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APPENDIX Map generally depicting the Sites and surrounding land in the vicinity.

This Consent Decree is made and entered into by and between (i) the State of New Mexico ("State"), acting through the New Mexico Natural Resources Trustee and the New Mexico Office of Natural Resources Trustee (jointly "ONRT") and the New Mexico Attorney General and the New Mexico Attorney General's Office (jointly "AGO"); and (ii) Freeport-McMoRan Corporation, Freeport-McMoRan Chino Mines Company, Freeport-McMoRan Tyrone Inc., Freeport-McMoRan Tyrone Mining LLC, and Freeport-McMoRan Cobre Mining Company on behalf of themselves and other settling defendants (the "Settling Defendants").

### **I. BACKGROUND**

A. The State, acting through ONRT and AGO, has filed a Complaint along with this Consent Decree asserting claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, and Section 311 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1321, commonly known as the Clean Water Act ("CWA"), seeking damages for injury to, destruction of, or loss of ground water resources belonging to, managed by, or controlled by the State, resulting from releases of hazardous substances at and from the Chino Mine Site, the Tyrone Mine Site, and the Cobre Mine Site, including the costs of assessing such injury, destruction, or loss. Hereinafter, this Consent Decree refers to both hazardous substances and Non-hazardous Substances, as that term is defined below, because the extent of ground water contamination as alleged by the State includes areas impacted by Non-hazardous Substances.

B. The Complaint filed by the State alleges that ground water resources have been injured as a result of releases of hazardous substances and Non-hazardous Substances at and from the Sites; as a result thereof, the public has suffered the loss of ground water resources and

associated services; and the State has incurred costs in connection with the assessment of such injuries, destruction or losses.

C. The Complaint further alleges that Performing Settling Defendants (as defined below) are liable for damages for injury to, destruction or loss of ground water resources because they are or were owners or operators of one or more facilities from which such releases occurred; or were owners or operators of one or more such facilities at a time hazardous substances or Non-hazardous Substances were disposed of at such facilities.

D. By entering into this Consent Decree and undertaking the obligations imposed under its terms, Settling Defendants do not expressly, or by implication, make any admissions of any liability, including but not limited to liability for injury to, destruction or loss of ground water resources as alleged in the Complaint, and Settling Defendants do not admit any fact concerning the matters addressed in the Complaint and this Consent Decree.

E. Chino Mine: The Chino Mine complex is owned and operated by Freeport-McMoRan Chino Mines Company, f/k/a Chino Mines Company, a New Mexico General Partnership. From 1980 to 2003, Heisei Minerals Corporation, a former Delaware corporation, owned a one-third general partnership interest in Chino Mines Company. Mitsubishi Corporation and Mitsubishi Materials Corporation owned 40% and 60%, respectively, of the common stock of Heisei. In 2003, Heisei sold its one-third partnership interest in Chino Mines Company to Chino Acquisition, Inc. and Heisei Minerals Corporation was subsequently dissolved.

1. The Chino Mine Site consists of the Chino Mine and appurtenant area, including the Santa Rita open pit, the Groundhog Mine, the Ivanhoe Concentrator, a

former precipitation plant, an operating SX-EW Plant, the former Hurley mill, concentrator, and smelter, and associated facilities and units as described below. The mine area of the Chino Mine Site is located near the town of Bayard in T17S, R12W, Sections 25, 26, 27, 28, 29, 32, 33, 34, 35 and 36; and T18S, R12W, Sections 3 and 4. The Santa Rita open pit is approximately 1.8 miles in diameter and 0.3 miles deep (from 6,600 to 5,050 feet elevation) and covers approximately 2,560 acres. Approximately 1,800 million tons of rock from the Santa Rita open pit has been placed in various leach stockpiles and waste rock piles located around the open pit. Mining process water reservoirs located around the perimeter of the open pit cover a combined area of approximately 165 acres, while seepage impoundment and storm water retention reservoirs cover an additional 8 acres. The Groundhog Mine area within the Chino Mine Site contains underground mine workings and reclaimed waste rock piles.

2. The former Hurley smelter, concentrator and tailings impoundments are located east and south of the town of Hurley in Grant County: T18S, R12W, Sections 31 and 32; T19S, R12W, Sections 5, 6, 7, 8, 16, 17, 18, 19, 20, 21, 28, 29, 30, and 33; T20S, R12W, Sections 4, 9, 16, 21, 22, 27, 34, and 35; and T18S, R13W, Sections 12 and 13; and in Luna County: T21S, R12W, Sections 1, 2, and 12; T21S, R11W, Section 7 and 18. A concentrate filter plant, concentrate loading facilities, power generation facilities, a tailings impoundment, and associated pipelines continue to operate in this area. The former smelter area and slag piles cover approximately 195 acres within the described Site. Near Lake One, 230 acres contain sediment from Whitewater Creek, tailings and concentrate associated with the former concentrator and tailings thickeners, and tailings

recovered from numerous tailings pipeline spills. The Chino tailings impoundments comprise approximately 690 million tons of tailings and include Axiflo Lake. The Pond 7 seepage interceptor system consists of 18 to 20 wells that pump ground water mixed with tailings pond seepage to the top surface of Pond 7.

3. Open-pit mining at the Chino Mine Site began in 1910. In 1911, a mill and concentrator used to process ore from the Santa Rita open pit was built, and in 1981 the Ivanhoe mill and concentrator were constructed, along with pipelines to transport tailings and concentrate from the mill to the Hurley smelter and the tailings impoundments and to return process water to the concentrator. Tailings from the Chino Mine Site have been deposited in Lake One and in the tailings impoundments east and south of Hurley along the former channel of Whitewater Creek.

4. The Complaint alleges that, once inactive, tailings exposed to air and precipitation release hazardous substances and Non-hazardous Substances on the surface of the tailings or that percolate through the tailings to ground water. These substances allegedly include, but are not limited to, sulfuric acid and various dissolved metals (depending upon the mineral composition of the tailings) such as arsenic, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, and zinc.

5. Leaching operations commenced in 1936 on low-grade ore stockpiles deposited near the Santa Rita open pit. Leaching operations consist of acidic solutions applied to ore stockpiles to leach copper into solution. This "pregnant leach solution" (PLS) was collected in open channels and uncovered ponds and transported to

precipitation plants. Any overflows from the leaching operations flowed into Whitewater Creek, the creek channel to Lake One and, occasionally, into Whitewater Creek downgradient of Lake One. The Complaint alleges that PLS in seepage from leach stockpiles, channels and ponds and overflows contained hazardous substances and Non-hazardous Substances including, but not limited to sulfuric acid and dissolved metals (dependant upon the mineral composition of the leached ore) including: arsenic, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, and zinc.

6. In 1988, a Solution Extraction/Electrowinning (SX/EW) plant was constructed east of the open pit, and additional ore leaching activities began. The SX/EW plant continues in operation.

7. Construction of a copper smelter near the town of Hurley was completed in 1939 and operated until 2002. The Complaint alleges that hazardous substances and Non-hazardous Substances previously have been deposited via prevailing winds from the smelter and the nearby tailings impoundments.

8. Surface flows from the Chino Mine drain into ephemeral drainages in the Mimbres River watershed. Major drainages at Chino include: Whitewater Creek, Hanover Creek, and Lampbright Draw. The Complaint alleges that ground water at, underlying and in the vicinity of these drainages has been contaminated by hazardous substances and Non-hazardous Substances originating at the Chino Mine facilities.

9. On December 23, 1994, an Administrative Order on Consent (AOC) was signed between the Chino Mines Company and the New Mexico Environment

Department that directs a "Superfund Like" remedial action with respect to historical copper mining and smelter operations at the Chino Mine Site. A remedial investigation for this AOC region is underway. A remedial investigation "Background Report" was completed under the AOC on October 5, 1995, and ecological risk assessment reports have since been issued by the New Mexico Environment Department in accordance with 40 C.F.R. § 300.430. Further investigations and feasibility studies are ongoing, and one Record of Decision has been issued for soil remediation in the Town of Hurley.

F. Tyrone Mine: The Tyrone Mine is operated by Freeport-McMoRan Tyrone Inc., a Delaware corporation, and is owned by Freeport-McMoRan Tyrone Mining LLC, a New Mexico limited liability corporation. The Tyrone Mine Site consists of several open pits, leach ore stockpiles, a former mill and concentrator, a former precipitation plan, an operating Solution extraction/electrowinning (SX-EW) plant, the Little Rock Mine, PLS collection impoundments, seepage interception systems, stormwater detention impoundments, a maintenance and lubrication area, process solution pumping stations, former mill and concentrator facilities, a former precipitation plant, an acid unloading facility, and the Burro Mountain tailings impoundment.

1. The mining area at the Tyrone Mine is located near the Town of Tyrone in Sections 19, 20, 29 and 30 of T19S, R14W; and Sections 10, 11, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27 and 28 of T19S, R15W, in Grant County New Mexico. The Tyrone open pits cover approximately 2,000 acres with the main pit being approximately 1,400 feet deep. The leach and waste rock stockpiles cover approximately 2,800 acres and contain approximately two billion tons of rock. The Mangas Valley tailings area contains



five closed and reclaimed tailings impoundments covering approximately 2,300 acres and associated ground water interception systems and drainage conveyances. The adjacent, inactive Little Rock copper mine is northwest of the Tyrone open pit, with the mine, leach stockpiles, and waste rock cover approximately 600 acres.

2. Open-pit mining at Tyrone began in 1967, and in 1969 a mill and concentrator were constructed adjacent to the open pit. Tailings from the concentrators were deposited west of the open pit mine, on either side of Mangas Wash, though 1992. The Complaint alleges that, once inactive, tailings exposed to air and precipitation release hazardous substances that collect in surface waters and may percolate to ground water. According to the Complaint, these substances include (dependent on the mineralogy of the tailings), but are not limited to, sulfuric acid and dissolved metals, such as arsenic, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, and zinc. The Complaint alleges that sampling results indicate that windblown tailings are deposited off-site according to prevailing winds.

3. In 1972, leaching operations of low-grade ore stockpiles near the open pit began. Copper was extracted from pregnant leach solutions at on-site precipitation plants. In 1984, a SX/EW plant was constructed east of the open pit, and additional leaching activities began. The Complaint alleges that leach solutions are collected in open channels and ponds, and that these open channels and ponds contain hazardous substances including, but not limited to, sulfuric acid, arsenic, beryllium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, nickel, selenium, and zinc.

G. Cobre Mine: The Cobre Mine is owned and operated by Freeport-McMoRan

Cobre Mining Company, f/k/a Cobre Mining Company, which acquired the mine assets shortly before commencing mining in 1992. The Cobre Mine Site consists of the Continental Pit and underground mine, two mills, the Pearson-Barnes Mine, the Hanover-Empire Zinc Mine, other historic mine workings and associated mine workings and disturbances, underground workings, land, stockpiles, tailings impoundments, waste rock piles, and other related facilities and units located near the towns of Fierro and Hanover, Grant County, New Mexico.

1. The Cobre Mine includes the Continental Mine, located approximately ½ mile west of Fierro in Sections 3,4,5,8,9,10,15,16,17, 22, 26, and 27 of T17S, R12W, Grant County, New Mexico. Copper ore was mined from the Continental open pit, which covers about 142 acres and is about 500 feet deep, and the Continental underground mine, which underlies about 124 acres and ranges in depth from 400 to 1,500 feet. There are six rock stockpiles covering about 294 acres. The Main Tailings Impoundment covers about 140 acres and received tailings from two mills located near the mine. A separate magnetite tailings impoundment is approximately 20 acres in size.

2. The Complaint alleges that, during the 1995-1996 period, five distinct releases of hazardous material were reported by Cobre Mining Company, including 6,000 gallons of mill process water; 80,000 gallons of sediment pond water; 2,000 gallons of tailings; 30-50,000 gallons of mill slurry discharge; and 17,500-52,500 gallons of a tailings/water mix, all of which entered Hanover Creek. The Complaint alleges that the latter spill also included residue from an alcohol-based frother and hydrocarbon-based collector which exceeded permissible levels of cadmium, lead, total nitrogen, and sulfate.

3. The Complaint alleges that, in 1996, four seeps were detected. Three seeps

located at the magnetite pond were found to be leaking at the rate of 3 gallons per minute; an acid seep from the west waste rock dump registered a flow of 10 gallons per minute and a pH of 3.5 (exceeding both surface and ground water standards) and discharged into Buckhorn Gulch and Hanover Creek. The cause of the latter seep was determined to be heavy rains.

4. The Complaint alleges that, in March 1999, a pipeline breach released tailings to nearby stream beds, including Hanover Creek. According to company estimates, about 8 million gallons of tailings escaped. Mining and milling operations at the Cobre Mine were suspended in March 1999.

5. The Complaint alleges that seepage from the various mine workings at the Cobre Mine is a release of hazardous substances to ground water in the vicinity of the Cobre Mine Site. The Complaint further alleges that windblown tailings containing hazardous substances are deposited off-site according to the direction of prevailing winds.

H. The Complaint alleges that the Trustee has located historical studies that show injuries to ground water resources in the vicinity of the Sites. The Complaint alleges that the Trustee has also identified permit records of the New Mexico Environment Department that show ground water in the vicinity of the Sites has been contaminated with hazardous substances and Non-hazardous Substances at levels which exceed state ground water quality standards and federal drinking water standards. Based on these historical studies and additional assessment work, the Trustee has determined that releases of hazardous substances and Non-hazardous Substances at or from the Sites have occurred and alleges that such releases have caused injuries

to ground water resources at and in the vicinity of the Sites.

I. The Complaint alleges that the Performing Settling Defendants (as defined below) are liable for damages for injury to, destruction of, or loss of ground water resources resulting from the release of hazardous substances and Non-hazardous Substances at or from the Sites.

J. The State, acting through the ONRT and the AGO, is authorized to seek Natural Resource Damages, including the reasonable costs to assess the damages pursuant to, among other authorities, the New Mexico Natural Resources Trustee Act ("NMNRTA"), NMSA 1978 Sections 75-7-1 through -5.

K. The ONRT has been delegated authority to act as State Trustee for natural resources impacted by the release of hazardous substances and Non-hazardous Substances at and from the Sites.

L. Through the Complaint, the Trustee brings claims for recovery of Natural Resource Damages (including recovery of natural resource damage assessment costs) against the Performing Settling Defendants.

M. The Trustee and the Performing Settling Defendants have negotiated regarding the extent of and appropriate compensation for injuries to ground water resources alleged in the Complaint. This settlement follows an investigation by the Trustee of alleged ground water resource injuries related to the release of hazardous substances and Non-hazardous Substances into the environment at and from the Sites, due at least in part from acid rock drainage, process solutions, smelter emissions, windblown materials, wastes, non-waste materials, and from other areas, sources, and operations at and in the vicinity of the Sites. The Trustee has evaluated potential impacts to ground water resources. In particular, the Trustee reviewed possible injuries

at: (i) the Sites; (ii) selected areas at and appurtenant to the Sites where historical information suggested releases could have injured ground water resources; and (ii) areas at or near the Sites where information indicated to the Trustee that ground water has been affected by the release of hazardous substances or Non-hazardous Substances.

N. The Parties recognize that significant improvements have been made on and at the Sites, and therefore adopted reasonable conservative assumptions in assessing ground water resource injuries and associated damages that would assure the public is appropriately compensated for any such injury and loss. Among those assumptions is that some hazardous substances and Non-hazardous Substances may continue to be released or to migrate at and from the Sites into the future.

O. This Consent Decree represents a settlement of a contested matter, and neither payment nor the acceptance of any consideration represents an admission of liability or responsibility by any Party. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that implementation of this Consent Decree will expedite the restoration of allegedly injured ground water resources and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

## **II. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345. The Court also has personal jurisdiction over the Performing Settling Defendants. Venue is proper under CERCLA, 42 U.S.C. §§ 9601 et seq. and § 311 of the CWA,

33 U.S.C. § 1321. Performing Settling Defendants consent to this Court's jurisdiction, and to venue in this District, as to the underlying proceeding giving rise to this Consent Decree, to enforce the terms of this Consent Decree and any subsequent enforcement order stemming from this Consent Decree. In any action to enforce this Consent Decree, the Settling Defendants shall not challenge: i) that the State has stated a claim upon which relief could be granted, ii) the terms of this Consent Decree, and iii) this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

2. This Consent Decree applies to and is binding upon the State and the Settling Defendants and their respective successors and assigns. Any change in ownership or corporate status of the Settling Defendants including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Defendants' responsibilities under this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or the CWA, or in regulations promulgated under CERCLA and the CWA, shall have the meaning assigned to them in CERCLA, the CWA or such regulations. Whenever terms listed below are used in this Consent Decree or its appendix, the following definitions shall apply:

a. Affiliate of an entity means another entity that directly or indirectly (through one or more intermediaries) controls or is controlled by the first entity, or that is controlled by the same entity that controls the first entity.

b. "AGO" means the New Mexico Attorney General, the New Mexico Attorney General's Office and any successor officers, departments or agencies.

c. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

d. "Consent Decree" means this Consent Decree and the appendix attached hereto (listed in Section XIII (Appendix)). In the event of conflict between this Consent Decree and the Appendix, this Consent Decree shall control.

e. "Day" means a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than Saturday, Sunday, or a federal holiday. In computing any period of time under this Consent Decree, when the last day falls on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

f. "Effective Date" means the effective date of this Consent Decree as provided by Section XIV (Effective Date and Retention of Jurisdiction).

g. "Future Costs" means any and all direct and indirect costs that the Trustee or the State has incurred or will incur after the entry of the Consent Decree in connection with planning, implementing, monitoring, and completing the restoration activity or activities funded through this Consent Decree, or overseeing or enforcing this Consent Decree. Future Costs

include administrative and other costs or expenses associated with providing for public participation that are incurred incident to or in support of the restoration process.

h. "Ground water resources" means, for purposes of this Consent Decree, any water below the surface of the earth belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State or in which the State has any legally cognizable interest.

i. "Interest" means interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "Natural Migration" means movement after entry of this Consent Decree of hazardous substances or Non-hazardous Substances released or disposed of at or from any of the Sites prior to entry of the Consent Decree (including movement within the same or to a different environmental medium, or from a land disposal unit to an environmental medium) occurring within the course of natural phenomena and processes such as precipitation, wind, erosion, percolation, leaching, diffusion, dispersion, sediment transport or volatilization or occurring due to the movement or transport of air, soils, sediment, surface water or ground water in the course of natural phenomena or processes. Natural Migration does not include the movement of hazardous substances or Non-hazardous Substances due to breaches of dikes or dams caused by sudden events; sudden and unanticipated movement of hazardous substances or Non-hazardous Substances resulting from failure to maintain or to construct structures in accordance with



applicable permits; or other sudden and unanticipated movement of hazardous substances or Non-hazardous Substances on or off the Sites through direct human intervention.

k. "Natural Resource" or "Natural Resources" means ground water resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State or in which the State has any legally cognizable interest.

l. "Natural Resource Damages," for the purposes of this Consent Decree, means any damages recoverable by the State for injury to, destruction of, loss of, loss of use of, or impairment of ground water resources resulting from the release or threatened release or disposal or presence of hazardous substances or Non-hazardous Substances or any such substances at, from, or to the Sites, including, but not limited to: (i) the costs of assessing such injury, destruction, loss, loss of use, or impairment; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost ground water resources or of acquisition of equivalent resources; (iii) the costs of identifying and planning such restoration, rehabilitation, replacement or acquisition activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of ground water; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and/or the NMNRTA. "Natural Resources Damages" includes, but is not limited to, any such damages, costs, and compensation relating to releases or threatened releases or disposal of hazardous substances or Non-hazardous Substances at or from the Sites as of and prior to the entry of this Consent Decree, as well as any such damages, costs and compensation resulting from the Natural Migration of such substances after the date of the entry of the Consent Decree, and any such damages, costs and compensation resulting from the continued operation of facilities in existence as of the date of entry of the Consent Decree in accordance with permits

issued as of that date. For purposes of this Consent Decree, "Natural Resource Damages" does not include damages which may be recoverable by the State for injury to, destruction of, loss of, loss of use of, or impairment of any resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State other than ground water resources.

m. "Non-hazardous Substance" means a pollutant or contaminant resulting from physical, chemical, or biological processes or reactions (including degradation) with respect to discharged oil or released hazardous substances, and also means the presence of a pollutant or contaminant in ground water in excess of an applicable standard as a result of a discharge, disposal, or release at or from mine-related facilities.

n. "ONRT" means the New Mexico Natural Resources Trustee, the New Mexico Office of Natural Resources Trustee and any successor officers, departments or agencies.

o. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

p. "Parties" and "Party" means the State and/or the Settling Defendants.

q. "Past Costs" means any and all direct and indirect costs incurred by the Trustee or by the State prior to the entry of the Consent Decree in assessing the ground water resources, and all other natural resources, as defined in 43 C.F.R. § 11.14 and/or the NMNRTA, actually or potentially injured, destroyed, or lost as a result of alleged releases of hazardous substances or Non-Hazardous Substances at, from or to the Sites, in identifying and planning for restoration actions to compensate for such alleged injuries and losses, and in evaluating, assessing or settling potential claims against Performing Settling Defendants and others relating to such alleged injuries and losses.

r. "Performing Settling Defendants" or "Freeport McMoRan" means Freeport-McMoRan Corporation, Freeport-McMoRan Chino Mines Company, Freeport-McMoRan Tyrone Inc., Freeport-McMoRan Tyrone Mining LLC, and Freeport-McMoRan Cobre Mining Company, corporations or partnerships doing business in the State of New Mexico.

s. "Section" means a portion of this Consent Decree identified by an uppercase Roman numeral.

t. "Settling Defendants" means (1) the Performing Settling Defendants; (2) any persons or entities holding or that have held in the past a partnership interest in any of the Performing Settling Defendants; (3) the successors of the entities identified in items (1) and (2); and (4) the past and present Affiliates of the above-described entities. For the avoidance of doubt, with respect to Natural Resource Damages attributable to the Chino Mine Site, "Settling Defendants" includes Heisei Minerals Corporation, a former general partner of Chino Mines Company; Mitsubishi Corporation and Mitsubishi Materials Corporation, the former 40% and 60% shareholders of Heisei; and the successors, assigns and Affiliates of Heisei, Mitsubishi Corporation, and Mitsubishi Materials Corporation.

u. "Sites" means the combination of lands, units, structures and facilities associated collectively with the Chino Mine Site, Tyrone Mine Site and Cobre Mine Site. The Sites and vicinity are generally depicted on the map attached as the Appendix.

v. "State" means the State of New Mexico, and its officers, departments, agencies and instrumentalities, including the ONRT and the AGO.

w. "Subparagraph" means a portion of this Consent Decree identified by a lower case letter or an Arabic numeral in parenthesis.

x. "Trustee" means ONRT.

#### **V. STATEMENT OF PURPOSE**

4. The mutual objectives of the Parties in entering into this Consent Decree are to: (i) provide for the restoration, replacement, or acquisition of the equivalent of the ground water resources allegedly injured, destroyed, or lost as a result of hazardous substances and Non-hazardous Substances releases at and from the Sites; (ii) reimburse natural resource damage assessment costs incurred by the State; (iii) resolve the Settling Defendants' potential liability for Natural Resource Damages as provided herein; and (iv) avoid potentially costly and time-consuming litigation.

#### **VI. PAYMENT BY THE PERFORMING SETTling DEFENDANTS**

5. **Prior Payments.** The Performing Settling Defendants have already paid \$1,467,318.33 to the State and its consultants for the cooperative, restoration-based natural resource damage assessment activities undertaken by the State and its consultants.

6. **Payments to be made by Performing Settling Defendants.** Within thirty days (30) days after the Effective Date, the Performing Settling Defendants shall pay the sum of \$13,000,000, as described below and include Defendants' Taxpayer identification number with each payment:

(a) **Past Costs:** To the ONRT Natural Resources Trustee Fund by wire transfer, per wire instructions that may be obtained from that office, the sum of \$205,691.78, to be labeled "FMI Cost Recovery", as compensation in full for ONRT Past Costs that the Settling Defendants have not already paid.

(b) Ground Water Restoration, Replacement, Rehabilitation, and/or Acquisition: The balance after completing the payment required by subparagraph (a), consisting of \$12,794,308.22, to the ONRT Natural Resources Trustee Fund by wire transfer, per wire instructions that may be obtained from that office, to be labeled, "FMI Ground Water Restoration," to be used by ONRT to plan and implement projects designed to restore, replace, rehabilitate, and/or acquire the equivalent of ground water resources allegedly injured, destroyed, or lost as a result of the release of hazardous substances and Non-hazardous Substances at or from the Sites.

7. Notice of Payment. Upon making any payment under this Consent Decree, Performing Settling Defendants shall send written notice that payment has been made to:

Rebecca Neri Zagal, Executive Director  
New Mexico Office of Natural Resources Trustee  
4910-A Alameda Blvd. NE  
Albuquerque, NM 87113  
Tel: 505-243-8087  
Fax: 505-243-6644  
[rebecca.nerizagal@state.nm.us](mailto:rebecca.nerizagal@state.nm.us)

with copies to:

Judith Ann Moore  
Assistant Attorney General  
111 Lomas Blvd., NW Suite 300  
Albuquerque, NM 87102  
Tel: 505-222-9024  
Fax: 505-222-9006  
[AMoore@nmag.gov](mailto:AMoore@nmag.gov)

8. Remedies for Untimely or Inadequate Payment of Money.

(a) Interest. In the event any payment required by Paragraph 6 is not made when due, the Performing Settling Defendants shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment.

(b) Stipulated Penalties. In addition to the Interest required to be paid under the preceding Subparagraph, if any payment required by Paragraph 6 is not made within 14 days after it is due, then the Performing Settling Defendants shall also pay stipulated damages per day in the amounts specified below.

Penalty Per Violation Per Day	Period of Noncompliance
\$1,000	1st through 14th day
\$1,500	15th through 30th day
\$2,000	31st day and beyond

(c) Payment of Interest and Stipulated Penalties. Performing Settling Defendants must pay any Interest payments under Subparagraph 8(a) to the State in the same manner and form as Performing Settling Defendants should have paid the overdue principal amount. Interest shall be allocated to Past Costs and to ground water resource restoration, replacement, rehabilitation, and/or acquisition activities in accordance with the proportions that the unpaid amounts of the principal payments specified in Subparagraphs 6(a) and 6(b) bear to the total unpaid principal amount. Settling Defendants must pay any stipulated penalty payments under Subparagraph 8(b) in the manner and form that Performing Settlement Defendants should have paid the principal amounts in Paragraph 6. Stipulated Penalties shall be allocated to Past

Costs and ground water restoration, replacement, rehabilitation, and/or acquisition activities in the same manner as Interest payments. All payments to the State under this Subparagraph 8(c) shall (i) indicate that the payment is for stipulated penalties or interest, as applicable, and (ii) reference the United States District Court docket number and the name and address of the party making the payment.

(d) The payment of stipulated penalties shall not alter in any way Performing Settling Defendants' other obligations required under this Consent Decree.

**VII. TRUSTEE-SPONSORED GROUND WATER RESOURCE RESTORATION PROJECTS**

9 Management and Application of Funds: All funds disbursed from the ONRT Natural Resources Trustee Fund pursuant to Subparagraph 6(b) shall be used to pay for Future Costs and ONRT-sponsored ground water restoration activities in accordance with this Consent Decree and applicable state and federal law. All such funds shall be applied toward the costs of restoration, rehabilitation, or replacement of injured ground water, and/or acquisition of equivalent resources, including but not limited to any administrative costs and expenses for, and incidental to, restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken.

10. Restoration Planning. The Trustee intends to prepare a Restoration Plan describing how the funds dedicated for Trustee-sponsored ground water resource restoration efforts under this Section will be used. As provided by 43 C.F.R. § 11.93, the Plan will identify how funds will be used for restoration, rehabilitation, replacement, or acquisition of equivalent

resources. The Plan may also identify how funds will be used to address services allegedly lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed. The Trustee intends to solicit public review and comment on the Restoration Plan, and in no event will any project proceed without the publication in a newspaper of general circulation in the vicinity of the Sites of the opportunity to review the proposed project and submit comments on the proposal to the Trustee.

11. The Settling Defendants shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of funds or restoration efforts under this Section, provided that Settling Defendants may exercise whatever rights they, or any of them, may have as a member of the general public concerning such decisions, without reference to the terms of this Consent Decree or the settlement negotiations that led to this Consent Decree but without violating any term of this Consent Decree.

#### **VIII. COVENANT NOT TO SUE BY THE STATE**

12. Except as specifically provided by Paragraph 13 (General Reservations) and Paragraph 14 (Limitation on Covenant Regard Natural Resource Damages), the State covenants not to sue or take any civil or administrative action pursuant to CERCLA Section 107, 42 U.S.C. § 9607, Section 311(f)(4) & (5) of the CWA, 33 U.S.C. § 1321(f)(4) & (5), or the NMNRTA, NMSA 1978 Sections 75-7-1 through -5, or other statute or common law against the Settling Defendants for: a) Natural Resource Damages; b) Past Costs; and c) Future Costs. This covenant not to sue is conditioned upon the Performing Settling Defendants' full and satisfactory performance of their duties and obligations under this Consent Decree.



**IX. RESERVATION OF RIGHTS BY THE STATE**

13. General Reservations. The State reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendants with respect to all matters not expressly included within Paragraph 12 (Covenants by the State). Notwithstanding any other provisions of this Consent Decree, the State reserves all rights against the Settling Defendants with respect to:

(a) claims based on a failure by the Performing Settling Defendants to meet a requirement or fulfill a duty or obligation of this Consent Decree;

(b) liability for injunctive relief or administrative order enforcement under state law;

(c) liability under CERCLA Section 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), the CWA, Section 311, 33 U.S.C. § 1321, or applicable state law for the costs of removal or remedial actions by the State;

(d) liability under Section 107(a)(4)(D), 42 U.S.C. § 9607(a)(4)(D), for costs of any health assessment or health effects study carried out under 42 U.S.C. § 9604(i);

(e) liability for any damages or costs incurred or to be incurred by the State that are not within the definition of Natural Resource Damages, Past Costs or Future Costs;

(f) liability for damages to ground water resources resulting from releases of hazardous substances other than at or from the Sites and occurring after the date of entry of this Consent Decree; provided that this reservation does not include any liability arising from Natural Migration that occurs after the date of the entry of this Consent Decree;

(g) criminal liability;

(h) liability arising from the past, present, or future disposal or release of a

hazardous substance, or a Non-hazardous Substance, outside the Sites; provided that this reservation does not include any liability arising from Natural Migration to properties outside of the Sites of hazardous or Non-hazardous Substances released from, already stored, disposed of or present on or at the Sites prior to the date of the entry of this Consent Decree.

14. Limitation on Covenant Regarding Natural Resource Damages.

(a) Notwithstanding any other provision of this Consent Decree, the State reserves and retains the right to institute proceedings against the Performing Settling Defendants in this action or in a new action to secure Natural Resource Damages including the costs of damage assessment for possible Natural Resource Damages relating to the Sites and resulting from the release of hazardous substances at or from the Sites where:

(1) any condition at one or more of the Sites that was unknown to Trustee as of the entry of this Consent Decree is discovered and causes or contributes to injury to, destruction or loss of Natural Resources materially greater or materially different from that known and assessed as of the entry of this Consent Decree, other than a condition resulting from Natural Migration after the date of entry of this Consent Decree.; or

(2) any information, unknown to the Trustee at the time of entry of this Consent Decree, is received by the Trustee and the Trustee determines that this unknown information together with any other relevant information indicates that the damages to Natural Resources may be materially greater than assessed by the Trustee as of the entry of this Consent Decree; or

(3) After completion of remedial investigation and feasibility study for one or more of the Sites under CERCLA, (i) Performing Settling Defendants fail to perform timely

any CERCLA response action selected or approved for any of the Sites by the United States; and (ii) such failure to perform or its untimely performance contributes to an injury to, destruction of, or loss of ground water resources materially greater than or materially different from that assessed by the Trustee as of the entry of this Consent Decree.

(b) An immaterial increase in the assessed size of injury when compared to the assessment based on the information within the knowledge of the Trustee as of the entry of this Consent Decree or an immaterial increase in the rate or quantity of release of hazardous substances or Non-hazardous Substances compared to the rate or quantity of release as of when this Consent Decree was entered is not, standing alone, a basis for invoking the limitation on the covenant established by this paragraph.

#### **X. COVENANTS BY SETTLING DEFENDANTS**

15. Covenants by the Settling Defendants. The Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the State, or its respective contractors, agents, officials or employees, with respect to Natural Resource Damages covered by the covenants not to sue contained in Paragraph 12 above, including but not limited to any claim against the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and Section 311 of the CWA, 33 U.S.C. § 1321, relating to Natural Resource Damages. These covenants not to sue shall not apply in the event that the State brings a claim against Settling Defendants pursuant to the reservations set forth in Paragraphs 13 or 14 above, but only to the extent and for the same matters, transactions, or occurrences as are raised in the claims asserted by the State pursuant to such reservations.

**XI. EFFECT OF SETTLEMENT - CONTRIBUTION PROTECTION**

16. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

17. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and other federal or state laws, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Costs, Future Costs, and Natural Resource Damages.

18. The Settling Defendants agree that, with respect to any suit or claim for contribution brought against them or any of them for matters related to this Consent Decree, the Settling Defendants shall notify the persons identified in Section XII (Notices) in writing within 30 days of service of the complaint or claim upon it. In addition, the Settling Defendants shall notify the persons identified in Section XII (Notices) within 15 days of service or receipt of any motion for summary judgment (or within 5 business days of receipt if a response would be due in less than 15 days), and within 15 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

19. Waiver of Claim-Splitting Defenses. In any subsequent administrative or judicial

proceeding initiated by the State for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the Sites, the Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by the State set forth in Section VIII.

## **XII. NOTICES**

20. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree.

### **AS TO THE STATE:**

Rebecca Neri Zagal  
New Mexico Office of Natural Resources Trustee  
4910-A Alameda Blvd. NE  
Albuquerque, NM 87113  
[rebecca.nerizagal@state.nm.us](mailto:rebecca.nerizagal@state.nm.us)

Judith Ann Moore  
Assistant Attorney General  
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Albuquerque, NM 87102  
Tel: 505-222-9024  
Fax: 505-222-9006  
[AMoore@nmag.gov](mailto:AMoore@nmag.gov)

AS TO SETTLING DEFENDANTS:

Dalva L. Moellenberg  
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2575 E. Camelback Road  
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[dldm@gknet.com](mailto:dldm@gknet.com)

Donna Diamond  
Senior Counsel  
Freeport-McMoRan Copper & Gold Inc.  
333 North Central Avenue  
Phoenix, Arizona 85004  
[Donna.Diamond@FMI.com](mailto:Donna.Diamond@FMI.com)

Tel. (602) 366-7734

**XIII. APPENDIX**

21. The following appendix is attached to and incorporated into this Consent Decree:

A map generally depicting the Sites and surrounding land in the vicinity.

**XIV. EFFECTIVE DATE AND RETENTION OF JURISDICTION**

22. This Consent Decree shall take effect upon entry by the Court.

23. This Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

**XV. CONSENT DECREE MODIFICATIONS**

24. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect until filed with the Court.

Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

25. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

26. Economic hardship or changed financial circumstances of the Performing Settling Defendants shall not serve as a basis for modifications of this Consent Decree.

#### **XVI. SIGNATORIES / SERVICE**

27. The undersigned representatives of the Settling Defendants and the State each certify that he or she is fully authorized to enter into this Consent Decree and to execute and legally bind such Party to this Consent Decree. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

28. The Settling Defendants hereby agree not to oppose entry of this Consent Decree (in the form presented) by this Court or to challenge any provision of this Consent Decree unless the State has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, this Consent Decree is voidable at the sole discretion of any Party and the terms of this Consent Decree may not be used as evidence in any litigation among the Parties. Notwithstanding the preceding sentence, the Settling Defendants agree not to appeal the Court's approval of this Consent Decree.

29. The Settling Defendants shall identify, on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Settling Defendants with respect to all matters arising under or relating to this Consent Decree. The Settling Defendants hereby agree to accept service of the Complaint and all other pleadings in that manner and to waive the formal service requirements set forth in Rule 4, Fed. R. Civ. P. and any applicable local rules of this Court, including but not limited to the requirements for service of a summons. The Settling Defendants need not file an answer to the Complaint in this action unless or until otherwise agreed among the Parties or ordered by the Court.

**XVII. FINAL JUDGMENT**

30. This Consent Decree and its appendix constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

31. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the State and the Settling Defendants. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58, Fed. R. Civ. P.

SO ORDERED this 11<sup>th</sup> day of February, 2011.

ROBERT H. SCOTT  
United States ~~District~~ Court Judge  
District of New Mexico

Magistrate

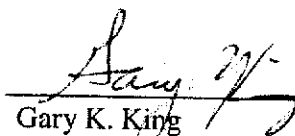


THE UNDERSIGNED PARTIES enter into this Consent Decree in State of New Mexico v. Freeport McMoRan Corporation, et al.


**FOR THE STATE OF NEW MEXICO:**

New Mexico Attorney General

Date: 12/23/10

  
\_\_\_\_\_  
Gary K. King  
Attorney General  
Stephen R. Farris  
Judith Ann Moore  
Assistant Attorneys General  
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Albuquerque, NM 87102  
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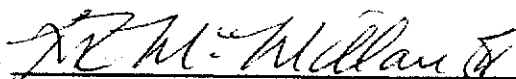
Date: 12/27/10

  
\_\_\_\_\_  
Ron Curry  
Natural Resources Trustee  
N.M. Office of Natural Resources Trustee  
4910-A Alameda Blvd. NE  
Albuquerque, NM 87113  
Tel: 505-243-8087  
Fax: 505-243-6644  
[Ron.curry@state.nm.us](mailto:Ron.curry@state.nm.us)

THE UNDERSIGNED PARTIES enter into this Consent Decree in State of New Mexico v. Freeport McMoRan Corporation, et al.

**FOR FREEPORT-MCMORAN CORPORATION,**

Date: 12/23/10



L. Richards McMillan II  
Senior Vice President  
333 North Central Avenue  
Phoenix, Arizona 85004

**FOR FREEPORT-MCMORAN CHINO MINES COMPANY,  
a New Mexico general partnership**

By: Phelps Dodge Chino, Inc.,  
its General Partner

Date: 12/23/10



L. Richards McMillan II  
Senior Vice President  
333 North Central Avenue  
Phoenix, Arizona 85004

By: Chino Acquisition Inc.,  
its General Partner

Date: 12/23/10



L. Richards McMillan II  
Senior Vice President  
333 North Central Avenue  
Phoenix, Arizona 85004

**FOR FREEPORT-MCMORAN TYRONE MINING LLC,  
a New Mexico limited liability company**

By: Freeport-McMoRan Tyrone Inc.,  
its Manager

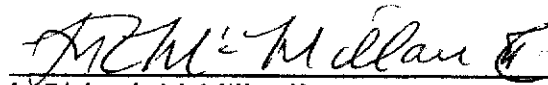
Date: 12/23/10



L. Richards McMillan II  
Senior Vice President  
333 North Central Avenue  
Phoenix, Arizona 85004

**FOR FREEPORT-MCMORAN TYRONE INC.,**

Date: 12/23/10



L. Richards McMillan II  
Senior Vice President  
333 North Central Avenue  
Phoenix, Arizona 85004

**FOR FREEPORT-MCMORAN COBRE MINING COMPANY**

Date: 12/23/10

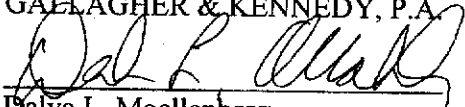


L. Richards McMillan II  
Senior Vice President  
333 North Central Avenue  
Phoenix, Arizona 85004

Designated Agent per Section XVI:

Date: 12/23/10

GALLAGHER & KENNEDY, P.A.

  
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Attorneys for Freeport-McMoRan Corporation,  
Freeport-McMoRan Chino Mines Company  
Freeport-McMoRan Tyrone Inc.  
Freeport-McMoRan Tyrone Mining LLC  
Freeport-McMoRan Cobre Mining Company

2623984

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

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STATE OF NEW MEXICO,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
Freeport-McMoRan Corporation	)	
Freeport-McMoRan Chino Mines Company	)	
Freeport-McMoRan Tyrone Inc.	)	
Freeport-McMoRan Tyrone Mining LLC	)	
Freeport-McMoRan Cobre Mining Company	)	
	)	
	)	
Defendants.	)	

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APPENDIX TO CONSENT DECREE

**Preliminary Estimate of Phelps Dodge NRDAR Assessment Areas**

