, by the Regional Board, including costs associated with preparation of this Order, review of the documents described in Exhibit C and associated documents, and in providing oversight of field activities (together with costs in 4.10.1, "Oversight Costs"), and other activities under this Order.

4.10.2 Any DTSC billing not paid by the Respondents within sixty (60) days of mailing to Respondents is subject to interest calculated from the date of the invoice pursuant to Health and Safety Code section 25360.1, and may render the Respondents to be in material default of this Order. Any Regional Board billing not paid by the Respondents within ninety (90) days of the invoice date will be considered a violation of this Order.

4.10.3 All payments made by the Respondents to DTSC shall be by a cashier's check, certified check or State Controller's check made payable to the "DTSC" or "Department of Toxic Substances Control," and shall bear on its face the project code for the Site (Site No. 100235) and the docket number of this Order. Payments for DTSC billings shall be sent to:

Department of Toxic Substances Control  
Accounting/Cashier  
1001 I Street, 21st Floor, MS-21A  
P.O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager. Payments may be made by wire transfer in accordance with DTSC procedures.

4.10.4 All payments made by the Respondents to the Regional Board shall be by a cashier's check, certified check or State Controller's check made payable to the "State Water Resources Control Board," and shall bear on its face the Site name "Empire Mine SHP." Payments shall be sent to:

State Water Resources Control Board  
SLIC Program  
P.O. Box 944212  
Sacramento, CA 94244-2120

A photocopy of the check shall be sent concurrently to the Regional Board's Project Manager. Payments may be made by wire transfer in accordance with Regional Board procedures.

4.11 Cost Record Retention. DTSC and the Regional Board shall retain all cost records associated with the work performed under this Order for such time periods as may be required by applicable state law. The Respondents may request to inspect all

## EXHIBIT H

documents which support DTSC's and the Regional Board's cost determinations in accordance with the Public Records Act, Government Code Sections 6250 et seq.

4.12 Access. Respondents shall provide, and/or obtain access to the Site and shall use best efforts to obtain access to offsite areas to which access is necessary to implement this Order. Such access shall be provided to DTSC's and the Regional Board's employees, contractors, and consultants at all reasonable times upon reasonable notice. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC, the Regional Board, or any other agency may otherwise have by operation of any law. DTSC, the Regional Board and their authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times upon reasonable notice for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and relevant contracts relating to this Site; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting such tests as DTSC or the Regional Board may deem necessary; and verifying the data submitted to DTSC and the Regional Board by the Respondents.

4.13 Submittal of Data and Documents. Unless otherwise specified in the documents required under this Order, including Work Plans, or the NPDES permits, the Respondents shall submit to DTSC and the Regional Board: (1) within 14 days of the effective date of this Order, all appropriately redacted or non-privileged existing background information in electronic or hard copies as appropriate, including sample analysis results, environmental assessment reports, and other information pertinent to the hazardous substance contamination and/or discharges of waste at the Site; and (2) on an ongoing basis thereafter all data and appropriately redacted or non-privileged information concerning hazardous substances contamination and/or discharges of waste at the Site, in an electronic format agreed to by DTSC and the Regional Board, including technical records and reports, relevant contractual documents, sampling and monitoring information and photographs and maps. This obligation applies whether or not such data or information was developed pursuant to this Order. These submittals shall be in both electronic and hard copy format, if reasonably feasible.

4.13.1 Data Gaps Report: Within 5 days of its finalization, or by September 15, 2006, whichever is earlier, the Respondents shall submit the Kelco Services, Inc. report, which consists of an inventory of existing data and identification of potential data needs, to DTSC and the Regional Board, without further request from the agencies.

4.14 Notification of Field Activities. The Respondents shall inform DTSC and the Regional Board at least seven (7) days in advance of any field activities pursuant to this Order and shall allow DTSC, the Regional Board and their authorized representatives to take duplicates of any samples collected by the Respondents pursuant to this Order.

4.15 Extension Requests. If Respondents are unable to perform any activity or submit any document within the time required under this Order, Respondents may, prior to expiration of the time, request an extension of time that includes a proposed revised

## EXHIBIT H

schedule in writing. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity or document is due. Any approvals of an extension request shall specify a new schedule in writing. Respondents shall comply with the new schedule that is hereby incorporated into this Order.

4.16 Notification of Environmental Condition. The Respondents shall notify the Project Managers immediately upon learning of any condition posing an immediate threat to public health or safety or the environment. Within seven (7) days of the onset of such a condition, the Respondents shall furnish a report to DTSC and the Regional Board, signed by the Respondents' Project Manager(s), setting forth the events that occurred and the measures taken in the response thereto. Nothing in this paragraph shall be deemed to limit any other notification requirement to which Respondents may be subject.

4.17 Preservation of Documentation. The Respondents shall maintain a central repository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports and other documents shall be preserved by the Respondents for a minimum of ten (10) years after the conclusion of all activities carried out under this Order. If DTSC or the Regional Board requests that some or all of these documents be preserved for a longer period of time, the Respondents shall either comply with that request, deliver the documents to DTSC and/or the Regional Board, or permit DTSC and/or the Regional Board to copy the documents prior to destruction. The Respondents shall notify DTSC and the Regional Board in writing at least six (6) months prior to the expiration of the ten-year minimum retention period before destroying any documents prepared pursuant to this Order. If any litigation, claim, negotiation, audit or other action involving the records has started before the expiration of the ten-year period, the related records shall be retained until the completion and resolution of all issues arising therefrom or until the end of the ten-year period, whichever is later.

4.18 Termination and Amendments. With the exception of Respondents' obligations for oversight costs as set forth in this Order and any other provisions containing express time period requirements, this Order will terminate upon the satisfactory (to DTSC and the Regional Board) completion of all work under this Amendment #2 to the Order unless the parties mutually agree to amend this Order. The Respondents' obligations to pay DTSC's and Regional Board's costs shall continue until the Respondents' payment obligations are satisfied, or resolved and satisfied, under paragraphs 4.7 and/or 4.10. This Order may be amended or modified solely upon written consent of all parties. Such amendments or modifications may be proposed by any party and shall be effective the third business day following the day the last party signing the amendment or modification sends its notification of signing to the other parties. The parties may agree to a different effective date.

4.19 Exhibits. All exhibits, listed herein and attached to this Order, are incorporated herein by this reference.

### Exhibit A Site Location Map

## EXHIBIT H

Exhibit B Site Diagram

Exhibit C Work Plans:

- C-1 Trails 2006 Priority Action Work Plan
- C-2 Exclusions 2006 Priority Action Work Plan
- C-3 Red Dirt Pile 2006 Priority Action Work Plan
- C-4 Residences 2006 Priority Action Work Plan
- C-5 Magenta Drain Sampling and Monitoring Program
- C-6 2007-2010 Plan/Activities List
- C-6-1 2008 Work

Exhibit D Health & Safety Plan

Exhibit E Communication Strategy

- E-1 Public Participation Plan, January 31, 2007

Exhibit F DTSC Estimated Oversight Costs

- F-1 DTSC Estimated Oversight Costs (7/07-8/08)
- F-2 DTSC Estimated Oversight Costs (April 1, 2008-June 30, 2009)

Exhibit G Regional Board Estimated Oversight Costs

- G-1 Regional Board Estimated Oversight Costs (5/07-12/07)
- G-2 Regional Board Estimated Oversight Costs (April 1, 2008 - June 30, 2009)

Exhibit H Unsigned incorporation of the terms of Amendment #1 and Amendment #2 into the 2006 Order.

For the convenience of the parties, Exhibit H is an unsigned document reflecting the terms of Amendment #1 and this Amendment #2, as incorporated into the 2006 Order.

4.20 Time Periods. Unless otherwise specified, time periods begin from the date this Order is fully executed, and “days” means calendar days. “Business days” means all calendar days that are not weekends or official State holidays.

4.21 Respondents’ Liabilities. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Order, and except as otherwise specifically provided in this Order, DTSC and the Regional Board covenant not to sue or to take administrative action against Respondents for performance of the Scope of Work described in Paragraph 4.1, actually performed, and for recovery of their past costs and Future Oversight Costs.

## EXHIBIT H

This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order. This covenant not to sue extends only to Respondents and does not extend to any other person. Nothing in this Order is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site.

4.22 Government Liabilities. DTSC and the Regional Board shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by the Respondents or by related parties in carrying out activities pursuant to this Order, nor shall DTSC or the Regional Board be held as a party to any contract entered into by the Respondents or its agents in carrying out the activities pursuant to this Order.

4.23 Third-Party Actions. In the event that the Respondents are a party to any suit or claim for damages or contribution relating to the Site to which DTSC or the Regional Board is not a party, the Respondents shall notify DTSC and the Regional Board in writing within ten (10) days after service of the complaint in the third-party action. Respondents shall pay all costs incurred by DTSC and the Regional Board relating to such third-party actions, including but not limited to responding to subpoenas.

4.24 Reservation of Rights. DTSC, the Regional Board and the Respondents reserve the following rights:

4.24.1 Except as provided in this Order, DTSC reserves its rights to pursue cost recovery and further response action(s) under CERCLA, as amended, Chapter 6.8 of Division 20 of the California Health and Safety Code, and any other applicable law.

4.24.2 Except as provided in this Order, the Regional Board reserves its rights to pursue cost recovery under Water Code, Division 7, CERCLA, as amended, and any other applicable law. The Regional Board reserves its right to issue orders for cleanup and abatement or take other remedial action pursuant to Water Code Section 13304 and any other applicable law.

4.24.3 Nothing in this Order is intended or shall be construed to limit or preclude DTSC or the Regional Board from taking any action authorized by law or equity to protect public health and safety or the environment and recovering the costs thereof.

4.24.4 Nothing in this Order (including any covenant not to sue or release) shall constitute or be construed as a waiver of the Respondents' rights, with respect to any claim, cause of action, or demand in law or equity that the Respondents may have against any "person," as defined in Section 101(21) of CERCLA, or Health and Safety Code Section 25319, including but not limited to claims based on negligence, or brought under CERCLA.

4.24.5 Except for purposes of enforcing this Order, in signing this Order the Respondents deny any and all legal and equitable liability and reserve all applicable

## EXHIBIT H

defenses under any federal, state, or local statute, regulation, or common law for any claim, endangerment, nuisance, response, removal, remedial or other costs or damages incurred or to be incurred by the United States, the State, or other entities or persons or any natural resource damages as a result of the release or threat of release of hazardous substances to, at, from, or near the Site. Entry of this Order is not an acknowledgement by Respondents that any release or threatened release of a hazardous substance constituting an imminent and substantial endangerment to human health or the environment has occurred or exists to, at, from, or near the Site. Respondents do not admit and retain the right to controvert any of the factual or legal statements or determinations made herein in any judicial or administrative proceeding except in an action to enforce this Order. This Order shall not be admissible in any judicial or administrative proceeding against any Respondent, over its objection, as proof of liability or an admission of any fact dealt with herein, but it shall be admissible in an action to the extent necessary to enforce this Order.

4.25 The Respondents hereby waive the defenses of res judicata, collateral estoppel and claim splitting by DTSC and the Regional Board, only with respect to the agencies' rights to pursue subsequent litigation regarding the Respondents' responsibility for phases of Site work and costs not covered by this Order.

4.26 Compliance with Applicable Laws. Nothing in this Order shall relieve the Respondents from complying with all applicable laws and regulations, and the Respondents shall conform all actions required by this Order with all applicable federal, state and local laws and regulations.

4.27 Compliance with CEQA. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations. DTSC, the Regional Board, and/or Parks will comply with CEQA to the extent that any activities required by this Order are subject to CEQA. Upon request, Respondents shall provide DTSC and the Regional Board with any non-privileged information that the agencies deem necessary to facilitate compliance with CEQA. The costs incurred by DTSC and the Regional Board in complying with CEQA are response costs, and Respondents shall reimburse DTSC and the Regional Board for such costs pursuant to Section 4.10.

4.28 California Law. This Order shall be governed, performed and interpreted under the laws of the State of California.

4.29 Severability. If any portion of this Order is ultimately determined not to be enforceable, that portion will be severed from the Order and the severability shall not affect the enforceability of the remaining terms of the Order.

4.30 Parties Bound. This Order applies to and is binding upon the Respondents and their successors, and assigns, and upon DTSC and the Regional

## EXHIBIT H

Board and any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Order. No change in the ownership or corporate or business status of any signatory, or of the facility or Site, shall alter any signatory's responsibilities under this Order.

4.31 Effective Date. The effective date of this Order is the date when this Order is fully executed.

4.32 Representative Authority. Each undersigned representative of the parties to this Order certifies that she or he is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind the parties to this Order.

4.33 Counterparts. This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

### **AGREED:**

\_\_\_\_\_  
Ruth Coleman, Director  
California Department of Parks & Recreation

Date:\_\_\_\_\_

### **AGREED:**

\_\_\_\_\_  
Blake M. Rhodes  
Vice President, General Counsel  
Newmont USA Limited

Date:\_\_\_\_\_

EXHIBIT H

**AGREED AND ORDERED:**

\_\_\_\_\_ Date: \_\_\_\_\_  
Anthony J. Landis, P.E.  
Supervising Hazardous Substances Engineer II  
Sacramento Office  
Brownfields and Environmental Restoration Program  
Department of Toxic Substances Control

\_\_\_\_\_ Date: \_\_\_\_\_  
Pamela C. Creedon, Executive Officer  
Central Valley Regional Water Quality Control Board