

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THE UNITED STATES OF AMERICA
and THE COEUR D'ALENE TRIBE,

Plaintiffs,

v.

DOUGLAS MINING COMPANY

Defendant.

Case No. 10-525-EJL

**CONSENT DECREE BETWEEN THE UNITED STATES, THE COEUR D'ALENE
TRIBE AND DEFENDANT DOUGLAS MINING COMPANY**

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607(a), alleging that Settling Defendant is jointly and severally liable for costs incurred and to be incurred by EPA in responding to the release or threat of release of hazardous substances at or in connection with Operable Unit 3 (“Coeur d’Alene Basin Site”) of the Bunker Hill Mining and Metallurgical Complex Superfund Site (“Site”) in Northern Idaho.

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Coeur d’Alene Basin Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Coeur d’Alene Basin Site. As of May 31, 2010, EPA has incurred more than \$230 million in connection with the Coeur d’Alene Basin Site.

C. The United States, acting by and through the United States Department of the Interior (“DOI”) and United States Department of Agriculture (“USDA”), and the Coeur d’Alene Tribe (“Tribe”) are co-trustees of injured natural resources at the Coeur d’Alene Basin Site, including but not limited to certain migratory natural resources such as fish, wildlife, birds, biota, and water. The Tribe joined the United States’ Complaint alleging that Settling Defendant is liable for natural resource damages pursuant to Section 107(a) of CERCLA in connection with the Coeur d’Alene Basin Site.

D. Defendant Douglas Mining Company, incorporated in Idaho in 1903, has owned or operated and continues to own or operate mining or milling related properties, including the Douglas mine and mill, within the Site.

E. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether it has an inability or a limited ability to pay natural resource damages and response costs incurred and to be incurred at the Coeur d'Alene Basin Site, taking into consideration the ability of Settling Defendant to pay response costs and natural resource damages and still maintain its basic business operations, including its overall financial condition and demonstrable constraints on its ability to raise revenues. Based upon this Financial Information, the United States has determined, and the Tribe concurs, that Settling Defendant qualifies for a reduction in settlement amount and/or an alternative payment method and is able to make the payment(s) specified in Section VI.

F. Settling Defendant does not admit any liability to the United States or the Tribe arising out of the transactions or occurrences alleged in the complaints.

G. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1362 (federal-question jurisdiction suits “brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior”), 1367(a) and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

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

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Coeur d'Alene Basin Institutional Controls Program" or "Basin ICP" shall mean the program administered by Panhandle Health District 1 that requires the use of contaminant management practices to minimize exposure of human and environmental receptors to site-related contaminants of concern, as defined in Idaho Administrative Code IDAPA 41.01.01 Rules of the Panhandle Health District (<http://adm.idaho.gov/adminrules/rules/idapa41/0101.pdf>).

d. "Coeur d'Alene Basin Site" shall mean Operable Unit 3 of the "Site," as defined in the EPA Record of Decision relating to Operable Unit 3 of the Site signed on September 12, 2002, by the Regional Administrator, EPA Region 10, or his delegate.

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

f. "DOI" shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

g. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

h. "Effective Date" shall mean the date this Consent Decree is entered by the Court.

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

j. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

k. “Financial Information” shall mean those financial documents provided by Settling Defendants to the United States identified in Appendix A.

l. “Institutional Controls” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that:

(i) limit land, water and/or resource use to minimize the potential for human exposure to Waste Materials at the Site; (ii) limit land, water and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (iii) provide information intended to modify or guide human behavior at the Site.

m. “Insurance Policies” shall mean all insurance policies issued to Settling Defendant prior to 1988 together with all environmental insurance policies or policies providing for coverage of environmental claims, however named or titled, together with any and all additional insurance policies in which Settling Defendant is subsequently determined to have any interest.

n. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall 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.

o. “Natural Resource Damages” shall have the meaning set forth in Section 107 of CERCLA, 42 U.S.C. § 9607.

p. “Natural Resource Trustees” shall mean DOI, USDA and the Coeur d’Alene Tribe.

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

r. “Parties” shall mean the United States, the Coeur d’Alene Tribe and Settling Defendant.

s. “Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

t. “Response costs” shall mean all costs of “response” as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

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

v. “Settling Defendant” or “Defendant” shall mean Douglas Mining Company.

w. “Settling Defendant’s Property” shall mean all portions of the Site owned by Settling Defendant as of the date of signature of the Consent Decree by Settling Defendant.

x. “Site” shall mean the Bunker Hill Mining and Metallurgical Complex Superfund Site located in Northern Idaho.

y. "Transfer" shall mean 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.

z. "Tribe" shall mean the federally-recognized Indian tribe known as the Coeur d'Alene Tribe, including its departments, agencies and instrumentalities. The Tribe, which has a governing Tribal Constitution and Tribal Council duly recognized by the Secretary of the Interior, is an "Indian tribe" within the meaning of Section 101(36) of CERCLA, 42 U.S.C. § 9601(36).

aa. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

bb. "USDA" shall mean the United States Department of Agriculture, Forest Service and any successor departments, agencies or instrumentalities of the United States.

cc. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33).

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objectives of the Parties are for the Settling Defendant to make cash payments and provide other valuable consideration to resolve its liability for Response Costs and Natural Resource Damages as provided in the Covenant Not to Sue by the United States and the Tribe in Section X, and subject to the Reservations of Rights by the United States and the Tribe in Section XI.

VI. PAYMENTS FOR RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

5. Settling Defendants' Liability. EPA has incurred past response costs of more than \$230 million and expects to incur future response costs of more than \$2.05 billion, and the Natural Resource Trustees have assessed over \$800 million in potential natural resource damages, in connection with the Coeur d'Alene Basin Site. It is the position of the United States and the Tribe that Settling Defendant is jointly and severally liable for the full amounts stated above. The cash payments made under Section VI shall be credited toward these amounts. This Consent Decree provides Settling Defendant with a Covenant Not to Sue by the United States and the Tribe (Section X), subject to the Reservation of Rights by United States and the Tribe (Section XI). However, the Coeur d'Alene Basin Insurance Recovery Trust will seek to satisfy Settling Defendant's remaining liability to the United States and the Tribe for the amounts stated above from the Insurance Policies.

6. Payment of Past Response Costs to EPA. Within 30 days of the Effective Date of the Consent Decree, Settling Defendant shall pay \$12,000 to EPA:

7. The total amounts to be paid pursuant to Paragraph 6 shall be deposited in the Bunker Hill Mining and Metallurgical Complex Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

8. Payment to the Natural Resource Trustees. Within 30 days of the Effective Date, Settling Defendant shall pay \$4,000 to the Natural Resource Trustees:

9. Payments in accordance with Paragraphs 6 and 8 above may be made by certified or cashier's check made payable to "U.S. Department of Justice," referencing the name and address of the party making payment, the Coeur d'Alene Basin Site, DOJ Case Number 90-11-3-128/12, the civil action number, and a notation regarding whether the payment is to EPA (Region 10 and Site/Spill Identification Number 2Q) or to the Natural Resource Trustees (NRDAR Account No. 14X5198). Provided however, any payments of \$10,000 or more shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice Account in accordance with EFT instructions to be provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Idaho. Settling Defendant shall send checks to: Financial Litigation Unit, U.S. Attorney's Office District of Idaho, WGI Plaza IV, 800 Park Blvd., Suite 600, Boise, Idaho 83712.

10. Payments Based on Future Production. Commencing on the Effective Date of the Consent Decree, and continuing until fifty (50) years after the Effective Date of the Consent Decree, Settling Defendant shall pay to the United States and the Tribe, on or before the thirtieth (30th) day ("due date") after the conclusion of each annual period (with the first annual period commencing on the Effective Date of this Consent Decree), an amount equal to the sum of two (2) percent of the value of the Net Smelter Returns for the annual period for Settling Defendant's Property ("NSR Payment"). This obligation is intended to apply to any gold, silver, lead, zinc, copper, or other metal or metal concentrate produced by each Settling Defendant or for Settling Defendant's account, including but not limited to, subsidiaries and joint ventures of Settling Defendant. In the event a Settling Defendant fails to make a payment by the due date, the Settling Defendant shall pay Interest from the due date until full payment has been made. This

provision shall not expressly or impliedly obligate Settling Defendants to operate to produce a NSR.

a. Definitions.

i. “Net Smelter Returns” shall mean the amount paid to Settling Defendant by a smelter, refiner, or other purchaser for minerals mined by Settling Defendant or for Settling Defendant’s account after deductions of the following costs paid by or charged to Settling Defendant: a.) all smelting, refining, treatment, selling and other costs, charges, and penalties charged by the smelter or other purchaser for such minerals; b.) all costs for loading, transporting, and insuring such minerals or mineral bearing concentrates from the mining operation to the smelter or other purchaser; and c.) all taxes paid by Settling Defendant on such minerals or concentrates, except income taxes, including, but not limited to production, severance, sales, and privilege taxes.

ii. “concentrates” means materials containing commercial quantities of metals or other minerals which are produced from ore by milling or other processing of the ore.

iii. “mill” means the whole mineral treatment plant, in which crushing, grinding, screening, flotation, drying, and other physical and chemical processing techniques are used to separate valuable minerals from waste. In metal ore processing, milling usually results in one or more concentrates that are stockpiled and then sent to smelters or refineries for further processing.

iv. “ore” means material extracted from Settling Defendant’s Property which contains commercial quantities of other mineral constituents and which has not been subjected to any milling or other processing except crushing and screening.

v. “ounces” means troy ounces of 31.1035 grams.

vi. “tailings” means material that has been mined, processed, and disposed of on Settling Defendant’s Property.

vii. “tons” means short tons of 2000 pounds avoirdupois.

viii. “waste dumps” means material that has been previously mined and placed in piles on the Settling Defendant’s Property without further processing.

b. Sampling and Testing. Settling Defendant shall have the right to mine amounts of minerals and mineral-bearing material reasonably necessary for sampling, assaying, metallurgical testing, and evaluating the minerals potential of the Property, not to exceed twenty-five (25) tons-per-year of raw in-place material, without initiating the obligation to make payments pursuant to this Paragraph.

c. Documentation. For each annual period in which Settling Defendant receives Net Smelter Returns, Settling Defendant shall submit to the United States and the Tribe a calculation sheet detailing the calculation of the payment amount. This calculation sheet will include the relevant metal prices, production quantities, NSR costs (as identified in subparagraph a.(i.) above), and a specific description of how Settling Defendant arrived at the payment amount. At that time, Settling Defendant shall provide the source materials and references supporting the computations.

d. Records. Settling Defendant shall maintain true and correct records of all minerals and mineral-bearing substances mined and sold from any relevant mining operation and Settling Defendant shall allow the United States or the Tribe to inspect the books and records of Settling Defendant which are pertinent to the determination of the payments due. Such

inspection shall be conducted at any reasonable time during normal business hours, provided such inspection is conducted by the United States or the Tribe, or their representatives, and provided such inspection does not interfere unreasonably with Settling Defendant's operations or procedures.

e. Tailings and waste rock. Any metal or non-metallic product produced through the re-working of old tailings, waste rock, re-processing, or by any other means shall be included in the produced ounces, pounds, tons, or cubic yards, for purposes of the NSR payment calculation.

f. Method of Payment. Payments shall be divided 75% to EPA and 25% to the Natural Resource Trustees. Payments to EPA and the Natural Resource Trustees shall be made in accordance with Paragraph 9 above.

g. Property Sales or Leases. If Settling Defendant sells, leases, or otherwise conveys full or partial title or interest in the designated Property to a third party, the transaction shall be encumbered by a recorded NSR Payment obligation so that any new owner shall be responsible for all payments, record keeping, and all other obligations incurred by Settling Defendant under this Consent Decree. The Parties agree that this encumbrance is intended to (a) provide notice to third parties of Settling Defendant's obligations under this Paragraph; and (b) create a secured interest in the income from the sale of metals from the Property. The Parties also agree that the intent of the encumbrance is not to create any possessory or ownership interest in the mining operations.

11. At the time of each payment pursuant to this Section, Settling Defendant shall also send notice that payment has been made to the United States and the Tribe in accordance with

Section XIX (Notices and Submissions). Such notice shall reference the Coeur d'Alene Basin Site, DOJ case number 90-11-3-128/12, and the civil action number. For payments to EPA, the notice shall also reference EPA Region 10 and Site/Spill Identification Number 2Q. For payments to the Natural Resource Trustees, the notice shall also reference "Natural Resource Damages for the Coeur d'Alene Basin Site" and NRDAR Account No. 14X5198. For NSR Payments pursuant to Paragraph 10, such notice shall also reference "Net Smelter Returns Payment."

VII. THE COEUR D'ALENE BASIN INSURANCE RECOVERY TRUST

12. Settling Defendant shall fully comply with the Coeur d'Alene Basin Insurance Recovery Trust Contribution Agreement, which is attached to this Consent Decree as Appendix B and incorporated herein by reference.

13. Settling Defendant shall fully cooperate in the following tasks related to the Coeur d'Alene Basin Insurance Recovery Trust ("Trust"):

a. complete a diligent, good faith search to identify any evidence of Insurance Policies (including, but not limited to, a review of business records, insurance related invoices, Certificates of Insurance, accounting ledgers, correspondence, or any other insurance related documentation) in which Settling Defendant may have an interest within 30 days from the Effective Date of this Consent Decree, and immediately notify Trustee of the discovery of any evidence of additional Insurance Policies (even if such discovery occurs more than 30 days after the effective date of this Agreement);

b. take such actions and execute and deliver such documents and instruments as may be necessary or appropriate to transfer, convey, release, compromise, and/or assign the Settling Defendant's interest pursuant to any or all of the Insurance Policies;

c. cooperate with Trustee's efforts to pursue claims and/or causes of action under the Insurance Policies and to avoid any interference with Trustee's recovery efforts or management of the Trust;

d. identify any documents or sources of documents that, to the Settling Defendant's knowledge, may relate to operations, activities, or corporate histories of entities that conducted operations at the Site ("Site Records");

e. provide Trustee and the Trust's representatives with full access to Site Records; and

f. provide Trustee and the Trust's representatives with any other assistance necessary to accomplish the duties, purposes, and goals of the Trust, including but not limited to the execution of any documents associated with the Trust and its recovery activities in a timely fashion.

VIII . FAILURE TO COMPLY WITH THE CONSENT DECREE

14. Interest on Late Payments. If Settling Defendant fails to make any payment under Section VI (Payments) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

15. Stipulated Penalties.

a. If a Settling Defendant does not pay any amounts due to EPA under Paragraph 6 by the required date, the Settling Defendant shall be in violation of this Consent Decree and

shall pay to the United States, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$250 per violation per day that such payment is late.

b. If a Settling Defendant does not pay any amounts due to the United States and the Tribe under Paragraphs 8, 9, and 10 by the required date or does not comply with the requirements of Paragraphs 10, 12 or 13 of this Consent Decree or the terms of the Trust Agreement, attached hereto as Appendix B, the Settling Defendant shall be in violation of this Consent Decree and shall pay to the United States and the Tribe, as a stipulated penalty, \$250 per day of such noncompliance. Settling Defendant shall pay 75% of the stipulated penalty to EPA and 25% to the Tribe.

16. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by the United States and/or the Tribe.

All payments to EPA under this Section shall be identified as “stipulated penalties” and shall be made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.” The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Coeur D’Alene Basin Site, EPA Region 10 and Site Spill ID Number 2Q, DOJ Case Number 90-11-3-128/12, and the civil action number. The Settling Defendant shall send the check (and any accompanying letter) to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

All payments to the Tribe under this Section shall be paid by certified or cashier’s check made payable to the “Coeur d’Alene Tribe” and sent to:

Coeur d'Alene Tribe
Finance Department
850 A Street
P O Box 408
Plummer, ID 83851

The check, or a letter accompanying the check, shall identify the payment as “stipulated penalties” and shall reference the name and address of the party(ies) making payment, the Coeur d'Alene Basin site, the civil action number and this Consent Decree.

17. At the time of each payment, Settling Defendant shall also send notice that payment has been made to the United States and the Tribe in accordance with Section XIX (Notices and Submissions). Such notice shall include the information required by Paragraph 11 and shall identify payments as “stipulated penalties.”

18. Penalties shall accrue as provided in this Paragraph regardless of whether the United States or the Tribe has notified the Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

19. If the United States or the Tribe brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States and the Tribe for all costs of such action, including but not limited to costs of attorney time.

20. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States or the Tribe by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

21. Notwithstanding any other provision of this Section, the United States and the Tribe each may, in its unreviewable discretion, waive payment of any portion of its share of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payments as required by Section VI or from performance of any other requirements of this Consent Decree.

22. Stipulated penalties shall continue to accrue as provided in Paragraph 18, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of the United States, in consultation with the Tribe, that is not appealed to the Court, Settling Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States and the Tribe within 30 Days of the effective date of the agreement or the receipt of the United States' decision or order.

b. If the dispute is appealed to the Court and the United States and/or the Tribe prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Settling Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

IX. CERTIFICATION OF SETTLING DEFENDANT

23. By signing this Consent Decree, Settling Defendant certifies that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to the United States and the Tribe, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, that relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site;

c. has and will comply fully with any and all EPA and Tribe requests for information regarding the Site pursuant to Sections 104(e), 122(e)(3)(B), and 122(g)(8) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e)(3)(B), and 9622(g)(8);

d. has and will fully disclose any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to the United States or the Tribe upon request such insurance policies, indemnity agreements, and information; and

e. has submitted financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed

between the time the financial information was submitted to the United States and the time Settling Defendant executes this Consent Decree.

X. COVENANT NOT TO SUE BY UNITED STATES AND THE COEUR D'ALENE TRIBE

24. Covenant Not to Sue by the United States and the Tribe. Except as specifically provided in Section XI of the Consent Decree (Reservations of Rights), the United States and the Tribe covenant not to sue or take administrative action against Settling Defendant pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt of Settling Defendant's payments as required by Section VI of the Consent Decree (Payment). This covenant not to sue is conditioned upon: a) the satisfactory performance by Settling Defendant of all obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI of the Consent Decree and compliance with the Coeur d'Alene Basin Insurance Recovery Trust Agreement, including assignment to the Trust of Settling Defendant's interest pursuant to the Insurance Policies; and b) the veracity of the information provided to the United States by Settling Defendant relating to Settling Defendant's involvement with the Site. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to the United States by Settling Defendant and the financial, insurance, and indemnity certification made by Settling Defendant in Section IX. If the Financial Information provided by Settling Defendant, or the financial, insurance, or indemnity certification made by Settling Defendant in Section IX, is subsequently determined by the United States or the Tribe to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments

made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 31 of the Consent Decree shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' or the Tribe's right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY UNITED STATES AND THE COEUR D'ALENE TRIBE

25. The United States and the Tribe reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by the United States and the Tribe in Section X. Notwithstanding any other provision of this Consent Decree, the United States and the Tribe reserve all rights against each Settling Defendant with respect to:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability as a result of failure by Settling Defendant to exercise due care with respect to hazardous substances at the Site;
- c. liability resulting from exacerbation by Settling Defendant of the release or threat of release of hazardous substances from the Site;
- d. criminal liability;

e. liability based upon the ownership or operation of any portion of the Site outside of Settling Defendant's Property, after signature of this Consent Decree by the Settling Defendant;

f. liability based upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and

g. liability arising from the past, present and future disposal, release or threat of release of a hazardous substance, pollutant or contaminant outside of the Site.

26. Notwithstanding any other provision of this Consent Decree, the United States and the Tribe reserve, and this Consent Decree is without prejudice to, the right to reinstitute or reopen proceedings against any Settling Defendant in this action or in a new action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by the Settling Defendant, or the financial certification made by Settling Defendant in Section IX, Paragraph 23.e. of this Consent Decree is false or, in an material respect, inaccurate.

XII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

27. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, or the Tribe with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.

§§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

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

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

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

29. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against Settling Defendant.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

30. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in

Paragraph 29 (Waiver of Claims), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they 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 Consent Decree diminishes the right of the United States or the Tribe, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons 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).

31. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are natural resource damages and all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States, the Tribe or any other person except for the State; provided, however, that if the United States or the Tribe exercises rights under the reservations in Section XI (Reservation of Rights by the United States and the Coeur d’Alene Tribe), other than in Paragraphs 25.a. (claims for failure to meet a requirement of the settlement) and 25.d. (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

32. In any subsequent administrative or judicial proceeding initiated by the United States or the Tribe for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Tribe in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by the United States and the Tribe set forth in Section X.

XIV. ACCESS AND INSTITUTIONAL CONTROLS

33. If any real property located within the Site is owned or controlled by Settling Defendant, Settling Defendant shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including contractors and subcontractors, and the Tribe and its representatives, including contractors and subcontractors, with access at all reasonable times to the real property within the Site to conduct any response activity related to the Site, including, but not limited to the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
2. Verifying any data or information submitted to the United States or the Tribe;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;

5. Assessing the need for, planning, or implementing additional response actions at or near the Site;

6. Assessing the Settling Defendant's compliance with this Consent Decree;

7. Determining whether real property within the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under this Consent Decree; and

8. Implementing, monitoring, maintaining, reporting on and enforcing any Institutional Controls.

b. commencing on the date of lodging of this Consent Decree, Settling Defendant shall not use the real property within the Site, or such other real property, in any manner that EPA, in consultation with the Tribe, determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures to be performed at the Site.

34. Basin ICP. With respect to any real property located within the Site that is owned by Settling Defendant, the Settling Defendant shall comply with the Basin ICP.

35. With respect to any real property located within the Site that is owned by Settling Defendant, the Settling Defendant shall:

(1) execute and record in the appropriate land records office Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 33.a and (ii) grant the right to enforce land/water use restrictions set forth in Paragraph 33.b, as further specified in Paragraph 35.(2)-

(4). The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA, in consultation with the Tribe: (i) the United States, on behalf of EPA, and its representatives, (ii) the State of Idaho and its representatives, and/or (iii) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a “third-party beneficiary,” allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

(2) upon request by EPA, in consultation with the Tribe, submit to EPA for review and approval regarding such real property: (i) a draft Proprietary Control that is enforceable under state law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens and encumbrances or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens and encumbrances). If, within 30 days of EPA’s request for Proprietary Controls, Settling Defendants have not obtained agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 35. The United States may, as it deems appropriate, assist Settling Defendants in obtaining the release or subordination of a prior lien or encumbrance.

(3) within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Control with the appropriate land records office. Within 30 days of recording the Proprietary Control, Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

36. If EPA, in consultation with the Tribe, determines Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions or other governmental controls are needed, Settling Defendant shall cooperate with EPA's efforts to secure and ensure compliance with such governmental controls.

37. Notwithstanding any provision of this Consent Decree, the United States and the Tribe retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto under CERCLA, RCRA and any other applicable statute or regulations.

XV. NOTICE TO SUCCESSORS-IN-TITLE AND TRANSFERS OF REAL PROPERTY

38. For any real property owned or controlled by Settling Defendant that is located within the Site, within 15 days of the Effective Date of this Consent Decree, Settling Defendant

shall submit to EPA and the Tribe for review and approval a proposed notice to be filed with the land records office that provides a description of the real property and provides notice to all successors-in-title that the real property is part of the Site and that EPA selected an interim remedy for the Coeur d'Alene Basin Site on September 12, 2002. The notice shall also describe the land use restrictions, if any, set forth in Paragraph 33.b. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Settling Defendant shall record the notice(s) within 10 days of EPA's and the Tribe's approval of the notice(s). Settling Defendant shall provide EPA and the Tribe with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

39. Settling Defendant shall at least 60 days prior to the Transfer of any real property located within the Site, give written notice: (i) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property; and (ii) to EPA and the Tribe regarding the proposed Transfer, including the name and address of the transferee, and the date on which the transferee was notified of the Consent Decree and Institutional Controls.

40. Settling Defendant may Transfer any real property located within the Site only if: (1) any Proprietary Controls required by Paragraph 35 have been recorded with respect to the real property; or (2) Settling Defendant has obtained an agreement from the transferee, enforceable by Settling Defendant, the United States and the Tribe, to (i) allow access and restrict land/water use, pursuant to Paragraphs 33.a and 33.b, (ii) record any Proprietary Controls on the real property, pursuant to Paragraph 35, and (iii) subordinate its rights to any such Proprietary Controls, pursuant to Paragraph 35, and EPA and the Tribe have approved in writing the

agreement. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph, the Settling Defendant shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist the Settling Defendant in obtaining compliance with the agreement. Settling Defendant shall reimburse the United States and the Tribe, for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

41. In the event of any Transfer of real property located within the Site, unless the United States and the Tribe otherwise consent in writing, the Settling Defendants shall continue to comply with their obligations under the Consent Decree, including, but not limited to, their obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls and to abide by such Institutional Controls.

XVI. DUE CARE AND COOPERATION

42. Nothing in this Consent Decree shall be construed to relieve Settling Defendant of its duty to exercise due care with respect to hazardous substances at the Site or its duty to comply with all applicable laws and regulations.

43. Settling Defendant agrees to cooperate fully with EPA and the Tribe in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA and the Tribe agree, consistent with their responsibilities under applicable law, to use reasonable efforts to minimize interference with Settling Defendant's operations by such entry and response. In the event that Settling Defendant becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants or

contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA and the Tribe of such release or threatened release.

XVII. RETENTION OF RECORDS

44. Until 10 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records, reports, or information (hereinafter referred to as “records”) now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

45. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendant shall notify the United States and the Tribe at least 90 days prior to the destruction of any such records, and, upon request by the United States or the Tribe, Settling Defendant shall deliver any such records to the United States or the Tribe. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide the United States or the Tribe with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a

record, the record shall be provided to the United States or the Tribe in redacted form to mask the privileged information only. Settling Defendant shall retain all records that they claim to be privileged until the United States or the Tribe has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the Tribe pertaining to the Site shall be withheld on the grounds that they are privileged.

XVIII. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. A Settling Defendant's failure to seek resolution of a dispute under this Section shall preclude the Settling Defendant from raising any such issue as a defense to an action by the United States or the Tribe to enforce any obligation of the Settling Defendant arising under this Decree.

47. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when one Party sends the other Parties a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, in consultation with the Tribe, shall be considered

binding unless, within 10 Days after the conclusion of the informal negotiation period, the Settling Defendant invokes formal dispute resolution procedures as set forth below.

48. Formal Dispute Resolution. The Settling Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the Tribe a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the Settling Defendant's position and any supporting documentation relied upon by the Settling Defendant.

49. The United States and the Tribe shall serve a joint or separate Statement(s) of Position within 45 Days of receipt of the Settling Defendant's Statement of Position. The United States' and the Tribe's Statement of Position(s) shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States and/or the Tribe. The United States' Statement of Position shall be binding on the Settling Defendant, unless the Settling Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

50. The Settling Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and the Tribe, in accordance with Section XIX of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' and the Tribe's Statement(s) of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the Settling Defendant's position on the matter in dispute, including any supporting factual data,

analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

51. The United States and the Tribe shall respond to the Settling Defendant's motion within the time period allowed by the Local Rules of this Court. The Settling Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

52. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 50, the Settling Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

53. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 22. If the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XIX. NOTICES AND SUBMISSIONS

54. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the Tribe and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-128/12)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Cara Steiner-Riley
Kelly Cole
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

As to the federal Natural Resource Trustees:

Barry Stein
U.S. Department of the Interior
805 SW Broadway Ste. 600
Portland Oregon 97201

As to the Coeur d'Alene Tribe:

Phillip Cernera
Lake Management Director
Coeur d'Alene Tribe
850 A Street
P.O. Box 408
Plummer, ID 83851

As to Settling Defendant:

Douglas Mining Company
J. Edward Short
P.O. Box 694
Hayden, ID 83835

XX. RETENTION OF JURISDICTION

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

XXI. INTEGRATION/APPENDICES

56. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the list of financial documents submitted to the United States by Settling Defendants.

“Appendix B” is the Coeur d’Alene Basin Insurance Recovery Trust Contribution Agreement.

XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

57. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States and the Tribe reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

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

XXIII. SIGNATORIES/SERVICE

59. The undersigned representatives of Settling Defendants to this Consent Decree and the Tribe and the Assistant Attorney General of the Environment and Natural Resources Division of the United States Department of Justice each certify that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

60. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States or the Tribe has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

61. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant needs not file an answer to the complaints filed in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIV. FINAL JUDGMENT

62. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2010.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the Bunker Hill Mining and Metallurgical Complex Superfund Site in Northern Idaho:

FOR THE UNITED STATES OF AMERICA

Date: 10/24/10

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 10/26/10

ERIKA M. ZIMMERMAN
Oregon Bar #055004
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
c/o NOAA, Damage Assessment
7600 Sandpoint Way, N.E.
Seattle, Washington 98115
Telephone:(206) 526-6608
Facsimile: (206) 526-6665

WENDY J. OLSON
United States Attorney
District of Idaho

NICHOLAS J. WOYCHICK
Civil Chief
U.S. Attorney's Office
District of Idaho
WGI Plaza IV
800 Park Blvd., Suite 600
Boise, Idaho 83712

THE UNDERSIGNED PARTIES enter into this Consent Decree, relating to the Bunker Hill Mining and Metallurgical Complex Superfund Site in Northern Idaho:

Date: 10/25/10

DANIEL D. OPALSKI
Director, Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Date: 10/21/10

CARA STEINER-RILEY
KELLY COLE
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

THE UNDERSIGNED PARTIES enter into this Consent Decree, relating to the Bunker Hill Mining and Metallurgical Complex Superfund Site in Northern Idaho:

FOR THE COEUR D'ALENE TRIBE

Date: 10/14/10

HOWARD A. FUNKE
Special Counsel
Coeur d'Alene Tribe
Howard Funke & Associates, P.C.
P.O. Box 969

0969

Date: 10/14/10

CHIEF J. ALLAN, Chairman
Coeur d'Alene Tribal Council
Coeur d'Alene Tribe
P.O. Box 408
Plummer, Idaho 83851

THE UNDERSIGNED PARTIES enter into this Consent Decree, relating to the Bunker Hill Mining and Metallurgical Complex Superfund Site in Northern Idaho:

FOR DEFENDANT DOUGLAS MINING
COMPANY

Date: 9/15/10

J. Edward Short
P.O. Box 694
Hayden, ID 83835

APPENDIX A
Financial Documents Provided by Settling Defendant to the United States

Douglas Mining Company, U.S. Corporate Income Tax Returns, Form 1120, 2007, 2008 and 2009

Douglas Mining Company, Balance Sheet, as of December 31, 2007

Douglas Mining Company, Statement of Income and Expense, for period ending December 31,
2007

APPENDIX B

COEUR D'ALENE BASIN INSURANCE RECOVERY TRUST
CONTRIBUTION AGREEMENT

This Coeur d'Alene Basin Insurance Recovery Trust Contribution Agreement (“Contribution Agreement”) is entered into by, between, and among Douglas Mining Company, an Idaho corporation (“Grantor”), and Daniel Silver, an individual (“Trustee”), for the purposes of contributing to the existing Coeur d'Alene Basin Insurance Recovery Trust (“Trust”).

WHEREAS, Grantor seeks to avoid difficult and prolonged litigation over activities at the Bunker Hill Mining and Metallurgical Complex Superfund Site (“Site”) and seeks to resolve its potential liabilities to the United States and the Coeur d'Alene Tribe (“Tribe”) under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601, *et seq.*

WHEREAS, Grantor, the United States, and the Tribe have entered into an agreement to settle pursuant to CERCLA (“Consent Decree”) which includes, among other things, contribution protection and a covenant-not-to-sue, and Grantor’s commitment to comply with this Contribution Agreement and the Trust.

WHEREAS, Grantor has accepted and confirmed Trustee to be the trustee pursuant to this Contribution Agreement and subject to the terms of the Coeur d'Alene Basin Insurance Recovery Trust Trust Agreement (“Trust Agreement”), attached hereto as Appendix A, and whereas further Trustee presently serves as trustee of the Trust and is willing to continue to act as trustee.

WHEREAS, the Grantor contributes to the Trust and assents to its terms pursuant to, and to effectuate, the Consent Decree.

WHEREAS, the United States and the Tribe allege that Grantor is liable for, among other things, natural resource damages and response costs incurred and to be incurred at the Site. The United States and the Tribe agreed to only execute on certain assets transferred to the Trust or specified in the Consent Decree.

NOW, THEREFORE, Grantor and Trustee agree as follows:

I. DEFINITIONS

1. Whenever terms listed below are used in this Contribution Agreement, the following definitions shall apply:
 - a. “Beneficiaries” shall mean the EPA and any successor departments, agencies, or instrumentalities of the United States, and the Natural Resource Trustees.
 - b. “DOJ” shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.
 - c. “Grantor” shall mean Douglas Mining Company and any successors or assigns.
 - d. “Grantor’s Settlement Contribution” shall mean those assets, funds, moneys, insurance policies, claims, and/or other property Grantor transfers to the Coeur d’Alene Basin Insurance Recovery Trust and Coeur d’Alene Basin Insurance Recovery Trust Fund, now or in the future, by virtue of this Contribution Agreement.
 - e. “Natural Resource Trustees” shall mean the Tribe and United States Department of the Interior and the United States Department of Agriculture, and any successor departments, agencies or instrumentalities of the United States.
 - f. “Site” shall mean the Bunker Hill Mining and Metallurgical Complex Superfund Site in northern Idaho.
 - g. “Tribe” shall mean the federally-recognized Indian tribe known as the Coeur d’Alene Tribe, including its departments, agencies, and instrumentalities.
 - h. “Trust” shall mean the Coeur d’Alene Basin Insurance Recovery Trust.
 - i. “Trust Fund” or “Fund” shall mean the fund established by the Coeur d’Alene Basin Insurance Recovery Trust and held by the Trustee.
 - j. “Trustee” shall mean Daniel Silver and any successor trustee.

j. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

II. ESTABLISHMENT AND ACCEPTANCE OF TRUST AND INCORPORATION BY REFERENCE

2. *Acknowledgement and Incorporation by Reference.* Grantor and Trustee hereby acknowledge the existence of the Coeur d’Alene Basin Insurance Recovery Trust as evidenced by the Coeur d’Alene Basin Insurance Recovery Trust Trust Agreement. Grantor and Trustee incorporate by reference the Trust Agreement, attached hereto as Appendix A, and the terms set forth therein, and assent to being fully and additionally bound thereby.

3. *Single Trust.* Grantor and Trustee understand, acknowledge, and expressly intend that this Contribution Agreement is executed for the purposes of contributing to the existing Trust and Trust Fund with the intent to be bound by the Trust’s terms. Grantor and Trustee do not intend to create a new trust by virtue of this Contribution Agreement.

III. CONTRIBUTION TO TRUST AND TRUST FUND

4. *Insurance Policies.* Grantor’s Settlement Contribution shall consist of, without limitation, all insurance policies issued prior to 1988 together with all environmental insurance policies or policies providing for coverage of environmental claims, however named or titled, together with any and all additional insurance policies in which Grantor is subsequently determined to have any interest (Insurance Policies) and any and all potential or actual claims and/or causes of action (including but not limited to causes of action based in contract, tort, extra-contractual theories, and statutory claims), pursuant to, and proceeds from, the Insurance Policies. Grantor hereby unconditionally transfers, conveys, and assigns the Trust all of Grantor’s Insurance Policies and any and all potential or actual claims and/or causes of action (including but not limited to causes of action based in contract, tort, extra-contractual theories, and statutory claims), pursuant to, and proceeds from, the Insurance Policies. Grantor retains no rights or residual interest in the assigned claims, causes of action,

Insurance Policies, and proceeds therefrom transferred to the Trust. Recognizing the complete assignment of the Insurance Policies and the associated claims, proceeds, and causes of action, Grantor's approval is unnecessary to settle, release, or compromise matters involving the assigned Insurance Policies and the associated claims, proceeds, and causes of action. Grantor shall have no right to make additional claims or pursue existing claims for defense or indemnity under the Insurance Policies. Grantor covenants not to assert or claim insurance coverage under the Insurance Policies after the effective date of this Contribution Agreement. Should the Trust reach a settlement or otherwise resolve an insurance coverage dispute, Grantor acknowledges that it is not entitled to any of the proceeds or any other payments and is estopped from claiming or receiving defense or indemnity coverage under the Insurance Policies. Grantor shall fully cooperate in the following tasks:

- a. complete a diligent, good faith search to identify any evidence of Insurance Policies (including, but not limited to, a review of business records, insurance related invoices, Certificates of Insurance, accounting ledgers, correspondence, or any other insurance related documentation) in which Grantor may have an interest within 30 days from the effective date of this Contribution Agreement, and immediately notify Trustee of the discovery of any evidence of additional Insurance Policies (even if such discovery occurs more than 30 days after the effective date of this Agreement);
- b. take such actions and execute and deliver such documents and instruments as may be necessary or appropriate to transfer, convey, release, compromise, and/or assign Grantor's interest pursuant to any or all of the Insurance Policies;
- c. cooperate with Trustee's efforts to pursue claims and/or causes of action under the Insurance Policies and to avoid any interference with Trustee's recovery efforts or management of the Trust and Fund;

- d. identify any documents or sources of documents that, to Grantor's knowledge, may relate to operations, activities, or corporate histories of entities that conducted operations at the Site ("Site Records");
- e. provide Trustee and the Trust's representatives with full access to Site Records; and
- f. provide Trustee and the Trust's representatives with any other assistance necessary to accomplish the duties, purposes, and goals of the Trust, including but not limited to the execution of any documents associated with the Trust and its recovery activities in a timely fashion.

5. *Fund Held by Trustee.* Grantor's Settlement Contribution shall be added to and included in the Fund and shall be held by Trustee, in trust, as provided herein and in the Trust Agreement. This Fund shall consist of, without limitation, any and all Policy Payments as set forth in Section II.5 of the Trust Agreement.

6. *Acceptance of Trust.* Trustee, by his execution of this Contribution Agreement, accepts Grantor's Settlement Contribution to the Trust, reconfirms that he understands and accepts the Trust established in the Trust Agreement, reconfirms that he accepts his rights, powers, duties, and responsibilities as Trustee of the Trust, and reconfirms his agreement to perform his duties and responsibilities as Trustee of the Trust, as set forth in the Trust Agreement.

IV. ROLE OF GRANTOR

7. Except as provided in Section II, Grantor shall have no rights, responsibilities, or obligations pursuant to this Contribution Agreement or the Trust Agreement. Grantor has no residual interest or entitlement to the Fund, trust proceeds, or any proceeds of trust assets.

V. NOTICES

8. Whenever, pursuant to the terms of this Contribution Agreement and the incorporated Trust Agreement, written notice or communications are required or authorized, or a report or other document is required or authorized to be sent, the written notice, document, or communication shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give written notice of a change. All notices and submissions shall be considered effective on receipt, unless otherwise provided.

As to Beneficiaries:

EPA

Cara Steiner-Riley and Kelly Cole
Region 10
United States Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

Director, Office of Environmental Cleanup
Region 10
United States Environmental Protection Agency
1200 Sixth Avenue, ECL-111
Seattle, Washington 98101

Natural Resource Trustees

Barry Stein
U.S. Department of the Interior
805 SW Broadway Ste. 600
Portland, Oregon 97201

Phillip Cernera
Lake Management Director
Coeur d'Alene Tribe
850 A Street
P.O. Box 408
Plummer, Idaho 83851

As to Trustee:

Daniel Silver
Coeur d'Alene Basin Insurance Recovery Trust Trustee
606 Columbia Street NW, Suite 212
Olympia, Washington 98501

Kurt Petersen
Cascadia Law Group PLLC
1201 Third Avenue, Suite 320
Seattle, Washington 98101

As to Grantor:

Douglas Mining Company
J. Edward Short
P.O. Box 694
Hayden, ID 83835

VI. IRREVOCABILITY

9. *Irrevocability of Trust.* The Trust is irrevocable. Grantor retains no equitable, legal, beneficial, or residual interest in the Trust.

VII. CHOICE OF LAW

10. This Contribution Agreement shall be administered, construed, and enforced according to the laws of the State of Idaho.

VIII. MISCELLANEOUS

11. *Headings.* Headings to sections and paragraphs of this Contribution Agreement are included for the convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Contribution Agreement.

12. *Particular Words.* Any word contained in the text of this Contribution Agreement shall be read as singular or plural and masculine, feminine, or neuter, as may be applicable or permissible in the particular context. The word “person” shall include an individual, partnership, association, company, corporation, or municipal corporation.

13. *Complete Agreement.* This Contribution Agreement (expressly including the Trust Agreement, incorporated by reference) contains the final expression and the complete and exclusive statement of the terms of the Contribution Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written representations, understandings and agreements between them with respect thereto.

14. *Authorized Signatories.* Each person signing this Contribution Agreement represents and warrants that he or she is duly authorized to enter into this Contribution Agreement by the entity on whose behalf the person is signing. Each person signing this Contribution Agreement has consulted or had the opportunity to consult independent legal counsel regarding the effect of this Contribution Agreement and understands the legal ramifications of entering into this Contribution Agreement.

15. *Effective Date.* The effective date of this Contribution Agreement shall be the date that Grantor's Consent Decree is entered by the Court.

16. *Severability.* If any provision of this Contribution Agreement, or the Trust Agreement, or their application to any person in any circumstances, is deemed invalid or unenforceable by a court of law, the application of such provision to other persons and in circumstances other than those to which the provision is invalid or unenforceable, and the other provisions of the Contribution Agreement or Trust Agreement shall not be affected by such invalidity or unenforceability.

IN WITNESS WHEREOF the parties have executed this Contribution Agreement.

GRANTOR DOUGLAS MINING COMPANY

J. Edward Short
P.O. Box 694
Hayden, ID 83835

ATTEST:
Federal Tax Identification Number:

82-0114790

TRUSTEE

Daniel Silver
ATTEST:

Cecilia M. Nickerson

APPENDIX A to
Coeur d'Alene Basin Insurance Recovery Trust Contribution
Agreement

COEUR D'ALENE BASIN INSURANCE RECOVERY TRUST
TRUST AGREEMENT

This Environmental Trust Agreement (“Agreement”) is entered into by, between, and among Mascot Mines, Inc.; Nabob Silver-Lead Company; and United Resource Holdings Group, Inc. (“Settling Grantors”), and Daniel Silver, an individual (“Trustee”), to establish the Coeur d’Alene Basin Insurance Recovery Trust (“Trust”).

WHEREAS, Settling Grantors seek to avoid difficult and prolonged litigation regarding the Bunker Hill Mining and Metallurgical Complex Superfund Site (“Site”) and seek to resolve their potential liabilities to the United States and the Coeur d’Alene Tribe (“Tribe”) under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601, *et seq.*

WHEREAS, Settling Grantors, the United States, and the Tribe have entered into agreements to settle pursuant to Section 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g), (“Consent Decrees”) which include, among other things, contribution protection and a covenant not to sue, and each Settling Grantor’s commitment to comply with this Agreement.

WHEREAS, Settling Grantors have selected Trustee to be the trustee pursuant to this Agreement, and Trustee is willing to act as trustee.

WHEREAS, the Trust is created pursuant to, and to effectuate, the Consent Decrees.

WHEREAS, the United States and the Tribe allege that Settling Grantors are liable for, among other things, natural resource damages and response costs incurred and to be incurred at the Site. The United States and the Tribe agreed to only execute on certain assets transferred to the Trust or specified in the Consent Decrees.

WHEREAS, the Trust is created to allow and accommodate future contributions to the Trust from future grantors, whether presently known or unknown, to further the purposes set forth herein and for the benefit and interest of EPA and the Natural Resource Trustees.

NOW, THEREFORE, Settling Grantors and Trustee agree as follows:

I. DEFINITIONS

1. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

a. “Beneficiaries” shall mean EPA and any successor departments, agencies, or instrumentalities of the United States, and the Natural Resource Trustees.

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

c. “Grantor” or “Grantor(s)” shall mean any person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity or association, of whatever form, and any successors or assigns, who contributes assets, funds, moneys, and/or other property to the Trust, whether now or in the future, and whether presently known or unknown. “Grantor” or “Grantor(s)” shall expressly include, but is not limited to, the “Settling Grantor” defined below.

d. “Natural Resource Trustees” shall mean the Tribe and the United States Department of the Interior and the United States Department of Agriculture, and any successor departments, agencies or instrumentalities of the United States.

e. “Settling Grantors” shall mean Mascot Mines, Inc.; Nabob Silver-Lead Company; and United Resource Holdings Group, Inc. and any successors or assigns.

f. “Site” shall mean the Bunker Hill Mining and Metallurgical Complex Superfund Site in northern Idaho.

g. “Tribe” shall mean the federally-recognized Indian tribe known as the Coeur d’Alene Tribe, including its departments, agencies, and instrumentalities.

h. “Trust” shall mean the Coeur d’Alene Basin Insurance Recovery Trust.

i. “Trustee” shall mean Daniel Silver and any successor trustee.

j. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

II. ESTABLISHMENT AND ACCEPTANCE OF TRUST

2. *Trust Fund.* Settling Grantors and Trustee hereby establish the Coeur d’Alene Basin Insurance Recovery Trust trust fund (“Fund” or “Trust Fund”) for the benefit of the Beneficiaries as stated herein. Each Grantor and Trustee intend that no third parties have access to the Fund. All property in the Trust, and any and all proceeds therefrom, are intended for the cleanup and restoration in connection with the Site. The Trust Fund shall consist of all assets, funds, moneys, and/or other property currently in the hands of Trustee together with all assets, funds, moneys, and/or other property received by and transferred to or paid into the Trust.

3. *Cash contribution.* The Fund shall consist of, without limitation, initial cash contributions, specified as follows, paid into the Trust by the Settling Grantors: a.) \$23,650 by Mascot Mines, Inc. b.) \$26,100 by Nabob Silver-Lead Company; and c.) \$4,300 by United Resource Holdings Group, Inc.

4. *Insurance Policies.* The Fund shall consist of, without limitation, all insurance policies issued to each Settling Grantor prior to 1988 together with all environmental insurance policies or policies providing for coverage of environmental claims, however named or titled, including, but not limited to, the policies described on Exhibit 1 to this Agreement, together with any and all additional insurance policies in which the Grantor is subsequently determined to have any interest (“Insurance Policies”) and any and all potential or actual claims and/or causes of action (including but not limited to causes of action based in contract, tort, extra-contractual theories, and statutory claims), pursuant to, and proceeds from, the Insurance Policies. Each Settling Grantor hereby unconditionally transfers, conveys, and assigns the Trust all of Grantor’s Insurance Policies and any and all potential or actual claims and/or causes of action (including but not limited to causes of action based in contract, tort, extra-contractual theories, and statutory claims), pursuant to, and proceeds from, the Insurance Policies. Settling Grantors retain no

rights or residual interest in the assigned claims, causes of action, Insurance Policies, and proceeds therefrom transferred to the Trust. Recognizing the complete assignment of the Insurance Policies and the associated claims, proceeds, and causes of action, the Settling Grantor's approval is unnecessary to settle, release, or compromise matters involving the assigned Insurance Policies and the associated claims, proceeds, and causes of action. Settling Grantors shall have no rights to make additional claims or pursue existing claims for defense or indemnity under the Insurance Policies. Each Settling Grantor covenants not to assert or claim insurance coverage under the Insurance Policies after the effective date of this Agreement. Should the Trust reach a settlement or otherwise resolve an insurance coverage dispute, each Settling Grantor acknowledges that it is not entitled to any of the proceeds or any other payments and is estopped from claiming or receiving defense or indemnity coverage under the Insurance Policies. Each Settling Grantor shall fully cooperate in the following tasks:

- a. complete a diligent, good faith search to identify any evidence of Insurance Policies (including, but not limited to, a review of business records, insurance related invoices, Certificates of Insurance, accounting ledgers, correspondence, or any other insurance related documentation) in which Settling Grantor may have an interest within 30 days from the effective date of this Agreement, and immediately notify Trustee of the discovery of any evidence of additional Insurance Policies (even if such discovery occurs more than 30 days after the effective date of this Agreement);
- b. take such actions and execute and deliver such documents and instruments as may be necessary or appropriate to transfer, convey, release, compromise, and/or assign Settling Grantor's interest pursuant to any or all of the Insurance Policies;
- c. cooperate with Trustee's efforts to pursue claims and/or causes of action under the Insurance Policies and to avoid any interference with Trustee's recovery efforts or management of the Trust and Fund;

d. identify any documents or sources of documents that, to Settling Grantor's knowledge, may relate to operations, activities, or corporate histories of entities that conducted operations at the Site ("Site Records");

e. provide Trustee and the Trust's representatives with full access to Site Records; and

f. provide Trustee and the Trust's representatives with any other assistance necessary to accomplish the duties, purposes, and goals of the Trust, including but not limited to the execution of any documents associated with the Trust and its recovery activities in a timely fashion.

5. *Policy Payments.* The Fund shall consist of, without limitation, any and all payments made by any insurer or any other party pursuant to Section IV of this Agreement in connection with the Insurance Policies including, without limitation, any and all amounts paid by any insurer or any other party in settlement or satisfaction of claims or rights arising under the Insurance Policies ("Policy Payments") and any interest, earnings, and profits thereon, less any payments or distributions made by Trustee pursuant to this Agreement; and

6. *Acceptance of Trust.* Trustee, by his execution of this Agreement, agrees that he understands and accepts the Trust established herein, accepts his rights, powers, duties, and responsibilities as Trustee of the Trust, and agrees to perform his duties and responsibilities as Trustee of the Trust.

III. FUTURE GRANTOR(S) AND FUNDS

7. *Future Grantor(s).* Trustee shall have authority to permit other and additional Grantor(s) to contribute to the Trust and Trust Fund and to enter into subsequent agreements with future and additional similarly situated Grantor(s) binding said Grantor(s) to the terms of this Agreement.

8. *Future Trust Fund Contributions.* Trustee shall have authority to accept, without limitation, assets, funds, moneys, and/or other property, of subsequent Grantor(s) to be added to

the Trust Fund and to manage the same as a single undivided corpus without regard to the percentage or form of contribution from any current or future Grantor(s), whether presently known or unknown. Nothing in this Agreement should be construed to limit the type, form, amount, or character of any assets, funds, moneys, and/or other property, whether real, personal or otherwise, that the Trustee may accept in Trust, in his or her discretion, and control and manage in accord with the terms of this Agreement.

9. *Single Trust.* Unless the terms of any separate trust document expressly indicate otherwise, future contributions to the Trust by future Grantor(s), accepted by the Trustee, shall not create a new trust but shall vest in this Trust and Trust Fund and add to the single Fund created by this Agreement.

IV. TRUSTEE AUTHORITY

10. *Pursuance and Liquidation of Claims.* Trustee shall have broad discretion and authority to take such actions as Trustee deems necessary or appropriate to pursue claims, payments, and proceeds for the Trust. Trustee is expressly authorized and empowered to take such actions as Trustee in its discretion deems necessary or appropriate to pursue applicable claims. Without limiting Trustee's general discretion and authority granted pursuant to this Section, Grantor(s) and Trustee agree that Trustee shall have the authority to:

negotiate, settle, release, compromise, or otherwise adjust all claims, policies, and payments arising under or in connection with the trust assets, including but not limited to the Insurance Policies and other legal claims;

engage such outside legal counsel, consultants, accountants, and other independent advisors as Trustee deems necessary or appropriate;

compensate, or arrange or agree to compensate, such persons, using Trust proceeds;

make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

compromise, liquidate, or otherwise adjust all claims and Trust assets in favor of, or against, the Fund;

sell, dispose of, or liquidate all Trust assets in favor of the Fund;

purchase and maintain insurance coverage covering Trustee's personal liability for any acts or omissions in his capacity as Trustee and any other insurance products that are reasonable and appropriate to protect Trustee from personal liability.

11. *Payments from the Fund.* Trustee shall have authority to make such payments and distributions from the Fund as set forth and prescribed in Section VII below.

12. *General Authority.* Trustee shall have such further authority as provided by law and this Agreement.

V. TRUST MANAGEMENT

13. *Investing Trust Assets.* Consistent with the liquidity needed to make payments authorized or required by this Agreement, Trustee shall invest the income of the Fund in liquid investments only. Trustee shall be under no liability for interest or producing income on any Fund assets. Investments are limited to demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured, and other liquid investments, such as Treasury bills.

14. *Checking Account.* Consistent with the liquidity needed to make payments authorized or required by this Agreement, the Trustee may deposit and maintain Trust funds in a checking account, provided that 100% of any such deposit, account, or other obligation is insured by FDIC or FSLIC.

15. *Trustee's Other Trust Management Duties.* Trustee shall discharge his duties regarding the Fund solely in the interest of the Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, consistent with the duties of a fiduciary. Notwithstanding any other provision of this Agreement, Trustee shall not take actions that cause Grantor(s) to incur any personal financial liability.

16. *Management of Trust Funds and Assets.* The Trust Fund shall represent a single indivisible Fund irrespective of the identity or number of any current or future Grantor(s), and the Trustee shall expressly be permitted, in his or her discretion, to hold and co-mingle all assets, funds, moneys, and/or other property granted by any current or future Grantor(s) in a single Fund held for the benefit and interest of Beneficiaries.

VI. TAXES AND EXPENSES

17. All taxes of any kind that may be assessed or levied against, or in respect of, the Fund shall be paid solely from the Fund. The compensation of Trustee and all other expenses incurred by Trustee in connection with the administration of this Trust shall be paid solely from the Fund.

18. *Grantor Environmental Trust.* For federal income tax purposes only, the Trust hereby established is intended to be an environmental remediation trust as described in U.S. Treasury Regulation § 301.7701-4(e). The Trust shall have no purpose in generating income or profit other than income generated by temporary investment of Trust assets, which income shall be incorporated into the corpus of the Trust and used exclusively for Trust purposes. The Trust has been organized with no objective to continue or engage in the conduct of a trade or business.

VII. PAYMENTS FROM THE FUND

19. *Payments of Professional Fees and Expenses by Trustee.* Trustee shall make payments from the Fund to compensate or reimburse Trustee and persons or entities engaged by Trustee pursuant to Section IV of this Agreement. Additionally, pursuant to the preceding Section, Trustee shall make payments from the Fund for taxes and expenses. Upon payment to third parties pursuant to this paragraph, such funds shall no longer constitute part of the Fund as defined herein.

20. *Disbursement Instructions for Distributions to Beneficiaries.* Trustee shall make all disbursements from the Fund 75% to EPA and 25% to the Natural Resource Trustees.

21. *Threshold Fund Maintenance.* Trustee shall be entitled to retain in the Fund, in his or her discretion, up to \$50,000 to further the Trust's purposes as set forth herein, which amount may be withheld from disbursement.

22. *Notice; Disbursement Payments from Fund.* Within 15 days of receipt of Policy Payments exceeding \$50,000, or when the value of the Fund exceeds \$75,000, Trustee shall notify Beneficiaries in writing. Within 15 days of providing the above notice, Trustee shall pay the balance of the Fund, less \$50,000, plus reasonable amounts for anticipated expenses, to Beneficiaries in accordance with Paragraph 20.

23. *Direct Disbursement Payments to Beneficiaries.* Trustee shall make all payments to EPA by federal electronic funds transfer (“EFT”) into the Bunker Hill Mining and Metallurgical Complex Site Special Account within the EPA Hazardous Substance Superfund, or as otherwise provided by EPA, consistent with written instructions provided by EPA. EPA may retain or use funds received from, or on behalf of, Grantors and deposited into the Bunker Hill Mining and Metallurgical Complex Site Special Account to conduct or finance response actions at or in connection with the Site, or transfer all or any portion of such funds to the EPA Hazardous Substance Superfund. Trustee shall make all payments to the Natural Resource Trustees for the Site by federal electronic funds transfer (“EFT”) to NRDAR Account No. 14X5198, or as otherwise provided by the Natural Resource Trustees, consistent with written instructions provided by the Natural Resource Trustees. The Natural Resource Trustees may retain or use funds received from, or on behalf of, Grantors to conduct or finance restoration activities in connection with the Site.

VIII. ROLE OF GRANTOR

24. Except as provided in Section II, Grantors shall have no rights, responsibilities, or obligations pursuant to this Agreement. Grantors have no residual interest or entitlement to the Fund, trust proceeds, or any proceeds of trust assets.

IX. INSPECTION OF RECORDS, AUDITS, AND REPORTING

25. *Accounting Records and Audits.* Trustee shall keep or cause to be kept proper books, records, and accounts of all transactions relating to the Trust in such form as will enable Trustee to produce all reports and accountings and to submit to any audit required pursuant to this Agreement. If requested by Beneficiaries, Trustee shall make available all Trust books and records, including accounting records, to Beneficiaries for inspection within five (5) days of Beneficiaries' request. If requested by Beneficiaries, and in advance of the intended termination of the Trust, Trustee shall arrange for an independent accounting audit and shall furnish Beneficiaries with the report and any other documents prepared by the independent accounting auditor.

26. *Quarterly Reports.* Within 30 days after the end of each calendar quarter, Trustee shall provide Beneficiaries with a quarterly report summarizing the financial status and activities of the Trust in the previous quarter.

X. ADVICE OF COUNSEL

27. Trustee may at any time consult with counsel with respect to any issue regarding construction of this Agreement, or any action to be taken pursuant to the Agreement. To the extent permitted by law, Trustee shall not be liable for actions taken on advice of counsel.

XI. TRUSTEE COMPENSATION

28. Trustee shall be entitled to compensation for its/his/her services on a basis in the amount listed in Exhibit 2, which Grantors and Trustee agree constitutes a reasonable fee as of the date of this Agreement.

XII. RESIGNATION, REMOVAL, AND SUCCESSOR TRUSTEE

29. *Term of Trustee.* Trustee shall serve for a term of five years. Trustee shall automatically be reappointed to subsequent five-year terms unless, no less than 90 days prior to the end of the current term, Beneficiaries notify Trustee that Trustee will not be reappointed.

30. *Resignation of Trustee.* Trustee may resign at any time, with or without cause, and without the necessity of any court proceeding, by giving not less than 60 days prior written notice to Beneficiaries. Such resignation shall take effect on the date set forth in the resignation notice, which shall be a date not less than 60 days after the date Trustee submits the resignation notice to Beneficiaries, unless a successor Trustee is appointed sooner pursuant to Paragraph 32 of this Agreement, in which event such resignation shall take effect immediately after the appointment and acceptance of the successor Trustee.

31. *Removal of Trustee.* Notwithstanding any other provision of this Agreement, Trustee may be removed at any time, with or without cause, and without the necessity of any court proceeding, pursuant to an instrument executed by the EPA Region 10 Director of the Office of Environmental Cleanup or his designee, or to his successor, and delivered to Trustee.

32. *Successor Trustee.* If Trustee resigns, is removed, is not reappointed for a subsequent term, or otherwise ceases to act as Trustee, a successor Trustee shall be appointed pursuant to an instrument executed by Beneficiaries without the necessity of any court proceeding. The successor Trustee, by its execution of an addendum to this Agreement, agrees that the successor Trustee understands and accepts the Trust established by this Agreement, accepts the rights, powers, duties, and responsibilities set forth in this Agreement, and agrees to perform Trustee's duties in accordance with this Agreement.

33. *Transfer to Successor Trustee.* Every successor Trustee appointed pursuant to the preceding paragraph shall execute and deliver to his predecessor an instrument accepting his appointment. Thereupon, such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all the estates, rights, powers, title to Trust assets, trusts, duties, and other Trustee obligations pursuant to this Agreement. Nevertheless, upon written request of the successor Trustee, such predecessor Trustee shall execute and deliver an instrument transferring to such successor Trustee all the estates, rights, powers, title to Trust assets, trusts, duties, and other obligations of such predecessor Trustee pursuant to this Agreement, and every predecessor Trustee shall deliver all assets of the Trust held by him to his successor; provided, however, that before any such delivery is required or made, all allowable fees and expenses of any such predecessor Trustee shall be paid in full. If payment of any fees or expenses is disputed, predecessor Trustee shall not withhold delivery of any undisputed assets to successor Trustee.

XIII. NOTICES

34. Whenever, pursuant to the terms of this Agreement, written notice or communications are required or authorized, or a report or other document is required or authorized to be sent, the written notice, document, or communication shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give written notice of a change. All notices and submissions shall be considered effective on receipt, unless otherwise provided.

As to Beneficiaries:

EPA

Cara Steiner-Riley and Kelly Cole
Region 10
United States Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

Director, Office of Environmental Cleanup
Region 10
United States Environmental Protection Agency

1200 Sixth Avenue, ECL-111
Seattle, Washington 98101

Natural Resource Trustees

Barry Stein
U.S. Department of the Interior
805 SW Broadway Ste. 600
Portland Oregon 97201

Phillip Cernera
Lake Management Director
Coeur d'Alene Tribe
850 A Street
P.O. Box 408
Plummer, ID 83851

As to Trustee:

Daniel Silver
Coeur d'Alene Basin Insurance Recovery Trust Trustee
606 Columbia Street NW, Suite 212
Olympia, Washington 98501

Kurt Petersen
Cascadia Law Group PLLC
1201 Third Avenue, Suite 320
Seattle, WA 98101

As to Grantors:

Gary D. Babbitt
Hawley, Troxell Ennis & Hawley
PO Box 1617
Boise, Idaho 83702
Counsel for Mascot Mines, Inc. and Nabob Silver-Lead Company, Inc.

United Resource Holdings Group, Inc.
Laughlin Associates, Inc., Registered Agent
2533 North Carson Street
Carson City, Nevada 89706

XIV. IRREVOCABILITY AND TERMINATION

35. *Irrevocability of Trust.* The Trust is irrevocable. Grantors retain no equitable, legal, beneficial, or residual interest in the Trust.

36. *Termination of Trust.* This Trust shall continue until, and Trustee shall terminate this Trust within 30 days after, in the judgment of the Beneficiaries, (1) all claims against Trustee in his individual and official capacity have been resolved; (2) Trustee has made all valid claims based on the Insurance Policies and received all proceeds based on the Insurance Policies, or until the remaining valid claims based on the Insurance Policies are no longer worthwhile of further recovery efforts; (3) Trustee has made all remaining valid legal claims assigned to the Trust and received any proceeds from such claims, or until the remaining valid claims are no longer worthwhile of further recovery efforts; and (4) Trustee has paid all expenses and obligations of the Trust. Upon termination of the Trust, Trustee shall liquidate all remaining Trust property, pay all final Trust administration expenses, and distribute the remaining balance of the Trust to the Beneficiaries in accordance with Paragraph 20.

XV. AMENDMENT AND MODIFICATION

37. The Trust may be amended or modified in order to further the material purposes of the Trust as follows:

a. amendments or modifications shall be valid only if made pursuant to a written instrument agreed to and signed by the Trustee and the Beneficiaries;

b. amendments or modifications to the Trust shall be deemed effective upon the date of mutual execution by the Trustee and the Beneficiaries, unless the terms of the amendment or modification expressly provide otherwise;

c. amendments or modifications to the Trust shall be incorporated into this Agreement and be binding on all then-present and future Grantor(s) and Trustee(s) and Beneficiaries;

d. amendments or modifications of the Trust may be done without notice to or consent of Grantor(s) and without the necessity of court intervention or approval.

XVI. IMMUNITY AND INDEMNIFICATION

38. *No Liability of the Beneficiaries.* Notwithstanding any other provision of this Agreement, the Beneficiaries, including, without limitation, the United States of America and the Tribe, and their departments and agencies shall not be liable to the Trust, Trustee, or Grantors for any damages or payments whatsoever arising out of matters related to the Trust, and Trustee shall not have power to sue Beneficiaries in any forum except for the purpose of enforcing the terms of this Agreement.

39. *Extent of Liability of Trustee.* Trustee shall not be liable for his acts, omissions, or defaults, regardless of whether or not occasioned by the negligence of Trustee, nor for the acts, omissions, or defaults of any agent or depository employed, appointed, or selected by Trustee, except for such Trustee's own acts, omissions, or defaults occasioned by the gross negligence or willful misconduct of such Trustee. Trustee shall not be responsible for the acts or omissions of any predecessor Trustee nor, in particular, shall Trustee be liable for the exercise or nonexercise of any power or discretion properly delegated pursuant to this Agreement.

40. *Indemnification of Trustee.* To the extent of Trust assets only, the Trust shall indemnify, hold harmless, and defend, to the extent allowed by law, Trustee from any personal liability to which Trustee may be subjected by reason of any act or omission in Trustee's official capacity, including all expenses reasonably incurred in Trustee's defense. This provision shall not apply with respect to gross negligence or willful misconduct by Trustee.

41. *Survivorship of Protections.* Notwithstanding any other provision of this Agreement, the terms and conditions of Paragraphs 38, 39, and 40 of this Agreement shall survive the termination of the Trust, and the protections in Paragraphs 38, 39, and 40 of this Agreement may not be altered, amended, or revoked without the consent of the Beneficiaries and the Trustee of the protections set forth in each respective paragraph.

42. *No Bond or Insurance Required.* No bond or other security shall be exacted or required of any Trustee appointed by this Agreement.

XVII. CHOICE OF LAW

43. This Agreement shall be administered, construed, and enforced according to the laws of the State of Idaho.

XVIII. MISCELLANEOUS

44. *Headings.* Headings to sections and paragraphs of this Agreement are included for the convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

45. *Particular Words.* Any word contained in the text of this Agreement shall be read as singular or plural and masculine, feminine, or neuter, as may be applicable or permissible in the particular context. The word “person” shall include an individual, partnership, association, company, corporation, or municipal corporation.

46. *Preservation of Privilege.* In connection with the rights, claims, and causes of action transferred to the Trust, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) related to the Trust or the assets assigned to the Trust (including, but not limited to, the Insurance Policies, legal claims, and all related and unrelated assigned claims) shall vest in the Trust and its representatives, and the parties are authorized to take all necessary actions to effectuate the transfer of such privileges.

47. *Disputes; Jurisdiction of Court.* All disputes arising between or among Trustee, Grantors, or Beneficiaries that cannot be resolved informally shall be resolved in the United States District Court for the District of Idaho. Trustee and Grantors agree to, and accept the jurisdiction of, the United States District Court for the District of Idaho for this purpose.

48. *Complete Agreement.* This Agreement contains the final expression and the complete and exclusive statement of the terms of the Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written representations, understandings and agreements between them with respect thereto.

49. *Authorized Signatories.* Each person signing this Agreement represents and warrants that he or she is duly authorized to enter into this Agreement by the entity on whose behalf the person is signing. Each person signing this Agreement has consulted or had the opportunity to consult independent legal counsel regarding the effect of this Agreement and understands the legal ramifications of entering into this Agreement.

50. *Effective Date.* The effective date of this Agreement shall be the date that a Settling Grantor's Consent Decree is entered by the Court.

51. *Severability.* If any provision of this Agreement, or its application to any person in any circumstances, is deemed invalid or unenforceable by a court of law, the application of such provision to other persons and in circumstances other than those to which the provision is invalid or unenforceable, and the other provisions of this Agreement shall not be affected by such invalidity or unenforceability.

IN WITNESS WHEREOF the parties have executed this Agreement.

THE UNDERSIGNED PARTIES enter into the Coeur d'Alene Basin Insurance Recovery Trust Trust Agreement:

**SETTLING GRANTOR MASCOT MINES,
INC.**

Joseph Wallace
President, Mascot Mines, Inc.

ATTEST: _____

Federal Tax Identification Number:

82-0200595

**SETTLING GRANTOR NABOB SILVER-
LEAD COMPANY**

Martin Clemets
President, Nabob Silver-Lead Company

ATTEST:

Federal Tax Identification Number:

82-0183554

**SETTLING GRANTOR UNITED
RESOURCE HOLDINGS GROUP, INC.**

Mark Kersey
President, United Resource Holdings Group, Inc.

ATTEST: _____

Federal Tax Identification Number:

90-0409097

TRUSTEE

— N — 

— Daniel Silver — / —

ATTEST: —

EXHIBIT 1

Nabob Silver-Lead Company

Fireman's Fund Insurance Company Policy Nos.:

XAC 169656 (2/1/55 - 2/1/56)

PC5 200500 (2/1/56 - 2/1/57)

PC5 202866 (2/1/57 - 2/1/58)

PC5 203933 (2/1/58 - 2/1/59)

PC1 220695 (2/1/59 - 2/1/60)

PC1 238129 (2/1/60 - 2/1/61)

PC1 252199 (2/1/61 - 2/1/62)

PC1 268533 (2/1/62 - 2/1/63)

PC1 283710 (2/1/63 - 2/1/64)

Mascot Mines, Inc.

Policy No. 55PS54809

EXHIBIT 2

Trustee Compensation

The Trustee's compensation is set at \$150 per hour. Trustee may propose increases to the above-set compensation no more frequently than twice per calendar year, which proposed increases shall be negotiated in good faith between Trustee and Beneficiaries. Trustee shall further be reimbursed for actual travel expenses (including mileage) and direct costs associated with administration of the Trust.