JS 44 (Rev. 12/12)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

## I. (a) PLAINTIFFS

ATLANTIC RICHFIELD COMPANY

**(b)** County of Residence of First Listed Plaintiff Harris County, Texas
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*
SEE ATTACHMENT

## DEFENDANTS

UNITED STATES OF AMERICA, THE PUEBLO OF LAGUNA, an Indian tribe, and LAGUNA CONSTRUCTION COMPANY, INC.

County of Residence of First Listed Defendant
*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

## II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

## III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

*(For Diversity Cases Only)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ❒ 1 | ❒ 1 | Incorporated *or* Principal Place of Business In This State | ❒ 4 | ❒ 4 |
| Citizen of Another State | ❒ 2 | ❒ 2 | Incorporated *and* Principal Place of Business In Another State | ❒ 5 | ❒ 5 |
| Citizen or Subject of a Foreign Country | ❒ 3 | ❒ 3 | Foreign Nation | ❒ 6 | ❒ 6 |

## IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

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## V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 USC 2201; 42 USC 9607; 42 USC 9613

Brief description of cause:
CERCLA claims and other relief concerning cost of environmental clean-up.

## VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

**DEMAND $** Cost recovery, contribution, declaratory & injunctive relief.

CHECK YES only if demanded in complaint:
**JURY DEMAND:** ❒ Yes ❒ No

## VIII. RELATED CASE(S) IF ANY

*(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE
01/21/2015

SIGNATURE OF ATTORNEY OF RECORD
s/ Mark F. Sheridan

**FOR OFFICE USE ONLY**

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW MEXICO**

| | |
|---|---|
| ATLANTIC RICHFIELD COMPANY,<br><br>Plaintiff,<br><br>v.<br><br>UNITED STATES OF AMERICA, THE PUEBLO OF LAGUNA, an Indian tribe, and LAGUNA CONSTRUCTION COMPANY, INC.,<br><br>Defendants. | Case No. |

# COMPLAINT

For its Complaint against Defendants the United States of America ("United States"), the Pueblo of Laguna ("Laguna"), and Laguna Construction Company, Inc. ("Laguna Construction"), Atlantic Richfield Company ("Atlantic Richfield") alleges as follows:

## NATURE OF THE ACTION

1. Atlantic Richfield seeks a declaration of its rights and other relief to prevent the United States from imposing upon Atlantic Richfield responsibility for funding or performing any environmental reclamation or remediation work at the Jackpile-Paguate Uranium Mine (the "Jackpile Site" or the "Site"), because Atlantic Richfield paid $43,600,000 to the Laguna and the United States in 1986 for a comprehensive settlement and release of Atlantic Richfield's environmental liability for the Site.

2. The Jackpile Site is located within the Pueblo of Laguna Reservation in Cibola County, New Mexico. Before, during, and after mining operations at the Site by Atlantic Richfield's predecessor, the United States held legal title to some or all of the land within the Site. The United States currently holds legal title to some or all of the land within the Site. At all relevant times, the federal trust doctrine imposed, and continues to impose, fiduciary duties upon the United States with regard to all of the land within the Jackpile Site.

3. The United States promoted and encouraged uranium exploration and mining on the Pueblo of Laguna Reservation, including at the Jackpile Site. Beginning in the 1940s, the United States implemented a decades-long program to locate, acquire, and process uranium ore and to purchase uranium ore and uranium concentrate for military purposes. The United States' uranium procurement program ultimately included the Jackpile Site. Until the late 1960s, the United States was the sole purchaser of all the uranium produced from domestic uranium mines, including from the Jackpile-Paguate Uranium Mine. During this period, the United States exercised pervasive control over the domestic uranium industry, including all aspects of uranium exploration, production, processing, and marketing.

4. As a property owner of the Jackpile Site, the United States at all times owned, and still owns, raw materials and waste products at the Site, including uranium ore, protore, waste rock, and overburden. The United States knew and specifically intended that the Jackpile-Paguate Uranium Mine be used to produce uranium for the Government's defense program. The United States knew that mining uranium from property it owned was an essential step in the production of the uranium ore and uranium concentrate that it intended to purchase, and that mining uranium at the Jackpile Site would result in the disposal of hazardous waste.

5. After mining ended at the Jackpile Site, the United States helped negotiate the Agreement to Terminate Leases dated December 12, 1986 with Atlantic Richfield. As required by the federal trust doctrine, the United States approved the Laguna's entry into the Agreement to Terminate Leases, and the Secretary of the Department of Interior signed the agreement.[1]

6. Under that agreement, the Laguna assumed all responsibility and liability for the cleanup, reclamation, and other environmental remedial action at the Jackpile Site and agreed to perform those responsibilities in a manner that would protect human health and the environment and otherwise satisfy the standards of the United States.

7. In reliance upon these promises and upon comprehensive releases by Defendants of any responsibility or liability for environmental remedial action (including any work required by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")), Atlantic Richfield paid $43.6 million to be used by the Laguna, under the supervision of the United States, to perform the environmental cleanup required at the Jackpile Site.

8. The United States chose the remedy for the Jackpile Site after issuing a Final Environmental Impact Statement and a Record of Decision which, it represented, was the culmination of "four years of public hearings and exhaustive technical studies." The United States further represented that its chosen plan "meets the safety requirements of the United States Environmental Protection Agency."[2]

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[1] A copy of the Agreement to Terminate Leases is attached as Exhibit A to this Complaint.

[2] The United States made these representations in a Department of the Interior news release, attached as Exhibit B.

9. Under the Agreement to Terminate Leases and the United States' continuing ownership of the Jackpile Site and its trust responsibility, Defendants, collectively, had comprehensive and exclusive control of a fully-funded cleanup project for almost 30 years.

10. Through a combination of poor design and poor implementation, Defendants failed to remedy the conditions that existed at the Jackpile Site when the parties executed the Agreement to Terminate Leases in 1986. Rather, Defendants' decisions, actions, and inaction actually made the Site's condition worse than it was when mining ended more than 30 years ago.

11. When independent consultants hired by the Laguna concluded that Defendants had done a poor job of reclaiming the Jackpile Site, Defendants did not respond with additional efforts to discharge their responsibilities and honor their promises. Instead, the Laguna urged the United States Environmental Protection Agency ("EPA") to add the Jackpile Site to the National Priorities List ("NPL") and to shift the responsibility for performing environmental remediation to Atlantic Richfield. EPA listed the Jackpile Site on the NPL by publication in the Federal Register on December 12, 2013, thereby making it a Superfund site.

12. EPA is well aware that the United States owns property at the Jackpile Site and that the Laguna agreed to "assume full and complete responsibility and liability under all applicable laws," for the cleanup of the Site in exchange for the $43.6 million paid by Atlantic Richfield. EPA also knows that the United States was directly involved in, and responsible for, the inadequate cleanup of the Jackpile Site, including by choosing an inadequate reclamation plan and then deviating from its own Record of Decision. EPA knows, too, that the United States promised to refrain from "attempting to obligate [Atlantic Richfield] to engage in cleanup,

reclamation, or other environmental remedial action at the Mine" in the Agreement to Terminate Leases.

13. Nonetheless, EPA has repeatedly refused to request that Defendants assume any responsibility for addressing the conditions now existing at the Site. Instead, EPA issued a "Special Notice" to Atlantic Richfield and is attempting to require Atlantic Richfield to assume sole financial responsibility—beyond the $43.6 million in 1986 dollars it already paid—for a second cleanup of the Jackpile Site.

14. To avoid the injustice of being held responsible for Defendants' failures to live up to their promises and responsibilities, Atlantic Richfield, pursuant to CERCLA sections 107 and 113, seeks recovery of past response costs, contribution for past response costs, and a declaration that Defendants are liable for future environmental response costs. In addition, under the Agreement to Terminate Leases, Atlantic Richfield seeks: (a) a declaratory judgment that the Laguna is responsible for addressing the environmental condition of the Jackpile Site under all applicable laws, including CERCLA; (b) a permanent injunction requiring the Laguna to discharge responsibility for reclamation and remediation at the Jackpile Site under all applicable laws, including responsibilities that may be imposed by EPA pursuant to CERCLA; and (c) to recover damages caused by the Laguna's failure to discharge the responsibility it assumed under the Agreement to Terminate Leases.

## JURISDICTION, VENUE, AND STATUTORY REQUIREMENTS

15. With regard to the CERCLA claims, the Court has original and exclusive subject matter jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b).

16. With regard to the claims against the Laguna for declaratory judgment, injunction, and breach of contract that are based on the Agreement to Terminate Leases, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the claims require interpretation and resolution of the parties' duties and responsibilities under federal law. Alternatively, the Court has supplemental jurisdiction over these claims under 28 U.S.C. § 1367.

17. With regard to the CERCLA claims, venue is proper under 42 U.S.C. § 9613(b) because the releases that are the subject of this action occurred in this judicial district.

18. With regard to the claims against the Laguna for declaratory judgment, injunction, and breach of contract that are based on the Agreement to Terminate Leases, venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to this action occurred in this judicial district, the property that is the subject of this action is situated in this judicial district, and because the Laguna consented to be sued in a federal court of competent jurisdiction for actions brought under the Agreement to Terminate Leases.

19. An actual, existing, and justiciable controversy exists between Atlantic Richfield and the United States, the Laguna, and Laguna Construction for each and every claim in this Complaint concerning Defendants' obligation to reimburse Atlantic Richfield for response costs that it has incurred and to assume responsibility for all future costs required for environmental cleanup of the Jackpile Site.

20. With regard to the CERCLA claims, the United States and the Laguna have waived sovereign immunity pursuant to 42 U.S.C. § 9620(a)(1).

21. With regard to the CERCLA and breach of contract, declaratory judgment, and injunction claims asserted against the Laguna, the Laguna expressly waived sovereign immunity

in the Agreement to Terminate Leases. In addition, the Laguna waived all statutory and common law defenses that are based on the Laguna's status as a tribe relating to any claims brought under environmental laws by Atlantic Richfield with regard to the Jackpile Site. By virtue of the Laguna's ownership of Laguna Construction and the conduct of Laguna Construction at the Jackpile Site, this waiver applies to Laguna Construction to the extent sovereign immunity would otherwise apply to Laguna Construction.

22. Atlantic Richfield has provided a copy of this Complaint to the Attorney General of the United States and to the Administrator of EPA in accordance with section 113(*l*) of CERCLA, 42 U.S.C. § 9613(*l*).

## PARTIES

23. Plaintiff Atlantic Richfield Company is a Delaware corporation, and the successor to The Anaconda Company ("Anaconda") through a series of corporate transactions. References in this Complaint to Anaconda include Atlantic Richfield unless the context requires otherwise.

24. Atlantic Richfield is a "person" within the meaning of CERCLA section 101(21). 42 U.S.C. § 9601(21).

25. Defendant United States of America includes the United States Department of Interior ("DOI"), acting through the United States Bureau of Indian Affairs ("BIA"), the United States Bureau of Land Management ("BLM") and the United States Geological Survey ("USGS"), the United States Department of Energy ("DOE") and the United States Nuclear Regulatory Commission ("NRC"), both as successors to the now-defunct Atomic Energy Commission ("AEC"), as well as other current and former agencies and instrumentalities of the United States government (collectively "United States").

26. The United States is a "person" within the meaning of CERCLA section 101(21). 42 U.S.C. § 9601(21).

27. Defendant Pueblo of Laguna is a federally recognized Native American tribe located in New Mexico.

28. The Laguna is a "person" within the meaning of CERCLA section 101(21) with respect to the Jackpile Site because Atlantic Richfield is a "person" and the Laguna assumed Atlantic Richfield's responsibility and liability for the cleanup, reclamation, and other environmental action at the Jackpile Site under all applicable laws, including CERCLA.

29. The Laguna also became a "person" within the meaning of CERCLA section 101(21) by entering into the Agreement to Terminate Leases in which it waived any defense based on its status as a tribe. This waiver and the Laguna's consent to be sued in this Court induced Atlantic Richfield to enter into the Agreement to Terminate Leases. By this conduct the Laguna is estopped from arguing that it is not a "person" within the meaning of CERCLA section 101(21).

30. The Laguna is a "person" within the meaning of CERCLA section 101(21). 42 U.S.C. § 9601(21).

31. Defendant Laguna Construction Company, Inc. is a for-profit corporation registered to do business in New Mexico and with its principal place of business in New Mexico. Laguna Construction originally was incorporated as a New Mexico corporation, and it performed the majority, if not all, of the reclamation work at issue in this case before it was reorganized as a federally-chartered tribal corporation. As named in this Complaint, Laguna Construction

includes both the New Mexico corporation that was dissolved and/or merged out of existence and the surviving federally-chartered tribal corporation.

32. Laguna Construction is a "person" within the meaning of CERCLA section 101(21). 42 U.S.C. § 9601(21).

## GENERAL ALLEGATIONS

### The United States Created And Controlled The Domestic Uranium Industry For The Sole Purpose Of Producing And Supplying Uranium To The United States Government.

33. In 1946, Congress passed the Atomic Energy Act, 60 Stat. 755, that created the AEC. The purpose of the Act was to establish a "program for Government control for the production, ownership, and use of fissionable material to assure the common defense and security and to insure the broadest possible exploitation of the fields." *Id.* at 756.

34. The AEC immediately began a nationwide program to discover and acquire uranium ore and concentrate. However, the AEC was not equipped to perform the large scale mining and milling of uranium ore required for its national defense and security program.

35. The AEC devised and implemented a plan to incentivize and to assist private industry to mine and mill uranium ore and then sell uranium to the United States Government. The AEC promoted uranium mining and milling operations with incentives to the mining companies that already operated in the Western United States.

36. The Atomic Energy Act made it illegal for any person to process or to sell uranium to any person or entity other than the AEC. The AEC issued licenses allowing the transport of uranium ore from mines to approved buying stations and mills operated exclusively by the AEC or government contractors.

37. Between 1948 and 1957, the AEC issued a number of "Circulars" providing various types of incentives for private industry to engage in uranium exploration, production, and sales to the United States. These incentives included guaranteed ore prices, haulage and mine development allowances, production bonuses, and grade premium allowances. The incentives provided by the Circulars encouraged mining companies to explore for uranium and sell uranium ore to the only legal buyers at the time: the AEC, or uranium milling companies under contract with the AEC.

The United States' Involvement In Uranium Exploration, Mining, And Milling.

38. Beyond the financial incentives contained in the AEC Circulars, the AEC also helped develop the necessary equipment and techniques to prospect, mine, and mill uranium ore. The AEC initially operated its own uranium mine in Colorado to determine the actual costs of mining uranium to set the price it would later pay private miners for the ore. The AEC also built pilot test milling plants in Colorado to develop and refine uranium milling techniques. The AEC commissioned and conducted many thousands of hours of flight time for airborne radiometric scanning of tens of thousands of square miles of potentially productive uranium mining territory. The AEC created maps of detected radiometric anomalies and made them available for posting at designated public places throughout the Western United States to further encourage private-sector uranium exploration, development, and mine production.

39. In addition to the airborne radiometric reconnaissance, the Government's uranium exploration program included the withdrawal of hundreds of thousands of acres of public land for exploration purposes, the leasing of Indian reservation, trust, and allotted lands for uranium exploration and uranium mining, geological studies of these lands, physical exploration of these

lands by means of drilling projects and extractions of ore samples by both the AEC and the USGS, and building over a thousand miles of mining roads. All of these activities were designed to, and did, motivate private industry to become involved in uranium exploration and mining.

40. The AEC and the USGS implemented a comprehensive drilling program that was designed to find high-grade uranium ore as rapidly as possible for mining and delivery to existing mills, to supply reserves for proposed mills, to show miners where additional reserves were located near their existing mines, and to develop reserves in areas where private companies would not normally make the attempt. To fulfill the AEC's goal of locating uranium as rapidly as possible, the AEC and the USGS drilled millions of feet of exploratory and development holes.

The United States' Purchase Of Uranium Ores And Concentrates.

41. As the sole legal buyer, the AEC established ore-buying stations throughout the Western United States in areas where it appeared that there was uranium production potential sufficient to support a uranium processing mill. The United States' establishment of the ore buying stations, in effect, was to jump-start the production process by giving miners an economic justification to produce uranium ore in advance of the time the ore could be processed.

42. AEC source material licenses only authorized the transport of uranium ore to buying stations where, under the AEC Circulars, miners were paid for ore with uranium content of 0.10% or above. The AEC would not purchase ore with uranium content below 0.10%, and some ore buying stations sought only higher-content ore for the mills they served. The transport of uranium ore below 0.10% uranium was discouraged, and any sub-grade uranium ore brought

to an ore buying station could be confiscated as liquidated damages pursuant to the AEC Circulars.

43. Mining companies did not have the opportunity to negotiate the price they were paid for uranium ore. The AEC unilaterally set ore prices on a sliding scale that increased with uranium content. The AEC set uranium ore prices at a level that the Government determined would cover the cost of production and allow for a reasonable profit for miners, but the set price for uranium ore did not factor in the costs of waste disposal, mine reclamation, or environmental remediation.

44. The AEC's uranium exploration program and its ore-buying stations were preliminary steps to the main objective of its raw materials program—the acquisition of uranium concentrate or "yellow cake." Uranium concentrate was produced by refining high-grade uranium ore in AEC or private company-owned mills. When a mill was built to process uranium ore, the AEC would close its ore-buying station in that area and sell its accumulated stockpiles of ore to the mill for processing.

45. Between 1947 and 1960 the AEC entered into approximately 32 procurement contracts with private companies for the purchase of uranium concentrate. The procurement contracts varied in their terms, but most provided for the construction of a uranium mill to be operated by the private contractor, specified the particular uranium mines that could provide the raw materials for the mill, and contained a fixed price for the uranium ore that the mill owner or operator would pay to the miners. Such contracts also provided the required specifications for uranium concentrate, which was then delivered to the AEC, where it was weighed, sampled, and

assayed to determine the amount to be paid to the contractors under the terms of the applicable contracts.

Uranium Mining For The United States'
Domestic Uranium Procurement Program Required Waste Production And Disposal.

46. The process of extracting uranium ore from the earth necessarily entailed disturbing and extracting other uranium-containing material that had lesser concentrations of uranium in it. The minimum concentrations of uranium to qualify the material as "uranium ore" were set by the AEC Circulars and AEC source material licenses. Uranium-containing materials having lower concentrations of uranium were classified as "waste rock" for which miners received no payment.

47. Given the AEC's strict regulation of source and byproduct materials and its control over the price paid for uranium ore (and not paid for waste rock), and the DOI's authority under leases in place at many of the uranium mine sites, the Government had the authority to control the final disposition of all materials extracted under its uranium production program, including directing mining companies on waste disposal practices and requiring reclamation of mine sites.

48. The production of waste at uranium mine sites was a known and intended result of obtaining the high-grade uranium ore and uranium concentrate sought by the AEC. However, the AEC did not include the cost of managing waste or the cost of waste disposal or mine reclamation in the price it paid miners for uranium ore. The AEC knew and intended that the uranium mining conducted under its uranium procurement program would result in the disposal of uranium-containing waste at the mines that sourced its program.

The End Of The United States' Domestic Uranium Procurement Program.

49. The AEC's uranium program was a resounding success, with dramatic increases in reported ore reserves and mill capacity. In May 1958, the AEC removed the legal prohibition on selling uranium concentrates to any person or entity other than the AEC. There was, however, no such market for private sales. From 1958 to 1962, written permission from the AEC was required for the sale of uranium concentrate to any entity other than the United States government. No such sales occurred. After April 1962, sales were allowed to any properly licensed buyer. As a practical matter, however, the United States Government provided the only viable market for domestic uranium from the 1940s through the end of the 1960s.

50. In 1962, it was apparent that the private market for uranium concentrate would not be sufficient to sustain the domestic uranium industry at the end of 1966 when the AEC's program was scheduled to end. Thus, in November 1962, the AEC announced its "stretch out" program for 1967 though 1970.

51. Under the "stretch out" program, government contractors could voluntarily defer a portion of their 1962 through 1966 contract commitments to the United States until 1967 or 1968 in exchange for a commitment by the United States to purchase an additional amount of uranium concentrate, equal to the quantity deferred, in 1969 or 1970.

52. The United States' domestic uranium procurement program ended in 1970, with the last deliveries of uranium concentrate to the United States taking place in late 1970 and early 1971. From 1948-1971, the AEC bought over 173,665 tons of uranium concentrate through its domestic uranium program, at a cost of over $2.9 billion.

The United States' Involvement In Historical Uranium Mining Operations At The Jackpile Site.

53. The Jackpile Site is located within the boundaries of the Pueblo of Laguna Indian Reservation ("Laguna Reservation").

54. The Laguna Reservation was created by Executive Orders dated July 1, 1910 and March 21, 1917, and by Congressional enactments.

55. The United States owns legal title to land within the Laguna Reservation and holds that land in trust for the Laguna. The federal trust doctrine applies to all land underlying the Jackpile Site. The federal trust doctrine gives the United States the power to control and approve transactions involving real property in the Laguna Reservation, and charges the United States with the responsibility for protecting the Laguna's interest in those lands.

56. By at least the early 1950s, AEC geologists had began exploring the Laguna Reservation for uranium bearing deposits, with the intention that uranium from the Laguna Reservation be mined and milled for the Government's uranium program.

57. The AEC recommended to the Laguna that they obtain the assistance of a legitimate mining company to develop uranium deposits on the Laguna Reservation so that the Laguna could receive royalties and the uranium ore could be mined and sold to the AEC.

58. When Anaconda Copper Mining Company,[3] a predecessor of Atlantic Richfield, and the Laguna entered into a prospecting agreement dated October 18, 1951 that allowed Anaconda to explore for uranium on approximately 410,000 acres of the Laguna Reservation, the United States had to approve that agreement for it to become effective.

[3] Anaconda Copper Mining Company changed its name to The Anaconda Company in 1955.

59. The BIA approved the prospecting agreement and it became effective on November 27, 1951.

60. Starting in 1952, Anaconda and the Laguna entered into a series of mining leases permitting Anaconda to prospect for, and mine uranium on, portions of the Laguna Reservation. Each of these leases became effective only after they were approved by the BIA.

61. Starting in 1952, Anaconda entered into a series of contracts with the AEC to supply the AEC with milled uranium. As provided by those contracts, the AEC conducted its own evaluations of ore reserves, production capacity, and mining plans. These contracts required Anaconda to obtain the raw materials—the uranium ore—from the Jackpile Site.

62. Anaconda began mining at the Jackpile Site in 1952.

63. From 1952 until 1970, 9,498,698 tons of uranium ore were mined at the Jackpile Site, which produced 46,194,350 pounds of uranium concentrate, all of which was purchased by the United States.

64. Throughout the mining period, Anaconda paid royalties to the Laguna based on the value of each ton of uranium ore mined from the Jackpile Site, as established by the applicable AEC price schedules.

65. Throughout the mining period, the BIA examined Anaconda's books to ensure that Anaconda paid all royalties owed to the Laguna. These royalty payments were substantial. For example, between 1976 and 1980, Anaconda paid the Laguna from $5 to $10 million in royalties each year.

66. Throughout the mining period, several United States agencies involved themselves in various ways in mining operations.

67. During the 1970s and 1980s, the BLM conducted inspections of mining and reclamation operations, which sometimes resulted in the issuance of instructions to Anaconda concerning mining reclamation activities.

68. The United States Geological Survey, an agency of the DOI, also exercised control over mining and reclamation operations.

69. Anaconda had to send its underground mining plans to the USGS for its approval.

70. Like the BLM, the USGS conducted inspections of mining and reclamation operations at the Jackpile Site. In its inspection reports, the USGS instructed Anaconda to take certain measures related to mining and reclamation operations.

71. As the closure of the mine in early 1982 approached, the USGS directed Anaconda to perform certain actions to preserve the ability to recover additional uranium in the future.

The United States And The Laguna Assumed Responsibility For,
Liability For, And Control Of The Cleanup And Reclamation Of The Jackpile Site.

72. Before mining operations ceased in 1982, Atlantic Richfield developed a series of comprehensive remediation plans that it was prepared to implement at the Jackpile Site.

73. The Laguna, however, decided—with the United States' approval and concurrence—that if Atlantic Richfield would agree to provide the funds necessary to perform that work, the Laguna would prefer to assume the responsibility for reclaiming the Jackpile Site and meeting the requirements of all environmental laws.

74. By accepting this responsibility, the Laguna gained the opportunity to employ several hundred of its members for several years to perform the reclamation work through its newly formed Laguna Construction Company.

75. Over a period of several years, the United States worked with the Laguna to determine what measures should be taken and the cost of performing that work. At the same time, the United States and the Laguna negotiated with Atlantic Richfield.

76. On December 12, 1986, the Agreement to Terminate Leases became effective upon its approval by the Secretary of the Interior.

77. Pursuant to that agreement, the mining leases relating to the Jackpile Site were terminated.

78. In addition, the United States, the Laguna, and Anaconda agreed that the Agreement to Terminate Leases would "establish a final and binding legal basis for reclamation" of the Jackpile Site.

79. As a central part of the "final and binding legal basis" for environmental cleanup of the Jackpile Site, Atlantic Richfield, the United States, and the Laguna, agreed that the Laguna would "assume full and complete responsibility and liability under all applicable laws ... for ... the cleanup, reclamation or other environmental remedial action at the Mine."

80. Consistent with its assumption of all responsibility for environmental cleanup at the Jackpile Site, the agreement also provides that Anaconda would "be deemed to have met all of its reclamation and other environmental obligations relating to the Mine."

81. The Laguna, with the approval of the United States, also released "Anaconda from all responsibility and liability for reclamation of the Mine, for performing other environmental remedial measures relating to the Mine, and for all other obligations arising under the leases."

82. When it approved the Agreement to Terminate Leases, the United States also released Anaconda from environmental liability at the Jackpile Site.

83. The Secretary of the Interior, on behalf of the United States, expressly agreed to "refrain from ... attempting to obligate Anaconda to engage in cleanup, reclamation or other environmental remedial action at the Mine."

84. In reliance upon these promises, Anaconda agreed that the Laguna, acting under the direction and approval of the United States, could assume responsibility for environmental cleanup at the Jackpile Site.

85. Anaconda also agreed that it would fund the cost of that work by paying the Laguna $43.6 million in the manner specified by the Secretary of the Interior. The United States and the Laguna determined that $43.6 million was more than adequate to pay for the necessary environmental cleanup at the Site.

86. Indeed, before the Laguna executed the Agreement to Terminate Leases, its Tribal Council passed a resolution authorizing the Governor of the Pueblo of Laguna to execute the agreement. As part of its resolution, the Tribal Council noted that the BLM had calculated that the total cost of the reclamation would be $34.7 million. Thus, Defendants persuaded Atlantic Richfield to pay about $9 million more than the amount that they anticipated spending to address environmental issues at the Site.[4]

87. As required by the Agreement to Terminate Leases, Atlantic Richfield donated to the Laguna all of its structures and facilities at the Jackpile Site, including a railroad spur and water, sewage, and power systems.

[4] A copy of the Tribal Council's resolution is attached as Exhibit C.

88. Atlantic Richfield, on behalf of Anaconda, fulfilled all of its obligations under the Agreement to Terminate Leases. Among other things, Atlantic Richfield paid the $43.6 million liquidated cleanup amount, donated its facilities, and provided the Laguna with all of its mining plans, technical reports and studies, and other data and information Anaconda had relating to the Jackpile Site.

89. Upon discharging its responsibilities, Atlantic Richfield left the Jackpile Site and has not, in any form or manner, occupied it at any time since then. Thus, for almost 30 years, Defendants have had exclusive control over the Jackpile Site.

Defendants Designed And Planned The Cleanup Project.

90. The United States analyzed several alternatives for reclaiming the Jackpile Site in a Final Environmental Impact Statement prepared by the BLM and the BIA and filed with EPA on October 31, 1986.

91. As they acknowledged in the Final Environmental Impact Statement, the federal trust doctrine imposed upon the United States the responsibility to determine the extent of the environmental remediation required at the Jackpile Site.

92. After completing the Final Environmental Impact Statement in October 1986, the BIA and BLM promulgated a Record of Decision in December 1986 that established the requirements for environmental remediation at the Jackpile Site.

93. The Record of Decision states that its two most important objectives were to "ensure human health and safety" at the Jackpile Site and to "reduce the releases of radioactive elements and radionuclei to as low as reasonably achievable" at the Site.

94. The Record of Decision states that the selected alternative was the "environmentally preferred alternative" and would "ensure that adverse impacts are reduced to the extent possible" at the Jackpile Site.

95. In March 1987, the BIA and the Laguna entered into a "Cooperative Agreement ... to perform the management, coordination and administration" of the environmental remediation work for which Anaconda had paid $43.6 million.

96. Under the Cooperative Agreement, the BIA had "approval responsibility over project decisions," including all contracts, designs and drawings, investments and financial plans, and the retention of key project personnel.

97. After the Laguna and the United States entered into the Cooperative Agreement, the Laguna, the BIA, and other agencies of the United States formed the Technical Proposal Evaluation Committee to review and provide recommendations regarding proposals and reports relating to the engineering designs for the remediation work.

98. Roger Baer, a BIA engineer, worked directly with Jacobs Engineering, the contractor chosen to prepare the technical designs for the project, and provided input on the engineering and technical designs.

With The BIA's Approval, The Laguna Contracted With Laguna Construction So That The Laguna Would Realize Additional Financial Benefits From The Cleanup Project.

99. The BIA and the Laguna agreed that Laguna Construction would conduct the environmental cleanup work at the Jackpile Site.

100. Laguna Construction, however, was not selected because it had the experience and expertise to perform such a cleanup.

101. Indeed, Laguna Construction had no experience whatsoever and was created for the purpose of performing the Jackpile Site's environmental cleanup work.

102. As the BIA and the Laguna agreed, Laguna Construction would be formed and engaged because the Jackpile Site cleanup presented "unique opportunities [for Laguna Construction] to develop technical expertise as well as financial resources that will enable [the Laguna] to develop a construction firm capable of operating other projects."

103. In other words, the BIA and the Laguna agreed that the $43.6 million—an amount exceeding Defendants' estimate for reclaiming the Jackpile Site by almost $9 million—paid by Atlantic Richfield to obtain a comprehensive release and to fund the necessary environmental remedial measures represented an "opportunity" for the Laguna and Laguna Construction to use the Jackpile Site as a training ground to satisfy Laguna Construction's "need [for] training and experience."

104. The BIA and the Laguna decided to use the Jackpile Site cleanup project "as a stepping stone to a continuing source of income and employment."

The BLM Allowed The Laguna And Laguna Construction To Attempt
The Cleanup Of The Jackpile Site Without Adequate Supervision And Oversight.

105. Although both the BIA and the BLM knew that their trust responsibilities for the Laguna and the lands of the Laguna Reservation required them to ensure that the cleanup work was performed adequately, and that the Laguna and Laguna Construction lacked the expertise and experience necessary to perform a complex environmental cleanup, the United States failed to ensure adequate supervision and oversight of the Laguna's and Laguna Construction's cleanup work at the Jackpile Site.

106. In 1986, the BIA had refused to approve the Agreement to Terminate Leases unless an independent Construction Management Contractor was engaged to manage the Jackpile Site cleanup project.

107. As the cleanup proceeded, however, the Laguna lobbied the BIA to give Laguna Construction more control over the project and to reduce the role of the Construction Management Contractor. With full knowledge of Laguna Construction's lack of experience and without the consent or approval of Atlantic Richfield, the BIA acquiesced. In 1990, the BIA shifted most of the independent Construction Management Contractor's responsibilities to Laguna Construction.

108. Although the BIA recognized that a Construction Management Contractor would provide more independent verification of project work and better project oversight, it shifted the Construction Management Contractor's responsibilities to Laguna Construction because continuing close scrutiny of Laguna Construction by an independent management contractor could jeopardize the BIA's and the Laguna's goal of making Laguna Construction "a viable, long-term enterprise."

109. The Construction Management Contractor was replaced with a Construction Engineering Contractor, whose responsibilities were limited to third-party verification and review of work packages.

110. Later in 1990, the BIA eliminated the Construction Engineering Contractor and gave full responsibility for project management to the Laguna and Laguna Construction.

Defendants Performed Some Remediation Work At The Jackpile Site.

111. Although Laguna Construction contracted to perform the Jackpile Site cleanup, the BIA and the BLM remained heavily involved in all aspects of that work.

112. Roger Baer, the BIA civil engineer who was directly involved in developing the reclamation's technical design, was charged with managing the finances of the cleanup project, reviewing and approving reports, and informing the BIA of any problems that might require action by the BIA.

113. To perform these functions, Baer attended weekly project meetings and reviewed and approved all work packages.

114. The BIA also required the Laguna to file annual status and compliance reports.

115. Throughout the period when cleanup work was performed, the BLM also was involved in engineering decisions including with regard to radon cover thickness, soil thickness in the pits, stream channel adjustments, and dump stabilization.

116. In addition, the BLM continued its quarterly inspections during the reclamation period and provided day-to-day project oversight during periods when the BIA project engineer post was vacant.

117. In 1995, Defendants "completed" the Jackpile Site cleanup two years ahead of schedule and several million dollars below budget.

Defendants Significantly Worsened The Environmental Conditions At The Jackpile Site.

118. During their almost 30 years of exclusive control of the Jackpile Site, Defendants' decisions, actions, and inaction significantly increased the risk of releases of hazardous

substances and made environmental conditions at the Jackpile Site worse than they were when Atlantic Richfield left the property.

119. As described below, the increased risk was caused by a combination of:

a. inadequate assessment of the environmental risks created by the reclamation approach Defendants chose and described in the Record of Decision;

b. poor engineering design by Defendants;

c. deviations from the Record of Decision that decreased the environmental protections originally prescribed by Defendants;

d. Defendants' failure to perform adequate monitoring to determine whether Defendants' remediation had been effective; and

e. Defendants' failure to respond to indications that their work was ineffective.

Defendants Poorly Designed The Cleanup Project For The Jackpile Site.

120. Perhaps the leading example of Defendants' poor design of the cleanup project was their decision to push uranium ore (a/k/a "protore") that had been stockpiled on the surface of the Site into the mining pits.

121. While designing the final version of its own reclamation plans for the Jackpile Site, Atlantic Richfield concluded that the piles of protore should not be pushed into the mining pits because doing so would bring uranium-bearing ore into contact with groundwater.

122. Atlantic Richfield decided that the protore could be more safely handled, and that the risk of groundwater contamination would be minimized, if the protore piles were capped and left on the surface where they could easily be monitored.

123. While preparing their Final Environmental Impact Statement and Record of Decision, the BIA and the BLM reviewed Atlantic Richfield's reclamation plans, and they were well aware that, after years of consideration and study, Atlantic Richfield had determined that protore should not be used as fill for the pits.

124. Nonetheless, the BLM and the BIA decided to push the protore into the pits, and they did so.

125. Unfortunately, as predicted, this action increased groundwater contamination significantly. As the data collected since 1986 by the United States establishes, groundwater contamination at the Jackpile Site increased significantly after the conclusion of mining operations.

126. According to EPA, groundwater contamination is one of its greatest concerns at the Jackpile Site.

127. It is likely that responding to groundwater contamination stemming from protore placed in the pits and then buried under tons of rock will be both technically challenging and costly. These problems and costs could have been avoided had reclamation concepts then in use at other uranium sites been employed by Defendants at the Jackpile Site.

128. While the decision to push the protore into the pits was made by the United States when its agencies developed the Record of Decision, the engineering design decisions made after the Record of Decision also were flawed.

129. The Laguna retained OA Systems Corporation ("OA Systems"), an independent consulting firm, to determine whether Defendants' reclamation activities complied with the requirements of the Record of Decision.

130. OA Systems made its initial compliance assessment in 2007, noting whether Defendants had complied with the Record of Decision's requirements and, in some instances, making recommendations for how to address particular environmental issues.

131. In 2011, OA Systems conducted another assessment of whether Defendants had complied with the Record of Decision's requirements. In addition to determining whether Defendants had addressed the aspects of the reclamation which OA Systems had determined in 2007 were noncompliant, OA Systems considered whether work that was deemed compliant in 2007 remained compliant.

132. As part of its compliance assessment efforts, OA Systems commented upon the adequacy and effectiveness of Defendants' reclamation design.

133. For example, OA Systems noted in 2007 that "the berming design [for waste dumps] that was implemented for the reclamation did not perform as expected." OA Systems observed in 2007 and again in 2011 that this design flaw led to "chronic erosion blow-outs" and an attendant risk of radiation emissions.

134. In its 2011 assessment, OA Systems concluded not only that individual aspects of the remediation design were flawed but also that Defendants' design and engineering work failed to meet the essential purpose of the Jackpile Site cleanup. OA Systems stated that "the post closure monitoring indicates [that Defendants'] engineered efforts were not successful in prevention or mitigation of public health or environmental impacts."

135. The failure of their reclamation design should not have been surprising to Defendants. Roger Baer, the BIA Engineer who worked directly with Jacobs Engineering, repeatedly expressed his concerns that the firm was not making its more experienced engineers available to work on the project, and he reported to the BIA that he lacked confidence in Jacobs Engineering's work. The BLM's project management representative expressed the same concerns.

Defendants Deviated From The Record Of Decision For The Site.

136. Although the Record of Decision developed by the BIA and BLM was inadequate, it established the legal requirements and standards for the reclamation work at the Jackpile Site.

137. In the Agreement to Terminate Leases, the Laguna and the United States promised Atlantic Richfield—in return for exclusive control of the cleanup and the payment of $43.6 million—that they would satisfy the Record of Decision's standards.

138. Nonetheless, Defendants repeatedly deviated from the requirements and standards in the Record of Decision.

139. As OA Systems concluded in its two independent evaluations, these deviations from the Record of Decision led to an increased risk of release of hazardous substances.

140. For example, Defendants reduced the depth of the shale and top soil layers covering the waste dumps that they had prescribed in the Record of Decision. As OA Systems stated in its 2011 assessment, gamma surveys demonstrated that the reduced "cover has proven to be inadequate to prevent radiation emissions."

141. Similarly, OA Systems noted in 2011 that a "less rigorous design was approved after the ROD" for the protection of the "toes" of the waste dumps. This revised "design was inadequate to prevent the erosion of the banks below the toes of the waste piles" as demonstrated by the fact that "significant erosion has taken place in the past 12 years."

142. These and other deviations from the Record of Decision's requirements and the resulting environmental impacts cannot be blamed on inadequate funding of the cleanup project by Atlantic Richfield. Indeed, when the project was deemed completed, several million dollars had not been spent for the original remediation work, monitoring, and corrective actions.

Defendants Did Not Adequately Monitor Conditions
At The Jackpile Site And Neglected Problems When They Arose.

143. An effective monitoring program is a necessary and critical component of any effective environmental cleanup of a mining site.

144. Collecting and analyzing data obtained through monitoring enables those who conducted the cleanup to determine whether their efforts were successful and to devise and implement any necessary corrective measures.

145. Defendants, however, did not conduct an effective monitoring program at the Jackpile Site.

146. And, when problems were brought to Defendants' attention, they frequently failed to take appropriate action to remedy or prevent an environmental issue.

147. As part of its 2007 assessment, OA Systems determined that there were large gaps in the water quality data and that much of the available data was unreliable. OA Systems then made detailed recommendations for the implementation of an effective water quality monitoring and data evaluation program.

148. However, when OA Systems conducted its 2011 assessment, it learned that its recommendations had not been implemented.

149. Consequently, as OA Systems determined in 2007 and again in 2011, conclusions could not "be drawn as to environmental impacts and long term health risks associated with water quality at the closed mine."

150. In the 2007 report, OA Systems recommended that new gamma surveys of the areas that had been occupied by protore stockpiles be performed to determine whether the cover material for those areas—as reduced by Defendants after they issued the Record of Decision—provided adequate protection against gamma emissions.

151. When OA Systems returned to the Jackpile Site in 2011, it learned that the recommended surveys had not been conducted.

152. Similarly, although OA Systems had recommended in 2007 that radiation surveys be conducted of the "chronic blowout areas" of the waste dumps, it discovered in 2011 that no surveys had been made.

153. In 2007, OA Systems determined that "significant erosion had taken place in the past 12 years" of the banks below the waste piles. Either no monitoring of the waste piles occurred or, if it did, Defendants did not take any action to stop the erosion.

154. When OA Systems returned in 2011, it determined that "[n]othing has been done regarding erosion along the Rio Moquino," since its evaluation four years earlier. Indeed, additional erosion had occurred, and it appeared that the river had reached the "toes" of the waste piles.

Defendants Are Attempting To Shift Their Responsibilities To Atlantic Richfield.

155. The BLM's New Mexico State Office was asked to review the OA Systems reports to determine whether the reclamation project could be closed out.

156. The BLM concluded in January 2012 that the project was "not ready to be closed out" and that OA Systems' recommendations "should be followed." The BLM further concluded that "Laguna Pueblo and the EPA should coordinate the efforts to comply with" the Record of Decision.

157. However, instead of working together to complete an adequate cleanup, EPA and the Laguna are attempting to shift responsibility for environmental remediation to Atlantic Richfield, even though Defendants released Atlantic Richfield from any further responsibility for environmental remediation at the Jackpile Site, and the Laguna agreed to assume all such responsibility and liability under applicable laws.

158. By failing to cleanup and reclaim the Jackpile Site, the Laguna breached its obligation under the Agreement to Terminate Leases to assume full and complete responsibility and liability under laws applicable to the cleanup, reclamation, and other environmental remedial action at the Jackpile Site, including but not limited to CERCLA.

159. Moreover, notwithstanding Defendants' total control of, and responsibility for, the remediation of the Jackpile Site, the Laguna actively encouraged the United States to list the Jackpile Site on the NPL without assuming responsibility for the Site, in further breach of Defendants' promises to Atlantic Richfield. These actions are wholly inconsistent with not just the Laguna's assumption of responsibility and liability for the Site, but also with the Laguna's release of claims against Atlantic Richfield related to the Site. Nonetheless, the United States

now demands that Atlantic Richfield assume sole liability for funding and for performing the work Defendants failed to perform as well as for the environmental consequences of those failures.

160. In 2010, EPA propounded a CERCLA Section 104(e) Request on Atlantic Richfield seeking information and documents related to the Jackpile Site. Atlantic Richfield submitted a response on March 1, 2011 accompanied by approximately 43,000 documents.

161. Atlantic Richfield subsequently engaged a consultant—URS Corporation—to conduct an analysis of current conditions at the Jackpile Site and the success of the cleanup work performed by the Laguna and Laguna Construction under government oversight. This work also was used to help identify responsible parties for the Jackpile Site.

162. Atlantic Richfield also submitted comments on the Hazard Ranking System Documentation Record after EPA proposed listing the Jackpile Site on the NPL on March 15, 2012. This work was used to advance the NPL listing and planning the overall cleanup at the Jackpile Site.

163. Beginning in May 2014, EPA has advanced its determination that a CERCLA remedial investigation and feasibility study ("RI/FS") must be completed for the Jackpile Site, and has sought to place sole responsibility for funding and/or performing the RI/FS on Atlantic Richfield. Since that time, Atlantic Richfield has retained technical experts to aid with the assessment and negotiations concerning the RI/FS and to identify potentially responsible parties. Atlantic Richfield also has incurred other costs to respond to EPA's demand.

**FIRST CLAIM FOR RELIEF**

CERCLA Cost Recovery under Sections 107(a)(1), (2), (4)(B),
42 U.S.C. § 9607(a)(1), (2), (4)(B)
Owner Liability against the United States and the Laguna

164. Atlantic Richfield re-alleges and incorporates herein the allegations contained in Paragraphs 1 to 163.

165. CERCLA section 107(a) imposes liability upon any person who currently owns, or who at the time of disposal of any hazardous substances owned, any facility where such hazardous substances were disposed of. 42 U.S.C. § 9607(a)(1), (2).

166. The Jackpile Site qualifies as a "facility" within the meaning of CERCLA section 101(9). 42 U.S.C. § 9601(9).

167. "Hazardous substances" within the meaning of CERCLA section 101(14) were disposed of at the Jackpile Site. 42 U.S.C. § 9601(14).

168. The United States and the Laguna currently own property within the Jackpile Site.

169. The United States and the Laguna owned property within the Jackpile Site at the time hazardous substances were disposed of at that facility.

170. There have been "releases" or threatened "releases" as defined in CERCLA section 101(22), 42 U.S.C. § 9601(22), of hazardous substances into the environment at the Jackpile Site.

171. Atlantic Richfield has incurred and may continue to incur necessary "response" costs as defined by CERCLA section 101(25), 42 U.S.C. § 9601(25), as a result of the release and/or threatened release of hazardous substances at the Jackpile Site. These costs incurred and to be incurred by Atlantic Richfield are and will be consistent with the National Contingency

Plan, 40 C.F.R., Part 300, promulgated by the United States under the authority of CERCLA section 105, 42 U.S.C. § 9605.

172. The United States and the Laguna are liable to Atlantic Richfield under CERCLA section 107(a)(1) and (2), 42 U.S.C. § 9607(a)(1) and (2), for all response costs incurred by Atlantic Richfield by the time of trial in connection with the Jackpile Site.

**SECOND CLAIM FOR RELIEF**

CERCLA Cost Recovery under Sections 107(a)(3), (4)(B),
42 U.S.C. §§ 9607(a)(3), (4)(B)
Arranger Liability against the United States, the Laguna, and Laguna Construction

173. Atlantic Richfield re-alleges and incorporates herein the allegations contained in Paragraphs 1 to 172.

174. CERCLA section 107(a) imposes liability upon any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances. 42 U.S.C. § 9607(a)(3).

175. The Jackpile Site qualifies as a "facility" within the meaning of CERCLA section 101(9). 42 U.S.C. § 9601(9).

176. "Hazardous substances" within the meaning of CERCLA section 101(14) were disposed of at the Jackpile Site. 42 U.S.C. § 9601(14).

177. The United States, the Laguna, and Laguna Construction arranged for the disposal of hazardous substances at the Jackpile Site.

178. There have been "releases" or threatened "releases" as defined in CERCLA section 101(22), 42 U.S.C. § 9601(22), of hazardous substances into the environment at the Jackpile Site.

179. Atlantic Richfield has incurred and may continue to incur necessary "response" costs as defined by CERCLA section 101(25), 42 U.S.C. § 9601(25), as a result of the release and/or threatened release of hazardous substances at the Jackpile Site. These costs incurred and to be incurred by Atlantic Richfield are and will be consistent with the National Contingency Plan, 40 C.F.R., Part 300, promulgated by the United States under the authority of CERCLA section 105, 42 U.S.C. § 9605.

180. The United States, the Laguna, and Laguna Construction are liable to Atlantic Richfield under CERCLA section 107(a)(3), 42 U.S.C. § 9607(a)(3), for all response costs incurred by Atlantic Richfield by the time of trial in connection with the Jackpile Site.

**THIRD CLAIM FOR RELIEF**

CERCLA Cost Recovery under Sections 107(a)(1), (2), (4)(B),
42 U.S.C. §§ 9607(a)(1), (2), (4)(B)
Operator Liability against the United States, the Laguna, and Laguna Construction

181. Atlantic Richfield re-alleges and incorporates herein the allegations contained in Paragraphs 1 to 180.

182. CERCLA section 107(a) imposes liability upon any person who currently operates a facility, or who at the time of disposal of any hazardous substance operated any facility where such hazardous substance was disposed of. 42 U.S.C. § 9607(a)(1), (2).

183. The Jackpile Site qualifies as a "facility" within the meaning of CERCLA section 101(9). 42 U.S.C. § 9601(9).

184. "Hazardous substances" within the meaning of CERCLA section 101(14) were disposed of at the Jackpile Site. 42 U.S.C. § 9601(14).

185. The United States, the Laguna, and Laguna Construction currently operate and/or operated the Jackpile Site when hazardous substances were disposed of at the Site.

186. There have been "releases" or threatened "releases" as defined in CERCLA section 101(22), 42 U.S.C. § 9601(22), of hazardous substances into the environment at the Jackpile Site.

187. Atlantic Richfield has incurred and may continue to incur necessary "response" costs as defined by CERCLA section 101(25), 42 U.S.C. § 9601(25), as a result of the release and/or threatened release of hazardous substances at the Jackpile Site. These costs incurred and to be incurred by Atlantic Richfield are and will be consistent with the National Contingency Plan, 40 C.F.R., Part 300, promulgated by the United States under the authority of CERCLA section 105, 42 U.S.C. § 9605.

188. The United States, the Laguna, and Laguna Construction are liable to Atlantic Richfield under CERCLA section 107(a)(1) and (2), 42 U.S.C. § 9607(a)(1) and (2) for all response costs incurred by Atlantic Richfield by the time of trial in connection with the Jackpile Site.

## FOURTH CLAIM FOR RELIEF

CERCLA Contribution under Section 113(f),
42 U.S.C. § 9613(f)(1), (f)(3)(B)
Contribution against the United States, the Laguna, and Laguna Construction

189. Atlantic Richfield re-alleges and incorporates herein the allegations contained in Paragraphs 1 to 188.

190. CERCLA section 113(f)(1) provides that any person may seek contribution from any other person who is potentially liable under CERCLA section 107(a) during or following any civil action under CERCLA sections 106 or 107(a). 42 U.S.C. § 9613(f)(1).

191. CERCLA section 113(f)(3)(B) provides that a person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not protected from contribution under CERCLA section 113(f)(2). 42 U.S.C. § 113(f)(3)(B).

192. The United States and the Laguna are responsible for CERCLA response costs at the Jackpile Site as owners, arrangers, and/or operators. Laguna Construction is responsible for CERCLA response costs at the Jackpile Site as an arranger and/or an operator.

193. Atlantic Richfield resolved its liability to the United States for some or all of a response action or for some or all of the costs of such action at the Jackpile Site in an administrative or judicially approved settlement.

194. The United States, the Laguna, and Laguna Construction have not paid their equitable shares of response costs at the Jackpile Site.

195. Atlantic Richfield has incurred response costs beyond its equitable share at the Jackpile Site.

196. The United States, the Laguna, and Laguna Construction are liable to Atlantic Richfield in contribution for response costs incurred by Atlantic Richfield beyond its equitable share at the Jackpile Site.

**FIFTH CLAIM FOR RELIEF**

CERCLA Declaratory Judgment under Section 113(g)(2),
42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201
Declaratory Judgment against the United States, the Laguna, and Laguna Construction

197. Atlantic Richfield re-alleges and incorporates herein the allegations contained in Paragraphs 1 to 196.

198. CERCLA section 113(g)(2) provides that any person may seek a declaration of liability for response costs as defined under CERCLA sections 101(23)-(25). 42 U.S.C. § 9613(g)(2); 42 U.S.C. §§ 9601(23)-(25).

199. The Declaratory Judgment Act, 28 U.S.C. § 2201, provides that in a case of actual controversy, a court may declare the rights and other legal relations of any interested party seeking such a declaration.

200. An actual and substantial controversy exists between Atlantic Richfield, the United States, the Laguna, and Laguna Construction regarding Defendants' liability for future environmental response costs and other expenses to be incurred in connection with the Jackpile Site. Such costs and expenses are neither remote nor speculative.

201. Absent a judicial declaration setting forth the parties' rights, duties, and obligations with respect to such costs, multiple legal actions may result.

202. Atlantic Richfield is entitled to a declaratory judgment pursuant to CERCLA section 113(g)(2) that requires the United States, the Laguna, and Laguna Construction to reimburse Atlantic Richfield for all necessary response costs to be incurred by Atlantic Richfield in the future at the Jackpile Site.

203. Atlantic Richfield is entitled to a declaratory judgment that establishes the equitable shares of the United States, the Laguna, and Laguna Construction for all future response costs that may be required at the Jackpile Site.

**SIXTH CLAIM FOR RELIEF**

Declaratory Judgment under 28 U.S.C. § 2201
Declaratory Judgment against the Laguna

204. Atlantic Richfield re-alleges and incorporates herein the allegations contained in Paragraphs 1 to 203.

205. Atlantic Richfield and the Laguna entered into the Agreement to Terminate Leases, a binding and enforceable contract. Under that contract, and in exchange for a payment by Atlantic Richfield of $43.6 million for the reclamation project at the Jackpile Site, the Laguna agreed to stand in the shoes of Atlantic Richfield and to assume any and all responsibility and liability for environmental reclamation and remedial measures at the Jackpile Site. With the approval of the United States, the Agreement to Terminate Leases shifted responsibility for reclamation and remediation from Atlantic Richfield to the Laguna in two steps:

a) First, the Laguna eliminated Atlantic Richfield's obligations to the Laguna by releasing Atlantic Richfield from all responsibility and liability for reclamation of the Jackpile Site, for performing other environmental remedial measures relating to the Jackpile Site, and for other obligations arising under the leases.

b) Second, the Laguna assumed Atlantic Richfield's obligations to others for reclamation and remediation by promising to "assume full and complete responsibility and liability under all applicable laws for … (i) the cleanup, reclamation, or other environmental remedial action at the [Jackpile Site]; and (ii) conducting all other related and necessary activities

in a manner acceptable to, or required by governmental agencies with jurisdiction over reclamation and other related environmental programs, and which is otherwise consistent and in compliance with all applicable environmental laws and regulations; and (iii) obtaining requisite approval for such activities from the appropriate governmental authorities."

206. Also in exchange for the payment, the Laguna agreed to obtain approval from the United States for its reclamation activities, and further agreed to release Atlantic Richfield from all claims related to the Site.

207. EPA has listed the Jackpile Site on the NPL and has issued a "Special Notice" letter to Atlantic Richfield advising it of its potential liability under federal law applicable to cleanup, reclamation, and other remedial action at the Jackpile Site. EPA requires performance of an RI/FS, and has engaged in negotiations with Atlantic Richfield regarding the scope and responsibility for the RI/FS. In its negotiations with Atlantic Richfield, EPA has stated that it will continue to move forward with a CERCLA enforcement process notwithstanding the parties' inability to come to an agreement on the RI/FS.

208. Under the Agreement to Terminate Leases, the Laguna assumed full and complete responsibility for the cleanup, reclamation, and remediation that EPA is seeking to impose on Atlantic Richfield through its enforcement process.

209. The Laguna has materially breached the Agreement to Terminate Leases by failing to discharge the full and complete responsibility that is defined by federal law and applicable to the cleanup, reclamation, or remediation activities required at the Jackpile Site. In particular, the Laguna failed to complete the Record of Decision and has not assumed full and complete responsibility and liability under applicable federal laws, including CERCLA, on

behalf of Atlantic Richfield with respect to the "Special Notice," the listing of the Jackpile Site on the NPL, the RI/FS and further response actions that may be required by EPA.

210. There exists an actual and justiciable legal controversy between Atlantic Richfield and the Laguna regarding the rights and obligations of the parties under the Agreement to Terminate Leases.

211. The issues presented for declaratory judgment are ripe for determination. The alleged conduct that created the controversy has already occurred and there is a substantial and imminent threat that EPA will seek to hold Atlantic Richfield solely responsible and liable for the cleanup, reclamation, and other environmental remedial action at the Jackpile Site, and that the Laguna will fail or refuse to assume and discharge such responsibility and liability.

212. The relief requested will settle the controversy between the parties and will result in a just and expeditious determination of the controversy between the parties.

213. Accordingly, pursuant to 28 U.S.C. § 2201 and the Agreement to Terminate Leases, Atlantic Richfield is entitled to a declaration that the Laguna has failed to complete the Record of Decision and has full and complete responsibility and liability under federal laws applicable to the cleanup, reclamation, or other environmental action at the Jackpile Site that would otherwise impose any responsibility or liability upon Atlantic Richfield.

## SEVENTH CLAIM FOR RELIEF

Injunctive Relief against the Laguna

214. Atlantic Richfield re-alleges and incorporates herein the allegations contained in Paragraphs 1 to 213.

215. Atlantic Richfield and the Laguna entered into the Agreement to Terminate Leases, a binding and enforceable contract. Under that contract, and in exchange for a payment by Atlantic Richfield of $43.6 million for the reclamation project at the Jackpile Site, the Laguna agreed to stand in the shoes of Atlantic Richfield and to assume any and all responsibility and liability for environmental reclamation and remedial measures at the Jackpile Site. With the approval of the United States, the Agreement to Terminate Leases shifted responsibility for reclamation and remediation from Atlantic Richfield to the Laguna in two steps:

a) First, the Laguna eliminated Atlantic Richfield's obligations to the Laguna by releasing Atlantic Richfield from all responsibility and liability for reclamation of the Jackpile Site, for performing other environmental remedial measures relating to the Jackpile Site, and for other obligations arising under the leases.

b) Second, the Laguna assumed Atlantic Richfield's obligations to others for reclamation and remediation by promising to "assume full and complete responsibility and liability under all applicable laws for … (i) the cleanup, reclamation, or other environmental remedial action at the [Jackpile Site]; and (ii) conducting all other related and necessary activities in a manner acceptable to, or required by governmental agencies with jurisdiction over reclamation and other related environmental programs, and which is otherwise consistent and in compliance with all applicable environmental laws and regulations; and (iii) obtaining requisite approval for such activities from the appropriate governmental authorities."

216. Also in exchange for the payment, the Laguna agreed to obtain approval from the United States for its reclamation activities, and further agreed to release Atlantic Richfield from all claims related to the Site.

217. EPA has listed the Jackpile Site on the NPL and has issued a "Special Notice" letter to Atlantic Richfield advising it of its potential liability under federal law applicable to the cleanup, reclamation, and other remedial action at the Jackpile Site. EPA requires performance of an RI/FS, and has engaged in negotiations with Atlantic Richfield regarding the scope and responsibility for the RI/FS. In its negotiations with Atlantic Richfield, EPA has stated that it will continue to move forward with a CERCLA enforcement process notwithstanding the parties' inability to come to an agreement regarding an RI/FS.

218. Under the Agreement to Terminate Leases, the Laguna assumed full and complete responsibility for the cleanup, reclamation, and remediation that EPA is seeking to impose on Atlantic Richfield through its enforcement process.

219. The Laguna has materially breached the Agreement to Terminate Leases by failing to discharge the full and complete responsibility that is defined by federal law and applicable to the cleanup, reclamation, or remediation activities required at the Jackpile Site. In particular, the Laguna failed to complete the Record of Decision and has not assumed full and complete responsibility and liability under applicable federal laws, including CERCLA, on behalf of Atlantic Richfield with respect to the "Special Notice," the listing of the Jackpile Site on the NPL, the RI/FS and further response actions that may be required by EPA.

220. Atlantic Richfield will suffer irreparable harm unless an injunction is issued that requires the Laguna to assume and discharge full and complete responsibility for the reclamation and remediation at the Jackpile Site. In the Agreement to Terminate Leases, Atlantic Richfield acquired more than just a release from further liability from the Laguna for the costs incurred for the reclamation and remediation of the Jackpile Site. Atlantic Richfield also paid the Laguna for

the right to be free from any responsibility whatsoever for the reclamation and remediation at the Jackpile Site by having the Laguna stand in Atlantic Richfield's shoes, and this right includes the right to be free of any and all responsibility imposed by EPA enforcement activity. If the Laguna does not immediately assume full and complete responsibility for the reclamation and remediation at the Jackpile Site, Atlantic Richfield will lose a material benefit of the Agreement to Terminate Leases. This result is precisely what Atlantic Richfield sought to avoid when it paid the Laguna to assume responsibility, and the loss of this benefit cannot be cured with any speedy or adequate remedy at law after Atlantic Richfield is forced to discharge the Laguna's responsibility at the Site.

221. The harm to Atlantic Richfield caused by the Laguna's breach of its duty to assume and discharge responsibility for the Jackpile Site outweighs any harm to the Laguna caused by an injunction requiring the Laguna to comply with the Agreement to Terminate Leases. The injunction would restore the status quo and allow Atlantic Richfield to realize the benefit conferred under the Agreement to Terminate Leases in exchange for its payment of $43.6 million to the Laguna. Any hardship imposed on the Laguna for discharging its responsibility for reclamation and remediation at the Jackpile Site is a consequence of the Laguna's own dereliction at the Site, as alleged above.

222. An injunction requiring the Laguna to assume and discharge its responsibility for the Jackpile Site will serve the public's interest in the removal of hazardous materials from the Site and other appropriate protective measures. The injunction will not adversely affect the public interest.

223. The Laguna has refused and will likely continue to refuse to assume and discharge its responsibility at the Jackpile Site. Atlantic Richfield is entitled to a permanent injunction that requires the Laguna to assume and discharge full and complete responsibility for any environmental reclamation or remediation measures required by all applicable laws, including those required by EPA pursuant to CERCLA.

**EIGHTH CLAIM FOR RELIEF**

Breach of Agreement to Terminate Leases against the Laguna

224. Atlantic Richfield re-alleges and incorporates herein the allegations contained in Paragraphs 1 to 223.

225. Atlantic Richfield and the Laguna entered into the Agreement to Terminate Leases, a binding and enforceable contract. Under that contract, and in exchange for a payment by Atlantic Richfield of $43.6 million for the reclamation project at the Jackpile Site, the Laguna agreed to stand in the shoes of Atlantic Richfield and to assume any and all responsibility and liability for environmental reclamation and remedial measures at the Jackpile Site. With the approval of the United States, the Agreement to Terminate Leases shifted responsibility for reclamation and remediation from Atlantic Richfield to the Laguna in two steps:

a) First, the Laguna eliminated Atlantic Richfield's obligations to the Laguna by releasing Atlantic Richfield from all responsibility and liability for reclamation of the Jackpile Site, for performing other environmental remedial measures relating to the Jackpile Site, and for other obligations arising under the leases.

b) Second, the Laguna assumed Atlantic Richfield's obligations to others for reclamation and remediation by promising to "assume full and complete responsibility and

liability under all applicable laws for … (i) the cleanup, reclamation, or other environmental remedial action at the [Jackpile Site]; and (ii) conducting all other related and necessary activities in a manner acceptable to, or required by governmental agencies with jurisdiction over reclamation and other related environmental programs, and which is otherwise consistent and in compliance with all applicable environmental laws and regulations; and (iii) obtaining requisite approval for such activities from the appropriate governmental authorities."

226. Also in exchange for the payment, the Laguna agreed to obtain approval from the United States for its reclamation activities, and further agreed to release Atlantic Richfield from all claims related to the Site.

227. EPA has listed the Jackpile Site on the NPL and has issued a "Special Notice" letter to Atlantic Richfield advising it of its potential liability under federal law applicable to cleanup, reclamation, and other remedial action at the Jackpile Site. EPA requires performance of an RI/FS, and has engaged in negotiations with Atlantic Richfield regarding the scope and responsibility for the RI/FS. In its negotiations with Atlantic Richfield, EPA has stated that it will continue to move forward with a CERCLA enforcement process notwithstanding the parties' inability to come to an agreement on the RI/FS.

228. Under the Agreement to Terminate Leases, the Laguna assumed full and complete responsibility for the cleanup, reclamation, and remediation that EPA is seeking to impose on Atlantic Richfield through its enforcement process.

229. The Laguna has materially breached the Agreement to Terminate Leases by failing to discharge the full and complete responsibility that is defined by federal law and applicable to the cleanup, reclamation, or remediation activities required at the Jackpile Site. In

particular, the Laguna failed to complete the Record of Decision and has not assumed full and complete responsibility and liability under applicable federal laws, including CERCLA, on behalf of Atlantic Richfield with respect to the "Special Notice," the listing of the Jackpile Site on the NPL, the RI/FS, and further response actions that may be required by EPA.

230. Because the Laguna failed to assume and discharge responsibility applicable to the Jackpile Site, Atlantic Richfield has incurred and will continue to incur damages in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Atlantic Richfield requests the following relief:

a) Judgment pursuant to section 107 of CERCLA, 42 U.S.C. § 9607, in favor of Atlantic Richfield and against the United States, the Laguna, and Laguna Construction for all recoverable response costs incurred by Atlantic Richfield at the Jackpile Site, together with prejudgment interest accruing through the date of judgment;

b) Judgment pursuant to section 113 of CERCLA, 42 U.S.C. § 9613, in favor of Atlantic Richfield and against the United States, the Laguna, and Laguna Construction, for the United States', the Laguna's, and Laguna Construction's equitable shares of response costs already incurred by Atlantic Richfield in connection with the Jackpile Site, with interest as allowed by law;

c) Declaratory judgment on liability, pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, in favor of Atlantic Richfield and against the United States, the Laguna, and Laguna Construction regarding any future response costs in connection with the Jackpile Site;

d) Declaratory judgment pursuant to 28 U.S.C. § 2201 and the Agreement to Terminate Leases that the Laguna has failed to complete the work required by the Record of Decision and has full and complete responsibility and liability under federal laws applicable to the cleanup, reclamation, or other environmental action at the Jackpile Site that would otherwise impose any responsibility or liability upon Atlantic Richfield;

e) A permanent injunction that requires the Laguna to discharge the responsibility for reclamation and remediation at the Jackpile Site under all applicable laws, including responsibility imposed by EPA pursuant to CERCLA;

f) Damages against the Laguna caused by the Laguna's breach of the Agreement to Terminate Leases;

g) Attorneys' fees and costs, as allowed by law; and

h) Such other and further relief in favor of Atlantic Richfield and against the United States, the Laguna, and Laguna Construction as the Court deems just and proper.

Dated: January 21, 2015

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