

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA

Plaintiff,

v.

MINNIE MOORE RESOURCES, INC.
et al.

Defendants.

CASE NO. 2:CV-11-127-BLW

CONSENT DECREE BETWEEN THE UNITED STATES AND DEFENDANT MINNIE
MOORE RESOURCES, INC.

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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 Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606(a) and 9607(a), as amended (“CERCLA”), alleging that Minnie Moore Resources, Inc. (Settling Defendant) is jointly and severally liable for costs incurred by EPA in responding to the release or threat of release of hazardous substances at the Minnie Moore Mine Site (“the Site”) in Bellevue, Blaine County, Idaho.

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at the Site under Section 104 of CERCLA, 42 U.S.C. § 9604. EPA incurred response costs as a result of performing a removal action at the Site from September 26, 2005 to October 20, 2005. This removal action consisted of grading a pile of contaminated mine tailings waste located at the Site, excavation of contaminated soil from other areas of the Site and consolidation of this soil into the tailings waste pile, reshaping of the waste pile to promote surface water run-off, placement of permanent clean soil on top of the waste pile, and planting vegetation on top of the clean soil to stabilize the waste pile and reduce the infiltration of precipitation to the underlying contamination. EPA has also incurred response costs for enforcement activities related to the removal action for the Site. As of April 5, 2011, EPA has incurred approximately \$664,405.94 in response costs at or in connection with the Site.

C. Settling Defendant was incorporated in Nevada in July 1986 and has owned the Property within the Site since at least November 2001.

D. 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 for the response costs incurred for the Site, taking into consideration the ability of Settling Defendant to pay response costs 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 that Settling Defendant has an inability to pay and is unable to make any payments towards the costs incurred by EPA for the Site.

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

F. The United States and Settling Defendant agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Settling Defendant.

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:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 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 defense that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendant and Settling Defendant's 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.

III. STATEMENT OF PURPOSE

3. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to enter into Proprietary Controls and to pay certain sales proceeds for Transfer of the Property to resolve its alleged civil liability for the Site under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, as provided in the Covenants Not to Sue by Plaintiff in Section XI, and subject to the Reservations of Rights by United States in Section XII. 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, in accordance with Section XIV (Effect of Settlement/Contribution Protection) herein.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning 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, this Consent Decree shall control.
- c. “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.
- d. “DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

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

h. "Fair Market Value" shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, "Fair Market Value" shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, "Fair Market Value" shall mean the balance of Settling Defendant's mortgage on the Property at the time of the transfer.

i. "Financial Information" shall mean those financial documents identified in Appendix C.

j. "Institutional Controls" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the removal action performed by EPA at the Site; and/or (c) provide information intended to modify or guide human behavior at the Site.

k. "Net Sales Proceeds" shall mean the total value of all consideration received by Settling Defendant for any Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) less i) the balance of Settling Defendant's mortgage on the

Property, ii) closing costs limited to those reasonably incurred and actually paid by Settling Defendant associated with the Transfer of the Property, and iii) federal and state taxes owed on the proceeds. Settling Defendant shall provide EPA with documentation sufficient to show the total value of all consideration received by Settling Defendant for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the Property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items i) through iii) above. This documentation shall include, but not be limited to, the report of an appraisal paid for by Settling Defendant, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties. The documentation shall also include, either as part of the report or separately, 1) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and 2) a schedule showing all outstanding indebtedness on the Property.

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

m. "Parties" shall mean the United States and Settling Defendant.

n. "Plaintiff" shall mean the United States.

o. "Property" shall mean that portion of the Site that is owned by Settling Defendant as of November 2001. The Property is located on the Site and includes the Tailings and Soil Waste Pile, a concrete foundation that housed a former mill, the burnt remains of a shop building, a bunkhouse, a domestic well, and two dry tailings overflow ponds.

p. "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.

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

r. "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).

s. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

t. "Settling Defendant" shall mean Minnie Moore Resources, Inc.

u. "Site" shall mean the Minnie Moore Mine Site located one and a half miles west of Bellevue, Idaho in Blaine County, which includes the Property and Tailings and Soil Waste Pile, and is also generally designated by the following property description:

Commencing at the Northwest Corner of said Section 35; thence
S 40°32'24" E 731.39 feet; thence
S 48°15'00" E 200.00 feet to the centerline of Pine Street; thence
N 69°30'00" E along the center line of Pine Street 360.00 Feet to the
centerline intersection of
Pine Street and South Main Street; thence
S 48°15'00" E along the centerline of South Main Street 30.00 Feet to the Real
Point of
Beginning; thence
From said Real Point of Beginning, S 48°15'00" E along the centerline of
South Main Street
170.00 feet to the centerline intersection of South Main and Willow Streets;
thence
N 69°30'00" E 37.01 feet; thence
N 35°00'00" W 42.79 feet; thence
N 89°59'48" E 255.17 feet; thence
N 39°39'19" W 126.66 feet; thence
N 29°45'01" W 133.62 feet; thence
N 50°26'50" W 86.27 feet; thence
N 35°20'57" W 164.55 feet; thence
N 22°52'02" W 91.59 feet; thence
N 30°35'56" W 65.84 feet; thence
N 19°03 '38" W 82.58 feet; thence
N 33°27'10" W 117.03 feet; thence
N 45°42 '07" W 102.97 feet; thence
S 69°30'00" W 102.60 feet; thence
N 48°15'00" W 170.00 feet to the southerly right of way of Pine Street; thence
S 69°30'00" W along the southerly right of way of Pine Street, 400.00 feet to
the Real Point of Beginning

v. "State" shall mean the State of Idaho.

w. “Tailings and Soil Waste Pile” shall mean the approximately 6-acre contaminated tailings and soil waste pile that is located on the Site just south of the Site entrance from Broadford Road and is bordered on the east by Broadford Slough.

x. “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.

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

z. “Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “hazardous waste” under Idaho Code § 39-4403(8).

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

5. Settling Defendant shall, at least 60 days prior to the anticipated Transfer of any real property located at the Site, give written notice: (a) to the transferee regarding this Consent Decree and any Institutional Controls regarding the real property and any additional settlements entered into with other PRPs regarding the Site; and (b) to EPA and the State regarding the anticipated Transfer, including the name and address of the transferee and the date on which the transferee was notified of this Consent Decree and any Institutional Controls and any additional settlements entered into with other PRPs regarding the Site.

6. Settling Defendant may Transfer any real property located at the Site only if: (a) any Proprietary Controls required by Paragraph 8.c have been recorded with respect to the real property; or (b) Settling Defendant has obtained an agreement from the transferee, enforceable by Settling Defendant and the United States, to (i) allow access and restrict land/water use, pursuant to Paragraphs 8.a and 8.b, (ii) record any Proprietary Controls on the real property, pursuant to Paragraph 8.c, and (iii) subordinate its rights to any such Proprietary Controls,

pursuant to Paragraph 8.c, and EPA has approved the agreement in writing. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 6, 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 Settling Defendant in obtaining compliance with the agreement.

7. In the event of any Transfer of real property located at the Site, unless the United States otherwise consents in writing, Settling Defendant shall continue to comply with its obligations under this Consent Decree.

VI. ACCESS AND INSTITUTIONAL CONTROLS

8. With respect to the Property and/or other real property located within the Site that 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, 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:

- i. Monitoring, investigation, removal, remedial or other activities at the Site;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents;
- vii. Assessing Settling Defendant's compliance with this Consent Decree;

viii. 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

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

b. Commencing on the Effective Date of this Consent Decree, Settling Defendant shall not use the Site in any manner that EPA or the State 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 removal action performed at the Site. The restrictions shall include, but not be limited to, ; (1) No structures of any kind or nature shall be constructed or located on the Tailings and Soil Waste Pile; (2) No vehicles of any kind or type shall be allowed on the Tailings and Soil Waste Pile; (3) No excavation, digging, or trenching activities in or on the Tailings and Soil Waste Pile; and (4) No activity that may damage or disturb the integrity of the vegetative cover on the Tailings and Soil Waste Pile that would result in releasing or exposing Waste Material to the environment; and

c. Settling Defendant shall:

i. Within 60 Days of the Effective Date of this Consent Decree, execute and record in the appropriate land records office Proprietary Controls that are substantially the form attached hereto as Appendix A that are enforceable under State law and 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 8.a; and (ii) grant the right to enforce land/water use restrictions set forth in Paragraph 8.b. The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State 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 is a “third-party beneficiary,” allowing EPA and/or the State to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.

ii. Within 30 days of the Effective Date, submit to EPA for review and approval regarding such real property: (i) the draft Proprietary Controls that are in substantially the same form attached hereto as Appendix A; 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 the Effective Date of this Consent Decree, Settling Defendant has not obtained agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 8. The United States may, as it deems appropriate, assist Settling Defendant in obtaining the release or subordination of a prior lien or encumbrance.

iii. Within 15 Days of EPA’s approval and acceptance of the Proprietary Controls 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 Controls with the appropriate land records office within the time frame given in Paragraph 8.c(i). Within 30 Days of recording the Proprietary Controls, 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 Controls showing the clerk’s recording stamps. If the Proprietary Controls are 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.

9. For purposes of Paragraph 8.c(ii), “best efforts” includes the payment of reasonable sums of money to obtain an agreement to release or subordinate a prior lien or encumbrance. If, within 15 days of the Effective Date, Settling Defendant has not obtained, pursuant to Paragraph 8.c(ii), agreements from any other holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Settling Defendant shall promptly notify EPA in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 8. EPA may, as it deems appropriate, assist Settling Defendant in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse EPA for all costs incurred, direct or indirect, by the United States in obtaining such release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

10. If EPA 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 and the State’s efforts to secure and ensure compliance with such governmental controls.

11. Notwithstanding any provision of this Consent Decree, EPA retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

VII. PAYMENT OF PROCEEDS OF SALE OF PROPERTY

12. Settling Defendant agrees to not sell, assign, transfer or exchange the Property except by means of a Transfer.

a. Settling Defendant shall pay to EPA 50% of the Net Sales Proceeds of each Transfer of the Property, or any portion of the Property, that occurs within 3 years of the effective date of this Consent Decree. Payment shall be made to EPA within 30 days of the effective date of the Transfer of the Property.

b. Payment to EPA shall be made by certified or cashier's check made payable to EPA Hazardous Substance Superfund. The check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID #, and DOJ Case Number 90-11-3-09515, and shall be sent to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, Missouri 63197-9000

c. Settling Defendant shall send notice to EPA that payment has been made.

d. At least 30 days prior to any such Transfer, Settling Defendant shall notify EPA of the proposed Transfer, which notice shall include a description of the Property to be sold, the identity of the purchaser, the terms of the transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of the Property based upon an appraisal obtained within 1 year of the Transfer. Settling Defendant shall notify EPA of the completion of the Transfer within 10 days of the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA.

e. In the event of a Transfer of the Property or any portion thereof, Settling Defendant shall continue to be bound by all the terms and conditions, and subject to all the

benefits, of this Consent Decree, except if the United States and Settling Defendant modify this Consent Decree in writing.

VIII. DUE CARE AND COOPERATION

13. Nothing in this Consent Decree shall be construed to relieve Settling Defendant of Settling Defendant's duty to exercise due care with respect to Waste Material at the Site or Settling Defendant's duty to comply with all applicable laws and regulations.

14. Settling Defendant agrees to cooperate fully with EPA and the State in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its 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 of such release or threatened release.

IX. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

15. If Settling Defendant fails to comply with the requirements of Section V (Notice to Successors-in-Title and Transfers of Real Property), VI (Access and Institutional Controls), VII (Payment of Proceeds of Sale of Property), or VIII (Due Care and Cooperation), the United States may, in addition to any other available remedies or sanctions, bring an action against Settling Defendant seeking injunctive relief to compel compliance with this Consent Decree and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for the failure to comply.

X. CERTIFICATION OF SETTLING DEFENDANT

16. 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 EPA, 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 (other than identical copies) relating to its potential liability regarding the Site after the earlier of notification of potential liability or the filing of a suit against it regarding the Site;

c. 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 EPA and the time Settling Defendant executes this Consent Decree; and

d. Has and will comply fully with any and all EPA and State 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), and State law.

XI. COVENANTS BY UNITED STATES

17. In consideration of the valuable consideration that will be provided by Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Section XII (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against Settling Defendant pursuant to Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607 relating to the Site. With respect to present and future liability, these

covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of all obligations under this Consent Decree, including but not limited to the filing of the Proprietary Controls with the State's appropriate land records office, and the veracity of the information provided to EPA 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 EPA by Settling Defendant. If the Financial Information submitted by Settling Defendant is subsequently determined by EPA to be false or, in any material respect, inaccurate, this covenant not to sue and the contribution protection in Section XIV (Effect of Settlement/Contribution Protection) shall be null and void. These covenants extend only to Settling Defendant and do not extend to any other person.

XII. RESERVATION OF RIGHTS BY UNITED STATES

18. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the covenants provided by the United States in Section XI (Covenants by United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against 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 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 for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. Liability based on the ownership of the Site by Settling Defendant when such ownership commences after signature of this Consent Decree by Settling Defendant;

g. Liability based on the operation of the Site by Settling Defendant; and

h. Liability based on Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, after signature of this Consent Decree by Settling Defendant.

19. Notwithstanding any other provisions of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen proceedings against 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 Settling Defendant, or the financial certification made by Settling Defendant in Section IX is false or in any material respect, inaccurate.

XIII. COVENANTS NOT TO SUE BY SETTLING DEFENDANT

20. 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 with respect to the Site or this Consent Decree, including but not limited to:

a. Any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Section 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 pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

21. Except as provided in Paragraph 23 (waiver of claims or causes of action) and Paragraph 26 (waiver of claim-splitting defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XII (Reservations of Rights by United States), other than in Paragraph 18.a (claims for failure to meet a requirement of the Consent Decree) or 18.d (criminal liability), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

22. 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).

23. 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, 42 U.S.C. §§ 9607(a) and 9613) that it may have for all matters relating to the Site against any other person who is a PRP 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.

XIV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

24. 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 23 (waiver of claims or causes of action), 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, pursuant to Sections 113(f)(2) and (3) of

CERCLA, 42 U.S.C. §§ 9613(f)(2) and (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).

25. 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 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 or any other person except for the State; provided, however, that if the United States exercises rights under the reservations in Section XII (Reservation of Rights by United States), other than in Paragraphs 18.a (claims for failure to meet a requirement of this Consent Decree) and 18.d (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

26. In any subsequent administrative or judicial proceeding initiated by the United States 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 in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants by the United States set forth in Section XI (Covenants by United States).

XV. RETENTION OF JURISDICTION

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

XVI. INTEGRATION/APPENDICES

28. 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 is attached and incorporated into this Consent Decree: “Appendix A” is the draft form of Proprietary Controls; “Appendix B” is the Site Map of the Tailings and Soil Waste Pile; and “Appendix C” is the list of financial documents submitted to EPA by Settling Defendant.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

29. 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 reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations that indicate this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to entry of this Consent Decree without further notice.

XVIII. SIGNATORIES/SERVICE

30. The undersigned representative of Settling Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or her delegate, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

31. 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 has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

32. 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 including, but not limited to, service of summons, 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.

33. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XIX. FINAL JUDGMENT

34. 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.

XX. DISCLAIMER

35. This Consent Decree in no way constitutes a finding by EPA as to the risks to human health and the environment that may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

SO ORDERED THIS ____ DAY OF _____, _____.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Minnie Moore Resources, Inc.*, relating to the Minnie Moore Mining Site in Bellevue, Blaine County, Idaho.

FOR THE UNITED STATES OF AMERICA

Date:

5/17/12

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THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Minnie Moore Mine Site.

FOR DEFENDANT MINNIE MOORE RESOURCES INC.

Date: 04/19/2012

CARL JOHNSTON
Minnie Moore Resources, Inc.
3154 S. Sorrel St.
Las Vegas, NV 89146

President
PRESIDENT

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Carl Johnston

Title: President

Address: 3154 S. Sorrel St., Las Vegas, NV 89146