

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Agreement”) is made, as of the Effective Date of this Agreement, between the United States of America (“United States”) and the Navajo Nation, a federally recognized Indian Tribe, collectively referred to as the “Parties.”

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## **RECITALS**

WHEREAS, the Navajo Nation contends that it has claims against the United States under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-75, in connection with approximately 523 abandoned uranium mines (“AUMs”) located on Navajo Lands, as set forth in a letter from the Navajo Nation Attorney General to the United States Department of Justice, dated November 21, 2013;

WHEREAS, Region IX of the United States Environmental Protection Agency (“USEPA”), in collaboration with the Navajo Nation Environmental Protection Agency (“NNEPA”), has compiled a list of forty-three (43) “priority mines” for cleanup and has included the priority mines as part of the next Federal Government Five-Year Plan for addressing uranium contamination on Navajo Lands;

WHEREAS, the list of priority mines is based on two primary criteria, specifically, demonstrated levels of Radium-226: (a) at or in excess of ten (10) times the background levels and the existence of a potentially inhabited structure located within 0.25 miles of AUM features; or (b) at or in excess of two (2) times background levels and the existence of a potentially-inhabited structure located within two hundred (200) feet;

WHEREAS, the Parties agree that initial efforts to resolve the Navajo Nation’s CERCLA claims should focus on a subset of the priority mines, namely those priority mines for which a viable private entity potentially responsible party has not been identified;

WHEREAS, the Parties agree that close consultation and collaboration between NNEPA and USEPA, Region IX, is essential to the successful implementation of this Agreement;

WHEREAS, the Parties desire to enter into this Agreement to have a full and final resolution of any and all claims that were, could now be, or hereafter could be

asserted by the Navajo Nation against the United States in connection with Covered Matters, as defined below, and to avoid the complication and expense of litigation of such claims between the Parties concerning the Sites addressed in this Agreement;

WHEREAS, the Parties agree that this Agreement is fair, reasonable, and in the public interest;

WHEREAS, the United States does not admit any liability arising from occurrences or transactions pertaining to Covered Matters; and

WHEREAS, the Parties enter into this Agreement as a final settlement of all claims in connection with Covered Matters, except as expressly set forth in this Agreement.

THEREFORE, the Parties hereby agree as follows.

#### **ARTICLE 1: DEFINITIONS**

For the purposes of this Agreement, these terms shall be defined as follows:

1.1 Administrative Costs. “Administrative Costs” shall mean costs incurred in administering the Environmental Response Trust.

1.2 Agreement. “Agreement” shall mean this Settlement Agreement, including all attachments and any Scope of Work (“SOW”) associated with this document. In the event of conflict between this Agreement and any SOW, this Agreement shall control.

1.3 AUMs. “AUMs” shall mean abandoned uranium mines located on Navajo Lands.

1.4 AUM Future Oversight Costs Special Account. “AUM Future Oversight Costs Special Account” shall mean the special account, within the USEPA Hazardous Substance Superfund, established for the Sites by USEPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

1.5 CERCLA. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-75.

1.6 Covered Matters. “Covered Matters” shall mean any and all claims that were, that could have been, that could now be, or that could hereafter be asserted by the Navajo Nation against the United States, as of the Effective Date of this Agreement, that arise out of or in connection with: (1) the Work; (2) Future Oversight Costs incurred by USEPA and NNEPA with respect to the Work; and (3) Administrative Costs. Covered Matters shall further include any work performed as part of additional Response Actions at any of the Sites, using residual funds from the Trust Assets pursuant to Section 2.7 of the Trust Agreement.

1.7 Effective Date. The Effective Date of this Agreement shall be the date on which the last of the Parties signs the Agreement.

1.8 Excluded Matters. “Excluded Matters” shall mean any claims and liabilities associated with: (a) Response Actions (including Response Action decisions) at any Site that occur subsequent to the approval of an RSE Final Report for such Site (*cf.* Section 5.4 of the Trust Agreement), except as provided in Section 1.6 of this Agreement; (b) areas subject to the authority conferred by the Uranium Mill Tailings Radiation Control Act, 42 U.S.C. § 7901 *et seq.*; and (c) any other matters not expressly defined as Covered Matters.

1.9 Future Oversight Costs. “Future Oversight Costs” shall mean all costs of response that are not inconsistent with the National Contingency Plan (“NCP”), as defined in 42 U.S.C. § 9601(25), and that arise out of or in connection with Covered Matters and are incurred by USEPA or NNEPA, including, but not limited to, direct and indirect costs that USEPA or NNEPA incurs in reviewing or developing plans, reports and other items pursuant to this Agreement, verifying the Work, or otherwise implementing or overseeing this Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

1.10 Navajo Lands. “Navajo Lands” shall mean all lands of the Navajo Nation as described in 7 N.N.C. § 254(A).

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

1.12 Navajo Nation EPA or NNEPA. “Navajo Nation EPA” or “NNEPA” shall mean the Navajo Nation Environmental Protection Agency.

1.13 Navajo Nation DOJ or NNDOJ. “Navajo Nation DOJ” or “NNDOJ” shall mean the Navajo Nation Department of Justice.

1.14 Party and Parties. “Party” shall refer individually to and “Parties” shall refer collectively to the United States and the Navajo Nation.

1.15 Removal Site Evaluation. “Removal Site Evaluation” or “RSE” shall mean a removal preliminary site assessment and, if warranted, a removal site inspection and shall, for purposes of this Agreement, include the following activities: conducting background studies and gamma scans of surface soils, sampling surface and subsurface soils and sediments related to historic mining operations, assessing radiation exposure inside mine operations buildings, homes, or other nearby structures (if present at the Sites), sampling existing and accessible wells (if present at the Sites), mitigating physical hazards and other interim response actions, and preparing a final written report documenting the work performed and information obtained for each of the Sites, such as indicated in the exemplar Scopes of Work identified in Section 3.1 of this Agreement.

1.16 Response Action. “Response Action” shall have the same definition as given to the term “response” under Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

1.17 Site. “Site” in this Agreement shall mean each of the sixteen (16) AUMs listed on Appendix A, including the geographically proximate areas where

Waste Material associated with each such AUM has been deposited, stored, disposed of, placed, or otherwise come to be located. “Sites” shall mean, collectively, all sixteen (16) AUMs.

1.18 Trust Assets. “Trust Assets” shall mean the funding as provided by Section 2.4 herein and such other assets as may be acquired, earned, or held by the Environmental Response Trust prior to its termination.

1.19 Trustee. “Trustee” shall mean the individual or entity selected pursuant to Section 2.1 of this Agreement.

1.20 United States. The “United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

1.21 USEPA. “USEPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

1.22 USEPA Hazardous Substance Superfund. “USEPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

1.23 Waste Material. “Waste Material” shall mean 1) any “hazardous substance” as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant as defined under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any “solid waste” as defined under Section 1004(27) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*, 42 U.S.C. § 6903(27) (“RCRA”).

1.24 Work. “Work” shall mean Removal Site Evaluations at the Sites and associated public participation.

## **ARTICLE 2: ENVIRONMENTAL RESPONSE TRUST**

2.1 ERT. The Parties agree to establish through a separate agreement (“Trust Agreement”) an Environmental Response Trust (“ERT”) for the purpose of the performance of the Work. The Trustee for the ERT shall be selected by the Navajo Nation with the approval and concurrence of the United States.

2.2 Incorporation by Reference. The Trust Agreement shall be deemed incorporated into this Agreement once it is executed by the Parties and the Trustee. In the event of a conflict between this Agreement and the Trust Agreement, this Agreement controls.

2.3 Purposes. The exclusive purposes and functions of the ERT are to manage, administer, fund and perform the Work and to reimburse Future Oversight Costs and Administrative Costs, as more fully defined or described in the Trust Agreement and in this Agreement, in compliance with all applicable laws, regulations, and guidance, including but not limited to the National Contingency Plan, and to receive, hold and use the Trust Assets for the above purposes.

2.4 Funding. As soon as reasonably practicable after the Effective Date of the Trust Agreement, the United States shall cause to be deposited into the ERT thirteen million, two hundred and twenty-five thousand dollars (\$13,225,000). This payment by the United States is a full and final settlement of all of the Navajo Nation's claims against the United States for Covered Matters. This payment to be made by the United States is subject to the availability of funds appropriated for such purpose. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

2.5 Beneficiaries. The Navajo Nation, and the United States on behalf of USEPA, shall each be a beneficiary of the ERT.

2.6 Performance of the Work. The Trustee shall be responsible to arrange for and manage the performance of the Work required by this Agreement through and until notification by USEPA and NNEPA, after mutual consultation, that the Work is complete.

2.7 Accounting. The Trustee shall use ERT funds (including any interest earned thereon) to implement the Work, pay Future Oversight Costs, and pay

Administrative Costs, after receiving approval, where applicable, by NNEPA and USEPA of deliverables (including but not limited to Scopes of Work and budgets) required under the Trust Agreement. The Trustee shall expend funds consistently with approved budgets, approved schedules, approved Scopes of Work, and approved work plans.

2.8 EPA Special Account. EPA will establish the AUM Future Oversight Costs Special Account to accept payments from the ERT for Future Oversight Costs pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

### **ARTICLE 3: WORK TO BE PERFORMED**

3.1 The Trustee shall perform all actions necessary to complete an RSE at each Site. The Trustee shall develop Scopes of Work for the Sites under the oversight of USEPA and NNEPA. The Parties recognize that identifying appropriate Scopes of Work depends on the specific characteristics of each Site, but agree that the Scopes of Work used for (1) the Black Jack and Mac Mine Sites, (2) the Mariano Lake Mine Site, and (3) the Ruby Mine Sites are examples of potential models. The Parties agree that the identification of these three SOWs in this paragraph is by way of example only and is in no way binding on the Parties or the Trustee. The Trustee shall submit draft SOWs to NNEPA and USEPA for review, comment and approval. NNEPA and USEPA shall not approve any draft SOW that is inconsistent with this Agreement.

3.2 All Work under this Agreement shall be conducted in accordance with the provisions of this Agreement, the Trust Agreement, CERCLA, the NCP and relevant USEPA guidance. The Trustee shall not commence any Work except in conformance with the terms of this Agreement and the Trust Agreement.

3.3 All monies provided by the United States to the ERT pursuant to this Agreement shall be used solely for the performance of the Work, for the payment of Future Oversight Costs, and for the payment of Administrative Costs. Following performance of the Work and termination of the ERT, if there are any

residual funds in the Trust Account established pursuant to Section 2.1.3 of the Trust Agreement, those funds may be used to perform additional Response Actions, at any of the Sites, pursuant to Section 2.7 of the Trust Agreement.

3.4 The Trustee shall not commence any Work except in conformance with the terms of this Agreement, the Trust Agreement, and any approved SOW. The Trustee shall not commence implementation of work plans developed pursuant to approved SOWs without the prior written approval of NNEPA and USEPA. The process by which the Trustee shall obtain the approval of the NNEPA and USEPA will be detailed in the Trust Agreement.

3.5 Public Participation. The Parties recognize that public participation, particularly the involvement, participation and education of the communities local to the Sites, is an essential element of environmental investigation and remediation processes. The Trustee, in consultation with NNEPA and USEPA, shall undertake all reasonable and practical efforts to maximize public participation and outreach as part of the Work, and shall use Navajo speakers as fully as possible in these efforts.

#### **ARTICLE 4: SITE ACCESS**

4.1 NNEPA Authority and Practice. NNEPA has the authority to access and to authorize access to all uranium-contaminated sites within the Navajo Nation in accordance with Navajo Nation CERCLA, 4 N.N.C. § 2301 (“NNCERCLA”). NNEPA has developed best practices, in regards to site access, to facilitate cooperation with local land users. Before a site is first accessed, an NNEPA employee or contractor will determine whether any Navajo individuals have an interest in the area. This determination may be made by visiting the site to ascertain whether there are any Navajos living within the vicinity, by talking with local residents to determine if the area is part of someone’s customary use rights area, and/or by checking local records to determine whether someone has a grazing

permit or home site lease in the vicinity of the site. It is preferred that any communications with local residents include a Navajo speaker.

(a). Any individual who has an interest in land in the vicinity of a Site or resides on allotted lands in the vicinity of a Site will be notified of the nature of the work anticipated and informed of what access will be necessary to complete the work. Depending upon the particular circumstances, individuals may sign access agreements.

(b). It has been the practice of NNDOJ to prepare a letter for signature by the Director of NNEPA authorizing the entity performing the work to act as NNEPA's "agent" in accordance with NNCERCLA, thus providing such entity with NNEPA's access rights granted by NNCERCLA.

4.2 Trustee Duties. It will be the Trustee's responsibility to secure appropriate access to any given Site under the protocols and "best practices" described in Paragraph 4.1. The Trustee shall work closely with NNEPA and NNDOJ in securing any access agreements deemed appropriate under the circumstances.

4.3 NNEPA and NNDOJ Agreement. NNEPA and NNDOJ agree to support and facilitate the Trustee's efforts to arrange access to the Sites. NNEPA and NNDOJ shall provide any necessary support and information needed to make determinations regarding potential local interest in a Site as expeditiously as possible, as well as to secure access agreements where appropriate.

4.4 USEPA Assistance. Consistent with Section 4.2 of this Agreement, the Trustee shall immediately notify USEPA and NNEPA if after using best efforts the Trustee is unable to obtain necessary access agreements in areas which NNEPA does not have the authority to access or to authorize access. For purposes of this paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. The Trustee shall describe in writing the efforts to obtain access. USEPA may then assist the Trustee in gaining access, to the extent

necessary to effectuate the Work, using such means as USEPA deems appropriate. All costs and attorney's fees incurred by the United States in obtaining such access that are not inconsistent with the NCP shall be considered reimbursable Future Oversight Costs. Notwithstanding any provision of this Agreement, USEPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

#### **ARTICLE 5: RELEASES AND EFFECTS OF AGREEMENT**

5.1 Releases and Covenants Not to Sue. Effective when the payment required by Section 2.4 of this Agreement has been deposited into the ERT, the Navajo Nation forever releases, discharges, covenants, and agrees not to assert (by way of the commencement of an action or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever, in law or in equity, that the Navajo Nation may have had, or hereafter has, against the United States relating to Covered Matters, including, but not limited to, claims under CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613. The Parties agree that such release does not include any release for claims relating to the enforcement of the terms of this Agreement or for Excluded Matters.

#### 5.2 Protection Against Claims.

(a). The Parties acknowledge and agree that the payment and obligations provided for in this Agreement represent a full and final settlement of disputed claims for Covered Matters and that the settlement represents a fair, reasonable, and equitable resolution of Covered Matters.

(b). With regard to any claims for costs, damages, or other claims against the United States for Covered Matters under or addressed in this Agreement, the Parties agree that the United States is entitled to contribution protection consistent with Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), the Uniform Comparative Fault Act, and any other applicable provision of federal or

state law, whether by statute or common law, extinguishing the United States' liability to persons not party to this Agreement. Any rights the United States may have to obtain contribution or otherwise recover costs or damages for Covered Matters from persons not party to this Agreement are preserved.

(c). The Navajo Nation agrees that when the payment required under Section 2.4 has been made and deposited into the ERT, the United States will have resolved any liability that it may have to the Navajo Nation for Covered Matters.

5.3 No Admission. This Agreement was negotiated and executed by the Parties in good faith and at arm's length and is a fair and equitable resolution of claims. This Agreement shall not constitute or be construed as an admission of liability by any Party, nor is it an admission or denial of any factual allegations or an admission of any violation of law, rule, regulation, or policy by any Party.

5.4 Good Faith Efforts. The Parties agree to exercise good faith, due diligence, and their best efforts to execute all necessary documents to effectuate this Agreement and to join in and/or support, as may be appropriate, such legal or informal proceedings as necessary to implement all terms of this Agreement.

## **ARTICLE 6: DISPUTE RESOLUTION**

6.1 Given that all environmental field work contemplated by this Agreement will be carried out pursuant to the ERT, the Parties are hopeful that there will be very limited areas of disagreement between them. Nevertheless, disputes can always arise. Therefore, the Parties agree that it is important to establish a dispute resolution process as part of this Agreement. The purpose of this Article is to establish a process to talk through any dispute before resorting to other methods. In that regard the Navajo Nation, with the invaluable assistance of former Navajo Nation Supreme Court Chief Justice Robert Yazzie and former Director of the Navajo Abandoned Mines Program Perry Charley, has provided the following

discussion of Navajo Fundamental Law which it believes should inform any such discussions.

(a). If one conceives of the notion of problem-solving as a circle, or sun with four stages, the process begins on the eastern side of the circle and might be labeled in Navajo as “nitsahakees” or “thinking.” Thinking is key and it takes a long time. It goes on and on. Perhaps it has no beginning and no end. In this process of thinking about remediating the uranium contamination left over from past uranium mining on Navajo lands it is almost impossible to identify a beginning. The Navajo paradigm and the four stages within it are imbedded with one another. No one stage can exist without the other. Regardless, Navajo problem-solving begins with thinking. This Agreement has required a great deal of thinking. Thinking is examining root causes of a problem and its nature and consequences. Before we can decide on a solution (“nahat’a” or planning) we must understand the problem. If we have done our job well, there will be few disagreements.

(b). After “thinking” comes “nahat’a” or “planning.” Planning may be visualized as the southern-most point of the circle. Inside the circle is the milieu of life. For the Navajo this means many things including the sacred elements (air, water, fire and earth/pollen), the sacred mountains and “Nayee” (things that get in the way of a good life).

(c). After “planning” comes “Iina” or the life that implements the planning. Implementation may be seen as the western-most point of the circle. Again, this takes time and interacts with the forces visualized as being inside the circle. Obstacles emerge and interfere with the implementation. Insights arise and help the implementation.

But, if the thinking continues and the planning continues, this leads to hopeful and positive results.

(d). After “implementation” comes “sihasin” which means many things including “results.” “Results” appear at the northernmost point of the circle. Results follow thinking, planning and implementation. For the Navajo Nation the desired “results” here mean the complete remediation of all uranium contamination left over from past uranium mining on Navajo lands. The Navajo Nation understands the difficulties and challenges faced in achieving that goal. Still, the goal is worth the effort.

It is often difficult to keep focus on the nested nature of the four aspects discussed here. Each aspect is re-evaluated by discussion of what has worked and what has failed.

6.2. The Parties agree to follow a “talking things out” approach to dispute resolution. If the Parties fail to resolve any dispute through the above method, the Parties will attempt to resolve their dispute through formal non-binding alternative dispute resolution.

#### **ARTICLE 7: REPRESENTATIVE AUTHORITY**

7.1 The United States is executing this Agreement on behalf of the federal government, including all of its departments, agencies and instrumentalities.

7.2 The individuals signing this Agreement on behalf of each Party hereby certify that they are authorized to bind their respective Party to this Agreement.

#### **ARTICLE 8: MISCELLANEOUS**

8.1 Agreement is Binding and Final. This document including those documents incorporated by reference embodies the entire terms and conditions of this Agreement, and each Party acknowledges that it has not relied upon any warranties, representations, or promises except those set forth expressly in this Agreement. Subject to appropriate approvals, this Agreement may be amended to

list additional AUMs as sites subject to this Agreement, with a corresponding increase in the funding provided under Section 2.4, if and when additional AUMs are identified by the Parties. Notwithstanding the foregoing, this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing executed by an authorized representative of each of the Parties.

8.2 Preservation of Defenses. Nothing in this Agreement shall be construed as a waiver of sovereign immunity or of any legal defense.

8.3 Binding on Successors and Assigns. This Agreement shall be binding upon and for the benefit of the Parties, as well as their successors, representatives, and assigns.

8.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

8.5 Governing Law. This Agreement shall be governed by and construed under the laws of the United States.

8.6 Headings. The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

8.7 Notices to Parties.

For the United States:

Chief, Environmental Defense Section  
United States Department of Justice  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, DC 20044-7611  
Re: DJ # 90-11-6-19983

For the Navajo Nation:

Assistant Attorney General  
Natural Resources Unit  
Navajo Nation Department of Justice  
P.O. Box 2010  
Window Rock, AZ 86515  
Re: Abandoned Uranium Mines

IN WITNESS WHEREOF, the Parties enter into this Agreement.

**THE NAVAJO NATION:**

By:   
HARRISON TSOSIE  
Navajo Nation Attorney General

Dated: April 7, 2015

**THE UNITED STATES OF AMERICA:**

By: \_\_\_\_\_  
JOHN C. CRUDEN  
Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division

Dated: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties enter into this Agreement.

**THE NAVAJO NATION:**

By: \_\_\_\_\_  
HARRISON TSOSIE  
Navajo Nation Attorney General

Dated: \_\_\_\_\_

**THE UNITED STATES OF AMERICA:**

By:   
JOHN C. CRUDEN  
Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division

Dated: 4/8/15

## APPENDIX A

1. Occurrence B
2. Eunice Becenti
3. Section 26 (Desidero Group)
4. Standing Rock
5. Charles Keith
6. Harvey Blackwater No. 3
7. Mitten No. 3
8. Alongo Mines
9. Barton 3
10. NA-0904
11. NA-0928
12. Oak 124, Oak 125
13. Tsosie 1
14. Hoskie Tso No. 1
15. Boyd Tisi No. 2 Western
16. Claim 28