LEVIATHAN MINE SITE

WORK AND COST ALLOCATION

SETTLEMENT AGREEMENT

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LEVIATHAN MINE SITE WORK AND COST ALLOCATION SETTLEMENT AGREEMENT

THIS LEVIATHAN MINE SITE WORK AND COST ALLOCATION SETTLEMENT AGREEMENT (this "Agreement") is made as of this 27th day of March, 2015 (the "Effective Date"), by and between Atlantic Richfield Company, a Delaware corporation ("Atlantic Richfield"), and the "State Parties," as defined in Section I.NN. Atlantic Richfield and each of the State Parties may each be referred to herein as a "Party" or together, as the "Parties."

R E C I T A L S

WHEREAS, on November 9, 2007, Atlantic Richfield filed a Complaint and commenced a lawsuit in the Superior Court of the State of California, County of Los Angeles (the "Court"), Case No. BC380474 (the "Lawsuit"), naming the following as defendants: the State of California ("State"), the California State Water Resources Control Board (the "State Board"), the California Regional Water Quality Control Board, Lahontan Region (the "Regional Board") (collectively, the "Defendants")[1], and DOES 1-10, seeking damages and other relief to redress certain injuries allegedly suffered by Atlantic Richfield as a result of what Atlantic Richfield claims to be the conduct of the Defendants at the former "Leviathan Mine Site" (as defined herein) in Alpine County, California, a portion of which the State has owned since approximately December 1983;

WHEREAS, on January 31, 2008, the State Board, Regional Board, and the State acting by and through the State Board and Regional Board ("Cross-Complainants") filed a Cross-Complaint in the Lawsuit, alleging a claim against Atlantic Richfield for damages and other relief to redress certain injuries allegedly suffered by the Cross-Complainants as a result of what the Cross-Complainants claim to be the conduct of Atlantic Richfield and the conduct of its predecessor in interest, The Anaconda Company, at the Leviathan Mine Site;

WHEREAS, on July 20, 2010, the Court issued its Order Re: Motions for Summary Adjudication, which denied Atlantic Richfield's motion for summary adjudication and granted the Regional Board's motion for summary adjudication, finding that the settlement agreement entered into by Atlantic Richfield and the Regional Board in 1983: (1) merely released the Regional Board's claims against Atlantic Richfield for past ownership and use of the Leviathan Mine Site, (2) did not release claims of third parties against Atlantic Richfield, and (3) limited the Regional Board's duty to covering pollution clean-up costs attributable to completing and

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[1] Defendants maintain that the State of California was not a proper party to the Lawsuit and acts by and through its various agencies and boards, including the State Board and the Regional Board. Accordingly, the "State of California" contends that it appeared in the Lawsuit as the "State of California acting by and through the California State Water Resources Control Board and the Lahontan Regional Water Quality Control Board." Atlantic Richfield does not agree that the State of California was "not a proper party" to the Lawsuit. Atlantic Richfield identified the State of California as a defendant in the Complaint and continued to identify the State of California as a defendant in pleadings and other filings throughout the pendency of the Lawsuit.

maintaining the Regional Board's water pollution abatement project, including addressing any defects of that project;

WHEREAS, on April 27, 2012, Atlantic Richfield filed a motion for summary judgment to dismiss the Cross Complaint; on August 14, 2012 the Court denied Atlantic Richfield's motion for summary judgment; on September 4, 2012 Atlantic Richfield filed a Petition for Writ of Mandate seeking to reverse the Court's order denying the motion for summary judgment as to the State Board; and on September 18, 2012, the Court of Appeals denied Atlantic Richfield's Petition;

WHEREAS, on July 19, 2012, a Joint Stipulation signed by Atlantic Richfield and the Defendants was filed to dismiss, without prejudice, Atlantic Richfield's third, fourth, and fifth causes of action for statutory contribution or indemnity, equitable contribution, and unjust enrichment, leaving causes of action for continuing breach of contract, implied contractual indemnity, and declaratory relief; and on July 27, 2012, a Notice of Entry of Dismissal was filed, confirming entry of a dismissal of these causes of action without prejudice;

WHEREAS, on September 14, 2012, a Joint Stipulation was filed wherein the Cross-Complainants and Atlantic Richfield agreed that the Cross-Complaints filed by the Regional Board and the State of California acting by and through the Regional Board and the State Board, but excluding the Cross-Complaint filed by the State Board, would be dismissed with prejudice;

WHEREAS, on September 20, 2012, the Court issued its "Order Dismissing With Prejudice the Cross-Complaints Filed by the Lahontan Regional Water Quality Control Board and the State of California Acting By and Through the Lahontan Regional Water Quality Control Board and the California State Water Resources Control Board" (the "Dismissal Order"), which dismissed, with prejudice, the Cross-Complaints filed in the Lawsuit by the Regional Board and the State acting by and through the Regional Board and the State Board, but did not dismiss the State Board's Cross-Complaint;

WHEREAS, on October 11, 2012, Atlantic Richfield and the Defendants executed and lodged with the Court the "Leviathan Mine Site Work and Cost Allocation Settlement Agreement Term Sheet", which sets forth the key proposed terms of, and was intended to provide the basis for, a settlement of the Lawsuit to be negotiated by the Parties, subject to the approval of Atlantic Richfield senior management and the appropriate State constitutional officers and State agencies;

WHEREAS, to avoid the cost, inconvenience, use of resources, and risk associated with the Lawsuit, the Parties now desire to execute this Agreement to, among other things: (1) establish the allocation of responsibility between the Parties for performance and payment of all future Response Actions (as defined herein) at the Leviathan Mine Site, and (2) fully resolve and settle, in a manner consistent with the terms set forth herein, all claims, differences, disputes, and controversies by and among them that exist, have existed, or may exist in the future, for all damages, causes of action, claims, or demands of any nature brought or which could have been asserted in the Lawsuit by any Party against any other Party, subject to the reservations set forth herein;

WHEREAS, the other State entities having jurisdiction, control, responsibility, and authority over the matters addressed by this Agreement join the Defendants as Parties to this Agreement, and it is the intent of the Parties that the State Parties' agreements contained herein be construed consistent with the statutory and constitutional authority of the State Parties, to address (i) the claims advanced by Atlantic Richfield and (ii) the matters addressed by this Agreement;

WHEREAS, the Parties recognize the mutual benefits of having the Regional Board, with financial assistance from Atlantic Richfield, design and perform the additional remedial actions necessary to prevent or minimize, to the extent required under applicable state or federal laws, regulations, standards, rules, codes, and ordinances, past, present, and future Releases (as defined herein) of Waste Material(s) (as defined herein) within, in, at, to, on, under, about, or migrating or otherwise emanating from the Leviathan Mine Site, and operate and maintain those remedial actions into the future once they are constructed and implemented;

WHEREAS, the Parties wish to obtain a dismissal with prejudice of all claims that were brought or could have been asserted by any Party in the Lawsuit;

WHEREAS, Atlantic Richfield, the Regional Board, and potentially other State Parties or entities, intend to negotiate and intend to enter into a consent decree with the United States, which will, among other things: resolve the claims of the United States Environmental Protection Agency and possibly other settling federal agencies with respect to past, present, and future Releases or threatened Releases of Waste Material(s) within, in, at, to, on, under, about, or migrating or otherwise emanating from the Leviathan Mine Site; incorporate and not conflict with the operative terms of this Agreement; and be enforceable against all parties thereto in the appropriate United States District Court; and

WHEREAS, the Parties agree that this Agreement has been negotiated in good faith; the Parties to this Agreement were represented by experienced counsel; implementation of this Agreement is intended to, and will, expedite the cleanup of the Leviathan Mine Site; and this Agreement is substantively fair, reasonable, lawful, and in the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS

As used in this Agreement, and unless the context requires a different meaning, the following terms have the meanings set forth below:

A. **"Acid Mine Drainage"** or **"AMD"** shall mean acid mine drainage, *i.e.*, acidic water that forms when sulfide-rich minerals, exposed as a result of mining activity, are exposed to oxygen and water.

B. **"Administrative Abatement Action"** or **"AAA"** shall mean the administrative order issued by the EPA to the Regional Board under Section 106(a) of CERCLA, 42 U.S.C.

§ 9606(a), with an effective date of July 14, 2005, CERCLA Docket No. 2005-15, as amended, and directing the Regional Board to perform certain Response Actions at the Site.

C. **"Administrative Order for RI/FS"** shall mean the administrative order issued by the EPA to Atlantic Richfield under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), with an effective date of June 23, 2008, CERCLA Docket No. 2008-18, as amended, and directing Atlantic Richfield to prepare and perform a Remedial Investigation and Feasibility Study at the Site.

D. **"Administrative Settlement Agreement and Order on Consent for Removal Action"** or **"2009 AOC"** shall mean the administrative agreement and order entered into between EPA and Atlantic Richfield, and issued under CERCLA §§ 104, 106(a), 107, and 122, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, with an effective date of January 21, 2009, CERCLA Docket No. 2008-29, as amended, and directing Atlantic Richfield to perform certain Response Actions at the Site, among other things.

E. **"CERCLA"** shall mean the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675, as amended.

F. **"Certification of Completion"** shall mean, with respect to any Remedial Action, as defined herein: (1) certification by EPA of completion of such Remedial Action, as required under and pursuant to any Consent Decree and any work plans, project plans, or statements of work associated therewith, or (2) in the absence of a Consent Decree or such a requirement therein, a comparable certification by an agency of the United States or the State with jurisdiction over a Response Action at the Site that any such Remedial Action has been completed in full satisfaction of all applicable requirements under state and federal law with respect thereto.

G. **"Consent Decree"** shall mean one or more decrees to be entered in the United States District Court for the purposes, *inter alia*, of resolving the claims of the EPA and potentially other settling federal agencies against Atlantic Richfield, the Regional Board, and potentially other State Parties under CERCLA with respect to the Site and providing for the performance of Response Actions at the Site consistent with the NCP. For purposes of this Agreement, the term "Consent Decree" shall also include any unilateral administrative orders, administrative orders on consent, judicial decrees, or other judicial or administrative enforcement measures issued by or entered into with a state or federal agency or court, provided that such other order, decree, or measure is issued in lieu of a consent decree, and provided further that it requires or provides for the performance of any Remedial Action, the development and implementation of the RD/RA Work Plan or Remedial Design, or the planning and performance of Operations & Maintenance.

H. **"EPA"** shall mean the United States Environmental Protection Agency.

I. **"Explanation of Significant Differences"** or **"ESD"** shall mean any EPA Explanation(s) of Significant Differences for any ROD issued by EPA for the Site and documented in accordance with 40 C.F.R. § 300.435(c)(2)(i) and § 300.825(a)(2).

J. “**Feasibility Study**” or **“FS”** shall mean the studies and other Response Actions required or approved by EPA to evaluate the feasibility and effectiveness of implementing alternative remedial actions at the Leviathan Mine Site in a manner that is consistent with: (1) the Statement of Work set forth in Attachment 1 to the Administrative Order for RI/FS; (2) any other administrative orders or modified administrative orders issued by EPA and requiring an evaluation of remedial alternatives in accordance with 40 C.F.R. § 300.430(e), including those issued in accordance with Section IV.D of this Agreement; (3) the NCP; (4) CERCLA; and (5) FS work plans and work plan amendments submitted to and approved by EPA. For purposes of this Agreement, the term “Feasibility Study” or “FS” shall include any and all such studies and other Response Actions, including those addressing any separate Operable Units comprising the Site, in the event the Site is administratively sub-divided into more than one Operable Unit, and including any focused feasibility studies required or approved by EPA for the Site that address specific elements or components of a remedial action alternative. For purposes of this Agreement, the term “Feasibility Study” or “FS” shall not include Interim Combined AMD Treatment, Remedial Investigation, Remedial Design, Remedial Action, or Operations & Maintenance. The prior exclusion shall not apply to the Interim Combined AMD Treatment treatability investigation described in Section IV.C.2 of this Agreement, which shall be considered part of the FS for purposes of this Agreement.

K. **“Feasibility Study Costs”** or **“FS Costs”** shall mean all Response Costs and other reasonable and necessary costs paid by Atlantic Richfield in performing and completing the FS (including the Interim Combined AMD Treatment treatability investigation described in Section IV.C.2), including all costs and expenses for contractors, subcontractors, laboratory services, EPA oversight, labor, materials, equipment, license fees, permitting fees, disposal fees, reporting, HSSE, and any other actions or items necessary to obtain EPA’s final approval of a final FS report; provided, however, that FS Costs shall not include: (1) RI Costs; (2) Response Costs paid by Atlantic Richfield prior to January 1, 2014; (3) fines or penalties paid by Atlantic Richfield to EPA as a result of Atlantic Richfield’s failure to properly or timely perform and complete the RI or the FS; (4) Response Costs paid by Atlantic Richfield for Response Actions required under and performed in accordance with the 2009 AOC; and (5) AMD Treatment Support Costs, as defined in Section IV.C.7.h of this Agreement.

L. **“Gross Negligence”** shall mean the lack of any care or an extreme departure from what a reasonably careful person would do in the same situation to prevent harm. Gross negligence can occur by acting or by failing to act.

M. **“Hazardous Substance”** shall have the same meaning as provided in 42 U.S.C. § 9601(14).

N. **“Health, Safety, Security, and Environment”** or **“HSSE”** shall encompass all relevant and appropriate protective measures related to health, safety, security, and environmental conditions of the Response Actions performed at the Site.

O. **“Incremental Costs”** shall mean the Response Costs, Response Actions, Natural Resource Damages, Natural Resource Damage Assessments, costs, expenses, liabilities, obligations, work requirements, or other Claims (as defined in Section II.A.1 below) arising from, caused by, or otherwise directly attributable to a Party’s own Recklessness, Gross

Negligence, or Willful Misconduct, including that of any of such Party's employees, agents, contractors, subcontractors, or representatives, which occurs after the Effective Date. Incremental Costs shall not include any actions or costs that would have needed to be performed or paid in the absence of such Recklessness, Gross Negligence, or Willful Misconduct.

P. **"Judicial Consent Decree**" shall mean the Consent Decree entered by the United States District Court and entered into, at a minimum, between the United States, potentially other settling federal agencies, Atlantic Richfield, the Regional Board, and potentially other State Parties.

Q. **"Leviathan Mine Site"** or **"Site"** shall mean the former Leviathan Mine located primarily in Alpine County, California, including: (1) all areas within the Leviathan Mine Superfund site, as described in the National Priority List listing (65 Fed. Reg. 30482, May 11, 2000); (2) some or all of approximately 32 patented mineral claims and a patented mill site, which together total approximately 656 acres, located within a portion of Sections 14, 15, 22, and 23, in Township 10 north of Range 21 east of the Mount Diablo Meridian, Alpine County, California, including: (i) approximately 253 acres owned by the State or the United States Forest Service where disturbance from historical mining activities is evident, and (ii) all lands on which any Party has performed, is performing, or will perform Response Actions; (3) any area or medium, including, without limitation, surface water, groundwater, soil, sediment, and air, where Waste Material(s) Released from the areas described in Section I.Q(2) of this Agreement have been deposited, migrated to, or otherwise come to be located; (4) all suitable areas located in close proximity to the areas described in Section I.Q(2) of this Agreement reasonably necessary for the implementation of Response Actions; and (5) any and all Operable Units of the Site encompassing any of the foregoing. For purposes of this Agreement, the Leviathan Mine Site shall not include the former Anaconda Copper Company Mine in Yerington, Nevada or any other site to which materials originating at the Leviathan Mine Site were transported by Atlantic Richfield or its predecessor for commercial use; provided that such exclusion shall not apply with respect to any location in, along, or associated with the Leviathan Mine Road where materials originating at the Leviathan Mine Site were used or Released for road fill, base material, or any other similar purpose.

R. **"Leviathan Mine Environmental Remediation Trust"** or **"Trust" s**hall mean a trust account established and managed by the State Trustee (as defined in Section I.OO), which is dedicated solely for payments of Response Actions performed at the Leviathan Mine Site and in which any funds are held in trust by the State Trustee for such purpose. The Trust may be established as an account within a special deposit fund or other trust managed by the State Trustee, as long as such account otherwise satisfies the requirements in this definition.

S. **"Managed AMD Discharge Points"** shall mean the five primary locations where AMD is collected and treated pursuant to existing EPA orders at the Site. These locations are: (1) the Adit, (2) the Pit Underdrain, (3) the Channel Underdrain, (4) the Delta Seep, and (5) the Aspen Seep.

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

U. **"Natural Resource Damages"** shall mean any and all damages, costs, expenses, or other relief of any kind available under federal, state, local, tribal, or common law, under any legal or equitable theory pertaining or related to any injury to, destruction of, or loss of any and all Natural Resources arising from or related in any way to past, present, or future Release(s) or threatened Release(s) of Waste Material(s), including any past, present, or future migration, movement, deposition, or dispersion of Waste Material(s), within, in, at, to, on, under, about, or migrating or otherwise emanating from the Leviathan Site, including: (1) any and all damages or other relief related to the restoration, replacement, rehabilitation, reclamation, or acquisition of injured, destroyed, or lost Natural Resources; (2) any and all loss of economic value, including use and alleged non-use value, of Natural Resources; (3) any and all lost services of any kind; and (4) any fines, penalties, profit, gain, or income. Natural Resource Damages include any and all such damages, costs, expenses, or other relief that may be recoverable under Sections 107(a)(4)(C), 107(f), or 113 of CERCLA, 42 U.S.C. §§ 9607(a)(4)(C), 9707(f), and 9613; Section 311 of the Clean Water Act, 33 U.S.C. § 1321; the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. §§ 2701-2761; the California Porter-Cologne Water Quality Control Act, California Water Code §§ 13300 *et seq.*; and § 25363(e) of the California Health and Safety Code.

V. **"Natural Resource Damage Assessment"** shall mean the process of collecting, compiling, and analyzing information, statistics, or data, including baseline or other environmental samples, through methodologies to determine Natural Resource Damages. Natural Resource Damage Assessment shall include such activities performed by or for any Natural Resources trustee or trustee council.

W. **"Natural Resources"** shall mean any and all of those resources within the scope of Section 101(16) of CERCLA, 42 U.S.C. § 9601(16). "Natural Resources" also has, without limitation, the meaning of the term to the full extent used in or intended by Section 311 of the Clean Water Act, 33 U.S.C. § 1321; OPA, 33 U.S.C. §§ 2701-2761; and any other provision of law providing for recovery of Natural Resource Damages or the costs of Natural Resource Damage Assessment.

X. **"Operable Unit"** or **"OU"** shall have the same meaning as provided in the NCP, at 40 C.F.R. § 300.5.

Y. **"Operations & Maintenance"** shall mean all activities required to maintain the effectiveness and monitor the performance of any Remedial Action following Certification of Completion. "Operations & Maintenance" shall also mean any activities reasonably required or undertaken under any applicable laws, regulations, standards, rules, codes, and ordinances to maintain the effectiveness of any Remedial Action following a Certification of Completion of such Remedial Action, which, for purposes of this Agreement, shall define the commencement of Operations & Maintenance for that particular Remedial Action. Notwithstanding anything to the contrary stated in CERCLA Section 104(c)(6), 42 U.S.C. § 9604(c)(6), 40 C.F.R. § 300.5, or 40 C.F.R. § 300.435(f), "Operations & Maintenance" shall also mean, to the extent occurring or required following a Certification of Completion: (1) activities taken or reasonably necessary to respond to a Release or threatened Release of Waste Material(s) at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, or that results from a Force Majeure Event (as defined in Section VIII.A of

this Agreement), or that is otherwise a "removal action," as defined in the NCP, and that is not otherwise addressed in this Agreement; (2) the operation, maintenance, service, replacement, and repair of any treatment systems, equipment, structures, facilities (including roads, stormwater collection and conveyance structures, and fences), ponds, pipelines, property, soil covers and amendments, other erosion controls, revegetation, or other things existing at the Site and used for, associated with, or reasonably necessary for (i) the control, collection, storage, conveyance, treatment, interception, mitigation, prevention, monitoring, and discharge of AMD or other Waste Material(s), including AMD Releases from the Managed AMD Discharge Points, and (ii) responding to or mitigating past, present, or future Releases and threatened Releases of any Waste Material(s) within, in, at, to, on, under, about, or migrating or otherwise emanating from the Leviathan Mine Site; (3) any studies, investigations, monitoring, or further Response Actions that EPA or a state requests, selects, or requires, including in connection with a review under CERCLA Section 121(c), to determine whether the Remedial Action is protective of human health and the environment or because of a determination by EPA or a state that the Remedial Action is not protective of human health and the environment; and (4) any Response Actions required or approved by EPA or a state after Certification of Completion as a result of either a non-significant or significant change to the Remedial Action that was the subject of the Certification of Completion, the requirement for which is documented in a fact sheet, memo to the EPA site file, or an Explanation of Significant Differences. For purposes of this definition, a "significant change to the Remedial Action" shall be defined as one that changes a component of the Remedial Action but does not fundamentally alter the overall cleanup approach within the meaning of 40 C.F.R. § 300.435(c)(2)(i). Notwithstanding the foregoing, "Operations & Maintenance" shall not include or mean, to the extent occurring or required by EPA or a state after a Certification of Completion, a new Remedial Action or other Response Action required as a result of a fundamental change to the Remedial Action that was the subject of the Certification of Completion (including any associated RI or FS that may be required for a new ROD or ROD amendment), the requirement for which is documented in a new Consent Decree, a new ROD, or a ROD Amendment. For purposes of this definition, a "fundamental change to the Remedial Action" shall be defined as one that fundamentally alters the basic features of the Remedial Action within the meaning of 40 C.F.R. § 435(c)(2)(ii). If the Site is administratively sub-divided into more than one Operable Unit, then Operations & Maintenance shall be performed on an Operable-Unit-by-Operable-Unit basis.

Z. **"Performance Standards"** shall mean the cleanup standards and other measures of achievement of the goals of any Remedial Action, set forth in any ROD and any Statement of Work associated therewith, and any modified standards established pursuant to or required by any Consent Decree, including all applicable relevant and appropriate requirements under any law.

AA. **"RCRA"** shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended.

BB. **"Recklessness"** shall mean acting or failing to act with the knowledge, or when the actor has reason to know, that it is highly probable that such conduct would cause harm and knowingly or deliberately disregarding this risk. Recklessness is more than just failure to use reasonable care.

CC. **“Record of Decision”** or **“ROD”** shall mean any EPA Record(s) of Decision relating to the Site, or relating to any Operable Unit comprising the Site, that is selected, approved, and documented in accordance with the NCP, 40 C.F.R. § 300.430(f)(5), including any interim action ROD.

DD. **“Release”** shall have the same meaning as provided in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and shall include, without in any way limiting Section 101(22), the meaning of “Release” set forth in § 25320 of the California Health and Safety Code.

EE. **“Remedial Action”** shall mean any and all activities required at the Leviathan Mine Site to implement any ROD or ROD Amendment and to construct and implement any Remedy in accordance with any Consent Decree, RD/RA Work Plan, Remedial Design, or other plan(s) required and approved by the United States after the issuance of such ROD or ROD Amendment and until the Performance Standards have been achieved and the Certification of Completion has been made, but excluding Remedial Design, Interim Combined AMD Treatment, and Operations & Maintenance. “Remedial Action” shall also mean any “remedy” or “remedial action,” as defined in 42 U.S.C. § 9601(24), that is selected or required by EPA prior to issuance of the Certification of Completion or documented in a ROD Amendment, including any such interim remedy or interim remedial action. For purposes of this Agreement, the term “Remedial Action” shall also mean, to the extent occurring or required after issuance of a ROD or ROD Amendment and prior to a Certification of Completion with respect thereto: (1) activities taken or reasonably necessary to respond to a Release or threatened Release of Waste Material(s) at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, or that results from a Force Majeure Event (as defined in Section VIII.A of this Agreement), or that is otherwise a “removal action,” as defined in the NCP, and that is not otherwise addressed in this Agreement; (2) the operation, maintenance, service, replacement, and repair of any treatment systems, equipment, structures, facilities (including roads, stormwater collection and conveyance structures, and fences), ponds, pipelines, property, soil covers and amendments, other erosion controls, revegetation, or other things existing at the Site and used, associated with, or reasonably necessary for (i) the control, collection, storage, conveyance, treatment, interception, mitigation, monitoring, and discharge of AMD or other Waste Material(s), including AMD Releases from the Managed AMD Discharge Points, and (ii) responding to or mitigating Releases or threatened Releases of any Waste Material(s) within, in, at, to, on, under, about, or migrating or otherwise emanating from the Leviathan Mine Site; (3) any studies, investigations, or further Response Actions that EPA or a state requests, selects, or requires, including, in connection with a review under CERCLA Section 121(c), to determine whether the Remedial Action is protective of human health and the environment or because of a determination by EPA or a state that the Remedial Action is not protective of human health and the environment; and (4) any Response Actions required or approved by EPA or a state prior to Certification of Completion as a result of either a non-significant change or a “significant change to the Remedial Action”, the requirement for which is documented in a fact sheet, memo to the EPA site file, or an Explanation of Significant Differences. For purposes of this definition, a “significant change to the Remedial Action” shall be defined as one that changes a component of the Remedial Action but does not fundamentally alter the overall cleanup approach within the meaning of 40 C.F.R. § 300.435(c)(2)(i). Remedial Action shall also mean, to the extent occurring or required by EPA

or a state after a Certification of Completion, a new Remedial Action or other Response Action required as a result of a "fundamental change to the Remedial Action" that was the subject of the Certification of Completion, the requirement for which is documented in a new Consent Decree, a new ROD, or a ROD Amendment. For purposes of this definition, a "fundamental change to the Remedial Action" shall be defined as one that fundamentally alters the basic features of the Remedial Action within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). If the Site is administratively sub-divided into more than one Operable Unit, then the Remedial Action shall be performed on an Operable-Unit-by-Operable-Unit basis.

FF. **"Remedial Design"** shall mean all activities to be undertaken to develop the final plans, specifications, and designs for any Remedial Action pursuant to any RD/RA Work Plan or any Consent Decree. For purposes of this Agreement, the term "Remedial Design" shall include any and all such activities and any and all such plans, specifications, and designs, including those addressing any separate Operable Units comprising the Site, in the event the Site is administratively sub-divided into more than one Operable Unit.

GG. **"Remedial Design/Remedial Action Work Plan"** or **"RD/RA Work Plan"** shall mean the plan or plans developed pursuant to any Consent Decree for completion of Remedial Design, construction and implementation of Remedial Action, and achievement of Performance Standards. For purposes of this Agreement, the term "RD/RA Work Plan" shall include any and all such plans, including those addressing any separate Operable Units comprising the Site, in the event the Site is administratively sub-divided into more than one Operable Unit.

HH. **"Remedial Investigation"** or **"RI"** shall mean the investigations and other Response Actions required or approved by EPA to characterize the Leviathan Mine Site, including any Operable Unit(s) comprising the Site, and actual or potential contaminant migration pathways, define contamination sources, define the nature and extent of the contamination, identify actual or potential receptors, and assess the risks posed to actual or potential receptors in a manner that is consistent with: (1) the Statement of Work attached as Attachment 1 to the Administrative Order for RI/FS; (2) the NCP; (3) CERCLA; (4) other applicable laws, regulations, standards, rules, codes, and ordinances, including, Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, and its implementing regulations at 36 C.F.R. Part 800; and (5) RI work plans and work plan amendments submitted to and approved by EPA. For purposes of this Agreement, the term "Remedial Investigation" or "RI" shall include any and all such investigations and other Response Actions, including those addressing any separate Operable Units comprising the Site, in the event the Site is administratively sub-divided into more than one Operable Unit.

II. **"Remedial Investigation Costs"** or **"RI Costs"** shall mean all Response Costs and other reasonable and necessary costs paid by Atlantic Richfield in performing and completing the Remedial Investigation, including all costs and expenses for contractors, subcontractors, laboratory services, archeological services, EPA oversight, consultations, labor, materials, equipment, license fees, permitting fees, disposal fees, reporting, HSSE, and any other actions or items necessary to obtain EPA's final approval of a final RI report; provided, however, that RI Costs shall not include: (1) Response Costs paid by Atlantic Richfield prior to January 1, 2013; (2) fines or penalties paid by Atlantic Richfield to EPA as a result of Atlantic Richfield's

failure to properly or timely perform and complete the RI; (3) Response Costs paid by Atlantic Richfield for Response Actions required under and performed in accordance with the 2009 AOC; and (4) AMD Treatment Support Costs, as defined in Section IV.C.7.h of this Agreement.

JJ. **"Remedy"** shall mean the remedy selected in any ROD. For purposes of this Agreement, the term "Remedy" shall include any and all Remedial Actions selected in any and all RODs relating to the Site or relating to any Operable Unit comprising the Site.

KK. **"Response Actions"** shall mean all activities performed to investigate, clean-up, mitigate, remove, remediate, reduce, respond to, or otherwise address the past, present, or future Release or threatened Release of Waste Material(s) within, in, at, to, on, under, about, or migrating or otherwise emanating from the Leviathan Mine Site and all activities performed to maintain the effectiveness of the foregoing. For purposes of this Agreement, Response Actions shall not include any activities performed to investigate, clean-up, mitigate, remove, remediate, reduce, or otherwise address the Release or threatened Release of materials that have been or are in the future transported from the Leviathan Mine Site to the former Anaconda Copper Company Mine in Yerington, Nevada or to any other site for commercial use; provided that such exclusion shall not apply with respect to materials originating at the Leviathan Mine Site that were Released along the Leviathan Mine Road or that were otherwise used along the Leviathan Mine Road for road fill, base material, or any other similar purpose.

LL. **"Response Costs"** shall mean (1) any "necessary costs of response" incurred "consistent with the national contingency plan," within the meaning of CERCLA Section 107(a)(4)(B), 42 U.S.C. § 9607(a)(4)(B), incurred performing a Response Action pertaining to Waste Material(s) at or emanating from the Site, including pursuant to an order or consent agreement issued by or entered into with the United States or by such other regulatory authority as may have CERCLA jurisdiction during the time period in which the Response Action is performed; (2) any "costs of removal or remedial action incurred . . . not inconsistent with the national contingency plan" within the meaning of CERCLA Section 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), incurred performing a Response Action pertaining to Waste Material(s) at or emanating from the Site, including pursuant to an order or consent agreement issued by or entered into with the United States or by such other regulatory authority as may have CERCLA jurisdiction during the time period in which the Response Action is performed; (3) any "costs of removal or remedial action" that are "not inconsistent with the national contingency plan," within the meaning of CERCLA Section 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), that the United States has incurred or may incur performing or overseeing the performance of a Response Action pertaining to Waste Material(s) at or emanating from the Site; and (4) for purposes of this Agreement, and to the extent not otherwise included in the foregoing subsections of this definition, RI Costs (as defined in Section I.II of this Agreement), FS Costs (as defined in Section I.K of this Agreement), Interim Combined AMD Treatment Costs (as defined in Section IV.C.5.b of this Agreement), Remedial Design Costs (as defined in Section V.A.3.b of this Agreement), AMD Treatment Support Costs (as defined in Section IV.C.7.h of this Agreement), Remedial Action Costs (as defined in Section V.B.3.b of this Agreement), O&M Costs (as defined in Section VI.A.3.c of this Agreement), and Major Capital Equipment Replacement Costs (as defined in Section VI.B.5.b of this Agreement). For purposes of this Agreement, the term "Response Costs" shall not include any: (i) fines, penalties (including stipulated penalties), interest accrued on such fines or penalties, or administrative expenses

incurred in connection with the assessment or defense of any claims for such fines or penalties where such fines or penalties arise out of or are related to a Party's performance of Response Actions or other activities at the Site or a Party's failure to comply with a material requirement of the Consent Decree; or (ii) "Incremental Costs" (as defined in Section I.O of this Agreement).

MM. **"ROD Amendment"** shall mean any amendment to any ROD issued by EPA for the Site, and documented in accordance with the NCP, 40 C.F.R. § 300.435(c)(2)(ii) and 300.825(a)(2).

NN. **"State Parties"** shall mean and shall include: the State Board, the Regional Board, the California Environmental Protection Agency, the California Department of Toxic Substances Control, the California Department of Fish and Wildlife, the California Department of Conservation, and the California Department of General Services ("General Services"). For purposes of this Agreement, the term "State Parties" includes: (1) the State of California, as named as a Defendant, acting by and through the Regional Board and the State of California acting by and through the State Board, and (2) any and all State agencies, bureaus, departments, commissions, offices, officers, divisions, sub-divisions, boards, other administrative units, officials, and personnel (i) succeeding to or assuming the responsibilities and functions of or otherwise replacing the foregoing at any time in the future, or (ii) that act on behalf of the foregoing. Nothing in this definition is intended to enlarge a State Party's constitutional or statutory authority.

OO. **"State Trustee"** shall mean the State Board or another State agency or officer having the authority and capacity to establish and manage a trust, including the Trust.

PP. **"Waste Material"** shall mean: (1) any Hazardous Substance; (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C.§ 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous waste," "hazardous substance," "hazardous material," "waste," "pollutant," "contaminant," "mining waste," "pollution," or "contamination" under California Health and Safety Code §§ 25117, 25260, 25281, and 25316, and California Water Code § 13050.

QQ. **"Willful Misconduct"** shall mean intentional wrongful conduct done either with a knowledge that serious injury to another will probably result, or with a wanton and reckless disregard of the possible results.

II. RELEASE AND DISMISSAL

A. Claims Generally

1. **Mutual Release and Covenant Not to Sue**. In consideration of the payments that will be made, the work that will be performed under this Agreement, and the other terms of this Agreement, and except as specifically provided elsewhere in this Agreement, each of the State Parties and Atlantic Richfield each mutually covenant not to sue or take administrative action against, and release, each other and their respective officials, officers, directors, divisions, departments, employees, shareholders, parents, subsidiaries, predecessors, representatives, successors, and assigns from and for any past, present, or future claims,

complaints, losses, causes of action, demands, liabilities, costs, expenses, damages, equitable relief, penalties, or fees (including attorneys' fees) (collectively "Claims") arising from or related in any way to the Leviathan Mine Site, whether such Claims are known, suspected, or unknown, for injunctive relief, response actions, declaratory relief, response costs, or contribution under (a) Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613; (b) Sections 7002 and 7003 of RCRA, 42 U.S.C. §§ 6972 and 6973; (c) Sections 311 and 505 of the Clean Water Act, 33 U.S.C. §§ 1321 and 1365; (d) OPA, 33 U.S.C. §§ 2701-2761; (e) the California Porter-Cologne Water Quality Control Act, California Water Code §§ 13300 *et seq.*; and (f) Section 25363(e) of the California Health and Safety Code. In addition, and including any Claims covered by the preceding sentence, and except as specifically provided elsewhere in this Agreement, the State Parties and Atlantic Richfield each mutually covenant not to sue or take administrative action, and release, each other and their respective officials, officers, directors, divisions, departments, employees, shareholders, parents, subsidiaries, predecessors, representatives, successors, and assigns from and for any past, present, or future Claims, known or unknown, suspected or not suspected, arising from or related to the past, present, or future Release(s) or threatened Release(s) of Waste Material(s), including any migration, movement, deposition, dispersion, or exposure of or to Waste Material(s), within, in, at, to, on, under, about, or migrating or otherwise emanating from the Leviathan Site, and including any and all such Claims: (a) for Natural Resource Damages and costs of Natural Resource Damage Assessment incurred or alleged by any State Party or any Natural Resources trustee for the State of California; and (b) for injunctive relief, Response Costs, Response Actions, declaratory relief, contribution, indemnity, damages, or other relief under federal, State, or common law. This Mutual Release and Covenant Not to Sue extends to any theory of liability, whether based on a statute or common law, under which any State Party's or Atlantic Richfield's liability is based, in full or in part, upon such Party's or any of its predecessor's respective status as a past, present, or future owner, lessor, lessee, operator, generator, transporter, or any other status involving the handling, treatment, storage, transport, disposal, investigation, removal, remediation, cleanup, regulation, or management of Waste Material(s), of, at, to, or from the Leviathan Mine Site.

2. **Unconditional Release of Unknown Claims**. Notwithstanding anything to the contrary in California Civil Code § 1542, the State Parties and Atlantic Richfield each mutually agree that the Mutual Release and Covenant Not to Sue set forth in Section II.A.1 of this Agreement shall include and shall extend to any and all Claims that a Party does not know or does not suspect to exist in such Party's favor at the time of executing this Agreement, which if known by such Party must have materially affected such Party's settlement hereunder. The Parties are each fully aware of the meaning of California Civil Code § 1542 and fully understand the significance of waiving the protection of this Section. **THEREFORE, THE PARTIES EXPRESSLY WAIVE THE PROTECTION OF CALIFORNIA CIVIL CODE § 1542, WHICH STATES THAT:**

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

BY SIGNING THIS AGREEMENT, EACH PARTY FULLY ASSUMES ANY AND ALL RISK OF CURRENTLY EXISTING, BUT AS YET UNKNOWN OR UNSUSPECTED,

CLAIMS, AND ANY OTHER CLAIMS, WITHIN THE SCOPE OF CALIFORNIA CIVIL CODE § 1542, THAT ARE OTHERWISE WITHIN THE SCOPE OF THIS RELEASE.

B. Claims for Natural Resource Damages and Assessment Costs

1. **Payment for Natural Resource Damages and Assessment Costs**.

a. Within ninety (90) days of the Effective Date, Atlantic Richfield shall pay to the California Department of Fish and Wildlife ("CDFW") the following sum to compensate CDFW for costs incurred in performing or assisting with Natural Resources Damage Assessment or administration of restoration implementation (e.g., the development of restoration plans) as of November 30, 2012: $238,000.00.

b. In addition, Atlantic Richfield shall pay to CDFW the following sum to compensate CDFW for costs incurred in performing or assisting with Natural Resources Damage Assessment or administration of restoration implementation, (e.g., the development of restoration plans) after November 30, 2012: up to a maximum of $187,000.00; provided that Atlantic Richfield shall only be obligated to pay such sum if and to the extent CDFW provides reasonably detailed written documentation to Atlantic Richfield showing that such costs have been incurred by CDFW in performing or assisting with Natural Resources Damage Assessment or administration of restoration implementation. Other than Atlantic Richfield resolving potential contribution claims that it may have against the State Parties and paying for administration of restoration implementation as set forth herein, Atlantic Richfield is not performing physical restoration pursuant to this Agreement. Atlantic Richfield's payments under this subsection shall be due within ninety (90) days after Atlantic Richfield receives such written documentation, provided that payments shall not be required to be made more frequently than once per calendar quarter.

c. These payments to CDFW shall constitute full and final resolution of any Claims that CDFW or any other State Party with authority to pursue Claims for Natural Resource Damages may have, now or in the future, against Atlantic Richfield for Natural Resource Damages and for the past, present, or future costs or performance of any Natural Resource Damage Assessment.

d. Notwithstanding the foregoing, and subject to the reservations in Section II.E below, this Agreement does not resolve or preclude the pursuit of any Claims of or by any Non-Party NRD Claimant (as defined in Section II.B.2) against any Party for Natural Resource Damages or the costs of any Natural Resource Damage Assessment, including any such Claims that pertain to Natural Resources that are (i) under the trusteeship of such Non-Party NRD Claimant and (ii) located in the State of California; nor shall this Agreement preclude CDFW from participating, without the right to further reimbursement from Atlantic Richfield, in further Natural Resource Damages Assessment activities.

2. **Natural Resource Damages Paid to Non-Parties**. Except as otherwise provided in this Section II.B, the Mutual Release and Covenant Not to Sue set forth in Section II.A.1 of this Agreement shall apply with respect to any Claims among the Parties for

damages or other relief that any Party has paid or performed or pays or performs in the future to resolve, whether through negotiation, settlement, or judgment, any Claim for Natural Resource Damages or for the costs or performance of any Natural Resource Damage Assessment brought, filed, or otherwise asserted against such Party by any non-Party person, government or governmental agency, tribal government or tribal agency, or Natural Resources trustee (each a "Non-Party NRD Claimant").

3. **Natural Resource Damages Threshold Amount**. If, at any time in the future, the aggregate total amount or value of damages and other relief paid or performed by any one or more of the Parties to or on behalf of any one or more Non-Party NRD Claimant to resolve a Claim or Claims brought, filed, or otherwise asserted by such Non-Party NRD Claimant(s) for Natural Resource Damages equals or exceeds Nine Million Dollars ($9,000,000.00) (the "NRD Threshold Amount"), any Party shall then be entitled, and hereby reserves the right, notwithstanding any release or covenant not to sue set forth elsewhere in this Agreement, to seek recovery or other appropriate relief from any other Party for damages paid or the value of other relief performed in excess of the NRD Threshold Amount.

4. **Natural Resource Damage Assessment Costs Threshold Amount**. If, at any time in the future, the aggregate total amount or value of damages and other relief paid or performed by any one or more of the Parties to or on behalf of any one or more Non-Party NRD Claimant to resolve a Claim brought, filed, or otherwise asserted by such Non-Party NRD Claimant(s) for the costs or performance of any Natural Resource Damage Assessment equals or exceeds Four Million Five Hundred Thousand Dollars ($4,500,000.00) (the "NRD Assessment Costs Threshold Amount"), any Party shall then be entitled, and hereby reserves the right, notwithstanding any release or covenant not to sue set forth elsewhere in this Agreement, to seek recovery or other appropriate relief from any other Party for damages paid or the value of other relief performed in excess of the NRD Assessment Costs Threshold Amount.

5. **Notice**. If Atlantic Richfield, the Regional Board, or the State Board pays damages or other consideration, or performs any other relief, to resolve a Claim for Natural Resource Damages or a Claim for the costs or performance of any Natural Resource Damage Assessment brought, filed, or otherwise asserted by a Non-Party NRD Claimant, written notice shall be provided to the other Parties of the amount paid or the reasonably estimated value of consideration provided or the relief performed. Settlement communications exchanged between any Party and the United States, the Washoe Tribe of Nevada and California, or the State of Nevada regarding Natural Resource Damages or costs of Natural Resource Damage Assessment shall be considered confidential, the disclosure of which shall be handled by such Party in accordance with any confidentiality agreement concerning such communications and entered into between such Party and the United States, the Washoe Tribe of Nevada and California, or the State of Nevada. If Atlantic Richfield engages in active settlement negotiations with any Non-Party NRD Claimant(s) in an effort to resolve Claims for Natural Resource Damages or the costs or performance of Natural Resource Damage Assessment, and if none of the State Parties is also involved in or otherwise made aware of those negotiations, Atlantic Richfield shall promptly notify, in writing, the State Board, the Regional Board, the California Attorney General's Office, and the California Department of Fish & Wildlife of the existence of such negotiations, subject to any confidentiality agreement concerning such negotiations. If the Regional Board or State Board engages in active settlement negotiations with any Non-Party NRD Claimant(s) in an

effort to resolve Claims for Natural Resource Damages or the costs of performance of Natural Resource Damage Assessment, and if Atlantic Richfield is not also involved in or otherwise made aware of those negotiations, such agency shall promptly notify Atlantic Richfield, in writing, of the existence of such negotiations, subject to any confidentiality agreement concerning such negotiations.

6. **Natural Resource Damages Claims for Threshold Amount Exceedances**. An action, dispute, or controversy seeking recovery or other appropriate relief under this Section II.B for damages and other relief paid and performed in excess of the NRD Threshold Amount or the NRD Assessment Costs Threshold Amount shall not be considered a dispute arising under or with respect to this Settlement Agreement, for purposes of the dispute resolution process set forth in Section XI of this Agreement. Any such action, dispute, or controversy shall be litigated in, if at all, any court having competent jurisdiction over the matter and where venue is proper.

C. Dismissal

Within ten (10) days of the Effective Date, Atlantic Richfield and the Defendants shall file Judicial Council Form CIV-110 with the Court. To the extent not already dismissed by the Court's September 20, 2012 Dismissal Order, Atlantic Richfield and the Defendants agree to the "dismissal of this entire action of all parties and all causes of action" (§ 1.b.(5)), "with prejudice" (§1.a.(1)), and shall complete Form CIV-110 accordingly.

D. Claims for Incremental Costs Arising from Future Recklessness, Gross Negligence, or Willful Misconduct

Notwithstanding any other provision in this Agreement, Atlantic Richfield and the State Parties each agree that each Party shall be solely responsible for paying, satisfying, reimbursing, performing, restoring, replacing, or otherwise implementing any and all Incremental Costs attributable to the conduct of such Party or that of its employees, agents, contractors, subcontractors, or representatives. With respect to such Incremental Costs: (1) each other Party hereby reserves all rights and does not waive whatever Claims it may have against the Party whose conduct resulted in the Incremental Costs or such Party's employees, agents, contractors, subcontractors, or representatives; (2) the releases and covenants not to sue set forth in Sections II.A and II.B of this Agreement shall not apply and shall be of no effect; (3) the allocation formulas set forth in this Agreement, including those in Sections IV.C.6, V.A.4, V.B.4, VI.A.4, and VI.B.6, shall not apply and shall be of no effect; (4) such Natural Resource Damages and costs of Natural Resource Damage Assessment shall be excluded from the NRD Threshold Amount and the NRD Assessment Costs Threshold Amount, respectively; (5) such costs and expenses shall not count towards the Remedial Action Retention Amount (defined in Section V.B.9) or the O&M Retention Amount (defined in Section VI.A.9); and (6) such costs and expenses shall not be subject to insurance coverage under the insurance policies purchased pursuant to Sections X.B and X.C of this Agreement. Disputes concerning the degree to which a Party's alleged Recklessness, Gross Negligence, or Willful Misconduct has caused an Incremental Cost shall be resolved pursuant to the Dispute Resolution procedures set forth in Section XI, and the Party asserting that a cost or other item is an Incremental Cost shall have the burden of proof on that issue.

E. General Reservation of Rights

Atlantic Richfield reserves, and this Agreement is without prejudice to, all rights it has against the State Parties, and the State Parties each reserve, and this Agreement is without prejudice to, all rights they have against Atlantic Richfield, with respect to all matters not expressly included within the releases and covenants not to sue set forth in Section II.A and II.B of this Agreement. Notwithstanding any other provision of this Agreement, Atlantic Richfield reserves all rights against the State Parties, and the State Parties reserve all rights against Atlantic Richfield, with respect to: (1) Claims for failure by the State Parties or Atlantic Richfield, as the case may be, to comply with or meet a requirement of this Agreement; (2) Claims arising from or in connection with any Claims brought or asserted by any non-Party (except for non-Party Claims for Natural Resource Damages and costs of Natural Resource Damage Assessment released under Section II.B of this Agreement, and Claims brought or asserted by the United States, a state, or the Washoe Tribe of California and Nevada for Response Costs or Response Actions addressed by this Agreement), including non-Party Claims for bodily injury, death, property (real or personal) damage (including injury to water rights), CERCLA cost recovery, or CERCLA contribution regarding, arising from, or relating to any Party's or any Party's predecessor's respective status as a past, present, or future owner, lessor, lessee, operator, generator, transporter, or any other status involving the handling, treatment, storage, transport, disposal, investigation, removal, remediation, cleanup, or management of Waste Material(s) of, at, to, or from the Leviathan Mine Site; (3) Claims arising from or in connection with any Claims brought or asserted by any non-Party that are based on any rights reserved by any plaintiff under the Consent Decree; (4) Claims based on the ownership or operation of any portion of the Site when such ownership or operation commences after the Effective Date and there is a new Release of Waste Material on or related to such property; (5) Claims based on the new transportation, treatment, storage, or disposal, or new arrangement for the transportation, treatment, storage, or disposal of a Waste Material, at or in connection with the Site that commences and occurs wholly after the Effective Date; (6) Claims arising from a new Release, threat of Release, or disposal of a Waste Material either within or outside of the Site, where such new Release, threat of Release, or disposal commences and occurs wholly after the Effective Date; (7) Claims for bodily injury, death, or damage to personal property, to the extent occurring after the Effective Date; (8) Claims arising from, in connection with, or relating to the past or future off-Site disposal of Waste Material(s) shipped from the Site to a location outside the Site for disposal by rail, ship, car, truck, or similar mechanical conveyance; and (9) to the extent not otherwise covered by the previous subsections, Claims arising from or in connection with any Claims brought or asserted by any non-Party pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365; Section 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972; Nev. Rev. Stat. § 41.540; the California Safe Drinking Water and Toxics Control Act, Health and Safety Code §§ 25249.5 *et seq.*; or other citizen suit provision under state or federal law. For purposes of subsections (4), (5), and (6) of this Section, migration or movement of, or formation of AMD from, Waste Material present within, in, at, to, on, under, about, or migrating or otherwise emanating from the Leviathan Site as of the Effective Date, or the continuation of a Release existing as of the Effective Date, are not new Releases, new threats of Releases, or new disposal of Waste Material. Subsections (4), (5), and (6) of this Section do not apply with respect to activities taken in connection with any Response Action. For purposes of subsections (2), (3), and (9) of this Section, the following are not non-Parties: a Party's

contractor, subcontractor, employee, agent, or representative, or an employee, agent, or representative of such contractor or subcontractor. Nothing in this Agreement shall be construed to waive or limit in any way any Party's Claims or defenses against any person or entity not a Party to this Agreement. A matter reserved herein is not a matter addressed by this Agreement.

F. <u>Reservation With Respect to Future Funding Commitments and Reimbursement Process</u>

1. **Funding Reservation**. Notwithstanding any other provision of this Agreement, Atlantic Richfield reserves, and this Agreement is without prejudice to, the right to assert and bring future Claims against the State Parties if, following the Effective Date, sufficient funds are not obtained by or made available to the Regional Board, regardless of cause, to enable it to satisfy its obligations for the performance and payment of Response Actions and Response Costs, as specified in this Agreement, and as a consequence of such inability, Atlantic Richfield is or may be ordered or otherwise required by EPA, another United States agency, a tribe, or a state to perform Response Actions or pay Response Costs in excess of its obligations under this Agreement. Likewise, the State Parties reserve, and this Agreement is without prejudice to, the right to assert and bring future Claims against Atlantic Richfield if, following the Effective Date, sufficient funds are not obtained by or made available to Atlantic Richfield, regardless of cause, to enable it to satisfy its obligations for the performance and payment of Response Actions and Response Costs, as specified in this Agreement, and as a consequence of such inability, the Regional Board is or may be ordered or otherwise required by EPA, another United States agency, a tribe, or a state to perform Response Actions or pay Response Costs in excess of its obligations under this Agreement.

2. **Payment Reimbursement**. If either Atlantic Richfield or the Regional Board fails to satisfy its obligations under this Agreement for paying Response Costs in accordance with the allocations set forth in this Agreement, and as a consequence of such failure, the total amount of Response Costs paid by Atlantic Richfield or the Regional Board, as the case may be, in any calendar year exceeds such Party's allocated share of the total amount of Response Costs paid in that calendar year, the Party who underpaid shall, on or before July 15 of the subsequent calendar year, reimburse the Party who overpaid in the amount of such excess payment. The Party who overpaid shall, on or before April 15 of the calendar year in which the reimbursement payment is due, provide the Party who underpaid with reasonably detailed written documentation evidencing such overpayment and instructions as to how the reimbursement should be paid or credited. The reimbursement payment required hereunder shall be paid either directly in accordance with instructions provided by the Party who overpaid or treated as a credit towards future payment obligations for Response Costs under this Agreement, as elected by the Party who underpaid. In addition to such reimbursement payment, the Party who underpaid shall owe to the Party who overpaid interest on the unpaid balance, which shall accrue at the rate specified in Civil Code Section 3289, commencing on the date a payment obligation became due and ending on the date the reimbursement payment is made or credited. Claims to recover reimbursement under this Section II.F.2 shall be subject to the reservation set forth in Section II.F.1 of this Agreement.

G. Reservation and Designated Allocation With Respect to Future State Claims

1. **Reservation for Future Non-Party State Claims**. Atlantic Richfield reserves, and this Agreement is without prejudice to, the right to assert and bring Claims against the State Parties arising from or in connection with any Claims brought or asserted by, following the Effective Date, and in spite of the Representation as to Binding Effect set forth in Section XIII.B.2 of this Agreement, any non-Party State agency, bureau, department, commission, office, officer, division, sub-division, board, other administrative unit, official, or individual representative or agent regarding, arising from, or relating to Atlantic Richfield's or any of its predecessor's status or alleged status as a past, present, or future owner, lessor, lessee, operator, generator, transporter, or any other alleged status involving the handling, treatment, storage, transport, disposal, investigation, removal, remediation, cleanup, or management of Waste Material(s) of, at, to, or from the Leviathan Mine Site.

2. **Allocation With Respect to Future Non-Party State Claims**. If, following the Effective Date, and in spite of the Representation as to Binding Effect set forth in Section XIII.B.2 of this Agreement, any non-Party State agency, bureau, department, commission, office, officer, division, sub-division, board, other administrative unit, official, or representative or agent, asserts or brings a Claim against Atlantic Richfield arising from, or relating to Atlantic Richfield's or any of its predecessor's status or alleged status as a past, present, or future owner, lessor, lessee, operator, generator, transporter, or any other alleged status involving the handling, treatment, storage, transport, disposal, investigation, removal, remediation, cleanup, or management of Waste Material(s) at, to, or from the Leviathan Mine Site, the Regional Board hereby agrees that it shall be responsible for (including payment or performance of) fifty percent (50%) of the Response Costs or Response Actions due as a result of the resolution of such Claim(s), whether such resolution occurs through administrative action, judicial action, settlement, or otherwise. Claims to recover such allocated costs under this Section II.G.2 shall be subject to the reservation set forth in Section II.G.1 of this Agreement. Recovery of such allocated costs shall not be the exclusive form of relief available to Atlantic Richfield under Section II.G.1 of this Agreement, and nothing herein shall prevent Atlantic Richfield from seeking or obtaining additional relief from the Regional Board or other State entities, including declaratory relief, injunctive relief, additional damages, or other relief. This paragraph does not apply to claims otherwise reserved by the State Parties pursuant to this Agreement or to the matters not addressed by this Agreement.

3. **Excluded Non-Party State Claims**. For purposes of this Section II.G, Claims brought or asserted by a non-Party State agency, bureau, department, commission, office, officer, division, sub-division, board, other administrative unit, official, or representative or agent for or pursuant to matters not addressed by this Agreement, including State or federal tax laws or labor laws, civil rights laws, occupational health and safety laws, workers' compensation laws, unemployment insurance and disability laws, unfair competition laws, motor vehicle laws, insurance laws, and licensing laws, shall not be considered Claims "regarding, arising from, or relating to, Atlantic Richfield's or any of its predecessor's status or alleged status as a past, present, or future owner, lessor, lessee, operator, generator, transporter, or any other alleged status involving the handling, treatment, storage, transport, disposal, investigation, removal, remediation, cleanup, or management of Waste Material(s) at, to, or from the Leviathan Mine Site."

III. LEVIATHAN MINE ENVIRONMENTAL REMEDIATION TRUST

A. Establishment and Management of the Trust

1. **Opening and Purpose of the Trust**. At least sixty (60) days before Atlantic Richfield is required under Section IV.C.7.a of this Agreement to make an initial deposit of Interim Combined AMD Treatment Costs (as defined in Section IV.C.5.b), the State Trustee (as defined in Section I.R) shall establish and accept trusteeship for the Leviathan Mine Environmental Remediation Trust (the "Trust") for the purpose of managing monies owed and deposited by Atlantic Richfield under this Agreement and that are to be used for the payment of Response Costs in accordance with this Agreement. The Parties agree to cooperate in executing any documents or instruments that may be necessary to establish the Trust, designate beneficiaries, and instruct the State Trustee how to manage and disburse monies in accordance with this Agreement, applicable state law, and, if applicable, the Consent Decree. Such instructions shall include the terms described in Section III.A.2 and III.A.6 below or such other or additional terms as the Parties may mutually approve.

2. **Managing Trust Deposits**. Except as otherwise specifically provided in this Agreement, monies deposited by Atlantic Richfield and held in the Trust shall not be comingled with any other monies or other financial assets received or held by the State Trustee or disbursed or used for any purpose other than for payment of Response Costs to be incurred and Response Actions to be performed at the Leviathan Mine Site. Once monies are deposited in the Trust, the State Trustee shall hold the monies in trust and act as a trustee with respect to the Trust and such deposits. Atlantic Richfield and the State Board intend that no third party shall have access to monies or other property in the Trust except as expressly provided herein. For purposes of this Agreement, the duty to act as a trustee shall, at a minimum, mean the obligations to maintain the moneys in the Trust pursuant to the terms of this Agreement, to use the monies only for the purposes expressly provided for in this Agreement, and to invest the monies as described in this Agreement. Notwithstanding any other provision of this Agreement, the State Board or other State entity responsible for management of the Trust shall release all or any portion of the Trust in accordance with any joint written direction submitted by Atlantic Richfield and the Regional Board.

3. **Investment**. The monies in the Trust shall be invested as authorized by law. All interest, dividends, profits, or other earnings from such investment shall be credited to and become part of the Trust and shall be used for the payment of Response Costs, and be credited to amounts owed by the State Defendants, hereunder. Any and all income taxes due or payable with respect to such investment returns shall be paid in accordance with applicable United States Treasury Regulations, which as of the date of this Agreement, state that the grantor pay such taxes, if any, on a grantor trust. Atlantic Richfield shall not be required to make up for any investment-related or management-related losses if, as a result of such losses, insufficient funds are available in the Trust at any time to cover payments due for Response Costs or otherwise to satisfy the financial obligations owed by Atlantic Richfield under this Agreement or any Consent Decree.

4. **No Administrative Costs**. The State Trustee shall not charge any expenses or fees or withdraw or deduct any monies from the Trust as compensation for the management and administration of the Trust, except as otherwise provided herein.

5. **Statements and Valuation**. The State Trustee shall furnish quarterly to Atlantic Richfield and the Regional Board a statement reflecting all activity in the Trust for the preceding quarter and confirming the value of the Trust. The State Trustee shall also provide such information concerning the Trust to Atlantic Richfield as Atlantic Richfield may reasonably request from time to time, within forty five (45) days of such request.

6. **Tax Reporting**. With respect to all items of income, deduction, and credit attributable to the Trust, the State Trustee shall perform all tax reporting and furnish to Atlantic Richfield all such statements and additional information as required: (i) under Treasury Regulations §§ 1.671-4(a) and 301.7701-4(e)(2) at all times that the Trust is a "grantor trust" as described in Section III.C.3 below; and (ii) under Treasury Regulations § 1.468B-2(l) at all times that the Trust is a "qualified settlement fund" as described in Section III.C.4 below. The State Trustee further shall perform all requisite Internal Revenue Service Form 1099 or other appropriate documentation reporting as is required by the Internal Revenue Code with respect to any portion of the Trust disbursed to any payee pursuant to the terms of this Agreement, provided that such payee provides to the State Trustee the information required by the State Trustee to do so. Atlantic Richfield shall, at its own cost, provide assistance to the State Trustee, as reasonably requested by the State Trustee with respect to such reporting under this Section.

B. Use of Trust Funds Only for Environmental Remediation

All payments and disbursements from the Trust shall be made and applied solely for the purpose of conducting environmental remediation and paying the other related expenses consistent with this Agreement, and with respect to Atlantic Richfield, to resolve, satisfy, mitigate, address, or prevent the liability or potential liability of Atlantic Richfield imposed by federal, state, or local environmental laws with respect to the Site. The State Board shall accept contributions to the Trust from, and only from, Atlantic Richfield or other parties that have, at the time of contribution, actual, potential, or alleged liability or a reasonable expectation of liability under federal, state, or local environmental laws for environmental remediation of the Site.

C. Governing Purpose of the Trust

Notwithstanding anything in this Agreement to the contrary, the Trust shall be administered in accordance with the following provisions:

1. Initially, and until the applicability of Section III.C.4 below, the Trust is intended to constitute an "environmental remediation trust," as provided by Treasury Regulations § 301.7701-4(e); and the Trust shall at all times be administered, and all provisions of this Agreement shall be construed, in a manner that is consistent with such intent.

2. The primary purpose of the Trust is to provide for the environmental remediation of the Site as contemplated under Treasury Regulations § 301.7701-4(e); and at no

time shall the Trust, the State Board, or any other State entity managing the Trust conduct investment or business activities that compromise this primary purpose.

3. Initially, and until the applicability of Section III.C.4 below, the Trust is intended to function as a "grantor trust" and Atlantic Richfield is intended to be treated as a grantor with respect to the Trust under the rules provided in Code § 1.677 and Treasury Regulations § 1.677(a)-1(d); and the Trust shall at all times be administered, and all provisions of this Agreement shall be construed, in a manner that is consistent with such intent.

4. At any time, Atlantic Richfield may take such steps as are required to elect to treat the Trust as a "qualified settlement fund," as provided by Treasury Regulations § 1.468B-1; and, following such election, the Trust shall at all times be administered, and all provisions of this Agreement shall be construed, in a manner that is consistent with such intent. The State Parties agree not to contest or dispute such treatment, administration, and intent. AR shall be responsible for any costs of the trust being a qualified settlement fund, and for any penalties, fees or expenses if the trust does not so qualify.

D. Use as Performance Guarantee

In negotiating the terms of the Consent Decree with the United States, Atlantic Richfield, the Regional Board, and any other State Party that is a party to the Consent Decree shall use good faith efforts to allow Atlantic Richfield to utilize the Trust to satisfy, in whole or in part, Atlantic Richfield's performance guarantee obligations under the Consent Decree. The Regional Board and any other State Party to the Consent Decree agree to provide available and necessary information to EPA regarding the Trust as required for use of the Trust as a performance guarantee.

IV. PERFORMANCE OF THE RI/FS

A. Performance of and Payment for the Remedial Investigation and Feasibility Study

1. **RI/FS Completion by Atlantic Richfield**. Atlantic Richfield shall be responsible for and shall perform and complete the RI and the FS, including all aspects of the RI and the FS work required by EPA under either (a) the Administrative Order for RI/FS, (b) a new administrative order issued by EPA under CERCLA that provides for the performance and completion of the RI or the FS and supersedes and terminates the Administrative Order for RI/FS, or (c) any other administrative order issued by EPA under CERCLA requiring performance of the RI or the FS with respect to any Operable Unit comprising the Site. Nothing in this Agreement shall obligate the Regional Board to perform any RI or FS work required under the Administrative Order for RI/FS or any new or superseding administrative order issued by EPA, nor shall anything in this Agreement prohibit the Regional Board, if it so chooses, from performing or contributing to the performance of any such RI or FS work at its own cost, provided that the Regional Board does not unreasonably interfere with or unreasonably frustrate Atlantic Richfield's work on the RI or the FS. Any disagreement regarding whether the Regional Board is unreasonably interfering with or unreasonably frustrating Atlantic Richfield's work on the RI or the FS is subject to the dispute resolution provisions in Section XI. The performance and completion of the RI and the FS is separate and distinct from the

responsibilities for the Interim Combined AMD Treatment system operations (but not the Interim Combined AMD Treatment treatability investigation) as set forth in Section IV.C.

2. **Comparative Analysis and Selection of Preferred Remedy Alternative**. Atlantic Richfield and the Regional Board will confer and use good faith efforts to reach agreement on the screening of Remedy alternatives and the identification of a preferred Remedy alternative prior to submitting the FS to EPA. Subject to the need to consider the Regional Board's input in good faith, Atlantic Richfield will be responsible for the final development and evaluation of Remedy alternatives in accordance with 40 C.F.R. § 300.430(e), presenting the comparative analysis of Remedy alternatives, and making recommendations as to the preferred Remedy alternative (to the extent solicited by EPA) in the FS. The Regional Board and Atlantic Richfield agree that the criteria set forth in the NCP shall be used for the development, screening, and detailed analysis of Remedy alternatives. Consistent with the NCP, the Parties will not support or advocate for selection of a Remedy alternative whose costs are grossly excessive compared to the overall effectiveness of that or any other alternative that also complies with the requirements of the NCP.

3. **Allocation and Payment of RI/FS Costs**. Atlantic Richfield shall be responsible for and shall make all required payments owed to any non-Party for RI Costs and FS Costs as long as the combined total of the RI Costs and the FS Costs is less than or equal to Eleven Million Dollars ($11,000,000). Once the combined total of RI Costs and FS Costs exceeds $11,000,000, for each dollar in RI Costs or FS Costs that Atlantic Richfield incurs and pays in excess of that amount, Atlantic Richfield shall receive a credit of Forty Cents ($0.40) towards the amount that Atlantic Richfield is obligated to pay to the Regional Board for Remedial Action Costs (as defined in Section V.B.3.b of this Agreement), as set forth in Section V.B of this Agreement. Atlantic Richfield shall maintain reasonably detailed documentation of all RI Costs and FS Costs that it incurs and pays and provide such documentation quarterly to the Regional Board. The first such submission shall occur within 90 days of Effective Date and cover all RI Costs and FS Costs incurred prior to the Effective Date. The Regional Board shall have the right to dispute, in accordance with the dispute resolution process set forth in Section XI of this Agreement, any RI Costs or FS Costs incurred by Atlantic Richfield. If the Regional Board does not dispute the RI Costs or FS Costs so provided by Atlantic Richfield within one hundred and eighty (180) days after the Regional Board receives the documentation, the documented costs shall be deemed accepted by the Regional Board and shall not be subject to further dispute for purposes of determining the credit due to Atlantic Richfield under this Section.

4. **RI or FS Required in New ROD or ROD Amendment**. In the event that a subsequent RI or FS is required by EPA in a new ROD or ROD Amendment issued after entry of the Judicial Consent Decree (and following the completion of the Feasibility Study addressed by Section IV.A.1 above), the Regional Board shall perform and complete the subsequent RI or FS. The costs for completing such RI or FS shall be allocated between the Regional Board and Atlantic Richfield and paid according to the following allocation formula:

Atlantic Richfield: 75%
Regional Board: 25%

In such a case, the Parties will utilize the funding procedures set forth for Remedial Design in Section V.A below, unless an alternative approach is agreed upon in writing between Atlantic Richfield and the Regional Board. The Regional Board shall consult with Atlantic Richfield on any such subsequently required RI or FS and shall solicit from Atlantic Richfield, and Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, technical input on the scoping, planning, development, and review of any subsequent RI or FS work plans and reports, and to request changes to such documents deemed by Atlantic Richfield to be necessary for the successful and cost-effective implementation and performance of the subsequent RI or FS. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for making final decisions about the planning, implementation, and reporting of any such subsequent RI or FS.

B. Assessment of Off-Site AMD Treatment and Delivery System

1. **Technical Work Group**. The Regional Board and Atlantic Richfield recognize and acknowledge that different technologies and approaches should be evaluated and considered in the course of performing the RI, FS, Remedial Design, and Remedy selection. To that end, the Regional Board and Atlantic Richfield convened a technical work group (the "Technical Work Group"), which was assigned the task of performing a preliminary assessment of the feasibility and costs of constructing and operating an off-Site AMD treatment and delivery system, as compared to an on-Site system, in accordance with Section IV.B.2 of this Agreement. The selected Technical Work Group participants had the engineering and other applicable technical training and expertise suitable for performing the analyses necessary for assessing such feasibility.

2. **Nature of the Assessment.** The Technical Work Group's preliminary assessment of off-Site AMD treatment considered: (a) the feasibility and costs of constructing a system for delivering AMD from the Site to a more easily accessible off-Site location, where an AMD treatment facility would be located; (b) the feasibility and costs of acquiring or obtaining access to property needed for the installation and construction of the AMD treatment facility and delivery system; (c) the feasibility and costs of constructing an off-Site AMD treatment facility; (d) the feasibility and costs of relocating existing on-Site water treatment equipment to a more easily accessible off-Site location; (e) possible ecological effects on Leviathan Creek and Bryant Creek expected to result from delivering AMD discharges from the Site to an off-Site location; and (f) long-term operations and maintenance requirements and costs. The Regional Board and Atlantic Richfield also considered and evaluated other non-technical issues that may affect the feasibility of an off-Site AMD treatment and delivery system, including impairment of water rights, access rights, and legal requirements for assessing environmental impacts on federal lands.

3. **Consequences for the FS.** The Parties agree that the analyses and conclusions of the Technical Work Group and the other non-technical evaluations described in this Section IV.B concerning the feasibility and costs of constructing and operating an off-Site AMD treatment and delivery system shall be reasonably accounted for during the scoping and performance of the FS, as set forth in Section IV.A.1 and IV.A.2 of this Agreement. Based on these analyses and conclusions, and unless otherwise specifically required by EPA, the FS shall

not include detailed analysis and consideration of an off-Site AMD treatment and delivery system.

C. Interim Combined AMD Treatment System

1. **AMD Sources and Existing Treatment**. There are currently five Managed AMD Discharge Points at the Site. Pursuant to the AAA, the Regional Board has been treating AMD from the Adit and Pit Underdrain since approximately 1999 using a lime-addition treatment system located near Pond 1 (the "Pond 1 Treatment System"). Pursuant to the 2009 AOC and a prior administrative order issued by EPA in 2000, Atlantic Richfield has been treating AMD from the Channel Underdrain and the Delta Seep on an intermittent basis since approximately 2001 using various technologies, including, most recently, a high-density-sludge ("HDS") treatment system located near Pond 4, and treating AMD from the Aspen Seep since approximately 2003 using a bioreactor treatment system located near the Aspen Seep. Except as otherwise specified in this Section IV.C, and until commencement of Remedial Action as set forth in Section V.B of this Agreement, Atlantic Richfield and the Regional Board shall each continue to perform the AMD treatment work required of them, respectively, by the 2009 AOC and the AAA, including any modifications or replacements thereof that may be issued by EPA, including those issued in accordance with Section IV.D of this Agreement. Atlantic Richfield shall be solely responsible for paying all Response Costs that it incurs in performing such work, and the Regional Board shall be solely responsible for paying all Response Costs that it incurs in performing such work. Atlantic Richfield shall not be responsible under this Agreement for paying any "09PV Costs", as such term is defined in Paragraph 7.i.ii of the 2009 AOC. The Regional Board shall not be responsible under this Agreement for paying any "09PU Costs", as such term is defined in Paragraph 7.i.i of the 2009 AOC. Except as otherwise specified in Section IV.D of this Agreement, after the Effective Date of this Agreement, Atlantic Richfield and the Regional Board each hereby agree that they will not seek from EPA, or agree to, any material modifications to the work requirements imposed upon them by the 2009 AOC and the AAA, respectively, that cause or are reasonably likely to cause, in any material aspect, a transfer of such work requirements to the other Party or any increase in the nature, cost, or scope of the work requirements imposed by EPA on the other Party, except by mutual written agreement between Atlantic Richfield and the Regional Board.

2. **Interim Combined AMD Treatment System Treatability Investigation.** As part of the RI/FS, Atlantic Richfield will submit a work plan to EPA before March 31, 2014 for a treatability investigation to evaluate interim combined treatment of AMD from the Managed AMD Discharge Points using the AMD treatment equipment and facilities existing at the Site as of the Effective Date ("Interim Combined AMD Treatment"). Atlantic Richfield shall consult with the Regional Board on the proposed work plan and shall solicit from the Regional Board, and the Regional Board shall have a reasonable opportunity, but not an obligation, to provide, technical input on the work plan, and to request changes to the work plan deemed by the Regional Board to be necessary for the successful and cost-effective implementation and performance of the work plan. Subject to the need to consider the Regional Board's input in good faith, and subject to receiving approval from EPA, Atlantic Richfield will be responsible for final development and implementation of the work plan; provided that work plan elements requiring the use and operation of the Pond 1 Treatment System will be performed by the Regional Board. The treatability investigation may evaluate, subject to the directions in

the work plan: the technology needed for collecting and conveying AMD from the Managed AMD Discharge Points to the treatment system; the adequacy and sizing of the existing treatment systems for handling flows from the Managed AMD Discharge Points under reasonably anticipated discharge rate scenarios; treatment system performance; operations and maintenance costs; and treatment sludge chemistry and stability. Atlantic Richfield shall be responsible for operation of its HDS treatment system and the Aspen Seep Bioreactor during the treatability investigation, and the Regional Board shall be responsible for operation of the Pond 1 Treatment System during the treatability investigation. Atlantic Richfield shall be responsible for initial collection of the Channel Underdrain, Delta Seep and Aspen Seep during the treatability investigation, and the Regional Board shall be responsible for initial collection of the Adit and Pit Underdrain during the treatability investigation, each in accordance with the requirements of the applicable EPA orders, unless such requirements are waived in writing by the EPA. Subject to EPA approval, the Regional Board and Atlantic Richfield will use good faith efforts to complete the laboratory, bench scale, pilot scale, and field scale (if any) testing components (excluding reporting) of the Interim Combined AMD Treatment treatability investigation, as specified in the work plan, before December 31, 2014. The Interim Combined AMD Treatment system treatability investigation, including any upgrades required to effectuate Interim Combined AMD Treatment under discharge rate scenarios reasonably anticipated to occur during Interim Combined AMD Treatment, as defined in the treatability investigation work plan, shall be considered part of the Remedial Investigation/Feasibility Study, and costs incurred by Atlantic Richfield in connection with the treatability investigation and installation and commissioning of such upgrades shall be treated as FS Costs.

3. **Interim Combined AMD Treatment System Operations.** If the results of the treatability investigation demonstrate that Interim Combined AMD Treatment is cost-effective and will achieve the discharge criteria identified in the AOC under reasonably anticipated discharge rate scenarios, Atlantic Richfield and the Regional Board shall jointly seek approval from EPA to proceed with Interim Combined AMD Treatment of the Managed AMD Discharge Points as part of the ongoing CERCLA removal action for the Site. If the results of the treatability investigations support proceeding with Interim Combined AMD Treatment of AMD from at least the Adit, Pit Underdrain, Channel Underdrain, and Delta Seep, Atlantic Richfield and the Regional Board shall seek approval from EPA to proceed with Interim Combined AMD Treatment from just those Managed AMD Discharge Points. Any Managed AMD Discharge Point that does not become a part of the Interim Combined AMD Treatment will remain the responsibility of the Party identified as responsible for its capture and treatment under the 2009 AOC or the AAA until commencement of the Remedial Action. After receiving EPA's approval to proceed, Atlantic Richfield shall provide the Regional Board with a summary of its costs and expenses for collecting and treating the Channel Underdrain, Delta Seep, and Aspen Seep, or whichever subset thereof becomes part of the Interim Combined AMD Treatment, within sixty (60) days of a request for such information from the Regional Board in a format reasonably requested by the Regional Board that is consistent with the costs summary provided annually to EPA pursuant to Paragraph 63 of the 2009 AOC. Atlantic Richfield and the Regional Board will solicit EPA's approval for Interim Combined AMD Treatment in accordance with the results of, and as soon as reasonably possible after completion of, the treatability investigation described in Section IV.C.2 of this Agreement, but in no event shall the request for EPA approval be made later than December 31, 2015, provided that the conditions of

the first sentence of this subsection 3 are met. The request to EPA for approval of the Interim Combined AMD Treatment shall not materially expand the requirements for AMD capture and treatment under the 2009 AOC and the AAA or require that Atlantic Richfield or the Regional Board perform actions beyond the scope of the 2009 AOC and the AAA, other than those actions specifically required to effectuate Interim Combined AMD Treatment. Notwithstanding the foregoing, if the Regional Board concludes, after consultation with Atlantic Richfield, that the results of the treatability investigation indicate additional treatability investigation or analysis is appropriate prior to implementing Interim Combined AMD Treatment, the Regional Board shall have the right to inform EPA of such conclusion and request that EPA consider the Regional Board's input before approving any request by Atlantic Richfield to proceed with Interim Combined AMD Treatment of the Managed AMD Discharge Points as part of the ongoing CERCLA removal action for the Site. If EPA agrees, such investigation or analysis shall be performed as part of the pre-ROD Remedial Design (as described in Section V.A.1.a) and subject to the procedures for the Remedial Design as set forth in Section V.A. The determination of when or if to implement Interim Combined AMD Treatment shall be made by EPA in light of the results of that additional study. Any disputes between the Parties concerning the need for such additional investigation or analysis shall be resolved by EPA. Once initiated, Interim Combined AMD Treatment shall continue until commencement of the Remedial Action, unless EPA requires some earlier termination. If the results of the treatability investigation do not support proceeding with Interim Combined AMD Treatment of AMD from at least the Adit, Pit Underdrain, Channel Underdrain, and Delta Seep under reasonably anticipated discharge rate scenarios, or if EPA does not approve the request for approval of the Interim Combined Treatment of AMD, the Managed AMD Discharge Points shall remain the responsibility of the Party identified as responsible for its capture and treatment under the 2009 AOC or the AAA until commencement of the Remedial Action.

4. **Responsibility for Interim Combined AMD Treatment.** Subject to obtaining EPA's approval for Interim Combined AMD Treatment in accordance with Section IV.C.3 of this Agreement, the responsibility for Interim Combined AMD Treatment shall be as follows:

a. If the HDS system is chosen for Interim Combined AMD Treatment of AMD from at least the Adit, Pit Underdrain, Channel Underdrain, and Delta Seep, Atlantic Richfield shall operate and maintain the HDS treatment system and the associated AMD conveyance and holding systems to effectuate such treatment prior to and until June 1, 2017; and the Regional Board shall operate and maintain the HDS treatment system and the associated AMD conveyance and holding systems to effectuate such treatment thereafter. Atlantic Richfield shall, by June 1, 2016, provide the Regional Board with the operations and maintenance plans and other specifications reasonably required by the Regional Board to retain a qualified contractor to operate and maintain the HDS treatment system and the associated AMD conveyance and holding systems to effectuate such treatment. During the first three work seasons, as defined in the 2009 AOC, following this transition, if the HDS system is chosen for Interim Combined AMD Treatment, Atlantic Richfield shall provide the Regional Board or its designated contractor with instruction, documentation, competency training, and such other support as reasonably requested by the Regional Board to enable it to competently and effectively collect, manage, and convey AMD flows from the Channel Underdrain, Delta Seep,

and Aspen Seep (or any subset of these that are part of the Interim Combined AMD Treatment) and effectively operate and maintain the HDS treatment system for Interim Combined AMD Treatment. While operating and maintaining the HDS treatment system and the associated AMD conveyance and holding systems for Interim Combined AMD Treatment pursuant to this Agreement, Atlantic Richfield and the Regional Board, as the case may be, shall adhere to and satisfy all applicable recommendations, prescriptions, and requirements set forth in the following documents, including any amendments or modifications thereto, existing while such operations are required under this Agreement directly related to capture and treatment of AMD through the Interim Combined AMD Treatment operation: the 2009 AOC, the AAA, any administrative order that replaces or modifies the foregoing (pursuant to Section IV.D of this Agreement), any applicable work plans approved by EPA, the High Density Sludge Treatment System Operations And Maintenance Manual (attached hereto as Exhibit 1), and the High Density Sludge Treatment System Training Program Manual (attached hereto as Exhibit 2). Atlantic Richfield and the Regional Board will work together in good faith during the Interim Combined AMD Treatment to update and modify the manuals attached hereto as Exhibit 1 and Exhibit 2 as necessary to ensure the continued safe, effective, and efficient operation of the HDS treatment system. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for the decision to modify such documents following the commencement of Interim Combined AMD Treatment.

b. If the Pond 1 Treatment System is chosen for Interim Combined AMD Treatment of AMD from at least the Adit, Pit Underdrain, Channel Underdrain, and Delta Seep, then the Regional Board shall operate and maintain the Pond 1 Treatment System and the associated AMD conveyance and holding systems to effectuate such treatment commencing no later than June 1, 2017. During the first three work seasons following this transition, if the Pond 1 Treatment System is chosen for Interim Combined AMD Treatment, then Atlantic Richfield shall provide the Regional Board or its designated contractor with instruction, documentation, competency training, and such other support as reasonably requested by the Regional Board to enable it to competently and effectively collect, manage, and convey AMD flows from the Channel Underdrain, Delta Seep, and Aspen Seep (or any subset of these that are part of the Interim Combined AMD Treatment) to the Pond 1 Treatment System. While operating and maintaining the Pond 1 Treatment System and the associated AMD conveyance and holding systems for Interim Combined AMD Treatment pursuant to this Agreement, the Regional Board shall adhere to and satisfy all applicable recommendations, prescriptions, and requirements set forth in the following documents, including any amendments or modifications thereto, existing while such operations are required under this Agreement directly related to capture and treatment of AMD through the Interim Combined AMD Treatment operation: the 2009 AOC, the AAA, any administrative order that replaces or modifies the foregoing (pursuant to Section IV.D of this Agreement), any applicable work plans approved by EPA, and any Portions of Exhibit 1 and Exhibit 2 applicable to the collection and conveyance of AMD from the Channel Underdrain, the Delta Seep, and the Aspen Seep to the Pond 1 Treatment System.

c. Regardless of whether Interim Combined AMD Treatment proceeds under subsection (a) or subsection (b) of this Section IV.C.4, or both, if any Managed AMD Discharge Point, or any portion of the flow therefrom, is not included as part of the Interim Combined AMD Treatment, including the Aspen Seep, for any reason, the Party

responsible for the capture and treatment of any such non-included Managed AMD Discharge Point or portion of the flow therefrom as of the Effective Date shall remain responsible for its capture and treatment until the commencement of the Remedial Action.

d. If temporary, emergency treatment of AMD contained in the evaporation ponds is needed to prevent the discharge of untreated AMD to Leviathan Creek during Interim Combined AMD Treatment, the operation of the portable lime treatment system needed for such temporary treatment shall be considered part of the Interim Combined AMD Treatment, the costs of which shall be subject to the cost allocation of Section IV.C.6.

5. **Interim Combined AMD Treatment Cost Estimate.** The costs associated with Interim Combined AMD Treatment shall be estimated, and such cost estimates shall be handled, as follows:

a. At least 60 days before the Regional Board commences Interim Combined AMD Treatment, as provided in Section IV.C.4 of this Agreement, the Regional Board shall deliver to Atlantic Richfield a reasonably detailed written cost estimate for the operation and maintenance of the Interim Combined AMD Treatment system for the remainder of the calendar year in which the Regional Board commences Interim Combined AMD Treatment. By November 1 of that first year and of each subsequent year until commencement of the Remedial Action, the Regional Board shall deliver to Atlantic Richfield a reasonably detailed written cost estimate for the operation and maintenance of the Interim Combined AMD Treatment system for the next calendar year. The initial cost estimate and the subsequent cost estimates shall each be known as an "Interim Combined AMD Treatment Cost Estimate."

b. Each Interim Combined AMD Treatment Cost Estimate shall include (collectively "Interim Combined AMD Treatment Costs") all Response Costs and other reasonable and necessary costs that the Regional Board estimates will be incurred: performing all work required to operate and maintain the Interim Combined AMD Treatment system in accordance with this Agreement; maintaining compliance with applicable laws and the terms of this Agreement as required for the Interim Combined AMD Treatment; performing Site maintenance and Site access activities required for operation and maintenance of the Interim Combined AMD Treatment system; and satisfying any other obligations under this Agreement that are reasonably likely to arise in connection with the Interim Combined AMD Treatment for the time period covered by such estimate, which Atlantic Richfield and the Regional Board shall use good faith efforts to minimize. Such costs include: all costs and expenses for contractors, subcontractors, laboratory services, labor, transportation, utilities, materials, supplies, tools, equipment, licenses, permits or other authorizations, application fees, inspections, coordination, supervision, contract management, contract review and development, analysis, reporting, record retention, monitoring, tax reporting expenses for the Trust, maintenance, repair, preparation of Interim Combined AMD Treatment Cost Estimates (notwithstanding the fact that such preparation costs may have been incurred in whole or in part prior to the preparation of the cost estimate), accounting, quality assurance, HSSE requirements, design, construction, mobilization, demobilization, and overhead (including direct and indirect payments to any employee for labor, travel, reimbursement of expenses, or other services) incurred or used in operating and maintaining the Interim Combined AMD Treatment system. The Regional Board shall, at the same time the Interim Combined AMD Treatment Cost Estimate is provided, provide Atlantic

Richfield with copies of reasonably complete supporting documentation, including working spreadsheets, calculations, and other back-up, used in developing the Interim Combined AMD Treatment Cost Estimate.

c. Interim Combined AMD Treatment Costs and Interim Combined AMD Treatment Cost Estimates shall not include: (i) stipulated or other civil penalties (except to the extent caused by a breach by Atlantic Richfield of this Agreement); (ii) costs of resolving disputes under this Agreement or the Consent Decree; (iii) Incremental Costs; (iv) costs of performing any work or tasks unrelated to performance of the Interim Combined AMD Treatment in accordance with the work plan approved by the EPA; or (v) any Response Costs or other costs incurred after the commencement of the Remedial Action.

d. The Regional Board shall not accept the Interim Combined AMD Treatment Cost Estimate as final without first engaging in good faith consultations with Atlantic Richfield concerning the nature, scope, and amount of the Interim Combined AMD Treatment Cost Estimate. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for the decision to accept the Interim Combined AMD Treatment Cost Estimate as final.

e. Once finalized and provided to Atlantic Richfield, an Interim Combined AMD Treatment Cost Estimate shall not be increased, either in amount or duration, without the prior written consent of Atlantic Richfield.

6. **Cost Allocation for Interim Combined AMD Treatment.** Subject to Atlantic Richfield's rights to dispute or withhold payment of certain costs under Section IV.C.9 and Section IV.C.10 of this Agreement, all Interim Combined AMD Treatment Costs shall be allocated between the Regional Board and Atlantic Richfield and paid according to the following allocation formula:

Atlantic Richfield: 75%
Regional Board: 25%

7. **Payment of the Interim Combined AMD Treatment Costs.** Interim Combined AMD Treatment Costs shall be paid as follows:

a. Within thirty (30) days after receiving the first Interim Combined AMD Treatment Cost Estimate, or within thirty (30) days after Atlantic Richfield receives written notice from the Regional Board that the Regional Board or General Services will initiate contracting for the Interim Combined AMD Treatment in the next thirty (30) days, whichever is later, Atlantic Richfield shall make or cause to be made an initial deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to seventy-five percent (75%) of such Interim Combined AMD Treatment Cost Estimate.

b. Within the same time period, the Regional Board shall obtain or make available unencumbered funds in an amount equal to twenty-five percent (25%) of such Interim Combined AMD Treatment Cost Estimate, which funds shall be dedicated for the payment of the Regional Board's allocated share of Interim Combined AMD Treatment Costs.

Such funds obtained or made available by the Regional Board shall be maintained either (i) in an account controlled by General Services on the Regional Board's behalf, or (ii) in some other type of account established and controlled by the State Board, the Regional Board, or General Services to ensure the funds placed therein are available, when needed, for payment of the Regional Board's allocated share of Interim Combined AMD Treatment Costs in accordance with this Agreement.

c. On or before January 1 of each year covered by a subsequent Interim Combined AMD Treatment Cost Estimate, and except as otherwise provided in this Agreement, Atlantic Richfield shall make or cause to be made a subsequent deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to 20% of such subsequent Interim Combined AMD Treatment Cost Estimate.

d. On or before April 15 of each year covered by a subsequent Interim Combined AMD Treatment Cost Estimate, and except as otherwise provided in this Agreement, Atlantic Richfield shall make or cause to be made a subsequent deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to 55% of such subsequent Interim Combined AMD Treatment Cost Estimate.

e. On or before July 1 of each year covered by a subsequent Interim Combined AMD Treatment Cost Estimate, and except as otherwise provided in this Agreement, the Regional Board shall obtain or make available unencumbered funds in an amount equal to twenty-five percent (25%) of such subsequent Interim Combined AMD Treatment Cost Estimate, which funds shall be dedicated for the payment of the Regional Board's allocated share of Interim Combined AMD Treatment Costs. Such funds shall be maintained in the same way as provided in Section IV.C.7.b above.

f. The Regional Board or General Services may transfer or request the transfer of any funds deposited into the Leviathan Mine Environmental Remediation Trust pursuant to this Section IV.C.7 from the Leviathan Mine Special Environmental Remediation Trust into one or more accounts controlled by General Services, the State Controller, or the Regional Board; provided that such transferred funds may be used by General Services, the State Controller, or the Regional Board only for the payment of Interim Combined AMD Treatment Costs in accordance with this Agreement.

g. Before paying any contractor for Interim Combined AMD Treatment Costs, the Regional Board or General Services shall provide Atlantic Richfield with copies of the associated contractor's invoice(s), sales receipt(s), statement(s), or other cost documentation. Atlantic Richfield shall have ten (10) days from the date of receiving such documentation to review it and advise the Regional Board of any reasonable concerns with respect thereto, which the Regional Board shall consider in good faith. Unless given earlier notification of approval by Atlantic Richfield, payment to a contractor for Interim Combined AMD Treatment Costs shall not be issued or fully authorized until after the expiration of this 10-day review period. The failure by Atlantic Richfield to advise the Regional Board of any concerns with respect to a contractor's cost documentation during such 10-day review period shall in no way limit Atlantic Richfield's rights under Section IV.C.9 or IV.C.10 of this

Agreement to dispute or withhold payment of the Interim Combined AMD Treatment Costs detailed therein.

h. If, during the time period covered by any Interim Combined AMD Treatment Cost Estimate, Atlantic Richfield has paid Response Costs in providing support to and requested by the Regional Board pursuant to Section IV.C.4.a of this Agreement ("AMD Treatment Support Costs"), such AMD Treatment Support Costs shall be included in the total amount of Interim Combined AMD Treatment Costs against which the allocation formula in Section IV.C.6 is applied when determining the amount of funds owed by Atlantic Richfield, and Atlantic Richfield shall receive a 25% credit for its AMD Treatment Support Costs towards the subsequent payment owed hereunder for Interim Combined AMD Treatment Costs or for other Response Costs owed by Atlantic Richfield under this Agreement if no subsequent payment for Interim Combined AMD Treatment Costs is owed. By February 15 of each year, Atlantic Richfield shall provide the Regional Board with reasonably detailed documentation of its AMD Treatment Support Costs (including invoices, sales receipts, and statements) that were paid during the previous calendar year and which Atlantic Richfield intends to claim as a credit, if any.

8. **Interim Combined AMD Treatment Cost Summary**.

a. On or before March 1 of each year of Interim Combined AMD Treatment, and within ninety (90) days after the completion of Interim Combined AMD Treatment, the Regional Board shall submit to Atlantic Richfield reasonably detailed documentation of all Interim Combined AMD Treatment Costs paid in the prior calendar year (using funds placed into the Leviathan Mine Environmental Remediation Trust and funds obtained by the Regional Board in accordance with Section IV.C.7 above) and back-up documentation of the associated costs and expenses (including invoices, sales receipts, and statements) ("Interim Combined AMD Treatment Cost Summary").

b. Atlantic Richfield, at its discretion, may request, and the Regional Board shall within thirty (30) days of such request provide, an informal summary of all Interim Combined AMD Treatment Costs paid since issuance of the prior Interim Combined AMD Treatment Cost Summary (an "Informal Interim Cost Summary"). Such requests shall not be made more frequently than quarterly.

c. If, at any time after the Regional Board has provided an Interim Combined AMD Treatment Cost Summary, the Regional Board discovers an error in the information so provided (including missing charges, over charges, or otherwise), it shall notify Atlantic Richfield of such error within a reasonable time after the discovery, provide appropriate backup documentation, and instruct Atlantic Richfield as to the payment consequences of the purported error. Atlantic Richfield shall have sixty (60) days from the receipt of such notice and backup documentation to deliver a written Notice of Dispute and commence dispute resolution with respect thereto, as set forth in Section XI.A.3 of this Agreement. Any credit due to Atlantic Richfield as a result of the error shall be deducted from, and any additional funds due to the Regional Board as a result of the error shall be added to, Atlantic Richfield's next required payment into the Leviathan Mine Environmental Remediation Trust.

9. **Disputes Over Interim Combined AMD Treatment Costs.** Atlantic Richfield shall have the right to dispute, in accordance with the dispute resolution process set forth in Section XI of this Agreement, the costs included in any Interim Combined AMD Treatment Cost Estimate or Interim Combined AMD Treatment Cost Summary. Atlantic Richfield shall have sixty (60) days from the receipt of an Interim Combined AMD Treatment Cost Estimate or Interim Combined AMD Treatment Cost Summary to deliver a written Notice of Dispute and commence dispute resolution with respect thereto, as set forth in Section XI.A.3 of this Agreement. The Regional Board shall likewise have the right to dispute, within sixty (60) days, any AMD Treatment Support Costs included by Atlantic Richfield in determining the amount of funds owed by Atlantic Richfield for an Interim Combined AMD Treatment Costs Payment. In any such dispute, Atlantic Richfield or the Regional Board, as the case may be, may seek credit or debit, respectively, against Interim Combined AMD Treatment Costs presented in a subsequent Interim Combined AMD Treatment Cost Estimate, or against other future Response Costs owed by Atlantic Richfield under this Agreement if no subsequent Interim Combined AMD Treatment Cost Estimate is presented. In no event shall issuance of a payment by Atlantic Richfield constitute a determination that all costs included in an Interim Combined AMD Treatment Cost Estimate or Interim Combined AMD Treatment Cost Summary are legitimate and reimbursable Interim Combined AMD Treatment Costs.

10. **Right to Adjust or Withhold Payment of Interim Combined AMD Treatment Costs.** Notwithstanding the foregoing, Atlantic Richfield shall also have the right to adjust, withhold, or deny payment of costs included in an Interim Combined AMD Treatment Cost Estimate if, and only to the extent:

a. The Regional Board has failed to comply with a material requirement of this Agreement with respect to its obligations to perform Interim Combined AMD Treatment, following notice and a reasonable opportunity to cure; and provided that any payment adjusted, withheld, or denied on this basis shall be made within thirty (30) days after such failure to comply has been cured or the dispute relating thereto is otherwise resolved.

b. The Regional Board has failed to provide Atlantic Richfield with the documentation supporting such costs, as required under Section IV.C.5, or an intervening Interim Combined AMD Treatment Cost Summary, as required under Section IV.C.8, until such time as the documentation is provided; and provided that any payment adjusted, withheld, or denied on this basis shall be made within thirty (30) days after Atlantic Richfield receives such documentation or the dispute relating thereto is otherwise resolved.

c. Following the three-work-season transition period specified in Section IV.C.4 of this Agreement, the Regional Board has used moneys from the Leviathan Mine Environmental Remediation Trust, or requested payment from Atlantic Richfield, for: (i) fines, penalties (including stipulated penalties), interest accrued on such fines or penalties, or administrative expenses paid in connection with the assessment or defense of any claims for such fines or penalties, where such fines or penalties arise out of or are related to the Regional Board's operation of the Interim Combined AMD Treatment system and the Regional Board's failure to comply with a material requirement of any then-applicable EPA orders or applicable laws; or (ii) Incremental Costs.

d. Atlantic Richfield is entitled to a credit under Section IV.C.7.h, Section IV.C.8.c, or Section IV.C.11 of this Agreement.

11. **Interim Combined AMD Treatment Costs Shortfalls and Excesses.** Because the amount of funds deposited by Atlantic Richfield into the Leviathan Mine Environmental Remediation Trust in any calendar year during Interim Combined AMD Treatment will depend on the Interim Combined AMD Treatment Cost Estimate for that year, it is possible that the funds may be either more than or less than sufficient to cover Atlantic Richfield's obligations for Interim Combined AMD Treatment Costs paid in that year. Such shortfalls and excesses shall be addressed as follows, subject to the same rights to dispute or withhold payments that are set forth in Section IV.C.9 and IV.C.10 of this Agreement:

a. If the total amount of Interim Combined AMD Treatment Costs actually paid in a given calendar year, as documented in the Interim Combined AMD Cost Summary, is less than the Interim Combined AMD Treatment Cost Estimate for that calendar year, seventy-five percent (75%) of such difference shall be deducted from the subsequent April 15 payment owed by Atlantic Richfield for Interim Combined AMD Treatment Costs, or from the next subsequent payment for other Response Costs owed by Atlantic Richfield under this Agreement if no subsequent payment for Interim Combined AMD Treatment Costs is owed.

b. If the total amount of Interim Combined AMD Treatment Costs actually paid in a given calendar year, as documented in the Interim Combined AMD Cost Summary, is greater than the Interim Combined AMD Treatment Cost Estimate for that calendar year, seventy-five percent (75%) of such shortfall funds shall be added to the subsequent April 15 payment owed by Atlantic Richfield for Interim Combined AMD Treatment Costs, or to the next subsequent payment for other Response Costs owed if no subsequent payment for Interim Combined AMD Treatment Costs is owed; and the Regional Board shall be responsible for paying the other twenty-five percent (25%) of the shortfall.

c. Credits or debits resulting from the resolution of any disputes over Interim Combined AMD Treatment Costs shall only be made against the next payment for Interim Combined AMD Treatment Costs or other Response Costs that comes due after such resolution occurs, except as otherwise provided above in Section IV.C.10.and IV.C.10.b.

d. Any funds remaining in the Leviathan Mine Special Environmental Remediation Trust after completion of Interim Combined AMD Treatment shall be credited towards the subsequent payment(s) owed by Atlantic Richfield for Remedial Design Costs pursuant to Section V.A.5 of this Agreement.

D. Replacement and Modification of Administrative Orders

1. **Administrative Abatement Action**. Within sixty (60) days of receiving EPA's approval for Interim Combined AMD Treatment in accordance with Section IV.C.3 of this Agreement, the Regional Board shall request that EPA modify the AAA or draft a new administrative order to provide for the Regional Board's assumption of responsibility for Interim Combined AMD Treatment in accordance with Section IV.C.4 of this Agreement. Atlantic Richfield shall support the Regional Board's requests in good faith.

2. **2009 AOC.** Within sixty (60) days of receiving EPA's approval for Interim Combined AMD Treatment in accordance with Section IV.C.3 of this Agreement, Atlantic Richfield shall request that EPA modify Paragraph 50.i.iii and/or Paragraph 50.j.i of the 2009 AOC (or any provision of a superseding administrative order imposing the same or substantially similar requirements) to terminate Atlantic Richfield's obligation to capture and treat AMD flows from any Managed AMD Discharge Point included within such approval. The Regional Board shall support Atlantic Richfield's requests in good faith. The Parties shall not propose or seek to modify the 2009 AOC in a manner that expands the AMD capture and treatment requirements and responsibilities. If the Aspen Seep does not become a part of the Interim Combined AMD Treatment, its collection and treatment will remain the responsibility of Atlantic Richfield in accordance with the 2009 AOC, or any modification thereof, until commencement of the Remedial Action.

3. **Notices of Intent to Comply.** Nothing in this Agreement shall be construed as a retraction or repudiation of any commitments made by any Party in any notice to EPA of such Party's intent to comply with the lawful requirements contained in any administrative order issued by EPA under CERCLA requiring Response Actions at the Site.

4. **Inability to Obtain Modifications**. In the event that EPA delays or fails to issue new or modified administrative orders, as described in this Section IV.D, Atlantic Richfield and the Regional Board shall nevertheless proceed in good faith to effectuate the work and cost allocations set forth under this Agreement with respect to the RI, the FS, and the Interim Combined AMD Treatment.

E. Access and Cooperation

1. **Access**.

a. This Agreement supersedes the Access Agreement first entered into between ARCO Environmental Remediation, L.L.C., the State Board, and the Regional Board on August 7, 2001, as amended.

b. The Regional Board and the State Board shall provide Atlantic Richfield, its employees, agents, representatives, contractors, and subcontractors with lawful access to and the non-exclusive right to enter State-owned portions of the Site as required for Atlantic Richfield's performance of the RI/FS and other Response Actions required by EPA, another United States agency, or a state, including Response Actions or other work required under the 2009 AOC and the Administrative Order for RI/FS. The Regional Board and the State Board shall also provide EPA, its contractors, and oversight officials with lawful access to State-owned portions of the Site as required for EPA to oversee or perform Response Actions at the Site. The Regional Board and the State Board acknowledge that Atlantic Richfield is not EPA's representative with respect to liability associated with such activities at the Site.

c. Atlantic Richfield shall submit to the Regional Board all work designs, work plans, and any other documents, including amendments and modifications, specifying activities to be conducted on State-owned portions of the Site concurrent with submittal to the EPA, if (i) such submittal is required by the EPA, or (ii) even if submittal is not

required by EPA, the specified activity involves excavation, road-grading, earthmoving, or other construction work that will alter stormwater drainage patterns at the Site (but not including routine maintenance to maintain the original line and grade, hydraulic capacity, or original purpose of a road or other facility). Such submittal shall be made at least fourteen (14) days (or such lesser time as required by EPA) prior to implementing such work, where practicable. Where such notice is not practicable, Atlantic Richfield shall provide reasonable notice and opportunity to comment to the Regional Board, and shall coordinate such activities with the Regional Board to the maximum extent practicable. If the Regional Board disagrees with any work proposed by Atlantic Richfield in such work designs, work plans, and other documents, as being contrary to the efficient and necessary cleanup of the Site, the Regional Board may propose alternative work to Atlantic Richfield and EPA. If the Regional Board elects to propose an alternative, it shall communicate to Atlantic Richfield and EPA promptly or as required by EPA, in writing, of any such disagreement and proposed alternative work. In such circumstances, EPA shall resolve the issue.

d. With respect to activities performed by Atlantic Richfield on State-owned portions of the Site, Atlantic Richfield shall obtain, at its own cost, all necessary permits and authority from federal, state, and local government entities and agencies, if any, and shall comply with all federal, state, and local laws and regulations to the extent applicable.

e. Atlantic Richfield shall take all reasonable safety and security precautions in connection with all activities performed on State-owned portions of the Site. Atlantic Richfield shall not, in the right of access granted under this Agreement, unreasonably interfere with the State Board's or the Regional Board's use or authority over the Site to protect public health, welfare, or the environment, including water quality. As a condition of access to the State-owned portion of the Site for Atlantic Richfield, Atlantic Richfield and the Regional Board agree to develop written procedures to be followed by Atlantic Richfield, its employees, agents, representatives, contractors, and subcontractors, which are consistent with procedures employed by the Regional Board and its contractors for accessing the State-owned portions of the Site to minimize the risk that invasive species are brought onto the State-owned portions of the Site.

f. At least three (3) days prior to entry on to State-owned portions of the Site, Atlantic Richfield shall provide the Regional Board written notice stating the nature and anticipated duration of the work to be performed. To the extent that three (3) days is impracticable, Atlantic Richfield shall provide such notice as is practicable under the circumstances. This notice requirement shall not apply with respect to activities performed on a regular schedule (*i.e.*, daily, weekly, monthly, or quarterly) or those that are otherwise documented in work designs, work plans, and any other documents submitted to the Regional Board in accordance with this Section IV.E.

g. Simultaneous with submittal to the EPA, Atlantic Richfield shall provide the Regional Board with copies of the results of all sampling, tests and other data generated, including analyses, and all reports prepared pursuant to Response Actions performed on State-owned portions of the Site. Atlantic Richfield shall provide the Regional Board with access to all non-privileged records and documentation related to conditions of the Site and all

work performed at the Site. The Regional Board reserves the right to challenge Atlantic Richfield's assertion that certain records are privileged, if any privilege is claimed.

h. Atlantic Richfield shall facilitate the Regional Board and the State Board in entering, accessing, and utilizing facilities and equipment constructed or installed by Atlantic Richfield at the Site to the extent reasonably necessary for the Regional Board to perform its obligations under this Agreement or otherwise to perform Response Actions required by EPA.

i. Unless specifically agreed to by the Regional Board in writing, Atlantic Richfield shall return the Site to the State Board in the same or better condition, to the extent practicable, than when Atlantic Richfield first accessed the Site under the Access Agreement, effective as of August 7, 2001. This requirement shall only apply with respect to State-owned portions of the Site used by Atlantic Richfield to perform the Response Actions at the Site, and further shall not apply with respect to structures, facilities, or other features and elements of Response Actions performed by Atlantic Richfield that were required under CERCLA administrative orders issued by EPA and that are included in the Consent Decree, the ROD, or the Remedial Action. Structures, facilities, or other features and elements of Response Actions and RI/FS activities performed by Atlantic Richfield that are not included in the Consent Decree, the ROD, or the Remedial Action must be removed or restored by Atlantic Richfield upon written request by the State Board or Regional Board. If Atlantic Richfield does not remove or restore the structures, facilities, or other features and elements within a reasonable period, the State Board or Regional Board may remove or restore those structures, facilities, or other features and elements; Atlantic Richfield shall be responsible for and shall reimburse the State Board or Regional Board for the reasonable documented costs for that removal or restoration. This requirement shall not apply to road grading, the HDS plant and associated infrastructure, the Aspen Seep Bioreactor and associated infrastructure (excluding the infiltration overflow pond, which will be addressed by Atlantic Richfield at its sole cost), parking lots, and drainage facilities.

2. **General Cooperation.** The State Parties shall not impede, hinder, or delay Atlantic Richfield, either by act or omission, in Atlantic Richfield's development, negotiation, and implementation of the RI, the FS, and other Response Actions at the Site or in completing such Response Actions in a cost-effective manner. The Regional Board and State Board shall cooperate with Atlantic Richfield to avoid any interruption in the performance of Response Actions from any activities by the Regional Board and State Board or the Regional Board's or State Board's contractors. Atlantic Richfield shall not impede, hinder, or delay the Regional Board or State Board, either by act or omission, in the development, negotiation, and implementation of any Response Actions at the Site or in completing such Response Actions in a cost-effective manner. Atlantic Richfield shall cooperate with the Regional Board and State Board to avoid any interruption in the performance of Response Actions from any activities by Atlantic Richfield or its contractors. These prohibitions, however, shall not prevent any Party, as interested stakeholders, from providing input to any other Party, EPA, or any other stakeholder in connection with the development of the RI, the FS, or other Response Actions and Response Action documents, provided that such input is provided in good faith. Such good faith input shall not be considered an impedance, hindrance, or delay within the meaning of this Agreement. Atlantic Richfield, the Regional Board, and the State Board shall also cooperate in executing any

documents necessary for the conveyance of ownership, from Atlantic Richfield to the Regional Board, without additional consideration beyond what is set forth herein, of any equipment, fixtures, or facilities located at the Site and needed by the Regional Board for the satisfactory performance of its obligations under this Agreement or the Consent Decree.

3. **Cooperation in Focused RI/FS and Remedy Selection**. The Regional Board, the State Board, and Atlantic Richfield recognize and acknowledge the mutual benefits of timely completion of the RI, the FS, and the selection of the Remedial Action. To that end, the Regional Board, the State Board, and Atlantic Richfield shall cooperate in and support a cost-effective process, consistent with the requirements of the NCP, that: (a) focuses the RI and the FS on those investigations, activities, and Response Actions reasonably necessary to support informed risk management decisions regarding which Remedial Action alternative is most appropriate for the Site; (b) maximizes the use of existing information; (c) minimizes the collection of unnecessary data; and (d) supports selection of a Remedial Action alternative that reduces risk sooner and costs less (based on net present value), either to construct or to operate and maintain, than other alternatives. The Regional Board, the State Board, and Atlantic Richfield will work cooperatively in good faith to convince EPA to accept and approve a strategy that streamlines and accelerates completion of the RI and the FS to the maximum extent reasonably possible, consistent with the requirements of the NCP.

4. **Cooperation in Transition Between Phases of Work**. The Parties agree to cooperate in managing the transition between different phases of the work required under this Agreement, such that requirements of EPA are met, that the transition between Parties conducting work is conducted in a manner that avoids unneeded interruption in the Response Actions, and that Response Costs addressed by this Agreement are allocated appropriately in accordance with the terms and spirit of this Agreement.

V. REMEDY DESIGN, IMPLEMENTATION, AND CONSTRUCTION

A. Remedial Design

1. **Performance of Remedial Design and Planning.** The Regional Board shall be responsible for and shall perform the Remedial Design and the development of the RD/RA Work Plan, including all requirements and schedules with respect thereto set forth in the Consent Decree.

a. The Regional Board and Atlantic Richfield acknowledge that there may be scheduling and cost benefits associated with commencing Remedial Design or development of the RD/RA Work Plan prior to issuance by EPA of the ROD or entry by the Court of the Consent Decree, including any additional investigation or analysis contemplated in Section IV.C.3 for the Interim Combined AMD Treatment. To the extent required by EPA or a state, or to the extent the Regional Board and Atlantic Richfield mutually agree to proceed in the absence of an EPA or state requirement, the Regional Board shall also be responsible for and shall perform such pre-ROD and pre-Consent Decree work on the Remedial Design and RD/RA Work Plan.

b. The Regional Board shall consult with Atlantic Richfield on the proposed Remedial Design and shall solicit from Atlantic Richfield, and Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, technical input on the scoping, planning, development, and review of the Remedial Design and the RD/RA Work Plan, and to request changes to the Remedial Design or the RD/RA Work Plan deemed by Atlantic Richfield to be necessary for the successful and cost-effective implementation and performance of Remedial Action. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for making final decisions about the form and content of the Remedial Design and RD/RA Work Plan ultimately submitted to EPA for review and approval.

2. **Remedial Design Contractor.** In order to accomplish the performance of the Remedial Design and development of the RD/RA Work Plan, as required under Section V.A.1 of this Agreement, the Regional Board shall select and retain, in accordance with applicable State contracting laws, the services of a qualified contractor experienced and knowledgeable in the business of designing and planning environmental remediation projects, including remediation of former mine sites or mining-impacted sites, similar in scale to the Remedial Action for the Site (the "Remedial Design Contractor"). The Regional Board shall commence the selection and retention process immediately upon, or, at the discretion of the Regional Board, at any reasonable time prior to (a) the issuance of the ROD, (b) the entry by the Court of the Consent Decree, or (c) the effective date of any administrative orders issued in lieu of a Consent Decree that require performance of the Remedial Design, whichever occurs first, unless some other date is specified in the Consent Decree or other administrative document. The Remedial Design Contractor shall have the ability, experience, and means required to design and plan the Remedial Action. Without interfering with contracting procedures dictated by State law or the written contracting policies and procedures of General Services, Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, input to the Regional Board on the selection of the Remedial Design Contractor. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for making final decisions about the selection and retention of the Remedial Design Contractor. The Remedial Design Contractor may, but need not, be the same entity as the Remedial Action Contractor (as defined in Section V.B.2 below).

3. **Remedial Design Cost Estimate.** The costs associated with Remedial Design shall be estimated, and such cost estimates shall be handled, as follows:

a. As soon as practicable after the Regional Board retains the services of the Remedial Design Contractor in accordance with Section V.A.2 of this Agreement, the Regional Board shall obtain from the Remedial Design Contractor and deliver to Atlantic Richfield a reasonably detailed written cost estimate for the performance of the Remedial Design and development of the RD/RA Work Plan (the "Remedial Design Cost Estimate").

b. The Remedial Design Cost Estimate shall include (collectively "Remedial Design Costs"): all Response Costs and other reasonable and necessary costs that the Remedial Design Contractor estimates will be incurred: in performing all work required for the Remedial Design and development of the RD/RA Work Plan in accordance with this Agreement, the Consent Decree, and applicable laws; maintaining compliance with applicable laws and the

terms of this Agreement as required for Remedial Design; and satisfying any other obligations under this Agreement and the Consent Decree that are reasonably likely to arise in connection with the Remedial Design, which Atlantic Richfield and the Regional Board shall use good faith efforts to minimize. Such costs include: all costs and expenses for contractors, subcontractors, laboratory services, labor, transportation, utilities, materials, supplies, tools, equipment, licenses, permits or other authorizations, application fees, inspections, coordination, supervision, contract management, contract review and development, analysis, reporting, records retention, monitoring, tax reporting expenses for the Trust, maintenance, repair, preparation of the Remedial Design Cost Estimate (notwithstanding the fact that such preparation costs may have been incurred in whole or in part prior to the preparation of the cost estimate), accounting, quality assurance, HSSE requirements, design, construction, mobilization, demobilization, overhead (including direct and indirect payments to any employee for labor, travel, reimbursement of expenses, or other services), and United States' Future Response Costs and Future Oversight Costs (as such terms are defined in the Consent Decree) that are incurred in connection with the Remedial Design. The Remedial Design Cost Estimate may also include the costs of preparing the Remedial Action Cost Estimate in accordance with Section V.B.3.a.

c. Remedial Design Costs and the Remedial Design Cost Estimate shall not include: (i) stipulated or other civil penalties (except to the extent caused by a breach by Atlantic Richfield of this Agreement); (ii) costs of resolving disputes under this Agreement or the Consent Decree; (iii) Incremental Costs; or (iv) costs of performing any work or tasks unrelated to the Remedial Design and development of the RD/RA Work Plan in accordance with this Agreement, the Consent Decree, and the ROD.

d. The Remedial Design Cost Estimate shall detail the annual Remedial Design Costs estimated to be incurred during each calendar year of the Remedial Design. The Regional Board shall, at the same time the Remedial Design Cost Estimate is provided, provide Atlantic Richfield with copies of reasonably complete supporting documentation, including working spreadsheets, calculations, and other back-up, used by the Remedial Design Contractor in developing the Remedial Design Cost Estimate.

e. Once finalized and provided to Atlantic Richfield, a Remedial Design Cost Estimate shall not be increased, either in amount or duration, without the prior written consent of Atlantic Richfield.

f. The Regional Board shall not accept the Remedial Design Cost Estimate as final, or authorize the Remedial Design Contractor to perform or provide services relating to the Remedial Design, without first engaging in good faith consultations with Atlantic Richfield concerning the nature, scope, and amount of the Remedial Design Cost Estimate. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for the decision to accept the Remedial Design Cost Estimate as final.

4. **Cost Allocation for Remedial Design and Planning.** Subject to Atlantic Richfield's rights to dispute or withhold payment of certain costs under Section V.A.7 and V.A.8 of this Agreement, all Remedial Design Costs shall be allocated between the Regional Board and Atlantic Richfield and paid according to the following allocation formula:

Atlantic Richfield: 75%
Regional Board: 25%

5. **Payment of Remedial Design Costs**. Remedial Design Costs shall be paid as follows:

a. Within thirty (30) days after receiving the Remedial Design Cost Estimate and the supporting documentation in accordance with Section V.A.3 of this Agreement, but in no event before December 31, 2016, Atlantic Richfield shall make or cause to be made an initial deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to seventy-five percent (75%) of the Remedial Design Costs estimated to be incurred during the first calendar year of Remedial Design, less any credit then due to Atlantic Richfield under Section IV.C.11.a (Interim Combined AMD Treatment Excess).

b. Within the same time period, the Regional Board shall obtain or make available unencumbered funds in an amount equal to twenty-five percent (25%) of the Remedial Design Costs estimated to be incurred during the first calendar year of Remedial Design, plus any amount then credited to Atlantic Richfield under Section IV.C.11.a (Interim Combined AMD Treatment Excess), which funds shall be dedicated for the payment of the Regional Board's allocated share of Remedial Design Costs. Such funds obtained or made available by the Regional Board shall be maintained either (i) in an account controlled by General Services on the Regional Board's behalf, or (ii) in some other type of account established and controlled by the State Board, the Regional Board, or General Services to ensure the funds placed therein are available, when needed, for payment of the Regional Board's allocated share of Remedial Design Costs in accordance with this Agreement.

c. On or before January 1 of each subsequent year covered by the Remedial Design Cost Estimate, and except as otherwise provided in this Agreement, Atlantic Richfield shall make or cause to be made a subsequent deposit of funds into the Leviathan Mine Special Environmental Remediation Trust equal to 20% of the Remedial Design Costs estimated to be incurred during such calendar year.

d. On or before April 15 of each subsequent year covered by the Remedial Design Cost Estimate, and except as otherwise provided in this Agreement, Atlantic Richfield shall make or cause to be made a subsequent deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to 55% of the Remedial Design Costs estimated to be incurred during such calendar year.

e. On or before July 1 of each subsequent year covered by the Remedial Design Cost Estimate, and except as otherwise provided in this Agreement, the Regional Board shall obtain or make available unencumbered funds in an amount equal to twenty-five percent (25%) of the Remedial Design Costs estimated to be incurred during such calendar year, which funds shall be dedicated for the payment of the Regional Board's allocated share of Remedial Design Costs. Such funds shall be maintained in the same way as provided in Section V.A.5.b above.

f. The Regional Board or General Services may transfer or request the transfer of any funds deposited into the Leviathan Mine Environmental Remediation Trust pursuant to this Section V.A.5 from the Leviathan Mine Environmental Remediation Trust into one or more accounts controlled by General Services, the State Controller or the Regional Board; provided that such transferred funds may be used by General Services, the State Controller or the Regional Board only for the payment of Remedial Design Costs in accordance with this Agreement.

g. Before paying any contractor for Remedial Design Costs, the Regional Board or General Services shall provide Atlantic Richfield with copies of the associated contractor's invoice(s), sales receipt(s), statement(s), or other cost documentation. Atlantic Richfield shall have no less than ten (10) days from the date of receiving such documentation to review it and advise the Regional Board of any reasonable concerns with respect thereto, which the Regional Board shall consider in good faith. Unless given earlier notification of approval by Atlantic Richfield, payment to a contractor for Remedial Design Costs shall not be issued or fully authorized until after the expiration of this 10-day review period. The failure by Atlantic Richfield to advise the Regional Board of any concerns with respect to a contractor's cost documentation during such 10-day review period shall in no way limit Atlantic Richfield's rights under Sections V.A.7 and V.A.8 of this Agreement to dispute or withhold payment of the Remedial Design Costs detailed therein.

6. **Remedial Design Cost Summary.**

a. On or before March 1 of each year of Remedial Design, and within ninety (90) days after EPA issues its final approval of the Remedial Design in accordance with the requirements of the Consent Decree, the Regional Board shall submit to Atlantic Richfield reasonably detailed documentation of all Remedial Design Costs paid in the prior calendar year (using funds placed into the Leviathan Mine Environmental Remediation Trust and funds obtained by the Regional Board in accordance with Section V.A.5 above) and back-up documentation of the associated costs and expenses (including invoices, sales receipts, and statements) (a "Remedial Design Cost Summary").

b. Atlantic Richfield, at its discretion, may request, and the Regional Board shall within thirty (30) days of such request provide, an informal summary of all Remedial Design Costs paid since issuance of the prior Remedial Action Cost Summary (an "Informal Remedial Design Cost Summary"). Such requests shall not be made more frequently than quarterly.

c. If, at any time after the Regional Board has provided the Remedial Design Cost Summary to Atlantic Richfield, the Regional Board discovers an error therein (including missing charges, overcharges, or otherwise), it shall notify Atlantic Richfield of such error within a reasonable time after the discovery, provide appropriate backup documentation, and instruct Atlantic Richfield as to the payment consequences of the purported error. Atlantic Richfield shall have sixty (60) days from the receipt of such notice and backup documentation to deliver a written Notice of Dispute and commence dispute resolution with respect thereto, as set forth in Section XI.A.3 of this Agreement. Any credit due to Atlantic Richfield as a result of the error shall be deducted from, and any additional funds due to the Regional Board as a result of

the error shall be added to, Atlantic Richfield's next required payment into the Leviathan Mine Environmental Remediation Trust.

7. **Disputes Over Remedial Design Costs.** Atlantic Richfield shall have the right to dispute, in accordance with the dispute resolution process set forth in Section XI of this Agreement, the costs included in the Remedial Design Cost Estimate and any Remedial Design Cost Summary. Atlantic Richfield shall have sixty (60) days from the receipt of the Remedial Design Cost Estimate or a Remedial Design Cost Summary to deliver a written Notice of Dispute and commence dispute resolution with respect thereto, as set forth in Section XI.A.3. In any such dispute, Atlantic Richfield may seek credit against future Remedial Design Costs owed or against other future Response Costs owed by Atlantic Richfield under this Agreement if no subsequent Remedial Design Costs are due. In no event shall issuance of a payment by Atlantic Richfield constitute a determination that all costs included in the Remedial Design Cost Estimate or in a Remedial Design Cost Summary are legitimate and reimbursable Remedial Design Costs.

8. **Right to Adjust or Withhold Payment of Remedial Design Costs.** Notwithstanding the foregoing, Atlantic Richfield shall also have the right to adjust, withhold, or deny payment of costs included in the Remedial Design Cost Estimate if, and only to the extent:

a. The Regional Board has failed to comply with a material requirement of this Agreement with respect to its obligations to perform Remedial Design, following notice and a reasonable opportunity to cure; and provided that any payment adjusted, withheld, or denied on this basis shall be made within 30 days after such failure to comply has been cured or the dispute relating thereto is resolved.

b. The Regional Board has failed to provide Atlantic Richfield with the documentation supporting such costs, as required under Section V.A.3, or an intervening Remedial Design Cost Summary, as required under Section V.A.6, until such time as the documentation is provided; and provided that any payment adjusted, withheld, or denied on this basis shall be made within 30 days after Atlantic Richfield receives such documentation or the dispute relating thereto is resolved.

c. Atlantic Richfield is entitled to a credit under Section V.A.6.c above or Section V.A.9 below.

d. The Regional Board has used moneys from the Leviathan Mine Environmental Remediation Trust, or requested payment from Atlantic Richfield, for payment of: (i) fines, penalties (including stipulated penalties), interest accrued on such fines or penalties, or administrative expenses paid in connection with the assessment or defense of any claims for such fines or penalties, where such fines or penalties arise out of or are related to the Regional Board's performance of the Remedial Design or the Regional Board's failure to comply with a material requirement of the Consent Decree; or (ii) Incremental Costs.

e. EPA has initiated a work takeover under the Consent Decree (except if such work takeover is caused in whole or in part by a breach by Atlantic Richfield of this Agreement).

9. **Remedial Design Costs Shortfalls and Excesses.** Because the amount of funds deposited by Atlantic Richfield into the Leviathan Mine Environmental Remediation Trust in any calendar year during Remedial Design will depend on the Remedial Design Cost Estimate for that year, it is possible that the funds may be either more than or less than sufficient to cover Atlantic Richfield's obligations for Remedial Design Costs paid in that year. Such shortfalls and excesses shall be addressed as follows, subject to the same rights to dispute or withhold payments that are set forth in Sections V.A.7 and V.A.8 of this Agreement:

a. If the total amount of Remedial Design Costs actually paid in a given calendar year, as documented in the Remedial Design Cost Summary, is less than the Remedial Design Cost Estimate for that calendar year, seventy-five percent (75%) of such difference shall be deducted from the subsequent April 15 payment owed by Atlantic Richfield for Remedial Design Costs, or from the next subsequent payment for other Response Costs owed by Atlantic Richfield under this Agreement if no subsequent payment for Remedial Design Costs is owed.

b. If the total amount of Remedial Design Costs actually paid in a given calendar year, as documented in the Remedial Design Cost Summary, is greater than the Remedial Design Cost Estimate for that calendar year, seventy-five percent (75%) of such shortfall funds shall be added to the subsequent April 15 payment owed by Atlantic Richfield for Remedial Design Costs, or to the next subsequent payment for other Response Costs owed if no subsequent payment for Remedial Design Costs is owed; and the Regional Board shall be responsible for paying the other twenty-five percent (25%) of the shortfall.

c. Credits or debits resulting from the resolution of any disputes over Remedial Design Costs shall only be made against the next payment for Remedial Design Costs or other Response Costs that comes due after such resolution occurs, except as otherwise provided above in Sections V.A.8.a and V.A.8.b.

d. Any funds remaining in the Leviathan Mine Environmental Remediation Trust after completion of Remedial Design shall be credited towards the subsequent payment(s) owed by Atlantic Richfield for Remedial Action Costs pursuant to Section V.B.5 of this Agreement.

B. Remedial Action

1. **Performance of the Remedial Action**. The Regional Board shall be responsible for and shall perform any Remedial Action(s) at the Site, including all work required for the construction and implementation of the Remedy set forth in the ROD, compliance with the design plans and specifications set forth in the RD/RA Work Plan and Remedial Design, satisfaction of all requirements and schedules applicable to the performance and implementation of the Remedial Action set forth in the Consent Decree, and achievement of the Performance Standards. The Regional Board shall solicit from Atlantic Richfield, and Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, technical input on the planning, construction, and implementation of the Remedy and to request changes to any Remedial Action work plans or other associated planning documents deemed by Atlantic Richfield to be necessary for the successful and cost-effective implementation and performance

of the Remedial Action. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for the final preparation and content of such Remedial Action work plans and other associated planning documents and for their submittal to EPA for review and approval.

2. **Remedial Action Contractor.** In order to accomplish the performance of any Remedial Action, as required under Section V.B.1 of this Agreement, the Regional Board shall select and retain the services of a qualified contractor experienced and knowledgeable in the business of performing environmental remediation projects, including remediation of former mine sites or mining-impacted sites, similar in scale to the Remedial Action for the Site (the "Remedial Action Contractor"). The Regional Board shall commence the selection and retention process immediately upon, or, at the discretion of the Regional Board, at any reasonable time prior to, approval of the Remedial Design by EPA. The Remedial Action Contractor shall have the ability, experience, and means required to construct and implement the Remedial Action. Without interfering with contracting procedures dictated by State law or the written contracting policies and procedures of General Services, Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, input to the Regional Board on the selection of the Remedial Action Contractor. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for making final decisions about the selection and retention of the Remedial Action Contractor. The Remedial Action Contractor may, but need not, be the same entity as the Remedial Design Contractor.

3. **Remedial Action Cost Estimate.** The costs associated with Remedial Action shall be estimated, and such cost estimates shall be handled, as follows:

a. At least sixty (60) days before the commencement of any Remedial Action work, the Regional Board shall deliver to Atlantic Richfield a detailed, written cost estimate for the construction and implementation of the Remedial Action (a "Remedial Action Cost Estimate"). The Remedial Action Cost Estimate may, but not need, be prepared as part of the Remedial Design if the Regional Board deems appropriate. Before such time, the Regional Board shall retain the services of, and shall obtain a Remedial Action Cost Estimate from, a contractor (the "Remedial Action Cost Estimate Contractor") that is experienced and knowledgeable in the business of performing and designing environmental remediation projects, including remediation of former mine sites or mining-impacted sites, similar in scale to the Remedial Action for the Site. The Remedial Action Cost Estimate Contractor shall have the ability, experience, and means required to construct and implement the Remedial Action. Without interfering with contracting procedures dictated by State law or the written contracting policies and procedures of General Services, Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, input to the Regional Board on the selection of the Remedial Action Cost Estimate Contractor. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for making final decisions about the selection and retention of the Remedial Action Cost Estimate Contractor. The Remedial Action Cost Estimate Contractor may, but need not, be the same entity as the Remedial Design Contractor and/or the Remedial Action Contractor.

b. The Remedial Action Cost Estimate shall include (collectively "Remedial Action Costs"): all Response Costs and other reasonable and necessary costs that the

Remedial Action Cost Estimate Contractor estimates will be incurred in performing all work required to construct and implement the Remedial Action in accordance with this Agreement, the Consent Decree, and applicable laws; maintaining compliance with applicable laws and the terms of this Agreement as required for the Remedial Action; and satisfying any other obligations under this Agreement and the Consent Decree that are reasonably likely to arise during the Remedial Action, which Atlantic Richfield and the Regional Board shall use good faith efforts to minimize. Such costs include: all costs and expenses for contractors, subcontractors, laboratory services, labor, transportation, utilities, materials, supplies, tools, equipment, licenses, permits or other authorizations, application fees, inspections, coordination, supervision, contract management, contract review and development, analysis, reporting, records retention, monitoring, tax reporting expenses for the Trust, maintenance, repair, preparation of the Remedial Action Cost Estimate (if such costs were not already included in the Remedial Design Cost Estimate under Section V.B.3.a), accounting, quality assurance, HSSE requirements, design, construction, mobilization, demobilization, overhead (including direct and indirect payment to any employee for labor, travel, reimbursement of expenses, or other services), and United States' Future Response Costs and Future Oversight Costs (as such terms are defined in the Consent Decree) that are incurred in connection with the Remedial Action.

c. Remedial Action Costs and the Remedial Action Cost Estimate shall not include: (i) stipulated or other civil penalties (except to the extent caused by a breach by Atlantic Richfield of this Agreement); (ii) costs of resolving disputes under this Agreement and the Consent Decree; (iii) Incremental Costs; or (iv) costs of performing any work or tasks unrelated to the performance of the Remedial Action in accordance with this Agreement, the Consent Decree, the ROD, the RD/RA Work Plan, and the Remedial Design.

d. The Remedial Action Cost Estimate shall detail the annual Remedial Action Costs estimated to be paid during each calendar year of the Remedial Action. Among other components, the Remedial Action Cost Estimate shall reasonably account for inflation, contingencies, discounting, and the net present value of future expenditures in accordance with standard cost estimation practices used by contractors experienced and knowledgeable in the business of performing and designing environmental remediation projects that are similar in scale to the Remedial Action for the Site. The Regional Board shall, at the same time the Remedial Design Cost Estimate is provided, provide Atlantic Richfield with copies of reasonably complete supporting documentation, including working spreadsheets, calculations, and other back-up, used by the Remedial Action Cost Estimate Contractor in developing the Remedial Action Cost Estimate.

e. Once finalized and provided to Atlantic Richfield, the Remedial Action Cost Estimate shall not be increased, either in amount or duration, without the prior written consent of Atlantic Richfield.

f. The Regional Board shall not accept the Remedial Action Cost Estimate as final, or authorize the Remedial Action Contractor to perform or provide services relating to the Remedial Action, without first engaging in good faith consultations with Atlantic Richfield concerning the nature, scope, and amount of the Remedial Action Cost Estimate. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for the decision to accept the Remedial Action Cost Estimate as final.

4. **Cost Allocation for Remedial Action.** Except as otherwise specified in Section IV.A.3 (Allocation and Payment of RI/FS Costs) and Section V.B.9 (Remedial Action Retention Amount) of this Agreement, and subject to Atlantic Richfield's rights to dispute or withhold payment of certain costs under Sections V.B.7 and V.B.8 of this Agreement, all Remedial Action Costs shall be allocated between the Regional Board and Atlantic Richfield and paid according to the following allocation formula:

Atlantic Richfield: 75%
Regional Board: 25%

5. **Payment of Remedial Action Costs.** Remedial Action Costs shall be paid as follows:

a. Within sixty (60) days after receiving the Remedial Action Cost Estimate and the supporting documentation in accordance with Section V.B.3 of this Agreement, or within sixty (60) days after Atlantic Richfield receives written notice from the Regional Board that the Regional Board or General Services will initiate contracting for the Remedial Action Contractor in the next sixty (60) days, whichever is later, Atlantic Richfield shall make or cause to be made an initial deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to one hundred fifty percent (150%) of the Remedial Action Cost Estimate for the first calendar year of the Remedial Action, as determined under Section V.B.3 of this Agreement, less any credit then due to Atlantic Richfield under Section IV.A.3 (Allocation and Payment of RI/FS Costs) and Section V.A.9.a (Remedial Design Costs Excess) of this Agreement. If the Regional Board disputes any RI/FS costs in accordance with Section IV.A.3 of this Agreement, Atlantic Richfield shall nevertheless be entitled to deduct the full value of the credit from the payment due under this Section V.A.5.a pending resolution of the dispute, at which point Atlantic Richfield shall, within thirty (30) days of such resolution, make up any additional payment required as a result of a resolution in the Regional Board's favor. If one hundred fifty percent (150%) of the Remedial Action Cost Estimate for the first calendar year of the Remedial Action exceeds seventy-five (75%) of the full amount of the Remedial Action Cost Estimate for all years covered by the Remedial Action Cost Estimate, Atlantic Richfield's payment obligation under this Section V.A.5.a shall be limited to seventy-five (75%) of the entire Remedial Action Cost Estimate.

b. Within the same time period, the Regional Board shall obtain or make available unencumbered funds in an amount equal to twenty-five percent (25%) of the Remedial Action Cost Estimate for the first calendar year of the Remedial Action, plus any amount credited in such year to Atlantic Richfield under Section IV.A.3 (Allocation and Payment of RI/FS Costs) and Section V.A.9.a (Remedial Design Costs Excess) of this Agreement, which funds shall be dedicated for the payment of the Regional Board's allocated share of Remedial Action Costs. Such funds obtained or made available by the Regional Board shall be maintained either (i) in an account controlled by General Services on the Regional Board's behalf, or (ii) in some other type of account established and controlled by the State Board, the Regional Board or General Services to ensure the funds placed therein are available, when needed, for payment of the Regional Board's allocated share of Remedial Action Costs in accordance with this Agreement.

c. On or before April 15 of the second calendar year covered by the Remedial Action Cost Estimate, and except as otherwise provided in this Agreement, Atlantic Richfield shall make or cause to be made a second deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to one hundred fifty percent (150%) of the Remedial Action Cost Estimate for the second calendar year of the Remedial Action, as determined under Section V.B.3 of this Agreement, less any remaining credit due to Atlantic Richfield under Section IV.A.3 (Allocation and Payment of RI/FS Costs) of this Agreement in the event the total amount of the credit due under such Section exceeds the amount of the Remedial Action Costs deposit required under Section V.B.5.a above for the first year of the Remedial Action. If the sum of one hundred fifty percent (150%) of the Remedial Action Cost Estimate for the second calendar year of the Remedial Action plus one hundred fifty percent (150%) of the Remedial Action Cost Estimate for the first calendar year of the Remedial Action exceeds seventy-five (75%) of the full amount of the Remedial Action Cost Estimate for all years covered by the Remedial Action Cost Estimate, Atlantic Richfield's payment obligation under this Section V.B.5.c shall be limited to seventy-five (75%) of the entire Remedial Action Cost Estimate minus the deposit amount required under Section V.B.5.a.

d. On or before April 15 of the third calendar year covered by the Remedial Action Cost Estimate, and except as otherwise provided in this Agreement, Atlantic Richfield shall make or cause to be made a third deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to the difference between (a) seventy five percent (75%) of the full amount of the Remedial Action Cost Estimate, less any credit due to Atlantic Richfield under Section IV.A.3 (Allocation and Payment of RI/FS Costs) of this Agreement, and (b) the combined amounts of the initial deposit and second deposit made by Atlantic Richfield into the Leviathan Mine Environmental Remediation Trust under this Section V.B.5.

e. Consistent with the foregoing, the combined amount of the deposits that Atlantic Richfield shall be required to make under this Section V.B.5 for Remedial Action Costs shall not exceed seventy-five percent (75%) of the full amount of the Remedial Action Cost Estimate, less any credit due to Atlantic Richfield under Section IV.A.3 of this Agreement.

f. On or before July 1 of the second calendar year and of each subsequent calendar year covered by the Remedial Action Cost Estimate, and except as otherwise provided in this Agreement, the Regional Board shall obtain or make available unencumbered funds in an amount equal to twenty-five percent (25%) of the Remedial Action Costs estimated to be incurred during such calendar year, plus any amount credited to Atlantic Richfield under Section IV.A.3 (Allocation and Payment of RI/FS Costs) of this Agreement in such year, which funds shall be dedicated for the payment of the Regional Board's allocated share of Remedial Action Costs. Such funds shall be maintained in the same way as provided in Section V.B.5.b above.

g. The Regional Board or General Services may transfer or request the transfer of any funds deposited into the Leviathan Mine Environmental Remediation Trust pursuant to this Section V.B.5 from the Leviathan Mine Environmental Remediation Trust into one or more accounts controlled by General Services, the State Controller or the Regional Board;

provided that such transferred funds may be used by General Services, the State Controller or the Regional Board only for the payment of the Remedial Action in accordance with this Agreement.

h. Before paying any contractor for Remedial Action Costs, the Regional Board or General Services shall provide Atlantic Richfield with copies of the associated contractor's invoice(s), sales receipt(s), statement(s), or other cost documentation. Atlantic Richfield shall have no less than ten (10) days from the date of receiving such documentation to review it and advise the Regional Board of any reasonable concerns with respect thereto, which the Regional Board shall consider in good faith. Unless given earlier notification of approval by Atlantic Richfield, payment to a contractor for Remedial Action Costs shall not be issued or fully authorized until after the expiration of this 10-day review period. The failure by Atlantic Richfield to advise the Regional Board of any concerns with respect to a contractor's cost documentation during such 10-day review period shall in no way limit Atlantic Richfield's rights under Sections V.B.7 and V.B.8 of this Agreement to dispute or withhold payment of the Remedial Action Costs detailed therein.

6. **Remedial Action Cost Summary**.

a. On or before March 1 of each year of the Remedial Action, and within ninety (90) days after Certification of Completion of the Remedial Action, the Regional Board shall submit to Atlantic Richfield reasonably detailed documentation of all Remedial Action Costs paid in the prior calendar year (using funds placed into the Leviathan Mine Environmental Remediation Trust and funds obtained by the Regional Board in accordance with Section V.B.5 above) and back-up documentation of the associated costs and expenses (including invoices, sales receipts, and statements) (a "Remedial Action Cost Summary").

b. Atlantic Richfield, at its discretion, may request, and the Regional Board shall within thirty (30) days of such request provide, an informal summary of all Remedial Action Costs paid since issuance of the prior Remedial Action Cost Summary (an "Informal Remedial Action Cost Summary"). Such requests shall not be made more frequently than quarterly.

c. If, at any time after the Regional Board has provided the Remedial Action Cost Summary to Atlantic Richfield, the Regional Board discovers an error therein (including missing charges, overcharges, or otherwise), it shall notify Atlantic Richfield of such error within a reasonable time after the discovery, provide appropriate backup documentation, and instruct Atlantic Richfield as to the payment consequences of the purported error. Atlantic Richfield shall have sixty (60) days from the receipt of such notice and backup documentation to deliver a written Notice of Dispute and commence dispute resolution with respect thereto, as set forth in Section XI.A.3 of this Agreement. Any credit due to Atlantic Richfield as a result of the error shall be deducted from, and any additional funds due to the Regional Board as a result of such error shall be added to, Atlantic Richfield's next required payment into the Leviathan Mine Environmental Remediation Trust.

7. **Disputes Over Remedial Action Costs.** Atlantic Richfield shall have the right to dispute, in accordance with the dispute resolution process set forth in Section XI of this Agreement, the costs included in the Remedial Action Cost Estimate and any Remedial Action

Cost Summary. Atlantic Richfield shall have sixty (60) days from the receipt of the Remedial Action Cost Estimate or a Remedial Action Cost Summary to deliver a written Notice of Dispute and commence dispute resolution with respect thereto, as set forth in Section XI.A.3. In any such dispute, Atlantic Richfield may seek credit against future Remedial Action Costs owed or against other future Response Costs owed by Atlantic Richfield under this Agreement if no subsequent Remedial Action Costs are due. In no event shall issuance of a payment by Atlantic Richfield constitute a determination that all costs included in the Remedial Action Cost Estimate or in a Remedial Action Cost Summary are legitimate and reimbursable Remedial Action Costs.

8. **Right to Adjust or Withhold Payment of Remedial Action Costs.** Notwithstanding the foregoing**,** Atlantic Richfield shall also have the right to adjust, withhold, or deny payment of costs included in the Remedial Action Cost Estimate if, and only to the extent:

a. The Regional Board has failed to comply with a material requirement of this Agreement with respect to its obligations to perform the Remedial Action, following notice and a reasonable opportunity to cure; and provided that any payment adjusted, withheld, or denied on this basis shall be made within 30 days after such failure to comply has been cured or the dispute relating thereto is resolved.

b. The Regional Board has failed to provide Atlantic Richfield with the documentation supporting such costs, as required under Section V.B.3, or an intervening Remedial Action Cost Summary, as required under Section V.B.6, until such time as the documentation is provided; and provided that any payment adjusted, withheld, or denied on this basis shall be made within 30 days after Atlantic Richfield receives such documentation or the dispute relating thereto is resolved.

c. Atlantic Richfield is entitled to a credit against Remedial Action Costs owed to the Regional Board in accordance with Section IV.A.3, V.B.6.c, or V.B.10 of this Agreement.

d. The Regional Board has used moneys from the Leviathan Mine Environmental Remediation Trust, or requested payment from Atlantic Richfield, for payment of: (i) fines, penalties (including stipulated penalties), interest accrued on such fines or penalties, or administrative expenses paid in connection with the assessment or defense of any claims for such fines or penalties, where such fines or penalties arise out of or related to the Regional Board's performance of the Remedial Action or the Regional Board's failure to comply with a material requirement of the Consent Decree; or (ii) Incremental Costs.

e. EPA has initiated a work takeover under the Consent Decree (except if such work takeover is caused in whole or in part by a breach by Atlantic Richfield of this Agreement).

9. **Remedial Action Retention Amount.** The Parties recognize that Remedial Action Costs paid in performing the Remedial Action may exceed the Remedial Action Cost Estimate. Notwithstanding the allocation set forth in Section V.B.4 of this Agreement, and except as otherwise stated in Section VIII.B.2 of this Agreement ("Force Majeure"), the Regional Board shall be solely responsible for paying all Remedial Action Costs

or other costs or expenses paid in connection with the performance of the Remedial Action in excess of the Remedial Action Cost Estimate until and to the extent the amount of such excess Remedial Action Costs, as documented in the Remedial Action Cost Summaries prepared and delivered to Atlantic Richfield in accordance with Section V.B.6, exceeds seven and one-half percent (7.5%) of the Remedial Action Cost Estimate (the "Remedial Action Retention Amount"). Atlantic Richfield shall not be responsible under this Agreement for paying any portion of the Remedial Action Retention Amount. Atlantic Richfield shall not be responsible under this Agreement for paying any Remedial Action Costs in excess of the Remedial Action Cost Estimate, unless and until the Regional Board has paid the entire Remedial Action Retention Amount. In the event the total amount of the Remedial Action Costs exceeds the Remedial Action Cost Estimate plus the Remedial Action Retention Amount, the Parties shall be responsible for paying such excess Remedial Action Costs (those above the Remedial Action Retention Amount) until completion of the Remedial Action in accordance with the following formula:

Atlantic Richfield: 75%
Regional Board: 25%

10. **Remedial Action Costs Shortfalls and Excesses.** Because the total amount of funds deposited by Atlantic Richfield into the Leviathan Mine Environmental Remediation Trust during the first three years of the Remedial Action will depend on the Remedial Action Cost Estimate, it is possible that the funds may be either more than or less than sufficient to cover Atlantic Richfield's obligations with respect to all Remedial Action Costs necessary for completion of the Remedial Action. Such shortfalls and excesses shall be addressed as follows, subject to the same rights to dispute or withhold payments that are set forth in Sections V.B.7and V.B.8 of this Agreement, and also subject to the payment limitations set forth in Section V.B.9 with respect to the Remedial Action Retention Amount:

a. If the total amount of Remedial Action Costs actually paid in the first two calendar years of the Remedial Action, as documented in the Remedial Action Cost Summaries for those two years, is less than the sum of the Remedial Action Cost Estimates for those two calendar years, seventy-five percent (75%) of such difference shall be deducted from the third payment required to be made by Atlantic Richfield for Remedial Action Costs under Section V.B.5.d, or from the next subsequent payment for other Response Costs owed by Atlantic Richfield under this Agreement if no third payment for Remedial Action Costs is owed.

b. If the total amount of Remedial Action Costs actually paid in any calendar year after the first two calendar years of the Remedial Action, as documented in the Remedial Action Cost Summary for that calendar year, is less than the Remedial Action Cost Estimate for that calendar year, seventy-five percent (75%) of such difference shall be deducted from the next subsequent payment or payments for other Response Costs owed by Atlantic Richfield under this Agreement.

c. If the total amount of Remedial Action Costs actually paid in the first two calendar years of the Remedial Action, as documented in the Remedial Action Cost Summaries for those two years, is greater than the sum of the Remedial Action Cost Estimates

for those two calendar years, Atlantic Richfield shall make its third deposit into the Leviathan Mine Environmental Remediation Trust as provided for in Section V.B.5.d.

d. If, at any time, the total amount of Remedial Action Costs actually paid for the Remedial Action, as documented in the Remedial Action Cost Summaries prepared and delivered to Atlantic Richfield as of such time, exceeds the sum of the Remedial Action Cost Estimate plus the Remedial Action Retention Amount, seventy-five percent (75%) such excess amount shall be added to the next subsequent payment required to be made by Atlantic Richfield for Remedial Action Costs under Section V.B.5.d, or, if no such subsequent payment for Remedial Action Costs is required, Atlantic Richfield shall deposit seventy-five percent (75%) of such excess amount into the Leviathan Mine Environmental Remediation Trust on or before April 15 of the calendar year in which the Regional Board provides the Remedial Action Cost Summary documenting such excess amount; and the Regional Board shall be responsible for paying the other twenty-five percent (25%) of such excess amount.

e. Credits or debits resulting from the resolution of any disputes over Remedial Action Costs shall only be made against the next payment for Remedial Action Costs or other Response Costs that comes due after such resolution occurs, except as otherwise provided above in Sections V.B.8.a and V.B.8.b.

f. Any funds remaining in the Leviathan Mine Environmental Remediation Trust after completion of the Remedial Action shall be credited towards the subsequent payment(s) owed by Atlantic Richfield for O&M Costs pursuant to Section VI.A.5 of this Agreement.

VI. OPERATIONS & MAINTENANCE AND MAJOR CAPITAL EQUIPMENT REPLACEMENT

A. Operations & Maintenance

1. **Performance of Operations & Maintenance.** The Regional Board shall be responsible for and shall perform the Operations & Maintenance, including all requirements and schedules with respect thereto set forth in the Consent Decree. The Regional Board shall solicit from Atlantic Richfield, and Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, technical input on the scoping, planning, and implementation of the Operations & Maintenance, and to request changes to any Operations & Maintenance work plan deemed by Atlantic Richfield to be necessary for the successful and cost-effective implementation and performance of the Operations & Maintenance. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for the final preparation and content of such Operations & Maintenance work plans and other associated planning documents and for their submittal to EPA for review and approval. The Regional Board shall not assign or transfer its responsibilities or obligations under this Agreement with respect to the Operations & Maintenance to any other person or entity without the prior written consent of Atlantic Richfield, which written consent may be denied if an assignment or transfer is reasonably expected to result in a material increase in costs, additional compliance requirements, or delayed achievement of Performance Standards, among other reasons, but otherwise shall not be unreasonably withheld or delayed; provided that such

prohibition shall not restrict the Regional Board's right and obligation to retain the services of contractors to perform the Operations & Maintenance pursuant to Section VI.A.2 below.

2. **Operations & Maintenance Contractor.** In order to accomplish the performance of the Operations & Maintenance, as required under Section VI.A.1 of this Agreement, the Regional Board shall select and retain the services of a qualified contractor experienced and knowledgeable in the business of operating and maintaining environmental remediation projects, including remediation projects at former mine sites or mining-impacted sites, similar in scale to the Remedial Action for the Site (the "O&M Contractor"). The Regional Board shall commence the selection and retention process immediately upon, or, at the discretion of the Regional Board, at any reasonable time prior to, Certification of Completion of the Remedial Action. The Regional Board shall have the right to continue and/or begin Operations & Maintenance with the Remedial Action Contractor until the O&M Contractor is selected, and the O&M Contractor may, but need not, be the same entity as the Remedial Action Contractor. The O&M Contractor shall have the ability, experience, and means required to operate and maintain the effectiveness of the Remedial Action. Without interfering with contracting procedures dictated by State law or the written contracting policies and procedures of General Services, Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, input to the Regional Board on the selection of the O&M Contractor. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for making final decisions about the selection and retention of the O&M Contractor.

3. **Operations & Maintenance Cost Estimates.** The costs associated with Operations & Maintenance shall be estimated, and such cost estimates shall be handled, as follows:

a. At least sixty (60) days before the commencement of any Operations & Maintenance work, the Regional Board shall obtain from the O&M Contractor and deliver to Atlantic Richfield a reasonably detailed written cost estimate for the performance of the first ten (10) calendar years of Operations & Maintenance (an "O&M Cost Estimate"), including the remainder of the calendar year in which Operations & Maintenance commences.

b. At least sixty (60) days before the tenth anniversary of the delivery of the first such O&M Cost Estimate, the Regional Board shall obtain from the O&M Contractor and deliver to Atlantic Richfield an O&M Cost Estimate for the performance of the Operations & Maintenance during the second ten (10) years of Operations & Maintenance. The Regional Board shall obtain and deliver additional O&M Cost Estimates for each successive ten (10) year period (each an "O&M Retention Period") at least sixty (60) days prior to each successive 10-year anniversary.

c. Each O&M Cost Estimate shall include (collectively "O&M Costs"): all Response Costs and other reasonable and necessary costs that the O&M Contractor estimates will be incurred in performing all work required to perform the Operations & Maintenance in accordance with this Agreement, the Consent Decree, applicable work plans or project plans, and applicable laws during the O&M Retention Period covered by that O&M Cost Estimate; maintaining compliance with applicable laws and the terms of this Agreement as

required for O&M during such O&M Retention Period; and satisfying any other obligations under this Agreement and the Consent Decree that are reasonably likely to arise during the O&M Retention Period covered by that O&M Cost Estimate, which Atlantic Richfield and the Regional Board shall use good faith efforts to minimize. Such costs include: all costs and expenses for contractors, subcontractors, laboratory services, labor, transportation, utilities, materials, supplies, tools, equipment, licenses, permits or other authorizations, application fees, inspections, coordination, supervision, contract management, contract review and development, analysis, reporting, records retention, monitoring, tax reporting expenses for the Trust, maintenance, repair, preparation of the O&M Cost Estimate (notwithstanding the fact that such preparation costs may have been incurred in whole or in part prior to the preparation of the cost estimate) , accounting, quality assurance, HSSE requirements, design, construction, mobilization, demobilization, overhead (including direct and indirect payments to any employee for labor, travel, reimbursement of expenses, or other services), and United States' Future Response Costs and Future Oversight Costs (as such terms are defined in the Consent Decree) that are incurred in connection with the performance of Operations & Maintenance during the applicable O&M Retention Period.

d. O&M Costs and O&M Cost Estimates shall not include: (i) stipulated or other civil penalties (except to the extent caused by a breach by Atlantic Richfield of this Agreement); (ii) costs of resolving disputes under this Agreement and the Consent Decree; (iii) Incremental Costs; (iv) Major Capital Equipment Replacement Costs, as defined in Section VI.B.5 of this Agreement; and (v) costs of performing any work or tasks unrelated to maintaining the effectiveness of the Remedial Action in accordance with this Agreement, the Consent Decree, the ROD, or any work plans or other project plans prepared in association with the foregoing.

e. Each O&M Cost Estimate shall detail the annual O&M Costs estimated to be paid during each calendar year of the Operations & Maintenance Retention Period. Among other components, the O&M Cost Estimate shall reasonably account for inflation, discounting, contingencies, and the net present value of future expenditures in accordance with standard cost estimation practices used by contractors experienced and knowledgeable in the business of operating and maintaining environmental remediation projects that are similar in scale to the Remedial Action for the Site. The Regional Board shall, at the same time the Remedial Design Cost Estimate is provided, provide Atlantic Richfield with copies of reasonably complete supporting documentation, including working spreadsheets, calculations, and other back-up, used by the O&M Contractor in developing the O&M Cost Estimate.

f. Once finalized and provided to Atlantic Richfield, an O&M Cost Estimate shall not be increased without the prior written consent of Atlantic Richfield.

g. Atlantic Richfield may request that the Regional Board re-evaluate and reduce an O&M Cost Estimate after the fifth year of an O&M Retention Period, if Atlantic Richfield reasonably believes, based on the O&M Cost Summaries provided to Atlantic Richfield in accordance with Section VI.A.6 below, that the O&M Cost Estimate will substantially exceed the total O&M Costs likely to be paid during the O&M Retention Period. The Regional Board shall consider Atlantic Richfield's request in good faith. Subject to the need

to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for making final decisions whether to reconsider the O&M Cost Estimate.

h. The Regional Board shall not accept an O&M Cost Estimate as final, or authorize an O&M Contractor to perform or provide services relating to the Operations & Maintenance, without first engaging in good faith consultations with Atlantic Richfield concerning the nature, scope, and amount of the O&M Cost Estimate. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for the decision to accept the O&M Cost Estimate as final.

4. **Cost Allocation for Operations & Maintenance.** Except as otherwise specified in Section VI.A.9 ("O&M Retention Amount") of this Agreement, and subject to Atlantic Richfield's rights to dispute or withhold payment of certain costs under Sections VI.A.7 and VI.A.8 of this Agreement, all O&M Costs shall be allocated between the Regional Board and Atlantic Richfield and paid according to the following allocation formula:

Atlantic Richfield: 70%
Regional Board: 30%

5. **Payment of O&M Costs.** O&M Costs shall be paid as follows:

a. Within thirty (30) days after Atlantic Richfield receives the first O&M Cost Estimate and the supporting documentation in accordance with Section VI.A.3 of this Agreement, but in no event more than one hundred twenty (120) days before the scheduled commencement of Operations & Maintenance (as defined in Section I.Y of this Agreement), Atlantic Richfield shall make or cause to be made a deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to seven percent (7%) of the first O&M Cost Estimate, less any credit then due to Atlantic Richfield under Section V.B.10.b (Remedial Action Costs Excess) of this Agreement.

b. Within the same time period, the Regional Board shall obtain or make available unencumbered funds in an amount equal to three percent (3%) of the first O&M Cost Estimate, plus any amount then credited to Atlantic Richfield under Section V.B.10.b (Remedial Action Costs Excess) of this Agreement, which funds shall be dedicated for the payment of the Regional Board's allocated share of O&M Costs. Such funds obtained or made available by the Regional Board shall be maintained either (i) in an account controlled by General Services on the Regional Board's behalf, or (ii) in some other type of account established and controlled by the State Board, the Regional Board or General Services to ensure the funds placed therein are available, when needed, for payment of the Regional Board's allocated share of O&M Costs in accordance with this Agreement.

c. On or before January 1 of each successive year of Operations & Maintenance, and except as otherwise provided in this Agreement, Atlantic Richfield shall make or cause to be made a subsequent deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to 1.75% (one-fourth of 7%) of the O&M Cost Estimate for the applicable O&M Retention Period .

d. On or before April 15 of each successive year of Operations & Maintenance, and except as otherwise provided in this Agreement, Atlantic Richfield shall make or cause to be made a subsequent deposit of funds into the Leviathan Mine Environmental Remediation Trust equal to 5.25% (three-fourths of 7%) of the O&M Cost Estimate for the applicable O&M Retention Period.

e. On or before July 1 of each successive year of Operations & Maintenance, and except as otherwise provided in this Agreement, the Regional Board shall obtain or make available unencumbered funds in an amount equal to three percent (3%) of the O&M Cost Estimate for the applicable O&M Retention Period, which funds shall be dedicated for the payment of the Regional Board's allocated share of O&M Costs. Such funds shall be maintained in the same way as provided in Section VI.A.5.b above.

f. The Regional Board or General Services may transfer or request the transfer of any funds deposited into the Leviathan Mine Environmental Remediation Trust pursuant to this Section VI.A.5 from the Leviathan Mine Environmental Remediation Trust into one or more accounts controlled by General Services, the State Controller or the Regional Board; provided that such transferred funds may be used by General Services, the State Controller, or the Regional Board only for the payment of O&M Costs in accordance with this Agreement.

g. Before paying any contractor for O&M Costs, the Regional Board or General Services shall provide Atlantic Richfield with copies of the associated contractor's invoice(s), sales receipt(s), statement(s), or other cost documentation. Atlantic Richfield shall have no less than ten (10) days from the date of receiving such documentation to review it and advise the Regional Board of any reasonable concerns with respect thereto, which the Regional Board shall consider in good faith. Unless given earlier notification of approval by Atlantic Richfield, payment to a contractor for O&M Costs shall not be issued or fully authorized until after the expiration of this 10-day review period. The failure by Atlantic Richfield to advise the Regional Board of any concerns with respect to a contractor's cost documentation during such 10-day review period shall in no way limit Atlantic Richfield's rights under Sections VI.A.7 and VI.A.8 of this Agreement to dispute or withhold payment of the O&M Costs detailed therein.

6. **O&M Cost Summary**.

a. On or before March 1 of each year of Operations & Maintenance, the Regional Board shall submit to Atlantic Richfield reasonably detailed documentation of all O&M Costs paid in the prior calendar year (using funds placed into the Leviathan Mine Environmental Remediation Trust and funds obtained by the Regional Board in accordance with Section VI.A.5 above) and back-up documentation of the associated costs and expenses (including invoices, sales receipts, and statements) (an "O&M Cost Summary").

b. Atlantic Richfield, at its discretion, may request, and the Regional Board shall within thirty (30) days of such request provide, an informal summary of all O&M Costs paid since issuance of the prior O&M Cost Summary (an "Informal O&M Cost Summary"). Such requests shall not be made more frequently than quarterly.

c. If, at any time after the Regional Board has provided the O&M Cost Summary to Atlantic Richfield, the Regional Board discovers an error therein (including missing charges, over charges or otherwise), it shall notify Atlantic Richfield of such error within a reasonable time after the discovery, provide appropriate backup documentation, and instruct Atlantic Richfield as to the payment consequences of the purported error. Atlantic Richfield shall have sixty (60) days from the receipt of such notice and backup documentation to deliver a written Notice of Dispute and commence dispute resolution with respect thereto, as set forth in Section XI.A.3 of this Agreement. Any credit due to Atlantic Richfield as a result of the error shall be deducted from, and any additional funds due to the Regional Board as a result of such error shall be added to, Atlantic Richfield's next required payment into the Leviathan Mine Environmental Remediation Trust.

7. **Disputes Over O&M Costs.** Atlantic Richfield shall have the right to dispute, in accordance with the dispute resolution process set forth in Section XI of this Agreement, the costs included in any O&M Cost Estimate and O&M Cost Summary. Atlantic Richfield shall have sixty (60) days from the receipt of an O&M Cost Estimate or O&M Cost Summary to deliver a written Notice of Dispute and commence dispute resolution with respect thereto, as set forth in Section XI.A.3. In any such dispute, Atlantic Richfield may seek credit against future O&M Costs owed. In no event shall issuance of a payment by Atlantic Richfield constitute a determination that all costs included in an O&M Cost Estimate or O&M Cost Summary are legitimate and reimbursable O&M Costs.

8. **Right to Adjust or Withhold Payment of O&M Costs.** Notwithstanding the foregoing, Atlantic Richfield shall also have the right to adjust, withhold, or deny payment of costs included in an O&M Cost Estimate if, and only to the extent:

a. The Regional Board has failed to comply with a material requirement of this Agreement with respect to its obligations to perform Operations & Maintenance, following notice and a reasonable opportunity to cure; and provided that any payment adjusted, withheld, or denied on this basis shall be made within 30 days after such failure to comply has been cured or the dispute relating thereto is resolved.

b. The Regional Board has failed to provide Atlantic Richfield with the documentation supporting such costs, as required under Section VI.A.3, or an intervening O&M Cost Summary, as required under Section VI.A.6, until such time as the documentation is provided; and provided that any payment adjusted, withheld, or denied on this basis shall be made within 30 days after Atlantic Richfield receives such documentation or the dispute relating thereto is resolved.

c. Atlantic Richfield is entitled to a credit against O&M Costs owed to the Regional Board in accordance with Sections VI.A.6.c or VI.A.10 of this Agreement.

d. The Regional Board has used moneys from the Leviathan Mine Environmental Remediation Trust, or requested payment from Atlantic Richfield, for payment of: (i) fines, penalties (including stipulated penalties), interest accrued on such fines or penalties, or administrative expenses paid in connection with the assessment or defense of any claims for such fines or penalties where such fines or penalties arise out of or are related to the Regional

Board's performance of the Operations & Maintenance or the Regional Board's failure to comply with a material requirement of the Consent Decree; or (ii) Incremental Costs.

e. EPA has initiated a work takeover under the Consent Decree (except if such work takeover is caused in whole or in part by a breach by Atlantic Richfield of this Agreement).

9. **Operations & Maintenance Retention Amount.** The Parties recognize that O&M Costs paid in performing Operations & Maintenance during any O&M Retention Period may exceed the O&M Cost Estimate for that O&M Retention Period. Notwithstanding the allocation set forth in Section VI.A.4 of this Agreement, and except as otherwise stated in Section VIII.B.2 of this Agreement ("Force Majeure"), the Regional Board shall be solely responsible for paying all O&M Costs or other costs or expenses paid in connection with the performance of the Operations & Maintenance in excess of the O&M Cost Estimate until and to the extent the amount of such excess O&M Costs, as documented in the O&M Cost Summaries prepared and delivered to Atlantic Richfield in accordance with Section VI.A.6, exceeds fifteen percent (15%) of the O&M Cost Estimate for the applicable O&M Retention Period (the "O&M Retention Amount"). Atlantic Richfield shall not be responsible under this Agreement for paying any portion of the O&M Retention Amount. Atlantic Richfield shall not be responsible under this Agreement for paying any O&M Costs in excess of the O&M Cost Estimate, unless and until the Regional Board has paid the entire O&M Retention Amount. In the event the total amount of the O&M Costs paid within an O&M Retention Period exceeds the O&M Cost Estimate plus the O&M Retention Amount for that O&M Retention Period, the Parties shall be responsible for paying such excess O&M Costs (those above the O&M Retention Amount) in accordance with the following allocation formula:

Atlantic Richfield: 70%
Regional Board: 30%

10. **O&M Costs Shortfalls and Excesses.** Because the total amount of funds deposited by Atlantic Richfield into the Leviathan Mine Environmental Remediation Trust in any calendar year during Operations & Maintenance will depend on the O&M Cost Estimate for that year, it is possible that the funds may be either more than or less than sufficient to cover Atlantic Richfield's obligations for O&M Costs paid in that year. Such shortfalls and excesses shall be addressed as follows, subject to the same rights to dispute or withhold payments that are set forth in Sections VI.A.7 and VI.A.8 of this Agreement, and also subject to the payment limitations set forth in Section VI.A.9 with respect to the O&M Retention Amount:

a. If the total amount of O&M Costs actually paid in a given calendar year, as documented in the O&M Cost Summary, is less than the O&M Cost Estimate for that calendar year, seventy percent (70%) of such difference shall be deducted from the subsequent April 15 payment owed by Atlantic Richfield for O&M Costs, or from the next subsequent payment for other Response Costs owed by Atlantic Richfield under this Agreement if no subsequent payment for O&M Costs is owed.

b. If the total amount of O&M Costs actually paid in a given calendar year, as documented in the O&M Cost Summary, is greater than the O&M Cost Estimate for that

calendar year, seventy percent (70%) of such shortfall funds shall be added to the subsequent April 15 payment owed by Atlantic Richfield for O&M Costs, or to the next subsequent payment for other Response Costs owed if no subsequent payment for O&M Costs is owed; provided that no such addition to the subsequent April 15 payment shall occur under this subsection if such addition would cause the total amount of O&M Costs paid by Atlantic Richfield during any O&M Retention Period to equal more than seventy percent (70%) of the total O&M Cost Estimate for the that O&M Retention Period; the Regional Board shall be responsible for paying the other thirty percent (30%) of the shortfall.

c. Notwithstanding the prior subsection, if the total amount of O&M Costs actually paid for Operations & Maintenance during an O&M Retention Period, as documented in the O&M Cost Summaries prepared and delivered to Atlantic Richfield, exceeds the O&M Cost Estimate plus the O&M Retention Amount for the applicable O&M Retention Period, seventy percent (70%) of the O&M Costs paid in excess of the combined total of the O&M Cost Estimate and the O&M Retention Amount shall be added to the subsequent April 15 payment owed by Atlantic Richfield for O&M Costs, or to the next subsequent payment for other Response Costs owed if no subsequent payment for O&M Costs is owed; and the Regional Board shall be responsible for paying the other thirty percent (30%) of such excess costs.

d. Credits or debits resulting from the resolution of any disputes over O&M Costs shall only be made against the next payment for O&M Costs or other Response Costs that comes due after such resolution occurs, except as otherwise provided above in Sections VI.A.8.a and VI.A.8.b.

11. **Operations & Maintenance Step-In**. Deficiencies in the performance of the Operations & Maintenance, if any, shall be addressed as follows:

a. In the event that Atlantic Richfield demonstrates by clear and convincing evidence that the Regional Board has ceased implementation of the Operations & Maintenance, or is seriously or repeatedly deficient, wasteful, or late in its performance of the Operations & Maintenance, Atlantic Richfield shall have the right, but not the obligation, to assume the performance of the Operations & Maintenance.

b. Before exercising such right, Atlantic Richfield shall, within ten (10) days of becoming aware of such evidence, provide written notice to the Regional Board describing with reasonable specificity the nature of the deficiency and the evidence relied upon to identify it. If, within thirty (30) days after receipt of such written notice from Atlantic Richfield, the Regional Board fails to correct the deficiency by diligently commencing or diligently performing the Operations & Maintenance in compliance with the provisions of this Agreement, the Consent Decree, the RD/RA Work Plan, the Remedial Design, or any Operations & Maintenance work plans or other plans approved by EPA, or if the Regional Board otherwise fails to correct the deficiency in a way that satisfies the Regional Board's obligations under this Agreement with respect to the Operations & Maintenance, Atlantic Richfield may, at its discretion, then exercise its right to assume the performance of all or any portion of the Operations & Maintenance as Atlantic Richfield deems necessary, subject to the Regional Board's right to invoke Dispute Resolution pursuant to this Agreement.

c. For purposes of this Section VI.A.11, "clear and convincing evidence" shall include initiation of a work takeover by EPA under the Consent Decree. EPA's decision not to initiate a work takeover, however, shall create a rebuttable presumption that the Regional Board has not ceased implementation of the Operations & Maintenance, and is not seriously or repeatedly deficient, wasteful, or late in its performance of the Operations & Maintenance. If, over the objections of the Regional Board (as documented by the invocation of dispute resolution procedures under this Agreement), Atlantic Richfield assumes performance of the Operations & Maintenance, and the dispute resolution process results in a determination that such assumption was not justified, Atlantic Richfield shall not be entitled to recover any of the O&M Costs it incurs in performing such work and shall reimburse the Regional Board for any extra costs the Regional Board incurs as a result of the transition into and out of its role as the work party.

d. If Atlantic Richfield assumes performance of all of the Operations & Maintenance under this Section VI.A.11, Atlantic Richfield's payment obligations under Section VI.A.5 shall be immediately suspended and shall remain suspended for as long as Atlantic Richfield continues to perform the Operations & Maintenance, except for payments owed by Atlantic Richfield to the Regional Board at the time of such assumption pursuant to Sections VI.A.10.b and VI.A.10.c. In the event Atlantic Richfield assumes performance of some but not all of the Operations & Maintenance, Atlantic Richfield's payment obligations under Section VI.A.5 shall continue to apply, but only with respect to any Operations & Maintenance work that the Regional Board continues to perform. Also, Atlantic Richfield's assumption of the performance of the Operations & Maintenance shall in no way affect the cost allocation for O&M Costs set forth in Section VI.A.4 of this Agreement. Accordingly, Atlantic Richfield shall, in the event of such assumption, be entitled to reimbursement from the Regional Board, and the Regional Board shall be obligated under this Agreement to reimburse Atlantic Richfield, for thirty percent (30%) of all O&M Costs paid by Atlantic Richfield in performing Operations & Maintenance. In seeking reimbursement from the Regional Board, Atlantic Richfield shall provide the Regional Board with reasonably detailed supporting documentation, including invoices, sales receipts, and statements reasonably detailing all O&M Costs for which reimbursement is being sought. The Regional Board shall have the right to dispute, in accordance with the dispute resolution process set forth in Section XI of this Agreement, the costs claimed by Atlantic Richfield for reimbursement after assumption of the Operations & Maintenance. Such right shall be the same as the rights afforded to Atlantic Richfield to dispute the Regional Board's O&M Cost under Section VI.A.7 of this Agreement.

e. In the event that EPA initiates a work takeover and Atlantic Richfield elects to not step-in and assume performance of all the Operations & Maintenance under this Section VI.A.11, EPA's costs for performing the Operations & Maintenance shall be allocated as specified in Section VI.A.4. In such an event, Atlantic Richfield shall not be responsible for payment of any stipulated penalty required under the Consent Decree or any indirect costs charged by EPA, unless EPA initiates the work takeover due to the Regional Board's failure to perform the Operation & Maintenance as a result of Atlantic Richfield failure to make timely payments as required under Section VI.A.5. If a particular event or condition has caused a work takeover, and that event or condition ceases to exist, the Regional Board may re-initiate its role as the O&M work party.

12. **Delay in Commencement of Operations & Maintenance**.

a. If Certification of Completion of the Remedial Action, and thus commencement of Operations & Maintenance (as defined under this Agreement), does not occur within (i) ten (10) years after completion of the Remedial Design and its final approval in accordance with the Consent Decree, or (ii) upon the scheduled date for completion of the Remedial Action, as identified in the schedule contained in the Remedial Design, and after a determination is jointly made by the Regional Board and Atlantic Richfield that the Performance Standards for the Remedial Action have been achieved and the Remedial Action is operational and functional (*i.e.*, functioning properly and is performing as designed), whichever time period is shorter, then Response Costs paid by the Regional Board from that point forward in performing Response Actions reasonably required for maintaining the effectiveness of such Remedial Action, shall be allocated between Atlantic Richfield and the Regional Board and paid according to the following allocation formula (rather than the formula set forth in Section V.B.4):

Atlantic Richfield: 70%
Regional Board: 30%

In such event, Atlantic Richfield and the Regional Board shall cooperate in good faith to develop a mutually agreeable process for tendering cost estimates and cost summaries and making payments for Response Costs in a manner that satisfies this allocation formula and is generally consistent with the payment procedures set forth elsewhere in this Agreement for Operations & Maintenance. If one of the Parties does not agree that the conditions in this Section have been met, the Parties shall engage in dispute resolution under Section XI of this Agreement to resolve the dispute.

b. The determination whether Response Actions performed after such time period are "reasonably required for maintaining the effectiveness of the Remedial Action" shall be subject to dispute resolution under Section XI of this Agreement.

B. Major Capital Equipment Replacement Projects

1. **Definition of Major Capital Equipment**. The Parties recognize and acknowledge that certain equipment installed at the Site may have a limited useful life or may otherwise need to be replaced following Certification of Completion of the Remedial Action. For purposes of this Agreement, the term "Major Capital Equipment" shall be defined as any article of non-expendable, tangible personal property installed or constructed at the Site, or used to operate such personal property that is installed or constructed at the Site, which is used to accomplish and is necessary for the post-Certification performance of the Remedial Action and the Operations & Maintenance and: (a) stands alone and is complete in itself, (b) is not disposable or consumable, (c) has an anticipated useful life of more than three (3) years, and (d) has a per unit acquisition cost that equals or exceeds Ten Thousand Dollars ($10,000.00) (excluding taxes, shipping, and delivery charges, and installation labor costs). Major Capital Equipment, the replacement of which is necessary to maintain the effectiveness of the Remedial Action and continued achievement of the Performance Standards, shall be replaced as set forth in this Section VI.B. Other equipment otherwise necessary for the performance of the

Operations & Maintenance shall be replaced, as needed, as part of the Operations & Maintenance, with the costs of such replacement allocated and paid for as provided in Section VI.A of this Agreement. For purposes of this Agreement, "Major Capital Equipment" shall not include any ponds, pond liners, dams, roads, road surfaces, asphalt or concrete structures, ditches, channels, pipes or piping (except to the extent a pipe or piping is a component of an item of Major Capital Equipment), pipelines, underdrains, drainage systems, sewers, soil covers and amendments, other erosion controls, vegetated surfaces, or similar structures or facilities.

2. **Major Capital Equipment Inventory.** The Regional Board shall maintain a written inventory of all Major Capital Equipment installed, constructed, or used at the Site during the Remedial Action and Operations & Maintenance (the "Major Capital Equipment Inventory"). Such written inventory shall include, at a minimum, for each item of Major Capital Equipment: manufacturer, serial number, estimated useful operating life, maintenance interval, and purchase price, as applicable. An item of equipment shall not be considered Major Capital Equipment for purposes of this Section VI.B unless it is included on the Major Capital Equipment Inventory. The Regional Board shall update the Major Capital Equipment Inventory from time to time, as necessary for it to accurately reflect the Major Capital Equipment present at the Site. The Regional Board shall provide Atlantic Richfield with a copy of the Major Capital Equipment Inventory within thirty (30) days of its completion or revision, as applicable. Within thirty (30) days of receiving such Major Capital Equipment Inventory, Atlantic Richfield shall have the right to dispute, in accordance with the dispute resolution process set forth in Section XI of this Agreement, the inclusion or exclusion of any item as Major Capital Equipment.

3. **Performance of Major Capital Equipment Replacement Projects.** The Regional Board shall be responsible for and shall perform the replacement of Major Capital Equipment as necessary to maintain the effectiveness of the Remedial Action and continued achievement of the Performance Standards ("Major Capital Equipment Replacement Project"). Major Capital Equipment Replacement Projects do not include new Remedial Actions implemented as part of a new ROD, ROD Amendment, or in response to a remedy failure. Before replacing any item of Major Capital Equipment, the Regional Board shall solicit from Atlantic Richfield, and Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, technical input on the necessity for and selection, design, procurement, construction, and installation of such item. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for the decision to replace an item of Major Capital Equipment.

4. **Major Capital Equipment Replacement Contractor.** In order to accomplish any Major Capital Equipment Replacement Project, the Regional Board shall select and retain the services of a qualified contractor experienced and knowledgeable in the business of replacing Major Capital Equipment used in operating and maintaining environmental remediation projects, including, without limitation, remediation projects at former mine sites or mining-impacted sites, similar in scale to the Remedial Action for the Site (a "Major Capital Equipment Replacement Contractor"). Without interfering with contracting procedures dictated by State law or the written contracting policies and procedures of General Services, Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, input to the Regional Board on the selection of any Major Capital Equipment

Replacement Contractor. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for making final decisions about the selection and retention of any Major Capital Equipment Replacement Contractor. Unless it results in commercially unreasonable terms, the Regional Board shall use good faith efforts to contract for the replacement of any item of Major Capital Equipment on a guaranteed, fixed-price basis, that is, pursuant to an agreement containing the Major Capital Equipment Replacement Contractor's commitment to replace the item of Major Capital Equipment for a contractually guaranteed fixed price.

5. **Major Capital Equipment Replacement Cost Estimate.** The costs associated with a Major Capital Equipment Replacement Project shall be estimated, and such cost estimates shall be handled, as follows:

a. At least five (5) business days before authorizing any Major Capital Equipment Replacement Contractor to perform or provide services relating to the replacement of an item of Major Capital Equipment, the Regional Board shall obtain from the Major Capital Equipment Replacement Contractor and deliver to Atlantic Richfield a reasonably detailed written cost estimate for such replacement (a "Major Capital Equipment Replacement Cost Estimate").

b. The Major Capital Equipment Replacement Cost Estimate shall include (collectively "Major Capital Equipment Replacement Costs"): all Response Costs and other reasonable and necessary costs that the Major Capital Equipment Replacement Contractor estimates will be incurred in performing all work required to replace the item of Major Capital Equipment in accordance with this Agreement, the Consent Decree, applicable work plans or project plans, and applicable laws, and maintaining compliance with applicable laws and the terms of this Agreement as required for the Major Capital Equipment Replacement Project, which Atlantic Richfield and the Regional Board shall use good faith efforts to minimize. Such costs include: all costs and expenses for contractors, subcontractors, laboratory services, labor, transportation, utilities, materials, supplies, tools, equipment, licenses, permits or other authorizations, application fees, inspections, coordination, supervision, contract review and development, contract management, analysis, reporting, records retention, monitoring, tax reporting expenses for the Trust, maintenance, repair, preparation of the Major Capital Equipment Replacement Cost Estimate, accounting, quality assurance, HSSE requirements, design, construction, mobilization, demobilization, and overhead (including direct and indirect payments to any employee for labor, travel, reimbursement of expenses, or other services) incurred or used for the Major Capital Equipment Replacement Project.

c. Major Capital Equipment Replacement Costs and Major Capital Equipment Replacement Cost Estimates shall not include: (i) stipulated or other civil penalties (except to the extent caused by a breach by Atlantic Richfield of this Agreement); (ii) costs of resolving disputes under this Agreement and the Consent Decree; (iii) Incremental Costs; and (iv) costs of performing any work or tasks unrelated to replacing an item of Major Capital Equipment.

d. Each Major Capital Equipment Replacement Cost Estimate shall include copies of reasonably complete supporting documentation, including working

spreadsheets, calculations, and other back-up, used by the Major Capital Equipment Replacement Contractor in developing the Major Capital Equipment Replacement Cost Estimate.

e. Once finalized and provided to Atlantic Richfield, a Major Capital Equipment Replacement Cost Estimate shall not be increased without the prior written consent of Atlantic Richfield.

f. The Regional Board shall not accept a Major Capital Equipment Replacement Cost Estimate as final, or authorize any Major Capital Equipment Replacement Contractor to perform or provide services relating to the replacement of an item of Major Capital Equipment (other than obtaining a cost estimate per this Agreement), without first engaging in good faith consultations with Atlantic Richfield concerning the nature, scope, and amount of the Major Capital Equipment Replacement Cost Estimate and the need for replacing the item of Major Capital Equipment that is the subject thereof. Atlantic Richfield shall provide any input regarding the Major Capital Replacement Cost Estimate within five (5) days of receiving a Major Capital Replacement Cost Estimate. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for the decision to accept the Major Capital Equipment Replacement Cost Estimate as final.

6. **Cost Allocation for Major Capital Equipment Replacement Projects.** Subject to Atlantic Richfield's rights to dispute or withhold payment of certain costs under Sections VI.B.9 and VI.B.10 of this Agreement, Major Capital Equipment Replacement Costs shall be allocated between the Regional Board and Atlantic Richfield and paid according to the following allocation formula:

Atlantic Richfield: 70%
Regional Board: 30%

7. **Payment of Major Capital Equipment Replacement Costs.** Major Capital Equipment Replacement Costs shall be paid as follows:

a. Within thirty (30) days after Atlantic Richfield receives a Major Capital Equipment Replacement Cost Estimate and the supporting documentation in accordance with VI.B.5 of this Agreement, Atlantic Richfield shall make or cause to be made a deposit into the Leviathan Mine Environmental Remediation Trust equal to seventy percent (70%) of such Major Capital Equipment Replacement Cost Estimate.

b. Within the same time period, the Regional Board shall obtain or make available unencumbered funds in an amount equal to thirty percent (30%) of such Major Capital Equipment Replacement Cost Estimate, which funds shall be dedicated for the payment of the Regional Board's allocated share of the Major Capital Equipment Replacement Costs. Such funds obtained or made available by the Regional Board shall be maintained either (i) in an account controlled by General Services on the Regional Board's behalf, or (ii) in some other type of account established and controlled by the State Board, the Regional Board or General Services to ensure the funds placed therein are available, when needed, for payment of the Regional Board's allocated share of Major Capital Equipment Replacement Costs in accordance with this Agreement.

c. The Regional Board or General Services may transfer or request the transfer of any funds deposited into the Leviathan Mine Environmental Remediation Trust pursuant to this Section VI.B.7 from the Leviathan Mine Environmental Remediation Trust into one or more accounts controlled by General Services, the State Controller or the Regional Board; provided that such transferred funds may be used by General Services, the State Controller or the Regional Board only for the payment of Major Capital Equipment Replacement Costs in accordance with this Agreement.

d. Before paying any contractor for Major Capital Equipment Replacement Costs, the Regional Board or General Services shall provide Atlantic Richfield with copies of the associated contractor's invoice(s), sales receipt(s), statement(s), or other cost documentation. Atlantic Richfield shall have no less than ten (10) days from the date of receiving such documentation to review it and advise the Regional Board of any reasonable concerns with respect thereto, which the Regional Board shall consider in good faith. Unless given earlier notification of approval by Atlantic Richfield, payment to a contractor for Major Capital Equipment Replacement Costs shall not be issued or fully authorized until after the expiration of this 10-day review period. The failure by Atlantic Richfield to advise the Regional Board of any concerns with respect to a contractor's cost documentation during such 10-day review period shall in no way limit Atlantic Richfield's rights under Sections VI.B.9 or VI.B.10 of this Agreement to dispute or withhold payment of the Major Capital Equipment Replacement Costs detailed therein.

8. **Major Capital Equipment Replacement Cost Summary**.

a. Within sixty (60) days after completion of a Major Capital Equipment Replacement Project, as documented in a final invoice received from the Major Capital Equipment Replacement Contractor, the Regional Board shall submit to Atlantic Richfield reasonably detailed documentation of all Major Capital Equipment Replacement Costs paid in connection with such Project (using funds placed into the Leviathan Mine Environmental Remediation Trust and funds obtained by the Regional Board in accordance with Section VI.B.7 above) and back-up documentation of the associated costs and expenses (including invoices, sales receipts, and statements) (a "Major Capital Equipment Replacement Cost Summary").

b. If, at any time after the Regional Board has provided a Major Capital Equipment Replacement Cost Summary, the Regional Board discovers an error in the information so provided (including missing charges, over charges, or otherwise), it shall notify Atlantic Richfield of such error within a reasonable time after the discovery, provide appropriate backup documentation, and instruct Atlantic Richfield as to the payment consequences of the purported error. Atlantic Richfield shall have sixty (60) days from the receipt of such notice and backup documentation to deliver a written Notice of Dispute and commence dispute resolution with respect thereto, as set forth in Section XI.A.3 of this Agreement. Any credit due to Atlantic Richfield as a result of the error shall be deducted from, and any additional funds due to the Regional Board as a result of the error shall be added to, Atlantic Richfield's next required payment into the Leviathan Mine Environmental Remediation Trust.

9. **Disputes Over Major Capital Equipment Replacement Costs.** Atlantic Richfield shall have the right to dispute, in accordance with the dispute resolution process set

forth in Section XI of this Agreement, the costs included in any Major Capital Equipment Replacement Cost Estimate or Major Capital Equipment Replacement Cost Summary. Atlantic Richfield shall have sixty (60) days from the receipt of a Major Capital Equipment Replacement Cost Estimate or Major Capital Equipment Replacement Cost Summary to deliver a written Notice of Dispute and commence dispute resolution with respect thereto, as set forth in Section XI.A.3 of this Agreement, within sixty (60) days after receiving the Major Capital Equipment Cost Summary. In any such dispute, Atlantic Richfield may seek credit against future O&M Costs or Major Capital Equipment Replacement Project Costs owed under this Agreement. In no event shall issuance of a payment by Atlantic Richfield constitute a determination that all costs included in a Major Capital Equipment Replacement Cost Estimate or Major Capital Equipment Replacement Cost Summary are legitimate and reimbursable Major Capital Equipment Replacement Costs.

10. **Right to Adjust or Withhold Payment of Major Capital Equipment Replacement Costs.** Notwithstanding the foregoing, Atlantic Richfield shall also have the right to adjust, withhold, or deny payment of costs included in the Major Capital Equipment Replacement Cost Estimate if, and only to the extent:

a. The Regional Board has failed to comply with a material requirement of this Agreement with respect to its obligations to perform a Major Capital Equipment Replacement Project, following notice and a reasonable opportunity to cure; and provided that any payment adjusted, withheld, or denied on this basis shall be made within 30 days after such failure to comply has been cured or the dispute relating thereto is resolved.

b. The Regional Board has failed to provide Atlantic Richfield with the documentation supporting such costs, as required under Section VI.B.5, until such time as such documentation is provided; and provided that any payment adjusted, withheld, or denied on this basis shall be made within 30 days after Atlantic Richfield receives such documentation or the dispute relating thereto is resolved.

c. Atlantic Richfield is entitled to a credit under Section VI.B.8.b above or Section VI.B.11 below.

d. The Major Capital Equipment Replacement Cost Estimate includes the costs of replacing an item of equipment not listed on the Major Capital Equipment Inventory or that is not Major Capital Equipment.

e. The Regional Board has used moneys from the Leviathan Mine Environmental Remediation Trust, or requested payment from Atlantic Richfield, for payment of: (i) fines, penalties (including stipulated penalties), interest accrued on such fines or penalties, or administrative expenses paid in connection with the assessment or defense of any claims for such fines or penalties where such fines or penalties arise out of or are related to the Regional Board's replacement of a Major Capital Equipment Project or the Regional Board's failure to comply with a material requirement of the Consent Decree; or (ii) Incremental Costs.

f. EPA has initiated a work takeover under the Consent Decree (except if such work takeover is caused in whole or in part by a breach by Atlantic Richfield of this Agreement).

11. **Major Capital Equipment Replacement Costs Shortfalls and Excesses.** Because the amount of funds deposited by Atlantic Richfield into the Leviathan Mine Environmental Remediation Trust for a particular Major Capital Equipment Replacement Project will depend on the Major Capital Equipment Replacement Cost Estimate for that Project, it is possible that the funds may be either more than or less than sufficient to cover Atlantic Richfield's obligations for the associated Major Capital Equipment Replacement Costs. Such shortfalls and excesses shall be addressed as follows, subject to the same rights to dispute or withhold payments that are set forth in Sections VI.B.9 and VI.B.10 of this Agreement:

a. If the total amount of Major Capital Equipment Replacement Costs actually paid, as documented in the Major Capital Equipment Replacement Cost Summary, is less than the applicable Major Capital Equipment Replacement Cost Estimate, seventy percent (70%) of such difference shall be deducted from the subsequent April 15 payment owed by Atlantic Richfield for O&M Costs (under Section VI.A.5.d), or from the next subsequent payment for other Response Costs owed by Atlantic Richfield under this Agreement if no subsequent payment for O&M Costs is owed.

b. If the total amount of Major Capital Equipment Replacement Costs actually paid, as documented in the Major Capital Equipment Replacement Cost Summary, is greater than the applicable Major Capital Equipment Replacement Cost Estimate, seventy percent (70%) of such shortfall funds shall be added to the subsequent April 15 payment owed by Atlantic Richfield for O&M Costs (under Section VI.A.5.d), or to the next subsequent payment for other Response Costs owed if no subsequent payment for O&M Costs is owed; the Regional Board shall be responsible for paying the other thirty percent (30%) of the shortfall.

c. Credits or debits resulting from the resolution of any disputes over Major Capital Equipment Replacement Costs shall only be made against the next payment for O&M Costs or other Response Costs that comes due after such resolution occurs.

d. Any funds remaining in the Leviathan Mine Environmental Remediation Trust after completion of a Major Capital Equipment Replacement Project shall be credited towards the subsequent payment(s) owed by Atlantic Richfield for O&M Costs pursuant to Section VI.A.5 of this Agreement.

VII. REMEDIAL DESIGN/REMEDIAL ACTION CONSENT DECREE AND COURT JURISDICTION

A. CERCLA Remedial Design/Remedial Action Consent Decree

1. **Intent of the Parties.** Subject to EPA approval, Atlantic Richfield and the Regional Board, and potentially other State Parties, shall negotiate in good faith, and each enter into, the Consent Decree following the execution of this Agreement and within a reasonable time after completion of the RI/FS and issuance of the ROD.

2. **Consent Decree Terms.** Atlantic Richfield and the Regional Board further intend and agree to use good faith efforts to ensure that the Consent Decree they enter into, among other things: (a) identifies, at a minimum, Atlantic Richfield and the Regional Board as Settling Defendants (as defined in the Consent Decree); (b) resolves all outstanding and potential claims of EPA, and, if reasonable, of the State of Nevada, the Washoe Tribe, and other Natural Resource Damages trustees against Atlantic Richfield and the Regional Board under CERCLA and other applicable federal statutes relating to environmental conditions at the Site; (c) adopts, incorporates, and does not conflict with the operative terms of this Agreement, including the assignments of responsibility hereunder for performance of and payment for the RI/FS, Remedial Design, Remedial Action, and Operations & Maintenance; (d) is entered in the United States District Court; (e) constitutes a judicially approved settlement for purposes of CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2); and (f) thereby entitles Atlantic Richfield and the Regional Board to protection from contribution actions or claims as provided thereunder, or as otherwise provided by law, for the matters addressed in the Consent Decree and in this Agreement, which matters Atlantic Richfield and Regional Board shall endeavor to have defined as broadly as possible.

3. **United States' Past Response Costs and TAP Costs.** The Parties anticipate that the Consent Decree will require reimbursement by the Settling Defendants to the United States for Past Response Costs (as defined in the Consent Decree) paid by the United States prior to the effective date of the Consent Decree. The Parties also anticipate that the Consent Decree may require payment by the Settling Defendants of Technical Assistance Plan ("TAP") costs. The Parties will use good faith efforts, and will cooperate with each other in good faith, to negotiate the minimum amount of Past Response Costs owed to the United States and TAP costs payable under the Consent Decree. Any Past Response Costs or TAP costs owed jointly by Atlantic Richfield and the Regional Board to the United States under the Consent Decree, excluding 09PU Costs and 09PV Costs (both as defined in Paragraph 7.i. of the 2009 AOC), shall be allocated between the Regional Board and Atlantic Richfield and paid according to the following allocation formula:

Atlantic Richfield: 75%
Regional Board: 25%

In determining Atlantic Richfield's and the Regional Board's respective allocated payment obligations under this Agreement for United States' Past Response Costs due under the Consent Decree, Atlantic Richfield shall receive a 25% credit for any 091A Costs (as defined in Paragraph 7.i.iii of the 2009 AOC) paid by Atlantic Richfield to EPA after January 21, 2009 and before the effective date of the Consent Decree. The Regional Board shall increase the amount of its allocated payment due to EPA under the Consent Decree and this Section VII.A.3 by an equal amount to make up for Atlantic Richfield's credit.

4. **Inability to Timely Obtain Consent Decree**. In the event that Atlantic Richfield or the Regional Board delays or fails to enter into the Consent Decree, as described in this Section VII.A, Atlantic Richfield and the Regional Board shall cooperate in good faith to develop a mutually agreeable process to effectuate the work and cost allocations as set forth under this Agreement to perform and pay for the Remedial Design, the Remedial Action, the Operations & Maintenance, Major Capital Equipment replacement, or any other obligations

identified, allocated, or otherwise set forth in this Agreement in accordance with the terms hereof. At a minimum, the Parties agree that Response Costs paid by Atlantic Richfield and the Regional Board on or after January 1, 2020, and until the entry and effective date of the Consent Decree, shall be allocated between Atlantic Richfield and the Regional Board and paid according to the process and allocation formula set forth in Section IV.C of this Agreement ("Interim Combined AMD Treatment System").

5. **Survival of Releases and Covenants.** The Parties expressly agree and acknowledge that all releases, reservations, rights, obligations, and covenants of the Parties set forth in this Agreement shall survive the entry and effectiveness of the Consent Decree. The prior sentence is not intended to extend any obligation beyond the date otherwise specified in this Agreement.

B. Jurisdiction of the State Court and United States District Court

1. **Jurisdiction Prior to Entry of the Judicial Consent Decree.** During the period from the Effective Date until the Judicial Consent Decree is entered and made effective by the United States District Court, the Parties agree that the Superior Court of the State of California, County of Los Angeles (the "Court") shall have jurisdiction over the subject matter of this Agreement and personal jurisdiction over the Parties with respect thereto.

2. **Jurisdiction Following Entry of the Judicial Consent Decree.** Following entry of the Judicial Consent Decree, the Parties agree the United States District Court shall have jurisdiction over the subject matter of the Judicial Consent Decree and personal jurisdiction over, at a minimum, Atlantic Richfield, the Regional Board, and any other State Parties named as Settling Defendants in the Consent Decree with respect thereto. Solely for the purposes of the Judicial Consent Decree, Atlantic Richfield, the Regional Board, and any other State Party that executes the Consent Decree, hereby waive, and agree to ensure that the Judicial Consent Decree similarly waives, all objections, challenges, and defenses, whether based on immunity or other factual or legal grounds, that any such Party may have to the jurisdiction of the United States District Court. For purposes of this Section VII.B.2, a claim reserved under Section II.F.1 of this Agreement and arising after entry of the Judicial Consent Decree shall be considered to be within the subject matter of the Judicial Consent Decree and, accordingly, subject to the jurisdiction of the United States District Court, which jurisdiction shall not be challenged by the State Parties. If and to the extent the Judicial Consent Decree fails to adopt, incorporate, and supersede any of the operative provisions of this Agreement, the Parties agree that the Superior Court of the State of California, County of Los Angeles shall retain and shall continue to have jurisdiction over the subject matter of this Agreement and over the Parties as necessary to enforce the terms of this Agreement. As between Atlantic Richfield and the State Parties, in the event of any conflict between the terms of the Judicial Consent Decree and this Agreement with respect to a Party's obligation to perform Response Actions or pay Response Costs, this Agreement shall govern and control. In the event both the Superior Court of the State of California for the County of Los Angeles and the United States District Court have jurisdiction over a dispute between the parties or any matter requiring enforcement of the terms of this Agreement and/or the Judicial Consent Decree, the Parties agree that such dispute or matter shall be submitted to the United States District Court without the Parties filing any request

for abstention by the United States District Court or asserting primary jurisdiction by another court or administrative agency or any similar objection to the dispute's resolution by that court.

3. **Alternative Dispute Resolution.** Nothing in this Section VII.B is intended to diminish or affect the Parties' rights and obligations under this Agreement to resolve disputes in accordance with the procedures set forth in Section XI of this Agreement before seeking judicial relief from a court. To the extent that a dispute arises that includes EPA as a party to the dispute, the dispute resolution provisions of any Judicial Consent Decree shall govern and control.

VIII. FORCE MAJEURE

A. Definition of Force Majeure

For purposes of this Agreement, a "Force Majeure" is defined as any event arising from causes beyond the control of a Party, of any entity controlled by a Party, or of a Party's contractor that delays or prevents the performance of any obligation under this Agreement despite a Party's best efforts to fulfill the obligation. For the purposes of this Section only, the requirement that a Party 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 Force Majeure as it is occurring and following the potential Force Majeure, such that delay and any adverse effects of the delay are minimized to the greatest extent possible. If the event in question affects or concerns a potential obligation to EPA, EPA shall determine whether an event qualifies as a Force Majeure or not.

B. Effect of a Force Majeure

1. **General Effect**. Any delay or failure in performance of an obligation under this Agreement by a Party shall not constitute default or give rise to a claim for damages if, and to the extent, such delay or failure is caused by a Force Majeure occurrence, provided however that the occurrence of a Force Majeure shall not extinguish, excuse, or otherwise affect a Party's rights and obligations under this Agreement, including rights and obligations of a Party pursuant to Section II.F. A Party who asserts a claim of Force Majeure shall take all reasonable measures to minimize the effects of such Force Majeure occurrence upon the Party's obligations under this Agreement.

2. **Allocation of Force Majeure Costs and Retention Amounts.** To the extent RI Costs, FS Costs, Interim Combined AMD Treatment Costs, Remedial Design Costs, Remedial Action Costs, O&M Costs, Major Capital Equipment Replacement Costs, or other Response Costs are incurred by a Party directly as a result of the occurrence of a Force Majeure, such costs shall be paid and allocated as otherwise required under this Agreement, provided however that such costs paid directly as a result of the occurrence of a Force Majeure shall not count towards the Remedial Action Retention Amount (defined in Section V.B.9) or the O&M Retention Amount (defined in Section VI.A.9).

C. Notification of a Force Majeure

If any event occurs or has occurred that may cause a delay or failure in performance of an obligation under this Agreement for which the Regional Board or Atlantic Richfield intends to assert a claim of Force Majeure, such Party shall give timely (within seven (7) days) and reasonably detailed written notice and explanation to the other party of the Force Majeure event. Upon written request, the Party claiming a Force Majeure will also provide the other Party with copies of all communications and documentation provided to EPA in connection with the Force Majeure event.

IX. PERFORMANCE GUARANTEES AND FINANCIAL ASSURANCES

A. No Additional Performance Guarantee Required

Except as otherwise required by the Consent Decree, neither Atlantic Richfield nor the Regional Board shall be required under this Agreement to establish or maintain any form of performance guarantee or financial security to ensure the completion of either Party's obligations under this Agreement with respect to the RI/FS, Interim Combined AMD Treatment, Remedial Design, Remedial Action, Operations & Maintenance, or replacement of Major Capital Equipment. In negotiating the terms of the Consent Decree, the Parties shall not request or demand that any Party be required to establish or maintain any form of performance guarantee or financial assurance that is more financially burdensome or onerous than those set forth in EPA's then-current model version of a CERCLA Remedial Design/Remedial Action Consent Decree.

B. Access to Atlantic Richfield's Performance Guarantee Required by the Consent Decree

In negotiating the terms of the Consent Decree with the United States, the Regional Board and Atlantic Richfield shall use good faith efforts to convince the United States to allow the Regional Board to have beneficiary rights with respect to any performance guarantee that Atlantic Richfield is required to establish and maintain under the Consent Decree to ensure the full and final completion of the Work, as defined therein. Such beneficiary rights shall require satisfaction of the same criteria for access to the performance guarantee that apply to any United States agency under the Consent Decree, and they shall not be superior to, but may be subsidiary to, the beneficiary rights of any United States agency as set forth in the Consent Decree.

X. INSURANCE

A. General

Atlantic Richfield and the Regional Board shall each ensure that each Principal Contractor (as defined below) retained to perform work at the Site on such Party's behalf secures, and maintains for as long as such work is performed, insurance coverage satisfying at least the requirements set forth in Section X.A.1 through X.A.7 below, as well as, with respect to Principal Contractors retained by the Regional Board, any additional applicable State contracting insurance requirements. Such insurance coverage shall be purchased from a financially sound insurance company with an A.M. Best Financial Strength Rating of A- or better and Financial

Size Category of X (10) or better. For purposes of this Agreement, a "Principal Contractor" shall be the primary contractor retained by Atlantic Richfield or the Regional Board for each phase of work outlined in this Agreement, including the Remedial Design Contractor, the Remedial Action Contractor, the Remedial Action Cost Estimate Contractor, and the O&M Contractor. The requirement for insurance coverage does not apply to government entities that are contracted to do work at the Site. Atlantic Richfield and the Regional Board maintain discretion to require such insurance of any contractor other than the Principal Contractor.

1. Workers compensation insurance as required under all applicable laws and regulations for all persons performing work at the Site.

2. Employer's liability insurance with a limit of not less than $1,000,000 per accident.

3. Commercial or general liability insurance, including coverage for premises and operations, contractual liability, and completed operations, with a combined single limit of not less than $1,000,000 per occurrence.

4. Automobile liability insurance (including owned, non-owned, and hired vehicles) with limits as required by law or with a combined single limit for bodily injury, death, and property damage of not less than $1,000,000 per occurrence.

5. Excess liability insurance above the employer's liability, commercial or general liability, and automobile liability, with a combined single limit for bodily injury, death, and property damage of not less than $4,000,000 per occurrence/aggregate.

6. Professional liability insurance (errors and omissions) with limits of not less than $5,000,000 per claim and annual aggregate, including coverage for environmental consulting.

7. Contractor's pollution liability insurance with limits of not less than $5,000,000 per claim.

With respect to the commercial general liability insurance, umbrella/excess liability insurance, and contractor's pollution liability insurance, such policies, to the extent they do not identify Atlantic Richfield or the Regional Board as first named insureds, shall name Atlantic Richfield and the Regional Board as additional insureds. Atlantic Richfield and the Regional Board shall each require that its Principal Contractor(s) furnish the other Party with a certificate of insurance evidencing the same. Each Party shall also require that its Principal Contractor(s) in turn require all subcontractors to obtain, maintain, and keep in force during the time in which they are engaged in performing work at the Site adequate insurance coverage in accordance with the Principal Contractor's normal business practices. Each Party shall also comply with any additional requirements for insurance imposed under the Consent Decree.

B. Environmental Site Liability Insurance

1. **Purchase**. At least thirty (30) days before the Regional Board commences work at the Site under Section IV.C.4 of this Agreement (Responsibility for Interim Combined

AMD Treatment), Atlantic Richfield and the Regional Board shall jointly purchase and put into effect an environmental site liability insurance policy (sometimes also known as pollution legal liability or pollution premises liability insurance) of substantially similar form and providing substantially similar coverages as the sample policy attached to this Agreement as Exhibit 3 (the "ESL Policy"). The Regional Board and Atlantic Richfield agree to cooperate in good faith in negotiating appropriate policy language, including the identification of this agreement, the 1983 Settlement Agreement and other documents as insured contracts, standard self-insured retention/deductible amounts and other language as needed to cover claims arising out of alleged negligent action or inaction or claimed exacerbation of existing contamination. The initial ESL Policy limit of liability shall be $25,000,000, unless the Parties mutually agree to a different amount.

2. **Term and Renewal.** The initial term of the ESL Policy shall be ten (10) years, unless a policy with such a term is not commercially available at the time of purchase, in which case the term shall be for the maximum number of years less than ten that is then commercially available. Atlantic Richfield and the Regional Board shall renew the ESL Policy or purchase substantially similar environmental site liability insurance prior to the expiration of the initial ESL Policy term so as to ensure continuous environmental site liability insurance coverage, without lapse, from the commencement of the Regional Board's work at the Site under Section IV.C.4 of this Agreement through and including at least the first ten (10) years of Operations & Maintenance work at the Site. The Regional Board may, in its sole discretion, elect to renew or purchase substantially similar environmental site liability insurance for as many successive periods as it deems appropriate, and the Insurance Costs (as defined below) associated with such policies shall be allocated as set forth in Section X.B.4, below.

3. **Insureds.** The Regional Board and Atlantic Richfield shall each be identified as a named insured on the initial ESL Policy and any renewal or replacement policy purchased in accordance with this Section X.B. If, pursuant to the Consent Decree, EPA requires that it be identified as an ESL Policy additional insured, Atlantic Richfield and the Regional Board shall not object to such designation(s). The ESL Policy will pay for covered costs and claims (subject to the terms of the ESL Policy) on behalf of Atlantic Richfield and the Regional Board.

4. **ESL Insurance Costs.** With respect to the initial ESL Policy and any renewal or replacement ESL Policy purchased in accordance with this Section X.B, responsibility for paying any premiums, surplus lines taxes, brokers' commissions, self-insured retention amounts, deductibles, and copayments (collectively "Insurance Costs") required by or under such ESL Policy shall be allocated as follows: (a) if the Insurance Costs are incurred prior to the commencement of Operations &Maintenance: Atlantic Richfield = 75%; the Regional Board = 25%; (b) if the Insurance Costs are incurred after the commencement of Operations & Maintenance: Atlantic Richfield = 70%; the Regional Board = 30%.

5. **ESL Insurance Unpaid Claims.** As between Atlantic Richfield and the Regional Board, each Party shall bear the sole risk of any losses or liabilities otherwise subject to ESL Policy coverage that meet both of the following requirements: (a) the losses or liabilities are attributable solely to the negligence of such Party or that of its employees, agents, contractors, subcontractors, or representatives occurring after the Effective Date, and (b) the losses or

liabilities exceed the ESL Policy limit. The Regional Board shall have no right to seek payment from Atlantic Richfield, and Atlantic Richfield shall have no right to seek payment from the Regional Board, for any such losses or liabilities denied by any insurer because the ESL Policy limits have been exceeded.

6. **Captive Reinsurance Option**. Atlantic Richfield shall have the option to have some portion of the insurance coverage provided by the ESL Policy, up to a maximum of 75% prior to the commencement of Operations & Maintenance and 70% after such commencement, reinsured by Saturn Insurance Inc., which is an insurance captive of BP America Inc., or by another similarly qualified captive insurance company.

C. Property Damage Insurance

The State, or the appropriate State Party with authority over insurance matters relating to the Site, shall amend its existing insurance coverages to identify the Site as an "Insured Property" on any insurance policies, or schedules thereto, providing insurance coverage for loss of or damage to real or personal property owned by the State. Coverage limitations, deductibles, and other coverage terms shall be consistent with those provided for other State-owned property having comparable acreage, value, and risk of loss to the Site. If the State or the appropriate State Party with authority over insurance matters relating to the Site, does not maintain such insurance on similar property, the Regional Board or Atlantic Richfield may each elect, in its own discretion, either to (1) purchase property damage insurance providing coverage for such Party's allocated share (pursuant to this Agreement) of the costs of replacing or repairing lost or damaged real or personal property present at the Site and required for the performance of Response Actions, or (2) pay its allocated share of such costs without the benefit of insurance. Atlantic Richfield and the Regional Board shall not be responsible for paying any portion of the costs of a property damage insurance policy purchased by the other Party, nor shall it be a requirement under this Agreement that any Party be identified as an additional insured on a property damage insurance policy purchased by another Party.

XI. DISPUTE RESOLUTION

A. General Dispute Resolution Provisions

1. **Exclusive Mechanism**. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section XI shall be the exclusive mechanism to resolve disputes between Atlantic Richfield and the State Parties arising under or with respect to this Agreement. If a dispute involves EPA and/or arises from the Judicial Consent Decree, the dispute resolution provision of the Judicial Consent Decree shall govern.

2. **No Extension.** The invocation of formal dispute resolution procedures under this Section XI shall not extend, postpone, or affect in any way any obligation of any Party under this Agreement that is not directly in dispute, unless the Parties mutually agree otherwise, which consent shall not be unreasonably withheld, or the Court orders otherwise.

3. **Informal Dispute Resolution.** Any dispute which arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations

between the Parties involved therewith. The dispute shall be considered to have arisen when one Party to the dispute sends another Party or other Parties involved in the dispute a written Notice of Dispute setting forth the sending Party's position as to the cause, circumstances, and proposal for resolution of the dispute, and the Notice of Dispute is received by the other Party(ies). The period for informal negotiations shall not exceed thirty (30) days from the time that the Notice of Dispute is received by the receiving Party(ies) (the "Informal Negotiation Period"), unless that time period is modified by written agreement of the involved Parties. The Party(ies) shall have a reasonable opportunity to cure any alleged breach of this Agreement or any other basis for the Notice of Dispute.

B. Formal Dispute Resolution Process

1. **Invocation of Formal Dispute Resolution.** In the event a dispute arising under or with respect to this Agreement cannot be resolved by informal negotiations under Section XI.A.3, then the position advanced by the Party providing the Notice of Dispute, as set forth in the Notice of Dispute, shall be considered binding unless, not more than sixty (60) days after the conclusion of the Informal Negotiation Period, a Party who receives the Notice of Dispute invokes the formal dispute resolution procedures set forth in this Section XI.B by serving on the Party raising the dispute a written Statement of Position on the matter in dispute, including any factual data, analysis, or opinion supporting the receiving Party's position and any supporting documentation relied upon by that Party.

2. **Responsive Written Statement of Position.** Upon the invocation of the formal dispute resolution process, the Party originally providing the Notice of Dispute shall then have thirty (30) days from its receipt of a written Statement of Position to provide the other Party(ies) involved in the dispute with a responsive written Statement of Position on the matter in dispute, including any factual data, analysis, or opinion supporting the noticing Party's position and any supporting documentation relied upon by that Party.

3. **Early Resolution and Mediation Option**. The Parties shall attempt to resolve any dispute arising under or with respect to this Agreement within ten (10) days after the exchange of the written Statements of Position. The Parties may elect to attempt to resolve the dispute through the use of a neutral third-party mediator if all Parties involved in the dispute agree to such mediation and the selection of the mediator within thirty (30) days after the exchange of written Statements of Position. Each Party shall bear its own costs and one-half of any third party costs, including those of the mediator, in such mediation. The period of mediation shall not exceed thirty (30) days from the date that the mediator is selected, unless the Parties involved in the dispute otherwise mutually agree in writing.

4. **Failure of Dispute Resolution and Mediation.** If the Parties are unable to resolve any dispute arising under or with respect to this Agreement by informal dispute resolution or mediation in accordance with the procedures and schedules set forth in this Section XI, the Parties agree and stipulate that any such dispute may be settled through litigation brought in the court with jurisdiction over the issue, including a court having jurisdiction based on the provisions of Section VII.B of this Agreement. If the matter at issue concerns a dispute with the United States under the Judicial Consent Decree, the process for dispute resolution in the Judicial Consent Decree shall be followed.

XII. NOTICES AND SUBMISSIONS

Any notice or other communication required or permitted to be delivered to a Party under this Agreement shall be in writing, except as otherwise provided herein. Writing shall mean a hard copy, unless the receiving Party has given prior approval for electronic notice for a particular submission. Whenever, under the terms of this Agreement, written notice or communication is required to be sent by one Party to another Party, it shall be directed to the individuals at the addresses specified below, or to such other individual as has been specified in writing to the Parties, and shall be considered effective upon receipt, unless otherwise provided:

As to Atlantic Richfield:
Brian Johnson
BP America Inc.
201 Helios Way
Houston, Texas 77079
PH: (281) 504-9093
FAX: (281) 366-7904
EMAIL: brian.s.johnson@bp.com

With a copy to:
Adam S. Cohen
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202
Tel: (303) 892-7321
Fax: (303) 893-1379
adam.cohen@dgslaw.com

As to the Regional Board:
Executive Officer
Lahontan Regional Water Quality Control Board
2501 Lake Tahoe Boulevard
South Lake Tahoe, California 96150
PH: (530) 542-5400
FAX: (530) 544-2271

As to the State Board:
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100
PH: (916) 341-5615
FAX: (916) 341-5620

As to the California Environmental Protection Agency:
Secretary for Environmental Protection
California Environmental Protection Agency
P.O. Box 2815
Sacramento, California 95812-2815
PH: (916) 323-2514
FAX: (916) 324-0908

As to the California Department of Toxic Substances Control:
Director
California Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
PH: (916) 322-0504
FAX: (916) 324-3158

As to the California Department of Fish and Wildlife:
Administrator
Department of Fish and Wildlife
Office of Spill Prevention and Response
1700 K Street, Suite 250
Sacramento, CA 95811
PH: (916) 445-9338
FAX: (916) 324-9786

As to the California Department of Conservation:
Director
California Department of Conservation
801 K Street, MS 24-01
Sacramento, California 95814
PH: (916) 322-1080
FAX: (916) 445-0732

As to the California Department of General Services:
Director
California Department of General Services
707 3rd Street
West Sacramento, California 95605
PH: (916) 376-5012
FAX: (916) 376-5018

As to the California Attorney General:
Attorney General
California Department of Justice
Attorney General's Office
P.O. Box 944255
Sacramento, California 94244-2550
PH: (916) 445-9555
FAX: (916) 323-5341

XIII. AUTHORITY AND ENFORCEABILITY

A. As to Atlantic Richfield

Atlantic Richfield hereby represents and warrants that: (1) this Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation; (2) this Agreement shall be enforceable against it in accordance with its terms; and (3) the execution, delivery and performance of this Agreement does not violate any applicable law or regulation. Each individual executing this Agreement as a representative for Atlantic Richfield represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Atlantic Richfield and that this Agreement is binding upon Atlantic Richfield according to its terms. Atlantic Richfield represents and warrants that it has the full right, authority, capacity, and power to enter into this Agreement.

B. As to the State Parties

1. **Authority and Enforceability**. Each State Party hereby represents and warrants, severally and not jointly, that: (1) this Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation; (2) this Agreement shall be enforceable against it in accordance with its terms; and (3) the execution, delivery and performance of this Agreement does not violate any applicable law or regulation as they pertain to each State Party. Each individual executing this Agreement as a representative for a State Party represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such State Party and that this Agreement is binding upon that State Party and the State of California acting by and through such State Party according to its terms. Each State Party represents and warrants that it has the full right, authority, capacity, and power to enter into this Agreement.

2. **Representation as to Binding Effect**. The State Parties represent and agree that they are the State entities with control and authority over the matters addressed by this Agreement and that no additional approvals or authorizations of this Agreement by any other State entity or official are required to make this Agreement valid and enforceable. For purposes of this subsection, the term “State entities” does not include counties, cities, or municipalities located within the State of California.

3. **Representation as to Existing Claims for Off-Site Disposal**. Each of the Regional Board, the State Board, and California Department of Toxic Substances Control represent and agree that they do not have actual knowledge, as of the Effective Date, of any

pending or planned Claims by one or more of those entities regarding the matters reserved in Subsection II.E(8) of this Agreement, nor do they have actual knowledge of any off-Site disposal of Waste Material(s), the circumstances of which would give rise to such a Claim.

4. **Availability of Sufficient Funds**. The Regional Board and State Board each represent and warrant that, upon the Effective Date, they will, in accordance with State law, take such measures as may be necessary to authorize or obtain authorizations for the payment, provisioning, obligation, or appropriation of funds required for the Regional Board to perform and satisfy its contractual obligations under this Agreement; notwithstanding the foregoing, nothing contained herein shall be interpreted as a commitment to appropriate, obligate, or pay funds in contravention of State law.

XIV. MISCELLANEOUS

A. No Admission of Liability

This Agreement is intended to be, and is, a commercial accommodation between the Parties. Nothing in this Agreement, any of the terms hereof, nor any negotiations, discussions, or proceedings conducted herewith shall constitute an admission of (i) the merit or lack of merit of any factual or legal allegations, claims, or defenses made by another Party or by any other person or entity, or (ii) any liability, any wrongful action, or any violation of any federal, state, tribal, or local statute, regulation, ordinance or common law on the part of any Party to this Agreement. Where responsibility for performing or paying for certain tasks or obligations is assigned to or allocated among one or more Parties under this Agreement, such assignment or allocation is not intended, and shall not be interpreted, as an admission of any liability or responsibility other than as between the Parties hereto and pursuant to the express terms hereof.

B. Governing Law

This Agreement shall be governed and interpreted under the laws of the State of California, without giving effect to conflict of law principles.

C. Rule of Construction

The Parties hereto acknowledge that they each enter into this Agreement having had an opportunity for thorough review by, and on advice of, their respective legal counsel. Any judicial rule of construction requiring or allowing an instrument to be construed to the detriment of or against the interests of the maker thereof shall not apply to this Agreement.

D. Entire Agreement and Amendments

This Agreement and the Judicial Consent Decree contain and will contain the entire understanding of the Parties with regard to the subject matter contained herein or therein and supersede any and all prior agreements or understandings, whether oral or written, among the Parties with respect to the subject matter hereof or thereof. The terms and conditions set forth herein shall be incorporated in all associated authorizations unless otherwise so stated therein. This Agreement may be amended only by a written instrument signed by Atlantic Richfield and at least the State Board or the Regional Board.

E. Severability

In the event that any provision of this Agreement, or the application of any such provision to any person, individual, entity, or other organization or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to any person, individual, entity, or other organization or circumstances other than those as to which it is determined to be invalid, unlawful, void, or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law, except where such enforcement would materially alter the bargained for consideration supporting this Agreement or otherwise fundamentally defeat the intent of the Parties in resolving their disputes on the terms set forth herein.

F. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of Atlantic Richfield, each of the State Parties, and each of their respective successors, successor agencies, and permitted assigns, as provided in this Agreement, including any current or subsequent owners of any State-owned portion of the Site. Neither this Agreement nor any right, interest, or obligation hereunder may be assigned in whole or in part by the Parties hereto without the prior written consent of the other Parties hereto. The rights and obligations set forth with respect to the State-owned portions of the Site shall run with the land and be binding on subsequent owners and operators of such property. To this end, the Parties shall, following the Effective Date, execute and deliver such additional documents, instruments, conveyances, and assurances, and take such further actions as may be reasonably required to give effect to the foregoing sentence, including the execution of a memorandum of agreement summarizing the terms of this Agreement for recording by the State in the real property records of the Alpine County Assessor/Recorder.

G. Relationship of Parties

This Agreement shall not be construed to create, either expressly or by implication, the relationship of agency or partnership between Atlantic Richfield and any of the State Parties. No State Party (including a State Party's officers, agents, employees, or contractors) is authorized to act on behalf of Atlantic Richfield, and Atlantic Richfield is not authorized to act on behalf of any State Party, in any manner or matter relating to the subject matter of this Agreement, except as expressly provided for herein. No Party shall be liable for the acts, errors, or omissions of any other Party (including a Party's officers, agents, employees, and contractors) entered into, committed, or performed with respect to or in performance of this Agreement, except as expressly provided for herein.

H. Replacement of and Assignments by Contractors

After the Regional Board initially selects and retains the services of a Principal Contractor, as defined in Section X.A, the Regional Board may select and retain the services of a new contractor to replace the Principal Contractor initially selected, provided that the replacement contractor satisfies the qualification and experience requirements set forth in the section of this Agreement applicable to the initial selection and retention of such contractor.

Without interfering with contracting procedures dictated by State law or the written contracting policies and procedures of General Services, Atlantic Richfield shall have a reasonable opportunity, but not an obligation, to provide, at its own expense, input to the Regional Board on the selection of any replacement contractor. Subject to the need to consider Atlantic Richfield's input in good faith, the Regional Board will be responsible for making final decisions about the selection and retention of a replacement contractor. The Regional Board shall ensure that any contract entered into between the Regional Board and a Principal Contractor to perform services pursuant to this Agreement prohibits the contractor from assigning its rights and obligations thereunder without the prior written consent of the Regional Board, which consent shall not be given unless and until the Regional Board first engages in good faith consultations with Atlantic Richfield concerning such assignment.

I. Contractor Indemnities

The Regional Board, State Board, and General Services shall ensure that, in any contract entered into, after the Effective Date, between such State Parties and a Principal Contractor to perform services pursuant to this Agreement, Atlantic Richfield shall have the same indemnity and hold harmless rights as the Principal Contractor provides to such State Parties. Atlantic Richfield shall ensure that, in any contract entered into, after the Effective Date, between Atlantic Richfield and a Principal Contractor to perform services pursuant to this Agreement, the Regional Board and the State Board shall have the same indemnity and hold harmless rights as the contractor provides to Atlantic Richfield. The Regional Board, State Board, General Services, and Atlantic Richfield shall promptly notify each other of any claim, demand, or proceeding commenced for which the Regional Board, State Board, General Services, or Atlantic Richfield, as the case may be, is or may be entitled to indemnification under such a contract.

J. Inspections and Audits

1. Atlantic Richfield, at its sole expense, may designate one or more inspectors or engineers to inspect and test the Site and evaluate the progress of the Interim Combined AMD Treatment, the Remedial Action, the Operations & Maintenance, or the replacement of Major Capital Equipment. Atlantic Richfield shall provide seventy-two (72) hours prior notice to the Regional Board of such inspections and tests and will cooperate with the Regional Board's requirements for safety and access while conducting such inspections and tests. The State Parties shall cooperate with such inspectors and engineers. Any such inspection or testing by Atlantic Richfield shall be for Atlantic Richfield's sole benefit and shall not be deemed acceptance by Atlantic Richfield of all or any portion of the items or work so inspected, nor shall it relieve or release the State Parties from any duties under this Agreement or the Consent Decree, including the requirement that the work conforms with the requirements of this Agreement.

2. Atlantic Richfield, at its sole expense, shall also have a reasonable opportunity to independently inspect and review the documentation maintained by the Regional Board, its Principal Contractors, the State Board, and General Services pertaining to the Response Actions performed, the Response Costs paid, and the processing of deposits into and withdrawals from the Leviathan Mine Environmental Remediation Trust in accordance with the terms of this Agreement; provided that Atlantic Richfield shall not be entitled to request such an

inspection and review more frequently than once per year. Atlantic Richfield shall provide the Regional Board, its Principal Contractors, the State Board, or General Services with fourteen (14) days prior notice of such inspections and reviews. Atlantic Richfield shall provide copies of work plans, data, and test results related to an inspection performed under this Section to the Regional Board as soon as practicable, except to the extent that such information is privileged material or disclosure is otherwise protected by law. This Section does not require the Regional Board, its Principal Contractors, the State Board, and General Services to disclose information that is privileged or to the extent disclosure is otherwise protected by law. The Parties each reserve the right to contest such claims of privilege.

K. No Waiver

No waiver by any Party of any default or breach by another Party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default or breach, whether like or different in character. Any failure by a Party at any time to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions, or rights and shall not affect or impair same, or the right of either Party to enforce the terms of this Agreement.

L. Counterparts

This Agreement may be executed and transmitted by facsimile or other electronic means in any number of counterparts, all of which together shall constitute one original Agreement. Facsimile and electronic signatures shall have the same force and effect as original signatures.

M. Definitions and Terms Generally

The definitions set forth herein shall apply equally to both the singular and plural forms of the terms defined. The words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation” or “but not limited to” or words of similar import. The word “or” is not exclusive. The words “herein,” “hereof” and “hereunder” and words of similar import refer to this Agreement (including all Exhibits and attachments) in its entirety and not to any part hereof unless the context otherwise requires. All references to Sections, subsections, and Exhibits will be deemed references to Sections and subsections of, and Exhibits to, this Agreement unless the context otherwise requires. Any reference to a “day” or number of “days” (without the explicit qualification of “business”) will be interpreted as a reference to a calendar day or number of calendar days. Any reference to a “business day” means any day which is not a Saturday, Sunday or day on which banks in the State of California are authorized or required by law to close. If any action or notice is to be taken or given on or by a particular calendar day, and such calendar day is not a business day, then such action or notice will be deferred until, or may be taken or given on, the next business day. All references to dollar amounts in this Agreement shall be references to United States Dollars.

N. Breach and Opportunity to Cure

In the event that a Party fails to strictly comply with an obligation under this Agreement, such failure shall not be deemed a breach of the Agreement until such Party has been given written notice of such failure and given a reasonable opportunity to cure. This provision does not apply to the failure of one Party to make timely payments to the other Party as required under this Agreement.

O. Effect of Missed Deadline for Notices and Documentation

If a Party misses a deadline to provide notice or documentation as required under this Agreement, such failure shall not be deemed a breach of the Agreement and shall not give rise to any remedy unless and only to the extent that the other Party demonstrates that it has been materially damaged by such failure.

P. Compliance with Consent Decree

In the event that a Consent Decree requires a Party to act prior to a deadline set forth in this Agreement, such Party shall take action as required in the Consent Decree. Such action shall not be considered a breach of this Agreement and any costs associated with such action shall be subject to the applicable allocation provisions of this Agreement.

Q. Communications with EPA and Other Stakeholders

Nothing in this Agreement shall be construed to limit a Party's ability to provide full and candid comments or input to the EPA or other stakeholders regarding actions taken in relation to the Site.

R. EPA Orders, Court Order, and Law

Nothing in this Agreement shall be construed to prevent a Party from complying with an EPA order, court order, or otherwise complying with a legal obligation.

S. No Third-Party Beneficiaries

Each of the provisions of this Agreement is for the sole and exclusive benefit of the Parties, and none of the provisions of this Agreement shall be deemed to be for the benefit of any other person or entity.

T. Effect on the 1983 Settlement Agreement

This Agreement resolves all issues under the 1983 settlement agreement, captioned as "Settlement And Release of Liability Agreement," that is the subject of the Lawsuit, and that agreement is hereby superseded by this Agreement. Notwithstanding the foregoing, and except as otherwise set forth in this Agreement, the Regional Board shall continue after the Effective Date to operate, maintain, service, and repair any equipment, structures, facilities (including roads, stormwater collection and conveyance structures, and fences), ponds, pipelines, underdrains, property, soil covers and amendments, other erosion controls, revegetation, or other

things installed, placed, or constructed by the Regional Board at the Site pursuant to the AAA and/or the 1983 Settlement And Release of Liability Agreement. The costs of such operation, maintenance, service, and repair shall be borne solely by the Regional Board until commencement of the Remedial Action and paid in accordance with the allocation formulas and other provisions set forth in this Agreement thereafter.

IN WITNESS WHEREOF, Atlantic Richfield and each of the State Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date set forth in Page 1.

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By: A. Fiedler
Name: Andrew Fiedler
Title: President
Atlantic Richfield Company
Date: 3/13/15

By: ______________________
Name: ______________________
Title: ______________________
California Regional Water Quality Control Board, Lahontan Region
Date: ______________________

By: ______________________
Name: ______________________
Title: ______________________
California State Water Resources Control Board
Date: ______________________

By: ______________________
Name: ______________________
Title: ______________________
California Environmental Protection Agency
Date: ______________________

By: ______________________
Name: ______________________
Title: ______________________
California Department of Toxic Substances Control
Date: ______________________

By: ______________________
Name: ______________________
Title: ______________________
California Department of Fish and Wildlife
Date: ______________________

By: ______________________
Name: ______________________
Title: ______________________
Atlantic Richfield Company
Date: ______________________

By: Patty Z Kouyoumdjian
Name: ~~Patty~~ Z. Kouyoumdjian
Title: Executive Officer
California Regional Water Quality Control Board, Lahontan Region
Date: March 11, 2015

By: Thomas Howard
Name: THOMAS HOWARD
Title: EXECUTIVE DIRECTOR
California State Water Resources Control Board
Date: 3/16/15

By: [signature]
Name: Matthew Rodriquez
Title: Secretary
California Environmental Protection Agency
Date: 3/19/15

By: ______________________
Name: ______________________
Title: ______________________
California Department of Toxic Substances Control
Date: ______________________

By: ______________________
Name: ______________________
Title: ______________________
California Department of Fish and Wildlife
Date: ______________________

ATLANTIC RICHFIELD COMPANY

By: ______________________
Name: ______________________
Title: ______________________
Date: ______________________

STATE OF CALIFORNIA

By: ______________________
Name: ______________________
Title: ______________________
California Regional Water Quality Control Board, Lahontan Region
Date: ______________________

By: ______________________
Name: ______________________
Title: ______________________
California State Water Resources Control Board
Date: ______________________

By: ______________________
Name: ______________________
Title: ______________________
California Environmental Protection Agency
Date: ______________________

By: Stewart W. Black
Name: STEWART W. BLACK
Title: DEPUTY DIRECTOR
California Department of Toxic Substances Control
Date: 3-19-15

By: ______________________
Name: ______________________
Title: ______________________
California Department of Fish and Wildlife
Date: ______________________

By: ______________________________
Name: ______________________________
Title: ______________________________
Atlantic Richfield Company
Date: ______________________________

By: ______________________________
Name: ______________________________
Title: ______________________________
California Regional Water Quality Control Board, Lahontan Region
Date: ______________________________

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California State Water Resources Control Board
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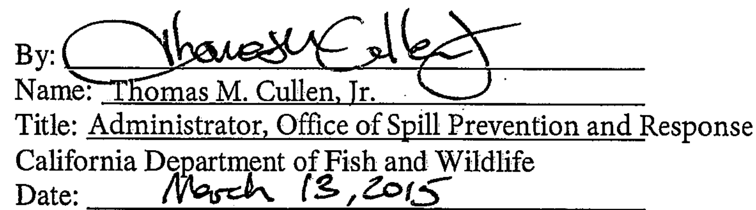
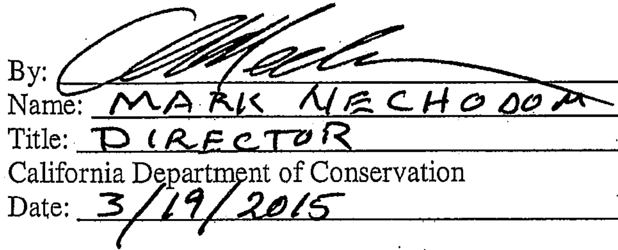
California Department of Toxic Substances Control
Date: ______________________________



By: ______________________________
Name: Thomas M. Cullen, Jr.
Title: Administrator, Office of Spill Prevention and Response
California Department of Fish and Wildlife
Date: March 13, 2015



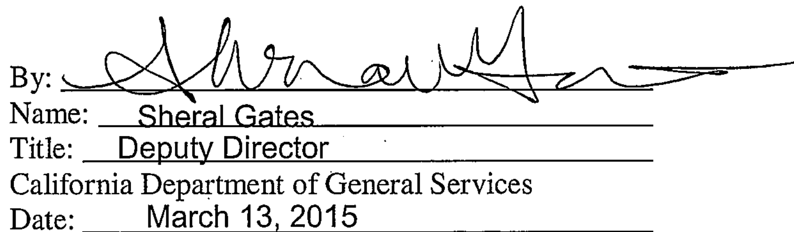
By: ______________________
Name: MARK NECHODOM
Title: DIRECTOR
California Department of Conservation
Date: 3/19/2015

By: ______________________
Name: ______________________
Title: ______________________
California Department of General Services
Date: ______________________

AND APPROVED AS TO FORM BY:

By: ______________________
Name: ______________________
Title: ______________________
California Attorney General
Date: ______________________

By: ______________________________
Name: ______________________________
Title: ______________________________
California Department of Conservation
Date: ______________________________



By: ______________________________
Name: Sheral Gates
Title: Deputy Director
California Department of General Services
Date: March 13, 2015

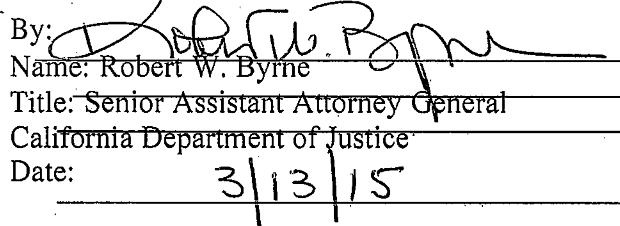
AND APPROVED AS TO FORM BY:

By: ______________________________
Name: ______________________________
Title: ______________________________
California Attorney General
Date: ______________________________

By: ______________________________
Name: ______________________________
Title: ______________________________
California Department of Conservation
Date: ______________________________

By: ______________________________
Name: ______________________________
Title: ______________________________
California Department of General Services
Date: ______________________________

AND APPROVED AS TO FORM BY:



By: ______________________________
Name: Robert W. Byrne
Title: Senior Assistant Attorney General
California Department of Justice
Date: 3/13/15

Adam S. Cohen
(303) 892-7321
adam.cohen@dgslaw.com

January 4, 2016

Via E-Mail

Thomas A. Bloomfield
The Gallagher Law Group, PC
2060 Broadway, Suite 280
Boulder, Colorado 80302

Re: Leviathan Mine Site Work and Cost Allocation Settlement Agreement
Interim Combined AMD Treatment
Informal Dispute Resolution

Dear Tom:

This letter addresses and provides for the resolution of a dispute between Atlantic Richfield Company ("Atlantic Richfield") and the California Regional Water Quality Control Board, Lahontan Region ("Regional Board") under the Leviathan Mine Site Work and Cost Allocation Settlement Agreement (effective March 27, 2015) (the "Settlement Agreement"). Unless otherwise specified, section references and capitalized terms used in this letter refer to the sections and defined terms contained in the Settlement Agreement. As detailed below, this dispute concerns the results of the Interim Combined AMD Treatment treatability investigation referenced in Section IV.C.2 of the Settlement Agreement, and the request for EPA approval to proceed with Interim Combined AMD Treatment under Section IV.C.3. Atlantic Richfield is providing this notice of dispute and proposal for resolution pursuant to Section XI.A.3 ("Informal Dispute Resolution").

Parties Involved

Atlantic Richfield and the Regional Board are the only Parties involved in this dispute. The applicable sections of the Settlement Agreement do not specify any rights, responsibilities, or commitments of other Parties. Accordingly, under Section XI.A.3, Atlantic Richfield and the Regional Board may engage in these informal negotiations and resolve this dispute among themselves without involving or obtaining agreements from any other Parties.

Nature of the Dispute

Section IV.C.3 of the Settlement Agreement prescribes that "[i]f the results of the treatability investigation demonstrate that Interim Combined AMD Treatment is cost-effective and will achieve the discharge criteria identified in the AOC under reasonably anticipated discharge scenarios, Atlantic Richfield and the Regional Board shall [no later than December 31,

2015] jointly seek approval from EPA to proceed with Interim Combined Treatment of the Managed AMD Discharge Points as part of the ongoing CERCLA removal action for the Site." The parties disagree as to whether the results of the treatability investigation satisfy these conditions.

Atlantic Richfield submitted the treatability investigation work plan described in Section IV.C.2 of the Settlement Agreement to EPA on March 28, 2014, after consulting with and soliciting technical input from Regional Board staff. The testing components of the treatability investigation specified in the work plan, including bench-scale testing, pilot-scale testing, and field-scale capacity testing, were completed before December 31, 2014. Atlantic Richfield has been working to analyze and summarize the treatability testing results and complete the treatability investigation report since that time. During 2015, Atlantic Richfield and Regional Board staff conferred on multiple occasions, through written correspondence and meetings, concerning the findings and recommendations presented in the treatability investigation report. After addressing some final comments received from the Regional Board on December 2, 2015, Atlantic Richfield submitted the final Interim Combined Acid Drainage Treatability Investigation Report (the "Treatability Investigation Report") to EPA on December 18, 2015.

As stated in the Treatability Investigation Report, Atlantic Richfield and its technical team believe the results of the Interim Combined AMD Treatment treatability investigation "reasonably demonstrate that implementation of combined AD treatment [for discharges from the Adit, Pit Underdrain, Channel Underdrain, and Delta Seep] during the interim, pre-remedy period using the HDS Treatment Plant, the existing pond storage capacity, and additional conveyance facilities (described in Section 6.10) will be cost-effective and will achieve effluent concentrations that meet the MRAM discharge criteria." Atlantic Richfield thus believes that the conditions in the first sentence of Section IV.C.3. of the Settlement Agreement have been satisfied, and that the results of the treatability investigation are sufficient to request EPA's approval to proceed with full-scale Interim Combined Treatment.

The Regional Board believes that the treatability investigation does not "demonstrate that Interim Combined Treatment is cost-effective and will achieve the discharge criteria identified in the AOC under reasonably anticipated discharge scenarios [for discharges from the Adit, Pit Underdrain, Channel Underdrain and Delta Seep]" within the meaning of Section IV.C.3 by December 31, 2015. The Regional Board believes a full-scale field demonstration is necessary to demonstrate that the Interim Combined AMD Treatment is cost-effective and will achieve the discharge criteria identified in the AOC under reasonably anticipated discharge scenarios.

The parties also discussed, at an August 26, 2015 meeting and at other times, the need for supplemental or "surge capacity" treatment of pond water as a backup after the transition to full-scale Interim Combined AMD Treatment (as described in Section IV.C.4.a of the Settlement Agreement) ("Supplemental Treatment Capacity"). To address this need, a rotating cylinder treatment system or similarly effective equipment would be installed at the site and plumbed to the pit clarifier. The supplemental treatment equipment would be available for use by the Regional Board for treatment of water collected in the upper ponds when HDS treatment

capacity is exceeded. Atlantic Richfield would install this system in the 2016 or 2017 field season, prior to any commencement of full-scale Interim Combined AMD Treatment by the Regional Board and in time for the Regional Board to include such system in the contract for Interim Combined AMD Treatment.

Two consequences of this dispute are: (i) the Regional Board and Atlantic Richfield will not be jointly soliciting approval from EPA to proceed with Interim Combined Treatment by December 31, 2015, and (ii) if Atlantic Richfield completes the field demonstration in 2016, it may not be possible to transition responsibility for the operation of the HDS treatment system from Atlantic Richfield to the Regional Board by June 1, 2017, as provided in Section IV.C.4 of the Settlement Agreement.

Proposal for Resolution

The parties have met and conferred about this dispute, and have agreed to resolve the dispute as follows:

1. The parties agree to extend the date set forth in Section IV.C.3 to solicit approval from EPA to proceed with Interim Combined Treatment from December 31, 2015 to December 31, 2016, to provide Atlantic Richfield with additional time to complete a full-scale field demonstration in 2016.

2. Atlantic Richfield's Treatability Investigation Report, which was submitted to EPA on December 18, 2015 (copy hereto as Exhibit 1, excluding exhibits A-H), recommends proceeding with the next phase of Interim Combined AMD Treatment implementation, including: (a) the design and construction of the conveyance structures needed to deliver acid drainage from Ponds 1, 2N, 2S, and 3 to the HDS treatment system; (b) completion or evaluation of certain HDS treatment system equipment modifications; (c) commencement of full-scale Interim Combined AMD Treatment demonstration in 2016 using the HDS treatment system; and (4) treatment system optimization.

3. Atlantic Richfield will perform the full-scale Interim Combined AMD Treatment field demonstration in 2016 using the HDS treatment system. The field demonstration will be considered successful as long as the HDS treatment system: (i) operates for 30 days (or until the total volume of acidic drainage in Ponds 1, 2N, and 2S has been treated, whichever is shorter); (ii) treats a mixture of acidic drainage representative of the Shortened-Season 85th Percentile Year Treatment Scenario, as defined in Table 7 in the Treatability Investigation Report, during that 30-day period; (iii) consistently produces an effluent that satisfies the EPA discharge criteria; and (iv) experiences less than 10% downtime during the demonstration (see Exhibit 1).

4. If the 2016 field demonstration activities satisfy the performance metrics specified in Provision No. 3 above, and in Exhibit 1, the Regional Board and Atlantic Richfield will, no later than December 31, 2016, jointly request EPA approval to proceed with full-scale Interim Combined AMD Treatment implementation.

5. Atlantic Richfield will proceed with the design and construction of the conveyance systems and other upgrades required to effectuate the field demonstration and Interim Combined AMD Treatment in 2016.

6. Iftby June 1, 2016, Atlantic Richfield is not able to provide the Regional Board with the operations and maintenance plans and other specifications reasonably required by the Regional Board to retain a qualified contractor to operate and maintain the HDS treatment system, the associated AMD conveyance and holding systems, and the Supplemental Treatment Capacity to effectuate Interim Combined AMD Treatment, the date of June 1, 2016 in Section IV.C.4.a (relating to the provision of information by Atlantic Richfield to the Regional Board) shall be changed from June 1, 2016 to June 1, 2017, and the date of June 1, 2017 (concerning the Regional Board start of operating the Interim Combined Treatment system if the applicable conditions are met) shall be changed from June 1, 2017 to June 1, 2018.

7. Atlantic Richfield may also conduct additional investigations and analysis in 2016 and 2017 of the feasibility of including the conveyance, storage, and treatment of discharges from the Aspen Seep as part of full-scale Interim Combined AMD Treatment. If the results of these investigations demonstrate that the conditions in Settlement Agreement can be met, including the first sentence of Section IV.C.3 of the Settlement Agreement, after combining the Aspen Seep with the other Managed AMD Discharge Points, Atlantic Richfield and the Regional Board may jointly request that EPA approve including the Aspen Seep as part of Interim Combined AMD Treatment in or after 2017. In that instance, the parties will cooperate in good faith to identify appropriate lead times for information exchange and contracting, in the event that the Regional Board will be treating the Aspen Seep as part of the Interim Combined AMD Treatment program.

8. Consistent with Section IV.C.2 of the Settlement Agreement, the design and construction of conveyance systems, the 2016 full-scale field demonstration for the HDS treatment system, the design and construction of the Supplemental Treatment Capacity, and the Aspen Seep investigations described above shall be considered part of the Remedial Investigation/Feasibility Study, and costs incurred by Atlantic Richfield in connection with these activities shall be treated as FS Costs for purposes of the Settlement Agreement.

9. If otherwise necessary to demonstrate the feasibility of Interim Combined AMD Treatment, including discharges from the Aspen Seep, the parties will cooperate

in good faith to determine an appropriate and mutually acceptable date after June 1, 2017 for the transition of responsibility for operating and maintaining the HDS treatment system and associated AMD conveyance and holdings systems to effectuate Interim Combined AMD Treatment from Atlantic Richfield to the Regional Board, as provided in Section IV.C.4 of the Settlement Agreement. The parties will similarly cooperate in good faith to accommodate the other associated deadlines necessary for, inter alia, the Regional Board to retain a qualified contractor to operate and maintain the HDS treatment system and the associated AMD conveyance and holding systems to effectuate such treatment.

10. Except as specifically addressed in this letter, all of the rights and obligations of the Parties under the Settlement Agreement shall remain as set forth therein. Any act or omission performed by Atlantic Richfield or the Regional Board in accordance with the resolution set forth in this letter shall not constitute a breach, default, or waiver of any of the terms and conditions of the Settlement Agreement and shall not affect or impair the right of any Party to enforce the terms of the Settlement Agreement.

Atlantic Richfield requests that the Regional Board acknowledge and agree to this proposal by signing below. Once signed by both Parties, this letter will constitute a resolution of the present dispute for purposes of Section XI.A.3 of the Settlement Agreement, and it shall serve to amend the Settlement Agreement in accordance with Section XIV.D (requiring the signatures of "Atlantic Richfield and at least the State Board or the Regional Board"). The signed resolution shall be appended to, and incorporated into, and maintained with the original Settlement Agreement.

Sincerely,

Adam S. Cohen
for
Davis Graham & Stubbs LLP

cc: Anthony Brown
Ronald Halsey
Brian Johnson
Nathan Block, Esq.

Enclosure: Treatability Investigation Report, December 18, 2015 (Exhibit 1)

Acknowledged and Agreed by the Regional Water Quality Control Board, Lahontan Region:

____

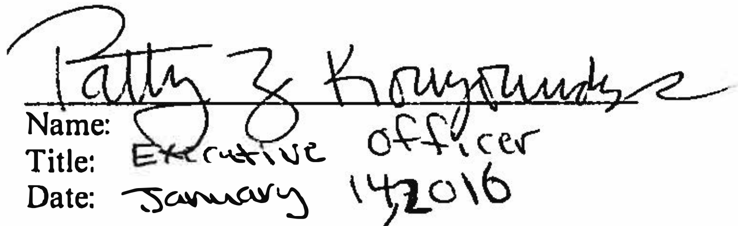
Name:
Title:
Date:

Acknowledged and Agreed by Atlantic Richfield Company:

[signature] President 2/2/16

Name:
Title:
Date:

Acknowledged and Agreed by the Regional Water Quality Control Board, Lahontan Region:



Name:
Title: Executive Officer
Date: January 14, 2016

Acknowledged and Agreed by Atlantic Richfield Company:

Name:
Title:
Date: