UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:

Governor Basin Site
Ouray County, Colorado

Fafo Holdings, LLC,

Respondent

and

United States Department of Agriculture
Forest Service Region 2

Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act

CERCLA Docket No. ____
CERCLA-08-2026-0004

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	3
II.	PARTIES BOUND	3
III.	DEFINITIONS	4
IV.	FINDINGS OF FACT	6
V.	CONCLUSIONS OF LAW AND DETERMINATIONS	8
VI.	ORDER AND AGREEMENT	8
VII.	COORDINATION AND SUPERVISION	9
VIII.	PERFORMANCE OF THE WORK	10
IX.	PROPERTY REQUIREMENTS	17
X.	FINANCIAL ASSURANCE	19
XI.	INDEMNIFICATION AND INSURANCE	21
XII.	PAYMENTS FOR RESPONSE COSTS	23
XIII.	FORCE MAJEURE	24
XIV.	DISPUTE RESOLUTION	25
XV.	STIPULATED PENALTIES	26
XVI.	COVENANTS BY THE AGENCIES	27
XVII.	COVENANTS BY RESPONDENT	28
XVIII.	EFFECT OF SETTLEMENT; CONTRIBUTION	29
XIX.	RECORDS	30
XX.	USFS INVOLVEMENT	32
XXI.	NOTICES AND SUBMISSIONS	32
XXII.	APPENDIXES	33
XXIII.	MODIFICATIONS	33
XXIV.	SIGNATORIES	33
XXV.	INTEGRATION	34
XXVI.	EFFECTIVE DATE	34

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the United States Department of Agriculture Forest Service ("USFS") (collectively, the "Agencies"), and Fafo Holdings, LLC ("Respondent"). This Settlement provides for the performance of a removal action by Respondent and the payment by Respondent of certain response costs incurred by the United States at or in connection with the "Governor Basin Site" (the "Site") generally located in Ouray County, Colorado.

2. This Settlement is issued under the authority vested in the President of the United States by sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). This authority was delegated to the Administrator of the EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14A (Determinations of Imminent and Substantial Endangerment, Jan. 31, 2017), 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). This authority was further redelegated by the Regional Administrator of the EPA Region 8 to the undersigned EPA officials. The USFS is proceeding under the CERCLA authority delegated to the Secretary of the Department of Agriculture by Executive Order 12580; further delegated to the USFS Chief by 7 C.F.R. § 2.60(a); and re-delegated to the undersigned Regional Forester pursuant to the Forest Service Manual 2164.04c.

3. The Agencies have notified the State of Colorado (the "State") of this action pursuant to section 106(a) of CERCLA.

4. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts and conclusions of law and determinations in Sections IV and V of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and agrees not to contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon the Agencies and upon Respondent and its successors. Unless the Agencies otherwise consent, (a) any change in ownership or corporate or other legal status of any Respondent, including any transfer of assets, or (b) any Transfer of the Site or any portion thereof, does not alter any of Respondent's obligations under this Settlement.

6. Respondent shall provide notice of this Settlement to officers, directors, employees, agents, contractors, subcontractors, or any person representing Respondent with

respect to the Site or the Work. Respondent is responsible for ensuring that such parties act in accordance with the terms of this Settlement.

III. DEFINITIONS

7. Terms not otherwise defined in this Settlement have the meanings assigned in CERCLA or in regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

"Agencies" means the EPA and the USFS, collectively.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. "Working Day" means any day other than a Saturday, Sunday, or federal or State holiday.

"Effective Date" means the effective date of this Settlement as provided in Section XXVI.

"EPA" means the United States Environmental Protection Agency.

"Fund" means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

"Future Response Costs " means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States, with the exception of the USFS, pays after the Effective Date in implementing, overseeing, or enforcing this Settlement, including: (i) in developing, reviewing and approving deliverables generated under this Settlement; (ii) in overseeing Respondent's performance of the Work; (iii) in implementing community involvement activities under Paragraph 32; (iv) in assisting or taking action to obtain access or use restrictions under Section IX; (v) in taking action under ¶ 52 (Access to Financial Assurance); (vi) in taking response action described in ¶ 79 because of Respondent's failure to take emergency action under ¶ 36; (vii) in implementing a Work Takeover under ¶ 42; and (viii) in enforcing this Settlement, including all costs paid under Section XIV (Dispute Resolution) and all litigation costs.

"Including" or "including" means "including but not limited to."

"Interest" means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date the EPA signs this Settlement, rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan, also called the National Contingency Plan, promulgated pursuant to section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

"Paragraph" or "¶" means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

"Parties" means the EPA, the USFS, and Respondent.

"Post-Removal Site Control" means actions necessary to ensure the effectiveness and integrity of the Removal Action consistent with sections 300.415(*l*) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER 9360.2-02, Dec. 3, 1990).

"RCRA" means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

"Removal Action" means the removal action required under this Settlement.

"Respondent" means Fafo Holdings, LLC, a Nevada limited liability company.

"Restrictive Notice" means a Notice of Environmental Use Restrictions pursuant to Colorado's Environmental Covenants Statute, C.R.S. § 25-15-317, et seq. limiting use of certain areas of the Site where the Work is being conducted, as discussed in Paragraph 45.

"Section" means a portion of this Settlement identified by a Roman numeral.

"Settlement" means this Administrative Settlement Agreement and Order on Consent, all appendixes attached hereto (listed in Section XXII), and all deliverables approved under and incorporated into this Settlement. If there is a conflict between a provision in Sections I through XXVI and a provision in any appendix or deliverable, the provision in Sections I through XXVI controls.

"Site" means the Governor Basin Site, a combination of private and public lands encompassing approximately 10.47 acres, located approximately seven miles west-southwest of Ouray in southwest Colorado and generally includes the Elizabeth mining claim patent (Mineral Survey 20146); the Waverly mining claim (Mineral Survey 18526); the Monongahela mining claim (Mineral Survey 523); the Terrible mining claim (Mineral Survey 1592); the Terrible 2 mining claim (Minerals Survey 7096); the Blue Grass mining claim (formerly a Caldera claim) (Mineral Survey 459); and the Hill Top Mill Site mining claim (Mineral Survey 13424B). The Site is depicted generally on the map included in the Work Plan as Appendix 1.

"Special Account" means the Governor Basin special account, within the Fund, established for the Site by the EPA under section 122(b)(3) of CERCLA.

"State" means the State of Colorado.

"Transfer" means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"United States" means the United States of America and each department, agency, and instrumentality of the United States, including the Agencies.

"USFS" means the United States Department of Agriculture Forest Service and its successor departments, agencies, or instrumentalities.

"Waste Material" means (a) any "hazardous substance" under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; and (c) any "solid waste" under section 1004(27) of RCRA.

"Work" means all obligations of Respondent under Sections VII (Coordination and Supervision) through XI (Indemnification and Insurance).

"Work Plan" means the document describing the activities Respondent must perform to implement the Removal Action under this Settlement, as set forth in Appendix 1, and any modifications made thereto in accordance with this Settlement.

"Work Takeover" means the EPA's assumption of the performance of any of the Work in accordance with ¶ 42.

IV. FINDINGS OF FACT

8. The Site is located approximately seven miles west-southwest of the City of Ouray, in Ouray County, Colorado. The Site is located within Governor Basin, an alpine basin ranging in elevation from 11,880 feet to 13,267 feet. Portions of the upper basin support alpine tundra with a variety of wildflowers, grasses, sedges, cushion plants, and lichens during the short growing season. Other areas in the basin lack vegetation due to limited soil development, talus and rock outcrops, or the presence of mine waste from historic abandoned mines.

9. Mining in Governor Basin began in the 1880s and extended until approximately 1895. Governor Basin includes the Virginius Mine and the Terrible Mine. The Virginius Mine is located on the upper slopes of Governor Basin. The Terrible Mine is located downslope of the Virginius Mine. Miners shipped most high-grade ore to smelters throughout Colorado, while leaving low-grade ore and overburden in mine waste dumps in the area. A small portion of the ore was milled in Governor Basin, and miners deposited the tailings near Governor Basin Road.

10. The Site features generally include: (a) the Virginius Mine waste dump; (b) the Terrible Mine complex waste dump; and (c) the Virginius and Terrible Tailings footprint.

11. Virginius Mine Waste Dump: The Virginius Mine waste rock dump is approximately 3.2 acres.

12. Terrible Mine Complex Waste Dump: The Terrible Mine Complex has three adits; the adits are numbered from upgradient to downgradient. Waste rock from the Terrible Mine accumulated downgradient of each adit. The Terrible 1 and 2 adits are collapsed. The waste rock dump below the Terrible 1 adit is approximately 1 acre. The waste rock dump below the Terrible 2 adit is approximately 1.7 acres. The Terrible 3 adit is a draining adit; flow from the adit varies. Flow from the Terrible 3 adit traverses mine waste and tailings. The Terrible 3 area also contains a sediment settling pond that increases the likelihood that contaminated water may impact groundwater via the pond bed.

13. Virginius and Terrible Tailings Footprint: Below the Virginius Mine waste dump and the Terrible Mine Complex waste dump there is a tailings area, where additional mining waste came to be located. Over time, erosion has increased the footprint of the tailings area. Erosion and transport issues are exacerbated where Governor Basin Road traverses the Site.

14. The Site encompasses 10.47 acres, with 1.51 acres (14%) under the jurisdiction of the USFS and 8.96 acres (86%) owned by Respondent.

15. The Uncompahgre Watershed Partnership—in collaboration with the Colorado Department of Reclamation, Mining and Safety (DRMS)—characterized surface waters in Governor Basin in 2014, 2015, 2017, and 2018, with soil characterizations taking place in 2016 and 2018. In August 2021, material from Site waste rock test pits were analyzed using a Synthetic Precipitation Leaching Procedure (SPLP) to assess the leaching potential of these materials under natural conditions. This analysis revealed that the Virginius Borrow material has low potential to leach metals of concern such as zinc, manganese, lead, arsenic, cadmium, and copper, because this material will buffer heavy metals as it has high calcium carbonate (CaC03) concentrations and, therefore, is suitable capping material for the Removal Action.

16. The multi-year sampling effort identified that mine waste located on the Site, particularly the Terrible Mine, contributes metals including zinc, copper, cadmium, lead, and arsenic to Governor Creek, especially during storms and periods of melting snow. Water samples suggest that metal concentrations in the Terrible 3 adit drainage increase substantially as the drainage flows through the mine waste. Sediment leachate samples indicate that infiltration through the Terrible waste rock and tailings mobilizes metals. Ultimately, the sampling effort concluded that the Site mine waste impairs water quality, impairs aquatic life, and degrades the condition of riparian and alpine habitat.

17. Governor Creek (WQCC segment COGUUN05_C) is on Colorado's Section 303(d) list for impaired water quality segments for dissolved cadmium, dissolved copper, dissolved manganese, dissolved and total lead, and dissolved zinc. SPLPs indicate lead and zinc

have the capacity to leach into adjacent groundwater networks. These metals have a harmful effect on water quality and pose risks to human health and the environment.

18. Governor Creek flows into Sneffels Creek. Sneffels Creek is a perennial tributary of Canyon Creek and the Uncompahgre River. Sneffels Creek, below Governor Basin, (WQCC segment COGUUN05_E) is also on Colorado's Section 303(d) list for impaired water quality segments for dissolved cadmium, dissolved manganese, dissolved lead, and dissolved zinc.

19. The actual or threatened release of one or more hazardous substances from the Site may present an imminent and substantial endangerment to public health or welfare or the environment.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

20. Based on the Findings of Fact in Section IV and the administrative record, the EPA has determined that:

a. The Site is a "facility" as defined by section 101(9) of CERCLA.

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by section 101(14) of CERCLA.

c. Respondent is a "person" as defined by section 101(21) of CERCLA.

d. Respondent is a potentially responsible party under section 107(a) of CERCLA. Respondent is the "owner(s)" of the facility, as defined by section 101(20) of CERCLA and within the meaning of section 107(a)(1) of CERCLA

e. The conditions described in the Findings of Fact constitute an actual or threatened "release" of a hazardous substance from the facility as defined by section 101(22) of CERCLA.

f. The conditions described in the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of section 106(a) of CERCLA.

g. The Removal Action is necessary to protect the public health, welfare, or the environment.

VI. ORDER AND AGREEMENT

21. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement as follows:

VII. COORDINATION AND SUPERVISION

22. **Respondent's Project Coordinator**

a. Respondent has proposed and the EPA has not disapproved, Heather Burmingham, Mine Engineer, Fafo Holdings, LLC, as its proposed Project Coordinator. The EPA has consulted with the USFS and provided the USFS with an opportunity to comment. Respondent's Project Coordinator will be responsible for administration of all actions by Respondent required by this Settlement.

b. Respondent's Project Coordinator must have sufficient technical expertise to coordinate the Work. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work.

c. Notice or communication relating to this Settlement from the Agencies to Respondent's Project Coordinator constitutes notice or communication to Respondent.

d. Respondent may change its Project Coordinator by following the procedures under ¶ 23.

23. **Procedures for Notice and Disapproval**

a. Respondent shall notify the Agencies of the names, titles, contact information, and qualifications of any contractors or subcontractors retained to perform the Work at least 30 days prior to commencement of such Work.

b. The EPA may issue notices of disapproval regarding any proposed Project Coordinator, contractor, or subcontractor, as applicable. The EPA will consult with the USFS and provide the USFS with an opportunity to comment. If the EPA issues a notice of disapproval, Respondent shall, within 14 days, submit to the EPA a list of supplemental proposed Project Coordinators, contractors, or subcontractors, as applicable, including a description of the qualifications of each.

c. The EPA may disapprove the proposed Project Coordinator, contractor, or subcontractor, based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.

24. **EPA On-Scene Coordinator**. The EPA designates Taylor Bowker of the Emergency Management Branch, Superfund and Emergency Management Division, EPA Region 8, as its On-Scene Coordinator ("OSC"). The OSC has the authorities described in the NCP, including oversight of Respondent's implementation of the Work, authority to halt,

conduct, or direct any Work, or to direct any other removal action undertaken at the Site. The OSC's absence from the Site is not a cause for stoppage of work. The EPA may change its OSC and will notify Respondent of any such change.

25. **USFS Federal Project Coordinator**. The USFS has designated Bryan Barrett, Environmental Engineer, Minerals, Grand Mesa, Uncompahgre, and Gunnison National Forests, as its Federal Project Coordinator. The Federal Project Coordinator is responsible for supporting the EPA's oversight of Respondent's implementation of this Settlement. Absence of the Federal Project Coordinator from the Site will not be cause for stoppage of work. The USFS has the right to change its Federal Project Coordinator.

VIII. PERFORMANCE OF THE WORK

26. Respondent shall perform the Work in accordance with this Settlement, including all EPA-approved, conditionally approved, or modified deliverables as required by this Settlement. The goals of the Work are to: limit recreational exposure to contaminated soil along Governor Basin Road and the adjacent parking area; prevent uncontrolled erosion of the Terrible and Virginius mine wastes; and remove the Sediment Pond and revegetate with wetland vegetation. The actions to be implemented are detailed in the Work Plan.

27. **Work Plan and Implementation**

a. The EPA, with USFS's concurrence, has approved the Work Plan, attached as Appendix 1.

b. Respondent must commence implementation of the Work in accordance with the schedule included in the Work Plan. Respondent must not commence or perform any Work, except in conformance with the terms of this Settlement.

c. Unless otherwise provided in this Settlement, any additional deliverables that require the EPA approval under the Work Plan must be reviewed and approved by the EPA in accordance with this Paragraph. Prior to any approval or disapproval, the EPA will consult with the USFS and provide the USFS with an opportunity to comment.

28. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from the EPA of the modification, amendment, or replacement.

29. **Health and Safety Plan**. Within 30 days after the Effective Date, Respondent shall submit for the Agencies' review and comment a Health and Safety Plan ("HASP") that meets the requirements of 29 C.F.R. § 1910.120 for developing the HASP, that describes all activities to be performed to protect on-site personnel and area residents from physical, chemical, biological and all other hazards related to performance of Work under this Settlement. This HASP shall be prepared in accordance with *EPA's Emergency Responder Health and Safety*

Manual, OSWER 9285.3-12 (July 2005 and updates), available on the Agency's website at https://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, Respondent shall ensure that the HASP complies with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. part 1910. If the EPA determines that it is appropriate, the HASP shall also include contingency planning. Respondent shall incorporate all changes to the HASP recommended by the Agencies and shall implement the HASP during the pendency of the Work.

30. **Quality Assurance, Sampling, and Data Analysis**

a. Respondent shall cooperate with the On-Scene Coordinator to implement a Region 8 Site Data Management Plan which will outline how representative images, survey information, aerial imagery, or other sources of information used to document construction progress and compliance with the Work Plan shall be collected and reported.

b. No sampling or monitoring data is expected to be collected by Respondent in performance of the Work. If EPA requires sampling or monitoring data to be collected, Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures consistent with the UFP-QAPP format (Optimized UFP-QAPP Worksheets, 2012) developed in accordance with the most recent versions of EPA's Quality Assurance Project Plan Standard (CIO 2105-S-02), EPA's Guidance for Quality Assurance Project Plans (EPA/240/R-02/009), EPA's Guidance on Systematic Planning Using the Data Quality Objectives (EPA/240/B-06/001), EPA's Guidance on Environmental Data Verification and Data Validation (EPA QA/G-8), and any other relevant data quality guidance. This QAPP shall include a completed EPA Region 8 QAPP Crosswalk.

c. If samples are to be collected, Respondent shall ensure that the Agencies' personnel and their authorized representatives are allowed access at reasonable times to laboratories used by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories analyze all samples submitted by the EPA or the USFS pursuant to the Quality Assurance Project Plan for quality assurance monitoring, and that sampling and field activities are conducted in accordance with the *EPA QA Field Activities Procedure*, CIO 2105-P-02.1 (Sept. 23, 2014) available at http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in the *Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions* (Directive No. FEM-2011-01) (Nov. 2016) available at http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements and that the laboratories perform all analyses according to EPA-accepted methods. Accepted EPA methods are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), SW 846 *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (https://www.epa.gov/hw-sw846), *Standard Methods for the Examination of Water and Wastewater* (http://www.standardmethods.org/), 40 C.F.R. part 136, *Air Toxics - Monitoring Methods* (http://www3.epa.gov/ttnamti1/airtox.html).

d. Upon request, Respondent shall provide split or duplicate samples to the Agencies or their authorized representatives. Respondent shall notify the Agencies not less than seven days prior to any sample collection activity unless shorter notice is agreed to by the EPA, with an opportunity for comment by the USFS. In addition, the Agencies have the right to take any additional samples that the EPA or the USFS deem necessary. Upon request, the Agencies may provide to Respondent split and/or duplicate samples in connection with the EPA's and the USFS's oversight sampling.

e. Respondent shall submit to the Agencies all sampling and test results and other data obtained or generated by or on behalf of Respondent or in connection with the implementation of this Settlement. Respondent shall expedite all data generation and validation for residential sampling activities.

31. **Post-Removal Site Control**. By August 1, 2028, or as otherwise directed by the EPA, Respondent shall submit for EPA approval a Post-Removal Site Control Plan to develop controls to ensure the effectiveness and integrity of the removal action after its completion. The proposal should include, but not be limited to maintaining drainage ditches and erosion control features. Upon EPA approval, Respondent must either conduct Post-Removal Site Control activities or obtain a written commitment from another party for conduct of such activities, until such time as the EPA determines that no further Post-Removal Site Control is necessary. Respondent must provide the EPA with documentation of all Post-Removal Site Control commitments. For the portion of the Site owned or controlled by Respondent, Respondent must execute and record a Restrictive Notice approved by the EPA pursuant to Colorado's Environmental Covenants Statute, C.R.S. § 25-15-317, et seq.

32. **Community Involvement**. The EPA has the lead responsibility for implementing community involvement activities at the Site, including the preparation of a community involvement plan, in accordance with the NCP and EPA guidance. As requested by the EPA, Respondent shall participate in community involvement activities, including participation in (a) the preparation of information regarding the Work for dissemination to the public (including compliance schedules and progress reports), with consideration given to the specific needs of the community, including translated materials and mass media and/or Internet notification and (b) public meetings that may be held or sponsored by the EPA to explain activities at or relating to the Site.

33. **Deliverables: Specifications and Approval**

a. **General Requirements for Deliverables**.

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC and the Federal Project Coordinator at the contact information listed in Section XXI (Notices and Submissions). Respondent shall submit all deliverables required by this Settlement, the Work Plan, or any other approved work plan to the Agencies in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables to the Agencies in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 33.b. All other deliverables must be submitted to the Agencies in the form specified by the OSC.

b. **Technical Specifications for Deliverables**. Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed by the OSC if electronic direct submission presents a significant burden or as technology changes.

c. **Approval of Deliverables**. After review of the Work Plan and any other deliverable required to be submitted for EPA approval under the Settlement, the EPA shall: (1) approve, in whole or in part, the deliverable; (2) approve the submission upon specified conditions or required revisions to the deliverable; (3) disapprove, in whole or in part, the deliverable; or (4) any combination of the foregoing. If the EPA requires revisions, the EPA will provide a deadline for the resubmission, and Respondent shall submit the revised deliverable by the required deadline. Once approved or approved with conditions or required revisions, Respondent shall implement the Work Plan or other deliverable in accordance with the EPA-approved schedule. Upon approval, or subsequent modification, by the EPA of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, and any subsequent modifications, will be incorporated into and enforceable under the Settlement; and (2) Respondent shall take any action required by such deliverable, or portion thereof. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.

34. **Off-Site Shipments**

a. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-site facility only if it complies with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from the EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the Agencies. This written notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above, the OSC, and the Federal Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the Removal Action and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if it complies with section 121(d)(3) of CERCLA, 40 C.F.R. § 300.440, EPA's *Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992) (https://semspub.epa.gov/work/03/136166.pdf). Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

35. **Permits**

a. As provided in CERCLA § 121(e), and section 300.400(e) of the NCP, no permit is required for any portion of the Work conducted entirely on-Site (*i.e*., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-Site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Respondent may seek relief under the provisions of Section XIII (Force Majeure) of the Settlement for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 35.a and required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. Nothing in the Settlement constitutes a permit issued under any federal or state statute or regulation.

36. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall: (a) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (b) immediately notify the OSC and the Federal Project Coordinator or, in the event of their unavailability, the Regional Duty Officer at (800) 424-8802 of the incident or Site conditions; and (c) take such actions in consultation with the OSC and Federal Project Coordinator or authorized EPA officer and in accordance with all applicable provisions of this Settlement, including, the Health and Safety Plan, and any other applicable deliverable approved by the EPA.

37. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondent is required to report under CERCLA § 103 of or section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC and Federal Project Coordinator or, in the event of their unavailability, the National Response Center at (800) 424-8802. Respondent shall

also submit a written report to the Agencies within seven days after the onset of such event, (a) describing the event, and (b) all measures taken and to be taken: (1) to mitigate any release or threat of release, (2) to mitigate any endangerment caused or threatened by the release; and (3) to prevent the reoccurrence of any such a release or threat of release. The reporting requirements under this Paragraph are in addition to the reporting required by CERCLA §§ 103 and 111(g) or EPCRA § 304.

38. **Progress Reports**. After the Effective Date and until issuance of Notice of Completion of Work under ¶ 40, Respondent shall submit written progress reports to the Agencies on a monthly basis, or as otherwise directed in writing by the OSC. These reports must describe all significant developments during the preceding reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

39. **Final Report**

a. Within 30 days after completion of all Work required by this Settlement other than the continuing obligations listed in ¶ 31, Respondent shall submit for the Agencies' review and EPA approval a final report regarding the Work. The final report must

(1) summarize the actions taken to comply with this Settlement;

(2) conform to the requirements of section 300.165 of the NCP ("OSC Reports");

(3) list the quantities and types of materials removed off-Site or handled on-Site;

(4) describe the removal and disposal options considered for those materials;

(5) identify the ultimate destination(s) of those materials;

(6) include the analytical results of all sampling and analyses performed; and

(7) include all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits) and an estimate of the total costs incurred to complete the Work.

b. The final report must also include the following certification signed by a responsible corporate official of Respondent or Respondent's Project Coordinator: "I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

40. **Notice of Completion of Work**

a. If after reviewing the final report under ¶ 39, the EPA determines that all Work, other than the continuing obligations, has been fully performed in accordance with this Settlement, the EPA will provide written notice to Respondent. A notice of completion of work is not a protectiveness determination and does not affect the following continuing obligations:

(1) implementing and maintaining the requirements of the Post-Removal Site Controls Plan;

(2) obligations under Section IX (Property Requirements);

(3) payment of Future Response Costs; and

(4) obligations under Section XIX (Records).

b. If the EPA determines that any Work other than the continuing obligations has not been completed in accordance with this Settlement, the EPA will so notify Respondent and provide a list of deficiencies to be corrected and a schedule for correcting them. Respondent shall promptly correct all identified deficiencies in accordance with the schedule provided and shall submit a modified Final Report following completion of such work. Subsequent determinations by the EPA regarding completion of Work shall be handled in accordance with this Paragraph.

41. **Compliance with Applicable Law**. Nothing in this Settlement affects Respondent's obligations to comply with all applicable state and federal laws and regulations, except as provided in section 121(e) of CERCLA, and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement shall, to the extent practicable, as determined by the EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. The EPA has determined that attainment of water quality standards under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., as a result of the Work is not practicable. Respondent will comply with the provisions of the Work Plan that address water quality issues in order to ensure environmental improvement at the Site. Respondent must follow ARARs selected by the EPA. ARARs selected by the EPA are attached as a table in Appendix 2.

42. **Work Takeover**

a. If the EPA determines that Respondent: (1) has ceased implementation of any portion of the Work required under this Section; (2) is seriously or repeatedly deficient or late in performing the Work required under this Section; or (3) is implementing the Work required under this Section in a manner that may cause an endangerment to public health or welfare or the environment, the EPA may issue a notice of Work Takeover to Respondent, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Respondent shall remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless the EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Respondent does not remedy to the EPA's satisfaction the circumstances giving rise to the notice of Work Takeover, the EPA may notify Respondent and, as the EPA deems necessary, commence a Work Takeover.

c. The EPA may conduct the Work Takeover during the pendency of any dispute under Section XIV but shall terminate the Work Takeover if and when: (1) Respondent remedies, to the EPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (2) upon the issuance of a final determination under Section XIV that the EPA is required to terminate the Work Takeover.

IX. PROPERTY REQUIREMENTS

43. The USFS grants the EPA and Respondent, including their representatives and contractors, access to property within the Site under its jurisdiction at all reasonable times to conduct any activity regarding the Settlement, including those activities listed in Paragraph 44.c (Access Requirements).

44. **Agreements Regarding Access**

a. Respondent shall, commencing on the Effective Date, provide the EPA, the USFS, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement. Where any action under this Settlement is to be performed in areas owned or controlled by someone other than Respondent or the USFS, Respondent shall use best efforts to obtain all necessary agreements for access, enforceable by Respondent and the Agencies, within 30 days after the Effective Date, or as otherwise specified in writing by the OSC.

b. Land, Water, or Other Resource Use Restrictions. Respondent will refrain from using property it owns within the Site that is not included in a DRMS permit in any manner that the EPA determines will pose an unacceptable risk to human health or to the environment as a result of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Removal Action. The following is a list of land, water, or other resource use restrictions applicable:

(1) Prohibiting any operational and construction activities which could interfere with the removal action;

(2) Prohibiting use of contaminated water including groundwater as dust suppression;

(3) Prohibiting that any new structures or operations on property Respondent owns within the Site that will increase potential risk of inhalation of or release of contaminants to the environment;

(4) Providing a copy of such access and use restriction agreement(s) to the EPA.

c. Access Requirements. The following is a list of activities for which access is required:

(1) Implementing and monitoring, as applicable, the Work and overseeing compliance with the Settlement;

(2) Conducting investigations regarding contamination at or near the Site;

(3) Assessing the need for, planning, implementing, or monitoring response actions at or near the Site;

(4) Determining whether the property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

(5) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the property.

45. **Environmental Covenants Statute**. This Paragraph only applies to (a) portions of the Site owned or controlled by Respondent and does not apply to any portion of the Site under the jurisdiction of the USFS; and (b) to the limited areas of the Site where Work is conducted, as depicted on Attachment B of the Restrictive Notice provided in Appendix 3. Respondent agrees to implement the Restrictive Notice in compliance with the substantive requirements of the Colorado Environmental Covenants Statute, C.R.S. § 25-15-317, et seq. Respondent must execute and record a Restrictive Notice pursuant to Colorado's Environmental Covenants Statute, C.R.S. § 25-15-317, et seq., which will include land use restrictions approved by the EPA to sustain the integrity of the Work, and for any portion of the Work not included under a DRMS permit. The Restrictive Notice must be recorded in a form substantially similar to Appendix 3. Not later than 30 days after recording the Restrictive Notice, Respondent must provide to the Agencies a copy of the recorded Restrictive Notice. Respondent must comply with all Restrictive Notice requirements.

46. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access or use restriction agreements, as required by this Section. If Respondent cannot accomplish what is required through "best efforts" in a timely manner, it shall notify the EPA, and include a description of the steps taken to achieve the requirements. If the EPA deems it appropriate, it may assist Respondent, or take independent action, to obtain such access and/or use restrictions.

47. In the event of a Transfer of the portion of the Site that is the subject of the Work Plan prior to Respondent's receipt of a Notice of Completion of the Work, Respondent shall, prior to entering into a contract to Transfer any of its property that is part of the Site, or 60 days prior to a Transfer of such property, whichever is earlier, (a) give written notice to the proposed transferee that the property is subject to this Settlement; and (b) give written notice to the Agencies of the proposed Transfer, including the name and address of the transferee. Respondent also agrees to require that its successors comply with this Section and Section XIX (Records).

48. Notwithstanding any provision of the Settlement, the Agencies retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions, including related enforcement authorities under CERCLA, RCRA, and any other applicable statute or regulations.

X. FINANCIAL ASSURANCE

49. To ensure completion of the Work required under Section VIII (Performance of Work), Respondent shall secure financial assurance, initially in the amount of $750,000 ("Estimated Cost of the Work"), for the benefit of the EPA. The financial assurance must: (a) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the EPA; and (b) be satisfactory to the EPA. As of the date of signing this Settlement, the sample documents can be found under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/. Respondent may use multiple mechanisms. The following are acceptable mechanisms:

a. a surety bond guaranteeing payment, performance of the Work, or both, that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. an irrevocable letter of credit, payable to the EPA or at the direction of the EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency; and

c. a trust fund established for the benefit of the EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

50. Respondent has selected, and the EPA has found satisfactory, a surety bond as an initial form of financial assurance. By June 1, 2026, or 30 days following the entry of the Settlement but before any Work commences, whichever is later, Respondent shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the EPA in accordance with Sections XIX and XXI.

51. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify the EPA of such information within seven days. If the EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, the EPA will notify the Respondent of such determination. Respondent shall, within 30 days after notifying the EPA or receiving notice from the EPA under this Paragraph, secure and submit to the EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. The EPA may extend this deadline for such time as is reasonably necessary for Respondent, in the exercise of due diligence, to secure and submit to the EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondent shall follow the procedures of ¶ 53 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Settlement.

52. **Access to Financial Assurance**

a. If the EPA issues a notice of a Work Takeover under ¶ 42.b, then, in accordance with any applicable financial assurance mechanism, the EPA may require: (1) the performance of the Work; and/or (2) that any funds guaranteed be paid in accordance with ¶ 52.d.

b. If the EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 52.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 42, the EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work, then the EPA is entitled to demand an amount, as determined by the EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within 7 days after such demand, pay the amount demanded as directed by the EPA.

d. Any amounts required to be paid under this Paragraph must be, as directed by the EPA: (i) paid to the EPA in order to facilitate the completion of the Work by the EPA, the State, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to the EPA, the EPA may deposit the payment into the Fund or into the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by the EPA to the Fund.

53. **Modification of Amount, Form, or Terms of Financial Assurance**. On any anniversary of the Effective Date, or at any other time agreed to by Respondent and the EPA, Respondent may request to change the form, terms, or amount of the financial assurance mechanism. Respondent shall submit any such request to the EPA in accordance with the procedures outlined in ¶¶ 49-51, and shall include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. The EPA will notify Respondent of the EPA's decision regarding the request. Respondent may modify the form, terms, or the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) any resolution of a dispute on the appropriate amount of financial assurance under Section XIV. Any decision made by the EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Respondent shall submit to the EPA, within 30 days after receipt of EPA's approval, or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

54. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if the EPA issues a Notice of Completion of Work under ¶ 40; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIV.

XI. INDEMNIFICATION AND INSURANCE

55. **Indemnification**

a. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as the EPA's authorized representative under section 104(e)(1) of CERCLA. Respondent shall indemnify and save and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out activities under this Settlement, including any claims arising from any designation of Respondent as the EPA's authorized representatives under section 104(e)(1) of CERCLA. Further, Respondent agrees to pay the United States all costs the United States incurs including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, Respondent's officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Respondent's behalf or under its control in carrying out activities under this Settlement. The United States may not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities under this Settlement. Respondent and any such contractor may not be considered an agent of the United States.

b. The EPA shall give Respondent notice of any claim for which the EPA plans to seek indemnification in accordance with this ¶ 55, and shall consult with Respondents prior to settling such claim.

56. Respondent covenants not to sue and shall not assert any claim or cause of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Respondent shall indemnify and save and hold harmless the United States with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of work at or relating to the Site, including claims on account of construction delays.

57. Pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, the United States shall be liable for death, personal injury, or property damage caused by the negligent or wrongful act or omission of any employee of an agency acting within the scope of their office or employment, under circumstances where a private person would be liable in accordance with the law of the place where the act or omission occurred. 28 U.S.C. §§ 1346(b), 2674.

58. **Insurance**. Respondent shall secure, by no later than 15 days before commencing any on-Site Work, the following insurance: (a) commercial general liability insurance with limits of liability of $1 million per occurrence; (b) automobile liability insurance with limits of liability of $1 million per accident; and (c) umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name the Agencies as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent under this Settlement. Respondent shall maintain this insurance until the first anniversary after the EPA's issuance of the Notice of Completion of Work under ¶ 40. In addition, for the duration of this Settlement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for

all persons performing the Work on behalf of Respondent in furtherance of this Settlement. Prior to commencement of the Work, Respondent shall provide to the Agencies certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondent demonstrates by evidence satisfactory to the EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to the Agencies under this Paragraph identify the Governor Basin Site, Ouray County, Colorado and the EPA docket number of this case.

XII. PAYMENTS FOR RESPONSE COSTS

59. **Payments by Respondent for Future Response Costs**. Respondent must pay to the EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills**. On a periodic basis, the EPA will send Respondent a bill for Future Response Costs, including a standard Regionally-prepared cost summary, listing direct and indirect costs paid by the EPA, its contractors, and subcontractors. Respondent may initiate a dispute under Section XIV regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (1) whether the EPA has made an arithmetical error; (2) whether the EPA has included a cost item that is not within the definition of Future Response Costs; or (3) whether the EPA has incurred excess costs as a direct result of an the EPA action that was inconsistent with a specific provision or provisions of the NCP. Respondent shall specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill**. Respondent shall pay the bill, or if it initiates dispute resolution under Section XIV, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Respondent shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Respondent shall make all payments at https://www.pay.gov using the "EPA Miscellaneous Payments Cincinnati Finance Center" link, and including references to the Site Name, Docket Number, and Site/Spill ID number and the purpose of the payment. Respondent shall send notices of this payment to the EPA and include these references.

c. **Interest**. In the event that any payment for Future Response Costs is not made by the date required, Respondent must pay Interest on the unpaid balance. The Interest will accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph are in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties under Section XV (Stipulated Penalties).

60. **Deposit of Payments**. The EPA may, in its unreviewable discretion, deposit the amounts paid under ¶ 59 in the Fund, in the Special Account, or both. The EPA may, in its unreviewable discretion, retain and use any amounts deposited in the Special Account to conduct or finance response actions at or in connection with the Site, or transfer those amounts to the Fund.

XIII. FORCE MAJEURE

61. "Force majeure," for purposes of this Settlement, means any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Respondent exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work, or increased cost of performance.

62. If any event occurs for which Respondent will or may claim a force majeure, Respondent shall notify the OSC and the Federal Project Coordinator by email. The deadline for the initial notice is seven days after the date Respondent first knew or should have known that the event would likely delay performance. Respondent shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Respondent knew or should have known. Within 30 days thereafter, Respondent shall send a further notice to the EPA that includes: (a) a description of the event and its effect on Respondent's completion of the requirements of the Settlement; (b) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (c) the proposed extension of time for Respondent to complete the requirements of the Settlement; (d) a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (e) all available proof supporting their claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Respondent from asserting any claim of force majeure regarding that event, provided, however, that if the EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 61 and whether Respondent has exercised best efforts under ¶ 61, the EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

63. The EPA will notify Respondent of the EPA's determination whether Respondent is entitled to relief under ¶ 61, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. Respondent may initiate dispute resolution under Section XIV regarding the EPA's determination within 15 days after receipt of the determination. In any such

proceeding, Respondent has the burden of proving that they are entitled to relief under ¶ 61 and that their proposed extension was or will be warranted under the circumstances.

64. The failure by the EPA to timely complete any activity under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from timely completing a requirement of the Settlement, Respondent may seek relief under this Section.

XIV. DISPUTE RESOLUTION

65. Unless otherwise provided in this Settlement, Respondent shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement.

66. A dispute will be considered to have arisen when one or more parties sends a written notice of dispute ("Notice of Dispute") to the Agencies. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between the parties to the dispute. If Respondent objects to any EPA or USFS action taken pursuant to this Settlement, Respondent shall send the Agencies a Notice of Dispute describing the objection(s) within 7 days after such action. The period for informal negotiations may not exceed 30 days after the dispute arises, unless the EPA otherwise agrees. If the Parties cannot resolve the dispute by informal negotiations, the position advanced by the EPA is binding unless Respondent initiates formal dispute resolution under ¶ 67.

67. **Formal Dispute Resolution**

a. **Statements of Position**. Respondent may initiate formal dispute resolution by submitting to the Agencies, within seven days after the conclusion of informal dispute resolution under ¶ 66, an initial Statement of Position regarding the matter in dispute. The EPA's responsive Statement of Position is due within 20 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. If appropriate, the EPA may extend the deadlines for filing statements of position for up to 15 days and may allow the submission of supplemental statements of position.

b. **Formal Decision**. The Division Director of the Superfund and Emergency Management Division, EPA Region 8, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Respondent, and shall be incorporated into and become an enforceable part of this Settlement.

68. **Escrow Account**. For disputes regarding a Future Response Cost billing, Respondent shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to the EPA a copy of the transmittal letter and check paying the uncontested Future

Response Costs, and a copy of the correspondence that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. The EPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Respondent shall cause the escrow agent to pay the amounts due to the EPA under ¶ 59, if any, by the deadline for such payment in ¶ 59. Respondent is responsible for any balance due under ¶ 59 after the payment by the escrow agent.

69. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as the EPA agrees. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 72.

XV. STIPULATED PENALTIES

70. Unless the noncompliance is excused under Section XIII (Force Majeure), Respondent is liable to the EPA for the following stipulated penalties:

a. for any failure: (1) to pay any amount due under Section XII; (2) to establish and maintain financial assurance in accordance with Section X; (3) to establish any escrow account required under ¶ 68; (4) to submit timely or adequate deliverables as required by this Settlement; and (5) to comply with the Work laid out in the Work Plan:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	$500
15th through 30th day	$1,000
31st day and beyond	$2,000

71. **Work Takeover Penalty**. If the EPA commences a Work Takeover under ¶ 42, Respondent is liable for a stipulated penalty in the amount of $50,000. This stipulated penalty is in addition to the remedy available to the EPA under ¶ 52 (Access to Financial Assurance).

72. **Accrual of Penalties**. Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate instances of noncompliance with this Settlement. Stipulated penalties accrue regardless of whether Respondent has been notified of their noncompliance, and regardless of whether Respondent has initiated dispute resolution under Section XIV, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that the EPA subsequently determines is deficient, during the period, if any, beginning on the 31st day after the EPA's receipt of such submission until the date that the EPA notifies Respondent of any deficiency; or

b. with respect to a matter that is the subject of dispute resolution under Section XIV, during the period, if any, beginning on the 21st day after the EPA's Statement of Position is received until the date of the Formal Decision under ¶ XIV.

73. **Demand and Payment of Stipulated Penalties**. The EPA may send Respondent a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Respondent may initiate dispute resolution under Section XIV within 30 days after receipt of the demand. Respondent shall pay the amount demanded or, if they initiate dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Respondent shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late, and; (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Respondent shall make payment at https://www.pay.gov using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site Name, Docket Number, and Site/Spill ID number and the purpose of the payment. Respondent shall send notices of this payment to the EPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Respondent under the Settlement.

74. Nothing in this Settlement limits the authority of the EPA to seek any other remedies or sanctions available by virtue of Respondent's failure to comply with this Settlement or with the statutes and regulations upon which it is based, including penalties under sections 106(b) and 122(l) of CERCLA, and punitive damages pursuant to section 107(c)(3), provided, however, that the EPA may not seek civil penalties under section 122(l) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Settlement, except in the case of a willful noncompliance with this Settlement or in the event that the EPA assumes performance of a portion or all of the Work pursuant to ¶ 42 (Work Takeover).

75. Notwithstanding any other provision of this Section, the EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Settlement.

XVI. COVENANTS BY THE AGENCIES

76. **Covenants for Respondent**. Subject to ¶ 77, the Agencies covenant not to sue or to take administrative action against Respondent under sections 106 and 107(a) of CERCLA regarding the Work and Future Response Costs.

77. The covenants under ¶ 76: (a) take effect upon the Effective Date; (b) are conditioned on the complete and satisfactory performance by Respondent of the requirements of this Settlement; (c) extend to the successors of Respondent but only to the extent that the alleged liability of the successor of the Respondent is based solely on its status as a successor of the Respondent; and (d) do not extend to any other person.

78. **General Reservations**. Notwithstanding any other provision of this Settlement, the Agencies reserve, and this Settlement is without prejudice to, all rights against Respondent regarding the following:

a. liability for failure by Respondent to meet a requirement of this Settlement;

b. liability for performance of response action other than the Work;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

e. criminal liability.

79. Subject to ¶ 76, nothing in this Settlement limits any authority of the Agencies to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action.

XVII. COVENANTS BY RESPONDENT

80. **Covenants by Respondent**

a. Subject to ¶ 81, Respondent covenants not to sue and shall not assert any claim or cause of action against the United States under CERCLA, section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding the Work, Future Response Costs, and this Settlement.

b. Subject to ¶ 81, Respondent covenants not to seek reimbursement from the Fund through CERCLA or any other law for costs of the Work, Future Response Costs, or any claim arising out of response actions at or in connection with the Site.

81. **Respondent's Reservation**. The covenants in ¶ 80 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 78.a through 78.e.

82. **De Micromis Waiver**. Respondents shall not assert any claims and waive all claims or causes of action (including claims or causes of action under sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for

disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials. This waiver does not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (a) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (b) such person has failed to comply with any information request or administrative subpoena issued under sections 104(e) or 122(e)(3)(B) of CERCLA or section 3007 of RCRA with respect to the Site, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (c) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise. This waiver does not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by this waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.

XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION

83. The Parties agree that: (a) this Settlement constitutes an administrative settlement under which Respondent has, as of the Effective Date, resolved its liability to the Agencies within the meaning of sections 113(f)(2), 113(f)(3)(B), and 122(h)(4) of CERCLA; and (b) Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work and Future Response Costs, provided, however, that if the Agencies exercise rights against Respondent under the reservations in ¶¶ 78.a through 78.e, the "matters addressed" in this Settlement do not include those response costs or response actions that are within the scope of the exercised reservation.

84. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify the Agencies no later than 60 days prior to the initiation of such suit or claim. Respondent shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify the Agencies within 10 days after service of the complaint on Respondent. In addition, Respondent shall notify the Agencies within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

85. **Res Judicata and Other Defenses**. In any subsequent administrative or judicial proceeding initiated against Respondent by the EPA or the USFS or by the United States on behalf of the EPA or the USFS for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (res judicata), issue

preclusion (collateral estoppel), claim-splitting, or 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.

86. Nothing in this Settlement creates any rights in, or grants any defense or cause of action to, any person not a Party to this Settlement. Except as provided in Section XVII (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including pursuant to section 113 of CERCLA), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States under section 113(f)(2) and (3) of CERCLA to pursue any person not a party to this Settlement to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

XIX. RECORDS

87. **Respondent's Certification**. Respondent certifies that to the best of its knowledge and belief, after thorough inquiry it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability under CERCLA regarding the Site since notification of potential liability by the United States or the State.

88. **Retention of Records and Information**

a. Respondent shall retain, and instruct its contractors and agents to retain, the following documents and electronically stored data ("Records") until 10 years after the Notice of Completion of the Work under ¶ 40 ("Record Retention Period"):

(1) All records regarding Respondent's liability and the liability of any other person under CERCLA regarding the Site;

(2) All reports, plans, permits, and documents submitted to the Agencies in accordance with this Settlement, including all underlying research and data; and

(3) All data developed by, or on behalf of, Respondent in the course of performing the Work.

b. At the end of the Record Retention Period, Respondent shall notify the Agencies that the Agencies have 90 days to request the Respondent's Records subject to this Section. Respondent shall retain and preserve its Records subject to this Section until 90 days after the Agencies' receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

89. Respondent shall provide to the Agencies, upon request, copies of all Records and information required to be retained under this Section. Respondent shall also make available to the Agencies, for purposes of investigation, information gathering, or testimony, Respondent's employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

90. **Privileged and Protected Claims**

a. Respondent may assert that all or part of a record requested by either Agency is privileged or protected as provided under federal law, in lieu of providing the record, provided that Respondent comply with ¶ 90.b, and except as provided in ¶ 90.c.

b. If Respondent asserts a claim of privilege or protection, it shall provide the Agencies with the following information regarding such record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Respondent shall provide the record to the EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all records that it claims to be privileged or protected until the Agencies have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any record that Respondent is required to create or generate in accordance with this Settlement.

91. **Confidential Business Information Claims**. Respondent is entitled to claim that all or part of a record submitted to the Agencies under this Section is Confidential Business Information ("CBI") that is covered by section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Respondent shall segregate all records or parts thereof submitted under this Settlement which it claims is CBI and label them as "claimed as confidential business information" or "claimed as CBI." Records that a submitter properly labels in accordance with the preceding sentence will be afforded the protections specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to the Agencies, or if the EPA notifies the submitter that the records are not entitled to confidential treatment under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to the submitter.

92. Notwithstanding any provision of this Settlement, the Agencies retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XX. USFS INVOLVEMENT

93. Prior to any approval or disapproval provided for in this Settlement, the EPA will consult with the USFS and provide the USFS an opportunity to comment.

XXI. NOTICES AND SUBMISSIONS

94. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to the EPA:	*via email to*: Taylor Bowker, On-Scene Coordinator Bowker.Taylor@epa.gov Office: (303) 312-6818 Cell: (303) 868-0090 Kayleen Castelli, Site Attorney Castelli.Kayleen@epa.gov (303) 312-6174 Mike Hormell, Enforcement Specialist Hormell.Michael@epa.gov (303) 312-6610 Re: Site/Spill ID # <u>B884</u>
As to the USFS:	*via email to:* Bryan Barrett, Federal Project Coordinator Bryan.Barett2@usda.gov (970) 874-6667 Kirk Minckler, Attorney Kirk.Minckler@usda.gov (303) 275-5549

As to Respondent: *via email to*:
Heather Burmingham, Project Coordinator
hburmingham@thorinresources.com
(406) 290-4543

Sarah Slack, Attorney
Foley and Lardner LLP
sslack@foley.com
(608) 258-4239

XXII. APPENDIXES

95. The following appendixes are attached to and incorporated into this Settlement:

"Appendix 1" is the Work Plan.
"Appendix 2" is the ARARs table.
"Appendix 3" is the draft Restrictive Notice.

XXIII. MODIFICATIONS

96. The OSC may modify any plan or schedule or Work Plan in writing or by oral direction. The EPA will promptly memorialize in writing any oral modification, which will be effective on the date of the OSC's oral direction. Any other requirements of this Settlement must be modified in writing by mutual agreement of the Parties.

97. If Respondent seeks permission to deviate from the Work Plan or any other approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to the Agencies for EPA approval outlining the proposed modification and its basis. Respondent may not proceed with a requested deviation until receiving oral or written approval from the OSC pursuant to ¶ 96.

98. No informal advice, guidance, suggestion, or comment by any EPA or USFS representatives regarding any deliverable submitted by Respondent relieves Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXIV. SIGNATORIES

99. Each undersigned representative of the EPA, the USFS, and Respondent certify that they are fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind such party to this Settlement.

100. Under Executive Order 12580 section 4(b)(1), USFS authority to enter into this Settlement may only be exercised with the concurrence of the United States Department of

Justice ("DOJ"). By signature below, the USFS represent that it has sought DOJ concurrence and the Attorney General or his designee has approved the settlement in accordance with Section 122(h)(1) of CERCLA.

XXV. INTEGRATION

101. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements and understandings, whether oral or written, regarding the subject matter of the Settlement.

XXVI. EFFECTIVE DATE

102. This Settlement will be effective 1 day after the Settlement is signed by the EPA.

IT IS SO AGREED AND ORDERED:

Signature Page for Settlement regarding the Governor Basin Site

BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

AARON URDIALES
Digitally signed by AARON URDIALES
Date: 2026.06.22 17:03:54 -06'00'

Dated	Aaron Urdiales Division Director, Region 8 Superfund & Emergency Management Division U.S. Environmental Protection Agency

CHRISTOPHER THOMPSON
Digitally signed by CHRISTOPHER THOMPSON
Date: 2026.06.23 14:23:22 -06'00'

Dated	Christopher Thompson Associate Regional Counsel for Enforcement, Region 8 Office of Regional Counsel U.S. Environmental Protection Agency

Signature Page for Settlement regarding the Governor Basin Site

BY THE U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE REGION 2:

5/8/26

BUNNI MACEO Digitally signed by BUNNI MACEO Date: 2026.05.08 14:41:15 -06'00'

Dated

Troy Heithecker
Regional Forester

Signature Page for Settlement regarding the Governor Basin Site

FOR FAFO HOLDINGS, LLC:

May 7, 2026

Dated

Chris Skerik Digitally signed by Chris Skerik Date: 2026.05.07 07:06:03 -06'00'

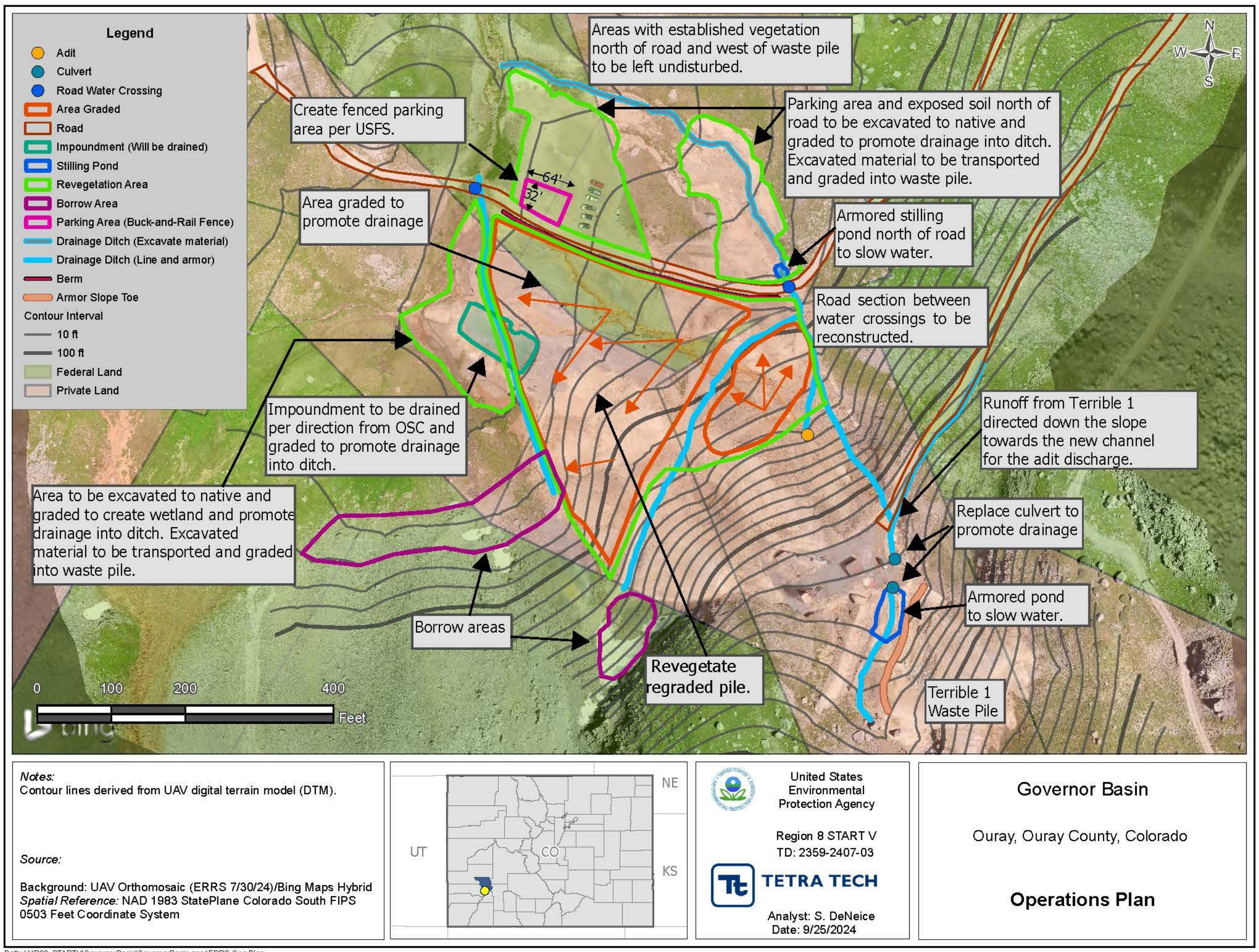
Chris Skerik
Authorized Signatory
1900 Main Street, Unit 1, Ouray, CO 81427

Appendix 1

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

WORK PLAN

Governor Basin Site
Ouray County, Colorado



Purpose

This Work Plan is in support of the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement) between Fafo Holdings, LLC (Respondent) and the United States Environmental Protection Agency (EPA), and the United States Forest Service (USFS). Pursuant to the Settlement, Respondent is required to complete certain tasks as described herein.

Timing

- Construction will cover several summer seasons beginning in 2026 and ending in 2028. When a break in construction is required between seasons, the On-Scene Coordinator will provide direction to winterize the Site during the pauses in construction.
- A ***Construction Schedule*** outlining the time frame that each of the following objectives will be achieved must be submitted to the On-Scene Coordinator prior to the start of construction.

Removal Objectives and Progress Metrics

2.1 The On-Scene Coordinator will visit the Site regularly during construction and determine, at their sole discretion, when Respondent has met the following removal objectives and progress metrics. Respondent shall conduct the work described in Objectives 2 through 5 to the extent practicable, as determined by the On-Scene Coordinator.

Objective 1: Control traffic and improve Governor Basin Road to support construction.

1.1 Solicit input from USFS, Ouray County, stakeholders (including tourism/jeep industry) and the general public to develop a ***Traffic and Staging Areas Control Plan.*** This ***Traffic and Staging Areas Control Plan*** must be submitted to the On-Scene Coordinator prior to the start of road maintenance and mobilization and at least 30 days in advance of road closure. The following must be addressed in the Traffic and Staging Areas Control Plan: (1) temporary road closures between the Revenue Mine and the Site for transit of equipment and materials (including road base to cap the road and create a parking area at the Site as well as amendments and soil for revegetation); (2) a longer closure of the road past the turnoff to the Virginius Mine; (3) safe turnarounds for the public during road closures; and (4) temporary staging areas for equipment and materials.

1.2 Minor improvements and general road maintenance must be performed along Governor Basin Road to support the safe transit of equipment, personnel and materials to the Site. All road improvements will be approved by the On-Scene Coordinator. The Respondent will coordinate these activities with USFS and Ouray County and will notify other local stakeholders (including tourism/jeep industry) prior to the initiation of such work.

Objective 2: Remove mine waste from two areas north of the Governor Basin Road and cap the road.

2.1 Excavate mine waste down to native soil or rock in two areas north of Governor Basin Road, including the existing parking area and Governor Basin Road as it passes the waste pile. Avoid disturbing areas with established vegetation. All mine waste to be left in place on land managed by USFS will be delineated by orange construction fencing laid flat on top of the waste before capping and/or revegetation. Consolidate excavated mine waste with the waste pile on the south side of the road.

2.2 Re-grade excavated areas north of Governor Basin Road to support drainage, as needed. Establish approximately 550 feet of natural channel.

2.3 Reconstruct Governor Basin Road where the road crosses the waste pile between the two water crossings with up to 6 inches of road base material that is pre-tested for metals contamination. Construct two water crossings along the road where it crosses the mine waste. Create a broad area armored with rip rap to slow water (stilling pond) north of the road where the adit discharge crosses the road.

2.4 Create a roughly 2,000 square foot parking area on the north side of the road using pre-tested road base material. Coordinate with USFS on exact size and location of parking lot. Use buck and rail fencing to delineate the perimeter of the new parking area on three sides away from the road.

2.5 Install and maintain temporary erosion control features including coconut waddles and fabric silt fencing to limit the migration of mine waste and other sediments during construction.

Objective 3: Improve grade of waste pile to support drainage.

3.1 Slowly pump, treat if needed, and drain the water impoundment per direction from On-Scene Coordinator.

3.2 Excavate mine waste from the west flank of the waste pile (including approximately 2/3 of the drained impoundment) down to native material. Avoid areas with established vegetation. Consolidate excavated material with the main waste pile.

3.3 Regrade native material along the west flank of the waste pile to support drainage and create the potential for a wetland.

3.4 Create a berm along the south edge of Governor Basin Road to establish new north perimeter of waste pile.

3.5 Regrade the area around the adit and the low angle slopes of the waste pile south of Governor Basin Road to support drainage and manage erosion. Use screening samples to prioritize the types of soil with the highest contamination that should be buried deeper during this regrading effort.

3.6 Install and maintain temporary erosion control features including coconut waddles and fabric silt fencing to limit the migration of mine waste and other sediments during construction.

Objective 4: Install stormwater / snowmelt drainage controls.

4.1 Harvest rock for rip rap from around the Site as well as the toe and slope of the nearby talus field west of the waste pile. Avoid existing vegetation in this area. Additional rock may need to be delivered to the Site.

4.2 Armor the toe of the Terrible 1 waste pile with rock.

4.3 Create a stormwater control ditch with stilling pond along the base of the Terrible 1 pile. Replace the existing jointed culvert and install a larger culvert made of HDPE or aluminum across the Virginius portal access road. Push stormwater from this level to a steep existing channel along the east periphery of the main waste pile to where it joins the channel that will drain the adit.

4.4 Construct approximately 1,000 linear feet of lined and rocked channels on the south side of Governor Basin Road to drain the Terrible 2 and 3 waste piles. Channels south of Governor Basin Road must be lined, armored and roughly 9 feet wide and 3 feet deep with the exception of the steep natural slope along the east periphery of the waste pile. Install lined and rocked grade control pools along these channels as necessary.

4.5 Ensure borrow areas are regraded to match natural slopes and promote drainage.

4.6 Install and maintain temporary erosion control features including coconut waddles and fabric silt fencing to limit the migration of mine waste and other sediments during construction.

Objective 5: Revegetate all disturbed areas.

5.1 Revegetate areas with exposed native soil using native seeds, sod mats or containerized plant starts. Coordinate with Uncompahgre Watershed Group to utilize native seeds collected from the Site in 2024 and conduct the revegetation effort on exposed native soil including the rock borrow areas.

5.2 Establish vegetation test plots on representative waste material in 2026. Hydroseeding should be considered. Test plots should include use of surface roughening, pH adjustment (mixing in lime during the surface roughening), amendments being considered, and specific seed mixes / plantings being proposed to the extent practicable. Amendments could include limestone, humates, and biotic soil to attempt to create a soil profile that will support initial and secondary plant succession. Seed mix will be specified by USFS with stakeholder input. Aspen wood straw and coconut waddles should be considered to reduce seed scour and soil mobility.

5.3 Use information from vegetation test plots established in 2026 to develop a ***Revegetation Plan*** for the regraded waste pile. Plan must be submitted to the On-Scene Coordinator prior to the start of revegetation.

5.4 Cap and revegetate the regraded waste pile in accordance with the approved ***Revegetation Plan***.

5.5 Maintain temporary erosion control features including coconut waddles and fabric silt fencing until advised otherwise by the On-Scene Coordinator.

Objective 6: Perform post-removal site control.

6.1 Propose, install and maintain public warning signs on the regraded waste pile to limit access.

6.2 Implement an Environmental Use Restriction and a Post-Removal Site Control Plan as set forth in the Settlement.

Appendix 2

STATE AND FEDERAL APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS (ARARS) TABLE

For Administrative Settlement Agreement and Order on Consent for Removal Action

Governor Basin Site
Ouray County, Colorado

	Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
Federal ARARs							
1	Bald and Golden Eagle Protection Act 16 U.S.C. §§ 668, *et seq*.	Applicable	This requirement makes it unlawful for anyone to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any bald or golden eagle, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to Federal regulations. In addition to immediate impacts, this requirement also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.	If bald or golden eagles are identified during design and action, activities must be modified and conducted to conserve the species and their habitat.		✓	
2	Endangered Species Act, 16 U.S.C. § 1531, *et seq*. and Implementing Regulations, 50 C.F.R. § 17 and § 402	Applicable	This statute and implementing regulations provide that federal activities not jeopardize the continued existence of any threatened or endangered species. 16 U.S.C. § 1536(a) of the Endangered Species Act requires consultation with the U.S. Fish and Wildlife Service to identify the possible presence of protected species and mitigate potential impacts on such species. Substantive compliance with the ESA means that the lead agency must identify whether a threatened or endangered species, or its critical habitat, will be affected by a proposed response action. If so, the agency must avoid the action or take appropriate mitigation measures so that the action does not affect the species or its critical habitat. If, at any point, the conclusion is reached that endangered species are not present or will not be affected, no further action is required.	If threatened or endangered species are identified during design and action, activities must be modified and conducted action to conserve the species and their habitat.		✓	
3	Migratory Bird Treaty Act 16 U.S.C. § 703; 50 C.F.R. § 10.1, *et seq*.	Applicable	This statute and implementing regulations makes it unlawful for anyone to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to these regulations.	If migratory birds are identified during design and action, activities must be modified and conducted to conserve the species and their habitat.		✓	
State ARARs							

	Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
1	Colorado Wildlife Enforcement and Penalties Act, Colorado Revised Statutes (CRS) § 33-6-128	Applicable	Prohibits willfully damaging or destroying any wildlife den or nest, or their eggs, or harassing any wildlife. "Harass" means to unlawfully endanger, worry, impede, annoy, pursue, disturb, molest, rally, concentrate, harry, chase, drive, herd, or torment wildlife. *See* C.R.S. § 33-1-102(24) (Definitions).	If migratory birds are identified during design and action, activities must be modified and conducted action to conserve the species and their habitat.		✓	
2	Colorado Non-game, Endangered, or Threatened Species Act, CRS §§ 33-2-104(3) and Colorado Wildlife Commission Regulations, 2 Code of Colorado Regulations (CCR) 406-10:1002-1004 4(Protected Species)	Applicable	Prohibits harassment, taking or possession of nongame species and subspecies, including threatened or endangered wildlife, with limited exceptions. The designations of species as endangered, threatened, or a nongame species, are made pursuant to 2 C.C.R. 406-10:1002-4. This regulation incorporates definitions of terms found in the Colorado Wildlife Enforcement and Penalties Act, C.R.S. § 33-1-102.	If non-game, threatened, or endangered species are identified during design and action, activities must be modified and conducted action to conserve the species and their habitat.		✓	
3	Colorado Noxious Weed Act, C.R.S. § 35-5.5-104 (Duty to Manage Noxious Weeds)	Applicable	Requires use of integrated methods to manage noxious weeds, if noxious weeds are likely to be materially damaging to the land of neighboring landowners. Integrated methods include: biological management, chemical management, cultural management, and mechanical management (as defined in C.R.S. § 35-5.5-103(9)(a-d)).	Where performing response activities in an area with noxious weeds.		✓	
4	Rules Pertaining to the Administration and Enforcement of the Colorado Noxious Weed Act, 8 C.C.R. 1206-2, Sections 3.3, and 3.4	Applicable	Prohibits allowing any plant of any population on "List A" to produce seed or develop other reproductive propagules. (Section 3.1 sets forth "List A.") Prescribed management techniques for individual noxious weed species on "List A" provided at 8 C.C.R. 1206-2, Section 3.6.	Where performing response activities in an area with "List A" noxious weeds.		✓	
5	Rules Pertaining to the Administration and Enforcement of the Colorado Noxious Weed Act, 8 CCR 1206-2, Section 4.4	Applicable	Prohibits allowing any plant of any population on "List B" to produce seed or develop other reproductive propagules after the time specified in the Ouray County elimination Plan. (Section 4.1 sets forth "List B.") Prescribed management techniques for individual noxious weed species on "List B" provided at 8 C.C.R. 1206-2, Section 4.8. Ouray County Plan B Species elimination plan, available on at: https://docs.google.com/spreadsheets/d/1fHXmYI_VY0MGNqe0ZZzJ8NwXON-Lr3Rs8i_KvBY0Vug/edit?pref=2&pli=1#gid=919371023	Where performing response activities in an area with noxious weeds.		✓	

	Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
6	Colorado Environmental Covenants Statute CRS § 25-15-317 *et seq*.	Relevant and Appropriate	Requires environmental covenants (ECs) or notice of environmental use restrictions (RNs) whenever residual contamination not safe for all uses is left in place or an engineered feature or structure that requires monitoring, maintenance, or operation is included in the remedy.[i]	Where performing response activities in locations leaving waste in place above standards for unrestricted use or incorporating engineered features or structures.		✓	
7	Colorado Noise Abatement Statute, C.R.S. § 25-12-103 (Maximum Permissible Noise Levels)	Applicable	Sound levels that exceed the limits at a distance of 25 feet from the property line or greater are prima facie evidence of a public nuisance. Activities must be conducted in a manner so that any noise produced is not objectionable due to intermittence, beat frequency, or shrillness. For construction projects, maximum noise levels will be those specified for industrial zones for the time period within which construction is to be completed. For industrial zones, the maximum permissible sound level from 7:00 am to the next 7:00 pm is 80 A-weighted decibels (db[A]) and from 7:00 pm to the next 7:00 am is 75 db(A).	Where location of response activities is within a designated land use zone subject to noise regulation.		✓	
8	Colorado Noise Abatement Statute, CRS § 25-12-103 (Maximum Permissible Noise Levels) and CRS § 25-12-110 (Off-highway vehicles)	Applicable	Sets forth maximum permissible noise levels specific to off-highway vehicles defined in 25-12-102 (5.6) as a self-propelled vehicle with wheels or tracks in contact with the ground that is designed primarily for use off the public highways: (a) If manufactured before January 1, 1998; 99 db(A); (b) If manufactured on or after January 1, 1998; 96 db(A). Measurements should be conducted using SAE J1287.	Where using off-highway vehicles, including excavators, in response activities		✓	
9	Colorado Solid Waste Disposal Sites and Facilities Regulations, 6 CCR 1007-2, pursuant to C.R.S. §§ 30-20-100.5, *et seq*.	Relevant and Appropriate	Establishes requirements and procedures for land disposal of solid wastes. Pursuant to the Solid Wastes Disposal Sites and Facilities Act, C.R.S. § 30-20-102(4), mining operations including reclamation activities with approved reclamation plans under a Colorado Mined Land Reclamation Board (MLRB) permit may dispose of solid wastes generated by such operations within the permitted area without obtaining a Certificate of Designation. The Colorado Department of Public Health and Environment (CDPHE) interprets this provision to allow CERCLA response actions performed consistently with the MLRB regulation 2 CCR 407-1 Rule 3 (Reclamation Performance Standards) to be compliant with Colorado's regulation pertaining to solid waste disposal.	Where disposing solid waste while performing work to stabilize waste rock piles, decommission sediment pond and construct rock-lined drainage channels.			✓

	Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
10	Colorado Mined Land Reclamation Board Regulations ("MLRB Regulations"), Reclamation Performance Standards, 2 C.C.R. § 407-1, Rule 1.1 (definitions) and Rule 3 (Reclamation Performance Standards), pursuant to the Co. Mined Land Reclamation Act, C.R.S. § 34-32-101, *et seq*.	Relevant and appropriate	The MLRB Regulations require reclamation of permitted mined lands, defined as "employment of procedures reasonably designed to minimize as much as practicable the disruption from mining operations and to provide for the establishment of plant cover, stabilization of soil, the protection of water resources, or other measures appropriate to the subsequent beneficial use of such affected lands." Reclamation must be conducted in accordance with the performance standards in Rule 3 of the Regulations. Substantive requirements are relevant and appropriate to mine reclamation activities including constructing the armored drainage tunnel, consolidating waste rock and other mine related materials and vegetating the engineered cover.	Where reclaiming mined lands while performing work to stabilize waste rock piles, decommission sediment pond and construct rock-lined drainage channels.			✓
11	MLRB Regulations, Rule 3.1.5(5), (10), (11)	Relevant and appropriate	Acid forming or toxic producing mined materials must be handled and disposed in a manner that will control unsightliness and protect the surface and groundwater drainage system from pollution.	Where reclaiming mined lands while performing work to stabilize waste rock piles, decommission sediment pond and construct rock-lined drainage channels.			✓
12	MLRB Regulations Rule 3.1.6	Relevant and appropriate	Reclamation activities must minimize disturbances to the prevailing hydrologic balance of the mined land and surrounding area by complying with all laws pertaining to water rights, water quality and dredge and fill activities. Minimizing measures also include removing temporary or large siltation structures from drainageways after stabilization and rehabilitation.	Where reclaiming mined lands while performing work to stabilize waste rock piles, decommission sediment pond and construct rock-lined drainage channels.			✓

	Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
14	MRLB Regulations Rule 3.1.8	Relevant and appropriate	Reclamation activities must take into account the safety and protection of wildlife on the mined site and along access roads with special attention given to critical periods in the life cycle of species requiring special consideration (i.e. elk calving, migration routes, peregrine falcon nesting, grouse strutting grounds).	Where reclaiming mined lands while performing work to stabilize waste rock piles, decommission sediment pond and construct rock-lined drainage channels.			✓
15	MLRB Regulations Rule 3.1.5(1), (3)	Relevant and appropriate	Any grading shall be done in a manner to control erosion and siltation and protect from slides and other damage. High walls shall be stabilized or eliminated. Grading shall create a final topography appropriate to the future land use. Slopes and slope combinations shall be compatible with the configuration of surrounding conditions and future land use.	Where reclaiming mined lands while performing work to stabilize waste rock piles, decommission sediment pond, and construct rock-lined drainage channels.			✓
16	MLRB Regulations Rule 3.1.5(2)	Relevant and appropriate	Backfilling shall ensure adequate compaction for stability and prevent leaching of toxic or acid forming materials.	Where reclaiming mined lands while performing work to stabilize waste rock piles, decommission sediment pond and construct rock-lined drainage channels.			✓
17	MLRB Regulations Rule 3.1.5(7)	Relevant and appropriate	Lakes or ponds shall be constructed with slopes no steeper than a ratio of 3:1 for slopes between 5 feet above to 10 feet below the expected waterline. All other slopes shall be no steeper than a ratio of 2:1.	Where reclaiming mined lands while performing work to stabilize waste rock piles, decommission sediment pond and construct rock-lined drainage channels.			✓

The scope of the Colorado Environmental Covenants Statute CRS § 25-15-317 *et seq.* ARAR (ARAR 6) is stated in Paragraph 45 of the ASAOC.

The EPA has evaluated the following ARARs and has determined that compliance with these requirements is not practicable given the scope of the removal action: (1) Clean Water Act 33 U.S.C. §§ 1342, *et seq.* (Point Source Discharges Requirements, Section 402); (2) Colorado Basic Standards and Methodologies for Surface Water, 5 CCR § 1002-31, pursuant to CRS §§ 25-8-101-703; (3) Colorado Surface Water Quality Classifications and Numeric Standards, 5 CCR § 1002-35, pursuant to CRS §§ 25-8-203 and 204; (4) Colorado Discharge Permit System Regulations, 5 CCR § 1002-61, Regulation No. 61, pursuant to CRS § 25-8-501 -509; (5) Colorado Effluent Limitations, 5 CCR § 1002-62, pursuant to CRS § 25-8-205; and (6) MLRB Regulations Rule 3.1.7.

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[i] The capped and revegetated mine waste, armored waste rock piles, and rock-lined diversion channels are engineered features. The stabilized and revegetated waste rock piles are areas where waste will remain above unrestricted use standards. An environmental covenant or restrictive notice will be required to protect these features and areas, and any other area within the Site where engineered components exist or where waste is left in place above unrestricted use standards. CRS. § 25-15-321 authorizes CDPHE to accept, refuse to accept, conditionally accept, hold, modify, and terminate environmental covenants and restrictive notices. CDPHE agrees to accept land use restrictions associated with remaining waste and engineered remedial features. Further, CDPHE states that environmental covenants and restrictive notices will only be modified or terminated to reflect changes made to the Superfund remedy (i.e., changes to the engineered remedial features).

Appendix 3

DRAFT RESTRICTIVE NOTICE

For Administrative Settlement Agreement and Order on Consent for Removal Action

Governor Basin Site
Ouray County, Colorado

This property is subject to a notice of environmental use restrictions approved by the Colorado Department of Public Health and Environment pursuant to section 25-15-321.5, Colorado Revised Statutes

Notice of Environmental Use Restrictions

Whereas, Fafo Holdings, LLC ("Owner") is the owner of certain property commonly referred to as the Governor Basin Site, located in Ouray County, State of Colorado, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); this Notice of Environmental Use Restriction only applies to the portions of the Governor Basin Site owned or controlled by Owner and does not apply to any portion of the Governor Basin Site under the jurisdiction of the USDA Forest Service; and

Whereas, the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department"), which is located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, is authorized to issue Notices of Environmental Use Restrictions (a/k/a "Restrictive Notices") pursuant to § 25-15-320(4)(a) of the Colorado Hazardous Waste Act, § 25-15-101, et seq., C.R.S.; and

Whereas, for purposes of indexing in the County Clerk and Recorder's office Grantor-Grantee index only, Fafo Holdings, LLC shall be considered the **Grantor**, and the Department shall be considered the **Grantee**. Nothing in the preceding sentence shall be construed to create or transfer any right, title or interest in the Property; and

Whereas, pursuant to Administrative Settlement Agreement and Order on Consent for Removal Action, CERCLA docket No. __, the Property is the subject of enforcement and response action by the U.S. Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.

Whereas, the purpose of this Restrictive Notice is to ensure protection of human health and the environment by incorporating land use restrictions on areas of the Site where waste is left in place above standards for unrestricted use, and where engineered features exist that will not function as intended if disturbed, in the specific, limited area as depicted on Attachment B (the "Restrictive Notice Area"); and

Whereas, Fafo Holdings, LLC has requested that the Department approve this Restrictive Notice as provided in Article 15 of Title 25, Colorado Revised Statutes;

Now, therefore, the Department approves this Restrictive Notice pursuant to § 25-15-321.5, C.R.S. The Restrictive Notice Area described in Attachment B shall hereinafter be subject to the following requirements set forth in paragraphs 1 through 13 below, which shall be binding on Owner and all persons now or subsequently having any right, title or interest in the Property, or any part thereof, and any persons using the land, as described herein. As used in this Restrictive Notice, the term Owner means the then current record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

1. **Use restrictions.**

   a. Residential use is prohibited on the Governor Basin Site. The term "residential use" means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, but do not include motels, hospitals and other buildings used only for short-term lodging.

   b. Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on the Governor Basin Site.

   c. No excavation, drilling, grading, digging, or tilling, is allowed in the Restrictive Notice Area, except (i) as authorized in a remedial decision document as that term is defined in C.R.S. § 25-15-101(13.5) or (ii) as may otherwise be approved by the Department.

   d. No water from the uppermost aquifer beneath the Governor Basin Site may be withdrawn or used for any purpose, except (i) as authorized in a remedial decision document as that term is defined in C.R.S. § 25-15-101(13.5); or (ii) as may otherwise be approved by the Department.

   e. Any action that is not otherwise authorized under subs (c) and (d) above that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on the Restrictive Notice Area is prohibited. Engineered components of the remedy include drainage ditches and erosion control features.

2. **Modifications.** This Restrictive Notice shall remain in full force and effect unless modified or terminated in accordance with this paragraph and pursuant to § 25-15-321.5, C.R.S. or any successor statute. Owner may request that the Department approve a modification or termination of the Restrictive Notice.

The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Restrictive Notice will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Restrictive Notice shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

a. proposal to perform additional remedial work;
b. new information regarding the risks posed by the residual contamination;
c. information demonstrating that residual contamination has diminished;
d. information demonstrating that an engineered feature or structure is no longer necessary;
e. information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment;
f. any application for any permit to conduct mining activities at the Governor Basin Site; and
g. other appropriate supporting information.

3. **Conveyances.** Owner shall notify the Department at least fifteen (15) days prior to any conveyance of any interest in any or all of the Property. Within thirty (30) days after any such conveyance, Owner shall provide the Department with the name, mailing address and telephone number of the new Owner.

4. **Notice to Lessees.** Owner agrees to incorporate either in full or by reference the restrictions of this Restrictive Notice in any leases, licenses, or other instruments granting a right to use the Property.

5. **Notification for proposed construction and land use.** Owner shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.

6. **Inspections.** The Department, including its authorized employees, agents, representatives and independent contractors, shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Restrictive Notice.

7. **Third Party Beneficiary.** The Owner of the Property and the U.S. Environmental Protection Agency are third party beneficiaries with the right to enforce the provisions of this Restrictive Notice as provided in § 25-15-322, C.R.S.

8. **No Liability.** The Department does not acquire any liability under State law by virtue of issuing this Restrictive Notice.

9. **Enforcement.** The Department may enforce the terms of this Restrictive Notice pursuant to § 25-15-322, C.R.S. against Owner and may file suit in district court to enjoin actual or threatened violations of this Restrictive Notice.

10. **Owner's Compliance Certification.** Owner shall execute and return a certification form provided by the Department, on an annual basis, detailing Owner's compliance, and any lack of compliance, with the terms of this Restrictive Notice.

11. **Severability.** If any part of this Restrictive Notice shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.

12. **Notices.** Any document or communication required under this Restrictive Notice shall be sent or directed to:

    [insert name of Project Manager]
    [insert program name]
    Hazardous Materials and Waste Management Division
    Colorado Department of Public Health and the Environment
    4300 Cherry Creek Drive South
    Denver, Colorado 80246-1530

    Martin McComb
    On-Scene Coordinator
    Superfund and Emergency Management Division
    U.S. Environmental Protection Agency, Region 8
    1595 Wynkoop Street
    Denver, Colorado 80202

13. **Subdivision of Property.** At least 90 days prior to any subdivision of the Property, Owner shall submit a plan addressing the certification of compliance set forth in paragraph (10) of this Restrictive Notice. The plan may provide for contractual assignment of such obligations to, and assumption of such obligations by, a property management entity charged with managing the

Property (including but not limited to a homeowner's association of multiple Owners). The Department shall approve the plan if it determines that the plan reasonably will ensure continued compliance with the requirements of this Restrictive Notice. Any Department notice of disapproval shall include the Department's rationale for its decision, including any additional information or changes to the plan that the Department requires before the plan can be approved. Any appeal of a Department notice of disapproval shall be taken in accordance with section 25-15-305(2), C.R.S. If Owner fails to obtain approval of such plan prior to subdividing the Property, the owner of each subdivided parcel shall be responsible for certifying its own compliance with the restrictions set forth in paragraph (1) of this Restrictive Notice.

Current Facility Owner Signature Block

[*Insert Current Facility Owner Name*], has caused this instrument to be

executed on ________________________, 20_____.

[*Insert Current Facility Owner Name]*

By: _____________________________________

Title: _____________________________________

State of ______________)
) ss:
County of ____________)

This record was acknowledged before me on ________________________,
20_____ by

__________________________________ [*Insert Name of Signatory*]

on behalf of [*Insert Current Facility Owner Name*].

____
Notary Public

My commission expires: ______________________________, 20_____.

Colorado Department of Public Health and Environment
Signature Block

This Notice of Environmental Use Restrictions is approved by the Colorado Department of Public Health and Environment on

__________________________, 20_____.

By: ____

Title: ____

State of Colorado)
) ss:
County of _____________)

This record was acknowledged before me on ___________________________, 20_____ by

_____________________________________ [*Insert Name of Department Signatory*]

on behalf of the Colorado Department of Public Health and Environment.

____
Notary Public

My commission expires: ________________________________, 20_____.

Attachment "A"
to the
Notice of Environmental Use Restrictions
Legal Description

Attachment "B"
to the
Notice of Environmental Use Restrictions
Restrictive Notice Area

The Restrictive Notice Area is limited to:
Areas Graded
Impoundment
Stilling Pond
Borrow Area
Both Drainage Ditches
Berm
Armor Slope Toe

This Notice of Environmental Use Restriction only applies to the portions of the Governor Basin Site owned or controlled by Owner and does not apply to any portion of the Governor Basin Site under the jurisdiction of the USDA Forest Service.