



STILLWATER  
PROTECTIVE ASSOCIATION  
Absarokee, Montana 59001



## GOOD NEIGHBOR AGREEMENT

BETWEEN

STILLWATER MINING COMPANY

AND

NORTHERN PLAINS RESOURCE COUNCIL  
COTTONWOOD RESOURCE COUNCIL  
STILLWATER PROTECTIVE ASSOCIATION

ORIGINALLY SIGNED  
MAY 8, 2000

AMENDED  
AUGUST 3, 2004

REVISED AND AMENDED

AUGUST 23, 2005

## TABLE OF CONTENTS

PARTIES .....	5
RECITALS.....	6
SECTION 1. OBJECTIVES .....	9
SECTION 2. DEFINITIONS.....	9
SECTION 3. ACCESS TO INFORMATION AND CONFIDENTIAL INFORMATION .....	10
SECTION 4. FUNDING OBLIGATIONS .....	14
SECTION 5. THIRD PARTY .....	17
SECTION 6. ECONOMIC FEASIBILITY.....	19
SECTION 7. OVERSIGHT COMMITTEES.....	21
SECTION 8. RESPONSIBLE MINING PRACTICES AND TECHNOLOGY COMMITTEE.....	22
SECTION 9. DISPUTE RESOLUTION AND ENFORCEMENT .....	25
SECTION 10. INSPECTIONS .....	27
SECTION 11. CONSERVATION EASEMENTS .....	27
SECTION 12. MINE-SPONSORED HOUSING.....	30
SECTION 13. ADDITIONAL SMC COVENANTS.....	31
SECTION 14. ADDITIONAL COVENANTS OF COUNCILS .....	34
SECTION 15. TERM, TERMINATION, SURVIVAL .....	35
SECTION 16. MISCELLANEOUS PROVISIONS .....	38
APPENDIX A. DEFINITIONS .....	43
APPENDIX B. INFORMATION.....	47
APPENDIX C. DESIGNATED COUNCILS STAFF AND CONSULTANTS .....	48
APPENDIX D. ARBITRATION .....	49
APPENDIX E. LEGAL DESCRIPTION OF SMC PROPERTIES AS AMENDED IN 2004 AMENDMENT .....	52

APPENDIX F. EAST BOULDER MINE COMPREHENSIVE BUSING AND TRAFFIC REDUCTION PLAN.....	54
APPENDIX G. STILLWATER MINE TRAFFIC REDUCTION PLAN ..	56
APPENDIX H. COMMERCIAL TRAFFIC REDUCTION PLAN.....	59
APPENDIX I. ENVIRONMENTAL AUDIT PROGRAM FOR THE EAST BOULDER AND STILLWATER MINES.....	60
APPENDIX J. RECLAMATION PLAN AND PERFORMANCE BOND EVALUATION .....	62
APPENDIX K. TAILINGS AND WASTE ROCK PROJECT .....	64
APPENDIX L. COMPREHENSIVE SURFACE WATER, GROUND WATER, AND AQUATIC RESOURCES PROTECTION PROGRAM ...	68
SECTION 1.0 OBJECTIVES .....	68
SECTION 2.0 DEFINITIONS .....	69
SECTION 3.0 GENERAL REQUIREMENTS .....	72
SECTION 4.0 DATABASE.....	73
SECTION 5.0 WATER QUALITY REVIEW AND REPORT .....	74
SECTION 6.0 EAST BOULDER AND STILLWATER MINE SUPPLEMENTAL MONITORING PROGRAMS FOR SURFACE WATER, GROUND WATER, AND BIOLOGICAL RESOURCES .....	74
SECTION 7.0 SUPPLEMENTAL HYDRO-GEOLOGIC AND GROUND WATER RESOURCES STUDIES .....	75
SECTION 8.0 FISHERIES STUDY AND MONITORING PLAN .....	77
SECTION 9.0 TIERED TRIGGER LEVEL FRAMEWORK FOR THE EAST BOULDER AND STILLWATER MINES .....	78
SECTION 10.0 RESPONSE AND REMEDIAL ACTIONS .....	78
SECTION 11.0 WATER MANAGEMENT PRIORITIZATION AND OPTIMIZATION PLAN FOR THE EAST BOULDER AND STILLWATER MINES .....	79
SECTION 12.0 MINIMUM REQUIRED MONITORED-PARAMETERS .....	80
APPENDIX M. FINAL STILLWATER AND EAST BOULDER WATER QUALITY REVIEWS .....	82
APPENDIX N. EAST BOULDER MINE SUPPLEMENTAL MONITORING PROGRAM.....	83
APPENDIX O. STILLWATER MINE SUPPLEMENTAL MONITORING PROGRAM.....	88
APPENDIX P. HERTZLER RANCH PROPERTY AND PIPELINE MITIGATION PLAN .....	91

APPENDIX Q. FINAL EAST BOULDER WATER MANAGEMENT  
OPTIMIZATION AND PRIORITIZATION PLAN ..... 92

APPENDIX R. FINAL STILLWATER MINE WATER MANAGEMENT  
OPTIMIZATION AND PRIORITIZATION PLAN ..... 93

# GOOD NEIGHBOR AGREEMENT

(August 23, 2005)

This Good Neighbor Agreement (the “Agreement”) is effective May 8, 2000 (the “Effective Date”), by and among Stillwater Mining Company, a Delaware corporation (“SMC”), Northern Plains Resource Council, a Montana not-for-profit corporation (“NPRC”), Cottonwood Resource Council, a Montana not-for-profit corporation (“CRC”), and Stillwater Protective Association, a Montana not-for-profit corporation (“SPA”) (NPRC, CRC and SPA are collectively referred to as the “Councils”).

## PARTIES

A. Stillwater Mining Company. SMC is a Delaware corporation engaged in the exploration, development, extraction, processing and refining of platinum group metals (PGMs). SMC presently operates mines near Nye, Montana (the “Stillwater Mine”), and southeast of Big Timber, Montana, near the East Boulder River (the “East Boulder Mine”). SMC also owns and operates a metallurgical complex at Columbus, Montana. SMC shall include SMC successors, partners, subsidiaries, affiliates, and assigns.

B. Northern Plains Resource Council. NPRC is a grassroots organization dedicated to the stewardship of Montana’s air, land, and water and to the preservation of a sustainable system of family agriculture and the rural communities that depend on it. NPRC is a registered nonprofit corporation under Section 501(c)(3) of the Internal Revenue Code of 1986. NPRC was founded in 1972 by ranchers, farmers, and conservationists concerned with proposals for coal and energy development in eastern Montana. Through the years NPRC has worked on a variety of issues including coal and energy development, hard rock mining, air quality, water quality, and responsible management of hazardous wastes.

C. Stillwater Protective Association. SPA is an affiliate of NPRC and registered nonprofit corporation under Section 501(c)(3) of the Internal Revenue Code of 1986. SPA is a local grassroots organization that has been working to protect the quality of life in Stillwater County since 1975. SPA has focused on ensuring that SMC operates the Stillwater Mine without harming the natural environment or human community.

D. Cottonwood Resource Council. CRC is an affiliate of NPRC and registered nonprofit corporation under Section 501(c)(3) of the Internal Revenue Code of 1986. CRC was founded in 1988 by citizens concerned about the impacts of proposed hard-rock mining and other large-scale developments in Sweet Grass County. The CRC mission is to safeguard for future generations the high quality of life in Sweet Grass County, clean air and water, abundant wildlife, and a heritage of cooperation among neighbors. CRC has been actively involved in all phases of the state and federal permitting processes for the East Boulder Mine.

E. Third Party Beneficiaries. Nothing in this Agreement shall be construed to make any other person or entity not executing this Agreement a third-party beneficiary to this Agreement.

## **RECITALS**

The Parties agree as follows:

A. SMC holds the rights to claims covering substantially all the presently identified PGM mineralized zone of the J-M Reef. SMC from time to time might desire to modify its mining plans, mining or processing methods and production rates of palladium and platinum. Any such changes to SMC operations might have impacts on the local communities, economies, and Environment.

B. SMC conducts Mining Operations subject to federal, state, and local laws and regulations and permits issued pursuant to these governing laws and regulations. SMC may desire to provide for the amendment of its existing permits, licenses, and authorities to facilitate changes in Mining Operations and related business activities. SMC desires to provide for obtaining input from the Councils in connection with proposed permit applications or amendments or changes in Mining Operations or business activities. In furtherance of its Mining Operations and business activities, SMC further desires to place certain restrictions upon lands owned by SMC.

C. The Councils desire to Participate in SMC planning processes that might affect the local communities or the Environment, to provide comments and input with respect to present and future SMC Mining Operations and to provide a means for communicating with respect to Issues of Concern that may arise out of or relate to SMC Mining Operations.

### **Stillwater Mine Expansion**

D. In April of 1996, SMC proposed Amendment #010 to the Stillwater Mine Operating Permit. The purpose of this amendment was to expand Mining Operations at the Stillwater Mine including: the removal of the 2,000 tons-per-day (TPD) production cap, the construction of a new Tailings Impoundment and Waste Rock disposal areas, the construction of additional Water Management Facilities and disposal facilities, and the construction of a Pipeline to these new facilities.

E. The Custer National Forest (CNF) and Montana Department of Environmental Quality (MDEQ) released the draft Environmental Impact Statement (EIS) for the Stillwater Mine Revised Waste Management Plan and Hertzler Tailings Impoundment in March 1998. NPRC and SPA members testified at public hearings and submitted written comments on the draft EIS.

F. On November 12, 1998, the CNF and MDEQ issued the record of decision approving the expansion of Mining Operations at the Stillwater Mine. On February 10,

1999, SPA and NPRC commenced litigation in the First Judicial District Court of Montana, (Lewis and Clark County), NPRC and SPA v. MDEQ, Cause No. 9900103 (the “Pending Litigation”). The lawsuit challenges the MDEQ record of decision approving the proposed expansion under the Montana Environmental Policy Act (MEPA), Metal Mine Reclamation Act (MMRA), and Montana Constitution Article II, Section 2 and Article IX, Sections 1 and 2.

### **East Boulder Mine Development**

G. In 1988, a predecessor to SMC obtained the East Boulder MPDES Permit to discharge wastewater from East Boulder Mine exploration activities into ground waters adjacent to the East Boulder River.

H. In 1993, the Gallatin National Forest (GNF) and Montana Department of State Lands (MDSL) issued the record of decision approving the East Boulder Mine Operating Permit.

I. In 1991, a predecessor to SMC submitted a petition with the Board of Health and Environmental Sciences (BHES) for the modification of the quality of ambient waters adjacent to the East Boulder Mine. CRC and NPRC opposed the petition throughout the administrative process.

J. In 1992, the BHES approved the petition and CRC and NPRC commenced litigation in the First Judicial District Court of Montana (Lewis and Clark County), NPRC et al. v. State of Montana, Cause No. ADV-92-1148. In September of 1995, the parties agreed to dismiss the case without prejudice. The SMC predecessor postponed its plans to develop the East Boulder Mine.

K. In November of 1997, SMC announced plans to proceed with the development of the East Boulder Mine, submitted an application to renew the East Boulder MPDES Permit, and submitted its proposed Water Management Plan, which required an expansion of the permit area. CRC and NPRC requested that the MDEQ and GNF prepare a supplemental EIS for the proposed expansion of the permit area. On May 20, 1999, the MDEQ approved the expansion of the permit area.

L. On January 28, 1999, the MDEQ released the draft East Boulder MPDES Permit. CRC and NPRC members testified at the public hearing and submitted written comments on the draft East Boulder MPDES Permit.

M. In May 1999, the Councils and SMC entered into negotiations in an attempt to resolve certain issues regarding the expansion of the Stillwater Mine and the development of the East Boulder Mine.



## **The Good Neighbor Agreement**

N. The Parties signed the GNA on May 8, 2000 (hereinafter “2000 GNA”). Prior to the Good Neighbor Agreement, SMC worked diligently with local units of government to mitigate socio-economic impacts within the local communities surrounding its mining operations. Additionally, SMC had received environmental awards and public recognition for its exemplary compliance record and had a reputation for being proactive and environmentally responsible in the management of its operations.

Under the GNA, SMC has gone well beyond the standards of performance required by federal and state laws. Since signing the GNA, the Councils and SMC have worked cooperatively to address issues of concern. While we have not always been in agreement, the GNA has worked to maintain open lines of communication by which problems and concerns could be resolved. The Parties have truly become good neighbors.

O. Many of the projects required by the 2000 GNA have been completed. SMC has contributed staff and resources to ensure the GNA and its stringent objectives are achieved. The following projects are either completed or ongoing:

1. The Stillwater Mine environmental audit;
2. Baseline water quality reviews for both mine sites;
3. Donation of conservation easements;
4. Traffic reduction plans at both mine sites;
5. Supplemental biological monitoring for both rivers;
6. Baseline fisheries study of the East Boulder River;
7. A workable approach to maintaining existing water quality in the Stillwater and East Boulder watersheds;
8. The formation of the Boulder River Watershed Association;
9. An independent review of the East Boulder Mine reclamation plan and performance bond;
10. The East Boulder and Stillwater Mine Water Optimization and Prioritization Management Plans; and
11. The initial stages of the feasibility of new waste rock and tailings disposal management technologies.

P. The purposes of the 2005 amendments are to update the GNA to reflect the significant accomplishments the Parties have made in the implementation of the Agreement, to update several provisions to reflect current practice, and to provide a framework for the ongoing implementation of the GNA.

## **CONTRACT**

**NOW THEREFORE**, in consideration of the above background, the covenants, commitments, and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are acknowledged by the Parties hereto, the Parties hereby agree to be bound by this contract as follows:

### **SECTION 1. OBJECTIVES**

1.0 The objectives of this Agreement shall include the following:

- (a) To minimize any potential adverse impacts caused by SMC Mining Operations on the local communities, economies, and Environment.
- (b) To establish and maintain a mechanism of open lines of communication between the Parties to address Issues of Concern raised by Councils and the residents of the region impacted by SMC Mining Operations.
- (c) To provide Councils with the opportunity to Participate in SMC decisions that may impact the local communities, economies, or Environment. For the purposes of this Agreement, “Participate” means that SMC shall provide Councils with access to Information and notice of proposals and meetings before final decisions are made. The purpose of this access and notice is to provide Councils with the opportunity to provide meaningful input and advice to SMC decision-makers before final decisions are made. For Arbitrable Issues, this right to Participate includes a vote in the decision-making process, subject to the limitations set forth in Section 9.4 and Appendix D (Arbitration).
- (d) To bind SMC and SMC successors, partners, subsidiaries, affiliates, and assigns to this Agreement for the life of Mining Operations.
- (e) To minimize future litigation between Councils and SMC by utilizing the processes and mechanisms established by this Agreement to resolve disputes.

### **SECTION 2. DEFINITIONS**

2.0 In addition to the definitions of the capitalized terms stated in other sections of this Agreement, the capitalized terms when used in this Agreement and Appendices shall have the definitions found in Appendix A (Definitions).

## SECTION 3. ACCESS TO INFORMATION AND CONFIDENTIAL INFORMATION

3.0 Definition of Information. “Information” means “all data, sampling results, studies, reports, evaluations, plans, projects, audits, transcripts, and other Documents derived from or collected under this Agreement.” All Information shall be part of the public domain and shall not be subject to any requirement of confidentiality or non-disclosure, unless such Information is Confidential Information. The Information designated in Appendix B shall not be considered Confidential Information under any circumstances.

3.1 Disclosure. Upon receipt of Information, SMC shall immediately disclose all Information to the Designated Councils Representatives including any Information in SMC’s judgment to be Confidential Information. “Designated Councils Representatives” means Councils Oversight and Technology Committee Representatives and Designated Councils Staff and Consultants designated in Appendix C. Councils shall designate such staff and consultants within 30 days of the Effective Date. Councils may amend the list of Designated Councils Staff and Consultants (Appendix C) by providing SMC with Notice of any changes.

3.1.1 Limitation. Nothing in this Section shall be construed to compel SMC to disclose Information if the disclosure to Councils would violate any applicable federal or state law or regulation. Upon receipt of such Information, SMC shall notify Councils designated legal representative of the general nature of such information.

3.2 Additional Disclosure. Upon receipt of such Information, SMC shall disclose to the Designated Councils Representatives all information required to be disclosed by Federal and State Environmental Laws and Regulations. SMC shall disclose such information as soon as possible but no later than when such information is required to be disclosed by law or regulation.

3.3 Additional Requests. SMC shall, upon reasonable written requests made by the Designated Council Representatives, provide additional non-Confidential Information within 30 days of such requests.

3.4 Confidential Information. “Confidential Information” shall be limited to “Trade Secrets” and “Confidential Business Information”, which shall be defined as follows:

3.4.1 “Trade Secrets” means a commercially valuable plan, formula, process, or device that is used for making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. The Parties intend the definition of Trade Secrets to be identical to the definition of Trade Secrets under the Freedom of Information Act, 5 USC 552 *et seq.* (1988).

3.4.2 “Confidential Business Information” (CBI) means commercial and financial information obtained from a person and privileged or confidential the disclosure of which is likely to cause substantial harm to the competitive position of SMC. The Parties intend the definition of CBI to be identical to the definition of CBI under the Freedom of Information Act, 5 USC 552 *et seq.* (1988).

3.5 Process. SMC shall clearly label and mark any portions of such Information which in SMC’s judgment are Confidential Information. When disclosing Confidential Information to Designated Councils Representatives, SMC shall:

3.5.1 Submit Confidential Information separately from other Information; and

3.5.2 Substantiate the claim of confidentiality by providing a written statement stating:

(a) The rationale supporting SMC’s judgment that such information is either a Trade Secret or Confidential Business Information based on the above definitions;

(b) That SMC has not disclosed the Confidential Information to any other person who is not bound by a confidentiality agreement;

(c) That SMC has taken reasonable measures to protect the confidentiality of the Confidential Information and intends to continue to take such measures;

(d) That the Confidential Information is not required to be disclosed, or otherwise made available, to the public under any applicable federal, state, or local law or regulation; and

(e) Disclosure of the Confidential Information to the public is likely to cause substantial harm to SMC’s competitive position.

3.6 Use of Confidential Information. Designated Councils Representatives shall:

3.6.1 Keep the Confidential Information confidential;

3.6.2 Not disclose the Confidential Information to any entity or person except for disclosures permitted by Section 3.7 below; and

3.6.3 Use Confidential Information solely for the purposes of implementing this Agreement and for no other purposes.

3.7 Permitted Disclosure. The Designated Councils Representatives may disclose Confidential Information to other Councils officers, staff, and consultants in addition to those prescribed in Section 3.1, if such disclosure is necessary for Councils to satisfy its

performance obligations under this Agreement or to implement the objectives of this Agreement.

3.7.1 Process. The Designated Councils Representatives shall provide SMC with at least 10 (ten) days Notice before making any such disclosure. Such Councils officers, staff, and consultants shall agree in writing supplied to SMC to be likewise bound by the provisions of Section 3.6 above.

3.7.2 Limitation. Disclosure shall be limited to the following Councils officers, staff, and consultants:

- (a) The chair of SPA, CRC, and NPRC; and
- (b) Other Councils staff and consultants who have a need to access and review the Confidential Information to complete work that would qualify for SMC reimbursement under Section 4.3.

3.8 Exclusions. Nothing in this Section shall prohibit Councils from disclosing Confidential Information if:

3.8.1 Such information has been published or has become part of the public domain other than by a violation of this Section;

3.8.2 Such information is available through public sources;

3.8.3 Such information is required to be disclosed by applicable federal, state or local law or regulation;

3.8.4 Such information is required to be disclosed in a judicial, administrative, or governmental proceeding pursuant to a valid subpoena or other applicable order; provided, however, Councils shall give SMC Notice before making such disclosure. SMC expressly reserves the right to interpose all objections it may have as to the disclosure of the Confidential Information; or

3.8.5 Specifically authorized by SMC in writing.

3.9 Disputes. If the Designated Councils Representatives disagree with SMC's judgment as to the confidentiality of Information, or if Councils designated legal representative disagrees with SMC's judgment as to whether the disclosure of Information would result in a violation of federal or state law or regulation, the Designated Councils Representatives shall provide SMC with Notice of such disagreement. If the Parties cannot resolve the dispute within 30 days of SMC's receipt of such Notice, SMC or Councils may commence an action in district court for a declaratory judgment, pursuant with the Uniform Declaratory Judgments Act, MCA 27-8-101 *et seq.* and 25-20-Rule 57, as to whether such Information is Confidential

Information under this Section or whether the disclosure of such Information would violate applicable federal or state laws or regulations.

3.10 Enforcement. Councils shall be responsible for enforcing the confidentiality obligations of its members, officers, staff, and consultants under this Section.

3.11 Liquidated Damages. If a court of competent jurisdiction determines that Councils have violated Section 3.6, Councils shall:

3.11.1 Immediately terminate the person's participation in the Agreement; and

3.11.2 Pay to SMC a fine of \$1000 for the first violation, \$2500 for the second violation, and \$5000 for every violation thereafter; or

3.11.3 Pay to SMC a fine of \$10,000 if the violation is determined to be willful.

3.12 Other Remedies. Nothing in this Section shall preclude SMC from seeking any civil remedy under federal or state law for Councils violation of this Section. SMC is entitled to seek any remedy at law or in equity, including an injunction, specific performance, or other forms of equitable relief or money damages or any combination thereof if this Section is breached or if there is a threatened breach.

3.13 Grace Period. If Information shows that SMC is not in compliance with this Agreement and SMC meets the requirements set forth in Section 3.13.2 below, Councils shall not disclose such Information to the public for 60 days from the receipt of such Information (the "Grace Period"). At the end of the 60-day Grace Period, Councils may disclose such Information to the public but any such disclosure shall include a statement summarizing the corrective and preventative measures taken by SMC.

3.13.1 Inapplicable. This Grace Period does not apply:

(a) To issues of non-compliance that are the same or closely-related to issues of non-compliance that have occurred previously under this Agreement; or

(b) To Information that shows a violation of any Federal and State Environmental Law or Regulation.

3.13.2 SMC Obligations. This 60-day Grace Period applies if:

(a) SMC develops a written compliance schedule that explicitly identifies the corrective measures to be taken by SMC and the preventative measures to be taken by SMC to prevent the recurrence of the non-compliance;

(b) The relevant Oversight Committee approves the written compliance schedule within 15 days of the receipt of such Information; and

(c) SMC demonstrates to the satisfaction of the relevant Oversight Committee within the 60-day Grace Period that the corrective measures have resolved the issue of noncompliance.

3.14 Copies. SMC shall provide Councils with 3 (three) copies of all Information required to be disclosed to Councils under this Section. SMC shall provide Councils with an electronic format of such Information if available.

3.15 Return of Confidential Information. Upon the termination of this Agreement under Section 15, Councils shall make best efforts to return to SMC all Confidential Information or, upon direction of SMC destroy the Confidential Information and all Documents containing such Confidential Information. Upon a person's termination under Section 3.11.1, Councils shall ensure the Confidential Information in such person's possession is returned or destroyed.

## **SECTION 4. FUNDING OBLIGATIONS**

4.0 Funding Obligation. SMC shall fund the development and maintenance of any programs, studies, plans, audits, or committees required by this Agreement.

4.1 Third Parties. SMC shall pay directly all the expenses incurred by a Third Party completing the projects, reports, studies, or audits required by this Agreement including, but not limited to, the following:

4.1.1 The Environmental Audits required by Section 13.3 up to \$30,000 per audit year.

4.1.2 Emergency Environmental Audits required by various sections of this Agreement.

4.1.3 The Reclamation Plan and Bond Evaluation required by Section 13.4 up to \$12,000 per evaluation.

4.1.4 Tailings and Waste Rock Project required by Section 13.5.

4.1.5 The long term fisheries population monitoring program required by Section 13.7.9 up to \$20,000 per sampling year.

4.1.6 The supplemental Ground Water Studies required by Section 13.7.8 up to \$200,000.

4.1.7 The relevant Oversight Committee may reallocate any of the above funds and make appropriate adjustments to expenditure limits to complete other Third Party projects, reports, studies, or audits contemplated under this Section 4 or to similarly complete any other projects, reports, studies, or audits required by this Agreement for which the actual Third Party or other costs incurred by SMC exceed those amounts for which SMC's Funding Obligation is expressly limited under the Agreement. The relevant Oversight Committee may reallocate any of the above funds to complete Special Projects being conducted by Councils consultants pursuant to the Parties' agreement.

4.2 Response and Remedial Actions. Notwithstanding any other funding obligations under this Agreement, SMC shall be responsible for all the costs necessary to complete the response and remedial actions and implement the recommendations of the Emergency Environmental Audits required by Sections 13.7.12, 13.7.13, and Section 10.0 of Appendix L (Response and Remedial Actions).

4.3 Reimbursement Obligation. SMC shall reimburse Councils for Qualifying Expenses for the term of this Agreement. For the first 2 (two) years of this Agreement, SMC reimbursements shall be limited to an annual (12 month) amount of up to \$135,000. Subsequent the first two 2 (two) years of this Agreement, the Parties shall annually negotiate and approve an annual budget setting forth SMC's obligation for reimbursing Qualifying Expenses of up to \$135,000 annually.

4.3.1 Objectives. The objectives of the SMC reimbursements are to:

- (a) Allow Councils to effectively Participate in the implementation and enforcement of this Agreement;
- (b) Ensure Councils have available the technical and scientific expertise necessary to Participate in the implementation of this Agreement and to satisfy their performance obligations under this Agreement;
- (c) Offset the costs of conducting Citizen Sampling;
- (d) Offset the Administrative Expenses of participating in this Agreement; and
- (e) Offset the Out-of-Pocket expenses of Councils members serving on the Oversight and Technology Committees.

4.3.2 Qualifying Expenses. "Qualifying Expenses" shall include the following expenses incurred by Councils in participating and implementing this Agreement:

- (a) "Administrative Expenses" shall include the costs of telephone calls, conference calls, photocopying services, and postage. Administrative Expenses shall be limited to reasonable compensation and



overhead costs of NPRC employees or agents engaged in the direct implementation of actions contemplated in the Agreement. However, allocations of Council's general corporate overhead expenses or employee compensation incurred in the normal course of NPRC business, including but not limited to recruitment, routine organizational activities or general planning and coordination with affiliate organizations, shall not be considered Qualifying Expenses for purposes of this Agreement.

(b) "Out-of Pocket Expenses" shall include the travel, food, and lodging expenses incurred by Council's members serving on the Oversight and Technology Committees and Councils Staff designated in Appendix C.

(c) "Scientific and Technical Consultant Fees and Costs" shall include reasonable compensation rates for professional services, travel, food, and lodging expenses incurred by Councils consultants for purposes of this Agreement.

(d) "Citizen Sampling" shall include the costs of collecting, preserving, and analyzing any samples of the Environment taken during Citizen Sampling under Section 3.1 of Appendix L.

(e) The costs of maintaining and managing the Escrow Fund established by Section 4.4.1.

4.4 Reimbursement Process. SMC shall make reimbursements to Councils as prescribed in this Section.

4.4.1 Escrow Fund. SMC shall establish an Escrow Fund and deposit \$50,000 in such fund within 15 (fifteen) days of the Effective Date. SMC shall maintain this fund for the term of this Agreement.

4.4.2 Escrow Agent. Councils shall select a certified public accountant licensed to practice in the State of Montana or other qualified entity to serve as the Escrow Agent. The Escrow Agent shall be an agent of Councils and shall be responsible for managing the Escrow Fund. The Escrow Agent shall receive Councils receipts and invoices, receive SMC reimbursement payments, and make reimbursement payments to Councils.

4.4.3 Receipts and Invoices. Councils shall submit a written copy of all receipts and invoices for Qualifying Expenses to the designated Escrow Agent and to the designated SMC representative.

4.4.4 Reimbursements. SMC shall be solely accountable for reimbursements made by the Escrow Agent for Qualifying Expenses, or other allowable expenses expressly agreed to by the Parties and authorized by Councils, the receipts,

authorized expenses, and invoices for which are submitted concurrently to SMC and the Escrow Agent. Unless SMC provides Notice to the Escrow Agent and Councils within 10 (ten) working days of the receipt of receipts or invoices, the Escrow Agent shall immediately reimburse Councils by bank draft, cash, or immediately available funds.

4.4.5 Dispute. Any dispute between the Parties under this Section shall be resolved by the relevant Oversight Committee or arbitration under Section 9.4 if necessary.

4.4.6 Liability. If the relevant Oversight Committee or an arbitration panel finds that Councils have used SMC reimbursements for other than Qualifying Expenses or other allowable expenses expressly agreed to by the Parties, Councils shall reimburse the escrow account and cause the Council's Escrow Agent to post a credit to the account of SMC for such disputed amount.

4.4.7 Accounting Records. Councils shall establish and maintain accounting records in accordance with generally accepted accounting principles related to Qualifying Expenses incurred and funds expended in implementing this Agreement. Councils shall keep accounting records for at least 3 (three) years following the close of the fiscal year to which such records relate.

4.4.8 Audit. Upon the written request of SMC, Councils shall provide the Escrow Agent with accounting records related to Qualifying Expenses. The Parties acknowledge that this audit shall be limited to an evaluation of Councils compliance with the reimbursement Sections of this Agreement.

4.5 Inflation Adjustments. Any Fixed Amount Funding Obligation of SMC shall be adjusted each year after the year of the Effective Date. The adjusted Fixed Amount Funding Obligation for any year is the product of the Fixed Amount Funding Obligation multiplied by the change in the Consumer Price Index for all urban consumers (CPI-U) between the year of the Effective Date and the prior calendar year. For purposes of this Agreement, "Fixed Amount Funding Obligation" means any funding obligation of SMC that is prescribed herein as a stated dollar amount.

## **SECTION 5. THIRD PARTY**

5.0 Selection. Whenever this Agreement requires a Third Party to complete a study, project, report, audit, or plan, Councils and SMC (through the relevant Oversight Committee) shall mutually select the Third Party. The Parties shall approve the final budget before the Third Party commences work.

5.1 Dispute. If the selection process of Section 5.0 is unsuccessful in appointing the Third Party, Councils shall nominate three competent Third Parties, and SMC shall nominate three competent Third Parties. Councils may strike not more than two of the Third Parties nominated by SMC. SMC may strike not more than two of the Third

Parties nominated by Councils. The Third Party shall be selected by random drawing from the remaining pool.

5.2 Competency Standards. All Third Parties shall meet minimum professional competency standards. The Parties shall establish these standards as necessary.

5.3 Disclosure. All Third Parties shall make a written disclosure before their selection by the Parties. The written disclosure shall include the following: any bias, any direct or indirect financial or personal interest with the Parties or their representatives, any past, present, or reasonably foreseeable direct or indirect financial dependence on the Parties or their representatives, or any other past, present, or reasonably foreseeable relationship with the Parties or their representatives. The purpose of this disclosure is to ensure the Parties know of any circumstances that could potentially affect Third Party impartiality.

5.4 Relationship. The Third Party shall sign a contract with the Parties and shall owe their professional obligations and duties to the Parties. The Third Party shall have access to any Information necessary for them to complete the studies, projects, reports, or audits. The Third Party shall sign a separate confidentiality agreement with SMC to protect any Confidential Information.

5.5 Framework. To ensure that Councils have the opportunity to Participate in all aspects of the audits, plans, studies, projects, reports, and sampling required to be completed by Third Parties under this Agreement, Third Parties shall use the following framework:

5.5.1 Evaluation. The Third Party shall review all information, tour the mine site and related facilities, and meet with relevant SMC personnel and consultants and relevant administrative agency personnel to discuss the issue.

5.5.2 Draft Report. The Third Party shall prepare a draft report based on the above evaluation. The draft report shall include, as appropriate, findings of fact, recommendations, and conclusions.

5.5.3 Review. Each Party shall review the draft report and shall submit written comments and recommendations regarding the draft report. After receipt of the writing of each Party, the relevant Oversight Committee or Technology Committee shall meet and review the draft report with the Third Party.

5.5.4 Final Report. The Third Party shall prepare a final report. The final report shall include mutually agreed to recommendations, SMC recommendations, and Councils recommendations.

5.5.5 Approval. The relevant Oversight Committee shall approve the final report before implementation.

5.5.6 Implementation. SMC shall implement any mutually agreed to recommendations of the final report.

5.6 Participation. Councils shall have the right to Participate in all aspects of the audits, reports, studies, projects, plans, and sampling completed by Third Parties. Such participation shall include but is not limited to the following rights:

5.6.1 The right to participate in all site inspections and visits conducted by the Third Party;

5.6.2 The right to participate in all interviews of relevant SMC employees, consultants, and administrative agency personnel conducted by the Third Party; and

5.6.3 The right to access all SMC reports and documents relevant to Third Party work, subject to the limitations set forth in Section 3.0.

5.7 Exception for Special Projects. The requirements of Section 5.0 do not apply to Special Projects. The relevant Oversight Committee shall designate and give prior approval to all Special Projects. “Special Projects” are those projects or studies that Councils Consultants will complete instead of a Third Party.

## **SECTION 6. ECONOMIC FEASIBILITY**

6.0 Economic Feasibility Study and Report. Whenever this Agreement requires a determination as to whether the development or implementation of a technology or practice is Economically Feasible, the Parties shall use the following process to make such determination.

6.1 Feasibility Study. SMC shall conduct an Economic Feasibility study and prepare an Economic Feasibility report. SMC shall provide Councils with the opportunity to Participate in all aspects of the Economic Feasibility study. The objective of the Economic Feasibility study and report shall be to determine whether it is Economically Feasible for SMC to develop or implement the technology or practice or take the action required under this Agreement.

6.2 Definition. “Economically Feasible” means that, after an analysis of how beneficial and practical the implementation of a technology or practice will be to SMC, the local community, and to the Environment, the benefits are demonstrated to outweigh the costs.

6.2.1 Analysis. In making this analysis, SMC shall:

(a) Consider the direct and indirect costs of implementing the technology or practice.

(b) Consider the benefits to the local community and Environment of implementing the technology or practice and shall quantify those benefits to the maximum extent possible.

(c) Estimate the potential return to the company of implementing the technology or practice by weighing the costs against savings and the benefits to the local community and Environment.

6.2.2 Process. To make this analysis SMC, with the participation of Councils, shall conduct a multiple accounts analysis (MAA) or equivalent process to assess the risks, value and the impacts of implementing the technology or practice. SMC shall use the MAA to calculate the value of existing Technologies and/or Practices at SMC Mining Operations and compare them to the proposed alternatives. SMC shall calculate the direct and indirect costs and savings of the proposed technology or practice using the same time period applied in the MAA and then perform a cost/benefit analysis to calculate the return on the investment to implement the proposed technology.

6.3 Framework. To ensure that Councils have the opportunity to Participate in all aspects of Economic Feasibility studies, the Parties shall use the following framework:

6.3.1 Evaluation. The Parties shall review and evaluate all information relevant to the Economic Feasibility study.

6.3.2 Draft Report. SMC shall prepare a draft report based on the above evaluation. The draft report shall include, as appropriate, findings of fact, recommendations, and conclusions.

6.3.3 Review. Councils shall review the draft report and shall submit written comments and recommendations. The relevant Oversight Committee or Technology Committee shall meet and review the draft report and Councils written comments and recommendations.

6.3.4 Final Report. SMC shall prepare a final report. The final report shall include mutually agreed to recommendations, SMC recommendations, and Councils recommendations.

6.4 Implementation. If SMC determines that it is Economically Feasible to develop or implement the technology or practice or to take the action, SMC shall develop or implement the technology or practice or take the action as soon as possible.

6.5 Arbitration. If there is a Dispute as to the Economic Feasibility of SMC developing or implementing the technology or practice, Councils may initiate arbitration pursuant with Section 9.4 and Appendix D of this Agreement. The Arbitration Panel shall use the analysis and process described in Section 6.2 in making its decision.

## SECTION 7. OVERSIGHT COMMITTEES

7.0 Establishment. The Parties shall establish and SMC shall fund the following Oversight Committees for the Stillwater and East Boulder Mines. Each Oversight Committee shall be comprised of the following voting members:

7.0.1 For the East Boulder Oversight Committee (the “EBOC”), two individuals appointed by SMC and two individuals appointed collectively by CRC and NPRC.

7.0.2 For the Stillwater Oversight Committee (the “SOC”), two individuals appointed by SMC and two individuals appointed collectively by SPA and NPRC.

7.1 Appointment and Removal. The Parties shall appoint the initial individuals within 30 days of the Effective Date. The Parties may replace their representatives on the Oversight Committees but shall provide Notice of such replacements within 10 days of their appointment.

7.2 Rules and Procedures. The Oversight Committees have established standing agenda items as necessary. The Parties determined that no additional rules or procedures were necessary.

7.3 Decision-making Process. The Oversight Committees shall make decisions, make recommendations, and take actions on issues arising under this Agreement by majority vote. Any Dispute may be resolved pursuant with Section 9.4 and Appendix D (Arbitration).

7.4 Meetings. The Oversight Committees shall meet at least twice a year, or more frequently as requested by either Party, to implement the terms of this Agreement and to address new Issues of Concern related to SMC Mining Operations.

7.5 Scope. The objectives of the Oversight Committees are:

7.5.1 To oversee and implement the terms of this Agreement and to monitor SMC compliance with the terms of this Agreement.

7.5.2 To address Issues of Concern related to SMC Mining Operations.

7.5.3 To provide a mechanism for maintaining open lines of communication between Councils, the affected local communities, and SMC.

7.5.4 To oversee the development and implementation of all audits, plans, programs, studies, and monitoring required by this Agreement.

7.5.5 To serve as the decision-making body on all issues delegated to the Oversight Committees under this Agreement.

7.5.6 To resolve Disputes arising under this Agreement, including those originating in the Responsible Mining Practices and Technology Committee.

7.6 Rights. The rights of the Councils Oversight Committee representatives shall include, but are not limited to, the following:

7.6.1 The right to establish standing agenda items and the right to raise new agenda items when necessary.

7.6.2 The right to access all Information, subject to the limitations set forth in Section 3.

7.6.3 The right to conduct Citizen Sampling and observe all scheduled SMC Sampling and Monitoring Events.

7.6.4 The right to call emergency meetings of the Oversight Committee with 72 hours Notice to each relevant Oversight Committee member.

7.6.5 The right, with the consent of the majority of Oversight Committee members, to invite other representatives of the local community and/or state or federal administrative agencies to Oversight Committee meetings and to provide them an opportunity to be heard.

7.6.6 The right to enter mine premises and inspect mine facilities consistent with Section 10.

7.7 Minutes. There shall be a stenographic record of all Oversight Committee meetings and this record shall constitute the official minutes of such meetings, unless both Parties agree to waive this requirement prior to the meeting. The official minutes shall be available to the public, subject to prior approval by the respective Oversight Committee and the express limitations of Section 3. The Parties also prepare a summary of each Oversight Committee meeting that is available to the public after its approval by the respective Oversight Committee.

## **SECTION 8. RESPONSIBLE MINING PRACTICES AND TECHNOLOGY COMMITTEE**

8.0 Technology Committee. The parties shall establish and SMC shall fund a Responsible Mining Practices and Technology Committee (the “Technology Committee”).

8.1 Structure. The structure of the Technology Committee shall consist of three SMC representatives and three Councils representatives: one SPA representative, one CRC representative, and one NPRC representative.

8.2 Appointment and Removal. The Parties shall appoint the initial representatives within 30 days of the Effective Date. The Parties may replace their representatives on the Technology Committee but shall provide Notice of such replacements within 10 days of their appointment.

8.3 Rules and Procedures. The Technology Committee has established standing agenda items and determined that additional rules and procedures were not necessary to accomplish its objectives.

8.4 Decision-making Process. The Technology Committee shall make decisions, make recommendations, and take actions on issues arising under this Agreement by majority vote. Any “Dispute” in the Technology Committee shall be referred to the relevant Oversight Committee.

8.5 Objectives. The objectives of the Technology Committee shall be:

8.5.1 To identify new Technologies and/or Practices to eliminate and/or minimize potential adverse impacts on the Environment caused by SMC Mining Operations, to minimize the production of wastes created by SMC Mining Operations, and to eliminate and/or minimize potential safety risks associated with the disposal of wastes from SMC Mining Operations.

8.5.2 To provide an opportunity for Councils to Participate in and assist SMC in maintaining and improving a program for the research, development, and implementation of Economically Feasible Technologies and/or Practices identified under objective 8.5.1.

8.5.3 To oversee the implementation of any new Technologies and/or Practices contemplated in Section 8.5.1.

8.6 New Technologies Team. SMC shall designate a team of SMC employees and/or consultants with responsibilities for the identification, research, development, and implementation of New Technologies and/or Practices. SMC shall make the new technologies team available to consult with the Technology Committee.

8.7 Progress Review Meetings. The Technology Committee shall meet as frequently as necessary, but not less than annually, to review SMC progress regarding the research, development, and implementation of New Technologies and/or Practices.

8.8 Technology Review Meetings. The Technology Committee shall meet at least once annually to review relevant literature and consider recommendations for research to identify New Technologies and/or Practices and refinements to Technologies and/or Practices with potential application to SMC Mining Operations.

8.9 Rights. The rights of the Councils representatives on the Technology Committee shall include but are not limited to the following:



8.9.1 The right to establish standing agenda items and the right to raise new agenda items for the committee to consider.

8.9.2 The right to access all Information, subject to the limitations set forth in Section 3.

8.9.3 The right to participate in “Citizen Sampling” and observe scheduled SMC Sampling and Monitoring Events.

8.9.4 The right to enter mine premises and to inspect mine facilities pursuant with Section 10.

8.10 Time Frames. The Technology Committee shall have authority to set targets and time frames for research projects, pilot projects, and implementation projects and to monitor the progress of such projects.

8.11 Process. SMC shall consult with Councils in the design of the studies and projects. A draft report shall be prepared for all studies and projects and provided simultaneously to both Parties. The Technology Committee shall meet and discuss proposed changes to such draft reports. The final report shall include mutually agreed to recommendations, SMC recommendations, and the Councils’ recommendations. The Technology Committee shall approve the final report and forward it to the relevant Oversight Committee(s). The relevant Oversight Committee(s) must approve the report prior to implementation. SMC shall implement any mutually agreed to recommendations of the final report. The purpose of this process is:

(a) To ensure that Councils have the opportunity to Participate in all aspects of studies and projects related to Technologies and Practices; and

(b) To ensure the Councils have the opportunity to make recommendations before final decisions are made by SMC regarding the research, development, and implementation of technologies and practices.

8.12 Permit Amendments. If a new Technology and/or Practice is implemented, SMC shall use best efforts to amend any permits required by Federal and State Environmental Laws and Regulations to incorporate the Technology and/or Practice during the next renewal process. The Councils agree not to appeal any permit decision that results from the requirements of this section or any regulatory decision required for the implementation of new technologies at currently permitted facilities of SMC.

8.13 Minutes. There shall be minutes taken of all Technology Committee meetings to document material recommendations, action items, targets, time frames and decisions established by the Committee. The Technology Committee from time to time shall appoint one representative of either SMC or Councils to record and timely distribute to the Parties the minutes of each Technology Committee meeting.

## SECTION 9. DISPUTE RESOLUTION AND ENFORCEMENT

9.0 Definition of Dispute. For the purposes of this Section, a “Dispute” means the inability of the relevant Oversight Committee to obtain a majority vote on an issue arising under this Agreement within 120 days of its first recording in the official minutes of an Oversight Committee meeting.

9.1 Good Faith Efforts. The Parties shall negotiate in good faith to resolve all Disputes before attempting to resolve the Dispute through court enforcement or arbitration.

9.2 Cumulative Remedies. The remedies provided in this Agreement shall be cumulative, and not exclusive, of any and all rights, powers, and remedies existing at law or in equity. The assertion by Councils or SMC of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies.

9.3 Court Enforcement. Councils or SMC may enforce this Agreement by commencing a civil action in district court. Disputes regarding issues of substantive arbitrability and Disputes involving an alleged failure of Councils or SMC to perform a non-discretionary obligation or duty under this Agreement, shall be resolved through a civil action.

9.3.1 Venue. Venue for the civil action shall be Sweet Grass County, Stillwater County, or Yellowstone County, Montana.

9.3.2 Relief. Councils or SMC may seek any relief within the jurisdiction of the court including, but not limited to, a temporary restraining order, temporary or permanent injunction, declaratory judgment, specific performance, or any other legally cognizable relief at law or equity or any combination thereof shall be available.

9.3.3 Right to Specific and Preventative Relief. Councils or SMC may seek specific performance to enforce this Agreement because monetary damages may not provide adequate relief.

9.4 Arbitration. Disputes may be resolved by arbitration administered under Appendix D, which shall be binding on the Parties and judgment on the award rendered by the Arbitration Panel may be entered in any court having jurisdiction thereof. There is no limit on the number of arbitrations per year, except for the limit of Section 9.4.1(g).

9.4.1 Limitation. Any award, remedy, or relief granted by the Arbitration Panel against SMC (the “Arbitration Award”) shall be binding on SMC up to the amounts specified in this Section. The amount or portion of an Arbitration Award that exceeds these amounts is not binding on SMC.

(a) Reimbursement Payments. For Disputes arising under Section 4.4.5 (SMC reimbursement payments to Councils), the Arbitration Award shall be binding on SMC up to an aggregate amount of \$135,000 per year.

(b) Technologies or Practices. For Disputes arising under Section 6.5 or other Disputes related to the development or implementation of Economically Feasible Technologies and/or Practices, the Arbitration Award shall be binding on SMC up to an aggregate amount of \$1,000,000 per year.

(c) Water Quality and Aquatic Resource Monitoring. For Disputes arising under the following Sections of this Agreement or other Disputes related to water quality or aquatic resources monitoring, the Arbitration Award shall be binding on SMC up to an aggregate amount of \$100,000 annually per mine site:

1. Section 13.7.7 and Section 6 of Appendix L (Supplemental Monitoring Programs for the East Boulder and Stillwater Mines) and Appendix N (East Boulder Supplemental Monitoring Program).

(d) Fisheries Studies. For Disputes arising under Section 8 of Appendix L, the Arbitration Award shall be binding on SMC up to an aggregate amount of \$20,000 per sampling year.

(e) Environmental Audit. For Disputes arising under Section 13.3 and Appendix I, the Arbitration Award shall be binding on SMC up to an aggregate amount of \$30,000 per audit year, unless the Arbitration award is substantially related to the development or implementation of new Technologies and/or Practices or is substantially related to water quality or aquatic resources monitoring, whereby the limits of (b) and (c) of this Section shall apply respectively.

(f) Ground Water Studies. For Disputes arising under Section 13.7.8 and Section 7 of Appendix L, the Arbitration Award shall be binding on SMC up to an aggregate amount of \$200,000.

(g) Other Disputes. For other Disputes, the Arbitration Award shall be binding on SMC up to an aggregate amount of \$100,000 per year. Councils are entitled to no more than 2 (two) such arbitrations per year.

9.4.2 Presentation. If an amount or portion of the Arbitration Award exceeds the amounts specified in Section 9.4.1, SMC shall ensure the Councils have an opportunity to make a presentation to the SMC Board of Directors.

## SECTION 10. INSPECTIONS

10.0 Inspections. Councils shall have the right to enter mine premises and to inspect mine facilities. Councils shall have the right to conduct Citizen Sampling, take photographs, and meet with relevant SMC employees during all such inspections. Councils shall commence and complete each inspection within a reasonable period of time.

10.1 Council Obligations. Councils shall provide SMC with Notice of inspections. Councils shall provide SMC with reasonable notice, usually not to be less than 24 hours, and shall include a list of Council members and representatives that will be participating in the inspection, a list of relevant SMC employees Councils would like to meet with during the inspection, and a request, if any, to inspect underground facilities. Councils shall comply with all applicable federal and state laws and regulations pertaining to occupational safety and health during such inspections.

10.1.1 Limitation. Councils shall limit the number of persons for any inspection of underground facilities to 4 (four) persons unless SMC authorizes an additional number.

10.2 Samples. If Councils collect any samples of the Environment, prior to leaving the premises, Councils shall give SMC a receipt describing the sample taken and a portion of each such sample.

10.3 SMC Obligations. Any Council inspection of underground facilities shall require the consent of SMC, but SMC shall not unreasonably withhold such consent. SMC shall use best efforts to make relevant employees available during such inspections.

## SECTION 11. CONSERVATION EASEMENTS

11.0 Conservation Easement. Parties acknowledge that SMC has created and donated to the Montana Land Reliance certain conservation easements required by Section 11 and Appendix E of the Agreement as amended effective August 3, 2004. The Agreement was amended pursuant to Section 16.16, which allows the amendments by mutual written agreement of the Councils and SMC. The 2004 Amendment reads as follows:

THIS AMENDMENT TO GOOD NEIGHBOR AGREEMENT (“Amendment”) is agreed and entered into by and between NORTHERN PLAINS RESOURCE COUNCIL, INC., a Montana nonprofit corporation, COTTONWOOD RESOURCE COUNCIL, a Montana nonprofit corporation, STILLWATER PROTECTIVE ASSOCIATION, a Montana nonprofit corporation (collectively referred to herein as “Councils”), and STILLWATER MINING COMPANY, a Delaware corporation, (herein referred to as “SMC”). For valuable consideration contained in the terms of this Amendment, Councils and SMC (collectively referred to hereinafter as “the Parties”) hereby agree to amend their Good Neighbor Agreement (hereafter referred

to as “the Agreement”). This amendment shall become effective August 3, 2004.

WHEREAS, the Parties entered into the Agreement effective as of May 8, 2000, a true and correct copy of which is attached as Exhibit A hereto, establishing certain covenants, commitments, and conditions of agreement between the Parties; and, WHEREAS, SMC and Councils desire to amend the Agreement and therefore have agreed and entered into this Amendment for purposes of providing clarification of ambiguities in APPENDIX E [LEGAL DESCRIPTION OF SMC PROPERTIES] as to the description of certain properties for which, prior to the date of this Amendment, conservation easements have been created, consented to by Councils, and donated by SMC to The Montana Land Reliance, as established under SECTION 11 [CONSERVATION EASEMENTS]; to provide for the creation and donation by SMC of conservation easements on the Magpie Ranch Property and Ekwortzel Property; to delete reference to the Hertzler Ranch Property and Stillwater Valley Ranch Property; and for other purposes expressly described herein. NOW THEREFORE, the Parties agree to amend the Agreement as follows:

1. All references as to the Hertzler Ranch Property and Stillwater Valley Ranch Property in SECTION 11 and APPENDIX E of the Agreement are hereby deleted in their entirety. SMC and Councils shall execute such instruments necessary to release, waive and terminate any record, statement, reference, exception or notice of the SMC’s prior intent to create and donate to The Montana Land Reliance or other qualified donee conservation easements on the Hertzler Ranch Property and Stillwater Ranch Property.
2. APPENDIX E of the Agreement, as to the Beartooth Ranch Property, Stratton Ranch Property, Boe Ranch Property, and Yates Property respectively, is amended as set forth on Exhibit B attached hereto [“APPENDIX E-AMENDED”], for the purpose of accurately describing those properties on which the requirements of SECTION 11 of the Agreement had been satisfied by the creation and grant of conservation easements to The Montana Land Reliance prior to the date of this Amendment.
3. APPENDIX E of the Agreement is amended, as indicated on Exhibit B, attached hereto, to include the Magpie Ranch Property and Ekwortzel Property (collectively hereinafter the “Pending Easements”) under the terms and conditions of SECTION 11 of the Agreement. Provided; however, that for purposes of the Pending Easements, the first sentence of section 11.0 of the Agreement shall be revised by striking the phrase “but no later than 1 (one) year from the Effective Date.”

4. SMC and Councils concur that the legal descriptions of the properties provided in AMENDED EXHIBIT B are true and correct to the best of their knowledge and belief.
5. For purposes of the Magpie Ranch Property only, SMC shall be allowed to: grant, sell, divide, subdivide, exchange, devise, gift, or otherwise convey or transfer all of, or any portion of, their right to the title, estate, and interest in the Property in two (2) tracts or parcels; and construct one (1) new residence and one (1) associated garage/storage building to be used only for non-commercial purposes in conjunction with the permitted residence. These uses and practices shall not be considered to be a violation of Section 11 of the Agreement.
6. SMC shall create and donate the Pending Easements to The Montana Land Reliance, or another qualified grantee consented to by Councils, as soon as possible from the date of this Amendment, but in no event shall the Pending Easements be created or donated prior to the date of recording of that certain Mortgage, Assignment of Production, Security Agreement, Financing Statement and Fixture Filing dated as of the date hereof, by Company, as mortgagor, in favor of Toronto Dominion (Texas), Inc., as mortgagee. SMC shall use its best efforts to obtain any required consent by third parties holding mortgage or other valid interests in the Magpie Ranch Property and Ekwortzel Property as contemplated under section 11.4 of the Agreement.
7. This Amendment to the Agreement shall apply to, and be binding upon the heirs, assigns and successors in interest to each of the Parties. The Parties shall fully inform any and all respective heir, assign, and successor as to the existence of the Agreement and this Amendment by providing same with a true and correct copy of the instruments.
8. SMC shall, until such time as the Pending Easements are granted and recorded, continue to manage its activities, the activities of its contractors, and the activities of its lessees on the subject properties as though all terms, conditions and limitations expressed in the Pending Easements are in effect, such that the conservation values existing at the time of this Amendment are preserved.

The Parties hereto agree that unless expressly provided herein, no provision of this Amendment shall be construed as to expand or diminish any right or obligation of

the Parties under the Agreement, including the remedies set forth in section 9.3 of the Agreement. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS THEREOF, the Parties have caused this “AMENDMENT TO GOOD NEIGHBOR AGREEMENT” to be executed on the dates set forth below.

-END-

11.1 Subdivision Prohibition. SMC shall create and donate to a party consented to by Councils a conservation easement that prohibits major subdivisions for residential development on all properties acquired by SMC in Sweet Grass or Stillwater counties after the Effective Date. With the consent of the relevant Oversight Committee, this requirement may be satisfied by appropriate reservation, covenant or other burden on SMC’s title to the subject property.

11.2 Condition. SMC’s obligation to grant a conservation easement or otherwise burden title to such properties is conditioned upon the receipt by SMC of the consent of third parties, presently, or at the date of grant, then holding mortgage or other interests in such properties. SMC shall use best efforts to obtain such consents and may agree to subordinate the conservation easement or burden on title to the interests of the third party in order to obtain such consent.

## **SECTION 12. MINE-SPONSORED HOUSING**

12.0 Sweet Grass County. SMC shall confine all Mine-Sponsored Housing in Sweet Grass County to the city limits of Big Timber, Montana as extended by annexation or to SMC properties subject to the exceptions provided in Section 12.2.

12.1 Stillwater County. SMC shall confine all Mine-Sponsored Housing in Stillwater County to within the city limits of Absarokee and Columbus, Montana, as extended by annexation or to SMC properties subject to the exceptions provided in Section 12.2.

12.1.1 SMC shall prohibit Mine Sponsored Housing at the Hertzler Ranch Property.

12.2 Exceptions. Subject to the provisions of Section 11.1 or the express limitations of the conservation easements described in Appendix E of the Agreement as amended effective August 3, 2004, routine occupancy for security or maintenance of permanent dwellings on non-industrial properties owned by SMC at the date of the Agreement is allowed under this Agreement.

12.3 Review of Future Proposals. SMC shall provide Councils with Notice regarding, and an opportunity to review and comment on, all future Mine-Sponsored Housing proposals. SMC shall provide such Notice prior to the commencement of construction of or, in the case of existing structures, occupancy of, additional Mine-Sponsored Housing.

## SECTION 13. ADDITIONAL SMC COVENANTS

13.0 East Boulder Mine Busing and Traffic Plan. SMC shall develop, implement, and fund a comprehensive busing and traffic reduction plan for the duration of SMC Mining Operations, as described in Appendix F.

13.1 Stillwater Mine Busing and Traffic Plan. SMC shall develop, implement, and fund a comprehensive busing and traffic reduction plan for the duration of SMC Mining Operations, as described in Appendix G.

13.2 Commercial Traffic Reduction Plan. SMC shall develop, implement, and fund a comprehensive commercial traffic reduction plan for the duration of SMC Mining Operations, as described in Appendix H.

13.3 Audits. SMC shall establish, implement, maintain, and fund an environmental audit program, in an amount not to exceed \$30,000 per audit year, for the duration of SMC Mining Operations for the East Boulder and Stillwater Mines as described in Appendix I. A Third Party selected by the Parties or the Councils' Consultants shall perform such audits.

13.4 Reclamation Plan Revision and Performance Bond Evaluation. SMC shall participate in and fund, in an amount not to exceed \$12,000 per evaluation for the Councils' Consultants to evaluate the Reclamation Plan and Performance Bond for the East Boulder and Stillwater Mines as described in Appendix J. The reviews shall be conducted to coincide with the State of Montana's 5-year review of such plans and bonds. After each review is conducted, SMC shall revise the interim reclamation plan for the East Boulder or Stillwater Mine as necessary.

13.5 Tailings and Waste Rock Project. SMC shall participate in and fund the Tailings and Waste Rock Project (the "Project") to be completed by a Third Party as described in Appendix K.

13.6 Disclosure. SMC shall disclose and provide Councils with an opportunity to review and comment on all future Amendments and Revisions to the East Boulder Mine Operating Permit, Stillwater Mine Operating Permit, East Boulder MPDES Permit, and Stillwater MPDES Permit as soon as possible but no later than 3 (three) months prior to the Commencement of the Permitting Process.

13.7 Water Program. SMC shall design, implement, maintain, and fund the Comprehensive Surface Water, Ground Water, and Aquatic Resources Protection Program (the "Water Program") as described in Appendix L. SMC shall provide Councils with the opportunity to Participate in the design, implementation, and oversight of the Water Program.

13.7.1 Meeting and Inspections. SMC shall give Councils reasonable notice of all scheduled compliance meetings and inspections with the MDEQ, GNF, CNF,



or other administrative agencies related to surface water, ground water, or aquatic resource issues. Councils shall have the right to attend such meetings, inspections, and events unless Councils attendance is prohibited by Federal and State Environmental Laws and Regulations.

13.7.2 Sampling and Monitoring Events. SMC shall give Councils at least 72 hours Notice of all scheduled Sampling and Monitoring Events. Councils have the right to attend and observe all such events and shall have the right to enter SMC premises for these purposes.

13.7.3 Citizen Sampling. SMC shall provide Councils with the opportunity to conduct Citizen Sampling as described in Section 3.1 of Appendix L.

13.7.4 Reporting Program. SMC shall design, implement, and maintain the expanded reporting program as described in Section 3.2 of Appendix L.

13.7.5 Database. SMC shall design, implement, and maintain an electronic database of data related to surface water, ground water, and aquatic resources as described in Section 4.0 of Appendix L.

13.7.6 Water Quality Report. SMC shall fund, in an amount not to exceed \$30,000, a Third Party review and Water Quality Report for the East Boulder and Stillwater Mines as described in Section 5.0 of Appendix L. The final Water Quality Report shall be incorporated by reference into Appendix M. The water quality reviews and reports were completed by Councils' consultants. The Final Baseline Water Quality Review for the East Boulder Mine was completed and approved by the Oversight Committee on January 25, 2002. The Final Baseline Water Quality Review for the Stillwater Mine was completed and approved by the Oversight Committee on November 15, 2002.

13.7.7 Supplemental Monitoring Programs. SMC shall develop, implement, maintain, and fund the East Boulder Mine Supplemental Monitoring Program as described in Section 6.0 of Appendix L and Appendix N and the Stillwater Mine Supplemental Monitoring Program as described in Section 6.0 of Appendix L and Appendix O. SMC shall fund the East Boulder Mine and Stillwater Mining Supplemental Monitoring Programs up to an aggregate amount of \$100,000 annually per mine site.

13.7.8 Ground Water Studies. SMC shall participate in and fund, in an amount not to exceed \$200,000, supplemental Ground Water Studies as described in Section 7.0 of Appendix L.

13.7.9 Long-Term Fisheries Study. SMC shall fund a long-term fisheries population study as described in Section 8.0 of Appendix L. SMC's obligation shall not exceed \$20,000 per sampling year. The EBOC may expand the fisheries

program if conditions warrant. SMC shall fund a similar fisheries study of the Stillwater Watershed upon approval of the SOC.

13.7.10 Tiered Trigger Level Framework. SMC shall design, implement, maintain, and fund the Tiered Trigger Level Framework and any necessary programs described in Section 9.0 of Appendix L for the East Boulder and Stillwater Mines. The Tiered Trigger Level Framework for the Stillwater and East Boulder Mines have been finalized as part of the final Baseline Water Quality Reviews. Implementation of the programs is ongoing.

13.7.11 Response and Remedial Actions. SMC shall design, implement, maintain, and fund any programs necessary to implement the response and remedial actions described in Section 10.0 of Appendix L for the East Boulder and Stillwater Mines. SMC is responsible for the costs of conducting any required response and remedial actions.

13.7.12 Tier 2 and 3 Exceedence Response and Remedial Actions.

(a) Tier 2 Exceedence Nutrients. Upon a Tier 2 Exceedence for Nutrients, SMC shall implement the degree of treatment technologies and practices necessary to restore levels to below Tier 2 Trigger Levels at a cost not to exceed \$500,000 per year. Upon implementation of such treatment technologies or practices, the relevant Oversight Committee shall use the best available science and data to establish a time frame in which nutrient levels in surface water quality will return to below Tier 2 Trigger Levels.

(1) Additional Related Tier 2 Exceedences within Time Frame. If surface water quality monitoring indicates additional Tier 2 Exceedences from the same event triggering the original exceedence during the time frame approved by the relevant Oversight Committee pursuant to Section 13.7.12(a), the Committee shall give SMC credit for initial operational and capital expenditures incurred in implementing treatment technologies and practices in determining the additional technologies and practices to be implemented.

(2) Additional Related Tier 2 Exceedences outside Time Frame. If surface water quality monitoring indicates additional Tier 2 Exceedences from the same event triggering the original exceedence beyond the time frame approved by the relevant Oversight Committee, the Committee shall consider the following factors in determining additional technologies and practices required to be implemented: the context and magnitude of the exceedence, trends in ground water and surface water quality, and previous SMC operational and capital expenditures.

(b) Tier 3 Exceedence for Other Parameters. Upon a Tier 3 Exceedence for any parameter, except for Nutrients, SMC shall implement the degree of treatment technologies and practices necessary to restore levels to below Tier 2 Trigger Levels.

13.7.13 Water Management Prioritization and Optimization Plan. SMC shall develop, implement, maintain, and fund a Water Management Prioritization and Optimization Plan for the Stillwater and East Boulder Mines as described in Section 11.0 of Appendix L. The final Stillwater and East Boulder Mine Water Management Prioritization and Optimization Plans are incorporated by reference as Appendices Q and R, respectively.

13.8 Contribution to Boulder River Watershed Association. On July 15, 2005, SMC entered into a memorandum of agreement with the Boulder River Watershed Association (BRWA) that provides for the contribution and accounting of funds to be provided by SMC for the general administration of BRWA and for the maintenance of an appropriate operational fund to supplement the grant application and matching practices of BRWA.,

13.9 Hertzer Ranch Property and Pipeline Mitigation Plan. SMC shall develop, implement, and fund the Mitigation Plan described in Appendix P. The SOC approved the final Hertzer Ranch Property and Pipeline Mitigation Plan on May 14, 2002. The final plan is incorporated by reference as Appendix P. The language of section 7.0 of the said Plan shall be considered final upon the effective date of the 2005 Amendment.

#### 13.10 Future Tailings and Waste Rock Disposal Locations

13.10.1. Disclosure of Future Plans. SMC shall consult with Councils before purchasing or otherwise acquiring properties for future tailings or Waste Rock disposal.

13.10.2 Locations. SMC shall not construct future Tailings Impoundments within visual view of the Boulder River Watershed and East Boulder River Watershed below the Gallatin National Forest boundary.

### **SECTION 14. ADDITIONAL COVENANTS OF COUNCILS**

14.0 Termination of Pending Litigation. SPA and NPRC shall file a motion to dismiss, with prejudice, NPRC and SPA v. MDEQ, Cause No. DV 9900103, within 30 days of the Effective Date. This litigation was dismissed with prejudice within 30 days of the Effective Date.

14.1 Best Efforts. As a condition to the filing of an administrative appeal, the filing of a citizen suit, or the commencement of litigation, Councils shall use best efforts to resolve all issues raised in such appeal, suit, or litigation with SMC. Best efforts shall include good faith negotiations in the relevant Oversight Committee and mediation with a mediator selected by SMC.

## SECTION 15. TERM, TERMINATION, SURVIVAL

15.0 Term. Unless unilaterally terminated as provided by this Section, this Agreement shall continue in full force and effect until all the following conditions are satisfied:

15.0.1 The permanent cessation of all SMC Mining Operations;

15.0.2 The completion of all closure and final reclamation required by any Operating Permit or Federal and State Environmental Laws and Regulations;

15.0.3 The release of all SMC performance bonds required by MCA 82-4-338 (1997); and

15.0.4 The water quality of all discharges from SMC Mining Operations has returned to Baseline Water Quality.

15.1 Councils Rights. Nothing in this Section shall be construed or interpreted to allow SMC to unilaterally terminate this Agreement if Councils commence a civil action to enforce this Agreement under Section 3.9 or Section 9.3 or if Councils participate in any public process provided by applicable federal and state laws and regulations regarding the East Boulder or Stillwater Mines including the filing of written comments, testifying at public hearings, and meeting with administrative agencies.

15.2 Unilateral Termination by SMC.

15.2.1 Termination of the Entire Agreement. SMC may unilaterally terminate this Agreement by Notice to Councils upon the occurrence of any one or more of the following conditions:

(a) Amendment 001 of the East Boulder Mine Operating Permit. The filing by CRC, SPA, NPRC, or any of NPRC's affiliates of any administrative appeal or the commencement of litigation challenging the validity of the East Boulder Mine Operating Permit effective May 20, 1999 (MDEQ Approval of Amendment 001 to Operating Permit 00149, Water Management Plan and Facilities for the East Boulder Mine).

(b) Breach. The failure of Councils to perform the obligations required to be performed by them under this Agreement unless such failure shall have been cured to the satisfaction of SMC on or before the 30<sup>th</sup> day following the delivery of the termination Notice by SMC.

(c) Assertion. The assertion by Councils in a court of competent jurisdiction that the provisions of Section 15.2 are void, invalid, or otherwise unenforceable.

15.2.2 Termination of Sections of the Agreement. SMC may unilaterally terminate Sections of this Agreement by Notice to Councils upon the occurrence of any one or more of the following conditions:

(a) Future Litigation of Stillwater Mine Operating Permit. If SPA, CRC, NPRC, or any of NPRC's affiliates files an administrative appeal or commences litigation challenging the validity of, or any terms or conditions of, any Amendment or Revision to the Stillwater Mine Operating Permit, SMC may terminate the Sections of this Agreement related to the Stillwater Mine, subject to exception below and the limitations of Section 15.3.

Exception. SMC is precluded from terminating this Agreement or any section thereof, if SPA, CRC, NPRC, or any of its affiliates files an administrative appeal or commences litigation challenging the validity of or any terms or conditions of, any Amendment or Revision to, the Stillwater Mine Operating Permit concerning the construction of additional Tailings Impoundments at the Hertzler Ranch Property not approved in the Stillwater Mine Operating Permit effective November 12, 1998.

(b) Future Litigation of East Boulder Mine Operating Permit. If CRC, SPA, NPRC, or any of NPRC's affiliates files an administrative appeal or commences litigation challenging the validity of or any terms or conditions of, any Amendment or Revision to, the East Boulder Mine Operating Permit, SMC may terminate the Sections of this Agreement related to the East Boulder Mine, subject to the limitations of Section 15.3.

(c) Future Litigation of the Stillwater MPDES Permit. If SPA, CRC, NPRC, or any of NPRC's affiliates files an administrative appeal or commences litigation challenging the validity of or any terms or conditions of the Stillwater MPDES Permit during subsequent renewal processes, SMC may terminate Section 13.7 and related Appendices (Water Program), Section 10.0 (Inspections), and Section 4.3 (Reimbursement Obligations) related to the Stillwater Mine, subject to the limitations of Section 15.3.

(d) Future Litigation of the East Boulder MPDES Permit. If CRC, SPA, NPRC, or any of NPRC's affiliates files an administrative appeal or commences litigation challenging the validity of or any terms or conditions of the East Boulder MPDES Permit during subsequent renewal processes, SMC may terminate Section 13.7 and related Appendices (Water Program), Section 10.0 (Inspections), and Section 4.3 (Reimbursement Obligations) related to the East Boulder Mine, subject to the limitations of Section 15.3.

(e) Other Permits. If Councils, collectively or individually, file an administrative appeal or commence litigation challenging the validity of or terms or conditions of any SMC permit, SMC may terminate the sections of

this Agreement related to the appeal or litigation, subject to the limitations of Section 15.3.

15.3 Limitation on SMC Termination. If SMC shall be entitled to terminate this Agreement or Sections thereof under Section 15.2.2, SMC shall, as a condition to termination, suspend in whole or in part, by Notice to the Councils, performance of this Agreement or Sections of this Agreement for a period of at least 18 calendar months from the date of the Notice (the “Suspension Period”).

15.3.1 Ongoing Obligations. SMC shall complete all projects, studies, programs, audits, reports, or other performance obligations commenced prior to Councils commencement of litigation triggering the Suspension Period.

15.3.2 Future Obligations. The times for performance not commenced before Councils commencement of litigation shall be tolled during the Suspension Period. Unless the Parties agree otherwise, SMC shall not be obligated to perform, at the end of the Suspension Period or otherwise, any term or obligation under this Agreement if the time for such performance shall have occurred or expired during the Suspension Period.

15.3.3 Best Efforts. SMC shall use best efforts to resolve all issues raised in such litigation. Best efforts shall include good faith negotiations in the relevant Oversight Committee and mediation with Councils and the relevant administrative agencies using a mediator selected by Councils.

15.3.4 Termination. Unless the litigation allowing SMC termination under Section 15.2.2 shall have been dismissed with prejudice or otherwise been fully and finally resolved by the Parties, including appeals by any Party, this Agreement or the Sections thereof shall terminate on the last day of the Suspension Period without further action or Notice by SMC.

15.4 Unilateral Termination by Councils. This Agreement may be terminated by the Councils upon Notice to SMC upon occurrence of any one or more of the following:

15.4.1 The sale, assignment or transfer of all or substantially all of SMC assets outside of the ordinary course of business (other than assignments or transfer by operation of law pursuant to a merger or similar reorganization transaction).

15.4.2 The failure of SMC to perform the obligations required to be performed by it under this Agreement unless such failure shall have been cured to the satisfaction of the Councils on or before the 30<sup>th</sup> day following the delivery of the termination notice by the Councils.

15.5 Effect. Upon termination as provided in this Section, the Parties shall be relieved of each and every obligation hereunder and this Agreement shall be null and void and of no further force or effect, subject to the exception in Section 15.6.

15.6 Survival. The following Sections of this Agreement shall survive termination of this Agreement for any reason and shall remain in effect until all the conditions of Section 15.0 have been satisfied.

15.6.1 The East Boulder and Stillwater Mine Traffic Reduction and Busing Plans required by Sections 13.0 and 13.1 and described in Appendices F and G respectively.

15.6.2 Section 12.0 (Mine-Sponsored Housing).

## **SECTION 16. MISCELLANEOUS PROVISIONS**

16.0 Representations. Each Party represents and warrants that (i) it is duly organized, validly existing, and, as of the Effective Date is in compliance with all registration, reporting, and other requirements under the laws of the state of its organization, (ii) it has the right and authority to enter into this Agreement and its amendment and all proceedings required to be taken by or on behalf of such party to authorize it to execute and deliver this Agreement have been satisfied, (iii) this Agreement upon delivery is a valid, legal and binding obligation of such party, (iv) the execution and delivery of this Agreement will not violate the organizational documents of such party, violate, conflict with or constitute a default under any agreement which such party is a party to or by which any of its properties are bound, or violate any applicable law by which such party is bound, and (v) it has not assigned any of its rights to make the agreements contained herein.

16.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of each of the Parties hereto and its respective successors and assigns. The Parties acknowledge that one of the express purposes of this Agreement is to bind SMC successors, partners, subsidiaries, affiliates, and assigns to this Agreement. SMC shall record an abstract of this Agreement with the clerk and recorder office of any county in which real property that is affected by the Agreement is located. The purpose of this recording is to give notice of this Agreement to and to bind any successors, partners, subsidiaries, affiliates, and assigns of SMC.

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

16.3 Notice. Whenever Notice is required under this Agreement, such Notice shall be in writing and delivered by overnight courier or by U.S. certified mail, return receipt requested, to the following designated Parties and addressed to such Parties at the addresses set forth below:

To NPRC, SPA, or CRC:

Attention: Good Neighbor Agreement Manager

Northern Plains Resource Council

2401 Montana Avenue, Suite #200

Billings, MT 59101-2336

To SMC: Attention: Vice President, General Counsel

Stillwater Mining Company

1321 Discovery Drive

Billings, MT 59102

The Parties may hereafter designate by Notice a different address or person to whom Notice must be given.

16.4 Joint Drafting Terms. It is hereby expressly understood and agreed that this Agreement was jointly drafted by Councils and SMC. Accordingly, the Parties hereby agree that any rule of construction to the effect that ambiguity is construed against the drafting Party shall be inapplicable to any Dispute concerning the terms, meaning, or interpretation of this Agreement.

16.5 Controlling Law. This Agreement shall be interpreted under the laws of the State of Montana, except as specified in Appendix D (Arbitration).

16.6 Further Assurances. At any time, and from time to time, after the Effective Date, each Party will execute such additional instruments and take such actions as may be reasonably requested by the other Parties to confirm or perfect or otherwise to carry out the intent and purpose of this Agreement.

16.7 Waiver. Any failure on the part of any Party hereto to comply with any of its obligations, agreements or conditions thereunder may be waived by any other Party to whom such compliance is owed. To be effective, the waiver shall be in writing and signed by the chairs of Councils or the President of SMC. No waiver of any provision of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

16.8 Headings. The section and other headings in this Agreement are inserted solely as matter of convenience and for reference, and are not a part of this Agreement.

16.9 Appendices and Schedules. All attached and reserved Appendices and Schedules are incorporated by reference into this Agreement and are to be construed as an integral part of this Agreement. The Parties shall fill in all blanks, if any, in the attached



Appendices and complete all reserved Appendices as required by this Agreement in order to consummate the transactions contemplated with this Agreement.

16.10 Severability. If any provision of this Agreement is invalid or unenforceable in any jurisdiction, such provision shall be fully severable from this Agreement and the other provisions thereof shall remain in full force and effect in such jurisdiction and the remaining provisions hereof shall be liberally construed to carry out the provisions and intent thereof. The invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or unenforceability of any such provision in any other jurisdiction

16.11 Liability Limitation. For the purposes of determining liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), this Agreement does not convey or transfer to Councils any possessory rights or interests in any real property owned by, licensed to, or leased by SMC. In addition, this Agreement does not convey to, transfer to, or create in Councils any day-to-day management duties, decision-making abilities or responsibilities, or the authority to control day-to-day operations at the East Boulder or Stillwater Mines.

16.12 Time Requirements. This Agreement contains various provisions that are to be performed by a time deadline. Central to this Agreement is the timely performance of these provisions, thus time is of the essence of this Agreement.

16.13 Breach of time deadline. Whenever any Party believes that another Party is in breach of any part of this Agreement that requires compliance with a time deadline, the notifying Party must give proper and timely notice of the breach and allow for curing of the breach prior to the notifying Party having a cause of action to enforce such breach of any deadline provision, as described below:

16.13.1 A description of the substance of the breach, including at least the conduct, or lack of conduct, causing the alleged breach;

16.13.2 The section of the Agreement believed breached;

16.13.3 The time that the breach occurred;

16.13.4 Whom, including the person's mailing address, any response to the Notice, or attempted remedy of the alleged breach should be mailed to;

16.13.5 To be proper notice, the Notice must be sent certified mail, return receipt requested, to the Parties at the addresses set forth in Section 16.3.

16.13.6 Prior to bringing a proceeding for breach of the Agreement relating to a missed deadline, the notifying Party must wait at least ten (10) days after the receipt date of the Notice of Breach by the notified Party. The date of the receipt

of the notice is the date indicating delivery as shown on the Domestic Return Receipt.

16.14 Approval of Administrative Agencies. The Parties acknowledge that the approval of administrative agencies under Federal and State Environmental Laws and Regulations may be a condition of some SMC covenants under this Agreement. SMC shall use best efforts to obtain all necessary approvals.

16.15 Modification. The Parties may modify this Agreement by mutual agreement in writing signed by Councils and SMC.

16.16 Entire Agreement. This Agreement is the entire, final and complete agreement of the Parties with respect to the understandings between the Parties regarding the subject matter hereof, and supersedes and replaces all prior written and oral agreements between the Parties or their representatives with respect to such matters.

16.17 Statement. The Parties have read this contract and agree to be bound by its terms.

**SIGNATURES**

**STILLWATER PROTECTIVE ASSOCIATION,**

a Montana nonprofit corporation,

By: \_\_\_\_\_ Date: \_\_\_\_\_

Kevin Chandler, as its Chair

**COTTONWOOD RESOURCE COUNCIL**

a Montana nonprofit corporation,

By: \_\_\_\_\_ Date: \_\_\_\_\_

Elizabeth Green, as its Chair

**NORTHERN PLAINS RESOURCE COUNCIL,**

a Montana nonprofit corporation,

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mary E. Fitzpatrick, as its Chair

**STILLWATER MINING COMPANY,**

a Delaware corporation,

By: \_\_\_\_\_ Date: \_\_\_\_\_

John R. Stark, as its Vice President and Corporate Counsel

## APPENDIX A. DEFINITIONS

Definitions. In addition to the definitions of capitalized terms stated in other Sections of this Agreement, the capitalized terms when used in this Agreement and Appendices shall be defined as follows:

1.0 “Amendment or Revision” shall have the same meaning as such terms have under the Montana Metal Mine Reclamation Act, MCA 2-4-201 *et seq.* (1999), and the Montana Water Quality Act, MCA 75-5-101 *et seq.* (1999), and implementing administrative rules.

1.1 “Citizen Sampling” means sampling authorized by Section 3.1 of Appendix L of this Agreement, including the right to enter SMC premises for these purposes.

1.2 “Claimant” means the Party initiating arbitration under Section 9.4 of this Agreement by providing a written demand for arbitration to the Respondent.

1.3 “Commencement of the Permitting Process” means the date that SMC submits a proposed amendment, revision, proposal, or application to the MDEQ, CNF, GNF, or other relevant regulatory agencies.

1.4 “Dispute” means the inability of the relevant Oversight Committee or Technology Committee to obtain a majority vote on an issue arising under this Agreement within 120 days of its first recording in the official minutes of a Committee meeting.

1.5 “Documents” means any writing, letter, memorandum, computer records or files, statements, data, reports, studies, and other writings.

1.6 “East Boulder Mine” means SMC Mining Operations described in the East Boulder Operating Permit as amended from time to time.

1.7 “East Boulder Oversight Committee” (EBOC) means the Oversight Committee established by Section 7.0 of this Agreement.

1.8 “Effective Date” means the Effective Date of this Agreement, May 8, 2000.

1.9 “Emergency Environmental Audit” means an assessment, evaluation, review, or investigation of SMC Mining Operations conducted by a Third Party. Such audits are limited to the scope of the problem triggering the audit.

1.10 “Environment” means all surface waters, ground water, drinking water, land surfaces, subsurface strata, ambient air, and biological resources.

1.11 “Federal and State Environmental Laws and Regulations” shall include but is not limited to the following laws and regulations and any permits or plans required by these laws and regulations:

- 1.11.1 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9601 et seq. (1988) and implementing regulations.
  - 1.11.2 Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 et seq. (1988) and implementing regulations.
  - 1.11.3 Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. Section 11001 et seq. (1988) and implementing regulations.
  - 1.11.4 Federal Water Pollution Control Act (FWPCA), 42 U.S.C. Section 1251 et seq. (1988) and implementing regulations.
  - 1.11.5 Clean Air Act (CAA), 42 U.S.C. Section 7401 et seq. (1988) and implementing regulations.
  - 1.11.6 National Environmental Policy Act, 42 U.S.C. 4321 et seq. (1988) and implementing regulations.
  - 1.11.7 National Forest Management Act, 42 U.S.C. Section 1600 et seq. (1988) and implementing regulations.
  - 1.11.8 Forest Service Locatable Minerals Regulations, 40 CFR 228.
  - 1.11.9 Montana Water Quality Act, MCA 75-5-101 et seq. (1999) and implementing rules.
  - 1.11.10 Montana Clean Air Act, MCA 75-2-101 et seq. (1999) and implementing rules.
  - 1.11.11 Montana Metal Mine Reclamation Act, MCA 82-4-301 et seq. (1999) and implementing rules.
  - 1.11.12 Montana Environmental Policy Act, MCA 75-1-101 et seq. (1999) and implementing rules.
  - 1.11.13 The terms, conditions, stipulations, and mitigation measures required by any Record of Decision issued by the MDEQ, CNF, or GNF for the East Boulder Mine, Stillwater Mine or other SMC Mining Operations.
- 1.12 “Issues of Concern” shall include but are not limited to the following:
- a. Schools, local services, and infrastructure.
  - b. Roads and transportation issues.
  - c. Surface and groundwater resources, and associated aquatic life.
  - d. Air quality issues.

- e. Wildlife and fisheries.
  - f. Recreational, aesthetic, and visual impacts.
  - g. Land use issues.
  - h. Health and safety issues.
  - i. Reclamation and other mine closure issues.
  - j. Other unforeseeable impacts on the local Environment and community.
- 1.13 “J-M Reef” means the PGM rich zone of the Stillwater Complex.
- 1.14 “Mining Operations” means all SMC exploration, development, extraction, processing, and refining of platinum group metals and other minerals and related activities in Montana, including but not limited to the East Boulder and Stillwater Mines.
- 1.15 “Mine-Sponsored Housing” means any Housing owned by, leased by or sub-leased by, operated by, or managed by or for the benefit of SMC.
- 1.15.1 “Housing” means any structure, facility, or other dwelling unit that is used or occupied as a temporary or permanent home, residence, or sleeping space by any SMC employee, contractor, or subcontractor. Such housing also includes, but is not limited to, work camps, man camps, camping spaces, trailer parking spaces, and mobile, modular, or permanent barracks and structures.
- 1.16 “MPDES Permit” means the Montana Pollution Discharge Elimination System (MPDES) permit required by the Montana Water Quality Act, MCA 75-5-101 *et seq.*(1999) and ARM Title 17, Chapter 30, Subchapters 5, 6, 7, and 13.
- 1.16.1 “East Boulder MPDES Permit” means Permit # MT-0026808, as amended or renewed from time to time.
  - 1.16.2 “Stillwater MPDES Permit” means Permit # MT-0024716, as amended or renewed from time to time.
- 1.17 “NPRC” means Northern Plains Resource Council and any of its affiliates.
- 1.18 “Operating Permit” means the operating permit required by the Montana Metal Mine Reclamation Act, MCA 82-4-301 *et seq.* (1999).
- 1.18.1 “Stillwater Mine Operating Permit” means Permit No. 00118, effective November 12, 1998, as amended or renewed from time to time.
  - 1.18.2 “East Boulder Mine Operating Permit” means Permit No. 00149, effective May 20, 1999, as amended or renewed from time to time.
- 1.19 “Operational Emergency” means an Act of God, fire, or other unforeseeable event Notice of which is given to the Councils.

- 1.19.1 48-hour written notice. SMC shall provide Councils with Notice of all Operational Emergencies within 48 hours of their occurrence.
- 1.19.2 Effect. SMC is prohibited from using an operational emergency as a defense if such written notice is not given to Councils.
- 1.20 “Parties” means SMC and Councils.
- 1.21 “Party” means SMC, NPRC, CRC, or SPA.
- 1.22 “Pipeline” means all tailings slurry, adit water, tailings water, mill process water, and other Effluent pipelines identified in the Stillwater Mine Operating Permit effective November 12, 1998.
- 1.23 “Release from Pipeline” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, dumping, or otherwise disposing into the environment excluding any Federal or State permitted releases.
- 1.24 “Respondent” refers to the party (ies) who receive a written demand for arbitration.
- 1.25 “SMC” means Stillwater Mining Company (publicly traded under the symbol SWC), and all SMC successors and assigns, direct and indirect majority-owned subsidiaries, and affiliates.
- 1.26 “Stillwater Mine” means SMC Mining Operations described in the Stillwater Mine Operating Permit as amended from time to time.
- 1.27 “Stillwater Oversight Committee” (SOC) means the Oversight Committee established by Section 7.0 of this Agreement.
- 1.28 “Technologies and/or Practices” may also be referred to as best available technology, state-of-the-art, or developing technology. New technology is the latest in technological achievement that has undergone critical evaluation in order to determine its efficacy, and typically employs recently proven technologies. Developing technology is typically innovative technology in the process of undergoing design, development, feasibility and implementation processes, and may include technology in trial or demonstration stage. Technology and practices includes traditional pollution prevention and treatment technologies, in-process changes, recycling, and changes in input materials. The Parties recognize that new technologies and practices are an evolving concept.
- 1.29 “Third Party or Third Parties” means a party mutually selected by Councils and SMC pursuant with Section 5 to complete a plan, report, project, audit, study, or sampling.

## **APPENDIX B. INFORMATION**

- All information required to be disclosed by Federal and State Environmental Laws and Regulations or other applicable federal, state, or local laws and regulations.
- Data generated or derived from the East Boulder Mine and Stillwater Mine Supplemental Monitoring Programs.
- Data generated or derived from Citizen Sampling conducted pursuant with Section 3.1 of Appendix L and Inspections conducted pursuant with Section 10.
- Information acquired during meeting, inspections, and other significant events with the MDEQ, CNF, GNF, and other relevant regulatory agencies.
- Data and information generated and derived from Third Party studies and reports.
- Any final Arbitration Award.



## **APPENDIX C. DESIGNATED COUNCILS STAFF AND CONSULTANTS**

The following three people have signed confidentiality agreements:

James R. Kuipers, P.O. Box 641, Butte, Montana 59703

Aaron W. Browning, 2401 Montana Avenue, #200, Billings, MT, 59101

Michael D. Reisner, 2401 Montana Avenue, #200, Billings, MT, 59101

## APPENDIX D. ARBITRATION

1.0 Trigger. To resolve a Dispute under Section 9.0, Councils or SMC may initiate arbitration, and the dispute shall be arbitrated in the manner set forth in this Appendix.

1.1 Written Demand. The Claimant shall provide all Respondents with a written demand for arbitration by certified mail within 30 days of the expiration of the 120-day period specified in Section 9.0. The written demand for arbitration shall include a brief statement of the matter in Dispute, the section of the Agreement giving rise to the Dispute, and the remedies sought.

1.2 Negotiation Period. The receipt of the written demand for arbitration by the respondent initiates a 30-day negotiation period during which time the Parties shall negotiate in good faith to resolve the dispute. If the Dispute is not resolved within the 30-day negotiation period, the arbitration shall proceed.

1.3 Arbitration Panel. The Arbitration Panel shall decide all Disputes. The Arbitration Panel shall be comprised of one arbitrator selected by the Councils, one arbitrator selected by SMC, and one neutral arbitrator selected by the arbitrators so selected.

1.4 Selection of Councils and SMC Arbitrators. Councils and SMC shall select their respective arbitrators within 15 days of the end of the 30-day negotiation period. If the Councils or SMC fail to appoint an arbitrator within the time period, the American Arbitration Association (AAA) shall appoint such arbitrator within 10 (ten) days of being notified by either party of the need for such appointment.

1.5 Selection of neutral arbitrator. The arbitrator selected by Councils and the arbitrator selected by SMC shall, within 10 days of their appointment, select a third neutral arbitrator. In the event that they are unable to make such selection, the AAA shall appoint the third neutral arbitrator within 10 days of being notified by either Party of the need for such appointment.

1.6 Neutral arbitrator disclosure. Prior to the commencement of the arbitration hearing, the third neutral arbitrator shall provide an oath or undertaking of impartiality. To insure the complete independence of the neutral arbitrator, the neutral arbitrator shall disclose to the parties any circumstances that may affect impartiality. These circumstances include but are not limited to any bias, any direct or indirect financial or personal interest in the dispute, any past, present, or reasonably foreseeable direct or indirect financial dependence on the parties, and any other past, present, or reasonably foreseeable relationship with the parties or their representatives. Either Claimant or Respondent may object to the appointment of the neutral arbitrator based upon this disclosure. Upon objection of a party to the continued service of the neutral arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

1.7 Location. The arbitrators shall select Columbus, Big Timber, or Billings, Montana, as the place for arbitration.

1.8 Governing Law. The Parties acknowledge that this Agreement evidences a transaction involving interstate commerce and is subject to arbitration as provided in Title 5 of the U.S. Code, the United States Arbitration Act.

1.9 Guidelines. Unless otherwise agreed to by the Parties or provided in this Appendix, the American Arbitration Association (AAA) Environmental Arbitration Guidelines as in effect from time to time shall apply.

1.10 Injunctive Relief. Either respondent or claimant may apply to the Arbitration Panel seeking injunctive relief until the arbitration award is rendered or the dispute is otherwise resolved. Either Claimant or Respondent also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that Party, pending the Arbitration Panel's determination of the merits of the dispute.

1.11 Consolidation of Multiple Arbitrations. The Councils and SMC are bound each to each other, by this arbitration clause. If more than one arbitration is begun under this Agreement and one of the Parties contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the Arbitration Panel selected in the first-filed of such proceedings shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that Arbitration Panel.

1.12 Discovery. Consistent with the expedited nature of arbitration, Claimants and Respondents will, upon written request of the other Party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim. The scope of discovery shall be governed by MCA 25-20-rules 26-37. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the Arbitration Panel whose determination of such dispute shall be conclusive. All discovery shall be completed within 60 days following the appointment of the Arbitration Panel unless the Arbitration Panel determines that the discovery period must be extended because of a dispute over discovery.

1.13 Depositions. At the request of the Claimant or Respondent, the Arbitration Panel shall have the discretion to order examination by deposition of witnesses to the extent the Arbitration Panel deems such additional discovery relevant and appropriate. Depositions shall be limited to 3 (three) per Party and shall be held within 30 days of the making of a request.

1.14 Time of Arbitration hearing. The Arbitration Panel shall set the date, time, and place of the hearing and shall provide each Party with at least 30 days written notice of the hearing date.

1.15 Briefs. Each Party shall file a pre-hearing and post-hearing brief. The Arbitration Panel shall establish the required content and length of such briefs.

1.16 Stenographic record. There shall be a stenographic record of all arbitration proceedings and hearings and such record shall be the official record of such proceedings.

1.17 Award Time Line. The final award shall be made within 180 days of the Respondent's receipt of the written demand for arbitration. All the arbitrators shall agree to comply with this schedule before accepting appointment. The Parties, by written agreement, may extend this time limit.

1.18 Statute of Limitations. The requirements of filing a notice of claim with respect to the Dispute submitted to the Oversight Committee or to arbitration shall be suspended until the Arbitration Panel award.

1.19 Award. All decisions of the Arbitration Panel and the final award shall be by a majority vote of the Arbitration Panel. The final award shall be in writing and include findings of fact, a statement regarding the reasons for the disposition of the dispute, and any remedy awarded. All Arbitration Panel awards, decisions on questions of law, and findings of fact are final and binding on the Parties. The Arbitration Panel shall decide issues of procedural arbitrability.

1.20 Remedies. The Arbitration Panel may grant any remedy or relief that the panel deems is just and equitable and within the scope of the agreement of the Parties.

1.21 Arbitration costs and fees. The Arbitration Panel shall award to the prevailing Claimant or Respondent, if any, as determined by the Arbitration Panel, all of its "Arbitration Costs and Fees". "Arbitration Costs and Fees" mean all reasonable pre-award expenses, including the arbitrators' fees and expenses, administrative fees, stenographer costs, travel expenses, and out-of-pocket expenses such as copying and telephone costs.

1.21.1 Limitation. "Arbitration Costs and Fees" shall not include any attorney or witness fees incurred by a Claimant or Respondent. The Parties acknowledge that the Claimant and Respondent are responsible for their own attorney and witness fees.

1.22 Public information. A summary of the arbitration hearing and the final arbitration award shall be part of the public domain and may be disclosed by Councils or SMC, except for Confidential Information.

**APPENDIX E. LEGAL DESCRIPTION OF SMC PROPERTIES AS  
AMENDED IN 2004 AMENDMENT**

**Ekwortzel Property**

Township 4 South, Range 15 East, M.P.M., Stillwater County, Montana

Section 25: E ½ E ½.

**SUBJECT TO** all third party rights of record existing at the time of conveyance of this Easement and not subordinated to this Easement.

**Magpie Property**

Township 4 South, Range 16 East, P.M.M., Stillwater County, Montana

Section 27: NW¼, N½SW ¼, NW¼SE¼, SW¼SW¼,

Section 27: Tract located in the SW¼SE¼ and SE¼SW¼ described as Area of Relocation "B" on Certificate of Survey No. 312620,

Section 33: NE¼NE¼,

Section 34: NW¼.

All more particularly described as "Tract A" of Certificate of Survey No. 318979 filed August 18, 2004, at 3:19 p.m., records of Stillwater County, Montana.

**SUBJECT TO** all third party rights of record existing at the time of conveyance of this Easement and not subordinated to this Easement.

**Yates Property**

Township 3 South, Range 13 East, M.P.M., Sweet Grass County, Montana

Section 21: A tract of land in the NW¼ more particularly described as Tract "C" of Certificate of Survey No. 119451 filed January 7, 1992, at 2:05 p.m., records of Sweet Grass County, Montana.

**SUBJECT TO** all third party rights of record existing at the time of conveyance of this Easement and not subordinated to this Easement.

## **Boe Property**

### Township 3 South, Range 13 East, M.P.M., Sweet Grass County, Montana

Section 9: All,

Section 10:  $W\frac{1}{2}W\frac{1}{2}$ ,

Section 17: All,

Section 19:  $NE\frac{1}{4}$ ,

Section 20: Lots 3, 4, 5, 6, 10, 11 and 14, and a tract of land situated in the  $NE\frac{1}{4}$  more particularly described as Tract A of Certificate of Survey No. 129221 filed August 18, 1999, at 2:40 p.m., in the office of the Clerk and Recorder, Sweet Grass County, Montana.

**SUBJECT TO** all third party rights of record existing at the time of conveyance of this Easement and not subordinated to this Easement.

## **Beartooth Property**

### Township 5 South, Range 15 East, M.P.M., Stillwater County, Montana

Section 28:  $W\frac{1}{2}SW\frac{1}{4}$ ,

Section 32:  $NE\frac{1}{4}NE\frac{1}{4}$ ,

Section 33:  $NW\frac{1}{4}NW\frac{1}{4}$ .

**SUBJECT TO** all third party rights of record existing at the time of conveyance of this Easement and not subordinated to this Easement.

## **Stratton Ranch Property**

### Township 5 South, Range 15 East, M.P.M., Stillwater County, Montana

Section 10:  $S\frac{1}{2}SW\frac{1}{4}$ ,

Section 15:  $N\frac{1}{2}NW\frac{1}{4}$ .

**SUBJECT TO** all third party rights of record existing at the time of conveyance of this Easement and not subordinated to this Easement.

## **APPENDIX F. EAST BOULDER MINE COMPREHENSIVE BUSING AND TRAFFIC REDUCTION PLAN**

1.0 Traffic and Busing Plan. SMC shall develop, implement, and fund a comprehensive busing and traffic reduction plan (the “East Boulder Traffic Plan”) for the duration of SMC Mining Operations.

1.1 Implementation. SMC shall implement the East Boulder Traffic Plan to minimize all mine-related traffic on all mine-access roads, including but not limited to Federal Aid Secondary road 298 (Main Boulder River Road), Sweet Grass County road 31 (East Boulder River Road), Forest Service road 205, Sweet Grass County road 30, and Park County road 29 (Swingely Road), to the maximum extent possible.

1.2 Objective. The objective of the East Boulder Traffic Plan is to minimize and/or eliminate the adverse impacts of all mine-related traffic on road safety and maintenance, Boulder River valley residents, wildlife, surface waters and aquatic resources, and other resources.

1.3 Vehicle Permit System. SMC shall establish, maintain, and enforce a Vehicle Permit System for the East Boulder Mine. Except for persons displaying a valid vehicle permit, SMC shall prohibit employees, visitors, contractors, subcontractors, and vendors from entering or leaving the mine site by private vehicle. SMC shall provide bus transportation to and from the mine site for all unpermitted employees, visitors, contractors, subcontractors, and vendors. SMC shall prohibit unpermitted vehicles from parking at the mine site, shall notify appropriate law enforcement authorities of any unpermitted vehicles parked at the mine site, and shall take all necessary steps, including towing, to have such vehicles removed.

1.4 Permit Limitations. Up to a maximum of 35 vehicle permits may be assigned by SMC at their discretion to employees, visitors, subcontractors, vendors, or contractors. Each permit allows one round-trip to the mine site per day. The holders of such permits may enter or leave the mine site by private vehicle, and may park a private vehicle at the mine site.

1.4.1 Exclusions. Non-routine visitors and SMC employees with multiple site responsibilities that require travel between the East Boulder Mine and Boe Ranch Property are exempted from the vehicle permit system.

1.5 Car Pooling. SMC shall require all holders of vehicle permits to car pool to the maximum extent possible. SMC shall maintain a car pooling objective of at least 3.0 riders per permitted vehicle (measured as a daily mean).

1.6 Monitoring Program. SMC shall establish and maintain a daily traffic monitoring program to verify its compliance with this provision. At a minimum, such program shall monitor and record the number of riders in each permitted vehicle measured at the mine-site check-in gate, the number of unpermitted vehicles in the parking lot during each

shift, and the disposition of each such vehicles. This monitoring program shall also verify SMC's compliance with the Commercial Traffic Reduction Plan (Subsection 7.25-7.31) and shall monitor and record the number of commercial vehicles making deliveries to the mine site per day measured at the mine-site check-in gate. SMC shall provide a quarterly report to the CRC/NPRC representatives on the Oversight Committee at least 10 days before each quarterly meeting.

1.7 Inspections. NPRC/CRC shall have the right to conduct unannounced inspections to evaluate SMC's compliance with the East Boulder Traffic Plan, and may request more frequent monitoring reports if conditions warrant.

1.8 Incorporation. In addition to being a condition of this Agreement, the East Boulder Traffic Plan must be incorporated into the Plan of Operations for the East Boulder Mine.

1.9 Limits On Staging Area. The nearest bus stop from the East Boulder Mine site would be no closer than within the city limits of Big Timber. The EBOC may approve other bus stops when necessary.

1.10 Mitigation Measures. The Oversight Committee shall develop and implement additional mitigation measures necessary to address the issues regarding SMC employees, contractors, and subcontractors with residences in the Boulder River valley south of Big Timber. The Oversight Committee shall develop and SMC shall implement these mitigation measures within 90 days of the effective date of this Agreement. The Oversight Committee shall review this issue periodically to address any material changes in circumstances.

1.11 Busing. SMC shall require all SMC employees, subcontractors, and contractors with permanent residences south of Big Timber and within a three mile radius of the Big Timber city limits to ride the bus.



## **APPENDIX G. STILLWATER MINE TRAFFIC REDUCTION PLAN**

1.0 Traffic Plan. SMC shall develop, implement, and fund a comprehensive traffic reduction plan (hereinafter Stillwater Traffic Plan) for the duration of Mining Operations.

1.1 Implementation. SMC shall implement the Stillwater Traffic Plan to minimize all mine-related traffic on all mine-access roads to the maximum extent possible.

1.2 Objective. The objective of the Stillwater Traffic Plan is to minimize or eliminate the adverse impacts of all mine-related traffic on road safety and maintenance, Stillwater River valley residents, wildlife, surface waters and aquatic resources, and other resources.

1.3 Limit on Vehicle Trips. SMC shall limit the number of round-trip vehicle trips to the Stillwater Mine by employees, contractors, and subcontractors to a monthly mean of 110 trips per 24-hour period.

1.3.1 Measurement. SMC shall monitor traffic to the Stillwater Mine and record the number of vehicles entering mine premises over each 24-hour period.

1.3.2 Exemptions. The following persons are exempt from the limit of 110 round-trip vehicle trips per 24-hour period:

(a) Persons with residences within the following Townships in Stillwater County: T4 and 5S, R 15E, T4 and 5S, R 16E, and T3 and 4S, R 17E. SMC shall use best efforts to provide incentives to encourage these persons to carpool or take bus transportation.

(b) SMC employees, contractors, or subcontractors with multiple site or on-call responsibilities.

(c) SMC employees driving SMC-owned vehicles.

(d) Contractors employed during construction pulses for a period of less than or equal to 30 days that drive commercial vehicles.

1.3.3 Change in Circumstances. If there is a material change in circumstances, such as the development of a subdivision in the above Townships, that significantly changes the number of persons with residences in designated areas, the SOC shall address the issue.

1.4 Car Pooling. SMC shall require all persons driving private vehicles, including those exempted above, to car pool to the maximum extent possible.

1.5 Busing Program. SMC is providing bus transportation to and from the mine site for all employees, contractors, and subcontractors. The Parties acknowledge that a

busing program is the most effective means of reducing traffic and ensuring safety. SMC shall provide bus transportation as long as it is affordable.

1.5.1 Conditions of Suspension. Before suspending the busing program, SMC shall:

- (a) Prepare a report explaining why providing bus transportation is no longer affordable and provide an opportunity for NPRC/SPA to review the report.
- (b) Discuss the report at the next scheduled SOC meeting.
- (c) Develop and implement a carpooling program or other program to meet the limitation of 110 round-trip vehicle trips per day.

1.5.2 Re-Establish. SMC shall re-establish the busing program if changes in circumstances make providing bus transportation affordable.

1.6 Condition of Employment. SMC shall require, as a condition of employment, busing and/or carpooling for all employees, contractors, and subcontractors.

1.7 Monitoring Program. SMC shall establish and maintain a daily traffic monitoring program to verify its compliance with this provision. At a minimum, such program shall monitor and record the number of riders in each permitted vehicle measured at the mine-site check-in gate, the number of unpermitted vehicles in the parking lot during each shift, and the disposition of each such vehicles. This monitoring program shall also verify SMC's compliance with the Commercial Traffic Reduction Plan (Appendix H) and shall monitor and record the number of commercial vehicles making deliveries to the mine site per day measured at the mine-site check-in gate. SMC shall provide a report at each regular SOC meeting.

1.8 Inspections. SPA/NPRC shall have the right to conduct unannounced inspections to evaluate SMC's compliance with the Stillwater Traffic Plan and may request more frequent monitoring reports if conditions warrant.

1.9 Staging Areas. SMC shall provide staging areas to maximize access to busing and carpooling for employees, contractors, and subcontractors; to meet the performance requirements of this Plan; and to meet the needs of its expanding work force. SMC shall locate staging areas in Billings, Columbus, Absarokee, Red Lodge and any other areas if necessary.

1.9.1 Prohibition. SMC shall prohibit staging areas closer to the Stillwater Mine than Absarokee, except for staging areas in Dean and Fishtail established for the purpose of providing bus transportation to employees, contractors, and subcontractors with residences within a 10-mile radius of Dean and Fishtail.

1.10 Mitigation Measures. The Oversight Committee shall develop additional mitigation measures to address mine-related traffic issues as they arise and review all shift change proposals, speed limit issues, and construction-related traffic issues.

1.11 Training Sessions. SMC shall provide orientation and training sessions for employees emphasizing the importance of safe and courteous driving on local roads with the objective of reducing risks to persons or property, noise, excessive speed, and other negative impacts on the roads. At the SMC weekly safety meetings, driver safety messages will be presented. SPA/NPRC representatives have the right to attend the safety meetings and may deliver driver safety/traffic presentations or suggest such presentations be added to the agenda. SMC shall present safety reports to the Oversight Committee on a quarterly basis.

## **APPENDIX H. COMMERCIAL TRAFFIC REDUCTION PLAN**

- 1.0 Objective. The objective of the Commercial Traffic Reduction Plan is to minimize commercial traffic to both the Stillwater and East Boulder Mine sites to the maximum extent possible. For the purposes of this agreement, “Commercial Traffic” means all truck, delivery, and other service traffic to and from the mine site, except for SMC-sponsored busing required by this section.
- 1.1 Staging Areas. SMC shall minimize commercial traffic to the East Boulder Mine and Stillwater Mine sites by establishing central staging areas and/or warehouses in Columbus and Big Timber, Montana.
- 1.2 Shipments. SMC shall consolidate all shipments and require all contractors, subcontractors, and vendors, as a condition of service, to consolidate all shipments to both mine sites to the maximum extent possible.
- 1.3 Monitoring. SMC shall implement and maintain a program to monitor the total number of commercial vehicles traveling to both mine sites per day. SMC shall provide a quarterly report to the relevant Oversight Committee.
- 1.4 Limits. SMC shall limit all commercial traffic to 10 vehicles per day per mine (measured as a daily mean) to the maximum extent possible.
- 1.5 Deliveries. SMC shall use busses, vans, and other permitted vehicles to make deliveries to both mine sites to the maximum extent possible.
- 1.6 Hours. SMC shall restrict all commercial traffic to deliveries of supplies and equipment to the East Boulder Mine to daylight hours or to between the hours of 7 A.M. and 6 P.M., whichever is more restrictive, except during operational emergencies.
- 1.7 Construction Pulses. SMC may request exceptions for construction pulses. The EBOC and SOC shall approve all such exceptions.

## **APPENDIX I. ENVIRONMENTAL AUDIT PROGRAM FOR THE EAST BOULDER AND STILLWATER MINES**

- 1.0 Objectives. The objectives of the environmental audits are:
- 1.0.1 To evaluate SMC compliance with Federal and State Environmental Laws and Regulations.
  - 1.0.2 To evaluate SMC compliance with its internal environmental management policies and procedures.
  - 1.0.3 To evaluate SMC compliance with the terms, conditions, and performance objectives of this Agreement.
  - 1.0.4 To evaluate SMC waste control, minimization and reduction practices.
- 1.1 Frequency. The initial audit of the Stillwater Mine was completed on July 29, 2002. The final audit report is available to the public. A mini-audit of the East Boulder Mine was completed on February 10, 2003 to ensure policies were consistent with the Nye operations. Subsequent audits may be called by the Councils and shall be refined to address specific issues as determined by the relevant oversight Committee and shall occur no more than once every five years. Subsequent audits shall not include water-quality related issues unless a compliance issue has been raised by the appropriate federal or state agency or SMC has exceeded a Tier 2 or Tier 3 trigger level during the five years preceding the audit.
- 1.2 Limitation. The evaluation of SMC compliance with record keeping and reporting requirements under objective 1.0.1 shall be limited to Repeat Non-Compliances. “Repeat Non-Compliances ” means a pattern of the same or closely related non-compliances of record keeping or reporting requirements that have occurred within the past 3 (three) years.
- 1.3 Criteria. Councils’ Consultants shall complete the environmental audits. The Parties shall establish the criteria, protocols, methods, and procedures and shall determine the focus and scope of the environmental audits consistent with the objectives of Section 1.0.
- 1.4 Participation. Councils shall have the right to Participate in all aspects of the environmental audits. Such participation shall include but is not limited to the following rights:
- 1.4.1 The right to participate in all site inspections and visits conducted by the Councils’ consultants.

- 1.4.2 The right to participate in all interviews of relevant SMC employees, consultants, and regulatory agency personnel conducted by the Councils' consultants.
- 1.4.3 The right to access all Information relevant to the environmental audit, subject to the limitations set forth in Section 3.0.
- 1.4.4 The right to take photographs and take samples of the Environment during such audits.
- 1.5 Draft Audit Report. The Councils' consultants shall prepare a draft audit report to be reviewed by the EBOC or SOC. The Parties shall submit written comments and suggestions on the draft report within 45 days of receipt of the draft report.
- 1.6 Final Audit Report. The Councils' consultants shall prepare a Final Audit Report addressing the comments and suggestions made by the Parties within 45 days of receipt of such comments and/or suggestions. The Final Audit Report shall summarize the results of the audit, make recommendations and conclusions, and identify corrective measures necessary to address any issues of SMC compliance with the objectives of Section 1.0 of this Appendix.
- 1.7 Implementation. SMC shall implement the recommendations and corrective measures identified in the Final Audit Report consistent with the following:
- 1.7.1 In the event the recommendations and corrective measures are related to objective 1.0.1, SMC shall immediately implement the recommendations and corrective measures.
- 1.7.2 In the event the recommendations or corrective measures are related to objectives 1.0.2-4, the EBOC or SOC shall decide what recommendations or corrective measures SMC will be required to implement.
- 1.8 Progress Reports. SMC shall prepare quarterly reports and an annual report summarizing the implementation of any recommendations or corrective measures. The EBOC and SOC shall review such reports.
- 1.9 Information. The Final Audit Report shall be available to the public.
- 1.9.1 Confidential Information. In the event that SMC asserts that there is Confidential Information within the scope of the information and activities affected by these environmental audits, the Parties shall address the issues pursuant with Section 3.0.
- 1.10 Not Applicable. This section is not applicable to any Emergency Environmental Audit triggered by another section of this Agreement.

## **APPENDIX J. RECLAMATION PLAN AND PERFORMANCE BOND EVALUATION**

1.0 Evaluations. The Responsible Mining Practices and Technology Committee shall conduct an evaluation of the SMC Reclamation Plan, Performance Bond, and interim reclamation plan for the Stillwater Mine and East Boulder Mine to coincide with every State of Montana review of such plans and bonds. Councils' consultants shall complete the evaluation, and SMC shall fund the evaluation up to \$12,000 per evaluation.

1.1 Definitions. For the purposes of this Agreement,

1.1.1 "Performance Bond" means a surety bond or similar bond required to be provided by SMC under state or federal law with respect to reclamation obligations, including but not limited to, the bond required by MCA § 82-4-338 (1999) (performance bond).

1.1.2 "Reclamation" means the return of lands disturbed by mining or mining-related activities to an approved post-mining land use which has the stability and utility comparable to that of the pre-mining landscape to the extent Economically Feasible. Reclamation shall be performed consistent with applicable Federal and State Environmental Laws and Regulations.

1.1.3 "Reclamation Plan" means a plan as defined by MCA § 82-4-303(14) (definition of reclamation plan) and § 82-4-336 (reclamation plan and specific reclamation requirements), and applicable administrative rules.

1.2 Timeline. These evaluations shall be completed concurrent with State of Montana bond reviews or at a maximum once every 5 years.

1.3 Objectives. The objectives of these evaluations shall include but are not limited to the following:

1.3.1 To evaluate the SMC Reclamation Plan and Performance Bond for compliance with applicable Federal and State Environmental Laws and Regulations.

1.3.2 To evaluate the SMC Reclamation Plan and Performance Bond for adequacy with respect to sound engineering and environmental practices.

1.3.3 To make recommendations to improve the Reclamation Plan and Performance Bond.

1.3.4 To make recommendations to improve interim reclamation practices consistent with the objectives of Section 1.6 of this Appendix.

1.4 Participation. Councils shall have the right to Participate in all aspects of the Reclamation Plan and Performance Bond Evaluation. Such participation shall include but is not limited to the following rights:

1.4.1 The right to participate in all site inspections and visits conducted by the Third Party.

1.4.2 The right to participate in all interviews of relevant SMC employees, consultants, and regulatory agency personnel conducted by the Third Party.

1.4.3 The right to access all Information relevant to the Reclamation Plan and Performance Bond Evaluation, subject to the limitations set forth in Section 3.

1.5 Interim Reclamation Plan Revision. SMC shall revise the interim reclamation plan for the East Boulder Mine and Stillwater Mine if required by Agency decision or the decision of the relevant Oversight Committee after the review and approval of the final report.

1.6 Interim Reclamation Objectives. The objectives of the interim reclamation plan shall include but are not limited to the following:

1.6.1 The Plan shall incorporate the recommendations of the final report approved by the relevant Oversight Committee.

1.6.2 The Plan shall minimize the number of disturbed acres at the mine site and shall incorporate the concept of concurrent reclamation.

1.6.3 The Plan shall minimize and/or eliminate the invasion of noxious weeds on all SMC properties.

1.6.4 The Plan shall maximize the re-vegetation of disturbed areas to restore the nutrient balance of the soils to maximize the success rate of restoring all disturbed areas to a stable and productive pre-mining condition.

1.6.5 The Plan shall minimize and/or eliminate erosion and sediment runoff from disturbed areas.

1.6.6 The Plan shall be designed to ensure all areas are readily accessible for ongoing weed control efforts.

1.6.7 The Plan shall minimize the aesthetic and visual impacts to the surrounding environment.



## **APPENDIX K. TAILINGS AND WASTE ROCK PROJECT**

1.0 Obligation and Objectives. SMC shall establish, maintain, and fund a Tailings and Waste Rock Project (the “Project”).

1.1 Project Objectives. The objectives of the Project shall include but are not limited to the following:

1.1.1 To minimize and/or eliminate the need for additional traditional Tailings Impoundments and Waste Rock disposal areas in the Boulder River and Stillwater River Watersheds.

1.1.2 To minimize the production of tailings and Waste Rock at the East Boulder and Stillwater Mines to the extent Economically Feasible.

1.1.3 To identify and quantify future tailings and Waste Rock production and disposal requirements at the East Boulder and Stillwater Mines.

1.1.4 To identify, research, develop, and implement Economically Feasible new Technologies and/or Practices or modify existing Technologies and Practices to:

- (a) Minimize the production of tailings and Waste Rock;
- (b) Maximize the life expectancy and capacity of all existing impoundments and Waste Rock disposal areas;
- (c) Eliminate and/or minimize the environmental impacts associated with the disposal of tailings and Waste Rock; and
- (d) Eliminate and/or minimize the need for the surface disposal of tailings and Waste Rock.

1.1.5 To evaluate existing Tailings Impoundments and Waste Rock disposal plans and to make recommendations to improve their design to more adequately protect the Environment and more adequately address safety concerns.

1.1.6 To recognize that best available technology and practices are an evolving concept.

1.2 Definitions. For the purposes of this Agreement,

1.2.1 “Tailings Impoundment” means any structure used to store or contain processed ore (tailings) from a flotation or similar mineral process plant. Tailings Impoundment types may include cross valley, side hill, ring dike and valley bottom dams constructed by either upstream, downstream, or centerline methods. A Tailings Impoundment typically consists of an embankment that confines mill tailing in the form of a slurry and is engineered to provide for long-term geologic containment, control contaminant migration, and groundwater protection and related

issues. Tailings Impoundments may also be referred to as a tailings repository when used for de-watered or dry tailings storage.

1.2.2 “Waste Rock” means mined material disposed of on the surface that is classified and segregated as Waste Rock because it does not contain economic value.

1.3 Participation. Councils shall have the right to Participate in all aspects of the Project. Such participation shall include but is not limited to the following rights:

1.3.1 The right to participate in all site inspections and visits conducted by the Third Party.

1.3.2 The right to participate in all interviews of relevant SMC employees, consultants, and regulatory agency personnel conducted by the Third Party.

1.3.3 The right to access all Information relevant to the Project, subject to the limitations set forth in Section 3.0.

**Phases. This Project shall consist of the following four phases:**

1.4 Phase I: Evaluation Phase. Phase I was completed in April of 2002, except for objective 1.4.1(c) below.

1.4.1 Objectives. The objectives of Phase I shall include but are not limited to the following:

- (a) To evaluate existing tailings and Waste Rock disposal plans;
- (b) To determine their adequacy with respect to sound engineering and environmental practices;
- (c) To identify, evaluate, and recommend alternative locations for future tailings and Waste Rock disposal areas in the event such disposal options prove necessary; and
- (d) To make recommendations and conclusions for Phase II of this Project.

1.4.2 Locations. In evaluating the suitability of locations for future tailings and Waste Rock disposal areas, SMC shall:

- (a) Give preference to locations outside the 100-Year Floodplain. The 100-year floodplain shall be determined by information published by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study or similar information which contains discharges and water-surface elevations for 100-year floods, which have annual exceedence probabilities of 1%. The 100-year flood plain shall be defined as the area inundated by water-surface elevations during a 100-year storm event. The relevant Oversight

Committee shall establish the 100-year plain for both the East Boulder Mine and Stillwater Mine within 1 year of the Effective Date.

- (b) Not consider locations within visual view of the Boulder River Watershed and East Boulder River Watershed below the Gallatin National Forest boundary.
- (c) Give preference for locations within permit boundaries existing on the Effective Date.

1.4.3 Framework. The Parties shall use the following framework to complete Phase I:

- (a) The Third Party shall review all SMC Tailings Impoundment and Waste Rock disposal plans, studies, and reports.
- (b) The Third Party shall meet with SMC and discuss this information and discuss future production and/or expansion plans.
- (c) The Parties shall review literature and other information on traditional and innovative, emerging tailings and Waste Rock disposal techniques (i.e., paste).
- (d) The Third Party shall tour and review SMC tailings backfill operations and other relevant tailings and Waste Rock disposal facilities and discuss research and development plans. The Parties may tour other relevant mining facilities if appropriate.
- (e) The Technology Committee shall critically evaluate SMC existing and proposed tailings facilities, Waste Rock disposal studies and plans, and paste tailings evaluations with other existing and proposed mining operations.
- (f) The Technology Committee shall prepare draft reports with a discussion of information derived from above tasks, including conclusions and recommendations.
- (g) The Parties shall review the draft report separately, followed by review by the Technology Committee, and report out to the Oversight Committee.
- (h) The Technology Committee shall draft a final report with each Party reserving the right to include a minority report.
- (i) The Oversight Committees shall review and approve the final report and decide which recommendations and conclusions should be used in Phase II.

1.5 Phase II and Phase III: Pre-feasibility and Feasibility Phases. SMC shall use the recommendations and conclusions of the Phase I Final Report to establish its research and development (R&D) expenditures in the areas of tailings and Waste Rock disposal. The Phase II pre-feasibility study is currently ongoing. The Phase II pre-feasibility study shall be completed by December 31, 2005, and may include a recommendation for additional test work to be completed prior to the initiation of the full feasibility study. The Phase III feasibility study will be completed not later than December 31, 2010 and may include

recommendations as to environmental and technical feasibility, as well as economic feasibility.

1.6 Phase IV: Implementation of Successfully Piloted or Tested Technologies and Practices. If Economically Feasible Technologies and/or Practices are identified by Phase III of this Project, SMC shall incorporate the Technologies and/or Practices in additional tailings and Waste Rock disposal plans. SMC shall implement paste tailings or alternative technologies in existing impoundments and Waste Rock disposal areas if such implementation is determined to be Economically Feasible.

1.7 Projections. This Project shall evaluate future tailings and Waste Rock disposal requirements from all SMC operations based upon the projected production rate for the East Boulder and Stillwater Mines. This Project shall incorporate any changes in SMC projected production rates.

# **APPENDIX L. COMPREHENSIVE SURFACE WATER, GROUND WATER, AND AQUATIC RESOURCES PROTECTION PROGRAM**

## **SECTION 1.0 OBJECTIVES**

1.0 Objectives. The objectives (the “Objectives”) of the Comprehensive Surface Water, Ground Water, and Aquatic Resources Protection Program (the “Water Program”) shall include the following:

1.0.1 To provide an opportunity for the Councils to Participate in the development and oversight of SMC Water Management Plans.

1.0.2 To identify and address potential issues of concern related to water quality at the earliest possible time.

1.0.3 To adopt a proactive precautionary approach for the Water Management Plans at the East Boulder and Stillwater Mines.

1.0.4 To maintain the Baseline Water Quality, Biological Integrity, and Beneficial Uses of the of the East Boulder and Stillwater Rivers and ground waters that may be impacted by SMC Mining Operations.

1.0.5 To minimize and if Economically Feasible eliminate surface water mixing zones from the East Boulder and Stillwater MPDES Permits.

1.0.6 To minimize and if Economically Feasible eliminate ground water mixing zones from the East Boulder and Stillwater MPDES.

1.0.7 To minimize and if Economically Feasible eliminate a Direct Discharge of Effluent from the East Boulder and Stillwater MPDES Permits.

1.0.8 To minimize and if Economically Feasible eliminate the Direct Discharge and Indirect Discharge of Pollutants from SMC Mining Operations to surface and ground waters.

1.0.9 To make the East Boulder and Stillwater Mines Zero Discharge Facilities if Economically and technically Feasible.

1.0.10 To identify new Technologies and/or Practices and modifications of present Technologies and/or Practices to meet the above Objectives.

## SECTION 2.0 DEFINITIONS

2.0 Definitions. In addition to the definitions of capitalized terms in other Sections of this Agreement and Appendices, the following capitalized terms when used in this Agreement and Appendices shall be defined as follows:

2.1 “Baseline Water Quality, Biological Integrity, and Beneficial Uses” means the quality of the receiving water and biological integrity and natural variations immediately prior to the commencement of Mining Operations or, if available, the quality of the receiving water and natural variations that can be adequately documented to have existed on or after July 1, 1971.

2.2 “Biological Integrity” means the ability of an aquatic ecosystem to support and maintain a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of the natural habitats within a region.

2.3 “Boulder River Watershed” shall include the Boulder River (Montana Waterbody # MT43BJ001-2), the East Boulder River (Montana Waterbody # MT43BJ001-2), West Boulder River, and all tributaries.

2.4 “Discharge of Pollutants” means the addition of any pollutant to surface or ground waters from any point source.

2.4.1 “Direct Discharge(s)” means a Discharge of Pollutants from Outfall 001 in the East Boulder and Stillwater MPDES Permits.

2.4.2 “Indirect Discharge(s)” means a Discharge of Pollutants from all other Outfalls in the East Boulder and Stillwater MPDES Permits and discharges from LAD and snowmaking operations.

2.5 “Exceedence” The conditions causing the exceedence of a Trigger Level established by this Agreement are established in the final Tiered Trigger Level Frameworks approved by the relevant Oversight Committees in the Final Baseline Water Quality Reviews for the Stillwater and East Boulder Mines pursuant to Section 9.0 of this Appendix.

2.6 “Land Application Disposal (LAD)” The application of treated Effluent by irrigation spraying or similar methods to vegetated land for the purpose of exploiting the agronomic uptake of nutrients and water into plant matter.

2.7 “Lowest Applicable Water Quality Standard” means the most stringent water quality standard for the parameter established under the Clean Water Act and implementing regulations or the Montana Water Quality Act and implementing administrative rules.

2.8 “Monitored-Parameters” means any physical, chemical, or biological parameter for which SMC is required to monitor under this Agreement, as described in Section 12.0 of this Appendix or by Federal and State Environmental Laws and Regulations.

2.9 “Nutrients” means total inorganic nitrogen and total phosphorus.

2.10 “Sampling and Monitoring Events” means all sampling events required by this Agreement or Federal and State Environmental Laws and Regulations.

2.11 “Sampling and Monitoring Sites” shall include but are not limited to Effluent sites, instream surface water sites, and ground water monitoring sites established by this Agreement or required by Federal or State Environmental Laws and Regulations.

2.12 “Stillwater River Watershed” includes the Stillwater River (Montana Waterbody # MT43C001) and all tributaries.

2.13 “Treatment Systems” shall include but are not limited to clarification and filtration systems, LAD operations, biological denitrification systems, and snowmaking operations.

2.14 “Trigger Level(s)” means a specified concentration and/or load of a parameter, the exceedence of which triggers specific response and remedial actions under this Agreement and shall include all Trigger Levels of the final Tiered Trigger Level Frameworks approved by the relevant Oversight Committees in the Final Baseline Water Quality Reviews for the Stillwater and East Boulder Mines pursuant to Section 9.0 of this Appendix.

2.15 “Effluent” means all adit and mill process water from SMC Mining Operations, except for Unaltered Ground Water.

2.15.1 “Unaltered Ground Water” means ground water intercepted during Mining Operations. Ground water shall be considered unaltered only if SMC can show through sampling of the ground water that:

(a) There has been no change in the Baseline Water Quality of the ground water after its interception and the intercepted ground water has not been mixed with Effluent; and

(b) The Baseline Water Quality (chemistry) of the intercepted ground water is the same or better than the Baseline Water Quality of the receiving surface or ground waters.

2.16 “Water Management Plan or Water Management Facility(ies)” means SMC water collection, storage, treatment, and disposal plans or facilities for the East Boulder and Stillwater Mines.

2.17 “Zero Discharge Facility(ies)” means no Discharge of Pollutants into surface or ground water from any pipe, percolation pond, LAD operations, or snowmaking operations. To become a Zero Discharge Facility, SMC shall:

2.17.1 Eliminate Direct and Indirect Discharges of Effluent and Unaltered Ground water from SMC Mining Operations;

2.17.2 Operate LAD systems so that the following conditions are satisfied:

- (a) The actual, measured, application rate of Nutrients and water is less than or equal to the actual, measured agronomic uptake rate of the site-specific vegetation (habitat type) for each LAD area;
- (b) The actual, measured application rate of Nutrients and water is less than or equal to the calculated water uptake rate of the site-specific soil type for each LAD area;
- (c) The actual, measured application rate of Nutrients is less than or equal to the measured denitrification capacity of the soils and subsurface formations, or a combination of (a) through (c);
- (d) Discharges to LAD areas occur only during the established growing season for the specific LAD area and only during daylight hours or the actual, measured daily agronomic uptake period; and
- (e) Levels of all pollutants have been minimized by maximizing and prioritizing the use of Treatment Systems prior to disposal.

2.17.3 Continue to study and monitor the performance of all LAD systems and prepare periodic written reports that evaluate the performance of the LAD systems;

2.17.4 Show through monitoring data that LAD systems will not result in a measurable water quality change in surface waters or in ground waters to the extent practical; and

2.17.5 Show through monitoring data that snowmaking operations will not result in a measurable water quality change in surface waters or in ground waters to the extent practical.



## SECTION 3.0 GENERAL REQUIREMENTS

3.0 Participation in SMC Sampling. The Parties acknowledge that SMC employees and consultants shall be responsible for the collection of most of the data under the Water Program. The Designated Councils Representatives shall have the right to observe all scheduled Sampling and Monitoring Events. Designated Councils Representatives shall have the right to enter SMC premises for these purposes.

3.0.1 Sampling Schedule. SMC shall provide the EBOC and SOC with a written plan of all scheduled Sampling and Monitoring Events tentatively planned for the next calendar quarter at each Oversight Committee meeting.

3.0.2 Additional Samples. During all Sampling and Monitoring Events, Councils have the right to collect, or have SMC employees and/or consultants collect a reasonable number of duplicate samples.

3.1 Citizen Sampling. The Councils shall have the right to conduct Citizen Sampling of the Environment for any physical, chemical, or biological parameter. Designated Councils Representatives shall have the right to enter SMC premises for these purposes.

3.1.1 Limitations. Councils right to conduct Citizen Sampling is subject to the following limitations:

- (a) The Councils shall give SMC reasonable, which generally means at least 24 hours, notice before sampling on SMC premises. The Notice shall include a list of Council members and representatives that will be participating in the sampling;
- (b) The Councils shall be accompanied by SMC employees and/or consultants when sampling on SMC premises;
- (c) Councils shall comply with all applicable Federal and State laws and regulations pertaining to occupational safety and health during such sampling;
- (d) For all samples of the Environment collected by Councils, prior to leaving the premises, Councils shall give SMC a receipt describing the sample taken and a portion of each such sample;
- (e) The quality assurance/quality control (QA/QC) measures of all the Councils sampling shall be consistent with the recommendations of Barbour, M.T., J. Gerritsen, B.D. Snyder, and J.B. Stribling. 1999. Rapid Bio-assessment Protocols for Use in Streams and Wadeable Rivers: Periphyton, Benthic Macroinvertebrates and Fish. Second Edition. EPA/841-B-99-002. U.S. EPA, Office of Water, Washington, D.C. and the QA/QC of the SMC monitoring program.

3.2 Reporting Program. SMC shall design, implement, and maintain an expanded reporting program. SMC shall coordinate this reporting program with the reporting requirements of the Federal and State Environmental Laws and Regulations to the maximum extent possible. SMC and the Councils have implemented the expanded reporting program for both the East Boulder and Stillwater mines.

3.2.1 Quarterly Reports. SMC or Councils shall prepare quarterly reports that summarize all water and aquatic resource monitoring data from the preceding three months and identify any trends in water quality for Monitored-Parameters. These quarterly reports shall summarize the status of each Monitored-Parameter in relation to the Trigger Framework established by Section 9.0 of this Appendix. SMC or Councils shall summarize the most recent quarterly data at the relevant Oversight Committee meetings and incorporate the data into the Database established by Section 4.0 of this Appendix.

3.2.2 Annual Report. SMC or the Councils shall prepare an annual report that summarizes the data from the quarterly reports and compares the data to previous years data.

3.2.3 Review. The relevant Oversight Committees shall review the quarterly and annual reports.

## **SECTION 4.0 DATABASE**

4.0 Establishment of Database. SMC shall establish and maintain an electronic database (the "Database") of all historic baseline data and all data derived from SMC Sampling and Monitoring Events. SMC has established and maintains this Database for both the Stillwater and East Boulder Mines.

### 4.1 Requirements

- i. The Councils shall have access to this Database.
- ii. SMC shall incorporate all data collected or derived from the Water Program and the monitoring programs required by Federal or State Environmental Laws and Regulations into this Database. SMC shall incorporate this data on a quarterly basis.
- iii. The Oversight Committees shall use this Database to monitor trends in water quality, to develop and implement the programs established by the Water Program, and to evaluate SMC compliance with the Water Program.

## **SECTION 5.0 WATER QUALITY REVIEW AND REPORT**

5.0 Initial Review. As soon as the Database is operational, Councils shall review the Baseline Water Quality data used by SMC and the MDEQ in the most recent MPDES renewal process for the East Boulder MPDES Permit and Stillwater MPDES Permit. SMC shall provide Councils with any other Information necessary to complete this review. The EBOC and SOC shall address any concerns raised by Councils during this review. This initial review has been completed as part of the development of the Final Baseline Water Quality Reviews for the Stillwater and East Boulder Mines.

## **SECTION 6.0 EAST BOULDER AND STILLWATER MINE SUPPLEMENTAL MONITORING PROGRAMS FOR SURFACE WATER, GROUND WATER, AND BIOLOGICAL RESOURCES**

### 6.0 General Requirements for the East Boulder Mine and Stillwater Mine Supplemental Monitoring Programs

6.0.1 SMC Obligation. SMC shall develop, implement, maintain, and fund a supplemental monitoring program for the East Boulder and Stillwater Mines. SMC shall design these supplemental monitoring programs to supplement the monitoring programs required by Federal and State Environmental Laws and Regulations to the maximum extent possible.

6.0.2 Components. These supplemental monitoring programs shall consist of a minimum of three coordinated components:

- i. Surface and ground water resources.
- ii. Biological resources.
- iii. Effluent and Unaltered Ground Water.

6.0.3 Objectives. In addition to the Objectives, the objectives of the supplemental monitoring programs for the East Boulder and Stillwater Mines shall be to monitor and evaluate SMC compliance with:

- (a) The Trigger Framework and other Objectives of the Water Program; and
- (b) The requirements, limitations, conditions, and stipulations of all Federal and State Environmental Laws and Regulations.

6.0.4 Minimum Required Monitored-Parameters. SMC shall use the best available science and technology to monitor for the parameters referenced in Section 12.0 of this Appendix. SMC shall monitor for such parameters at all monitoring site locations designated in the East Boulder Supplemental Monitoring Program and the Stillwater Mine Supplemental Monitoring Program.

6.0.5 Coordination. To the maximum extent possible, SMC shall coordinate the collection and analysis of all physical, chemical, and biological monitoring data

and ensure the simultaneous collection of data necessary for statistical comparisons.

6.0.6 QA/QC. The quality assurance/quality control (QA/QC) measures of the supplemental monitoring programs shall be consistent with generally accepted practices.

6.1 East Boulder Mine Supplemental Monitoring Program

6.1.1 Timeline. SMC implemented the East Boulder Mine Supplemental Monitoring Program as described in Appendix N.

6.2 Stillwater Mine Supplemental Monitoring Program

6.2.1 Timeline. The Stillwater Mine Supplemental Monitoring Program has been approved and is incorporated into this Agreement as Appendix O.

**SECTION 7.0 SUPPLEMENTAL HYDRO-GEOLOGIC AND GROUND WATER RESOURCES STUDIES**

7.0 Objectives: The objectives of the Ground Water Studies shall include but are not limited to the following:

7.0.1 To complete additional baseline studies to adequately define and characterize the geologic, hydrologic, and ground water flow conditions at the East Boulder Mine and/or the Boe Ranch Property.

7.0.2 To adequately characterize variations in the hydrological conductivity of the various aquifers, to characterize the nature of any heterogeneities, and to identify potential high hydraulic conductivity zones at the East Boulder Mine and/or the Boe Ranch Property.

7.0.3 To adequately characterize and quantify the hydrological connection between the East Boulder River and various aquifers and to identify all potential alluvial aquifer discharge points into the East Boulder River at the East Boulder Mine and/or the Boe Ranch Property.

7.0.4 To develop a more complete hydro-geological conceptual model for the East Boulder Mine or alternatively the Boe Ranch Property based on the results of these studies.

7.0.5 To utilize real-time measurement in combination with hydro-geological modeling to optimize Effluent and Unaltered Ground Water discharges to meet the Objectives of the Water Program.

7.0.6 To develop and implement the Trigger Framework of Section 8.0 of Appendix L at the East Boulder Mine and/or the Boe Ranch Property.

7.1 Potential Components. The Third Party shall determine the necessary components of the Ground Water Studies. The components may include:

- (a) A Resistivity Imaging Geophysical Study.
- (b) Additional pumping tests for each ground water monitoring well and the placement of pressure transducers/data loggers in each monitoring well to monitor water levels over time. The purpose of these tests is to characterize the variations in hydraulic conductivity along the river and along the flow path of the proposed mixing zone.
- (c) Multiple-well aquifer tests at several sites along the river to characterize the hydraulic connection between the alluvial aquifers and the river.
- (d) A more complete hydro-geological conceptual model for the site based on the results of this geophysical study, water level monitoring, monitoring well pumping tests, and multiple-well aquifer tests.
- (e) Installation of real-time well, surface water and Effluent instrumentation to measure flow and concentration of Monitored-Parameters utilizing a computerized control and response system.

7.2 Conditions. The Parties shall select a Third Party to complete the Ground Water Studies if:

- (a) Regulatory monitoring, supplemental monitoring or citizen monitoring show that the compliance monitoring sites are incorrectly located in order to detect, qualify and quantify potential water quality impacts to the Stillwater or East Boulder rivers; or
- (b) SMC is required to initiate response and remedial actions under Section 10.0 of Appendix L because of a Tier 2 or Tier 3 Exceedence of Instream Trigger Levels; or
- (c) It is reasonably foreseeable that Indirect Discharges may result in a Tier 2 or Tier 3 Exceedence of Instream Trigger Levels; or
- (d) The Boe Ranch Property is proposed by SMC for other than operation as a Zero Discharge Facility; and
- (e) SMC does not demonstrate a proactive plan to establish new monitoring locations and appropriately modify monitoring plans and protocols.

There is no need for additional Ground Water Studies within the current permit boundaries of the East Boulder and Stillwater Mine sites.

7.3 Timeline. The Third Party shall initiate the Ground Water Studies as soon as possible but no later than 90 days, and complete the studies no later than 180 days, from the occurrence of any of the triggering conditions established pursuant to Section 7.2(a) through (e), unless otherwise agreed upon by the relevant oversight committee.

7.4 Actions. Based upon the recommendations and conclusions of the final report and the models developed from the Ground Water Resources Studies, the EBOC shall:

- (a) Establish and/or modify, if necessary, the Trigger Levels for Indirect Discharges established by this Agreement in the relevant Baseline Water Quality Review;
- (b) Modify, if necessary, the Trigger Levels for Direct Discharges established by this Agreement in the relevant Baseline Water Quality Review; and
- (c) Modify and expand, if necessary, the location and number of instream surface water monitoring sites and ground water monitoring wells to maximize the potential to detect potential contamination from SMC Mining Operations.

## **SECTION 8.0 FISHERIES STUDY AND MONITORING PLAN**

8.1 Long-term Fisheries Monitoring Plan. The baseline fisheries study has been modified. SMC and Councils have determined that the long-term fisheries monitoring program shall consist of populations surveys completed once every 5 years to coincide with the next 5-year renewal of SMC's East Boulder MPDES Permit. The next population study will be conducted in 2008.

8.2 Objectives: The objectives of this study shall include but are not limited to the following:

- (a) To attempt to determine fish distribution, species composition, and population estimates for fish populations in the East Boulder River Watershed.
- (b) To collect baseline data that can be used to develop a long-term monitoring plan of fish populations in the East Boulder River, and to monitor potential impacts from SMC Mining Operations at the East Boulder Mine.

8.3 Fisheries Monitoring Plan. A fish population census study will be conducted on the East Boulder River within the boundaries designated by the EBOC once every 5 years. SMC shall fund the approved fisheries monitoring plan up to \$20,000 per sampling year.

8.4 Stillwater Mine. The SOC shall decide if a baseline fisheries study or fisheries monitoring plan is necessary for the Stillwater River Watershed.

## **SECTION 9.0 TIERED TRIGGER LEVEL FRAMEWORK FOR THE EAST BOULDER AND STILLWATER MINES**

9.0 Required Components. The Tiered Trigger Level Framework (the “Trigger Framework”) shall be comprised of the following types of Trigger Levels: Instream Surface Water Trigger Levels, Trigger Levels for Direct Discharges, and Trigger Levels for Indirect Discharges. Each type of Trigger Levels shall have three tiers unless the relevant Oversight Committee decides otherwise.

9.1 Tiered Trigger Level Framework. The Tiered Trigger Level Framework for both the East Boulder and Stillwater Mines have been approved by the relevant oversight committees. The Trigger Frameworks were incorporated into the Baseline Water Quality Reviews. The EBOC approved the final Tiered Trigger Level Framework for the East Boulder Mine. The SOC approved the final Tiered Trigger Level Framework for the Stillwater Mine. The Trigger Levels for Nutrients at the Stillwater Mine were established as interim triggers pending the collection of additional data from the supplemental monitoring program. Based upon the initial findings of the monitoring program, the Parties have decided to adopt the interim Nutrient trigger levels as final Trigger Levels.

## **SECTION 10.0 RESPONSE AND REMEDIAL ACTIONS**

10.0 Objectives. The objectives of the response and remedial actions for the East Boulder and Stillwater Mines are:

1. To implement the Objectives of the Water Program; and
2. To implement the Trigger Framework established by Section 9.0 of this Appendix.

10.1 Schedule. The SOC and EBOC approved corrective schedules for all Tier 1, Tier 2, or Tier 3 Exceedences as part of the Baseline Water Quality Review, which included the establishment of the Tiered Trigger Level Framework for each mine.

10.1.1 Objectives. The objectives of the corrective schedules are:

- (a) To return levels of the parameter to Baseline Water Quality; and
- (b) To significantly reduce and/or eliminate the potential for future Exceedences.

10.2 Tier I Response and Remedial Actions. The SOC and EBOC approved the required response and remedial actions for all Tier 1 Exceedences as part of the Baseline Water Quality Review, which included the establishment of the Tiered Trigger Level Framework for each mine. Councils’ Consultants, in cooperation with SMC, prepare quarterly reports for each oversight committee meeting. The reports indicate whether there has been a Tier 1 Exceedence for any parameter. Such an exceedence triggers increased sampling, and implementation of corrective measures and other means of restoring the parameter to Baseline Water Quality. The Oversight Committee also evaluates the probability of a Tier 2 Exceedence within the next 180 days. Subsequent

quarterly reports monitor the parameter until it returns to Baseline Water Quality conditions.

10.2.1 Implementation. SMC shall implement all corrective measures approved by the Oversight Committee unless the immediate corrective action implemented by SMC has restored the parameter to existing Baseline Water Quality.

10.3 Tier 2 Response and Remedial Actions. The SOC and EBOC approved the required response and remedial actions for all Tier 2 Exceedences as part of the Baseline Water Quality Review, which included the establishment of the Tiered Trigger Level Framework for each mine. Councils' Consultants, in cooperation with SMC, prepare quarterly reports for each oversight committee meetings. The reports indicate whether there has been a Tier 2 Exceedence for any parameter. The Oversight Committee shall address any Tier 2 Exceedence.

10.3.1 Implementation. The Oversight Committee shall approve the final audit report within 15 days of the release of the final report. SMC shall immediately implement the recommendations and corrective measures identified by the final audit report.

10.4 Tier 3 Response and Remedial Actions. The SOC and EBOC approved the required response and remedial actions for all Tier 3 Exceedences as part of the Baseline Water Quality Review, which included the establishment of the Tiered Trigger Level Framework for each mine. Councils' Consultants, in cooperation with SMC, prepare quarterly reports for each oversight committee meeting. The reports indicate whether there has been a Tier 3 Exceedence for any parameter. The Oversight Committee shall address any Tier 3 Exceedence.

10.4.1 Implementation. The Oversight Committee shall approve the final audit report within 10 days of the release of the final report. SMC shall immediately implement the recommendations and corrective measures identified by the final audit report.

## **SECTION 11.0 WATER MANAGEMENT PRIORITIZATION AND OPTIMIZATION PLAN FOR THE EAST BOULDER AND STILLWATER MINES**

11.0 Objectives. The objectives of the Water Management Prioritization and Optimization Plans (the "Optimization Plans") for the East Boulder and Stillwater Mines are:

1. To implement the Objectives of the Water Program; and
2. To implement the Trigger Framework established by Section 9.0 of this Appendix.



11.1. The final East Boulder and Stillwater Mine Optimization Plans were approved as part of the 2005 Amendment of the GNA and are incorporated by reference at Appendices Q and R, respectively.

11.2. The approved Optimization Plans show that SMC removes greater than 90 percent of the pollutants from its effluent prior to discharge to ground waters on an annual average. SMC's level of performance exceeds the requirements of federal and state water pollution control laws by an order of magnitude. SMC achieves this level of pollution reduction by minimizing sources of nitrogen and other underground sources of contamination, utilizing advanced biological treatment technologies, and by operating such technologies efficiently and effectively. In approving the Optimization Plans, SMC has committed to maintaining this level of performance based on an annual average. The Parties recognize that there may be extenuating circumstances that affect this level of performance.

SMC has also committed to making good faith efforts to improve its performance by investigating and implementing new treatment technologies.

## **SECTION 12.0 MINIMUM REQUIRED MONITORED-PARAMETERS**

12.0 Modification. The relevant Oversight Committees may modify the list of parameters for which SMC is required to sample if there is a material change in circumstances.

### 12.1 Monitored Parameters for Effluent and Unaltered Ground Water.

*East Boulder Mine:* SMC shall monitor effluent streams (Treated Adit Water and Unaltered Ground Water) according to the parameters and sample frequencies detailed in Section D of MPDES Permit #MT-0026808, effective date August 1, 2000. Untreated adit water will be monitored according to the parameters and frequencies designated in Table 4-8 (Analytical Schedule for Monthly Adit Water Monitoring) of the East Boulder Mine Water Resources Monitoring Plan (WMP) dated February 1998.

*Stillwater Mine:* SMC shall monitor effluent streams (Treated Adit Water and Unaltered Ground Water) according to the parameters and sample frequencies detailed in Section D of MPDES Permit #MT-0024716, effective date August 1, 1998. Untreated adit water will be monitored according to the parameters and frequencies designated in Table 4-12 (Analytical Parameters for Weekly Adit Water Monitoring) of the Stillwater Mine Water Resources Monitoring Plan (WMP) dated October 1998 (revised April 1999).

### 12.2 Monitored Parameters for Surface Water.

*East Boulder Mine:* At the East Boulder Mine, SMC shall monitor surface water sites according to the locations and frequencies set forth in Table 4-1 of the East Boulder WMP dated February 1998. For the 1st and 3rd Quarters, SMC shall sample for parameters designated in Table 4-2 of the East Boulder WMP dated February 1998. For

the 2nd and 4th Quarters, SMC shall sample for parameters designated in Table 4-4 of the East Boulder WMP dated February 1998. For sites EBR-003 and EBR-004, in addition to quarterly sampling, SMC shall conduct monthly sampling for indicator parameters designated in Table 4-6 of the East Boulder WMP dated February 1998.

*Stillwater Mine:* At the Stillwater Mine, SMC shall monitor surface water sites according to the locations and frequencies set forth in Table 4-1; 4-2; and 4-3 of the Stillwater Mine WMP dated October 1998 (revised April 1999). During the Spring/Summer and Fall/Winter monitoring events, SMC shall sample for parameters designated in Table 4-4 of the Stillwater Mine WMP dated October 1998 (revised April 1999). During the Summer/Fall monitoring events, SMC shall sample for parameters designated in Table 4-7 of the Stillwater Mine WMP dated October 1998 (revised April 1999). Sampling Sites SMC-1A and SMC-11 shall be sampled quarterly for parameters designated in Table 4-5 of the Stillwater Mine WMP dated October 1998 (revised April 1999).

### 12.3 Monitored Parameters for Ground Water.

*East Boulder Mine:* At the East Boulder Mine, SMC shall monitor ground water sites (wells and springs) according to the locations and frequencies set forth in Table 4-1 of the East Boulder WMP dated February 1998. For the 1st and 3rd Quarters, SMC shall sample for parameters designated in Table 4-3 of the East Boulder WMP dated February 1998. For the 2nd and 4th Quarters, SMC shall sample for parameters designated in Table 4-5 of the East Boulder WMP dated February 1998.

*Stillwater Mine:* At the Stillwater Mine, SMC shall monitor ground water sites (wells and springs) according to the locations and frequencies set forth in Table 4-1; 4-2; and 4-3 of the Stillwater Mine WMP dated October 1998 (revised April 1999). During the Spring/Summer and Fall/Winter monitoring events, SMC shall sample for parameters designated in Table 4-6 of the Stillwater Mine WMP dated October 1998 (revised April 1999). During the Summer/Fall monitoring events, SMC shall sample for parameters designated in Table 4-8 of the Stillwater Mine WMP dated October 1998 (revised April 1999).

## **APPENDIX M. FINAL STILLWATER AND EAST BOULDER WATER QUALITY REVIEWS**

The Final Baseline Water Quality Review for the East Boulder Mine was prepared by the Center for Science in Public Participation, completed and approved by the East Boulder Oversight Committee on January 25, 2002, and is incorporated by reference into this Appendix by Section 13.7.6 of the Good Neighbor Agreement.

The Final Baseline Waster Quality Review for the Stillwater Mine was prepared by the Center for Science in Public Participation, completed and approved by the Stillwater Oversight Committee on November 15, 2002, and is incorporated by reference into this Appendix by Section 13.7.6 of the Good Neighbor Agreement.

## APPENDIX N. EAST BOULDER MINE SUPPLEMENTAL MONITORING PROGRAM

### **Supplemental instream surface water and biological resources monitoring plan.**

1.0 Objectives. In addition to the objectives of Section 1.0 of Appendix L, this supplemental monitoring program is designed to determine the efficacy of developing a site-specific standard for total inorganic nitrogen and total phosphorus in the East Boulder River while taking into account natural variation. This program shall be continued as necessary to meet these objectives. To date, the Parties have not yet reached agreement on development of a site-specific standard for total inorganic nitrogen and total phosphorus.

1.1 Required sampling. SMC shall conduct biological (periphyton, chlorophyll A and macroinvertebrate) sampling and water chemistry sampling at each monitoring site location designated in Section 1.2 of this Appendix, subject to the exceptions set forth in this section. Biological monitoring frequencies established in Section 1.5 and 1.8 for periphyton and macroinvertebrates shall be modified to once annually if any one of the following circumstances occur:

- A Tiered Trigger Level Exceedance
- A Direct Discharge of adit water to the East Boulder River (MPDES)
- A direct discharge of Stormwater from the permit area (MPDES)
- An accidental spill or discharge to the East Boulder River resulting from SMC operations, licensed contractor, vendor or vendors agent

Should instream water quality parameters return to baseline conditions and annual biological monitoring establish no impairment as a result of the triggering event, monitoring frequencies will return to those established below.

1.1.1 Boe Ranch. SMC shall also conduct chemical and biological monitoring (chlorophyll A, periphyton, macroinvertebrates) at monitoring sites EBR-005, EBR-007, EBR-008 and EC-01 (chemical only) annually for three years. After the three year period, the sampling frequency shall be pursuant to Section 1.1 of this Appendix. Such sampling shall begin when SMC commits to construction of the facilities at the Boe Ranch property.

1.2 Monitoring Site Locations. This supplemental monitoring program shall include the following monitoring site locations on the East Boulder River (listed from upstream to downstream). The EBOC has the authority to change the precise location of such monitoring sites based on site-specific conditions.

### **Monitoring Site Locations**

EBR-001. EBR approximately 650 feet upstream of Dry Fork Creek.
EBR-002. EBR approximately 100 yards downstream of Dry Fork Creek.
DF-01. Dry Fork Creek upstream of the confluence with the EBR.
EBR-003. EBR approximately 1.0 miles downstream of Dry Fork Creek, sample location at the bridge.
EBR-004. EBR approximately 1.8 miles downstream of Dry Fork Creek, below East Boulder mine facilities.
EBR-005. EBR adjacent to the USFS campground.
EBR-007. EBR approximately 500 feet upstream of Elk Creek, near the bridge over the EBR.
EC-01. Elk Creek upstream of the confluence with the EBR.
EBR-008. EBR approximately 1.5 miles below Elk Creek confluence, 0.75 miles above MBR confluence.

### **Periphyton/Chlorophyll A Sampling**

1.3 Chlorophyll A Sampling. Chlorophyll A sampling shall be conducted once annually during the low flow/peak algae growth season (August- September) at sites EBR-002, EBR-003 and EBR-004. The EBOC shall determine the precise dates for such sampling.

1.4 Random Sampling. Chlorophyll A sampling shall incorporate stratified random sampling and shall be consistent with the currently approved methodology.

1.5 Periphyton Sampling. Periphyton Sampling shall be conducted once every three years, beginning in fall 2006 at sites EBR-002, EBR-003 and EBR-004. Three (3) replicate periphyton samples shall be collected and analyzed at each monitoring site location. Substrates for periphyton sampling shall be selected in a random manner to the degree practical. Each replicate shall be a composite of several (no less than three) quantitative collections from natural substrates to minimize variation from microhabitat differences.

1.6 Sample Criteria. Periphyton samples shall be analyzed and quantified for soft algae composition and diatom community composition using a Palmer Cell and conduct a diatom proportional count on a sub-sample of each of the three replicate periphyton samples.

1.7 Chlorophyll A Sampling. A minimum of ten (10) replicate chlorophyll *a* samples shall be collected and analyzed at each sample location.

## **Macroinvertebrate Sampling**

1.8 Macroinvertebrate Sampling. Macroinvertebrate monitoring shall be conducted once every three years to correspond with the periphyton sampling, beginning in fall 2006 at sites EBR-002, EBR-003, and EBR-004 during the summer low flow event.

1.9 Sample Areas. Benthic macroinvertebrate samples shall be collected from riffle and run areas characteristic of the East Boulder River. Three (3) replicate samples shall be collected at each monitoring location. Each sample shall be analyzed for species identification, enumeration, and biomonitoring assessment with current protocols, or modified protocols as agreed upon by the EBOC.

## **Chemical and Physical Sampling**

1.10 Water Chemistry Sampling. Water chemistry sampling shall be conducted at all monitoring site locations designated in Section 1.2 of this Appendix.

1.11 Monitored parameters. Water chemistry sampling must conform with the minimum required monitored parameters in Section 12.0 of Appendix L.

1.12 Sampling frequency. The East Boulder Oversight Committee shall determine the frequency of chemical and physical monitoring at each site location. Currently, sites EBR-001, EBR-002, DF-01 are monitored quarterly. Currently, sites EBR-003 and EBR-004 are monitored monthly. Currently, site EBR-005 is monitored in the first and third quarters of each year. At the time SMC commits to construction of the Boe Ranch facilities, chemical and physical monitoring at sites EBR-005, EBR-007, EC-01 and EBR-008 shall resume quarterly frequency.

## **Supplemental Deposited Sediment Monitoring Plan.**

1.13 Objectives. The objectives of Deposited Sediment Monitoring Plan shall include but are not limited to the following:

- (a) To ensure that SMC's best management practices are being implemented effectively to control sediment loading to the East Boulder River watershed and to determine whether additional measures are necessary to control sediment loading.
- (b) To monitor additional sediment loading to the Boulder River watershed caused by activities related to the East Boulder Mine project and to measure these increases against predictions made in the FEIS.
- (c) To measure the impact of such sediment loading on the biological integrity of the watershed including the cumulative impacts associated with other activities and development in the watershed.

1.14 Requirements. SMC shall develop and implement a deposited sediment monitoring plan immediately on the Effective Date that is consistent with the terms of this Section. The deposited sediment monitoring plan was approved by the EBOC, under which monitoring occurs once every three years, in the same year as the periphyton and macroinvertebrate sampling.

1.15 Effect. Deposited sediment monitoring did not show any increase in sediment loading to the East Boulder River during the construction phase.

1.16 Sampling Methodology. Parameters measured include discharge (cfs) using USGS pygmy and price AA meters with a Swoffer digital revs/secs counter, suspended sediment (DH 48 wading sampler, DH 59 bridge sampler at site EBR-003 during high flows), bedload sediment (Helly-Smith 3" sampler), and turbidity with a HACH 2100A turbidity meter. Standard sample collection techniques associated with each equipment type are used in the field. Sampling methodology shall remain the same unless otherwise approved by the EBOC in the event of sampling technique or equipment changes.

1.17 Sampling Area. Sediment sampling must concentrate in riffle/run areas as specified in the approved sediment monitoring plan.

1.18 Sampling Frequency. Suspended and bedload sediment sampling must be conducted once every 3 years at all monitoring site locations designated in this Section 1.19 of this Appendix at the same time of year.

1.19 Monitoring Site Locations. Deposited sediment sampling shall be conducted at the following sites:

1.19.1 Potential disturbances. Immediately above and below any potential mine related disturbance or construction activities that may affect instream fine sediment to a detectable degree, as determined by the EBOC. SMC shall notify the EBOC of all activities and events that may cause disturbances during the next regularly scheduled Committee meeting.

1.19.2 Permanent Sampling Sites.

EBR-003. EBR approximately 1.0 miles downstream of Dry Fork Creek, sample location at the bridge.
EBR-004. EBR approximately 1.8 miles downstream of Dry Fork Creek, below East Boulder mine facilities.

1.19.3 Sampling Sites for Potential Disturbances.

The following sites shall commence sediment monitoring at such time SMC commits to construction of Boe Ranch facilities:

EBR-005. EBR adjacent to the USFS campground.
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EBR-006. EBR approximately 2.4 miles downstream of the USFS campground.
EBR-007. EBR approximately 500 feet upstream of Elk Creek, near the bridge over the EBR.

Additional sampling sites and frequencies shall be determined by the East Boulder Oversight Committee.

**Miscellaneous Requirements**

1.20 Water Flow Monitoring. SMC shall conduct instream water flow monitoring concurrent with water chemistry and biological monitoring at all locations designated in this Agreement.

1.21 Water Flow Data. In the event SMC proposes direct discharge to the East Boulder River, SMC shall collect continuous water flow data at EBR-003 and include such results in the quarterly and annual reports required by Section 3.2 of Appendix L.



## **APPENDIX O. STILLWATER MINE SUPPLEMENTAL MONITORING PROGRAM**

1.0 Objectives. In addition to the objectives of Section 1.0 of Appendix L, this supplemental monitoring program is designed to determine the efficacy of developing a site-specific standard for total inorganic nitrogen and total phosphorus in the Stillwater River while taking into account natural variation. This program shall be continued as necessary to meet those objectives. To date, the parties have not reached agreement on development of a site-specific standard for total inorganic nitrogen and total phosphorus.

1.1 Required Sampling. SMC shall conduct biological (periphyton, chlorophyll *a*, and macroinvertebrate) sampling and water chemistry sampling at each monitoring site location designated in Section 1.2 of this Appendix. Biological monitoring frequencies established in Section 1.5 and 1.8 for periphyton and macroinvertebrates shall be modified to once annually if any one of the following circumstances occur:

- A Tiered Trigger Level Exceedance
- A Direct Discharge of adit water to the Stillwater River (MPDES)
- A direct discharge of Stormwater from the permit area (MPDES)
- An accidental spill or discharge to the Stillwater River resulting from SMC operations, licensed contractor, vendor or vendors agent

Should instream water quality parameters return to baseline conditions and annual biological monitoring establish no impairment as a result of the triggering event, monitoring frequencies will return to those established below.

1.2 Monitoring Site Locations. The supplemental monitoring program shall include the following monitoring site locations on the Stillwater River (listed from upstream to downstream). The SOC has the authority to change the precise location of such monitoring sites based on site-specific conditions.

### **Monitoring Site Locations**

SMC-J. Stillwater River upstream of mine. Biological monitoring only.
SMC-1A. Stillwater River upstream of mine. Chemical monitoring only.
SMC-2. Stillwater River in the vicinity of the mine site facilities. Biological monitoring only.
SMC-11. Stillwater River downstream of mine site facilities at Old Nye Fishing Access.
SMC-12. Stillwater River downstream of mine site facilities at Buffalo Jump Fishing Access. Chemical monitoring only.
WFSC. Stillwater River downstream of West Fork of Stillwater River confluence and upstream of Hertzler facilities at Ekwortzel Ranch.
SMC-13. Stillwater River downstream of Hertzler facilities at Moraine Fishing Access.

### **Periphyton/Chlorophyll *a* Sampling**

1.3 **Chlorophyll *a* Sampling.** Chlorophyll *a* sampling shall be conducted once annually during the low flow/peak algae growth season (August – September). The SOC shall determine precise dates for such sampling.

1.4 **Random Sampling.** Chlorophyll *a* sampling shall incorporate stratified random sampling and shall be consistent with the currently approved methodology.

1.5 **Periphyton Sampling.** Periphyton sampling shall be conducted once every three years, beginning in fall 2005. Three (3) replicate periphyton samples shall be collected and analyzed at each monitoring location. Substrates for periphyton sampling shall be selected in a random manner to the degree practical. Each replicate sample shall be a composite of several (no less than three) quantitative collections from natural substrates to minimize variations from microhabitat differences.

1.6 **Sample Criteria.** Periphyton samples shall be analyzed and quantified for soft algae composition and diatom community composition using a Palmer Cell and conduct a diatom proportional count on a sub-sample of each of the three replicate periphyton samples.

1.7 **Chlorophyll *a* Sampling.** A minimum of ten (10) replicate chlorophyll *a* samples shall be collected and analyzed at each sample location.

### **Macroinvertebrate Sampling**

1.8 **Macroinvertebrate Sampling.** Macroinvertebrate monitoring shall be conducted once every three years to correspond with periphyton sampling during the summer low flow event, beginning in fall 2005. The Oversight Committee shall determine the precise dates for such sampling.

1.9 **Sample Areas.** Benthic macroinvertebrate samples shall be collected from riffle and run areas characteristic of the Stillwater River. Three (3) replicate samples shall be collected at each monitoring location. Each sample shall be analyzed for species identification, enumeration and biomonitoring assessment with current protocols, or modified protocols as agreed upon by the SOC.

### **Chemical and Physical Sampling**

1.10 **Water Chemistry Sampling.** Water chemistry sampling shall be conducted at all monitoring site locations designated in Section 1.2 of this Appendix.

1.11 **Monitoring Parameters.** Water chemistry sampling must conform with the minimum required monitoring parameters in Section 12.0 of Appendix L.

1.12 Sampling Frequency. The Stillwater Oversight Committee shall determine the frequency of chemical and physical monitoring at each site location.

**Supplemental Deposited Sediment Monitoring Plan**

1.13. Requirements. The SOC shall implement a supplemental deposited sediment monitoring plan upon a proposal by SMC to direct discharge to the Stillwater River.

**Miscellaneous Requirements**

1.14 Water Flow Monitoring. SMC shall conduct instream water flow monitoring concurrent with water chemistry and biological monitoring at all locations designated in this Agreement.

## **APPENDIX P. HERTZLER RANCH PROPERTY AND PIPELINE MITIGATION PLAN**

The SOC approved the final Hertzler Ranch Property and Pipeline Mitigation Plan. The final Plan is incorporated by reference herein as Appendix P.

## **APPENDIX Q. FINAL EAST BOULDER WATER MANAGEMENT OPTIMIZATION AND PRIORITIZATION PLAN**

The Final East Boulder Water Management Optimization and Prioritization Plan was prepared by Kuipers and Associates, LLC, completed on June 16, 2005, approved as a part of the 2005 amendment of the Good Neighbor Agreement, and is incorporated by reference into this Appendix by Appendix L, Sections 11.1 and 11.2.

## **APPENDIX R. FINAL STILLWATER MINE WATER MANAGEMENT OPTIMIZATION AND PRIORITIZATION PLAN**

The Final Stillwater Mine Water Management Optimization and Prioritization Plan was prepared by Kuipers and Associates, LLC, completed on June 16, 2005, approved as a part of the 2005 amendment of the Good Neighbor Agreement, and is incorporated by reference into this Appendix by Appendix L, Sections 11.1 and 11.2.