IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	)	
	)	Case No. 05-21207
ASARCO LLC, et al.	)	Chapter 11
	)	
Debtors.	)	

SETTLEMENT AGREEMENT REGARDING THE
UPPER BLACKFOOT MINING COMPLEX SITE

WHEREAS, the Upper Blackfoot Mining Complex Site (the "UBMC Site") is located in Lewis and Clark County, Montana at the headwaters of the Upper Blackfoot River;

WHEREAS, the UBMC Site includes the United States Department of Agriculture Forest Service Site ("USDA Forest Service Site") which is located within the Helena National Forest;

WHEREAS, a number of entities, including various entities associated with the American Smelting and Refining Company (incorporated 1899), a predecessor in interest of ASARCO LLC, formerly known as ASARCO Incorporated ("ASARCO"), engaged in mining and milling activities at the UBMC Site from 1889 through the 1960s;

WHEREAS, a predecessor of Atlantic Richfield Company assumed a lease to a number of patented and unpatented mining claims at the UBMC Site in 1964, acquired additional properties thereafter, and engaged in exploration and assessment activities at the UBMC Site before conveying all its leasehold and real property interests to ASARCO on or about November 19, 1981;

WHEREAS, ASARCO owns and has owned certain parcels within the UBMC Site in fee simple, owns and has owned patented mining claims on certain portions of the UBMC Site, and holds and has held unpatented mining and millsite claims on other portions of the UBMC Site;

WHEREAS, on or about August 24, 2006, ASARCO filed with the Bureau of Land Management a Notice of Intent to Abandon the following unpatented mining claims and one unpatented millsite claim: the Fir No. 3, Grace E, Hog All Extension, Howard, Detroit Extension Amended, Modoc (Amended), Pine Hill Extension (Amended), Rothsay (Amended) and Sterling Extension unpatented mining claims and the Little Nell Millsite claim;

WHEREAS, the United States and the State of Montana ("State") have alleged that as a result of mining and related activities, hazardous substances and/or hazardous or deleterious substances ("hazardous substances") have come to be located in or on portions of the UBMC Site;

WHEREAS, Atlantic Richfield Company and ARCO Environmental Remediation LLC (collectively "Atlantic Richfield") and ASARCO have undertaken a variety of activities in an effort to remediate hazardous substances on various portions of the UBMC Site;

WHEREAS, in December 2002, pursuant to its authority under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9604, the United States Department of Agriculture Forest Service ("the Forest Service") entered into an Administrative Order on Consent ("the AOC") with ASARCO, under which ASARCO agreed to prepare an Engineering

Evaluation/Cost Analysis ("EE/CA") with respect to the USDA Forest Service Site. ASARCO submitted the final EE/CA to the Forest Service in July 2007;

WHEREAS, the Forest Service issued an Action Memorandum on July 23, 2007 setting forth the response action selected for the USDA Forest Service Site;

WHEREAS, the United States has alleged that ASARCO and Atlantic Richfield are, under Section 107(a) of CERCLA, 42 USC §9607(a), potentially responsible parties with respect to the USDA Forest Service Site;

WHEREAS, the United States has alleged that it incurred past response costs, and will incur additional future response costs, under CERCLA in connection with the USDA Forest Service Site for which ASARCO and Atlantic Richfield allegedly are liable;

WHEREAS, the Montana Department of Environmental Quality ("DEQ") issued general notice letters to ASARCO and Atlantic Richfield on June 20, 1991, indicating their status as potentially liable persons under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Mont. Code Ann. §§ 75-10-701 *et seq.* ("CECRA");

WHEREAS, on March 21, 2003, the State, acting through DEQ, filed suit against ASARCO and Atlantic Richfield in *State of Montana ex rel. Department of Environmental Quality v. ASARCO, Inc., et al.*, Cause No. C-DV-2003-160 ("State Action"), before the Montana First Judicial District Court, Lewis and Clark County ("State Court") in which the State sought abatement of alleged endangerment to the public health, safety, and welfare, and the environment, recovery of past remedial action

costs, and a declaratory judgment of liability for future remedial action costs for the UBMC Site;

WHEREAS, the Montana legislature appropriated funds to DEQ for performance of a Remedial Investigation for the UBMC Site, and DEQ began the Remedial Investigation in August 2007 and expects to complete the State-lead Remedial Investigation/Feasibility Study for the UBMC Site by August 2011;

WHEREAS, the State, by and through DEQ and the Montana Department of Justice, allege that ASARCO and Atlantic Richfield are liable to the State for past and future response costs, and are liable to the State and the United States as co-trustees for natural resource damages and assessment costs under CERCLA, CECRA, the Montana Water Quality Act §§ 75-5-101 *et seq.* ("WQA"), the Clean Water Act, 33 U.S.C. § 1251 *et seq.* ("CWA"), and Montana tort law, based on the alleged activities of ASARCO and Atlantic Richfield at the UBMC Site, and the State filed a Second Amended Complaint in the State Action on October 26, 2007 seeking recovery of same from ASARCO and Atlantic Richfield;

WHEREAS, by entering into this Settlement Agreement, neither ASARCO nor Atlantic Richfield admit to any liability arising out of the transactions or occurrences that were alleged, or could have been alleged, in the State's Second Amended Complaint;

WHEREAS, ASARCO filed with the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") a voluntary petition for relief under Title 11 of the United States Bankruptcy Code on August 9, 2005 (the "Bankruptcy Case");

WHEREAS, the United States filed Proofs of Claim in the Bankruptcy Case (numbers 8375 and 10746) setting forth claims against ASARCO under CERCLA for various past and future response costs as defined under CERCLA in connection with the USDA Forest Service Site;

WHEREAS, the State filed Proofs of Claim in the Bankruptcy Case (numbers 10524, 10525, 10526, 10527, 10841, 10842 and 10843) setting forth claims against ASARCO, ASARCO Consulting, Inc., ASARCO Master, Inc., and American Smelting and Refining Company (incorporated 1975) under CERCLA, CECRA, the CWA and Montana tort law for natural resource damages and remediation expenses relating to the UBMC Site;

WHEREAS, Atlantic Richfield filed Proofs of Claim Nos. 10883 and 10884 in the Bankruptcy Case and Amended Proofs of Claim Nos. 18259 (amending No. 10884) and 18260 (amending 10883) setting forth claims independently against ASARCO and American Smelting and Refining Company (incorporated 1975) under CERCLA, CECRA, and Mont. Code Ann. § 27-1-703(1) for contribution and/or reimbursement of costs and damages Atlantic Richfield allegedly incurred or may incur in connection with the UBMC Site;

WHEREAS, ASARCO has disputed the claims with respect to the UBMC Site and USDA Forest Service Site filed by the United States, the State, and Atlantic Richfield, as set forth in the various proofs of claim and expert reports submitted by the United States, the State, and Atlantic Richfield;

WHEREAS, the Court established a process for estimating the claims of the United States, the State, and Atlantic Richfield against ASARCO with respect to the UBMC Site, including the use of mediation;

WHEREAS, having entered into mediation, the United States, the State, ASARCO, and Atlantic Richfield (collectively the "Parties") desire to settle, compromise and resolve their disputes without the necessity of an estimation hearing;

WHEREAS, in consideration of, and in exchange for, the promises and covenants herein, the Parties hereby agree to the terms and provisions of this Settlement Agreement ("Settlement Agreement"); and

WHEREAS, this Settlement Agreement is in the public interest and is an appropriate means of resolving this matter.

NOW, THEREFORE, without the admission of liability or any adjudication on any issue of fact or law, and upon the consent and agreement of the Parties by their attorneys and authorized officials, it is hereby agreed as follows:

I. JURISDICTION

1. The Bankruptcy Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 157, 1331, and 1334. The United States District Court for the District of Montana has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b), and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

II. PARTIES BOUND; SUCCESSION AND ASSIGNMENT

2. This Settlement Agreement applies to, is binding upon, and shall inure to the benefit of the Parties hereto, their legal successors and assigns, and any trustee, examiner or receiver appointed in the Bankruptcy Case.

III. DEFINITION OF SITE

3. For purposes of this Settlement Agreement, the UBMC Site will be defined as: (1) the area in Lewis and Clark County, Montana lying within sections 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 31, 32, 33 and 34, Township 15 North, Range 6 West, P.M.M. (the "Upper Blackfoot Mining Complex"); (2) the Blackfoot River Basin (*i.e.*, the main stem of the Blackfoot River, its floodplain, its associated groundwater systems and its tributaries) within the geographic area described in subparagraph (1) and any portion of the main stem of the Blackfoot River, its floodplain and associated groundwater systems downstream to its confluence with the Clark Fork River where hazardous substances (including hazardous or deleterious substances under CECRA) released from the Upper Blackfoot Mining Complex have come to be located; and (3) any contiguous area adjacent to the Upper Blackfoot Mining Complex where hazardous substances, including hazardous or deleterious substances under CECRA, originating on and released from the Upper Blackfoot Mining Complex have, by natural migration, come to be located.

4. For purposes of this Settlement Agreement, the United States Department of Agriculture Forest Service Site ("the USDA Forest Service Site") shall be defined as: (1) the properties identified in "The Stipulations Among the United States of America and the State of Montana and Atlantic Richfield Company and ARCO Environmental Remediation LLC (Collectively, "Atlantic Richfield Company"), and ASARCO, LLC

and American Smelting and Refining Company (Collectively, "ASARCO")," Stipulation Nos. 4-11, Attachment A hereto; (2) the Flosse and Louise patented claims; (3) the Blackfoot River Basin (*i.e.*, the main stem of the Blackfoot River, its floodplain, its associated groundwater systems and its tributaries) within the geographic area described in subparagraphs (1) and (2), and any portion of the main stem of the Blackfoot River, its floodplain and associated groundwater systems downstream to its confluence with the Clark Fork River where hazardous substances released from the geographic area described in subparagraphs (1) and (2) have come to be located; and (4) any contiguous area adjacent to the geographic area described in subparagraphs (1) and (2) where hazardous substances originating on and released from the geographic area described in subparagraphs (1) and (2) have, as a result of mining, milling or mineral exploration activity or by natural migration, occurring before lodging of the Settlement Agreement (pre-lodging), come to be located.

IV. CASH PAYMENTS

5. ASARCO shall pay cash in the amount of $8,000,000 by electronic funds transfer to the State not later than five (5) business days after the Effective Date as defined in Paragraph 52.

6. ASARCO shall pay, in the manner specified in Paragraph 9, cash in the amount of $500,000 to the United States not later than five (5) business days after the Effective Date as defined in Paragraph 52.

7. Not later than twenty (20) days after the Effective Date as defined in Paragraph 52, Atlantic Richfield shall pay cash in the amount of $8,000,000 by electronic funds

transfer to the State and shall pay, in the manner specified in Paragraph 9, cash in the amount of $500,000 to the United States.

8. The State shall provide its electronic funds transfer information to ASARCO and Atlantic Richfield no later than ten (10) days prior to the date on which payment is due. Upon receipt of any funds paid under this Agreement, the State will deposit the funds into a State special revenue fund, as provided for in MCA Section 17-2-102(1)(b)(i), to be known as the "UBMC Special Revenue Fund" ("UBMC Fund"), which shall be held and maintained by the State for the purposes of performing response actions and restoration actions in connection with the UBMC Site and reimbursing associated State interim and past costs. All interest and other earnings on the UBMC Fund shall be paid into the UBMC Fund, and no portion of the UBMC Fund or any earnings on the UBMC Fund is to be treated as a general revenue source or as State General Fund money, nor is any portion to be converted or transferred to the State General Fund, and may not be transferred to any other fund except as provided herein. As to the State's general unsecured claim provided for in Paragraph 10, any non-cash distributions to the State under the Plan of Reorganization in the Bankruptcy Case will be made in accordance with instructions provided by the State. For purposes of this Settlement Agreement, "response actions" includes both "response actions" under CERCLA and "remedial actions" under CECRA.

9. Cash distributions to the Forest Service shall be remitted in the form of a cashier's or certified check, referencing the USDA Forest Service Site (Mike Horse /Upper Blackfoot), to:

ASC – Receivables and Collections
Attn: Judie Wilson

USDA Forest Service Albuquerque Service Center
101 B Sun Avenue, NE
Albuquerque, NM 87109

All non-cash distributions under the Plan of Reorganization shall be made in accordance with instructions provided by the Forest Service.

V. ALLOWANCE OF CLAIMS

10. In addition to payments required under Section IV, in settlement and satisfaction of all claims and causes of action of the United States and the State covered by Paragraphs 26 and 28, including but not limited to all claims with respect to the USDA Forest Service Site asserted in the Proofs of Claim filed by the United States and all claims with respect to the UBMC Site asserted in the Proofs of Claim filed by the State, the United States shall have an allowed general unsecured claim against ASARCO in the total amount of $228,446.00 which shall be disbursed to the United States in accordance with Paragraph 9, and the State shall have an allowed general unsecured claim against ASARCO in the total amount of $19,771,554.00 which shall be disbursed to the State in accordance with Paragraph 8. The State agrees that, within 30 days of the Effective Date, it will withdraw its proofs of claim with respect to the UBMC Site from the following Proofs of Claim: ASARCO Master, Inc. (numbers 10526 and 10841)), ASARCO Consulting, Inc. (number10525) and American Smelting and Refining Company (incorporated 1975) (numbers 10527 and 10842). Such withdrawal shall be in a form satisfactory to the State and ASARCO. For plan voting purposes only, the Parties agree that $10,000,000.00 will be considered an allowed general unsecured claim of the United States, and $10,000,000.00 will be considered an allowed general unsecured claim of the State.

11. All allowed claims under this Settlement Agreement shall not be subordinated to other general unsecured claims pursuant to any provisions of the Bankruptcy Code or other applicable law that may be contended to authorize or provide for subordination of allowed claims, including without limitation sections 105 and 510 of the Bankruptcy Code.

12. Although the claims granted to the United States are described in Paragraph 10 as general unsecured claims, this description is without prejudice to the United States' alleged secured right of set-off against ASARCO's claim for tax refunds and nothing in this Settlement Agreement shall modify or waive such alleged secured claim of set-off.

13. With respect to the allowed unsecured claims set forth in Paragraph 10 for the United States and the State, only the amount of cash received by each government (and net cash received by each such government on account of any non-cash distributions) under this Settlement Agreement for the allowed general unsecured claims and not the total amount of the allowed claims, shall be credited by each government to any account for a particular site, which credit shall reduce the liability to such government of non-settling potentially responsible parties for the particular site by the amount of the credit.

VI. WORK TO BE UNDERTAKEN BY ASARCO

14. The work and other obligations described in Paragraphs 15 – 19 of this Section VI (Work to be Undertaken by ASARCO) are future obligations of ASARCO only, and are not activities for which Atlantic Richfield has or shall have any obligation to perform or fund under this Settlement Agreement.

15. Upon approval by DEQ, ASARCO shall timely construct and then shall operate and maintain a mechanical water treatment system for water discharged from the Mike

Horse Mine adit and the Anaconda Mine adit in compliance with the conditions to be specified in the Montana Pollution Discharge Elimination System permit MT-0030031 and any modifications or amendments, and any other permits needed to comply with the WQA (the "Permit"). In conjunction with this obligation, ASARCO shall capture and treat seepage from the Mike Horse Repository, including the so-called Upper Mike Horse seeps, the Lower Mike Horse seeps, the so-called passive wetland system, and the Anaconda Constructed Wetlands seeps. Within 90 days of the Effective Date, ASARCO shall provide a schedule for construction and operation to DEQ for approval of the water treatment system. ASARCO shall not undertake any further physical construction activities of the mechanical water treatment system unless and until the plans for the water treatment system have been approved by the Water Protection Bureau of DEQ, or as otherwise directed by DEQ. Upon the effective date of a Plan of Reorganization in the Bankruptcy Case, ASARCO shall also provide financial assurance in an amount sufficient for operating and maintaining the water treatment system to the extent and in a form provided for by applicable law, including Mont. Code Ann. Sections 75-10-719(9) and 75-10-721(7).

16. ASARCO shall maintain the Mike Horse Repository and the Carbonate Repository in compliance with all applicable laws, including financial assurances. Within six months of the Effective Date, ASARCO shall prepare an operations and maintenance plan for these repositories. Such plan shall include, but not be limited to, provision for periodic groundwater monitoring (using existing wells or wells to be installed by the State), inspections, and reports to the State, and shall be submitted to the State for approval. ASARCO will not be obligated to move or relocate either repository,

although the State may choose to move or relocate either or both repositories under State authority and at the State's expense. In the event the State elects to relocate either or both the Mike Horse or the Carbonate Repositories to a place elsewhere on ASARCO's property other than the Paymaster Repository, ASARCO shall remain responsible for operating and maintaining the relocated repository or repositories in compliance with all applicable laws, including financial assurances. However, should the relocation of either or both of the Mike Horse or the Carbonate Repositories increase ASARCO's operation and maintenance costs above those operations and maintenance costs incurred by ASARCO for the Mike Horse or the Carbonate Repositories prior to their relocation, ASARCO shall not be responsible for such increased costs beyond the amount that it would reasonably anticipate for operation and maintenance, including cap maintenance, annual site inspections, groundwater monitoring, weed control and revegetation, maintenance of stormwater controls and reporting, as of the Effective Date (including adjustments for inflation).

17. Should the State choose to move or relocate either or both of the Mike Horse and the Carbonate Repositories elsewhere on ASARCO property, other than to consolidate said repository or repositories with an existing repository, the State shall provide notice to ASARCO of its intent to relocate one or both repositories. ASARCO shall be entitled to review the location to which the repository is proposed to be moved and shall be entitled to propose an alternate location for such repository on ASARCO property. ASARCO shall also be entitled to review and provide comments on the design of such repository by the State and on the repository operation and maintenance plan to be developed by the State. ASARCO and the State shall make a good faith effort to resolve any dispute

regarding repository location or design prior to presenting the dispute to the Director of DEQ for final resolution. ASARCO shall be entitled to present its position in writing and shall, upon request, be allowed to meet with the Director and staff prior to any decisions being made. The decision of the Director shall be binding unless, within twenty (20) days of the receipt of the decision ASARCO files with the State Court and serves on DEQ a motion for judicial review of the Director's decision. ASARCO's motion shall set forth the nature of its dispute regarding the proposed location of the repository, the efforts made by the parties to resolve the dispute and the relief requested. DEQ may file a response to ASARCO's motion within twenty (20) days of receipt of the motion. Judicial review of ASARCO's motion shall be on the record developed during DEQ's administrative process and the dispute resolution process before DEQ and the Director's decision shall be overturned only to the extent it is determined to be arbitrary and capricious or otherwise not in accordance with law.

18. ASARCO hereby consents to the use of the Paymaster Repository for the deposition of tailings and waste rock that may be excavated by the State from various portions of the UBMC Site or for the consolidation of tailings and waste rock from other repositories on ASARCO-owned property, including tailings and waste rock from the Mike Horse or the Carbonate Repositories, undertaken in connection with response and restoration actions at the UBMC Site and USDA Forest Service Site. Thereafter, ASARCO shall continue to be responsible for operating and maintaining the Paymaster Repository in compliance with all applicable laws, including financial assurance. In the event that the consolidation of waste rock and tailings from other locations into the Paymaster Repository requires a new design or altered operations and maintenance plans,

ASARCO shall be entitled to review and provide comments on the design of the repository by the State and on the repository operation and maintenance plan to be developed by the State. ASARCO and the State shall make a good faith effort to resolve any dispute regarding repository design prior to presenting the dispute to the Director of DEQ for final resolution. ASARCO shall be entitled to present its position in writing and shall, upon request, be allowed to meet with the Director and staff prior to any decisions being made. The decision of the Director is binding and non-appealable.

19. ASARCO shall provide access at reasonable times to the UBMC Site and the USDA Forest Service Site for purposes of allowing the State and the United States to implement and maintain response actions and restoration actions. In addition, if the State determines that institutional controls on patented lands owned by ASARCO are needed to implement the response or restoration actions, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, then ASARCO shall cooperate with the State's efforts to secure such institutional controls, including, if required, by filing the appropriate covenants, easements, or other restrictions on such property. Should ASARCO object to the imposition of institutional controls on patented property, ASARCO and the State shall make a good faith effort to resolve any dispute regarding institutional controls prior to presenting the dispute to the Director of DEQ for final resolution. ASARCO shall be entitled to present its position in writing and shall, upon request, be allowed to meet with the Director and staff prior to any decisions being made. The decision of the Director is binding and non-appealable.

20. Nothing in this Agreement shall be deemed to prohibit ASARCO or any entity that acquires ASARCO's interests in the property that is subject to this Settlement

Agreement from using said property for mining purposes in accordance with the General Mining Law of 1872 (codified at various sections of Chapter 2 of Title 30 of the U.S. Code), as amended, or other applicable State or federal laws and regulations as would apply to any such mining activity in the State, provided that such use is consistent with ASARCO's obligations under this Settlement Agreement.

21. To the extent not previously produced to the State in the State Action or in response to a CECRA Section 707 information request, or to the United States in response to any CERCLA Section 104(e) information request, ASARCO and/or Atlantic Richfield shall, upon request, provide to the United States and the State copies of all non-confidential documents within the possession, custody, or control of ASARCO or Atlantic Richfield, respectively, or that of their respective contractors or agents, relating to the implementation of this Settlement Agreement, and any response actions or restoration actions performed or to be performed at the UBMC Site or USDA Forest Service Site.

22. With respect to ASARCO, the documents to be produced in response to a request under Paragraph 21, shall be those documents: (i) in the possession of Hydrometrics, Inc.; or (ii) located at ASARCO's offices in Phoenix, Arizona or its offices in Wallace, Idaho prior to lodging. ASARCO's obligation to produce the documents identified in Subparagraphs 22(i) and (ii) shall remain unaltered regardless of where such documents come to be located. Notwithstanding the foregoing, ASARCO is obligated to produce, in response to a request from the State or the United States under Paragraph 21, any non-confidential documents created after the date of lodging.

23. Except to the extent that such information is contained in or such conditions are identified in any of the sources set forth in Subparagraphs 43(i) – (iii), (v), or in (vi) as to the United States only, or in (vii) or (viii) as to the State only, the following shall be considered as new information or unknown conditions as to that Party for purposes of Section VIII (Reservation of Rights): (i) any information requested from, but not previously produced by ASARCO or by Atlantic Richfield, respectively, in the State Action prior to lodging, or (ii) any information requested in, but not previously produced by ASARCO or by Atlantic Richfield in response to any CERCLA Section 104(e) or CECRA Section 707 information request received by either ASARCO or Atlantic Richfield, respectively, prior to lodging, or (iii) any information provided by ASARCO or by Atlantic Richfield in response to a request made by the United States or the State under Paragraph 21 of this Settlement Agreement, provided that, with respect to information in the possession, custody or control of ASARCO concerning response actions or restoration actions performed at the Site prior to lodging, the information is found in documents in one of the locations specified in Paragraph 22 as of the lodging date.

24. All obligations of ASARCO and Atlantic Richfield to perform work under any existing orders issued by the State under CECRA, if any, relating to the UBMC Site are hereby discharged. All obligations of ASARCO and Atlantic Richfield to perform work under any existing orders issued by the United States under CERCLA, if any, relating to the USDA Forest Service Site are hereby discharged.

25. Nothing herein is intended to transfer either liability or a property interest from ASARCO or Atlantic Richfield to the United States or the State or any other person. Any

change in property status or ownership shall in no way alter ASARCO's responsibilities under this Section VI unless otherwise agreed to by the United States and the State.

VII. COVENANTS NOT TO SUE

26. United States Covenant Not to Sue as to ASARCO and Atlantic Richfield. Except as specifically provided in Section VIII (Reservation of Rights), with respect to the USDA Forest Service Site, the United States covenants not to take administrative action or assert any civil claims or civil causes of action including any action, claim or cause for injunctive relief, against ASARCO or Atlantic Richfield pursuant to Sections 106, 107(a), and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613(f); Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973; and any other claims with respect to the USDA Forest Service Site asserted in the Proofs of Claim filed by the United States. Further, and except as provided in Section VIII, with respect to any release or potential release of pollutants and contaminants, hazardous wastes, or hazardous substances at the USDA Forest Service Site, the United States covenants not to take administrative action or assert any civil claims or civil causes of action against ASARCO or Atlantic Richfield for any past, present or future discharges at or from the USDA Forest Service Site within the meaning of Sections 301(a), 309(b), and 311 of the CWA, 33 U.S.C. §§ 1311(a), 1319(b) and 1321. In addition, and except as provided in Section VIII, the United States covenants not to sue ASARCO or Atlantic Richfield for natural resource damages, including any costs of assessment, litigation and enforcement under CERCLA, the CWA or any State law with respect to the USDA Forest Service Site. These covenants do not apply to activities or operations conducted by either ASARCO or Atlantic Richfield at the USDA Forest Service Site after the

Effective Date. As to ASARCO only, these covenants also do not apply to ASARCO's continuing and future work obligations under Paragraphs 15 – 19 of Section VI (Work to be Undertaken By ASARCO).

27. Subject to Section VIII (Reservation of Rights), the United States agrees that, for the USDA Forest Service Site, this Settlement Agreement embodies the sole and exclusive obligations of Atlantic Richfield and the sole and exclusive obligations of ASARCO for the covenanted matters set forth in Paragraph 26. Subject to Section VIII (Reservation of Rights), the United States agrees that, for the USDA Forest Service Site, this Settlement Agreement embodies the sole and exclusive obligations of ASARCO for those matters set forth in Paragraphs 15 - 19 of this Settlement Agreement.

28. State Covenant Not to Sue as to ASARCO and Atlantic Richfield. Except as specifically provided in Section VIII (Reservation of Rights), with respect to the UBMC Site, the State covenants not to take administrative action or assert any civil claims or civil causes of action including any action, claim or cause for injunctive relief, against ASARCO or Atlantic Richfield pursuant to Sections 106, 107(a), and 113(f) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613(f); Sections 3004(u), 3004(v), 3008 and 7002 of RCRA, 42 U.S.C. §§ 6924(u), 6924(v), 6928 and 6972; and Sections 711, 714, 715(2) and 722 of CECRA, Mont. Code Ann. § 75-10-711, § 75-10-714, § 75-10-715(2) and § 75-10-722, and any other claims with respect to the UBMC Site asserted in the State Action and the Proofs of Claim filed by the State. Further, and except as provided in Section VIII, with respect to any release or potential release of pollutants and contaminants, hazardous wastes, or hazardous substances at the UBMC Site, the State covenants not to take administrative action or assert any civil claims or civil causes of

action against ASARCO or Atlantic Richfield for any past, present or future discharges at the UBMC Site within the meaning of Sections 301(a), 309(b), and 311 of the CWA, 33 U.S.C. §§ 1311(a), 1319(b), and 1321, or Sections 601, 602, 611, 613, 614 (except, as to ASARCO only, with respect to enforcement of an emergency order under 75-5-621), 615, 617, 631, and 635 of the WQA. In addition, and except as provided in Section VIII, the State further covenants not to sue ASARCO or Atlantic Richfield for natural resource damages, including any costs of assessment, litigation and enforcement under CERCLA, the CWA, CECRA, the WQA, or for recovery of damages under any Montana tort law theory with respect to the UBMC Site. These covenants do not apply to activities or operations conducted by either ASARCO or Atlantic Richfield at the UBMC Site after the Effective Date. As to ASARCO only, these covenants also do not apply to ASARCO's continuing and future work obligations under Paragraphs 15 – 19 of Section VI (Work to be Undertaken By ASARCO).

29. Subject to Section VIII (Reservation of Rights), the State agrees that, for the UBMC Site, this Settlement Agreement embodies the sole and exclusive obligations of Atlantic Richfield and the sole and exclusive obligations of ASARCO for the covenanted matters set forth in Paragraph 28. Subject to Section VIII (Reservation of Rights), the State agrees that, for the UBMC Site, this Settlement Agreement embodies the sole and exclusive obligations of ASARCO for those matters set forth in Paragraphs 15 - 19 of this Settlement Agreement.

30. The covenants set forth in Paragraphs 26 and 28 shall be effective after the Effective Date and upon receipt of all payments required under Paragraphs 5, 6, and 7 of this Settlement Agreement. The State and the United States shall promptly enforce the

payment obligations set forth in Paragraphs 5, 6 and 7 of this Settlement Agreement against any defaulting party for satisfaction of that defaulting party's payment obligations.

31. ASARCO and Atlantic Richfield each release the other from all claims, known or unknown, each may have against the other now or in the future with respect to the UBMC Site or the USDA Forest Service Site, that may arise under CERCLA, CECRA, RCRA, the CWA, the WQA or Montana tort law including any claim for contribution, reimbursement or injunctive relief. This release of claims shall not apply with respect to any defense, claim or cause of action that ASARCO or Atlantic Richfield may have, including claims against the other, in the event any claim or cause of action is asserted against ASARCO or Atlantic Richfield by any third party, and also in the event any claim is asserted by the United States or the State under Paragraph 41(iv) or Paragraph 42(iv), respectively, related to the USDA Forest Service Site or the UBMC Site. The release set forth in this Paragraph 31 shall inure to the benefit of and be binding upon ASARCO, Atlantic Richfield and their respective successors and assigns, officers, directors, employees and, as to ASARCO only, also ASARCO's trustees.

32. This Settlement Agreement in no way impairs the scope and effect of ASARCO's discharge under Section 1141 of the Bankruptcy Code as to any third parties or as to any claims that are not addressed by this Settlement Agreement.

33. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in Paragraphs 26, 28, 41, and 42, and notwithstanding any other provision of this Settlement Agreement, such covenants not to sue shall also apply to ASARCO's successors and assigns, officers, directors, and employees, and to trustees of

ASARCO appointed in the Bankruptcy Case, but only to the extent that their alleged liability arises solely from their status as a successor or assign, officer, director, or employee, or is based solely on their actions taken in their official capacity as trustee of ASARCO.

34. Without in any way limiting the covenants not to sue (and the reservations thereto) set forth in Paragraphs 26, 28, 41, and 42, and notwithstanding any other provision of this Settlement Agreement, such covenants not to sue shall also apply to Atlantic Richfield's, including ARCO Environmental Remediation LLC's, successors and assigns, officers, directors, and employees, but only to the extent that their alleged liability arises solely from their status as a successor or assign, officer, director, or employee of Atlantic Richfield.

35. The covenants not to sue contained in Paragraphs 26 and 28 of this Settlement Agreement extend only to ASARCO and/or Atlantic Richfield and the persons described in Paragraphs 33 and 34 above, and do not extend to any other person. Nothing in this Settlement Agreement is intended as a covenant not to sue or a release from liability for any person or entity other than ASARCO, Atlantic Richfield, the United States, the State and the persons described in Paragraphs 33 and 34 above. The United States, the State, ASARCO, and Atlantic Richfield expressly reserve all claims, demands, defenses and causes of action, either judicial or administrative, past, present or future, in law or equity, which the United States, the State, ASARCO or Atlantic Richfield may have against all other persons, firms, corporations, or entities for any matter arising at or relating in any manner to the sites or claims addressed herein.

36. Nothing in this Settlement Agreement shall be deemed to limit the authority of the United States or the State to take response action under Section 104 of CERCLA, 42 U.S.C. § 9604, Sections 711 and 712 of CECRA, or any other applicable law or regulation, or to alter the applicable legal principles governing judicial review of any action taken by the United States or the State pursuant to that authority. Nothing in this Settlement Agreement shall be deemed to limit the information gathering authority of the United States or the State under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, Section 707 of CECRA, or any other applicable federal or state law or regulation, or to excuse ASARCO or Atlantic Richfield from any disclosure or notification requirements imposed by CERCLA, CECRA, the CWA or any other applicable federal or state law or regulation. Nothing in this Settlement Agreement shall affect the State's permitting authority related to implementation of this Settlement Agreement, including the ability of the State to enforce against ASARCO or any party, other than Atlantic Richfield, pursuant to the WQA or other applicable law.

37. Any failure by ASARCO or by Atlantic Richfield to satisfactorily perform their respective obligations under this Settlement Agreement that occurs following receipt by the United States and the State of all payments required under Paragraphs 5, 6 and 7 shall not affect the applicability of the United States' and the State's covenants set forth in Paragraphs 26 and 28, respectively, as to the other party.

38. <u>ASARCO and Atlantic Richfield Covenants Not to Sue as to the United States.</u> ASARCO and Atlantic Richfield individually covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the USDA Forest Service Site, including but not limited to: any direct or indirect claim for reimbursement

from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, and 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, and 9613, or any other provision of law; any claims against the United States, including any of their departments, agencies or instrumentalities, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, under CECRA Sections 711, 715, 719, 722, 724 and 726, Mont. Code Ann. Sections 75-10-711, 75-10-715, 75-10-719, 75-10-722, 75-10-724, and 75-10-726, RCRA Sections 3004(u) and (v), 3008 and 7002, 42 U.S.C. §§ 6924(u) and (v), 6928, and 6972, CWA Sections 301(a), 311, 504 and 505, 42 U.S.C. §§ 1311(a), 1321, 1364, and 1365, and any other theory of recovery or provision of law with respect to the USDA Forest Service Site; and any claims arising out of the response action or restoration activities at the USDA Forest Service Site. Further, ASARCO and Atlantic Richfield individually covenant and agree not to interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions and restoration actions at the USDA Forest Service Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d). ASARCO and Atlantic Richfield individually covenant and further agree not to oppose or challenge the response action selected by the Forest Service for the USDA Forest Service Site as set forth in the Action Memorandum dated July 23, 2007.

39. <u>ASARCO and Atlantic Richfield Covenants Not to Sue as to the State.</u> ASARCO and Atlantic Richfield individually covenant not to sue and agree not to assert any claims or causes of action against the State with respect to the UBMC Site, including but not

limited to: any direct or indirect claim for reimbursement or funding under State law, including any direct or indirect claim for reimbursement from the Environmental Quality Protection Fund (established pursuant to Section 704 of CECRA), the Orphan Share Account (established pursuant to Section 743 of CECRA), or any other provision of law; any claims against the State, including any of its departments, agencies, instrumentalities, officials, employees, agents, and contractors, under Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, under CECRA Sections 711, 715, 719, 722, 724 and 726, Mont. Code Ann. Sections 75-10-711, 75-10-715, 75-10-719, 75-10-722, 75-10-724, and 75-10-726, RCRA Sections 3004(u) and (v), 3008 and 7002, 42 U.S.C. §§ 6924(u) and (v), 6928, and 6972, CWA Sections 301(a), 311, 504 and 505, 42 U.S.C. §§ 1311(a), 1321, 1364, and 1365, the WQA, and any other theory of recovery or provision of law, including damages under any Montana tort law theory, with respect to the UBMC Site; and any claims arising out of the response action or restoration activities at the UBMC Site. Further, ASARCO and Atlantic Richfield individually covenant and agree not to interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions and restoration actions at the UBMC Site. ASARCO and Atlantic Richfield individually covenant and further agree not to oppose or challenge either the final selected response actions or the final restoration plan adopted by the State for the UBMC Site.

40. Mutual Covenants Between United States and the State. In consideration of the commitments made between United States and the State with regard to the USDA Forest Service Site, and except as specifically provided in Section VIII (Reservations of Rights), and to the extent that such authority exists, the United States and the State covenant not

to sue or to take administrative action against each other pursuant to Sections 106, 107(a) and 113(f) of CERCLA and Sections 7002 and 7003 of RCRA, Sections 301(a), 309(b), and 311 of the CWA, Sections 601, 602, 611, 613, 614 (except with respect to enforcement of an emergency order under 75-5-621), 615, 617, 631, and 635 of the WQA, and Sections 711, 714, 715, 722, 724, and 726 of CECRA, relating to USDA Forest Service Site. These covenants extend only to the United States and the State. Notwithstanding any other provision of this Settlement Agreement, this covenant shall not affect the enforceability of the Watershed Restoration Agreement between the United States and the State, which sets forth, as between the United States and the State, the governments' relationship as to funding and for work on lands within the Helena National Forest. Nothing in this Settlement Agreement shall vest in ASARCO or Atlantic Richfield any right to enforce the Watershed Restoration Agreement. Only the United States and the State may enforce the Watershed Restoration Agreement.

VIII. RESERVATION OF RIGHTS

41. United States' Reservations. The covenants not to sue set forth in Section VII do not pertain to any matters other than those expressly specified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against ASARCO or Atlantic Richfield or other persons with respect to all other matters, including but not limited to: (i) any action to enforce the terms of this Settlement Agreement, as applicable to ASARCO and/or Atlantic Richfield; (ii) liability under CERCLA, RCRA, the CWA, or other federal law arising from actions of ASARCO or the actions of Atlantic Richfield at the USDA Forest Service Site after the Effective Date that create liability for that Party; (iii) claims for recovery of natural resource damages

arising from natural resource injury outside the boundaries of the USDA Forest Service Site which result from releases not attributable to the USDA Forest Service Site; and (iv) claims, including injunctive relief, for response costs and response actions arising from new information or unknown conditions at the USDA Forest Service Site provided that, as to ASARCO only, this clause shall apply only to portions of the USDA Forest Service Site owned by ASARCO in fee or subject to patented or unpatented mining claims as of the Effective Date and shall not apply to the unpatented mining claims formerly held by ASARCO that are referenced in Paragraph 48.

42. State Reservations. The covenants not to sue set forth in Section VII do not pertain to any matters other than those expressly specified therein. The State reserves, and this Settlement Agreement is without prejudice to, all rights against ASARCO or Atlantic Richfield or other persons with respect to all other matters, including but not limited to: (i) any action to enforce the terms of this Settlement Agreement, as applicable to ASARCO and/or Atlantic Richfield; (ii) liability under CERCLA, CECRA, RCRA, the CWA, the WQA, or other federal or state law arising from actions of ASARCO or actions of Atlantic Richfield at the UBMC Site after the Effective Date that create liability for that Party; (iii) claims for recovery of natural resource damages arising from natural resource injury outside the boundaries of the UBMC Site which result from releases not attributable to the UBMC Site; and (iv) claims, including injunctive relief, for response costs and response actions arising from new information or unknown conditions at the UBMC Site provided that, as to ASARCO only, this clause shall apply only to portions of the UBMC Site owned by ASARCO in fee or subject to patented or

unpatented mining claims as of the Effective Date and shall not apply to the unpatented mining claims formerly held by ASARCO that are referenced in Paragraph 48.

43. For purposes of Paragraphs 41 and 42, and except as provided in Paragraph 23, with respect to new information or unknown conditions, the information and conditions known to the United States and the State regarding the USDA Forest Service Site and the UBMC Site, respectively, shall include: (i) information contained in and conditions identified in the EE/CA prepared by ASARCO for the Forest Service dated July 23, 2007 and in any documents in the administrative record for the EE/CA; (ii) information contained in and conditions identified in the Proofs of Claim filed by the United States, the State and Atlantic Richfield; (iii) information contained in and conditions identified in the expert reports submitted by the United States, the State, Atlantic Richfield or ASARCO and the documents cited in the reports prepared by such experts; (iv) as to the State only, any information contained in or conditions identified as a result of the State-lead Remedial Investigation/Feasibility Study for the UBMC Site; (v) information produced to the United States or the State in responses to CERCLA Section 104(e) and CECRA Section 707 requests, including any documents produced by ASARCO or Atlantic Richfield in support of any 104(e) or 707 response; (vi) as to the United States only, information contained in and conditions identified in any other non-privileged and non-confidential records of the Forest Service, as of the Effective Date relating to the USDA Forest Service Site; and (vii) as to the State only, documents produced by ASARCO or Atlantic Richfield, and other responses to discovery in the State Action and (viii) as to the State only, information contained in and conditions identified in any other non-privileged and non-confidential records of any State agency as of the Effective Date

relating to the UBMC Site. For purposes of Paragraph 41, the fact that a response action or restoration action at the USDA Forest Service Site, has failed shall not constitute, in and of itself, an unknown condition or new information, unless the failure of the response action or restoration action results from an unknown condition or new information. For purposes of Paragraph 42, the fact that a response action or restoration action at the UBMC Site has failed shall not constitute, in and of itself, an unknown condition or new information, unless the failure of the response action or restoration action results from an unknown condition or new information. As to Atlantic Richfield only, a determination by either the United States or the State that wastes from mining, milling or mineral exploration activity prior to the Effective Date are present on the USDA Forest Service Site in greater quantities than estimated in the EE/CA shall not constitute an unknown condition or new information.

44. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

45. ASARCO and Atlantic Richfield Reservations. ASARCO and Atlantic Richfield each reserve their defenses, contribution, and other claims and counterclaims to any claim asserted by the United States under Paragraph 41 or by the State under Paragraph 42 against ASARCO or Atlantic Richfield (including, with respect to ASARCO, the defense that such claims have been discharged in the Bankruptcy Case), but only for contribution and other claims and counterclaims arising from the same matters, transactions and occurrences that are raised in or directly related to the United States' or the State's claims that are asserted against ASARCO or Atlantic Richfield.

IX. DISMISSAL OF STATE COURT ACTION

46. Upon the Bankruptcy Court Order becoming a final and unappealable order and the Montana District Court entering a final and unappealable judgment approving the terms of the Settlement Agreement, the State shall file a conditional motion to dismiss with prejudice its Second Amended Complaint in the State Action. In this conditional motion, the State will request that the dismissal not be entered unless and until affidavits are received by the State Court from the respective, authorized Atlantic Richfield and ASARCO officials or notices are provided by the respective counsel of record for Atlantic Richfield and ASARCO in the State Action declaring that the payments required in Paragraphs 5, 6, and 7 of this Settlement Agreement have been made.

X. CONTRIBUTION PROTECTION

47. The Parties hereto agree that, as of the Effective Date, the United States, the State, ASARCO and Atlantic Richfield are each entitled to protection from contribution actions or claims by third parties as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), Section 719(1) of CECRA, Mont. Code Ann. § 75-10-719(1), or other applicable law, for matters addressed in this Settlement Agreement. For purposes of this Section X, the matters addressed in this Settlement Agreement include all past and future direct and indirect costs of response actions and all claims for natural resource damages, including restoration actions and past and future litigation and assessment costs of the United States with respect to the USDA Forest Service Site. For purposes of this Section X, the matters addressed in this Settlement Agreement also include all past and future direct and indirect costs of response actions and all claims for natural resource damages

and other damages, including restoration actions and past and future litigation and assessment costs of the State with respect to the UBMC Site.

XI. STIPULATION REGARDING OWNERSHIP

48. The United States and the State stipulate for purposes of the Bankruptcy Case that ASARCO is not the current owner of the Fir No. 3, Grace E, Hog All Extension, Howard, Detroit Extension Amended, Modoc (Amended), Pine Hill Extension (Amended), Rothsay (Amended) and Sterling Extension unpatented mining claims and the Little Nell Millsite claim, and that ASARCO shall be deemed *nunc pro tunc* to have validly abandoned such claims prior to the filing of the Bankruptcy Case and in accordance with applicable provisions of the Bankruptcy Code.

XII. JUDICIAL APPROVAL

49. This Settlement Agreement shall be subject to the entry of an order by the Bankruptcy Court approving the Settlement Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Bankruptcy Court Order") as well as the entry of an order by the State Court (as set forth in Paragraph 46) and the entry of an order by the U.S. District Court for the District of Montana (the "Montana District Court"). ASARCO shall move promptly for approval of this Settlement Agreement by the Bankruptcy Court and shall exercise commercially reasonable efforts to obtain a Bankruptcy Court Order. The United States and the State agree to request approval of this Settlement Agreement under CECRA and CERCLA by the Montana District Court. The United States and the State reserve their rights to withdraw from or withhold consent if the public comments regarding the Settlement Agreement lodged in the Montana District Court disclose facts

or considerations which indicate that the Settlement Agreement is inappropriate, improper, or inadequate.

50. The effectiveness of this Settlement Agreement is contingent on the approvals required by Paragraph 49. If this contingency is not satisfied, this Settlement Agreement shall be null and void and of no further effect.

XIII. RETENTION OF JURISDICTION

51. The Bankruptcy Court shall retain jurisdiction over both the subject matter of this Settlement Agreement and the Parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purpose of enabling any of the Parties to apply to the Bankruptcy Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Settlement Agreement, or to effectuate or enforce compliance with its terms. Provided, however, the Parties agree that (i) the State Court alone has jurisdiction for (a) any State enforcement of ASARCO's obligation under the Permit to operate and maintain the water treatment system pursuant to the Montana Water Quality Act, Mont. Code Ann. §§ 75-5-101 *et seq.* or other applicable authority; and (b) any judicial review under Paragraph 17 of the Settlement Agreement; (ii) the Montana District Court alone retains jurisdiction for: (a) the enforcement of the covenants and reservations as to Atlantic Richfield; and (b) the enforcement of the covenants and reservations as to ASARCO if and when a Plan of Reorganization in the Bankruptcy Case becomes effective.

XIV. EFFECTIVE DATE

52. The "Effective Date" of this Settlement Agreement shall be the date upon which the State files a conditional motion as provided in Paragraph 46.

XV. SIGNATORIES/SERVICE

53. The signatories for the Parties each certify that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally such Party to this document.

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT REGARDING THE UPPER BLACKFOOT MINING COMPLEX SITE

FOR THE UNITED STATES

Date: April 22, 2008

Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: April 22, 2008

John N. Moscato
Alan S. Tenenbaum
David L. Dain

Environment and Natural Resources Division
Environmental Enforcement Section
U.S. Department of Justice

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT REGARDING THE UPPER BLACKFOOT MINING COMPLEX SITE

FOR THE STATE OF MONTANA

Montana Department of Environmental Quality

Date: 4/2/, 2008

Richard H. Opper
Director
Montana Department of Environmental Quality

Date: 4/4/, 2008

Cynthia D. Brooks
DEQ Legal Counsel
Montana Department of Environmental Quality
1100 N. Last Chance Gulch
P.O. Box 200901
Helena, Montana 59620-0901

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT REGARDING THE UPPER BLACKFOOT MINING COMPLEX SITE

Montana Department of Justice Natural Resource Damage Program

Date: 4/2, 2008

Mike McGrath
Attorney General

Date: 4/2, 2008

Robert G. Collins
Supervising Assistant Attorney General
Mary Capdeville
Assistant Attorney General
Montana Department of Justice
Natural Resource Damage Program
1301 Lockey Avenue
P.O. Box 201425
Helena, Montana 59620-1425

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT REGARDING THE UPPER BLACKFOOT MINING COMPLEX SITE

FOR ASARCO:

Date: 4/10, 2008

Thomas L. Aldrich
Vice President, Environmental Affairs

Date: 4/10, 2008

Douglas E. McAllister
Executive Vice President, General

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT REGARDING THE UPPER BLACKFOOT MINING COMPLEX SITE

FOR ATLANTIC RICHFIELD COMPANY:

Date: 4 April, 2008

Luke Keller
President

Date: _____, 2008

Asteghik Khajetoorians, Esq.
Senior Attorney
Atlantic Richfield Company
6 Centerpointe Drive, LPR 6-550
La Palma, CA 90623

Date: _____, 2008

William J. Duffy, Esq.
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

FOR ARCO ENVIRONMENTAL REMEDIATION LLC:

Date: _____, 2008

Robin Bullock
Vice President

Date: _____, 2008

Asteghik Khajetoorians, Esq.
Senior Attorney

Date: _____, 2008

William J. Duffy, Esq.
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT REGARDING THE UPPER BLACKFOOT MINING COMPLEX SITE

FOR ATLANTIC RICHFIELD COMPANY:

Date: _____, 2008

_____
Luke Keller
President

Date: _____, 2008

_____
Asteghik Khajetoorians, Esq.
Senior Attorney
Atlantic Richfield Company
6 Centerpointe Drive, LPR 6-550
La Palma, CA 90623

Date: _____, 2008

_____
William J. Duffy, Esq.
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

FOR ARCO ENVIRONMENTAL REMEDIATION LLC:

Date: April 2, 2008

_____
Robin Bullock
Vice President

Date: _____, 2008

_____
Asteghik Khajetoorians, Esq.
Senior Attorney

Date: _____, 2008

_____
William J. Duffy, Esq.
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT REGARDING THE UPPER BLACKFOOT MINING COMPLEX SITE

FOR ATLANTIC RICHFIELD COMPANY:

Date: _____, 2008

_____
Luke Keller
President

Date: 4-7, 2008

_____
Asteghik Khajetoorians, Esq.
Senior Attorney
Atlantic Richfield Company
6 Centerpointe Drive, LPR 6-550
La Palma, CA 90623

Date: April 8, 2008

_____
William J. Duffy, Esq.
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

FOR ARCO ENVIRONMENTAL REMEDIATION LLC:

Date: _____, 2008

_____
Robin Bullock
Vice President

Date: 4-7, 2008

_____
Asteghik Khajetoorians, Esq.
Senior Attorney

Date: April 8, 2008

_____
William J. Duffy, Esq.
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

Attachment A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	**Case No. 05-21207**
ASARCO, LLC, *et al.*	§	**Chapter 11**
Debtors	§	**(Jointly Administered)**
	§	

STIPULATIONS AMONG THE UNITED STATES OF AMERICA AND THE STATE OF MONTANA AND ATLANTIC RICHFIELD COMPANY AND ARCO ENVIRONMENTAL REMEDIATION LLC (COLLECTIVELY, "ATLANTIC RICHFIELD COMPANY"), AND ASARCO, LLC and AMERICAN SMELTING AND REFINING COMPANY (COLLECTIVELY, "ASARCO")

The Parties agree that the following stipulations are not to be used for any purpose other than the above-entitled proceeding.

1. Any liability for ownership and/or operation of the Mike Horse Mine and tailings impoundment which would attach to the Mike Horse Mining and Milling Company, a Montana corporation that was incorporated in 1940, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 to 9675, shall, for the purposes of the above captioned proceedings, attach to and be attributed to Asarco.

2. Asarco, in its own capacity and as the successor to the liabilities of the Mike Horse Mining and Milling Company, admits that Asarco is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as a person who at the time of the disposal of hazardous substances operated a facility, the Mike Horse Mine and tailings impoundment, situated within the Mike Horse/Upper Blackfoot Site.

3. Hazardous substances have been released from the Mike Horse Mine and tailings impoundment.

4. The following patented claims located within the area generally known as the Upper Blackfoot Mining Complex ("UBMC") have been owned by Asarco since November 19, 1981, and upon Asarco's bankruptcy filing, became property of Asarco's bankruptcy estate under section 541(a) of the Bankruptcy Code that has not been abandoned under section 554, 11 U.S.C.

§§ 541(a) and 554. These claims were conveyed to Asarco by The Anaconda Company ("Anaconda") on November 19, 1981.

Anaconda MS 9286
Big Dick MS 9286
Black Diamond MS 9287
Blackfoot Belle MS 10502
Carbonate No. 3 MS 10556
Carbonate No. 5 MS 10556
Cicero MS 9287
Consolation MS 10502
Copper Gate MS 9806
Copper Bell MS 9286
Daylight MS 9806
Eureka MS 10105
Edith MS 7356
Golden Eagle MS 10502
Helena MS 7353
Blue Cristle MS 9286
Bonanza MS 9287
Carbonate No. 1 MS 10557
Carbonate No. 2 MS 10557
Jumbo MS 9287
Little Joe MS 9286
Mary P MS 9285
Midnight MS 9806
Midnight Millsite MS 10106
Paymaster MS 9287
Summit Fraction MS 10105
Sunlight Fraction MS 9806
Sunset MS 9806
Tunnel Site MS 10105
Yellowstone MS 9806

5. The following patented claims located within the UBMC have been owned by Asarco since February 24, 1953, and upon Asarco's bankruptcy filing, became property of Asarco's bankruptcy estate under section 541(a) of the Bankruptcy Code that has not been abandoned under section 554, 11 U.S.C. §§ 541(a) and 554. The Mike Horse Mining and Milling Company conveyed all of these claims to Asarco on February 24, 1953. From June 1, 1953 until July 3, 1964, Asarco leased these claims to Norman Rogers. Effective July 3, 1964, the Rogers lease was assigned to Anaconda and Anaconda conveyed its leasehold interests in these claims back to Asarco under the Anaconda / Asarco November 19, 1981 Deed.

Black Ore MS 10371
Capital MS 7354
Copper Wreath MS 7357
Denver Lode Claim MS 7351
Detroit MS 10371
Hog All MS 10371
Little Nell MS 10371
Mike Horse MS 10371
Pine Hill MS 10371
Snowdrift MS 7352
Sterling MS 10371

6. The following unpatented claims have been owned by Asarco since February 24, 1953, and upon Asarco's bankruptcy filing, became property of Asarco's bankruptcy estate under section 541(a) of the Bankruptcy Code that has not been abandoned under section 554, 11 U.S.C. §§ 541(a) and 554. The Mike Horse Mining and Milling Company conveyed all these claims to Asarco on February 24, 1953. From June 1, 1953 until July 3, 1964, Asarco leased these claims to Norman Rogers. Effective July 3, 1964 the Rogers lease was assigned to Anaconda and Anaconda conveyed its leasehold interests in these claims back to Asarco under the Anaconda / Asarco November 19, 1981 Deed.

Al BLM 32874
Apex No.1-3 BLM 32876-878
Beauty BLM 32903
Big Chief BLM 32904
Capital No. 2 BLM 32912
Contact BLM 32919
Conken No.7 BLM 32917
Conken No.10 BLM 32918
Denver No. 1 BLM 32923
Denver No. 5 BLM 32924
Golden or Golden Quartz BLM 32936
Jane BLM 32945
Jeep BLM 32946
Lode Star BLM 32951
Keystone BLM 32948
K&B or K and B BLM 32947
Middle BLM 32952
Mineral State BLM 32953
Morris Fraction BLM 32955
Norman BLM 32956
North Central BLM 32957
Owl BLM 32958
Pat BLM 32959
Phoebe BLM 32960
Pine Hill No. 2 BLM 32962
Pleasant Hill BLM 32964
Power BLM 32967
Snafu BLM 32977
Short BLM 32976
Snow Belle No. 1 BLM 32978
Snow Belle No. 2 BLM 32979
Sunlight BLM 33004
Svenske BLM 33005
Troy BLM 33007
Toby BLM 33006
Red Dyke or Dike BLM 32971
Rader BLM 32969
R. Crow BLM 32968
Valley View BLM 33009
View BLM 33010
Viking BLM 33011
Val BLM 33008

7. The following unpatented claims have been owned by Asarco since November 19, 1981, and upon Asarco's bankruptcy filing, became property of Asarco's bankruptcy estate under section 541(a) of the Bankruptcy Code that has not been abandoned under section 554, 11 U.S.C. §§ 541(a) and 554. These claims were conveyed to Asarco by Anaconda under the Anaconda / Asarco November 19, 1981 Deed.

A BLM 32872
A&H BLM 32873
AR BLM 32875
Axe 1-5 BLM 32879-883
Axe 6 BLM 77165
B BLM 32886
Bar 1-7 BLM 32887-893
Bar 10-18 BLM 32894-902
Bell of the Hill BLM 37476
Blue Bell Fraction BLM 32905
Bobby Boy BLM 37477
Bruce BLM 32906
Bruce Nos. 2-5 BLM 32907-910
C BLM 32911
Calliope BLM 37478
Carbogold or Carbogold Plain BLM 32913
Carbonate Ore or Carbonate BLM 32916
Carbonate or Carbonate Claim BLM 32914
Carbonate No. 2 BLM 32915
Caribou BLM 37479
Copper Lane Nos. 1-3 BLM 37480-482
(50% interest only)
D BLM 32920
Deer Nos. 1 - 3 BLM 32921, 32922, 37483
Diamond T BLM 32926
E BLM 32927
Edith No. 2 BLM 32928
Emert BLM 37484
Esmeralda BLM 37485
EV BLM 37486
Eye BLM 32929
F BLM 32930

Fir Nos. 1-2 BLM 32931-932
FR BLM 32934
G BLM 32935
H BLM 32938
H&A BLM 32939
Helena No. 2 BLM 32941
Helena No 3 BLM 32942
HG BLM 32940
Ida BLM 37487
Iron Hill Millsite BLM 35659
Iron Hill BLM 37488
Jean BLM 37489
Land's End Fraction or Lands End BLM 32949
Lucy BLM 37490
Monty BLM 37491
Norge BLM 37492
Pine Nos. 1-16 BLM 37493-508
Pine No. 17 BLM 32961
Porphyry Nos. 1 & 2 BLM 32965-966
Prospect BLM 37509
Puddles BLM 37510
R.A.F or RAE BLM 32970
Radium BLM 37511
Rainbow BLM 37512
Red Dyke BLM 37513
Red Ore BLM 32972
Rico BLM 32973
Ridge BLM 32974
Sea Fraction BLM 37514
Sky Scraper BLM 37515
Spruce Nos. 1-15 BLM 32980-994
Spruce Nos. 21-28 BLM 32995-33002
Swan Fraction BLM 37516
Swede BLM 37517
Tac BLM 37518
Tic BLM 37519
Tinto BLM 37520
Toe BLM 37521

8. The following unpatented claims were acquired by Asarco on February 24, 1953. On or about August 24, 2006 Asarco filed the document attached hereto as Exhibit A with the Bureau of Land Management. The Mike Horse Mining and Milling Company conveyed all these claims to Asarco on February 24, 1953. From June 1, 1953 until July 3, 1964, Asarco leased these claims to Norman Rogers. Effective July 3, 1964, the Rogers lease was assigned to Anaconda and Anaconda conveyed its leasehold interests in these claims back to Asarco under the Anaconda / Asarco November 19, 1981 Deed.

Detroit Extension BLM 32925
Grace E BLM 32937
Hog All Extension BLM 32943
Howard BLM 32944
Little Nell Millsite BLM 32950
Modoc BLM 32954
Pine Hill Extension BLM 32963
Rothsay BLM 32975
Sterling Extension BLM 33003

9. The following unpatented claim was acquired by Asarco on November 19, 1981. On or about August 24, 2006 Asarco filed the document attached hereto as Exhibit A with the Bureau of Land Management. Prior to conveying this claim to Asarco on November 19, 1981, Anaconda located the claim in June 1967.

Fir No. 3 BLM 32933

10. The following properties (with legal descriptions) within the UBMC are properties owned by Asarco since November 19, 1981. These properties were conveyed to

Asarco by Anaconda on November 19, 1981, and upon Asarco's bankruptcy filing, became property of Asarco's bankruptcy estate under section 541(a) of the Bankruptcy Code that has not been abandoned under section 554, 11 U.S.C. §§ 541(a) and 554.

Tract 1:
The fee surface estate only for the following described real property situated in Township 15 North, Range 6 West, M.P.M. Lewis & Clark County, Montana; containing 189.50 acres.

Section 19
Lots 1 and 6, except those portions of said Lot 6 lying North of Montana State Highway No. 20; the Northwest Quarter of the Northeast Quarter (NW ¼ NE ¼) except those certain tracts deeded to Lake E. Henson and Katy J. Henson recorded in Book 219 of Deeds at Page 101 and to Ray Jensen and Bernice P. Jensen as recorded in Book 231 of Deeds at Page 4 records of Lewis & Clark County, Montana.

Section 20
Lots 5, 9, 15, and 16 except those portions of said lots lying North of State Highway No. 20 (Hwy 200).

Tract 2:
The fee surface and mineral estates of the following described real property situated in Township 15 North, Range 7 West, M.P.M., Lewis & Clark County, Montana; containing 40 acres.

Section 24
The Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼).

Tract 3:
The fee surface and mineral estates of the following described real property situated in Township 15 North, Range 6 West, M.P.M., Lewis & Clark County, Montana; containing 139 acres.

Section 19
Lots 2 and 3; the Northwest Quarter of the Southeast Quarter (NW ¼ SE ¼) and the Southwest Quarter of the Northeast Quarter (SW ¼ NE ¼) except that portion occupied by State Highway No. 20 (Hwy 200).

11. Asarco located the following unpatented claims on September 18 and 19, 1982 and since that time has continuously owned these unpatented claims. Upon Asarco's bankruptcy filing, these claims became property of Asarco's bankruptcy estate under section 541(a) of the Bankruptcy Code that has not been abandoned under section 554, 11 U.S.C. §§ 541(a) and 554.

Rob #1 BLM 91880
Tom #1 BLM 91881
Tom Frac BLM 91882

12. The attached map (Attachment B, hereto) was prepared by a consultant for the Atlantic Richfield Company. The map shows the approximate claim and tract boundaries for the claims and tracts identified in Stipulation Nos. 4 - 10, above, other claims and tracts and specifically highlights Asarco's present fee ownership of property at the UBMC. The Parties agree that Attachment B is to be used for demonstrative purposes only.

13. Asarco admits that unless the defenses set forth in Section 107(b) of CERCLA, 42 U.S.C. § 9607(b), are applicable, Asarco is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as the present owner of at least one patented mining property, situated within the Mike Horse / Upper Blackfoot Site, upon which hazardous substances have come to be located.

14. Asarco admits that unless the defenses set forth in Section 107(b) of CERCLA, 42 U.S.C. § 9607(b), are applicable, Asarco is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the past owner of at least one patented mining property, situated within the Mike Horse / Upper Blackfoot Site, at the time when hazardous substance were disposed of upon such patented mining property.

15. The Parties agree that the statements in Stipulations 6, 7, 8, 9 and 11, above, shall not be deemed or otherwise construed to be an admission by Asarco that the unpatented claims were or are valid or that Asarco owns or owned any rights in the land based on the unpatented claims.

16. Stipulations 4 through 11 do not apply with respect to the streambeds, if any, which may be owned by the State of Montana.

Stipulated By: _____
Tony M. Davis, Baker Botts, L.L.P.
As counsel for and on behalf of Debtor and Debtor -in-Possession.

Stipulated By: _____
William J. Duffy, Davis Graham & Stubbs LLP
As counsel for and on behalf of Atlantic Richfield Company

Rob #1 BLM 91880
Tom #1 BLM 91881
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12. The attached map (Attachment B, hereto) was prepared by a consultant for the Atlantic Richfield Company. The map shows the approximate claim and tract boundaries for the claims and tracts identified in Stipulation Nos. 4 - 10, above, other claims and tracts and specifically highlights Asarco's present fee ownership of property at the UBMC. The Parties agree that Attachment B is to be used for demonstrative purposes only.

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15. The Parties agree that the statements in Stipulations 6, 7, 8, 9 and 11, above, shall not be deemed or otherwise construed to be an admission by Asarco that the unpatented claims were or are valid or that Asarco owns or owned any rights in the land based on the unpatented claims.

16. Stipulations 4 through 11 do not apply with respect to the streambeds, if any, which may be owned by the State of Montana.

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Tony M. Davis, Baker Botts, L.L.P.
As counsel for and on behalf of Debtor and Debtor -in-Possession.

Stipulated By: _____
William J. Duffy, Davis Graham & Stubbs LLP
As counsel for and on behalf of Atlantic Richfield Company

Stipulated By: 8/17/07

Robert Collins, as counsel for and on behalf of the State of Montana

Stipulated By: _____ 8/16/2007

John N. Moscato, Senior Counsel, as counsel for and on behalf of the United States of America.