UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF:
Section 9 Lease Mine Site,
Arizona

Babbitt Ranches, LLC and
C.O. Bar, Inc.,

Respondents

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR INTERIM REMOVAL ACTION

U.S. EPA Region 9
CERCLA Docket No. 2016-13

Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Babbitt Ranches, LLC and C.O. Bar, Inc. (collectively "Respondents"). This Settlement Agreement provides for Respondents' performance of an interim removal action, including removal site evaluation, and other actions as provided herein, as well as Respondents' payment of Past Response Costs and Future Response Costs to be incurred by the United States at or in connection with the Section 9 Lease Mine Site (the "Site") generally located in the Little Colorado Mining District southeast of Cameron, Arizona, across the Little Colorado River from the Navajo Nation. The area addressed by this Settlement Agreement is generally within:

> Section 9 of Township 27 North, Range 10 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona ("Section 9"), as well as areas of Section 10 of Township 27 North, Range 10 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona (which is east of and adjacent to Section 9) where hazardous substances from Section 9 have come to be located.

The area addressed by this Settlement Agreement is more particularly specified in the Scope of Work ("SOW") (Appendix A) and attachments thereto.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, as amended by Executive Order No. 13016, August 30, 1996, 61 Federal Register 45871, further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D and further redelegated by Regional Delegation 14-2 dated December 15, 2015.

3. EPA has notified the Arizona Department of Environmental Quality ("ADEQ") and the Navajo Nation Environmental Protection Agency of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondents (collectively "Parties") recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Paragraph 7 and Sections IV and V of this Settlement Agreement. By signing this Settlement Agreement, Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms in proceedings initiated by

the United States to implement or enforce this Settlement Agreement. Respondents do not admit any liability to any third party arising out of this Settlement Agreement.

5. Under this Settlement Agreement, Respondents will perform a removal site evaluation ("RSE") and interim removal action, as provided herein and described in the SOW. EPA will evaluate the results of the evaluation and, after consultation with ADEQ and the Navajo Nation, EPA will make a response action decision for the Site. The Parties may then discuss the terms of one or more subsequent Settlement Agreements which, if executed, may provide for Respondents' execution of the selected response action and for payment of past response costs and other costs for the Site.

II. PARTIES BOUND

6. This Settlement Agreement applies to and is binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

7. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

8. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

9. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "ADEQ" shall mean the Arizona Department of Environmental Quality and any successor departments or agencies of the State.

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

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

mean a Day other than a Saturday, Sunday, or federal holiday. Unless specifically provided otherwise, calendar days shall be used to compute due dates in this Settlement Agreement.

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXI.

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

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the Effective Date of this Settlement Agreement, in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 25 (costs and attorney's fees and any monies paid to secure access, including the amount of just compensation), Paragraph 36 (Emergency Response), and Paragraph 62 (Work Takeover). Future Response Costs shall also include all Interim Response Costs.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Interim Removal Action" shall mean the response actions required in this Settlement Agreement and SOW, provided as Appendix A.

i. "Interim Response Costs" shall mean all costs, including direct and indirect costs, a) paid by the United States in connection with the Site between October 1, 2014 and the Effective Date, or b) incurred prior to the Effective Date, but paid after that date.

j. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

k. "Navajo Nation EPA" or "NNEPA" shall mean the Navajo Nation Environmental Protection Agency.

l. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

m. "Parties" shall mean EPA and Respondents.

n. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through September 30, 2014, plus Interest on all such costs through such date.

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

p. "Respondents" shall mean Babbitt Ranches, LLC ("Babbitt") and C.O. Bar, Inc. ("C.O. Bar").

q. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

r. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent for Interim Removal Action and the SOW, provided as Appendix A. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

s. "Site" shall mean and include the Section 9 Lease Mine, including Section 9 of Township 27 North, Range 10 East, including the areas depicted in Appendix A, and other areas where hazardous substances from Section 9 have been deposited, stored, disposed of, placed, or otherwise came to be located on Section 10 of Township 27 North, Range 10 East.

t. "State" shall mean the State of Arizona.

u. "Scope of Work" or "SOW" shall mean the Statement of Work for implementation of the Interim Removal Action, as set forth in Appendix A to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

v. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

w. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

EPA hereby finds the following facts, which Respondents neither admit nor deny:

10. Land Ownership History

a. From August 6, 1912 through June 20, 1960, Section 9 was owned sequentially by Babbitt Bros. Lands, Inc. (1921–1954) and CO Bar Livestock Company (1954–1960), subsidiaries of Babbitt Brothers Trading Company, a precursor to Babbitt Ranches LLC.

b. On June 20 1960, CO Bar Livestock Company sold Section 9 in an installment sale, conveying title to Arizona Title Guarantee and Trust Company, as Trustee for John and Carolyn D. Haynes, George B. and Mary Cady, and B.T. Investment Corporation. CO Bar Livestock carried back a portion of the purchase price.

c. CO Bar Livestock Company held a security interest in Section 9 when the property was sold to Arizona Title and Trust Company. Arizona Title and Trust Company defaulted on the security interest. CO Bar Livestock Company, to protect its security interest, foreclosed on the property. On November 23, 1971, title to Section 9 was conveyed back to CO Bar Livestock Company. Through subsequent transactions between related entities, Respondent C.O. Bar, Inc. became the owner.

11. Description of the Abandoned Uranium Mines

a. Abandoned Uranium Mine ("AUM") AUM 457 comprises approximately 16.5 acres, is located on the western banks of the Little Colorado River, and is the northern most of the three mining areas investigated by EPA as the "Section 9 Lease Site." AUM 457 is characterized by a former borrow pit, a former pond, and the remnants of facilities which former operators claimed could upgrade uranium ore, including a clearly visible foundation and partially intact walls. Un-reclaimed mining-related uranium waste rock and various wood/metal mining-related debris are present within the footprint of AUM 457. Gamma radiation measurements collected in 2010 and 2013 recorded gamma radiation at levels more than 50 times the naturally occurring background levels of the area. A portion of AUM 457 extends east of the boundary of Section 9 onto Section 10, which is owned by the United States. Hazardous substances from the portion of AUM 457 located on Section 9 have been deposited, stored, disposed of, placed, or otherwise come to be located downgradient in the area of AUM 457 east of the boundary between Sections 9 and 10.

b. AUM 458 comprises approximately 9.3 acres, is located approximately 0.25 miles west of the Little Colorado River, and is the most central of the three mining areas, approximately 0.5 miles south of AUM 457 and 1,000 feet northwest of AUM 459. AUM 458 is characterized by a centralized recessed pit/ depression with standing water and vegetation, surrounded by un-reclaimed mining-related uranium waste rock, and various wood/metal mining-related debris. Gamma radiation measurements collected in 2010 and 2013 recorded gamma radiation at levels more than 50 times the naturally occurring background levels of the area.

c. AUM 459 comprises approximately 13.3 acres, is located approximately 1,000 feet west of the Little Colorado River, and is the southern most of the three mining areas, approximately 1,000 feet southeast of AUM 458 and 0.75 miles south of AUM 457. AUM 459 is characterized by the presence of three pit areas each surrounded by un-reclaimed mining-related uranium waste rock, and various wood/metal mining-related debris. Standing water and vegetation was observed in the southern and western pits. Gamma radiation measurements collected in 2010 and 2013 recorded gamma radiation at levels more than 50 times the naturally

occurring background levels of the area. Most, and possibly all, of AUM 459 is located south of the boundary of Section 9 on property owned by the State.

12. Mining History at the Site

a. Uranium was first reported in the Cameron area in 1950, and mining ceased by 1963. Mining occurred on Section 9 from 1957 to 1962. In 1957, Arrowhead Uranium, a subsidiary of Rare Metals Corporation of America ("Rare Metals"), leased the rights to Section 9 from CO Bar Livestock Company, and began an open pit mining operation. In the first year, Rare Metals shipped 17.95 tons of low grade ore from the Site to the Rare Metals Mill in Tuba City and paid royalties to CO Bar Livestock Company. By 1958 Rare Metals ceased mining operations at the Site, and C.L. Rankin acquired the lease from CO Bar Livestock Company. C.L. Rankin shipped 87.21 tons of low grade ore in 1958, and 234.32 tons of low grade ore in 1959.

b. In 1959, Murchison Ventures, Inc. ("Murchison Ventures"), owned by John Milton Addison and others, acquired the lease of Section 9. Murchison Ventures built a small processing plant known as a "Benson Upgrader" in the northeast part of Section 9, near one of the former pits (AUM 457). Murchison Ventures claimed the Benson Upgrader would separate the waste rock from previous mining activities into a "sellable" higher grade slime fraction and a lower grade sand fraction. Murchison Ventures sent a shipment of 10.76 tons of upgraded ore to the Tuba City Mill in 1959. In 1960, Murchison Ventures modified the plant and sent another shipment of 11.31 tons of ore to the mill. John Milton Addison was adjudicated bankrupt on June 27, 1960.[1] On this date, all funds and assets—including the mining lease for the east half of Section 9—of John Milton Addison and various corporate entities with which he was affiliated came under the jurisdiction of the United States District Court for the Northern District of Texas (Dallas). In 1961, John Milton Addison, along with six associates, was convicted of fraud, conspiracy, and federal security violations related to the upgrading operation.

c. In October 1960, a group of Addison's investors incorporated as Milestone Hawaii to assume control over the Murchison Ventures operation on Section 9. As noted above, this was after the title to Section 9 was conveyed to Arizona Title and Trust Company in June, 1960. During the summer of 1961, Milestone Hawaii demolished the original Benson Upgrader on Section 9 and replaced it with a larger upgrader, and in March 1962 shipped 23.93 tons of low-grade material to the Tuba City Mill.

d. Mining operations ceased at the Site in 1961; no known mining activities have been performed at the Site since. While operational, the Atomic Energy Commission estimated the uranium ore production volume at the Section 9 Lease Mine, which included all three AUMs, as 386 tons.

[1] SEC v. John Milton Addison, Murchison Ventures, et al., 194 F. Supp. 709 (N.D. Tex., 1961), Page 714.

13. EPA conducted a Site Investigation, issuing a Site Investigation Report in 2014, which concluded that:

- Contaminated soil from leftover waste generated during historical uranium mining operations was identified on portions of the Site. Soil samples confirmed the presence of radium-226, uranium-238, arsenic, lead, mercury, molybdenum and other analytes of concern at concentrations greater than three times the background mean.

- Surface water from the Site flows into the Little Colorado River, located immediately east of the Site.

- Contaminated soil and mining waste is present on a portion of Section 10 immediately adjacent to and attributable to Section 9.

14. Arsenic, lead, mercury, radium-226 and uranium-238 are "hazardous substances" as defined by Section 101(14) of CERCLA and listed in 40 CFR Section 302.4.

15. This Interim Removal Action, as further described in the attached SOW, will include background studies, gamma scans of surface soils, soil sampling of surface and subsurface soils and sediments related to historic mining and processing operations, assessing radiation exposure inside the mine operations buildings, and mitigating physical hazards and other response actions as detailed herein, at the Site.

16. This Settlement Agreement reserves and does not address investigation and cleanup of groundwater or any other response actions not required by this Settlement Agreement.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

17. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondents Babbitt Ranches, LLC and C.O. Bar, Inc., or their corporate predecessors, are each a current and/or former "owner or

operator" of Section 9, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1), (2).

e. The conditions described in the Findings of Fact above for the Site constitute an actual or threatened "release" of a hazardous substance from a facility as defined by Section 101(22) of CERCLA, 42 U.S.C.§ 9601(22).

f. The Interim Removal Action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

g. The Interim Removal Action required by this Settlement Agreement meets the criteria for a removal action under Section 300.415(b) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

18. Based upon the foregoing Findings of Fact, Conclusions of Law, and Determinations, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

19. Respondents shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) or subcontractor(s) within 30 days after the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 30 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name and qualifications within 15 days after EPA's disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006). The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements.

20. Respondents have designated, and EPA has approved, Chuck Howe, Owner/Principal of C2 Environmental LLC, as Project Coordinator to be responsible for administration of all actions by Respondents required by this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. Notice or communication relating to this Settlement Agreement to Respondent's Project Coordinator shall constitute notice or communication to all Respondents. Following is contact information for the Project Coordinator:

Project Coordinator

Chuck Howe
C2 Environmental LLC
Owner/Principal
P.O. Box 944
Tuba City, AZ 86045
(928) 310-6898
CHowe@C2-env.com

21. EPA has designated Amanda Pease, Remedial Project Manager in the Region 9 Superfund Division, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC, with a copy to ADEQ and a copy to the Navajo Nation, by U.S. Mail, overnight mail, facsimile, or email:

EPA OSC

Amanda Pease
U.S. EPA, Mail Code SFD-6-2
75 Hawthorne St.
San Francisco, CA 94105
Telephone: 415-972-3068
Facsimile: 415-947-3518
Email: Pease.Amanda@epa.gov

ADEQ

Tina L. LePage, Manager
Remedial Projects Section
Arizona Department of Environmental Quality
400 West Congress Street, Suite 433
Tucson, AZ 85701

Navajo Nation

Veronica Blackhat, Assistant Attorney General
Natural Resources Unit
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
Telephone: 928-871-6347
Facsimile: 928-871-6177
Email: vblackhat@NNDOJ.org

U.S. Department of the Interior, Bureau of Reclamation

Kimberly Musser
Environmental Protection Specialist
U.S. Department of the Interior, Bureau of Reclamation
Phoenix Area Office
6150 West Thunderbird Road
Glendale, AZ 85306-4001
Telephone: 623-773-6216
Email: Musser, Kimberly <kmusser@usbr.gov>

22. EPA and Respondents shall have the right, subject to the requirements of this Section, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA at least 15 (fifteen) Days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

23. Respondents shall perform, at a minimum, all actions necessary to implement the Interim Removal Action, as described in and required by the attached SOW, Appendix A. The actions to be implemented generally include, but are not limited to, the following: determining background concentrations and gamma radiation levels of contaminants of potential concern, conducting a thorough site characterization, including gamma scanning, surface and subsurface sampling of the contamination on the Site and Site-related contamination in the vicinity; cultural resource and biological surveys; preparing a Removal Site Evaluation that documents the findings of the investigation; posting hazard signs around the Site; and identifying and addressing physical hazards at the Site.

a. Work Plans and Implementation.

i. All Work plans described in the SOW shall be submitted to EPA for approval. A copy of all Work plans described in the SOW shall be submitted to the Navajo

Nation Department of Justice, which shall be provided a reasonable opportunity to submit comments to EPA.

ii. EPA may approve, disapprove, require revisions to, or modify any draft Work plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Work plan within fifteen (15) Days of receipt of EPA's notification of the required revisions. Respondents shall implement each Work plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

iii. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement and SOW. Respondents shall not commence implementation of the Work plans developed hereunder and in the SOW until receiving written EPA approval pursuant to Paragraph 23(a)(ii).

b. Reporting.

i. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every month after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

ii. Respondents shall submit three copies of all plans, reports or other submissions required by this Settlement Agreement and the Statement of Work, or any approved Work Plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

iii. If a Respondent owns or controls real property at the Site, that Respondent shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. If a Respondent owns or controls property at the Site, that Respondent also agrees to require its successors to comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

c. Final Report. Within ninety (90) Days after completion of all Work required by this Settlement Agreement and receipt by Respondents of all validated laboratory data, Respondents shall submit for EPA review and approval a final Removal Site Evaluation Report (the RSE Report) summarizing the actions taken to comply with this Settlement Agreement. The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement.

The final report shall include the following certification signed by a person who supervised or directed the preparation of that report:

> "Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

IX. SITE ACCESS

24. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by a Respondent, that Respondent shall, commencing on the Effective Date: (1) provide EPA, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement, or such other property, for the purposes of overseeing, observing, and monitoring the Work, and taking split samples, during any EPA activities related to this agreement.

25. Where any action under this Settlement Agreement is to be performed on lands not owned by a Respondent, Respondents shall use their best efforts to obtain all necessary access agreements, and gain access, to the extent necessary to effectuate the response actions described in this Settlement Agreement. For purposes of this paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

26. Commencing on the Effective Date of this Settlement Agreement, Respondents shall refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response measures to be implemented pursuant to this Settlement Agreement. Restricted or prohibited activities include, but are not limited to, excavation and disturbance of any soils in any manner that might cause a release of hazardous substances, except as needed for implementation of this Settlement Agreement.

27. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

28. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the

Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

29. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified a Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public and the Navajo Nation may be given access to such documents or information without further notice to Respondents.

30. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by the Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

31. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

32. Until ten (10) years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in their possession or control or which come into their possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after Respondents' receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

33. At the conclusion of this document retention period, Respondents shall notify EPA at least ninety (90) Days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA or the Navajo

Nation. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by the Respondent. EPA may challenge a Respondent's privilege claim by notice to that Respondent. Respondents shall not destroy any records or documents subject to the privilege claim unless and until allowed by final resolution of EPA's challenge to the claim or EPA's failure to challenge the claim within the time allowed. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

34. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

35. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, tribal and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j).

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

36. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from any of the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of her unavailability, Will Duncan of the Region 9 Superfund Division, (415) 972-3412, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

37. In addition, in the event of any release of a hazardous substance from any of the Site, Respondents shall immediately notify the OSC at (415) 972-3068, or in the event of the OSC's

unavailability, Will Duncan of the Region 9 Superfund Division (415) 972-3412, the Region 9 Spill Response Center at (415) 947-4400 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) Days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq*.

XIV. AUTHORITY OF ON-SCENE COORDINATOR

38. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

39. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to EPA $230,000 for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondents by EPA Region 9, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number A902, and the EPA docket number for this action.

b. At the time of payment, Respondents shall send notice that such payment has been made by email to cinwd_acctsreceivable@epa.gov, and to both:

Amanda Pease, Mail Code SFD-6-2
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

EPA Cincinnati Finance Office
W. 26 Martin Luther King Drive
Cincinnati, Ohio 45268

c. The total amount to be paid by Respondents pursuant to Paragraph 39(a) shall be deposited by EPA in the Section 9 Lease Site Special Account ("Special Account") within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

40. Payments for Future Response Costs.

a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a cost summary listing the direct and indirect costs incurred by EPA and its contractors. Respondents shall make all payments within thirty (30) Days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 42 of this Settlement Agreement. The total amount paid will be deposited by EPA in the Special Account, within the EPA Hazardous Substance Superfund. These funds will be retained and used by EPA to conduct or finance future response actions in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. Respondents shall make all payments required by this Paragraph by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondents by EPA Region 9, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name (Section 9 Lease Mine Site Special Account), the EPA Region and Site/Spill ID Number (A902) and the EPA docket number for this action (CERCLA Docket No. 2016-13).

c. At the time of payment, Respondents shall send notice that payment has been made by email to cinwd_acctsreceivable@epa.gov, and to both:

Amanda Pease, Mail Code SFD-6-2
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

EPA Cincinnati Finance Office
W. 26 Martin Luther King Drive
Cincinnati, Ohio 45268

41. In the event that any payment required under this Section is not made within thirty (30) Days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

42. Respondents may dispute payment of any Future Response Costs billed under this Settlement Agreement, if Respondents determine that EPA has made a mathematical error or if they believe EPA incurred Future Response Costs or excess Future Response Costs that were inconsistent with the NCP. Such objection shall be made in writing within thirty (30) Days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as agreed by the Parties. In the event of an objection, Respondents shall within the thirty (30) -Day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 40. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered within the State and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within five (5) Days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 40. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 40. Respondents shall be disbursed any balance of the escrow account (plus associated accrued interest) within thirty (30) days after the dispute is resolved. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

44. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within thirty (30) Days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have thirty (30) Days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

45. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation

Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

46. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

47. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within forty-eight (48) hours of when a Respondent first knew that the event might cause a delay. Within seven (7) Days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

48. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

49. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 50 and 51 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondents shall include completion of all payments and activities under this Settlement Agreement or any Work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

50. Stipulated Penalty Amounts - Major.

a. The following stipulated penalties shall accrue per violation per Day for any noncompliance identified in Paragraph 50(b):

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

b. Compliance Milestones

i. Failure to timely submit a final report meeting the requirements of Section VIII (Work to Be Performed and the SOW); or

ii. Failure to make a payment when due.

51. Stipulated Penalty Amounts - Other. The following stipulated penalties shall accrue per violation per Day for failure to submit timely or adequate reports or other written documents, failure to timely perform actions pursuant to this Settlement Agreement, or other noncompliance those specified in the preceding Paragraph:

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

52. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 62 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $125,000.

53. All penalties shall begin to accrue on the Day after the complete performance is due or the Day a violation occurs, and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the thirty-first (31st) Day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Paragraph 43 of Section XVI (Dispute Resolution), during the period, if any, beginning on the twenty-first (21st) Day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

54. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

55. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) Days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to US EPA Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-900, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number A902, the EPA Docket Number 2016-13, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 40.

56. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

57. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) Days after the dispute is resolved by agreement or by receipt of EPA's decision.

58. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 55. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil

penalties pursuant to Section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 62 (Work Takeover). Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

59. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

60. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

61. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

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

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

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

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

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

62. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

a. In the event EPA determines that Respondents (i) have ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in its performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice "Work Takeover Notice" to the Respondents. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of twenty-one (21) Days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the twenty-one (21) Day notice period specified in subparagraph 62.a, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this subparagraph 62.b.

c. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution), Paragraph 43, to dispute EPA's implementation of a Work Takeover under subparagraph 62.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole

discretion commence and continue a Work Takeover under subparagraph 62.b until the earlier of (i) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XVI (Dispute Resolution), Paragraph 43, requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any financial assurance(s) provided pursuant to Section XXVI of this Settlement Agreement in accordance with the provisions of Paragraph 80 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Respondents fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 80, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Respondents shall pay pursuant to Section XV (Payment of Response Costs).

XXI. COVENANT NOT TO SUE BY RESPONDENTS

63. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

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

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

d. any direct or indirect claim for return of unused amounts in the Special Account, except for unused amounts that EPA determines shall be returned to Respondents in accordance with Paragraph 42.c.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 61(b), (c), and (e) - (h), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

Notwithstanding the foregoing, this Settlement Agreement shall not have any effect on claims or causes of action that Respondent has or may have pursuant to CERCLA Section 113(f), 42 U.S.C. § 9613(f), against the United States or any of its agencies or departments, other than EPA,

based on its (or their) alleged status as a potentially responsible party pursuant to CERCLA, 42 U.S.C. § 9607(a), relating to the Work, Future Response Costs, or this Settlement Agreement.

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

XXII. OTHER CLAIMS

65. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

66. Except as expressly provided in Section XXI (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

67. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

68. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may otherwise be provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs and Future Response Costs.

69. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work and Future Response Costs.

70. Nothing in this Settlement Agreement shall be constructed to create rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Except as provided in Section XXI (Covenant Not to Sue by Respondents), each of the Parties expressly reserves any and all rights (including but not limited to, pursuant to Section 113 of CERCLA, 42

U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIV. INDEMNIFICATION

71. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

72. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

73. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

74. At least seven (7) Days prior to commencing any on-Site Work under this Settlement Agreement, Respondents or their contractor shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars ($1,000,000), combined single limit, naming EPA as an additional insured. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit

such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of this Settlement Agreement, Respondents shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need to provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

75. Within thirty (30) Days after the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of $500,000 (hereinafter "Estimated Cost of Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA, in order to secure the full and final completion of Work by Respondents:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s);

c. a trust fund administered by a trustee;

d. a written guarantee to pay for or perform the Work provided by one or more direct or indirect parent companies of Respondents, or by one or more unrelated companies that have a substantial business relationship with Respondents, including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

e. a demonstration of sufficient financial resources to pay for the Work made by Respondents, which shall consist of a demonstration that Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

76. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within thirty (30) Days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 75, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (30) Days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability

to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

77. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 75(d) or (e) of this Settlement Agreement, Respondents shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements to EPA conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of $500,000 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the Respondent or guarantor to EPA by means of passing a financial test.

78. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 75 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Respondents may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

79. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

80. The commencement of any Work Takeover pursuant to Paragraph 62 of this Settlement Agreement shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to subparagraph 75.a, 75.b., 75c., 75.d, or 75.e. and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee or the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to subparagraph 75.d, Respondents shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

XXVII. MODIFICATIONS

81. This Settlement Agreement may be amended by mutual agreement of EPA and Respondents. Amendments shall be made in writing and shall be effective when signed by EPA. The OSC may make modifications to any plan or schedule or Scope of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly and provided to Respondents, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

82. If Respondents seek permission to deviate from any approved Work plan or schedule or Scope of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 81.

83. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

84. When EPA determines, after consultation with the NNEPA, and after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

85. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all the provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

86. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement

embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendix is attached to and incorporated into this Settlement Agreement: Scope of Work.

XXX. PUBLIC COMMENT

87. Final acceptance by EPA of Paragraph 39 (Payment for Past Response Costs) shall be subject to Section 122(i) of CERCLA, 42 U.S.C.§ 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XV (Payment of Response Costs) of this Settlement Agreement if comments received disclose facts or considerations that indicate that Section XV of this Settlement Agreement is inappropriate, improper, or inadequate. Otherwise, Section XV shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV of this Settlement Agreement.

XXXI. EFFECTIVE DATE

88. This Settlement Agreement shall be effective upon signature by the Assistant Director of the Superfund Division, U.S. EPA Region 9 or his delegatee with the exception of Paragraph 39 (Payment for Past Response Costs), which shall be effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XV (Payment of Response Costs).

The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the parties they represent to this document.

For Respondent Babbitt Ranches, LLC

By:_____

Print/Type Name):_____

Title:_____

Agreed this ___ day of _____, 2016.

For Respondent C.O. Bar, Inc.

By:_____

Print/Type Name):_____

Title:_____

Agreed this ___ day of _____, 2016.

It is so ORDERED and Agreed this _____ day of _____, 2016.

BY: _____ DATE:_____
Clancy Tenley
Assistant Director, Superfund Division
Partnerships, Land Revitalization and Cleanup Branch
U.S. Environmental Protection Agency, Region 9

EFFECTIVE DATE: _____