

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA, STATE
OF NEW MEXICO, NEW MEXICO
ENVIRONMENT DEPARTMENT, and
NAVAJO NATION, a federally recognized
Indian Tribe,

Plaintiffs,

v.

UNITED NUCLEAR CORPORATION,

Defendant.

Civil Action No. _____

CONSENT DECREE

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I. BACKGROUND

1. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“USEPA”), filed a complaint in this matter under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606 and 9607, against United Nuclear Corporation (“UNC”).

2. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by the USEPA and the Department of Justice (“DOJ”) for response actions at an area defined herein as the Consent Decree Site (“CD Site”), which encompasses activities at both the Northeast Church Rock Mine Site (“NECR Site”) and the United Nuclear Corporation Site (“UNC Site”), together with accrued interest; and (2) performance by the defendant of a response action at the CD Site consistent with the National Contingency Plan, 40 C.F.R. part 300 (“NCP”). In addition, the United States alleges in the Complaint that this Court has jurisdiction over General Electric Company (“GE”) sufficient to ensure the obligations of the Settling Defendants in this Decree and to accord complete relief among the Parties, pursuant to the All Writs Act, 28 U.S.C. § 1651, and Fed. R. Civ. Proc. 19(a).

3. In accordance with the NCP and section 121(f)(1)(F) of CERCLA the USEPA notified the State of New Mexico (“State”) on November 17, 2023, and the Navajo Nation (“Tribe”) on November 16, 2023, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial design and remedial action (“RD/RA”) for the CD Site, and the USEPA has provided the State and the Tribe with an opportunity to participate in such negotiations and to be a party to this Consent Decree (“Decree”).

4. The State has also filed a complaint against UNC in this Court alleging that UNC is liable to the State under section 107 of CERCLA.

5. The Tribe has also filed a complaint against UNC in this Court alleging that UNC is liable to the Tribe under section 107 of CERCLA and sections 2403, 2501 and 2503 of the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act (“NNCERCLA”), 4 N.N.C. §§ 2403, 2501 and 2503.

6. In accordance with section 122(j) of CERCLA, on November 16, 2023, the USEPA notified the U.S. Department of the Interior, the Navajo Nation and the New Mexico Office of the Natural Resource Trustee of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under their trusteeship and encouraged the natural resource trustees to participate in the negotiation of this Decree.

7. Defendant UNC and GE (for purposes of this Decree, referred to jointly as “Settling Defendants” and individually as “Settling Defendant”), by entering into this Decree, do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the CD Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

8. In accordance with section 105 of CERCLA, the USEPA listed the UNC Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

9. In response to a release or a substantial threat of a release of hazardous substances at or from the NECR Site, the USEPA Region 9 completed an Engineering Evaluation/Cost Analysis (“EE/CA”) for the NECR Site on May 30, 2009. The EE/CA for the NECR Site analyzed removal action alternatives that included addressing disposal of most of the waste from the NECR Site at the UNC Site. Following extensive public participation, the USEPA Regions 6 and 9 jointly selected disposal of most of the NECR Site waste at the UNC Site. The decision document is entitled “Action Memorandum: Request for a Non-Time-Critical Removal Action at the Northeast Church Rock Mine Site, McKinley County, NM, Pinedale Chapter of the Navajo Nation (“2011 Action Memo”), and was approved by the USEPA Region 6 Superfund Division Director and by the USEPA Region 9 Assistant Director for the Partnership, Land Revitalization and Cleanup Branch on September 29, 2011.

10. In addition, the USEPA Region 6 adopted the EE/CA as the Remedial Investigation and Feasibility Study (“RI/FS”) for the UNC Site. The USEPA Region 6 found, in its Record of Decision for the Soils Operable Unit at the UNC Site issued on March 29, 2013, that the EE/CA fulfilled the NCP requirements for an RI/FS, in accordance with 40 C.F.R. § 300.430. In accordance with section 117 of CERCLA and 40 C.F.R § 300.430(f), the USEPA published notice of the proposed plan for remedial action on June 20, 2012, in a major local newspaper of general circulation. The USEPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting and comments received are available to the public as part of the administrative record upon which the Regional Administrator, the USEPA Region 6, based the selection of the response action.

11. The USEPA Region 6’s remedial action decision document allowing the NECR Mine Site waste to be placed at the UNC Site is embodied in the final Record of Decision (“2013 ROD”), executed on March 29, 2013, with which the State provided its concurrence. The 2013 ROD includes a summary of responses to the public comments. Notice of the final plan was published in accordance with section 117(b) of CERCLA.

12. Because the UNC Site and the NECR Site are reasonably related on the basis of geography, or on the basis of the threat or potential threat to the public health or welfare or the environment, the USEPA is treating these related facilities as one Site, i.e., the CD Site, with two operable units, for the purpose of conducting the Response Actions (as defined herein) as described in the 2013 ROD. The treatment of the facilities as one CD Site for this purpose was presented in both the 2011 Action Memo and the 2013 ROD, and subject to the respective public comment periods of those decision documents. The disposal of material from the NECR Site within the UNC Site was also subject to the public comment period associated with the License Amendment (as defined in ¶ 18) in 2023.

13. Based on the information currently available, the USEPA, the State and the Tribe each have determined that the Work will be properly and promptly conducted by Settling Defendants if conducted in accordance with this Decree.

14. On September 6, 2011, the U.S. District Court for the District of New Mexico entered a Partial Consent Decree in the case of *The General Electric Corporation and United Nuclear Corporation v. United States of America, United States Department of the Interior, United States Bureau of Indian Affairs, United States Department of Energy, and United States Nuclear Regulatory Commission*, Civil Action No. 1:10-CV-00404-MCA-RHS. (“2011 Partial

Consent Decree”). The 2011 Partial Consent Decree resolved GE and UNC CERCLA contribution claims against the United States by providing for payment by the United States of an agreed allocated share of past and future response costs incurred by GE and UNC in connection with the NECR Site. Pursuant to a “Payment Demand” (as defined in the 2011 Partial Consent Decree), the 2011 Partial Consent Decree provides for a thirty-three percent contribution by the United States, reduced to thirty percent in each applicable calendar year, “if any department, agency, or instrumentality of the United States is responsible for the long-term operation and maintenance of the [r]esponse [a]ction” as defined in the 2011 Partial Consent Decree.

15. On January 11, 2012, the U.S. District Court for the District of New Mexico entered a Consent Decree in the case of *The General Electric Company and United Nuclear Corporation v. United States of America, et al.*, Civil Action No. 1:10-CV-00404 resolving the USEPA and DOJ CERCLA response costs through July 31, 2010, incurred in connection with the NECR Site (Site/Spill ID No. 09PM).

16. On April 27, 2015, the USEPA entered into an Administrative Settlement Agreement and Order on Consent for Design and Cost Recovery, the USEPA Regions 6 and 9, CERCLA Dockets No. 09-2015-02 (R9) and 06-09-14 (R6), The General Electric Company and United Nuclear Corporation, Respondents (“AOC”). The AOC required Respondents to prepare a Design for the combined NECR/UNC Site responses and to pay the USEPA’s unreimbursed past response costs through December 31, 2013, as well as future response costs for the USEPA oversight, community outreach, and other activities under or related to the AOC.

17. The USEPA Region 6 response costs have been reimbursed through September 30, 2022. The USEPA Region 9 response costs have been reimbursed through December 31, 2022. NNEPA's response costs have been reimbursed indirectly by USEPA through a USEPA grant but the Tribe's legal response costs were not paid by a USEPA grant and have not been reimbursed; these response costs date back to July 8, 2013. The Tribe's Future Response Costs will be billed as set forth in Paragraph 57; any costs that are reimbursed by existing or future USEPA grants will not be billed by the Tribe to Settling Defendants as Future Response Costs.

18. On February 15, 2023, the United States Nuclear Regulatory Commission ("NRC") issued record of decision and amendment number 58 to NRC Material License SUA-1475 held by UNC ("License Amendment") authorizing the disposal of uranium waste material from the NECR Site within the Tailings Disposal Area at the UNC Site.

19. The Parties recognize, and the Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith, that implementation of this Decree will expedite the cleanup of the CD Site and will avoid prolonged and complicated litigation between the Parties, and that this Decree is fair, reasonable, in the public interest, and consistent with CERCLA.

NOW, THEREFORE, it is hereby **ORDERED** and **DECREED** as follows:

II. JURISDICTION AND VENUE

20. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1367, and 1345, and sections 106, 107 and 113(b) of CERCLA, and personal jurisdiction over the Parties. Venue lies in this District under section 113(b) of CERCLA and 28 U.S.C. §§ 1391(b), and 1395(a), because the CD Site is located in this judicial district. This

Court retains jurisdiction over the subject matter of this action and over the Parties for the purpose of resolving disputes arising under this Decree, entering orders, modifying this Decree, or effectuating or enforcing compliance with this Decree. Subject to ¶ 103, the Parties may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree. Settling Defendants, the State, and the Tribe agree that any future action by or among them arising under this Decree or the "matters addressed" (as defined in ¶ 86 herein) shall only be brought in this Court.

III. PARTIES BOUND

21. Settling Defendants do not object to the Court's exercise of subject matter or personal jurisdiction and do not object to venue for purposes of enforcing the Decree obligations.

22. This Decree is binding upon the United States, the State, and the Tribe and upon Settling Defendants and their successors. Unless the United States otherwise consents, (a) any change in ownership or corporate or other legal status of any Settling Defendant, including any transfer of assets, or (b) any Transfer of the CD Site or any portion thereof, does not alter any of Settling Defendants' obligations under this Decree. Settling Defendants' responsibilities under this Decree cannot be assigned except under a modification executed in accordance with ¶ 100.

23. In any action to enforce this Decree, Settling Defendants may not raise as a defense the failure of any of their officers, directors, employees, agents, contractors, subcontractors, or any person representing Settling Defendants to take any action necessary to comply with this Decree. Settling Defendants shall provide notice of this Decree to each person representing Settling Defendants with respect to the CD Site or the Work. Settling Defendants

shall provide notice of this Decree to each contractor performing any Work and shall ensure that notice of the Decree is provided to each subcontractor performing any Work.

IV. DEFINITIONS

24. Subject to the next sentence, terms used in this Decree that are defined in CERCLA or the regulations promulgated under CERCLA have the meanings assigned to them in CERCLA and the regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Decree, the following definitions apply:

“2011 Action Memo” means the USEPA document entitled “Action Memorandum: Request for a Non-Time-Critical Removal Action at the Northeast Church Rock Mine Site, McKinley County, NM, Pinedale Chapter of the Navajo Nation,” which was jointly approved by the USEPA Region 6 Superfund Division Director and by the USEPA Region 9 Assistant Director for the Partnership, Land Revitalization and Cleanup Branch on September 29, 2011, provided as Appendix C to this Consent Decree.

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

“Consent Decree” or “Decree” means this consent decree, all appendices attached hereto (listed in Section XIX), and all deliverables incorporated into the Decree under ¶ 8.6 of the SOW. If there is a conflict between a provision in Sections I through XXIV and a provision in any appendix or deliverable, the provision in Sections I through XXIV controls.

“CD Site” means the UNC Site and the NECR Site, combined for purposes of the Response Actions pursuant to section 104(d)(4) of CERCLA and in accordance with the 2013 ROD. The CD Site is depicted generally on the maps provided as Appendix A.

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

“DOJ” means the United States Department of Justice.

“Effective Date” means the date upon which the Court’s approval of this Decree is recorded on its docket.

“USEPA” means the United States Environmental Protection Agency.

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

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs), excepting the limitation on costs set forth in subparagraph (viii) of this paragraph, that the United States, the State, or the Tribe: (a) pays between January 1, 2023 and the Effective Date, in the case of the Region 9 of the EPA; between October 1, 2022 and the Effective Date, in the case of Region 6 of the EPA; between March 1, 2023 and the Effective Date, in the case of DOJ; and between January 1, 2025 and the Effective Date, in the case of the Tribe; and (b) pays after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing Settling Defendants’ performance of the Work, including travel and laboratory expenses; (iii) in assisting or taking action to obtain access or use restrictions under ¶ 33.e; (iv) in securing, implementing, monitoring, maintaining, or enforcing Institutional Controls, including any compensation paid; (v) in taking action under ¶ 44 (Access to Financial

Assurance); (vi) in taking response action described in ¶ 83 because of Settling Defendants' failure to take emergency action under ¶ 5.5 of the SOW; (vii) in implementing a Work Takeover under ¶ 31; (viii) in implementing community involvement and relocation activities, including the cost of any technical assistance grant provided under section 117(e) of CERCLA, with no more than 67% of the costs of developing, planning for, and implementing Voluntary Alternative Housing; (ix) in enforcing this Decree, including all costs paid under Section XII (Dispute Resolution) and all litigation costs; and (x) in conducting periodic reviews in accordance with section 121(c) of CERCLA. Future Response Costs shall also include all Interest on Navajo Nation Past Response Costs that Settling Defendants have agreed to pay under this Decree that have accrued pursuant to section 107(a) of CERCLA during the period from January 1, 2023 to the Effective Date.

“General Electric Company” or “GE” means the General Electric Company, a New York corporation, and its successors. The General Electric Company owns the United Nuclear Corporation as a wholly-owned, indirect subsidiary, and as a Settling Defendant, guarantees the United Nuclear Corporation's performance of the Work.

“Including” or “including” means “including but not limited to.”

“Institutional Controls” means proprietary controls (*i.e.*, easements or covenants running with the land) that: (i) limit land, water, or other resource use, provide access rights, or both; and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office; or (iii) state, tribal, or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices) that: (a) limit land, water, or other resource use to minimize the potential for human exposure to

Waste Material at or in connection with the CD Site; (b) limit land, water, or other resource use to implement, ensure noninterference with, or ensure the protectiveness of the Response Actions; (c) provide information intended to modify or guide human behavior at or in connection with the CD Site; or (d) any combination thereof.

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

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Navajo Nation Past Response Costs” or “NN Past Response Costs” shall mean all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the Navajo Nation paid in connection with the CD Site from July 8, 2013 through December 31, 2024.

“NECR Site” shall mean the Northeast Church Rock Mine Site, an area of uranium and radium-226 (Ra-226) contamination associated with the former Northeast Church Rock uranium mine and associated structures and lands. The mine and associated structures collectively occupied approximately 125 acres and are located largely on Navajo tribal trust lands within the Eastern Agency of the Navajo Nation, approximately 17 miles northeast of Gallup, New Mexico near the intersection of State Highway 566 and Red Water Pond Road. The NECR Site includes all areas where uranium and Ra-226 contamination from mining activities at the NECR Site have

been, or are currently, located and all areas in very close proximity to those areas needed to support implementation of the Response Actions. For purposes of this Decree, the NECR Site is Operable Unit No. 1 of the CD Site as defined above.

“Northeast Church Rock Special Account,” Site/Spill ID No. O9PM, shall mean the account within the USEPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the NECR Site, or to be transferred by the USEPA to the USEPA Hazardous Substance Superfund, established pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“NMED” shall mean the New Mexico Environment Department and any successor departments or agencies of the State.

“NNCERCLA” shall mean the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, 4 N.N.C. §§ 2102-2805.

“NNCERCLA NECR/UNC Special Account” shall mean the special account that is established for the CD Site by NNEPA pursuant to the NNCERCLA, 4 N.N.C. § 2504(A)(5), and that is within the existing Hazardous Substance Fund established under the NNCERCLA, 4 N.N.C. § 2701.

“NNDOJ” shall mean the Navajo Nation Department of Justice and its successor departments or agencies.

“NNEPA” shall mean the Navajo Nation Environmental Protection Agency and its successor departments or agencies.

“Owner Settling Defendant” means UNC.

“Paragraph” or “¶” means a portion of this Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States, the State, the Tribe, and Settling Defendants.

“Past Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States paid in connection with the CD Site as follows: before September 30, 2022, in the case of USEPA Region 6; before December 31, 2022, in the case of USEPA Region 9; and before February 28, 2023, in the case of DOJ, plus all interest on such costs accrued under section 107(a) of CERCLA through the applicable date.

“Performance Standards” means the cleanup levels and other measures of achievement of the remedial action objectives and/or action levels, as set forth in the 2011 Action Memo and the 2013 ROD.

“Plaintiffs” means the United States, the State, and the Tribe.

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

“2013 ROD” means the USEPA document entitled “Record of Decision, United Nuclear Corporation Site, McKinley County, New Mexico, EPA ID NMD030443303; Operable Unit: OU 02, Surface Soil Operable Unit,” which was approved by the USEPA Region 6 Superfund Division Director on March 29, 2013, provided as Appendix D to this Consent Decree.

“Remedial Action” means the remedial action selected in the 2013 ROD.

“Remedial Design” means those activities to be undertaken by Settling Defendants to develop plans and specifications for implementing the Remedial Action as set forth in the SOW.

“Removal Action” means the removal action selected in the 2011 Action Memo.

“Response Actions” means all of the actions selected in either the 2011 Action Memo or the 2013 ROD or in both of these decision documents collectively for the CD Site.

“Scope of the Response Actions” means the scope of the response actions set forth in ¶ 1.3 of the SOW.

“Section” means a portion of this Decree identified by a Roman numeral.

“Settling Defendants,” for purposes of this Decree, means the UNC and GE and their respective successors and assigns. As used in this Decree, this definition means all settling defendants, collectively, and each settling defendant, individually.

“Site” means the “CD Site,” as defined above, specifically, the UNC Site and the NECR Site, combined for purposes of response action pursuant to section 104(d)(4) of CERCLA and in accordance with the 2013 ROD. The Site is depicted generally on the map provided as Appendix A.

“State” means the State of New Mexico.

“Statement of Work” or “SOW” means the document attached as Appendix B, which describes the activities Settling Defendants must perform to implement and maintain the effectiveness of the Response Actions.

“Tailings Disposal Area” means the three covered tailings cells on the UNC Site.

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

“Tribe” means the Navajo Nation.

“United Nuclear Corporation” or “UNC” means the United Nuclear Corporation, a Delaware corporation authorized to do business in the State of New Mexico and a wholly-owned, indirect subsidiary of GE.

“United Nuclear Corporation Superfund Site” or “UNC Site” means the area that includes the former ore processing mill facilities and the Tailings Disposal Area, which cover about 25 and 100 acres, respectively. The UNC Site includes all of the land within Section 2, Township 16 North, Range 16 West and all of the land within Section 36, Township 17 North, Range 16 West in McKinley County, New Mexico. The UNC Site is bounded on the north by the Navajo Nation Indian Reservation. The UNC Site includes all areas where uranium and Ra-226 contamination from mining and milling activities at the UNC Site have been, or are currently, located and all areas in very close proximity to those areas needed to support implementation of the Response Actions. For purposes of this settlement, the UNC Site is Operable Unit No. 2 of the CD Site defined above.

“United Nuclear Corporation Superfund Site Future Response Costs Special Account” Site Spill ID No. 0615, OU2, means the 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 UNC Site, or to be transferred by the USEPA to the EPA Hazardous Substance Superfund, established pursuant to section 122(b)(3) of CERCLA.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including the USEPA.

"Voluntary Alternative Housing" shall mean housing that the USEPA will provide to the Red Water Pond Road Community Voluntary Housing Group pursuant to the implementation of

the Response Actions. "Red Water Pond Road Community Voluntary Alternative Housing Group" or "RWPR Community VAHG" means the households along Red Water Pond Road in the immediate vicinity of the NECR Site that EPA has determined will experience significant disruption as a result of the Response Actions.

"Waste Material" means (1) any "hazardous substance" under section 101(14) of CERCLA; (2) any pollutant or contaminant under section 101(33) of CERCLA; (3) any "solid waste" under section 1004(27) of RCRA; (4) any source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011, *et seq.*; (5) any toxic pollutant or water contaminant as defined by Title 20, Chapter 6, Part 2 of the New Mexico Administrative Code; (6) any constituent identified in Table 1 of the New Mexico Environment Department's *Risk Assessment Guidance for Site Investigation and Remediation*; or (7) any "hazardous substance" under the NNCERCLA, 4 N.N.C. § 2104(Q), except petroleum, as defined therein, that is not otherwise specifically listed or designated as a hazardous substance under Subparagraphs (1) through (6) of § 2104(Q).

"Work" means all obligations of Settling Defendants under Sections VI (Performance of the Work) through IX (Indemnification and Insurance) to implement the Response Actions.

"Work Takeover" means the USEPA's assumption of the performance of any of the Work in accordance with ¶ 31.

V. OBJECTIVES

25. The objectives of the Parties in entering into this Decree are to protect public health, welfare, and the environment through the design (to the extent not already completed under the 2011 Action Memo and the 2013 ROD), implementation, and maintenance of the

Response Actions at the CD Site by Settling Defendants, to pay response costs of Plaintiffs, and to resolve and settle the claims of Plaintiffs against Settling Defendants and the claims of the State and the Tribe and Settling Defendants that were, or could have been, asserted against the United States with regard to the CD Site as provided in this Decree.

VI. PERFORMANCE OF THE WORK

26. Settling Defendants shall finance, develop, implement, operate, maintain, and monitor the effectiveness of the Response Actions in accordance with the SOW, any modified SOW and all the USEPA-approved, conditionally approved, or modified deliverables as required by the SOW or modified SOW.

27. Nothing in this Decree, and no USEPA approval of any deliverable required under this Decree, constitutes a warranty or representation by the USEPA or the State or the Tribe that completion of the Work will achieve the Performance Standards.

28. Settling Defendants' obligations to finance and perform the Work, and to pay amounts due under this Decree, are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to participate in the implementation of the Decree, the remaining Settling Defendant shall complete the Work and make the required payments.

29. Modifications to the Response Actions and Further Response Actions

a. Nothing in this Decree limits the USEPA's authority to modify the Response Actions or to select further response actions for the CD Site in accordance with the requirements of CERCLA and the NCP. Nothing in this Decree limits Settling Defendants'

rights, under sections 113(k)(2) or 117 of CERCLA, to comment on any modified or further response actions proposed by the USEPA.

b. If the USEPA modifies the Response Actions in order to achieve or maintain the Performance Standards, or both, or to carry out and maintain the effectiveness of the Response Actions, and such modification is consistent with the Scope of the Response Actions, then Settling Defendants shall implement the modification as provided in ¶ 29.d, subject to their right to initiate dispute resolution under Section XII by filing a notice of dispute within 60 days of USEPA's notice of modification.

c. If the USEPA selects a further response action for the CD Site pursuant to ¶ 82 then, upon receipt of notice from USEPA Settling Defendants shall implement the further response action as provided in ¶ 29.d, subject to their right to initiate dispute resolution under Section XII by filing a notice of dispute within 60 days of receipt of USEPA's notice of further response action.

d. Upon receipt of notice from the USEPA that it has modified the Response Actions as provided in ¶ 29.b, or selected a further response action as provided in ¶ 29.c, and requested that Settling Defendants implement the modified Response Actions or further response action, Settling Defendants shall implement the modification or further response action, subject to their right to initiate dispute resolution under Section XII within 60 days after receipt of the USEPA's notice. Settling Defendants shall modify the SOW, or related work plans, or both, in accordance with the Response Actions' modification or further response action or, if Settling Defendants invoke dispute resolution, in accordance with the final resolution of the dispute. The Response Actions' modification or further response action, the approved, modified SOW, and

any related work plans, will be deemed to be incorporated into, and enforceable under, this Decree.

30. **Compliance with Applicable Law.** Nothing in this Decree affects Settling Defendants' obligations to comply with all applicable federal, tribal, and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal, tribal, and state environmental laws as set forth in the 2011 Action Memo, the 2013 ROD and the SOW. The activities conducted in accordance with this Decree, if approved by the USEPA, will be deemed to be consistent with the NCP as provided under 40 C.F.R. § 300.700(c)(3)(ii).

31. **Work Takeover**

a. If the USEPA determines that Settling Defendants (i) have ceased to perform any of the Work required under this Section; (ii) are seriously or repeatedly deficient or late in performing the Work required under this Section; or (iii) are performing the Work required under this Section in a manner that may cause an endangerment to human health or the environment, the USEPA may issue a notice of Work Takeover to Settling Defendants, including a description of the grounds for the notice and a period of time ("Remedy Period") within which Settling Defendants must remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless the USEPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Settling Defendants do not remedy to the USEPA's satisfaction the circumstances giving rise to the notice of Work Takeover, the

USEPA may notify Settling Defendants and, as it deems necessary, commence a Work Takeover.

32. The USEPA may conduct a Work Takeover during the pendency of any dispute under Section XII (Dispute Resolution) but shall terminate the Work Takeover if and when: (i) Settling Defendants remedy, to the USEPA's satisfaction, the circumstances giving rise to the notice of Work Takeover; or (ii) upon the issuance of a final determination under Section XII (Dispute Resolution) that the USEPA is required to terminate the Work Takeover.

VII. PROPERTY REQUIREMENTS

33. Agreements Regarding Access and Noninterference

a. As used in this Section, "Affected Property" means any real property, including the CD Site, where the USEPA determines, at any time, that access; land, water, or other resource use restrictions; Institutional Controls; or any combination thereof, are needed to implement the Response Actions.

b. Settling Defendants shall use best efforts to secure from the owner(s) and/or lessees of all Affected Property (other than tribal trust land), an agreement, enforceable by Settling Defendants and by Plaintiffs, requiring such owner and/or lessee to provide Plaintiffs and Settling Defendants, and their respective representatives, contractors, and subcontractors, with access at all reasonable times to the property to conduct any activity regarding the Decree, including the following:

- i. implementing the Work and overseeing compliance with the Decree;
- ii. conducting investigations of contamination at or near the CD Site;

- iii. assessing the need for, planning, or implementing additional response actions at or near the CD Site;
- iv. determining whether the CD Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Decree; and
- v. implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

For purposes of this ¶ 33, “lessees” includes homesite lease holders, residents with or without homesite leases, and grazing permit holders.

c. Further, each agreement required under ¶ 33.b must commit the owner and/or any lessee to refrain from using its property in any manner that the USEPA or NNEPA determines will pose an unacceptable risk to human health or to the environment as a result of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Response Actions including the following:

- i. engaging in activities that could interfere with the Response Actions;
- ii. using contaminated groundwater;
- iii. engaging in activities that could result in human exposure to contaminants in soils and groundwater;
- iv. constructing new structures that may interfere with the Response Actions; and
- v. constructing new structures that may cause an increased risk of inhalation of contaminants.

d. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Settling Defendants would use to obtain access or use restrictions in a

timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements.

e. Settling Defendants shall provide to the USEPA, the State and the Tribe a copy of each agreement required under ¶ 33.b. If Settling Defendants cannot accomplish what is required through best efforts in a timely manner, they shall notify the USEPA and the Tribe and include a description of the steps taken to achieve the requirements. If the United States deems it appropriate, it may assist Settling Defendants, or take independent action, to obtain such access or use restrictions. If the Tribe deems it appropriate, it may assist Settling Defendants, or take independent action, to obtain such access or use restrictions.

34. Access and Noninterference by Owner Settling Defendant. The Owner Settling Defendant shall: (a) provide Plaintiffs and the Settling Defendants, and their representatives, contractors, and subcontractors, with access at all reasonable times to the CD Site to conduct any activity regarding the Decree; and (b) refrain from using the CD Site in any manner that the USEPA determines will pose an unacceptable risk to human health or to the environment because of exposure to Waste Material, or will interfere with or adversely affect the implementation, integrity, or protectiveness of the Response Actions.

35. Access and Noninterference by the United States and the Tribe. The United States and the Tribe shall: (a) provide Plaintiffs and the Settling Defendants, and their representatives, contractors, and subcontractors, with access to the CD Site at all reasonable times for the purpose of conducting any activity pursuant to the Decree; and (b) refrain from using the CD Site in any manner that the USEPA or NNEPA determine will pose an unacceptable risk to

human health or to the environment, or will interfere with, or adversely affect the implementation, integrity, or protectiveness of the Response Actions.

36. If the USEPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state, tribal, or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are appropriate, Settling Defendants shall cooperate with the USEPA's, the State's and/or the Tribe's efforts to secure and ensure compliance with such Institutional Controls.

37. Notice to Successors-in-Title

a. Owner Settling Defendant shall, within 30 days after the Effective Date, submit for the USEPA's approval a notice to be recorded regarding its property at the CD Site in the appropriate land records. The notice must: (1) include a proper legal description of the property; (2) provide notice to all successors-in-title: (i) that the property is part of, or affected by, the CD Site; (ii) that the USEPA has selected a remedy for the CD Site; and (iii) that potentially responsible parties have entered into a Decree requiring implementation of such remedy; and (3) identify the U.S. District Court in which the Decree was filed, the name and civil action number of this case, and the Effective Date of the Decree. Owner Settling Defendant shall record the notice within 14 days after the USEPA's approval of the notice and submit to the USEPA, within 14 days thereafter, a certified copy of the recorded notice.

b. Owner Settling Defendant shall, prior to entering into a contract to Transfer any of its property that is part of the CD Site, or 60 days prior to a Transfer of such property, whichever is earlier:

- i. notify the proposed transferee that the USEPA has selected a remedy regarding the CD Site, that potentially responsible parties

have entered into a Consent Decree requiring implementation of such remedy, and that the United States District Court has entered the Decree (identifying the name and civil action number of this case and the date the Court entered the Decree); and

- ii. notify the USEPA, the State and the Tribe of the name and address of the proposed transferee and provide the USEPA, the State and the Tribe with a copy of the notice that it provided to the proposed transferee.
- iii. record the notice, approved by USEPA, required in ¶ 37.a.

38. Notwithstanding any provision of the Decree, the USEPA, the State and/or the Tribe retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions and Institutional Controls, including related enforcement authorities, under CERCLA, RCRA, and any other applicable statute or regulations.

VIII. FINANCIAL ASSURANCE

39. To ensure completion of the Work required under Section VI, Settling Defendants shall secure financial assurance, initially in the amount of \$53 million (“Estimated Cost of the Work”), for the benefit of the USEPA. The financial assurance must: (i) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the USEPA; and (ii) be satisfactory to the USEPA. As of the date of lodging of this Decree, the sample documents can be found under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Settling Defendants may use multiple financial assurance mechanisms if they are limited to: surety bonds guaranteeing payment; letters of

credit; trust funds; insurance policies; or some combination thereof as listed below. The following are acceptable mechanisms:

- a. a surety bond guaranteeing payment, performance of the Work, or both, that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. an irrevocable letter of credit, payable to the USEPA or at the direction of the USEPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal, tribal, or state agency;
- c. a trust fund established for the benefit of the USEPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal, tribal, or state agency;
- d. a policy of insurance that provides the USEPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal, tribal, or state agency;
- e. a demonstration by one or more Settling Defendants that they meet the relevant test criteria of ¶ 40; or
- f. a guarantee to fund or perform the Work executed in favor of the USEPA by a company: (1) that is a direct or indirect parent company of a Settling Defendant or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Settling Defendant; and (2) demonstrates to the USEPA’s satisfaction that it meets the financial test criteria of ¶ 40.

40. Settling Defendants seeking to provide financial assurance by means of a demonstration or guarantee under ¶ 39.e or 39.f must, within 30 days after the Effective Date:

a. demonstrate that:

i. the affected Settling Defendant or guarantor has:

1. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
2. net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and tangible net worth of at least \$10 million; and assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

ii. the affected Settling Defendant or guarantor has:

1. a current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
2. tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
3. tangible net worth of at least \$10 million; and
4. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. submit to the USEPA for the affected Settling Defendant or guarantor:

(1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from the USEPA. As of the date of lodging of this Decree, a sample letter and report is available under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

41. Settling Defendants providing financial assurance by means of a demonstration or guarantee under ¶ 39.e or 39.f must also:

a. annually resubmit the documents described in ¶ 40.b within 90 days after the close of the affected Settling Defendant's or guarantor's fiscal year;

b. notify the USEPA within 30 days after the affected Settling Defendant or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. provide to the USEPA, within 30 days of the USEPA's request, reports of the financial condition of the affected Settling Defendant or guarantor in addition to those specified in ¶ 40.b; USEPA may make such a request at any time based on a belief that the affected Settling Defendant or guarantor may no longer meet the financial test requirements of this Section.

42. Settling Defendants have selected, and the USEPA has found satisfactory, a surety bond for \$53 million as an initial form of financial assurance. Settling Defendants shall, within 60 days after the Effective Date, seek the USEPA's approval of the form of Settling Defendants' financial assurance. Within 60 days after receipt of such approval, Settling Defendants shall secure all executed or otherwise finalized mechanisms or other documents consistent with the USEPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Financial Management Officer, to DOJ, and to the USEPA, the State and the Tribe.

43. Settling Defendants shall diligently monitor the adequacy of the financial assurance. If any Settling Defendant becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Settling Defendant shall notify the USEPA of such information within seven days. If the USEPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, the USEPA will notify the affected Settling Defendant of such determination. Settling Defendants shall, within 30 days after notifying USEPA or receiving notice from the USEPA under this Paragraph, secure and submit to the USEPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. The USEPA may extend this deadline for such time as is reasonably necessary for the affected Settling Defendant, in the exercise of due diligence, to secure and submit to the USEPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Settling Defendants shall follow the procedures of ¶ 45 in seeking approval of, and submitting

documentation for, the revised or alternative financial assurance mechanism. Settling Defendants' inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Decree.

44. Access to Financial Assurance

a. If the USEPA issues a notice of a Work Takeover under ¶ 31.b, then, in accordance with any applicable financial assurance mechanism, the USEPA may require that any funds guaranteed be paid in accordance with ¶ 44.d.

b. If the USEPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and the affected Settling Defendant fails to provide an alternative financial assurance mechanism in accordance with this Section at least 60 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 44.d.

c. If, upon issuance of a notice of a Work Takeover under ¶ 31.b, either: (1) the USEPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under ¶¶ 39.e or 39.f, then the USEPA is entitled to demand an amount, as determined by the USEPA, sufficient to cover the cost of the remaining Work to be performed. Settling Defendants shall, within 90 days after such demand, pay the amount demanded as directed by the USEPA.

d. Any amounts required to be paid under this ¶ 44 must be, as directed by the USEPA: (i) paid to the USEPA in order to facilitate the completion of the Work by the USEPA or by another person; or (ii) deposited into an interest-bearing account, established at a

duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to the USEPA, the USEPA may deposit the payment into the Fund, into the Northeast Church Rock Special Account, or into the United Nuclear Corporation Superfund Site Future Response Costs Special Account to be retained and used to conduct or finance response actions at or in connection with the CD Site, or to be transferred by the USEPA to the Fund.

45. **Modification of Amount, Form, or Terms of Financial Assurance.** Beginning after the first anniversary of the Effective Date, and no more than once per calendar year, Settling Defendants may submit a request to change the form, terms, or amount of the financial assurance mechanism. Any such request must be submitted to the USEPA in accordance with ¶ 42, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. The USEPA will notify Settling Defendants of its decision regarding the request. Settling Defendants may initiate dispute resolution under Section XII regarding the USEPA's decision within 30 days after receipt of the decision. Settling Defendants may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with the USEPA's approval; or (b) in accordance with any resolution of a dispute under Section XII. Settling Defendants shall submit to the USEPA, within 30 days after receipt of the USEPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

46. **Release, Cancellation, or Discontinuation of Financial Assurance.** Settling Defendants may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if the USEPA issues a Certification of Work Completion under ¶ 5.10 of the SOW; (b) in accordance with the USEPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XII.

IX. INDEMNIFICATION AND INSURANCE

47. Indemnification

a. Plaintiffs do not assume any liability by entering into this Decree or by virtue of any designation of Settling Defendants as the USEPA's, the State's, and the Tribe's representatives under section 104(e)(1) of CERCLA. Settling Defendants shall indemnify and save and hold harmless Plaintiffs and their officials, agents, employees, contractors, subcontractors, and representatives for or from any claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on Settling Defendants' behalf or under their control, in carrying out activities under this Decree, including any claims arising from any designation of Settling Defendants as the USEPA's, the State's, and the Tribe's authorized representatives under section 104(e)(1) of CERCLA. Further, Settling Defendants agree to pay Plaintiffs all costs they incur, including attorneys' fees and other expenses of litigation and settlement, arising from, or on account of, claims made against Plaintiffs based on negligent or other wrongful acts or omissions of Settling Defendants, their

officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities under this Decree. Plaintiffs may not be held out as parties to any contract entered into by or on behalf of Settling Defendants in carrying out activities under this Decree. The Settling Defendants and any such contractor may not be considered an agent of Plaintiffs.

b. Each Plaintiff shall give Settling Defendants notice of any claim for which such Plaintiff plans to seek indemnification in accordance with this ¶ 47 and shall consult with Settling Defendants prior to settling such claim.

48. Except for any “Payment Demand” made under, or claims reserved under, the 2011 Partial Consent Decree, Settling Defendants covenant not to sue and shall not assert any claim or cause of action against Plaintiffs for damages or reimbursement or for set-off of any payments made or to be made to Plaintiffs, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work or other activities on or relating to the CD Site, including claims on account of construction delays. In addition, Settling Defendants shall indemnify and save and hold Plaintiffs harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work at or relating to the CD Site, including claims on account of construction delays.

49. **Insurance.** Settling Defendants shall secure, by no later than 15 days before commencing any onsite Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance

with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name Plaintiffs as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Settling Defendants under this Decree. Settling Defendants shall maintain this insurance until the first anniversary after issuance of the USEPA's Certification of Remedial Action Completion under ¶ 5.10 of the SOW. In addition, for the duration of this Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Decree. Prior to commencement of the Work, Settling Defendants shall provide to the USEPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to the USEPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Settling Defendants shall ensure that all submittals to the USEPA under this Paragraph identify the CD Site name and the civil action number of this case.

X. PAYMENTS FOR RESPONSE COSTS

50. **Payment for Past Response Costs.** The United States acknowledges that Settling Defendants have fully reimbursed the United States for its Past Response Costs, as defined in this Decree, in connection with the CD Site.

51. **Payments by Settling Defendants for Future Response Costs of the United States**

a. **Future Response Costs.** Settling Defendants shall make payment of Future Response Costs to the USEPA in accordance with the requirements specified in ¶ 53.

b. The USEPA will deposit the amounts paid under ¶ 51.a into the Northeast Church Rock Special Account (SSID # 09PM for USEPA Region 9 costs) and the United Nuclear Corporation Superfund Site Special Account (SS/ID # 0615 OU2 for the USEPA Region 6 costs). The USEPA will retain and use these funds to conduct or finance future response actions at or in connection with the CD Site.

52. **Periodic Bills by United States.** On a periodic basis, each USEPA Regional office will send Settling Defendants a bill for Future Response Costs, including a “Summary Report” listing direct and indirect costs paid by the USEPA, its contractors, subcontractors, the State, and DOJ. Settling Defendants may initiate a dispute under Section XII regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether the USEPA has made an arithmetical error; (ii) whether the USEPA has included a cost item that is not within the definition of Future Response Costs; or (iii) whether the USEPA has paid excess costs as a direct result of an USEPA action that was inconsistent with a specific

provision or provisions of the NCP. Settling Defendants must specify in the Notice of Dispute the contested costs and the basis for the objection.

53. **Payment of Bill from the United States.** Settling Defendants shall pay the bill, or if they initiate dispute resolution, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Settling Defendants shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Settling Defendants shall make payment at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the CD Site/Spill ID and DJ numbers listed in ¶ 98 and the purpose of the payment. Settling Defendants shall send notices of this payment to DOJ and the USEPA.

54. **Deposit of Payments by the United States.** The USEPA may, in its unreviewable discretion, deposit the amounts paid under ¶¶ 50 and 51 in the Fund, in the Northeast Church Rock Special Account (for the USEPA Region 9) or United Nuclear Corporation Superfund Site Future Response Costs Special Account (for the USEPA Region 6), as appropriate, or both. The USEPA may, in its unreviewable discretion, retain and use any amounts deposited in the Northeast Church Rock Special Account or United Nuclear Corporation Superfund Site Future Response Costs Special Account to conduct or finance response actions at or in connection with the CD Site, or transfer those amounts to the Fund.

55. **Payment by Settling Defendants for NN Past Response Costs.** Within 30 days after the Effective Date, Settling Defendants shall pay the NNEPA \$54,328.75 for Navajo Nation Past Response Costs. Payment shall be made in accordance with ¶ 58.

56. **Payments by Settling Defendants to the Tribe for Future Response Costs.**

a. **Future Response Costs.** Settling Defendants shall make payment in accordance with the requirements specified in ¶ 58.

b. The NNEPA will deposit amounts paid under ¶¶ 55 and 56.a in the NNCERCLA Hazardous Substances Fund in a subaccount for NECR/UNC. These funds shall be retained and used by the NNEPA to conduct or finance future response actions at or in connection with the CD Site.

57. **Periodic Bills by the Tribe.** On a periodic basis, the NNEPA will send Settling Defendants a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by the NNEPA, the NNDOJ, contractors, and subcontractors. Settling Defendants may initiate a dispute under Section XII regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether the NNEPA has made an arithmetical error; (ii) whether the NNEPA has included a cost item that is not within the definition of Future Response Costs; or (iii) whether the NNEPA has paid excess costs as a direct result of a NNEPA action that was inconsistent with a specific provision or provisions of the NCP. Settling Defendants must specify in the Notice of Dispute the contested costs and the basis for the objection.

58. **Payment of Bill from the Tribe.** Settling Defendants shall pay the bill, or if they initiate dispute resolution, the uncontested portion of the bill, if any, within 30 days after

Settling Defendants' receipt of the bill. Settling Defendants shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Settling Defendants shall make payment by wire transfer in accordance with instructions to be provided by the NNEPA. Settling Defendants shall send notices of this payment to the NNEPA and the NNDOJ.

XI. FORCE MAJEURE

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

60. If any event occurs for which Settling Defendants will or may claim a force majeure, Settling Defendants shall notify the USEPA's Project Coordinator by email. The

deadline for the initial notice is 5 days after the date Settling Defendants first knew or should have known that the event would likely delay performance. Settling Defendants shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by, Settling Defendants knew or should have known. Within 30 days thereafter, Settling Defendants shall send a further notice to the USEPA, the State and the Tribe that includes: (i) a description of the event and its effect on Settling Defendants' completion of the requirements of the Decree; (ii) a description of all actions taken or to be taken to prevent or minimize the adverse effects or delay; (iii) the proposed extension of time for Settling Defendants to complete the requirements of the Decree; (iv) a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (v) all available proof supporting their claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Settling Defendants from asserting any claim of force majeure regarding that event, provided, however, that if the USEPA, despite late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 59 and whether Settling Defendants have exercised their best efforts under ¶ 59, the USEPA may, in its unreviewable discretion, excuse in writing Settling Defendants' failure to submit timely or complete notices under this Paragraph.

61. The USEPA, after a reasonable opportunity for review and comment by the State and the Tribe, will notify Settling Defendants of its determination whether Settling Defendants are entitled to relief under ¶ 59, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of

any other obligation. Settling Defendants may initiate dispute resolution under Section XII regarding the USEPA's determination within 15 days after receipt of the determination. In any such proceeding, Settling Defendants have the burden of proving that they are entitled to relief under ¶ 59 and that their proposed extension was or will be warranted under the circumstances.

62. The failure by the USEPA to timely complete any activity under the Decree or the SOW is not a violation of the Decree, provided, however, that if such failure prevents Settling Defendants from timely completing a requirement of the Decree, Settling Defendants may seek relief under this Section.

XII. DISPUTE RESOLUTION

63. Unless otherwise provided in this Decree, Settling Defendants must use the dispute resolution procedures of this Section to resolve any dispute arising under this Decree. Settling Defendants shall not initiate a dispute challenging the 2013 ROD. The Plaintiffs may enforce any requirement of the Decree that is not the subject of a pending dispute under this Section.

64. A dispute will be considered to have arisen when one or more Parties sends a written notice of dispute ("Notice of Dispute"). Disputes arising under this Decree must in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations may not exceed 45 days after the dispute arises unless all parties to the dispute otherwise agree. If the Parties to the dispute cannot resolve the dispute by informal negotiations, the position advanced by the Plaintiffs is binding unless Settling Defendants initiate formal dispute resolution under ¶ 65. By agreement of the Parties to the

dispute, mediation may be used during this informal negotiation period to assist the Parties to the dispute in reaching a voluntary resolution or narrowing of the matters in dispute.

65. Formal Dispute Resolution

a. **Statements of Position.** Settling Defendants may initiate formal dispute resolution by serving on the Plaintiffs, within 30 days after the conclusion of informal dispute resolution under ¶ 64, an initial statement of position regarding the matter in dispute. The Plaintiffs' responsive statements of position are due within 30 days after receipt of the initial statement of position. All statements of position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 15 days after receipt of the response. If appropriate, the Plaintiffs may extend the deadlines for filing statements of position for up to 45 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** The Director of the Superfund & Emergency Management Division, the USEPA Region 9, will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Settling Defendants unless they timely seek judicial review under ¶ 66.

c. **Compilation of Administrative Record.** The USEPA shall compile an administrative record regarding the dispute, which must include all statements of position, replies, supplemental statements of position, and the Formal Decision.

66. Judicial Review

a. Settling Defendants may obtain judicial review of the Formal Decision by filing, within 30 days after receiving it, a motion with the Court and serving the motion on all

Parties. The motion must describe the matter in dispute and the relief requested. The parties to the dispute shall brief the matter in accordance with local court rules.

b. **Review on the Administrative Record.** Judicial review of disputes regarding the following issues must be on the administrative record: (i) the adequacy or appropriateness of deliverables required under the Decree; (ii) the adequacy of the performance of the Response Actions; (iii) whether a Work Takeover is warranted under ¶ 31; (iv) determinations about financial assurance under Section VIII; (v) whether a reopener condition under ¶ 82 is satisfied, including whether the Response Actions are not protective of human health and the environment; (vi) the USEPA's selection of modified or further response actions; (vii) any other items requiring the USEPA approval under the Decree; and (viii) any other disputes that the Court determines should be reviewed on the administrative record. For all of these disputes, Settling Defendants bear the burden of demonstrating that the Formal Decision was arbitrary and capricious or otherwise not in accordance with law.

67. Judicial review of any dispute not governed by ¶ 66.b shall be governed by applicable principles of law.

68. **Disputes Regarding Future Response Costs Owed to the Tribe.** Disputes arising under this Decree between the Tribe and Settling Defendants that relate to Future Response Costs owed to the Tribe, including assessment of stipulated penalties by the Tribe regarding such Future Response Costs, shall not be considered disputes on the administrative record pursuant to ¶ 66.b and shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in ¶¶ 64 to 67, except that ¶ 66.b (review on the administrative record) shall not apply; the reference to

USEPA shall be read as a reference to NNEPA; and the reference to the Director of the Superfund & Emergency Management Division, USEPA Region 9, shall be read as a reference to the Executive Director of NNEPA. In addition, for purposes of this Paragraph only, references to “informal negotiations” in ¶ 64 shall mean the “Navajo Informal Dispute Resolution Process,” known as the “talking things out” approach, attached to this Decree as Appendix E.

69. **Escrow Account.** For disputes regarding a Future Response Cost billing, Settling Defendants shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (“FDIC”); (b) remit to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to the USEPA, the NMED, and the NNEPA copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. The USEPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Settling Defendants shall cause the escrow agent to pay the amounts due to the USEPA and/or the Tribe under ¶¶ 53 and 58, if any, by the deadline for such payment in ¶¶ 53 and 58. Settling Defendants are responsible for any balance due under ¶¶ 53 and 58 after the payment by the escrow agent.

70. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Decree, except as the USEPA agrees, or as determined by the Court. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 74.

XIII. STIPULATED PENALTIES

71. Unless noncompliance is excused under Section XI (Force Majeure); Settling Defendants are liable to the United States and the Tribe (with 25% going to the Tribe and 75% to the United States) for the following stipulated penalties:

a. for any failure: (i) to pay any amount due under Section X; (ii) to establish and maintain financial assurance in accordance with Section VIII; (iii) to submit timely or adequate deliverables under Section 9 of the SOW; or (iv) to meet the schedules in the Remedial Action Work Plan (as defined in the SOW) approved by the USEPA.

| Period of Noncompliance | Penalty Per Noncompliance Per Day |
|-------------------------|-----------------------------------|
| 1st through 14th day | \$1000 |
| 15th through 30th day | \$2000 |
| 31st day and beyond | \$3500 |

b. for any failure to submit timely or adequate deliverables required by this Decree other than those specified in ¶ 71.a:

| Period of Noncompliance | Penalty Per Noncompliance Per Day |
|-------------------------|-----------------------------------|
| 1st through 14th day | \$500 |
| 15th through 30th day | \$1000 |
| 31st day and beyond | \$2000 |

72. **Work Takeover Penalty.** If the USEPA commences a Work Takeover, Settling Defendants are liable for a stipulated penalty in the amount of \$500,000. This stipulated penalty is in addition to the remedy available to the USEPA under ¶ 44 (Access to Financial Assurance) to fund the performance of the Work by the USEPA.

73. **Accrual of Penalties.** Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Decree

prevents the simultaneous accrual of separate penalties for separate events of noncompliance with this Decree. Stipulated penalties accrue regardless of whether Settling Defendants have been notified of their noncompliance, and regardless of whether Settling Defendants have initiated dispute resolution under Section XII, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that the USEPA subsequently determines is deficient under ¶ 8.6 of the SOW, during the period, if any, beginning on the 31st day after the USEPA's receipt of such submission until the date that the USEPA notifies Settling Defendants of any deficiency;

b. with respect to a matter that is the subject of dispute resolution under Section XII, during the period, if any, beginning on the 21st day after the later of the date that the USEPA's Statement of Position is received or the date that Settling Defendants' reply thereto (if any) is received until the date of the Formal Decision under ¶ 65.b; or

c. with respect to a matter that is the subject of judicial review by the Court under ¶ 66, during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

74. Demand and Payment of Stipulated Penalties. The USEPA may send Settling Defendants a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Settling Defendants may initiate dispute resolution under Section XII within 30 days after receipt of the demand. Settling Defendants shall pay the amount demanded or, if they initiate dispute

resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Settling Defendants shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late; and (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Settling Defendants shall make payment at <https://www.pay.gov> using the link for “EPA Miscellaneous Payments Cincinnati Finance Center,” including references to the Site/Spill ID and DJ numbers listed in ¶ 98, and the purpose of the payment. Settling Defendants shall send a notice of this payment to DOJ and the USEPA. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Settling Defendants under the Decree.

75. Nothing in this Decree limits the authority of the United States, the State, and/or Tribe: (a) to seek any remedy otherwise provided by law for Settling Defendants’ failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Settling Defendants’ noncompliance with this Decree or of the statutes and regulations upon which it is based, including penalties under section 122(l) of CERCLA, provided, however, that the United States may not seek civil penalties under section 122(l) of CERCLA for any noncompliance for which a stipulated penalty is provided for in this Decree, except in the case of a willful noncompliance with this Decree.

76. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Decree.

XIV. COVENANTS BY PLAINTIFFS

77. **Covenants for Settling Defendants by the United States.** Subject to ¶¶ 81 and 82, the United States covenants not to sue or to take administrative action against Settling Defendants under sections 106 and 107(a) of CERCLA or section 7003 of RCRA regarding the CD Site, Work, Past Response Costs, and Future Response Costs.

78. **Covenants for Settling Defendants by the State.** Except as provided in ¶ 81, the State covenants not to sue or to take administrative action against Settling Defendants under section 107(a) of CERCLA or NMSA 1978, sections 69-36-1 *et seq.*, 74-4-1, *et seq.*, 74-6-1, *et seq.*, the Constitution of the State, or any other State law or common law causes of action regarding the CD Site, Work, Past Response Costs, and Future Response Costs owed to the State.

79. **Covenants for Settling Defendants by the Tribe.** Except as provided in ¶ 81, the Tribe covenants not to sue or to take administrative action against Settling Defendants under section 107(a) of CERCLA, sections 2403, 2501, and 2503 of NNCERCLA, or the Navajo Nation Solid Waste Act, 4 Navajo Code §§ 101 *et seq.*, Fundamental Law, or other Tribal law or common law causes of action regarding the CD Site, Work, Navajo Nation Past Response Costs, and Future Response Costs owed to the Tribe.

80. The covenants under ¶¶ 77-79: (a) take effect upon the Effective Date, except with respect to future liability, for which these covenants take effect upon Certification of Removal Action Completion for the NECR Site or Certification of Remedial Action Completion for the UNC Site by the USEPA under ¶ 5.10 of the SOW; (b) are conditioned on the satisfactory performance by Settling Defendants of the requirements of this Decree;

(c) extend to the successors of each Settling Defendant but only to the extent that the alleged liability of the successor of the Settling Defendant is based solely on its status as a successor of the Settling Defendant; and (d) do not extend to any other person.

81. **General Reservations.** Notwithstanding any other provision of this Decree, the United States, the State, and the Tribe reserve, and this Decree is without prejudice to, all rights against Settling Defendants regarding the following:

- a. liability for failure by Settling Defendants to meet a requirement of this Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the CD Site;
- c. liability arising from contamination of groundwater at the CD Site;
- d. liability based on Settling Defendants' ownership of the CD Site when such ownership commences after Settling Defendants' execution of this Decree;
- e. liability based on Settling Defendants' operation of the CD Site when such operation commences after Settling Defendants' execution of this Decree and does not arise solely from Settling Defendants' performance of the Work;
- f. liability based on Settling Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the CD Site, after execution of this Decree by Settling Defendants, other than as provided in the 2013 ROD or 2011 Action Memo, under this Decree, or as ordered by the USEPA;

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

h. liability, prior to achievement of Performance Standards, for additional response actions that the USEPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the Response Actions, but that are not covered by ¶ 29.b; and

i. criminal liability.

82. United States' Pre- and Post-certification Reservations

a. Notwithstanding any other provision of this Decree, the United States reserves, and this Decree is without prejudice to, the right to issue an administrative order or to institute proceedings in this action or in a new action seeking to compel Settling Defendants to perform further response actions relating to the Site, to pay the United States for additional costs of response, or any combination thereof. The United States may exercise this reservation only if, at any time, conditions at the Site previously unknown to the USEPA are discovered, or information previously unknown to the USEPA is received, and the USEPA determines, based in whole or in part on these previously unknown conditions or information, that the Remedial Action is not protective of human health or the environment.

b. Before certification of Remedial Action Completion, the information and the conditions known to the USEPA include all of that information and those conditions known to the USEPA as of the Effective Date.

c. After certification of Remedial Action Completion, the information and the conditions known to the USEPA include only that information and those conditions known to

the USEPA as of the date of Certification of Remedial Action Completion and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-Record of Decision administrative record, or in any information received by the USEPA in accordance with the requirements of this Decree prior to Certification of Remedial Action Completion.

83. Subject to ¶ 77-79, nothing in this Decree limits any authority of Plaintiffs to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the CD Site, or to request a Court to order such action.

XV. COVENANTS BY SETTLING DEFENDANTS

84. Covenants by Settling Defendants

a. Subject to ¶ 85, Settling Defendants covenant not to sue and shall not assert any claim or cause of action against the United States, the State and/or the Tribe under CERCLA, section 7002(a) of RCRA, the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, NMSA 1978, sections 69-36-1 *et seq.*, 74-4-1 *et seq.* or 74-6-1, *et seq.*, the Constitution of the State, State law, NNCERCLA, the Navajo Nation Solid Waste Act, Tribal law, or at common law regarding the Work, past response actions relating to the CD Site, Past Response Costs, Navajo Nation Past Response Costs, and Future Response Costs.

b. Subject to ¶ 85, Settling Defendants covenant not to seek reimbursement from the Fund through CERCLA or any other law for costs of the Work, past response actions

regarding the CD Site, Past Response Costs, Navajo Nation Past Response Costs, and Future Response Costs.

85. **Settling Defendants’ Reservations.** The covenants in ¶ 84 do not apply to: (i) any claim or cause of action brought, or order issued, after the Effective Date by the United States, the State, and/or the Tribe to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 81 through 82; or (ii) any Payment Demand or claim reserved under the 2011 Partial Consent Decree. For the avoidance of doubt, Past Response Costs incurred after December 31, 2010, Navajo Nation Past Response Costs, and Future Response Costs are “Future Response Costs” under the 2011 Partial Consent Decree. Additionally, notwithstanding anything to the contrary in this Decree, Settling Defendants reserve the right to challenge Settling Defendants’ responsibility for, or share of, response costs relating to Voluntary Alternative Housing. Settling Defendants reserve the right to challenge jurisdiction and venue in any court but this Court, and by entering into this Decree, Settling Defendants are not consenting to, nor intending to create jurisdiction or venue in, any court but this Court.

XVI. EFFECT OF SETTLEMENT; CONTRIBUTION

86. The Parties agree and the Court finds that: (a) the complaint filed by the United States in this action is a civil action within the meaning of section 113(f)(1) of CERCLA; (b) this Decree constitutes a judicially approved settlement under which each Settling Defendant has, as of the Effective Date, resolved its liability to the United States, the State and the Tribe within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (c) each 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, or as may be otherwise provided by law, for the

“matters addressed” in this Decree. The “matters addressed” in this Decree are the Response Actions, Work, Past Response Costs, and Future Response Costs, provided, however, that if the United States exercises rights under the reservations in ¶¶ 81 or 82, the “matters addressed” in this Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

87. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Decree, notify DOJ and the USEPA, the State, and the Tribe no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Decree, notify DOJ and the USEPA, the State, and the Tribe within 10 days after service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify DOJ and the USEPA, the State, and the Tribe within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

88. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated against any Settling Defendant by any Plaintiff for injunctive relief, recovery of response costs, or other appropriate relief relating to the CD Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, claim preclusion (res judicata), issue preclusion (collateral estoppel), claim-splitting, or other defenses based upon any contention that the claims raised by the United States, the State and/or the Tribe in the subsequent proceeding were or should have been brought in the instant case.

89. Nothing in this Decree diminishes the right of the United States under section 113(f)(2) and (3) of CERCLA to pursue any person not a party to this Decree 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).

XVII. RECORDS

90. **Settling Defendant Certification.** Each Settling Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry: (a) it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records, as that term is defined at ¶ 91 herein, (other than identical copies) relating to its potential liability regarding the CD Site since May 23, 2006; and (b) it has fully complied with any and all requests for information of the USEPA, the State and/or the Tribe under sections 104(e) and 122(e) of CERCLA, section 3007 of RCRA and State and/or Tribal law.

91. Retention of Records and Information

a. Settling Defendants shall retain, and instruct their contractors and agents to retain, non-identical copies of the following documents and electronically stored data (“Records”) until 10 years after the Certification Completion of the Work under SOW ¶ 5.10 (the “Record Retention Period”):

- i. All records regarding Settling Defendants’ liability under CERCLA regarding the CD Site;
- ii. All reports, plans, permits, and documents submitted to the USEPA in accordance with this Decree, including all underlying research and data; and
- iii. All data developed by, or on behalf of, Settling Defendants in the course of performing the Response Actions.

92. At the end of the Record Retention Period, Settling Defendants shall notify the USEPA, the State, and the Tribe that they have 90 days to request the Settling Defendants' Records subject to this Section. Settling Defendants shall retain and preserve their Records subject to this Section until 90 days after the USEPA's receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

93. Settling Defendants shall provide to the USEPA, the State and the Tribe, upon request, copies of all Records and information required to be retained under this Section. Settling Defendants shall also make available to the USEPA, the State and the Tribe, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

94. Privileged and Protected Claims

a. Settling Defendants may assert that all or part of a record requested by Plaintiffs is privileged or protected as provided under federal law, in lieu of providing the record, provided that Settling Defendants comply with ¶ 94.b, and except as provided in ¶ 94.c.

b. If Settling Defendants assert a claim of privilege or protection, they shall provide Plaintiffs with the following information regarding such record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a record, Settling Defendants shall provide the record to Plaintiffs in redacted form to mask the privileged or protected portion only. Settling Defendants shall retain all records that they claim to be privileged or protected

until Plaintiffs have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Defendants' favor.

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

95. **Confidential Business Information (CBI) Claims.** Settling Defendants may claim that all or part of a record provided to Plaintiffs under this Section is CBI to the extent permitted by, and in accordance with, section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Settling Defendants shall segregate and shall clearly identify all records or parts thereof submitted under this Decree for which they claim a designation of CBI by labeling each page or each electronic file "claimed as confidential business information" or "claimed as CBI." Records that Settling Defendants claim as CBI will be afforded the protection specified in 40 C.F.R. part 2, subpart B and the Navajo Nation Privacy Act, 2 N.N.C. §§ 83(C) and 85(A)(19). If no CBI claim accompanies records when they are submitted to the USEPA, the State and the Tribe, or if the USEPA notifies Settling Defendants that the records are not entitled to confidential treatment under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. part 2, subpart B, the public may be given access to such records without further notice to Settling Defendants.

96. In any proceeding under this Decree, validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by the USEPA, if relevant to the proceeding, is admissible as evidence, without objection.

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

XVIII. NOTICES AND SUBMISSIONS

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

As to DOJ:

via email to:
eescdcopy.enrd@usdoj.gov
Re: DJ # 90-11-3-10077/1

As to the USEPA:

via email to:
Superfund and Emergency Management Division
Directors:
Smith.Monaca@epa.gov And
Montgomery.Michael@epa.gov
And

USEPA Project Coordinators:

Jonason.Colin@epa.gov
Purcell.Mark@epa.gov
Arviso.Elisa@epa.gov
Tiballi.Craig@epa.gov

As to the Regional Financial
Management Officer:

via email to:
Johnson.Lydia@epa.gov
Re: Site/Spill ID # 0615
R9
Re: Site/Spill ID # 09PM

As to the State:

via email to:
Jonas Armstrong
New Mexico Environment Department Division Water
Protection Division Director
Jonas.Armstong2@env.nm.gov

As to the Tribe:

Veronica Blackhat, Asst. AG, Navajo Nation DOJ
veblackhat@nndoj.org

As to the NNEPA

Stephen B. Etsitty, Executive Director
s.etsitty@navajo-nsn.gov

Warren J. Roan, Manager, Waste Regulatory &
Compliance Dept.
warrenjroan@navajo-nsn.gov

As to Settling Defendants:

via email to:
Settling Defendants' Project Coordinator

With copies, via email, to:
Lance.hauer@ge.com
Monique.mooney@ge.com

And
ccbaker@hollandhart.com

XIX. APPENDICES

99. The following appendices are attached to and incorporated into this Decree:

“Appendix A” is the description and maps of the CD Site.

“Appendix B” is the SOW.

“Appendix C” is the 2011 Action Memo.

“Appendix D” is the 2013 ROD.

“Appendix E” is the Navajo Informal Dispute Resolution Process.

XX. MODIFICATIONS TO DECREE

100. Except as provided in ¶ 29 of the Decree and ¶ 8.6 of the SOW (Approval of Deliverables), nonmaterial modifications to Sections I through XXIV and the Appendices must be in writing and are effective when signed (including electronically signed) by the Parties. Material modifications to Sections I through XXIV and the Appendices must be in writing, signed

(which may include electronically signed) by the Parties, and are effective upon approval by the Court. As to changes to the Response Actions, a modification to the Decree, including the SOW, to implement an amendment to the 2011 Action Memo or the 2013 ROD that “fundamentally alters the basic features” of the Response Actions within the meaning of 40 C.F.R. § 300.435(c)(2)(ii) will be considered a material modification.

XXI. SIGNATORIES

101. The undersigned representative of the United States, the undersigned representatives of the State and the Tribe, and the undersigned representative of each Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such Party to this document.

XXII. PRE-ENTRY PROVISIONS

102. If, for any reason, the Court should decline to approve this Decree in the form presented, this agreement, except for ¶ 103 and ¶ 104, is voidable at the sole discretion of any Party and its terms may not be used as evidence in any litigation between the Parties.

103. This Decree will be lodged with the Court for at least 30 days for public notice and comment in accordance with section 122(d)(2) of CERCLA and 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations that indicate that the Decree is inappropriate, improper, or inadequate.

104. Settling Defendants agree not to oppose or appeal the entry of this Decree.

XXIII. INTEGRATION

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

Notwithstanding this Section and the Parties' Covenants and Reservations of Rights in Sections XIV and XV, nothing in this Decree shall be interpreted as waiving, abrogating, or superseding any claims, rights and obligations that the Parties may have pursuant to the consent decrees entered on September 6, 2011, and January 11, 2012, in the case of *The General Electric Company and United Nuclear Corporation v. United States of America*, Case No. 1:10-CV-00404-MCA-RHS (District of New Mexico).

XXIV. FINAL JUDGMENT

106. Upon entry of this Decree by the Court, this Decree constitutes a final judgment under Fed. R. Civ. P. 54 and 58 between and among the Parties.

SO ORDERED this ____ day of _____, 20__.

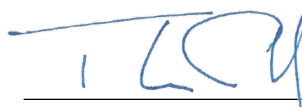
United States District Judge

Signature Page for Consent Decree in *U.S. et al. v. United Nuclear Corp.* (D.N.M.)

FOR THE UNITED STATES:

Dated

ADAM R.F. GUSTAFSON
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division



THOMAS P. CARROLL, D.C. Bar # 388593
Assistant Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044
thomas.carroll@usdoj.gov
(202) 51404051

RYAN ELLISON United States Attorney

s/Ruth F. Keegan
RUTH F. KEEGAN
Assistant United States Attorney
District of New Mexico
P.O. Box 607
Albuquerque, NM 87103
Phone: 505.224.1470
Mobile: 505.206.4197
Fax: 505.346.7296
Ruth.F.Keegan@usdoj.gov

Signature Page for Consent Decree in *U.S. et al. v. United Nuclear Corp.* (D.N.M.)

**FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:**

**MICHAEL
MONTGOMERY**

Digitally signed by MICHAEL
MONTGOMERY

Date: 2025.07.07 16:11:10 -07'00'

Michael Montgomery

Director

Superfund and Emergency Management Division

U.S. Environmental Protection Agency

Region 9

MONICA
SMITH

Digitally signed by MONICA
SMITH
Date: 2025.07.02 06:45:35
-05'00'

Monica Smith
Acting Director, Superfund and Emergency Management
Division
U.S. Environmental Protection Agency
Region 6

Cheryl T. Seager

Digitally signed by Seager,
Cheryl
Date: 2025.07.01 20:10:26
-05'00'

Cheryl T. Seager
Director, Enforcement and Compliance Assurance
Division
U.S. Environmental Protection Agency
Region 6

FOR THE STATE OF NEW MEXICO:

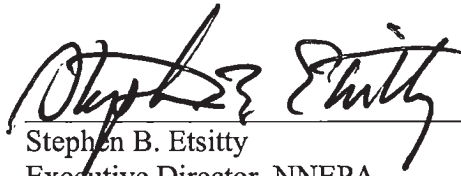
Andrew Knight

Andrew P. Knight
Assistant General Counsel
New Mexico Environment Department
Office of General Counsel
121 Tijeras Ave NE, Suite 1000
Albuquerque, NM 87102

FOR THE NAVAJO NATION:

A handwritten signature in black ink, appearing to read "Heather Clah", written over a horizontal line.

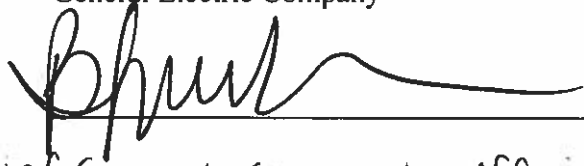
Heather Clah
Acting Attorney General
Navajo Nation Department of Justice
PO Box 2010
Window Rock, AZ 86515

A handwritten signature in black ink, appearing to read "Stephen B. Etsitty", written over a horizontal line.

Stephen B. Etsitty
Executive Director, NNEPA
PO Box 339
Window Rock, AZ 86515

FOR: General Electric Company

June 10, 2025
Dated



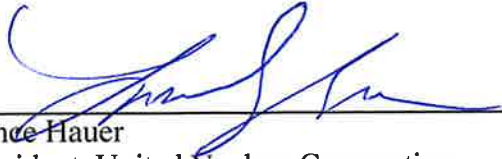
Name:

Title: Chief Counsel - Corporate Affairs & Operations

Address: 1 Neumann Way, Cincinnati, OH 45215

6/9/2025
Dated

FOR: United Nuclear Company


Name: Lance Hauer
Title: President, United Nuclear Corporation
Address: PO Box 1088
Gallup, New Mexico 87305-1088

If the Decree is not approved by the Court within 60 days after the date of lodging, and the United States requests, this Settling Defendant agrees to accept service of the complaint by mail, and to execute a waiver of service of a summons under Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. **This Settling Defendant hereby designates the agent below to accept service of the complaint by mail and to execute the Rule 4 waiver of service.** This Settling Defendant understands that they do not need to file an answer to the complaint until it has executed the waiver of service or otherwise has been served with the complaint.

Name: Chad Baker
Title: Attorney at Law
Company: Holland & Hart LLP
Address: 222 South Main Street, Suite 2200
Salt Lake City, UT 84101
Phone: 801-799-5938
email: ccbaker@hollandhart.com