

**CONSENT DECREE
FOR THE BUTTE SITE**

APPENDIX E

**GROUP 1 SETTLING DEFENDANTS'
INSTITUTIONAL CONTROLS IMPLEMENTATION PLAN**

PART 1 OF APPENDIX E TO CONSENT DECREE

GROUP 1 SETTling DEFENDANTS'

INSTITUTIONAL CONTROLS IMPLEMENTATION PLAN

I. Public ICs

1. Controlled Ground Water Area.

As provided in Paragraph 38 of the Consent Decree, a Petition for Controlled Ground Water Area ("Petition") was filed by Butte Silver Bow County ("BSBC") in October 2008 to establish the Butte Alluvial and Bedrock Controlled Groundwater Area ("BABCgWA") under state law. The Petition was filed to establish restrictions under state law upon the use and development of portions of the Butte alluvial and bedrock aquifers. A Final Order granting the Petition was issued by the Department of Natural Resources and Conservation ("DNRC") on October 30, 2009. A copy of the Final Order is included as Attachment 1 to this Appendix E.

The Final Order contains specific Findings of Fact and Conclusions of Law that support DNRC's Order, and specific restrictions concerning groundwater and well use which have the force of law. Key elements of the Order include:

- (a) New groundwater wells, except Superfund or other environmental monitoring / treatment wells necessary for environmental cleanup purposes, are generally prohibited.
- (b) Existing domestic use wells for potable supply which exceed human health standards must be immediately abandoned for such purpose, and the Settling Defendants are responsible for making an alternative water source available to replace use of the well for potable supply.
- (c) Existing wells for irrigation or industrial use may be replaced at the Owner's expense, but only if the conditions stated in the Order are satisfied.
- (d) The boundaries of the CGWA may be amended with the express written approval of the DNRC, the Environmental Protection Agency ("EPA") and the State of Montana Department of Environmental Quality ("DEQ").

The Butte-Silver Bow Water Quality District shall administrate, monitor, and enforce the restrictions associated with controlled groundwater areas. The costs for administration of the requirements set forth in the Final Order shall be funded by the Settling Defendants under the Consent Decree. BSBC, for the Group 1 Settling Defendants, shall report on a yearly basis to EPA and DEQ about their efforts at monitoring and enforcing the BABCgWA.

2. Hook-Up Ordinance / Education and Well Abandonment Program

BSBC has adopted a “hook-up” ordinance that requires all prospective potable water users to hook into the BSBC water system where municipal service is available, i.e., within 300 feet of an existing water main. Enforcement of the Final Order establishing the BABCGWA in conjunction with the hook-up ordinance and the private covenants described in Part II of this Plan, fulfill the requirements of the Consent Decree for covenants that restrict the utilization of the ground water for potable domestic use of the bedrock and alluvial aquifers, and for the prevention of new well drilling in such aquifers. The hook-up ordinance enhances the BABCGWA and private covenants by requiring the majority of local water users to obtain their domestic water supply from the BSBC municipal water system instead of from local wells. EPA, in consultation with DEQ, may determine that additional land/water use restrictions are appropriate and Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls, as provided in Paragraph 39 of the Consent Decree.

In addition, to the extent a controlled groundwater area will not prevent the use of existing wells, the Butte-Silver Bow Water Quality District will implement, in conjunction with the BSB Public Works Water Division, EPA, DEQ, and the DNRC, an education, testing and well abandonment program designed to a) discourage inappropriate uses of groundwater from existing wells, and b) encourage owners to take existing wells out of service voluntarily.

BSBC, for the Group 1 Settling Defendants, shall report on all such monitoring and enforcement efforts to EPA and DEQ on a yearly basis. The state law prohibitions shall also be monitored and enforced by the State of Montana as appropriate. Costs associated with BSBC's monitoring and enforcement shall be funded by the Settling Defendants.

3. Adoption of Excavation and Dirt-Moving Protocols Ordinance and Future Enforcement.

In March 2009, BSBC revised the former Reclaimed Areas Guidebook and republished the protocols for earth-moving in the document captioned the *Excavation and Dirt-Moving Protocols for All Dirt-work to be Performed In and Near the Butte-area Superfund Sites*. EPA approved the republished protocol document in June 2009. As soon as possible, BSBC will draft and enact an Ordinance, which outlines the procedures for the enforcement of the *Excavation and Dirt-Moving Protocols for All Dirt-work to be Performed In and Near the Butte-area Superfund Sites* as a part of this ICs Implementation Plan.

4. Enforcement of the Stormwater Management Ordinance.

BSBC will draft and enact an ordinance which outlines the procedures, protocols, and/or requirements to implement and enforce effective storm water management within the Butte Site. The content of the storm water ordinance will include, but not be limited to:

- (a) Nationally-accepted design standards;

- (b) Requirements that site-specific storm water design plans be prepared and certified by registered engineers;
- (c) Requirements that will allow maintenance inspections by BSBC personnel, including perpetual easements granted to BSBC to conduct the inspections; and
- (d) Provisions for enforcement against violators and appropriate penalties.

The draft Stormwater Management Ordinance shall be submitted to EPA and DEQ for review and comment prior to proposing a final Ordinance for formal adoption by BSBC.

The Settling Defendants shall provide for the adequate funding of monitoring and enforcement of such an ordinance. The Group 1 Settling Defendants shall report on the enactment, monitoring and enforcement of the Stormwater Management Ordinance on a yearly basis.

5. GIS (and Other) Database Description and Management.

Over the past fifteen years, BSBC has developed a Geographic Information System (GIS) with requisite staff, using the GIS to store vital data and run applications pertinent to implementing ICs. In addition, as related to the Butte Site, BSBC provides GIS services and maps to EPA, DEQ, AR and their employees, agents, representatives and contractors, upon request and at no additional charge or expense. BSBC shall operate the GIS System (with updated software and hardware) and provide GIS and other data management services as follows:

- (a) All data and other information obtained in connection with Response Actions performed within the Butte Site by AR or BSBC or any other Person or Governmental Entity;
- (b) All data and other information obtained in connection with Operation and Maintenance Activities within the Butte Site, performed by AR or BSBC; data will be recorded, stored and managed in a separate database;
- (c) All data and pertinent information compiled as part of the implementation of the Butte Reclamation and Evaluation System (BRES);
- (d) All data and other information obtained regarding health in connection with the implementation of the Residential Metals Abatement Program by AR or BSBC, subject to privacy access policies related to health information;
- (e) All data and information relating to applicable requirements under the Growth Policy and/or Zoning Ordinance;

- (f) All data and information relating to Controlled Groundwater Areas; and
- (g) All data and information relating to applicable real property use restrictions, covenants and obligations.

Such efforts shall be adequately funded by the Settling Defendants.

6. Enforcement of Zoning Ordinance in compliance with Growth Policy.

In 2008, BSBC adopted an updated Growth Policy, the City-County's future land use classification plan. In 2010, BSBC will continue development of draft amendments to the existing Zoning Ordinance to implement land use changes specified in the updated Growth Policy. As related to the Butte Site, certain properties will be re-zoned to Open Space to be consistent with future land use classifications and remedial action plans. Amendments will also be drafted and adopted to complement the other ICs, e.g., the CGWA's, the excavation protocols, and the storm water management regulations, to ensure land use development is consistent with remedial actions and their associated maintenance.

BSBC's progress on this task shall be reported to EPA and DEQ along with the yearly progress reports described above.

7. Signs and Fencing.

Upon request by EPA, after consultation with DEQ, the Group 1 Settling Defendants shall construct and install appropriate signage or fencing on Butte Site property to support the Work required under the Consent Decree, with the exception of property owned or controlled by the Group 2 Settling Defendants. Signage or fencing, for example, may be required to address safety issues associated with construction or where community interest supports the need for explanatory signs; fencing may be appropriate to prevent unauthorized use and to control access to Source Area Properties or stormwater control basins.

II. Private ICs

The Group 1 Settling Defendants and others have created, or facilitated the creation of, private institutional controls ("ICs") that provide both: (i) access easements or agreements (collectively, "access rights") for the benefit of the EPA, the DEQ, and any party performing response actions, and (ii) restrictive covenants that govern the use and development of certain property within the Butte Priority Soils Operable Unit ("BPSOU"). The covenants, for example, prohibit the unauthorized disruption of caps or other controls or engineering measures placed on such property (collectively, "restrictive covenants").

Access rights and restrictive covenants are presently in place for much of the Butte Site where response actions have or will occur, including Source Area Property and other real property where stormwater conveyance and management structures (collectively, referred to as the "Superfund Stormwater Structures") are present. Access easements and restrictive covenants that are filed in BSBC property records will run with the title of the land. Access easements and

restrictive covenants are enforceable by Atlantic Richfield Company (“AR”), Butte Silver Bow County (“BSBC”), EPA, DEQ, and others under state and federal law.

The Group 1 Settling Defendants shall use best efforts to enforce access rights and restrictive covenants on Butte Site property to support the Work required under the Consent Decree, with the exception of property owned or controlled by the Group 2 Settling Defendants, if violations are noticed by the Group 1 Settling Defendants or if EPA or DEQ identify the need for such action (either through a lack of access or a violation of the use and development covenants or easement provisions). Access rights and restrictive covenants shall be created or facilitated as needed in the future in a similar manner. These efforts shall be adequately funded by the Group 1 Settling Defendants.

The access rights and covenants are described in more detail below.

1. General. Access rights and restrictive covenants have been created by AR, BSBC and others using the mechanisms described below:

(a) Contract and Conveyance Transactions. Access rights and restrictive covenants have been created, or will be created, as part of property conveyance transactions involving certain Source Area Property, properties on which Superfund Stormwater Structures have been located and other real property within the BPSOU. In general, the access rights and restrictive covenants have been placed in deeds or other instruments transferring property. In addition, pursuant to that certain Allocation Agreement between AR and BSBC dated December 21, 2006 (the “AR/BSBC Allocation Agreement”), BSBC has agreed to provide AR, EPA and DEQ access rights to all real property owned or controlled by BSBC, and such access rights will be granted for real property to be transferred to BSBC under the AR/BSBC Allocation Agreement. Similarly, pursuant to that Allocation Agreement between ARCO Environmental Remediation, L.L.C. (“AERL”) and Ferry Lane Limited (“FLL”) dated July 27, 2004 (the “AERL/FLL Allocation Agreement”), FLL has also agreed to provide AR (which for purposes of the Consent Decree is defined to include its affiliate, AERL), EPA and DEQ access rights to all property owned or controlled by FLL.

(b) Residential Metals Abatement Program Access Agreements. BSBC has implemented and will continue to implement the Residential Metals Abatement Program (the “Multi-Pathway Program”) described in the RD/RA Work Plan and accompanying remedial design plans under the Consent Decree. As part of the Multi-Pathway Program, BSBC obtains access rights on properties on which BSBC has performed actions under the Multi-Pathway Program and shall continue to seek access rights on properties on which it performs actions in the future (collectively, the “Multi-Pathway Program Properties”), as described in the Residential Metals Abatement Plan.

2. Access Easements.

(a) AR/BSBC Properties. AR and BSBC each presently own or formerly owned substantial Source Area Property, properties on which Superfund Stormwater Structures have been located and other real property within the BPSOU where response actions have been,

or are anticipated to be, conducted. Most of the properties are currently subject to reserved access rights that provide access to EPA and DEQ for the purpose of addressing environmental conditions on the properties including without limitation response actions required under the Consent Decree. In addition, pursuant to the AR/BSBC Allocation Agreement, AR and BSBC have agreed that AR will convey to BSBC substantial property located within the BPSOU, including certain Source Area Property and properties on which Superfund Stormwater Structures are located. The following is a representative example of the access reservation that has been, or upon conveyance to BSBC will be, used in the various conveyance documents:

Reservation. Grantor reserves an easement for the benefit of itself, the United States Environmental Protection Agency, the State of Montana, and AR and each of their respective employees, agents, contractors, subcontractors, representatives, agents, successors, assigns and designees, to access, enter upon, and use any or all of the Property for purposes of ensuring compliance with, implementing or causing to be implemented any action required under Applicable Laws and/or the Allocation Agreement. Nothing in this Section shall be deemed to relieve Grantee of any of Grantee's obligations with respect to the Property or to impose on Grantor, the United States Environmental Protection Agency, the State of Montana or AR any obligation to perform any action with respect to the Property.

Additionally, as noted above, BSBC has also contractually agreed to provide AR, EPA and DEQ access rights to all Source Area Property, properties on which Superfund Stormwater Structures are located and other property owned or controlled by BSBC pursuant to the AR/BSBC Allocation Agreement.

The AR and BSBC properties subject to access rights on the date of lodging, or will be subject to access rights following completion of the AR/BSBC Allocation Agreement transfers are included among the real property parcels located on Map Figure 1 to this ICs Implementation Plan and described as "Source Areas and Superfund Stormwater Structures with Access." Should any Source Area Property or other real property owned by AR or BSBC, now or in the future, on which a Superfund Stormwater Structure is located be transferred to a third-party, that property shall be made subject to reserved access rights for EPA and DEQ upon any conveyance to a third-party.

(b) Third-Party Properties. AR has over time (prior to lodging) conveyed some Source Area Property to third parties. In those conveyances, reserved access rights have been included in the conveyance deeds to third-parties in substantially the same form as that noted above. Reserved access rights have also been included in various conveyances of Source Area Property that have occurred between third-parties. Further, as noted above, FLL has also contractually agreed to provide AR, EPA and DEQ access rights to all Source Area Property and other property owned or controlled by FLL pursuant to the AERL/FLL Allocation Agreement.

FLL has also agreed to include reserved access rights in conveyance of its Source Area Property to any third-party in the future. The Source Area Property owned by third-parties which are subject to access rights are also included in the properties described on Map Figure 1 as “Source Areas and Superfund Stormwater Structures with Access.” If and to the extent that access to implement the Consent Decree is needed to any other Source Area Property owned by a third-party, or to any other real property within the Butte Site owned by a third-party, the Settling Defendants, as appropriate, shall use their best efforts to secure from such third-parties an agreement to provide access to such property for the purpose of conducting all activities related to the implementation of the Consent Decree, including access, if necessary, for future operation and maintenance.

(c) Multi-Pathway Program Properties. As noted above, as part of the Multi-Pathway Program, BSBC has obtained, and will continue to seek, access rights and/or agreements to the Multi-Pathway Properties within the Butte Site for any required additional response actions that may be necessary. These access agreements are kept on file in BSBC offices. The Residential Metals Abatement Program contains additional Institutional Control measures regarding education, outreach, and tracking programs associated residential cleanup activities.

3. Private Covenants.

(a) AR/BSBC Properties. All Source Area Property and other real property presently owned by AR on which any Superfund Stormwater Structure is located is, or upon conveyance to BSBC pursuant to the AR/BSBC Allocation Agreement shall be, subject to covenants that restrict the use and development of the property to the appropriate land use for the area in which they are located. The covenants are commonly referred to as either Developable Property Covenants or Dedicated Use Property Covenants depending on the current and anticipated use of that particular property. The following are representative examples of the Developable Property Covenants that have been, or upon conveyance to BSBC will be, used in the various conveyance documents:

Mining Use. There shall be no exploration for or mining, milling, processing, drilling, or any other method of development and/or production of any veins, loads or mineral deposits (including, without limitation, hardrock minerals, sand, gravel, clay or other similar naturally occurring substances) on the surface of the Property. Nothing in this Section shall prevent or preclude the excavation or removal of Borrow Materials from the Property for the purpose of conducting Response Actions and/or Operation and Maintenance Activities within the Site.

Development. Except as provided in this Section, there shall be no development or any other action of any kind or nature that in any way alters, disturbs, or interferes with the Response Actions

undertaken on the Property. Any development on the Property must be undertaken by Grantee, at Grantee's sole cost and expense, in accordance with and in a manner consistent with the requirements of Applicable Laws including, without limitation, the Butte Reclaimed Areas Guidebook.¹

Water Wells [Alternative 1]. All use, construction and/or drilling of water wells for any purposes (except for any testing, sampling or monitoring wells that are required by or in conjunction with Applicable Laws and which are approved by governmental entities with jurisdiction over such matters) shall be prohibited.

Water Wells [Alternative 2]. All drilling, construction and/or use of water wells and all development and treatment of groundwater supplies on, at, under, near or associated with the Property shall strictly conform to and be consistent with the requirements of Applicable Laws and other applicable standards including, without limitation, the requirements: (i) of any decision document related to the Property issued by the United States Environmental Protection Agency or the Montana Department of Environmental Quality under Environmental Laws prior to, as of or following the date of this Deed; (ii) of any Controlled Groundwater Area Order related to the Property issued by the Montana Department of Natural Resources and Conservation prior to, as of or following the date of this Deed, and (iii) of any construction standards or rules for permitting of new wells or for use of groundwater for either potable or non-potable purposes. Grantee hereby assumes all risks that that the groundwater supplies on, at, under near or associated with the Property will not meet certain water quality standards set forth in Applicable Laws and that such groundwater supplies on, at, under, near or associated with the Property will not be useable, or will not be useable without treatment, for either potable or non-potable purposes. Notwithstanding any other term or provision of this Deed, Grantee shall be solely responsible for all costs, expenses and fees of any kind or nature associated with the drilling, construction and/or use of water wells and/or the development and/or necessary treatment of groundwater supplies on, at, under, near or associated with the Property.

¹ BSBC's "Butte Reclaimed Areas Guidebook" has been revised and republished as the "Excavation and Dirt-moving Protocols for All Dirt-work to be Performed In and Near the Butte-area Superfund Sites (June, 2009)." The EPA-approved form of the Excavation and Dirt-moving Protocols will be proposed by BSBC for adoption by Ordinance.

The following are representative examples of the Dedicated Use Property Covenants that have been, or upon conveyance to BSBC will be, used in the various conveyance documents:

Mining Use. There shall be no exploration for or mining, milling, processing, drilling, or any other method of development and/or production of any veins, loads or mineral deposits (including, without limitation, hardrock minerals, sand, gravel, clay or other similar naturally occurring substances) on the surface of the Property. Nothing in this Section shall prevent or preclude the excavation or removal of Borrow Materials from the Property for the purpose of conducting Response Actions and/or Operation and Maintenance Activities within the Site.

Other Uses. There shall be no industrial, commercial, residential, or agricultural (including grazing) use or development (as defined in the Zoning Ordinance) of the Property.

Development. Except as provided in this Section, there shall be no development or any other action of any kind or nature that in any way alters, disturbs, or interferes with the Response Actions that have been undertaken or may in the future be undertaken on the Property. Any development and any other action of any kind or nature on the Property that will alter, disturb or otherwise interfere with the Response Actions undertaken on the Property must be undertaken by Grantee, at Grantee's sole cost and expense, in accordance with and in a manner consistent with the requirements of Applicable Laws including, without limitation, the requirements of the Butte Reclaimed Area Guidebook.²

Water Wells. All use, construction and/or drilling of water wells for any purposes (except for any testing, sampling or monitoring wells that are required by or in conjunction with Applicable Laws and which are approved by governmental entities with jurisdiction over such matters) shall be prohibited.

The Source Area Property and other real property owned by AR or AERL on which Superfund Stormwater Structures are located that is, or upon conveyance to BSBC shall be, subject to either Developable Property Covenants or Dedicated Use Property Covenants are included in the properties depicted on Map Figure 2 to this ICs Implementation Plan as "Source Areas and Superfund Stormwater Structures with Covenants." An example of the form of Developable

² Please refer to Footnote 1 infra for reference to the revised protocols BSBC is developing.

Property and Dedicated Use Property deeds to be used for future conveyances where restrictive covenants are in place are included as Attachment 2 and 3, respectively, and deeds substantially in the form as the attached are approved by EPA and DEQ for future conveyances of such properties within the BPSOU, where appropriate.

Both EPA and DEQ have been, or upon conveyance to BSBC shall be, granted certain rights and remedies relating to the enforcement of the Developable Property Covenants and the Dedicated Use Property Covenants. Representative examples of the rights and remedies that have been, or upon completion of the AR/BSBC Allocation Agreement transfers will be, granted to EPA and DEQ are as follows:

Enforcement of Covenants. Grantor, the United States Environmental Protection Agency, the Montana Department of Environmental Quality and each of the owners (as the same may appear from time to time) of the Benefited Properties shall have the right to enforce the Covenants. Each Covenant shall be enforceable, in perpetuity, to the fullest extent permitted by Montana law.

Remedies.

Remedies. All remedies available at law, in equity or specifically provided in this Deed shall be available for the enforcement of the Covenants. The selection of remedies shall be within the sole discretion of the Enforcing Party.

Specific Performance. Grantee hereby specifically agrees that in addition to all other remedies available under this Deed, at law or in equity, the remedy of “specific performance” shall be available to the Enforcing Party. Grantee hereby waives, to the fullest extent permitted by Montana law, any rights it may have to argue that specific performance is an inappropriate remedy.

Other Remedies. In the event that Grantee fails to comply with any of the Covenants, the Enforcing Party may notify Grantee in writing of the failure, which notice shall specify the item(s) of non-compliance. Grantee shall have 30 days following delivery of the notice to correct the items of non-compliance to the written satisfaction of the Enforcing Party that gave the notice. If Grantee does not cure the failure within 30 days following delivery of the notice, the Enforcing Party shall have the right, but not the obligation, to enter onto the Property to cure the failure and to charge to Grantee the costs incurred by the Enforcing Party in

taking any such actions. Grantee shall promptly reimburse Grantor for all such costs incurred. Further, Grantee shall indemnify, defend and hold harmless, the Enforcing Party, its agents, employees or contractors from and against all claims against the Enforcing Party, or liabilities incurred by the Enforcing Party, in taking such actions. Nothing in this Section shall limit, qualify or abrogate the Enforcing Party's right to specific performance.

Attorneys Fees. If the Enforcing Party is the prevailing party in any action brought by it, the Enforcing Party shall be entitled to reasonable attorneys' fees and costs incurred in bringing such action.

Any Source Area Property or other real property acquired by AR after the date of lodging on which any Superfund Stormwater Structure is located that is not already subject to restrictive covenants will be made subject to either Developable Property Covenants or Dedicated Use Property Covenants, as appropriate, when acquired or conveyed by AR by using deeds substantially in the form of those included as Attachments 2 and 3 to this IC's Implementation Plan.

Certain Source Area Property and other real property presently owned by BSBC on which Superfund Stormwater Structures are located are already subject to Developable Property Covenants or Dedicated Use Property Covenants, as well as the enforcement rights and remedies noted above. The Source Area Property and other real property owned by BSBC on which Superfund Stormwater Structures are located that is already subject to either Developable Property Covenants or Dedicated Use Property Covenants are also located on Map Figure 2 to this ICs Implementation Plan as "Source Areas and Superfund Stormwater Structures with Covenants." Additionally, BSBC owns property that is not subject to any restrictive covenants and is not subject to any agreement requiring the imposition of restrictive covenants upon conveyance to a third-party. Source Area Property and other real property owned by BSBC on which Superfund Stormwater Structures are located that is not subject to restrictive covenants or an agreement to impose restrictive covenants upon conveyance is depicted on Map Figure 2 as "BSB Source Areas and Superfund Stormwater Structures without Covenants." Any Source Area Property or real property presently owned by BSBC on which Superfund Stormwater Structures are located that is not subject to restrictive covenants, as well as any such property not already subject to restrictive covenants which is acquired by BSBC after the date of lodging, will be made subject to either Developable Property Covenants or Dedicated Use Property Covenants, as appropriate, in any future conveyance by BSBC.

(b) Third-Party Properties. AR (including AERL) has over time (prior to the date of lodging) conveyed certain Source Area Property to third-parties. In those conveyances, AR has included appropriate Developable Property Covenants or Dedicated Use Property Covenants, as well as appropriate enforcement rights and remedies for EPA and DEQ, in the conveyance deeds to the third-parties. Developable Property Covenants or Dedicated Use

Property Covenants have also been included in various conveyances of Source Area Property that have occurred between third-parties. Further, pursuant to the AERL/FLL Allocation Agreement, FLL has agreed to abide by Developable Property Covenants on all Source Area Property owned by FLL and has agreed to include Developable Property Covenants in any deed conveying its Source Area Property to a third-party. The Source Area Properties and real property owned by third-parties on which Superfund Stormwater Structures are located and which are subject to Developable Property Covenants or Dedicated Use Property Covenants are also located on Map Figure 2 as “Source Areas and Superfund Stormwater Structures with Covenants.”

The restrictive covenants in the deeds in the transactions described above also include the following typical provisions:

- (i) a general covenant prohibiting the property owner from hindering, interfering with or otherwise modifying any remedial actions that have been undertaken on the property;
- (ii) a covenant requiring the property owner to perform any property maintenance that may be required on the property; and
- (iii) a provision that permits the EPA and DEQ to enforce the obligations against the property owner.

(c) Subsequent Conveyances. In all instances where restrictive covenants are imposed on Source Area Property, real properties on which Superfund Stormwater Structures are located and other real property within the BPSOU, a provision is included in the conveyance document which serves to require the owner to include certain disclosures in subsequent conveyance documents in order to help ensure that any subsequent owner receives actual notice of the applicable restrictive covenants and other obligations attendant to the Source Area Property or other property. A representative example of a subsequent conveyance provision is as follows:

Provisions of Subsequent Conveyance Instruments. Grantee hereby agrees that in any subsequent conveyance of all or any part of the Property, or any interest in the Property (including without limitation any grant of an easement burdening the Property or any grant of a lease of all or any part of the Property), the Grantee shall include the following provisions in the deed or other conveyance instrument (completed appropriately to refer to this Deed and modified only so as to fit appropriately in the context of the conveyance instrument):

Grantee hereby agrees to: (i) accept the Property subject to the Covenants set forth in that certain Quitclaim Deed dated

_____, _____ and recorded on _____, _____ at Roll _____, Card _____ in the real property records of the City and County of Butte-Silver Bow (the “Covenant Deed”) and (ii) abide by and enforce the Covenants as the owner of the Property in accordance with the terms and conditions of the Covenant Deed.

Grantee hereby also agrees that in any subsequent deed or other conveyance instrument, it shall require the grantee in such deed or conveyance instrument to either (a) execute a deed or conveyance instrument which contains the agreements set forth in the immediately preceding paragraph, or (b) execute a separate acknowledgment attached to the deed or conveyance instrument which contains the agreements set forth in the immediately preceding paragraph.

In all instances, the restrictive covenants are structured as covenants that run with the land that will be binding upon any subsequent owners of the property. As noted in Section II, Paragraph 3(a) above, an example of the form of Developable Property and Dedicated Use Property deeds to be used for future conveyances where restrictive covenants are in place are included as Attachment 2 and 3, respectively.

III. Status Summary of Consent Decree Compliance.

1. Access Rights.

The access rights created, or to be created, by AR and BSBC (as described in paragraphs 3(a), 3(b) and 3(c) above) and Map Figure 1 satisfy AR’s and BSBC’s respective obligations to provide access to real property as is required under Paragraph 35 of the Consent Decree, as of the date of lodging of this Consent Decree. Further, as provided above, AR and BSBC, respectively, shall provide access for response actions as required by Paragraph 35 of the Consent Decree to any property within the Butte Site that is acquired by AR or by BSBC following the date of lodging. Rarus and Inland also shall provide access to their respective real property within the Butte Site that each owns prior to or each may acquire following the date of lodging for all response actions under the Consent Decree, as required by Paragraph 35.

If access to any third party property is needed to implement the Work required of the Group 1 Settling Defendants under the Consent Decree, the Group 1 Settling Defendants shall use best efforts to obtain access as required by Paragraphs 36 and 37 of the Consent Decree.

2. Restrictive Covenants.

In review of the information and commitments provided in this IC’s Implementation Plan and Map Figure 2, EPA and DEQ have determined that the Restrictive Covenants described in

this IC Plan are adequate for the purpose intended and Group 1 Settling Defendants shall have no obligation under Paragraphs 35.c and 35.e of the Consent Decree to create any new restrictive covenants or use restrictions on any Source Area Property, property on which any Superfund Stormwater Structures are located or any other real property within the BPSOU that is owned by a Group 1 Settling Defendant or any third-party. The restrictive covenants described above, in conjunction with the ICs controls described in Section I (Public ICs), satisfy the requirements of the Consent Decree for the Group 1 Settling Defendants' implementation of private land use restrictions.

In the event any third-party property is acquired by a Group 1 Settling Defendant for implementation of any BPSOU response actions to be performed by the Group 1 Settling Defendants, new use restrictions shall be created, either Developable Property Covenants or Dedicated Use Property Covenants, as appropriate, in any such conveyance from a third-party to that Group 1 Settling Defendant. Further, the disclosures described in Section II, Paragraph 3(c) above to provide notice to a subsequent owner of the obligations attendant to a property with restrictive covenants shall be included in any subsequent conveyance, as provided in this IC's Implementation Plan.

**GROUP 1 SETTLING DEFENDANTS'
INSTITUTIONAL CONTROLS IMPLEMENTATION PLAN**

ATTACHMENT 1

FINAL ORDER

**BUTTE ALLUVIAL AND BEDROCK CONTROLLED
GROUNDWATER AREA**

**GROUP 1 SETTLING DEFENDANTS'
INSTITUTIONAL CONTROLS IMPLEMENTATION PLAN**

ATTACHMENT 2

**DEVELOPABLE PROPERTY
COVENANT DEED**

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INSTITUTIONAL CONTROLS IMPLEMENTATION PLAN**

ATTACHMENT 3

DEDICATED USE COVENANT DEED

**GROUP 1 SETTling DEFENDANTS'
INSTITUTIONAL CONTROLS IMPLEMENTATION PLAN**

MAP FIGURE 1

**GROUP 1 SETTling DEFENDANTS'
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MAP FIGURE 2