

SITE SPECIFIC MEMORANDUM OF AGREEMENT
BETWEEN

THE STATE OF MONTANA, THROUGH THE DEPARTMENT OF ENVIRONMENTAL QUALITY, THE STATE OF MONTANA, THROUGH THE MONTANA DEPARTMENT OF JUSTICE NATURAL RESOURCE DAMAGE PROGRAM

AND

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, THROUGH THE NATIONAL PARK SERVICE

FOR THE CLARK FORK SITE AND THE STATE PROPERTY REMEDIAL COMMITMENTS

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MEMORANDUM OF AGREEMENT

INTRODUCTION

The United States (“U.S.”), by and through the Environmental Protection Agency (“EPA”) and the Department of the Interior via the National Park Service (“NPS”) and the Bureau of Land Management (“BLM”), and the State of Montana (“State”) via the Department of Environmental Quality (“DEQ”) and the Natural Resource Damages Program (“NRDP”) are parties to a Consent Decree for the Clark Fork River operable unit of the Milltown Reservoir/Clark Fork River NPL Site (“the Clark Fork Site” or “the Site”) which has been entered in US v. Atlantic Richfield Company, Civ. Action No. 89-039-BU-SEH in the United States District Court for the District of Montana (hereinafter “Consent Decree”). The Consent Decree is also entered in State of Montana v. Atlantic Richfield Company, Civ. Action No. CV-83-317-HLN-SEH. The Consent Decree provides for implementation of the April 2004 Clark Fork Site Record of Decision, any amendments to that Record of Decision, any necessary additional work, and implementation of Restoration at the Clark Fork River operable unit, among other provisions.

This Site Specific Memorandum of Agreement (“SMOA” or “Agreement”) is in two parts. Part 1 addresses the following:

- a. the roles and responsibilities of the State acting through DEQ, EPA, and NPS regarding the Remedy, Remedial Design, Remedial Action, and Operation and Maintenance, as those terms are defined in the Consent Decree, at the Clark Fork Site;
- b. those portions of State Restoration Plan at the Clark Fork Site to be undertaken by the State in lieu of certain Remedial Actions within the Clark Fork Site upon EPA approval;
- c. the roles and responsibilities of the State, acting through DEQ, and NPS regarding implementation of Federal Restoration at the Grant-Kohrs Ranch National Historic Site (“Grant-Kohrs Ranch”); and
- d. general coordination among NRDP and the other Agencies as the State implements the State Restoration Plan for the Clark Fork River.

Part 2 includes dispute resolution provisions regarding disputes between EPA and the State for State Restoration at the Clark Fork Site proposed in lieu of Remedy at the Clark Fork Site, and addresses the roles and responsibilities of the State, acting through the NRDP, and EPA regarding the State Property Remedial Commitments at the Anaconda Smelter NPL Site.

This Agreement is enforceable only by EPA, NPS, the United States, DEQ, NRDP, and the State in the United States District Court of Montana, under applicable provisions of law, including section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (“CERCLA”), 42 U.S.C. § 9604. Nothing in the Consent Decree shall affect the enforceability of this SMOA by EPA, NPS, the United States, DEQ, NRDP, or the State.

This Agreement is intended to facilitate a cooperative working relationship among DEQ, NRDP, NPS, and EPA during the development and implementation of the Remedy and the Restoration at the Anaconda Smelter NPL Site and the Clark Fork Site; to provide for the review and oversight by EPA, and by NPS for matters affecting the Grant-Kohrs Ranch, of the development and implementation of the Work; to provide for the resolution of any disputes between DEQ, NRDP, NPS, and EPA in the development and implementation of the Remedy; to avoid duplication of effort by EPA, NRDP, NPS, or DEQ in the development and implementation of the Remedy; and to make optimal use of available resources to conduct the Remedial Design, Remedial Action, Operation and Maintenance, and Restoration at the Clark Fork Site.

PART 1
RESPONSE ACTIONS AT THE CLARK FORK SITE AND GENERAL CLARK FORK
SITE RESTORATION COORDINATION

This Part 1 of the Agreement is made and entered into by EPA Region 8, NPS, NRDP, and the DEQ pursuant to 42 U.S.C. § 9604, 40 C.F.R. §§ 300.505, and 300.515, and by NPS pursuant to 16 U.S.C. §§ 1 *et. seq.* and 42 U.S.C. § 9604, to further provide a mutually acceptable arrangement for managing and coordinating the implementation and oversight of the Remedy, Remedial Design, Remedial Action and Operations & Maintenance (O & M) pursuant to the Consent Decree and to further articulate understandings concerning the agencies' respective responsibilities for the Clark Fork Site. This Part 1 also addresses implementation of Federal Restoration at Grant-Kohrs Ranch.

Accordingly, in consideration of the mutual agreements set forth herein, EPA, NPS, NRDP, and DEQ hereby agree as follows:

I. DEFINITIONS

1. Terms defined in the Consent Decree shall have the same meaning when used in this Agreement.

II. TERM OF AGREEMENT

2. This Agreement and all rights and obligations hereunder are contingent upon, and shall be effective upon, the Effective Date of the Consent Decree.

3. The term of this Agreement shall be that of the Consent Decree, unless otherwise mutually agreed in writing by EPA, NPS, NRDP, and DEQ.

III. COMMUNICATION BETWEEN AND AMONG THE AGENCIES

4. In the performance of the Remedy, EPA, NPS, NRDP, and DEQ (the "Agencies") agree to communicate in an open and candid manner. Such communication is essential to building trust between the Agencies and the communities they support. This does not mean that Agency representatives will always agree on all points. Rather, it means that if differences arise, technical and legal staff and managers will work through the differences in a professional manner in accordance with the roles and responsibilities described herein and in the Consent Decree, subject to the dispute resolution provisions of this SMOA. Except as provided in paragraphs 6 and 7 below, the Agencies agree that it is unacceptable to withhold information, engage in actions that would have a significant impact on the Remedy without prior disclosure, interfere in management of staffs or contractors of the other Agencies, or unnecessarily delay communication.

5. The Agencies intend to use personal contact or telephone conference calls as efficient ways to maintain open communication among the Agencies. Communications will be prompt and, to the maximum extent practicable, will strive to keep other Agencies informed of Agency activities and third party communications. Written documentation of significant decisions decided during telephone calls or personal contacts may be made at the discretion of any Agency. The Agencies commit to maintaining sufficient staff contact and direction to recognize and address problems as they arise.

6. The Agencies commit to respond in a timely manner to requests and communications from another Agency. Verified data and other non-confidential information regarding the Clark Fork Site will be shared among EPA, NRDP, NPS, and DEQ project team members to ensure informed decision-making by all Agencies in as timely a manner as possible.

7. Recordkeeping. Various Site-related records are maintained by EPA, DEQ, NRDP, and NPS as required by law and as required by the terms of the Consent Decree. In some circumstances, records are maintained solely by one of these Agencies. EPA, DEQ, NRDP, and NPS will cooperate in coordinating and providing each other copies of or access to records upon written request by another Agency. Access to such records may include use of prior agreements or negotiation of new agreements for maintaining confidentiality of certain documents or records, if appropriate. Each Agency also maintains the right to withhold confidential documents as permitted by law.

8. DEQ, as Lead Agency, shall keep EPA (and NPS for activities affecting Grant-Kohrs Ranch) and NRDP informed of all important decisions and actions pertaining to the design and implementation of the Work at the Clark Fork Site. DEQ, NRDP, NPS, and EPA commit to using best efforts to resolve site management issues at the project manager/staff attorney level. Any sustained, repeated or otherwise unresolved problems in communication or timely remedial design/remedial action activities shall be promptly addressed through Dispute Resolution as set forth in this SMOA.

IV. IMPLEMENTATION OF REMEDY

9. Section X and other provisions of the Clark Fork Site Consent Decree provide for the implementation of the Remedy by DEQ as Lead Agency, and, along with the terms of this SMOA, define the roles and responsibilities of EPA and NPS in the cooperative oversight of the project by EPA and NPS, and the role of NRDP in proposing State Restoration at the Clark Fork Site in lieu of Remedy. Section X, other parts of the Consent Decree, and this SMOA also describe the review and approval processes for EPA and NPS at the Clark Fork Site.

10. Work on National Park Service land (Grant-Kohrs Ranch) – NPS role. For all reviews and approvals regarding any reports or submittals for the Work on Grant-Kohrs Ranch which are designated for EPA and NPS approval, EPA and NPS will work closely to jointly approve all such reports or submittals. When EPA and NPS identify

differences between them that may preclude joint approval of any such report or submittal, EPA and NPS will resolve those differences as described below in Section X of the SMOA (Dispute Resolution as Between EPA and NPS Regarding Response Actions at Grant-Kohrs Ranch). If this process will result in delays in EPA and/or NPS reviews or approvals, EPA and NPS will notify the State regarding the expected delay.

11. Work Contact Person for NPS. NPS shall designate and authorize an NPS contact person for DEQ to work with and coordinate remedial activities on the ground on or near Grant-Kohrs Ranch. The NPS contact will be empowered to make reasonably prompt decisions or connect DEQ to those in NPS who can make prompt decisions, to prevent construction delays and avoid impacts to operations at Grant-Kohrs Ranch. NPS's work contact person shall be Greg Nottingham, 303 887-6275 or 303 415-1483.

12. Access for Remedy and Restoration at Grant-Kohrs Ranch. NPS shall provide access to the State and EPA, and their employees, representatives, and contractors, to Grant-Kohrs Ranch at all reasonable times, upon reasonable notice (which generally consists of two business days prior to field work), for purposes of conducting any Remedy or Federal Restoration activity related to this Consent Decree and this SMOA at or with respect to the Grant-Kohrs Ranch. NPS's general parameters for such access are:

- a. EPA and the State shall use the Outer Loop Road for vehicle traffic and avoid vehicle traffic in the historical district of Grant-Kohrs Ranch to the extent practicable;
- b. EPA and the State shall leave gates open or closed, as they are found;
- c. EPA and the State shall ensure that livestock and wildlife are not harassed or unduly disturbed;
- d. EPA and the State will not exceed load limits on bridges within Grant-Kohrs Ranch; and
- e. EPA and the State will not allow EPA or State, or their contractors, vehicles to leave existing roads, unless specified in approved remedial design and remedial action documents.

Actions to implement the Remedy or Federal Restoration will be done during operating hours for the Grant-Kohrs Ranch to the extent practicable. NPS will use best efforts to adjust operating hours when necessary for Remedy or Federal Restoration actions in cooperation with DEQ.

13. During NPS review of any property-specific remedial design plan for Grant-Kohrs Ranch or any design plan that include components of the Work or Federal Restoration on Grant-Kohrs Ranch, NPS shall identify any specific operations or management criteria, requirements, or plans specific to Grant-Kohrs Ranch that may affect the State's implementation of the Remedy or Federal Restoration at the Grant-Kohrs Ranch. NPS agrees that if it does not identify any such specific operations or management criteria, requirements, or plans within the time frames identified in

paragraph 19 of Part 1 of the SMOA during the remedial design process, DEQ is not required to incorporate such considerations into the Work or into Federal Restoration.

14. Annual Budget. DEQ, in consultation with EPA (and with NPS for Work at Grant-Kohrs Ranch), shall prepare an annual estimated budget for the Work based on the State fiscal year between January 1 through March 1 of each year, or in such other periods as agreed to by EPA and DEQ. The annual estimated budget shall describe the planned work for the upcoming construction season and its estimated cost. This estimated budget shall be submitted to EPA (and to NPS for Work at Grant-Kohrs Ranch) and NRDP for review and comment as part of the consultation process, and shall continue as long as the Work at the Clark Fork Site continues. DEQ shall consider and attempt to incorporate or resolve all EPA, NRDP, and NPS comments and shall notify EPA of the disposition of its comments prior to completing the final annual estimated budget. DEQ may expend more monies than projected in the annual estimated budget if necessary.

15. DEQ, as Lead Agency and in consultation with EPA (and NPS for Grant-Kohrs Ranch), will select a contractor or contractors for developing the Remedial Design and for implementing Remedial Action. The Remedial Design contractor or contractors shall have appropriate qualifications and staffing for the complexity of the Clark Fork Site response action, including, but not limited to, appropriate expertise in performing similar design projects, and education and training in such disciplines as fluvial geomorphology, wetlands, hydrology, hydrogeology, soil science, mine waste reclamation, remedial construction, and hydraulic and floodplain modeling. The Remedial Action contractor or contractors shall have appropriate qualifications and staffing for the complexity of the Clark Fork Site response action, including appropriate expertise in performing similar construction actions and a demonstrated ability to manage complex projects.

16. a. Before making any final decision on its choice of contractor or contractors for developing the Remedial Design, including the Remedial Design Work Plan, DEQ shall timely provide EPA (and NPS for Work at Grant-Kohrs Ranch) and NRDP a contractor experience statement for each contractor that DEQ proposes to select, with information regarding similar projects and other evidence of appropriate qualification, as described above in Paragraph 15. DEQ shall also provide to EPA (and NPS for Work at Grant-Kohrs Ranch) and NRDP with a list of other remedial design contractors, identifying any general information DEQ has about these contractors. EPA (and NPS for Work at Grant-Kohrs Ranch) and NRDP shall have the opportunity, prior to DEQ's final selection of any contractor, to make timely written comments or objections to DEQ's potential choice of such contractor or contractors, which, if submitted, DEQ will carefully consider in evaluating its final selection decision. However, approval (or lack of approval) by EPA (and NPS for Work at Grant-Kohrs Ranch) and NRDP shall not constitute a basis, by itself, for DEQ to reject the potential contractor or contractors.

b. DEQ will procure contractors to perform the Remedial Action Work Plans by sealed bids. Bids will be publicly solicited and a firm fixed-price contract (lump

sum and/or unit price) awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price. DEQ will typically award the remedial construction contract, if at all, within 30 days of opening the bids. DEQ shall, after opening bids to implement a Remedial Action Work Plan, make available to EPA (and NPS for Work at Grant-Kohrs Ranch) and NRDP for review, the information pertinent to evaluating whether the apparent low bidder is a responsible bidder. EPA (and NPS for Work at Grant-Kohrs Ranch) and NRDP shall have no more than seven (7) days to review such information and timely submit written comments on or objections to the apparent low bidder, which, if submitted, DEQ will carefully consider in its decision to award the contract. However, approval (or lack of approval) by EPA (and NPS for Work at Grant-Kohrs Ranch) and NRDP shall not constitute a basis, by itself, for DEQ not to award the contract.

17. DEQ, in consultation with EPA (and NPS for Work at Grant-Kohrs Ranch), shall ensure that its contractors and subcontractors perform the Work in accordance with the Consent Decree.

18. EPA / NPS Oversight. EPA (and NPS for activities at the Grant-Kohrs Ranch) shall, with the State, conduct oversight over the Work at the Site. EPA and NPS shall provide constructive input to DEQ as it develops and implements the Work at the Site and follow all provisions of the Consent Decree and SMOA regarding EPA and NPS roles and responsibilities, including the provisions in the introductory section of the SMOA and Section III of Part 1 of the SMOA regarding cooperative agency interactions. Any EPA or NPS review of a document submitted by DEQ shall bear in mind DEQ's role as the Lead Agency and as the primary party responsible for development and implementation of Remedial Design, Remedial Action, and Operation and Maintenance.

19. EPA (and NPS for Grant-Kohrs Ranch) will make best efforts to provide comments within 15 working days unless otherwise agreed between DEQ and EPA (and NPS for activities at Grant-Kohrs Ranch). When a document is submitted for review, DEQ or NRDP may request a shorter time frame for review, and EPA and NPS will use best efforts to provide comments within the requested time frame.

20. Unless otherwise specifically stated, DEQ shall provide EPA and NRDP one paper copy and one electronic copy of any plans, work plans, reports, specifications, data compilations and recommendations required by the Consent Decree or this SMOA. Unless otherwise specifically stated, DEQ shall also provide to NPS one paper copy and one electronic copy of any plans, work plans, reports, specifications, data compilations and recommendations required by the Consent Decree or this SMOA that affect the Grant-Kohrs Ranch.

21. As provided in Paragraph 26 of the Consent Decree, DEQ shall provide quarterly statements to EPA, NPS, NRDP and the Atlantic Richfield Company ("AR") reporting on the funds received into and disbursed from the Clark Fork Site Response Action Account. As part of this quarterly report, DEQ shall also include a narrative

progress report section that: (a) describes the actions which have been taken toward implementing the response during the previous quarter; (b) includes a brief discussion of the actions to ensure contractors perform the Work in accordance with this Consent Decree; and (c) summarizes DEQ and contractor meetings and meetings with landowners and the public. To allow Agency participation in these activities, the quarterly statements shall also describe anticipated future activities to be taken in implementing the response during the next quarter (including but not limited to sampling efforts and expected plans, work plans, reports, specifications, or recommendations and anticipated dates of delivery). Changes in anticipated activities will be identified in the next quarterly report. If requested by EPA or NPS, DEQ shall meet with the Agencies to discuss the progress of the Work.

22. Change Orders During Remedial Construction. DEQ as Lead Agency, or its representatives, employees and contractors, shall conduct a technical and administrative review of any proposed contract change order, in consultation with EPA (and NPS for activities at Grant-Kohrs Ranch). These reviews shall examine the technical basis for the proposed change order pertaining to the Work and determine whether the requested changes are appropriate. DEQ shall provide to EPA and NPS copies of proposed contract change orders and technical and administrative reviews with resulting justifications as part of the consultative process. DEQ may approve, after prior notice to EPA and NPS but without specific approval by EPA or NPS, any change orders in an amount less than seventy thousand dollars (\$70,000). Individual proposed change order requests which exceed that seventy thousand dollar (\$70,000) amount, along with any associated documentation, shall be provided within three working days of receipt to EPA and NPS and must be jointly approved by DEQ and EPA (and for activities on the Grant-Kohrs Ranch, by NPS). EPA (and NPS for activities on the Grant-Kohrs Ranch) shall, to the extent practicable, respond to this request for change order approval within the timeframe specified by DEQ in correspondence accompanying the proposed change order, except that the timeframe specified shall not be less than two working days. In those cases where EPA or NPS has joint approval of proposed change orders, EPA's or NPS's failure or refusal to approve such proposal is subject to Dispute Resolution as set forth in this SMOA.

23. Offsite Shipment of Waste. EPA agrees that DEQ, or its designated agent(s), may sign uniform hazardous waste manifest forms on behalf of EPA only where all of the following conditions are met: (a) the material is removed from the Clark Fork Site as part of Remedy implementation (and not as a result of Restoration, including State Restoration in lieu of Remedy at the Clark Fork Site actions, or State Property Remedial Commitment actions); (b) such material cannot be disposed of at the Opportunity Ponds; and (c) such material requires an offsite disposal area which requires a hazardous waste manifest. DEQ, or its designated agent(s), shall sign the appropriate manifest after writing or printing the phrase "On behalf of the United States Environmental Protection Agency" in the signature block of the manifest. Neither DEQ nor its designated agent(s) shall be considered a generator of hazardous waste solely as a result of having signed the manifests or bills of lading on behalf of EPA in accordance with this paragraph. Any material which is removed from the Clark Fork Site because

of Restoration, including State Restoration in lieu of Remedy at the Clark Fork Site actions, and any material which is removed from the Anaconda Smelter Site because of State Property Remedial Commitments actions shall not be subject to EPA manifest authority, and EPA will not assume responsibility for off-site shipment of such material, including any required hazardous waste manifest requirements.

24. As required by 40 C.F.R. Section 35.6120, for any waste associated with the Remedy or Restoration that is to be shipped to an out-of-state waste management facility, the State will provide written notification prior to the off-site shipment to EPA, to the appropriate state environmental official for the state in which the waste management facility is located, and to any relevant tribe, via the appropriate Indian Tribal official who has jurisdictional authority in the area where the waste management facility is located.

25. Remedial Action Work Plan – Prefinal Inspection. The State and EPA (and NPS for activities at the Grant-Kohrs Ranch) shall jointly conduct a prefinal inspection at the conclusion of construction for each portion of the Remedial Action for a particular property for which a Remedial Action Work Plan was prepared. The prefinal inspection shall consist of a walk-through inspection of the entire project site and shall survey the completed work to determine whether the project is complete and consistent with the contract documents and the Remedy. DEQ and EPA (and NPS for activities at Grant-Kohrs Ranch) shall also determine if there are any outstanding construction items. Prior to the joint prefinal inspection(s), the contractor shall have certified that the work has met the terms and specifications of the contract documents. A copy of the memorandum containing DEQ's internal review of this issue will be provided to EPA (and NPS for activities at Grant-Kohrs Ranch) and NRDP for review and comment approximately two weeks prior to any scheduled walk-through. Based on the inspection, DEQ will develop a punch list of work items to be completed. DEQ will provide this punch list to EPA (and NPS for activities at Grant-Kohrs Ranch). EPA (and NPS for activities at Grant-Kohrs Ranch) will review and comment in a timely manner. Once DEQ and EPA (and NPS for activities at Grant-Kohrs Ranch) determine that all items in the prefinal inspection memorandum have been satisfactorily addressed by DEQ's contractor(s), a final inspection will be conducted jointly by EPA (and NPS for activities at Grant-Kohrs Ranch) and DEQ. Any dispute among DEQ, EPA, and NPS concerning performance of the Work is subject to Dispute Resolution as set forth in this SMOA.

26. Construction Completion Reports. As set forth in the Consent Decree, DEQ as Lead Agency shall compile and provide to EPA (and NPS for activities at Grant-Kohrs Ranch) for review and approval draft construction completion reports for each portion of the Remedial Action (which is likely to be for a particular property), in accordance with EPA regulations and guidance. The reports will contain a summary description of how Support Agency comments were addressed and how Performance Standards were met by the Remedial Action. If, pursuant to Paragraphs 44 through 46 of the Consent Decree, EPA (or NPS for activities at Grant-Kohrs Ranch) determines that the Remedial Action has not been completed or the Performance Standards have

not been achieved, then EPA, NPS, and DEQ will jointly determine the schedule for the implementation of the additional Work. Any disputes regarding Support Agency comments, requests for additional Work, or final approvals are subject to the dispute resolution provisions of the SMOA. When the final portion of the Remedial Action is completed, the combined final Construction Completion reports shall be the final Construction Completion Report for the Clark Fork Site.

27. Streambank Design. The ROD contains detailed examples of streambank stabilization methods and techniques. The ROD also provides that “[s]ubsequent remedial design activities will define the most practical and effective methods and the exact location for streambank stabilization.” ROD, pages 1-3 and 2-84. The ROD also states that the detailed examples and illustrations contained in the ROD “will be used in the Selected Remedy”. ROD, page 2-107. In designing streambank work for the Clark Fork Site, the State shall carefully consider the examples of design methods and techniques described in the ROD. However, the State’s designs may modify the rock toe treatment and types of plantings described in the ROD. The State and EPA shall use the streambank design guidelines, attached as Exhibit A to this SMOA, during the development and review of remedial design for the CFROU site. In addition, the State may propose design methods and techniques other than those described in the ROD for consideration during design for joint approval of plans, as described in the Consent Decree.

28. Wetland Evaluation. A Performance Standard at the Clark Fork Site is the no net loss standard for wetlands. The State shall evaluate wetlands in accordance with the Clark Fork Basin 4 step process described in the January 27, 1992 letter from AR to EPA, and shall ensure that the Remedy is designed and implemented in order to optimize wetlands development and to ensure compliance with the no net loss performance standard.

29. Continued USGS Funding. EPA shall use best efforts to enter into an agreement with USGS for the funding of USGS monitoring at the Clark Fork Site. The USGS monitoring activities are identified in Appendix C. EPA will not seek reimbursement from the State or the Clark Fork Site Remedial Action Account for these costs.

30. Weed Control. DEQ shall arrange for the thorough and effective control of weeds in all areas for which response action is done at the Clark Fork Site. Such weed control work shall be coordinated with the Powell County Weed Board and with landowners.

31. Coordination with Restoration Actions at the Clark Fork Site – In Lieu of Remedy.

a. Pursuant to the Consent Decree and in accordance with the Consent Decree and this SMOA, DEQ, as Lead Agency, anticipates implementing certain elements of State Restoration in lieu of Remedy at the Clark Fork Site. When such a substitution is proposed, the NRDP will, during Agency consultation over the design of the Remedial Action on a particular property, share with DEQ and EPA its design objectives, criteria, available fluvial geomorphic information, available landowner information, and other available information necessary for EPA’s approval of State Restoration in lieu of Remedy at the Clark Fork Site. DEQ will share with EPA and NRDP available landowner information, including access issues, landowner concerns, and other issues. Other information provided by NRDP or DEQ shall include a clear

statement of where the State proposes the State Restoration in lieu of Remedy at the Clark Fork Site, accompanied by a site map illustrating the same.

b. Subject to EPA's approval and in accordance with the provisions of Subparagraphs 26.c, 38.e, 38.f and Paragraph 69 of the Consent Decree, DEQ will integrate State Restoration in lieu of Remedy at the Clark Fork Site into the draft and final Remedial Action Work Plan. EPA shall maintain its final review and approval authority as set forth in the Consent Decree and this SMOA over the Remedial Action Work Plans, including those which address State Restoration at the Clark Fork Site in lieu of Remedy. EPA's failure to approve the substitution of State Restoration at the Clark Fork Site in lieu of Remedy shall be subject to the dispute resolution provisions of Part 2 of this SMOA. Nothing in this SMOA shall preclude the State or NPS (alone or via DEQ) at the Grant-Kohrs Ranch, from implementing, in their respective discretion, State or Federal Restoration at the Clark Fork Site which is in addition to or separate from the Work. No action by the NRDP or DEQ to implement Restoration shall relieve the State of its responsibility, as Lead Agency via DEQ, to meet all Performance Standards.

V. USE OF SETTLEMENT PROCEEDS FOR COMPLETION OF REMEDIAL ACTION, ANY MODIFICATIONS THERETO, AND O&M

32. DEQ shall arrange for the investment of funds in the Clark Fork Site Response Action Account (CFSRAA) by executing a Montana Short Term Investment Pool Participation Agreement with the Montana State Board of Investments in a form similar to that attached as Exhibit B hereto.

33. The funds in the CFSRAA shall be invested by the State Board of Investments in accordance with an Investment Policy Statement mutually agreed to by EPA and DEQ, which may allow portions of the funds to be invested in certain long term investments, as appropriate. The initial Investment Policy Statement is attached hereto as Exhibit B and shall be in effect until modified as provided herein. Investment Policy Statements may be modified by the mutual agreement of EPA and DEQ, through submission of an agreed upon, revised Investment Policy Statement to the State Board of Investments, subject to review and acceptance by the State Board of Investments.

34. The State Board of Investments shall be entitled to fees, to be deducted from earnings, in accordance with the Board's standard policy on fees for investments managed by the Board. DEQ shall provide the Board at least 24 hours notice when Short Term Investment Pool units must be liquidated to provide cash.

35. Funds shall generally be disbursed from the CFSRAA by DEQ to pay response costs for the Clark Fork Site in accordance with the annual estimated budget described in this SMOA. Such budget estimates shall run from July 1 through June 30 of each year during the term of this agreement or such other periods as are agreed to by DEQ and EPA. If DEQ, in consultation with EPA, determines that the estimated budget must be exceeded to meet remedial contract commitments or to otherwise comply with the Consent Decree or SMOA or to implement the ROD, DEQ may spend the money necessary to meet these commitments. The reasons for exceeding the budget shall be summarized in writing in the next quarterly report.

VI. FUNDING OF COST OVERRUNS

36. EPA will fund the State to perform Work for Further Response Costs or Additional Response Costs, if such costs are the responsibility of AR under the Consent Decree. EPA shall bill to AR costs for such Work as provided for in Paragraphs 8 and 14 of the Consent Decree, and the State shall not contest such billing. As between the United States acting through EPA, and the State acting through DEQ, funding of Additional Response Costs shall be determined by the provisions of Paragraph 14 of the Consent Decree, and shall be allocated to the United States or the State as indicated in the Consent Decree, regardless of the nature of the activities funded.

VII. IMPLEMENTATION OF THE FEDERAL RESTORATION

37. As provided in Subparagraph 70.a. of the Consent Decree and this section of the SMOA, the State, through DEQ, agrees to implement Federal Restoration at the Grant-Kohrs Ranch.

38. The State shall provide for NPS review and approval all Federal Restoration design documents for the Grant-Kohrs Ranch. The State and NPS agree to work cooperatively to ensure effective communication and avoid unnecessary delays in the review and approval process.

39. DEQ shall perform the Federal Restoration Plan for Grant-Kohrs Ranch using the funds, and any interest earned thereon, deposited into the State Grant-Kohrs Restoration Account established pursuant to Subparagraph 25.a. of the Consent Decree. Such money will be used exclusively for Federal Restoration at Grant-Kohrs Ranch.

40. This agreement by the State to implement Federal Restoration at Grant-Kohrs Ranch does not obligate the State to expend any funds other than those transferred by NPS and any interest earned thereon as described in paragraph 39 above for design and implementation of the Federal Restoration at the Grant-Kohrs Ranch.

41. Federal Restoration at Grant-Kohrs Ranch shall be consistent with the Federal Restoration Plan which is attached as Appendix I to the Consent Decree.

42. As stated in the Consent Decree, BLM shall implement Federal Restoration pertaining to BLM land.

VIII. DISPUTE RESOLUTION AS BETWEEN EPA AND DEQ

43. This dispute resolution process pertains to all disputes between EPA and DEQ regarding the Consent Decree or the SMOA.

44. With deference to DEQ as the Lead Agency, and in a spirit of mutual respect and cooperation, EPA shall monitor and oversee the State's development and implementation of the Remedial Design, the Remedial Action, and the Operation and Maintenance of the Remedy at the Clark Fork Site, as well as the expenditure and transfer of funds out of the Clark Fork Response Action Account. EPA and the NPS shall, with the State, also monitor and oversee all

remedial activities at the Grant-Kohrs Ranch.

45. If a dispute arises between the EPA and DEQ concerning any matter addressed under the Consent Decree or this SMOA that cannot be resolved at the project officer/staff attorney level, the disputing party shall identify the dispute to the other party in writing. EPA and DEQ shall have 14 days to resolve the dispute informally and may prepare reports or letters in response to the identification of the dispute as appropriate. At the end of the 14-day informal dispute period, if the dispute is not resolved, the Director of DEQ shall issue a written determination regarding the dispute after consulting directly with the EPA Montana Office Director.

46. If EPA disagrees with the dispute resolution issued by the Director of DEQ, within 14 days after the issuance of the resolution, the EPA Montana Office Director may appeal that resolution to the Assistant Administrator for Solid Waste and Emergency Response (“the AA”), in writing, with a copy of the appeal letter forwarded to DEQ. DEQ may respond to this appeal within 14 days of receipt of the appeal by DEQ, through submittal of a response letter to the AA, with a copy to the Director, EPA Montana Office. All prior dispute letters and responses shall be forwarded to the AA. After consulting directly with the Director of DEQ and the EPA Montana Office Director concerning the dispute, the AA shall, within 14 days of receipt of the dispute letters, issue a resolution of the dispute, recognizing that DEQ is the Lead Agency responsible for developing and implementing the Work. The AA may reject the determination issued by the Director of DEQ only if he or she finds one or more of the following:

- a. that the determination issued by the Director of DEQ is not protective of human health or the environment;
- b. that the determination issued by the Director of DEQ is not consistent with CERCLA or the NCP; or
- c. that the determination issued by the Director of DEQ is not consistent with the Consent Decree or the SMOA.

The resolution issued by the AA, shall constitute the final resolution of the dispute. The decision of the AA shall be final and shall not be subject to judicial review by any Party, including the Agencies. Such decisions are subject to judicial enforcement by the State or the United States only, as provided for in the Consent Decree. The time periods listed herein may be increased or decreased by mutual agreement of the Agencies.

47. When the dispute between EPA and DEQ involves activities, or activities that may affect the attainment of Performance Standards, at the Grant-Kohrs Ranch, all documents described above shall also be transmitted to NPS.

**IX. DISPUTE RESOLUTION BETWEEN NPS AND DEQ REGARDING
IMPLEMENTATION OF RESPONSE ACTIONS OR FEDERAL RESTORATION AT THE
GRANT-KOHR'S RANCH**

48. This dispute resolution process pertains to all disputes that arise solely between NPS and DEQ regarding Work or Federal Restoration at the Grant-Kohrs Ranch.

49. With deference to DEQ as the Lead Agency for remediation, and in a spirit of mutual respect and cooperation, NPS, along with EPA, shall monitor and oversee the State's development and implementation of the Remedial Design, the Remedial Action, and the Operation and Maintenance of the Remedy at the Grant-Kohrs Ranch. In the same spirit of mutual respect and cooperation, NPS shall monitor and oversee the State's development and implementation of the Federal Restoration at Grant-Kohrs Ranch.

50. If a dispute arises between the NPS and DEQ concerning Work or Federal Restoration at the Grant-Kohrs Ranch under the Consent Decree or this SMOA that cannot be resolved at the project officer/staff attorney level, the disputing party shall identify the dispute to the other party in writing. NPS and DEQ shall have 14 days to resolve the dispute informally and may prepare reports or letters in response to the identification of the dispute as appropriate. At the end of the 14-day informal dispute period, if the dispute is not resolved, the Director of DEQ shall issue a written determination regarding the dispute after consulting directly with the NPS Superintendent, Grant-Kohrs Ranch ("NPS Superintendent").

51. If NPS disagrees with the dispute resolution issued by the Director of DEQ, within 14 days after the issuance of the resolution, the NPS Superintendent may appeal that resolution through the NPS Regional Director, Intermountain Regional Office ("NPS Regional Director"), in writing, to the NPS Associate Director of Park Planning, Facilities, and Lands ("NPS Associate Director"), with a copy of the appeal letter forwarded to DEQ. DEQ may respond to this appeal within 14 days of receipt of the appeal by DEQ, through submittal of a response letter to the NPS Associate Director, with a copy to the NPS Superintendent. All prior dispute letters and responses shall be forwarded to the NPS Associate Director. After consulting directly with the Director of DEQ and the NPS Superintendent concerning the dispute, the NPS Associate Director shall, within 14 days of receipt of the dispute letters, issue a resolution of the dispute recognizing that DEQ is the Lead Agency responsible for designing and implementing the Work. The resolution issued by the NPS Associate Director, may reject the determination issued by the Director of DEQ only if he or she finds one of the following:

- a. that the determination issued by the Director DEQ is not protective human health or the environment;
- b. that the determination issued by the Director of DEQ is not consistent with CERCLA or the NCP; or
- c. that the determination issued by the Director of DEQ is not consistent with the Consent Decree or the SMOA.

Subject only to DEQ's right to appeal as set forth in paragraph 52 below of this SMOA, the resolution issued by the NPS Associate Director shall constitute the final resolution of the dispute. The decision of the NPS Associate Director shall be final and shall not be subject to judicial review by any Party, including the Agencies. Such decisions are subject to judicial enforcement by the State or the United States only, as provided for in the Consent Decree. The time periods listed herein may be increased or decreased by mutual agreement of DEQ and NPS.

52. If a dispute between NPS and DEQ involves Remedy activities at the Grant-Kohrs Ranch, all documents described above shall also be transmitted to EPA. DEQ shall have the right to appeal to EPA any dispute resolution issued by NPS involving Remedy activities. Any such appeal shall be conducted in accordance with the provisions of Section VIII (Dispute Resolution As Between EPA and DEQ). NPS shall have the right to participate fully in each phase of such appeal.

X. DISPUTE RESOLUTION AS BETWEEN EPA AND NPS REGARDING
RESPONSE ACTIONS AT THE GRANT-KOHR'S RANCH

53. This dispute resolution process pertains to all disputes between EPA and NPS regarding Remedial Design, Remedial Action, and Operation and Maintenance activities affecting Grant-Kohrs Ranch, the Consent Decree, or the SMOA.

54. EPA and NPS will cooperate to the fullest extent possible to ensure that the ROD is fully and completely implemented and to maximize the use of the resources available for the successful completion of the Remedy, Remedial Design, Remedial Action and Operation and Maintenance activities. In the event of disagreements between the Agencies, the Agencies agree to attempt to negotiate a mutually acceptable resolution of the issues to the fullest extent possible, as specified by the provisions below.

55. EPA and NPS have coordinated their respective CERCLA response authorities at the Grant-Kohrs Ranch portion of the Clark Fork Site and EPA has issued the Clark Fork Site ROD under CERCLA authorities with the concurrence of NPS. If a dispute between EPA and NPS arises concerning any matter addressed under the Consent Decree or the SMOA, and the dispute cannot be resolved at the project manager/staff attorney level, the disputing party shall identify the dispute to the other party in writing. EPA and NPS shall have 14 days to resolve the dispute informally if possible. At the end of the 14-day informal dispute period, if the dispute is not resolved, the disputing party shall again state the dispute in writing in a letter addressed to the NPS Regional Director, and the Office Director, EPA Region 8 Montana Office. The other party shall have 7 days to respond to this dispute letter. The NPS Regional Director and the EPA Office Director shall then have 14 days to resolve the dispute. If, at the end of this 14-day period, the dispute cannot be resolved, all dispute letters and responses shall be forwarded to the Assistant Regional Administrator for Ecosystems Protection and Remediation, EPA Region 8 (EPA ARA) and the NPS Associate Director. The EPA ARA and NPS Associate Director shall consult concerning the dispute and shall attempt to issue a joint decision regarding the issue within 14 days of receipt of the dispute letters. In the event the EPA ARA and NPS Associate Director are unable to issue a joint determination, the EPA ARA will issue a decision. The EPA ARA shall consider the NPS position in this matter in light of the NPS' responsibilities and authorities as the federal land management agency responsible for the management and stewardship of Grant-Kohrs Ranch. If unsatisfied with the decision of the EPA ARA, the NPS may initiate consultation with the Section Chief, Environmental Enforcement Section, US Department of Justice, regarding the EPA ARA decision. The EPA ARA will participate in that consultation process and consider the results of that consultation before making a final decision that will represent the final remedial action decision of the federal agencies. Any final decision reached pursuant to this paragraph shall not be subject to judicial review by any Party, including

the Agencies. The time periods listed herein may be increased or decreased by mutual agreement of the Agencies.

XI. NRDP COORDINATION OF STATE RESTORATION PLANS AT THE CLARK FORK AND ANACONDA SITES

56. In accordance with this SMOA, NRDP will coordinate Clark Fork Site and Anaconda Smelter NPL Site State Restoration activities with EPA by providing restoration design and implementation plans to EPA for review and comment. EPA and NPS have no approval authority over Clark Fork Site and Anaconda Smelter NPL Site State Restoration activities, except as provided in Paragraphs 38, 39 and 44 of the Consent Decree as to State Restoration in lieu of Remedy at the Clark Fork Site, and Paragraph 66 of the Consent Decree as to State Property Remedial Commitments, and Paragraph 31 of Part 1 of the SMOA above as to State Restoration in lieu of Remedy at the Clark Fork Site and Paragraphs 6 and 9 of Part 2 of the SMOA below as to State Property Remedial Commitments. All State Restoration design and implementation plans shall be provided to the EPA contacts listed in Paragraph 139 of the Consent Decree.

57. The NRDP will consult with the Salish and Kootenai Confederated Tribes and DOI concerning design and implementation activities under the Clark Fork River Aquatic and Riparian Resources Restoration Plan in accordance with the existing Memorandum of Agreement among the State of Montana, the Confederated Salish and Kootenai Tribes, the United State Department of the Interior Regarding Restoration, Replacement, or Acquisition of Natural Resources in the Clark Fork Basin dated April 1999.

XII. ADDITIONAL CONDITIONS

58. The United States and the State have reserved certain rights and statutory authorities under the Consent Decree, including, for example, unknown condition and unknown information reopeners. The State and EPA, and NPS to the extent the reservations involve the Grant-Kohrs Ranch, will confer with each other in a timely manner on the use of any such authorities prior to the exercise or invocation of any such rights or authorities.

59. In accordance with Paragraph 76 of the Consent Decree, DEQ and EPA, in consultation with NPS to the extent the matter at issue affects the Grant-Kohrs Ranch, will consult with each other to attempt to reach a unified position to be advanced in any dispute with AR pursuant to the Consent Decree.

60. This Agreement may be modified by mutual agreement in writing by EPA, NRDP, NPS, and DEQ.

61. This Agreement is not intended to supersede the requirements for State involvement for CERCLA activities set forth in 40 C.F.R. § 300.515(h), to the extent they are not addressed in this SMOA.

62. Execution of this Agreement shall not constitute a waiver of any Party's right to bring an action against any person or persons for liability under CERCLA, CECRA, or any other statutory provision or common law.

63. Nothing in this Agreement alters, affects or amends the Agencies' rights and obligations under the Streamside Tailings Operable Unit and Federal and Tribal Natural Resource Damages Consent Decree entered in CV 89-39-BU-SEH and in the State of Montana v. Atlantic Richfield Company, No. CV 83-317-HLN-SEH, on April 19, 1999, and its related SMOA.

64. Nothing contained in this Agreement shall be construed to create, either expressly or by implication, the relationship of agency between EPA or NPS and DEQ or NRDP. Any standards, procedures, or protocols prescribed in this Agreement to be followed by DEQ during the performance of its obligations under the Consent Decree or this Agreement are to assure the quality of the final product of the actions contemplated by this Agreement, and do not constitute a right to control the actions of DEQ or NRDP. EPA and NPS (including its employees and contractors) are not authorized to represent or act on behalf of DEQ or NRDP in any matter relating to this Agreement, and DEQ and NRDP (including its employees and contractors) are not authorized to represent or act on behalf of EPA or NPS in any matter related to this Agreement. EPA, NPS, NRDP, or DEQ shall not be liable for the contracts, acts, errors, or omissions of the agents, employees, or contractors of the other Agencies entered into, committed, or performed with respect to or in the performance of this Agreement.

PART 2
IMPLEMENTATION OF THE STATE PROPERTY REMEDIAL COMMITMENTS

This Part 2 of the Agreement is made and entered into by EPA and the State of Montana acting through the Natural Resource Damages Program (“NRDP”) pursuant to 42 U.S.C. § 9604, 40 C.F.R. §§ 300.505, and 300.515. This Agreement is made to provide a mutually acceptable arrangement for the Agencies to manage and coordinate the implementation of the State Property Remedial Commitments and any modifications thereto at the Anaconda Smelter Site. EPA’s decisions under this Part 2 of this Agreement will be made in consultation with DEQ. The NRDP will also consult with DEQ as the State makes decisions under this Part 2 of this Agreement.

Accordingly, in consideration of the mutual covenants and benefits set forth herein, EPA and the NRDP hereby agree as follows:

I. DEFINITIONS

1. Terms defined in the Consent Decree shall have the same meaning when used in this Agreement.

II. GENERAL TERMS

2. This Agreement and all rights and obligations hereunder are contingent upon and shall be effective upon the Effective Date of the Consent Decree.

3. The term of this Part 2 of the Agreement shall be that period actually required to implement the State Property Remedial Commitments and any modifications thereto at the Anaconda NPL Site unless otherwise mutually agreed in writing by EPA and the NRDP.

4. This Agreement is intended to facilitate a cooperative working relationship between NRDP and EPA during the implementation of the State Property Remedial Commitments; to provide for the orderly review and cooperative oversight of NRDP actions by EPA; and to provide for the orderly resolution of any conflict among NRDP and EPA in the implementation of the State Property Remedial Commitments.

5. The NRDP will consult with the Salish and Kootenai Confederated Tribes and DOI concerning design and implementation activities under the Smelter Hill Area Uplands Resources Restoration as provided in the Memorandum of Agreement Among the State of Montana, Confederated Salish and Kootenai Tribes, and the United States Department of the Interior Regarding Restoration, Replacement, or Acquisition of Natural Resources in the Clark Fork River Basin, dated April 1999.

III. IMPLEMENTATION OF THE STATE PROPERTY REMEDIAL COMMITMENTS

6. The State shall be the lead agency, subject to the terms and conditions of the Consent Decree and this SMOA, for completing remedial design and implementation and operation and maintenance of the State Property Remedial Commitments and any modifications thereto. If the State elects to use contractors to perform all or part of the State Property Remedial Commitments, it shall ensure that such contractors are qualified to perform the work and shall ensure that its contractors and subcontractors perform the State Property Remedial Commitment work in accordance with the Consent Decree. The deliverables which the State shall prepare as part of its overall State Restoration design and implementation process, to design and implement remedial design, remedial action, and operation and maintenance of the State Property Remedial Commitments are described and included in Appendix G to the Consent Decree, entitled the Smelter Hill Area Uplands Resources Restoration Plan. The State Property Remedial Commitments Remedial Action Work Plan and the State Property Remedial Commitments Performance Standards Document shall be subject to EPA review and approval as described in the Consent Decree. Certain Smelter Hill Area Uplands Resources Restoration Plan documents described in Appendix G shall also be subject to EPA review, comment and approval, as noted in Appendix G. Certain Smelter Hill Area Uplands Resources Restoration Plan documents described in Appendix G shall not be subject to EPA review and concurrence as noted in Appendix G. EPA's failure to approve or concur regarding the State Property Remedial Commitments shall be subject to the dispute resolution provisions of Part 2 of this SMOA. Nothing in this SMOA shall preclude the State from implementing, in its discretion, Restoration at the Anaconda Smelter Site which is in addition to or separate from the State Property Remedial Commitments and other response actions at the Anaconda Smelter Site.

7. NRDP shall provide semi-annual statements to EPA, DEQ, and AR reporting on the funds disbursed from the Smelter Hill Area Uplands State Restoration Account. As part of this report, NRDP shall also include a narrative progress report section that: (a) describes the actions which have been taken toward implementing the State Property Remedial Commitments work during the previous six months; (b) includes a brief discussion of the actions to ensure contractors perform the work in accordance with this SMOA and the Decree; and (c) summarizes NRDP and contractor meetings and meetings with the public. To allow Agency participation in these activities, the semi-annual statements shall also describe anticipated future activities to be taken in implementing the State Property Remedial Commitment work during the next six months (including but not limited to sampling efforts and expected plans, work plans, reports, specifications, or recommendations and anticipated dates of delivery). Changes in anticipated activities will be identified in the next semi-annual report. If requested by EPA, NRDP shall meet with EPA to discuss the progress of the State Property Remedial Commitment work.

8. As required by 40 C.F.R. Section 35.6120, for any waste associated with the State Property Remedial Commitments, that is to be shipped to an out-of-state waste management facility, NRDP will provide written notification prior to the off-site shipment to EPA, to the appropriate state environmental official for the state in which the waste management facility is located, and to any relevant tribe, via the appropriate Indian Tribal official who has jurisdictional authority in the area where the waste management facility is located.

9. State Property Remedial Commitments Completion Report. NRDP shall compile and provide to EPA and DEQ a final construction completion report for the State Property Remedial Commitments in accordance with EPA regulations and guidance. The report will contain a certification by NRDP that the State Property Remedial Commitments are complete, except for operation and maintenance, and a description of how Performance Standards were met. The final report is subject to approval by EPA. Any disputes regarding approvals are subject to the dispute resolution provisions of this Part 2 of the SMOA.

IV. DISPUTE RESOLUTION AS BETWEEN EPA AND NRDP

10. The State, through NRDP, and EPA will cooperate to the fullest extent possible to maximize the use of the resources available for the successful implementation of the State Property Remedial Commitments and Clark Fork Site State Restoration in lieu of Remedy actions at the Clark Fork Site. In the event of disagreements between the EPA and NRDP, the agencies shall attempt to negotiate a mutually acceptable resolution of the issues.

11. If a dispute between EPA and the NRDP concerning implementation of the State Property Remedial Commitments or State Restoration in lieu of Remedy at the Clark Fork Site arises and cannot be resolved at the project officer/staff attorney level, the disputing party shall identify the dispute to the other party in writing. EPA and the State shall have 14 days to resolve the dispute informally and may prepare reports or letters in response to the identification of the dispute as appropriate. If, at the end of this 14-day period, the dispute has not been resolved, the Attorney General of the State of Montana shall issue a resolution regarding the dispute after consulting directly with the Director of the EPA Montana Office.

12. If EPA disagrees with the dispute resolution issued by the Attorney General, within 14 days after the issuance of the resolution, the EPA Montana Office Director may appeal that resolution to the Assistant Administrator for Solid Waste and Emergency Response, in writing, with a copy of the appeal letter forwarded to the Attorney General. The State may respond to this appeal within 14 days of receipt of the appeal by Attorney General, through submittal of a response letter to the Assistant Administrator for Solid Waste and Emergency Response, with a copy to the Director, EPA Montana Office. All prior dispute letters and responses shall be forwarded to the Assistant Administrator for Solid Waste and Emergency Response. After consulting directly with the Attorney General and the EPA Montana Office Director concerning the

dispute, the Assistant Administrator for Solid Waste and Emergency Response shall, within 14 days of receipt of the dispute letters, issue a resolution of the dispute, recognizing that NRDP is the lead agency responsible for developing and implementing the State Property Remedial Commitments and Restoration Actions in lieu of Remedy at the Clark Fork Site, and in light of the State's responsibilities and authorities as a CERCLA trustee. The Assistant Administrator for Solid Waste and Emergency Response may reject the dispute resolution issued by the Attorney General only if he or she finds one or more of the following:

- a. that the resolution issued by the Attorney General is not protective human health or the environment;
- b. that the resolution issued by the Attorney General is not consistent with CERCLA or the NCP; or
- c. that the resolution issued by the Attorney General is not consistent with the Consent Decree or the SMOA.

The resolution issued by the Assistant Administrator for Solid Waste and Emergency Response shall constitute the final resolution of the dispute. The decision of the Assistant Administrator shall be final and shall not be subject to judicial review by any Party, including the Agencies. Such decisions are subject to judicial enforcement by the State or the United States only, as provided for in the Consent Decree. The time periods listed herein may be increased or decreased by mutual agreement of the Agencies.

V. RECORDKEEPING

13. Various Site related records are maintained by EPA, DEQ, NRDP as required by law and as required by the terms of the Consent Decree. In some circumstances, records are maintained solely by one of these agencies. EPA, DEQ, NRDP, and NPS will cooperate in coordinating and providing each other copies of or access to records upon written request by either agency. Access to such records may include use of prior agreements or negotiation of new agreements for maintaining confidentiality of certain documents or records, if appropriate. Each agency also maintains the right to withhold confidential documents intended for intra-agency use, as permitted by law.

VI. ADDITIONAL CONDITIONS

14. Negation of Agency Relationship. Nothing contained in this Agreement shall be construed to create, either expressly or by implication, the relationship of agency between the U.S. and/or the State. Any standards, procedures, or protocols prescribed in this Agreement to be followed by NRDP during the performance of its obligations under this Consent Decree or Agreement are to assure the quality of the final product of the actions contemplated by this Agreement and do not constitute a right to control the actions of NRDP. None of the Agencies (including employees and contractors) are authorized to represent or act on behalf of any other Agency in any matter relating to this Agreement. Neither the United States nor the State shall be

liable for the contracts, acts, errors, or omissions of the agents, employees, or contractors of the other Agencies entered into, committed, or performed with respect to or in the performance of this Agreement.

15. Exclusion of Third Parties This agreement extends no benefit or rights to any party not a signatory. In addition, EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. Sections 1346(b), 2671-2680. Except as expressly provided by State law, the State does not assume liability to third parties with respect to losses due to bodily injury or property damage.

16. Activities Prohibited by State Laws In the event that the State determines after execution of this Agreement that State laws or other restrictions prevent the State from acting consistent with CERCLA, the State agrees to promptly notify and consult with EPA regarding the use of such laws or other restrictions.

17. No Waiver Execution of this Agreement shall not constitute a waiver of any Agencies' right to bring an action against any person or persons for liability under CERCLA, CECRA, or any other statutory provision or common law.

18. The United States and the State have reserved certain rights and statutory authorities concerning the State Property Remedial Commitments under the Consent Decree. The State and EPA will confer with each other in a timely manner on the use of any such authorities prior to the exercise or invocation of any such rights or authorities.

19. EPA and NRDP will consult with each other to attempt to reach a unified position to be advanced in any dispute with AR pursuant to the Consent Decree.

20. This Agreement may be modified by mutual agreement in writing by EPA and NRDP.

21. This Agreement is not intended to supersede the requirements for State involvement for CERCLA activities set forth in 40 C.F.R. § 300.515(h), to the extent they are not addressed in this SMOA.

SIGNATURES

FOR THE STATE OF MONTANA

FOR THE MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Richard H. Opper, Director

Date

C. Bradley Smith, DEQ Legal Counsel

Date

FOR THE NATURAL RESOURCE DAMAGES PROGRAM, STATE OF MONTANA

Mike McGrath, Attorney General

Date

Mary Capdeville, Assistant Attorney
General

Date

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

John F. Wardell, Office Director
Montana Office
EPA Region 8

Date

D. Henry Elsen, Attorney
Legal Enforcement Program
US EPA Region 8

Date

FOR THE DEPARTMENT OF THE INTERIOR

Daniel W. Wenk
Deputy Director Operations
National Park Service

Date

Shawn P. Mulligan
Environmental Program Adviser
National Park Service

Date

Exhibit A

Streambank Design Principles

Exhibit B

Investment Policy

Exhibit C

USGS Monitoring