

**ATLANTIC RICHFIELD COMPANY'S RENEWED REQUEST FOR  
ADDITIONAL TIME AND BIFURCATED PROCEEDINGS**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

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**CLEANUP AND ABATEMENT ORDER NO. R5-2014-XXXX**

**ATLANTIC RICHFIELD COMPANY  
UNITED STATES DEPARTMENT OF AGRICULTURE,  
UNITED STATES FOREST SERVICE**

**WALKER MINE TAILINGS  
PLUMAS COUNTY**

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**CLEANUP AND ABATEMENT ORDER NO. R5-2014-YYYY  
ATLANTIC RICHFIELD COMPANY**

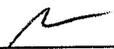
**WALKER MINE  
PLUMAS COUNTY**

In its December 6, 2013 Objections to Proposed Hearing Procedures, Atlantic Richfield Company ("Atlantic Richfield") set forth, among other things, its request for (1) additional time to prepare for a hearing on these matters, (2) additional time to present its legal and factual defenses at a hearing on these matters and (3) a bifurcated hearing structure, so that apportionment and remedy could be separately prepared and considered only after a jurisdiction and liability phase, if at all.

In light of today's deadline to submit requests for additional time, Atlantic Richfield renews all requests and objections set forth in its December 6, 2013 letter. Atlantic Richfield attaches this letter hereto, and incorporates it by reference here. For avoidance of doubt, Atlantic Richfield also stands by and reasserts all factual and legal arguments made in its Prehearing Brief and Prehearing Motions in these matters and incorporates those by reference here as well.

Dated this 6<sup>th</sup> day of March, 2014.

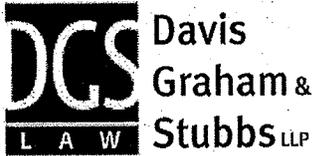
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December 6, 2013

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Re: Walker Mine and Walker Mine Tailings Sites, Plumas County – Atlantic  
Richfield Company Objections to Proposed Hearing Procedures

Dear Mr. Coupe:

This letter sets forth the Atlantic Richfield Company's ("Atlantic Richfield") comments and objections concerning the Prosecution Team's November 22, 2013 proposed hearing procedures (the "Proposed Procedures") for the two draft Cleanup and Abatement Orders (the "Draft CAOs") applicable to the Walker Mine Site (the "Mine Site") and Walker Mine Tailings Site (the "Tailings Site") (collectively, the "Sites"). Atlantic Richfield is identified as the sole "Discharger" in the current Draft Mine Site CAO, while Atlantic Richfield and the United States Forest Service ("USFS") are each identified as a "Discharger" for the Tailings Site CAO. The Proposed Procedures contemplate a two-hour hearing before the Regional Water Quality Control Board for the Central Valley Region (the "Regional Board") to consider and resolve all matters among the Regional Board, Atlantic Richfield and the USFS related to the two Draft CAOs. The Proposed Procedures are deficient for all the reasons explained below. Further, as described below and also in the enclosed alternate procedures, Atlantic Richfield believes that a bifurcated hearing structure with issues of jurisdiction and liability presented first will best serve the Regional Board's interests in efficiently and fairly adjudicating the parties' rights and obligations.

The Proposed Procedures ignore two fundamental circumstances: (1) The complexity of the legal and factual / technical issues the Regional Board must consider and resolve before deciding whether to adopt or modify the Draft CAOs; and, (2) The interrelationship of the Sites resulting from their proximity and historical development as a single integrated mine operation. The Prosecution Team's neglect of these fundamental circumstances causes several deficiencies in the Proposed Procedures and results in a truncated framework that will severely prejudice Atlantic Richfield's due process right to develop and present all the legal and factual arguments

in its defense. Specifically, Atlantic Richfield hereby objects to the following deficiencies in the Proposed Procedures:

1. The proposed hearing is not long enough to allow for presentation of all argument and evidence relevant to the numerous issues raised in the Draft CAOs. The Prosecution Team's proposed two-hour hearing would afford the Prosecution Team one hour for presenting its case, while requiring Atlantic Richfield and USFS to share one hour of presentation time. Atlantic Richfield respects the Regional Board's time and its undoubtedly crowded docket. However, the proposed two-hour hearing is wholly inadequate for an orderly presentation of the parties' arguments and evidence in a manner that efficiently discharges the Regional Board's responsibility to conduct a full and fair inquiry into the merits.
2. The proposed hearing date is too soon to allow Atlantic Richfield to develop the various factual / technical evidence and legal arguments in its defense. Further, the Prosecution Team has offered no substantial basis to support a March 2013 hearing and appears to have taken much more time to develop its own case. Electronic copies of historical documents that the Prosecution Team provided with the Draft CAOs indicate the electronic files were created in February 2013 and file names on the CD of documents more recently received in response to Atlantic Richfield's first Public Records Act request suggest the Prosecution Team was compiling records as early as December 2011. Atlantic Richfield's due process rights will not be protected if it is forced to prepare for a March 2013 hearing without any substantial basis.
3. The Proposed Procedures lack a reasonable period of pre-hearing exchange to ensure adequate disclosure of key facts. A brief summary of the procedural timeline thus far demonstrates that there is no compelling reason to limit appropriate pre-hearing procedures to meet an arbitrary schedule that the Prosecution Team has already delayed considerably. The Draft CAOs were first transmitted to Atlantic Richfield and the USFS on April 29, 2013; Atlantic Richfield responded to the Draft CAOs on June 3, 2013 (after receiving an extension of the Prosecution Team's original May 20, 2013 deadline). Four months later, on October 2, 2013, the Prosecution Team provided notice of a December hearing and issued its first set of proposed hearing procedures. When the Prosecution Team proposed separate hearings on the Draft CAOs for each Site during the U.S. government shutdown, the Regional Board appropriately rejected the Prosecution Team's proposal based on "overlapping issues" as to the Sites (by email from David Coupe to the Prosecution team, Atlantic Richfield, and USFS

on October 11, 2013).<sup>1</sup> The Prosecution Team then issued the Proposed Procedures along with substantive revisions of the Draft CAOs dated November 22, 2013 that will frame the issues for hearing.<sup>2</sup>

4. The Proposed Procedures will not efficiently resolve the preliminary question of the parties' contested liability as alleged "Dischargers" at the Sites, including the Regional Board's own liability. Many of the issues involved in the Draft CAOs raise preliminary issues regarding the Regional Board's jurisdiction and the parties' alleged liability that could bar consideration of any further issues. It will be most efficient for the Regional Board to address these fundamental questions of jurisdiction and liability first before proceeding to address the complex factual questions inherent in the Draft CAOs.
5. The Proposed Procedures do not include USFS as a party to the Mine Site CAO. The USFS is an indispensable party to the proceedings for both Sites because it unquestionably bears an interest in both Sites, is at least a former owner of the lands underlying both Sites, and possesses witnesses as well as large amounts of documentary evidence relevant to both Sites. The Prosecution Team's failure to name USFS as a party to the Mine Site CAO prejudices Atlantic Richfield by denying it access to crucial evidence. Failing to include USFS as a party also will inefficiently use the Regional Board's time and will prevent the Regional Board from properly considering USFS's potential liability for both Sites.
6. Similarly, the Proposed Procedures also fail to include the Regional Board as a party to either CAO. If given a fair opportunity, Atlantic Richfield expects to discover and present evidence that the Regional Board itself also may be responsible for work contemplated by the Draft CAOs due to its own activities at the Mine Site and its settlements with other responsible parties. A procedural framework that denies Atlantic Richfield this opportunity does not comport with the Regional Board's due process obligations.
7. The Proposed Procedures do not articulate the Prosecution Team's burden of proof. The burden of proof borne by the Prosecution Team is a fundamental legal issue that will guide the entirety of any proceedings regarding the Draft CAOs.

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<sup>1</sup> Despite the Regional Board's rejection of separate hearings for each Site, and despite the Prosecution Team's November 22, 2013 proposal that the hearings for each Site be unified ("Given the overlap between the parties, issues, alleged facts and evidence, the Central Valley Water Board will consider both CAOs during the same hearing," Proposed Procedures at p. 1), the Prosecution Team has persisted in suggesting separate Mine and Tailings Site hearings during subsequent communications.

<sup>2</sup> Important to the revised Draft CAOs, the Regional Board has abandoned its pursuit of an alter ego theory of liability against Atlantic Richfield. The Prosecution Team confirmed that intent in subsequent communications and thus comments pertinent to an alter ego theory of liability are not included here.

Ambiguity as to the Prosecution Team's burden, or an attempt to use a burden lower than that which would apply in civil court, will severely prejudice Atlantic Richfield's ability to defend against the allegations in the Draft CAOs.

8. The Proposed Procedures and the Draft CAOs appear to assume that Atlantic Richfield may be held jointly and severally liable for any and all costs or remedial activities the Regional Board determines may be necessary at the Sites. This assumption is unsupported and contrary to law.

The Regional Board must structure any hearing, and the process leading up to the hearing, to afford Atlantic Richfield and the USFS a full and fair opportunity to present evidence relevant to their alleged liability for the actions contemplated in the Draft CAOs. Because the above-described deficiencies in the Proposed Procedures would violate Atlantic Richfield's due process rights, Atlantic Richfield urges the Regional Board to reject the Proposed Procedures and adopt Atlantic Richfield's alternative procedures. The remainder of this letter elaborates on the bases for Atlantic Richfield's objections and explains why its alternative procedures would result in a more efficient and legally defensible process.

I. **The Draft CAOs Raise Complex Legal and Factual Issues That Will Take Significant Time to Develop and Present to the Regional Board.**

Many of the deficiencies in the Proposed Procedures result from the Prosecution Team's failure to appreciate the complexity of the numerous legal and factual / technical issues raised by the Draft CAOs. Some of the unique issues presented by these interrelated Sites are described below. As a fundamental point of departure, Atlantic Richfield (including its predecessors) never owned or operated the Sites, but instead was merely a shareholder in the publicly-traded company responsible for most of the mining known to have occurred at the Sites. The Draft CAOs thus require the Prosecution Team to present evidence and legal authority supporting an exception to the ordinary rule that it is the corporation – and not its shareholders – that bears responsibility for any liability arising from corporate operations. Further complicating the Prosecution Team's effort to impose liability for the work set forth in the Draft CAOs is the fact that the United States, through the USFS, once owned and managed all of the land area encompassed by the Sites, and continues to own and manage the land underlying the Tailings Site. In 2005, the USFS entered into a consent decree with Atlantic Richfield, and USFS is presently conducting remedial actions at the Tailings Site pursuant to its presidentially delegated authority under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). USFS's involvement with the Sites raises several issues, most notably, the likelihood that CERCLA Section 113(h) bars any remedial actions at the Sites until USFS has completed its remedial efforts. The Regional Board itself also may be responsible for work

contemplated by the Draft CAOs due to its own activities at the Mine Site and its settlements with other responsible parties.<sup>3</sup>

The most important of the complex and important legal and factual / technical issues that will require the Regional Board's attention are briefly described below:

- CERCLA's Pre-Enforcement Review Bar: CERCLA Section 113(h) prevents any court or administrative agency from exercising jurisdiction over "challenges" to CERCLA cleanups. Consistent with CERCLA's goal of ensuring safe, efficient, and effective federal cleanups, case law in the U.S. Court of Appeals for the Ninth Circuit defines "challenge" broadly to include actions that "interfere with" or even those which seek to "improve upon" an ongoing CERCLA cleanup. The extent to which CERCLA 113(h) bars state-lead action at the Sites is a threshold legal issue implicating the Regional Board's jurisdiction to establish a competing cleanup plan. Resolving this legal question will also require the Regional Board to consider highly technical and scientific evidence regarding the interrelationship between the Sites.
- CERCLA's Bar on PRP Cleanups: CERCLA Section 122(e)(6) also limits interference with CERCLA cleanups by barring a "potentially responsible party" from "undertak[ing] any remedial action at the facility unless such remedial action has been approved by the President." The Draft CAOs thus raise multiple questions of both law and fact about the interplay between the federal CERCLA remediation program and the Prosecution Team's Draft CAOs, including whether Atlantic Richfield, USFS, and / or the Regional Board meet CERCLA's definition of "potentially responsible party," and whether the Sites constitute a single "facility."
- Shareholder Non-Liability: The general rule under state and federal law is that a corporate shareholder is not liable for the acts of the corporation, including any corporate operations that caused pollution. Atlantic Richfield's predecessors – first, International Smelting & Refining Company which was then succeeded by The Anaconda Company – were merely shareholders in the Walker Mining Company. Shares of Walker Mining Company traded publicly on the Salt Lake City and New York Curb Exchanges. The Regional Board has indicated it intends to prove an exception to the usual rule of shareholder non-liability by

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<sup>3</sup> Atlantic Richfield has submitted two Public Records Act requests to the Board for production of such settlements and other records relevant to the allegations set forth in the Draft CAOs. The Prosecution Team has replied to the first of these requests (and a pending informal request for records) in a November 25, 2013 letter producing records and asserting claims of privilege and work product concerning correspondence "related to" its Witness List, Witness and Expert Witness Declarations, Evidence List and Legal Statement. Atlantic Richfield will seek more information as to the basis of these claims.

demonstrating that Atlantic Richfield's predecessors were so closely involved with operations at Walker Mine as to warrant a finding that the shareholder was itself an "operator" of the Mine. This inquiry will require the Regional Board to analyze decades of historical documents, including thousands of pages of business records and correspondence related to Atlantic Richfield's predecessors' relationships with the Walker Mining Company. Based on established case law, past State Water Board decisions, and the documents so far produced by the Prosecution Team, the Regional Board would go well beyond the existing precedents if it were to make a finding of liability consistent with the Prosecution Team's argument. The Regional Board cannot, therefore, hold Atlantic Richfield (including its predecessors) liable for the acts of the separate and independent Walker Mining Company.

- Regional Board Liability: The Regional Board must also consider its own liability for the Sites. The Draft CAOs indicate that the Regional Board entered settlements with multiple former owners of the Mine Site. In exchange for payments from the settling parties, the Regional Board apparently agreed to indemnify those parties. Atlantic Richfield was not a party to those agreements and has a right to challenge whether those settlements fairly allocated liabilities amongst the settling parties consistent with their degree of ownership and involvement in the activities that have given rise to liabilities at these interrelated Sites. Consideration of this issue requires discovery and analysis of the communications, negotiations, and agreements between the Regional Board and the settling parties, as well as the activities of those parties that gave rise to potential liability. Additionally, the Regional Board has undertaken remedial actions at the Mine Site and is therefore liable for (1) any actions not consistent with the standard of care applicable to its remedial activities and, (2) any discharges the Regional Board may have caused or exacerbated in the course of its remedial activities. Here, too, the Regional Board will have to consider highly technical evidence regarding the work it has performed at the Sites and what impact that work has had on environmental conditions at the Sites.
- The Consent Decree: The Regional Board must evaluate the consent decree between USFS and Atlantic Richfield, including the scope of the contribution protection provisions therein, to determine its applicability to both Sites. To simply accept USFS's argument that the consent decree does not apply to the Mine Site without naming USFS a party to the Mine Site CAO proceedings and without providing Atlantic Richfield the corresponding opportunity to present argument and evidence on that point would be a further denial of Atlantic Richfield's due process rights.

- Apportionment: If the Regional Board were to find Atlantic Richfield liable for some aspect of operation at the Mine Site or Tailings Site, the Regional Board would then have to consider the extent of that liability. Numerous entities and individuals have conducted mining and remedial operations at the Sites under various owners. Prior to the Walker Mining Company staking claims at the Sites, unknown individuals conducted mining operations there while USFS owned all of the property. Even after Walker Mining Company patented its claims, there was a period of several years, perhaps over a decade, when Walker Mining Company (including any predecessor entities or individuals) was mining but Atlantic Richfield's predecessors had not yet acquired any stock in Walker Mining Company. And even when Atlantic Richfield's predecessors did hold stock in Walker Mining Company, mining operations stopped and started. Mining operations during those times also occurred in various locations at the Mine Site. Thus, the question of what (if any) share of responsibility Atlantic Richfield could bear for current environmental conditions is exceedingly complex and will depend on detailed analysis of highly technical issues involving facts that took place 70 or more years ago. As explained above, apportionment of harm arising from the Regional Board's operations and settlements with other owners, and USFS liability for pre-Walker Mining Company mining activities must also be considered.
- State Statutory Issues: In addition to the issues identified above, the Draft CAOs raise several more issues arising from California state law, including:
  - Application of the California Water Code, section 13304(j), which bars retroactive liability for lawful activities.
  - Application of statutes of limitation and repose for the Draft CAOs which seek to impose remedial obligations on the named Dischargers to each order.
  - Application of California Water Code Section 13304(c), which bars recovery of past costs through CAOs.
  - Application of California Code of Civil Procedure Section 877, which bars imposition of liability upon Atlantic Richfield for matters covered by the release of claims from the USFS.

Presenting the foregoing issues in either state or federal court would require two or more weeks of trial. Such a trial would be preceded by multiple rounds of extensively briefed and argued motions, as well as months of discovery including depositions of fact and expert witnesses. Atlantic Richfield recognizes that the Regional Board cannot replicate court procedures in its administrative framework, but the deficiencies in the Proposed Procedures must

be cured to allow presentation of the arguments and evidence the Regional Board will need to reach a reasoned decision on the many issues raised by the Draft CAOs.

## **II. The Sites are Interrelated as a Result of Both Historical Operations and Geography.**

Besides overlooking the number and complexity of issues, the Proposed Procedures also fail to appreciate the interrelationship of the Sites. The Walker Mining Company operated the Sites as one facility and the connection between the Sites continues to this day. The Mine Site is adjacent to the Tailings Site less than a mile upstream along Little Dolly Creek. The tailings at the Tailings Site are the byproduct of mine operations at the Mine Site; after economically valuable portions of copper had been removed from the Walker Mine ore, the mill tailings were directed downstream for collection at the Tailings Site. Little Dolly Creek still connects the Sites. Accordingly, any remedial activity the Regional Board decides to require at the upstream Mine Site – which would almost certainly alter the quantity or character of Little Dolly Creek's flow, as well as possibly altering groundwater levels and movement in the area's aquifer – could potentially impact ongoing remedial activities at the downstream Tailings Site.

Considering both Sites at the same time is thus an integral part of Atlantic Richfield's counter-proposal. The interrelationship between the Sites means that most of the legal and factual defenses described above apply as much to the Mine Site as to the Tailings Site. Most importantly, the CERCLA Section 113(h) issue must be evaluated as to both Sites given the likely impact upstream remedial actions would have on the USFS's remedial work at the Tailings Site. Of course, the possibility that the Prosecution Team can prove some exception to the usual rules of shareholder non-liability is also dependent on historical facts relating to the integrated development and operation of the two Sites.

The Prosecution Team's continued suggestion to hold separate hearings on the two Sites, and USFS's apparent acquiescence in that suggestion, would only add to the inefficiencies inherent in the Proposed Procedures. USFS suggests that it would simplify matters for the Regional Board to consider the Tailings Site separately, if at all. That is not the case. As explained above, the Sites' histories cannot be considered separately and cannot be evaluated without USFS's full participation. The only issue related exclusively to USFS – sovereign immunity – relates to both sites insofar as Atlantic Richfield asserts that USFS must be a party to both Draft CAOs. If Atlantic Richfield's alternative procedures are adopted, the sovereign immunity issue may be evaluated along with all the other threshold issues implicating the Regional Board's jurisdiction and the parties' alleged liability. Given the litany of other issues the Regional Board must confront, no efficiency will result from separating the hearings based solely on the USFS's assertion of sovereign immunity.

**III. Atlantic Richfield's Alternative Procedures Provide a More Efficient Framework for Resolving all the Issues the Regional Board Must Consider.**

To efficiently address the many issues raised by the Draft CAOs, Atlantic Richfield proposes a hearing structure that bifurcates the more complex legal issues into a preliminary phase and leaves the more intensively factual / technical apportionment and remediation questions for a second phase. Atlantic Richfield's proposed calendar and protocols for pre-hearing discovery and disclosures is enclosed as an Addendum to this letter. A summary description of the bifurcated hearing structure follows.

**A. Jurisdiction and Liability Phase**

The first phase of the bifurcated hearing would consider all matters related to the Board's jurisdiction over the two Sites and the Parties identified as a "Discharger" for each site. This first phase would also consider all matters related to the liability of any Designated Party or third party for payment of costs, performance of actions, and any other relief at either or both Sites under the Draft CAOs.

The issues raised by the Prosecution Team's assertion of jurisdiction and designation of Atlantic Richfield and USFS as liable parties in these circumstances are the more complex legal questions the Regional Board must consider. Further, depending on how the Regional Board resolves these threshold legal questions, additional development of more complicated factual and technical issues may not be necessary. Atlantic Richfield therefore proposes dedicating a first phase hearing to the following issues:

1. Does CERCLA Section 113(h)'s bar on pre-enforcement review, the federal Consent Decree for the Walker Mine Tailings Site, sovereign immunity principles, and / or bankruptcy discharge provide a defense, in whole or in part, to the Regional Board's claims and grounds for jurisdiction at each Site?
2. Is the Regional Board a liable party as an "operator" for either Site or arising from settlements with other owners / operators for either Site?
3. Does The Anaconda Company's direct involvement with Walker Mining Company and the Walker Mine merit an exception to the usual rule that a corporate shareholder will not be held liable for the corporation's acts?
4. Is USFS a liable party as an "owner" or "operator" of the Tailings Site and does USFS bear any liability for the Mine Site?
5. Are there any third parties with liability for either Site?

6. Have all necessary parties been joined in the action?
7. Are any of the other issues raised above, or any further liability or jurisdictional issues that may later emerge, an impediment to the Regional Board's assertion of its authority in these circumstances?

The timeline and calendar appended to this letter outlines discovery and other pre-hearing tasks, and supports scheduling a "first phase" hearing in May 2014. The hearing would allocate time separately for both legal argument and factual testimony over the course of two days. The first three hours of hearing time would be devoted to oral argument and questions from the Regional Board concerning legal issues. The remainder of the first day of hearing and at least six hours on a second day of hearing would be used for presenting factual and expert testimony.

B. Apportionment and Remedy Phase

The second phase of the bifurcated hearing would consider the complex issues of apportionment and remedy. Phase 2 would proceed only in the event the Regional Board made liability determinations in the Phase 1 hearing that require further proceedings to resolve issues related to implementation of the Draft CAOs. In particular, if the Regional Board determined that Atlantic Richfield's predecessors had operated either of the Sites to some extent, further proceedings would be needed to determine what portion of the Walker Mine's operations Atlantic Richfield's predecessor had conducted, what (if any) ongoing environmental impacts those operations by Atlantic Richfield's predecessors caused, and what several (allocated) share of remedial costs or remedial actions Atlantic Richfield should bear as a result. Consistent with whatever findings the Regional Board made in Phase 1, the Regional Board would also need to consider allocation of costs and / or remedial action to USFS and the Regional Board itself.

As outlined in the appended timeline, deadlines for Phase 2 would begin to run only after the Regional Board issued a written decision addressing all of the issues raised in Phase 1. The Phase 2 determination would include such issues as:

1. Causation issues for each Site (i.e., specifically what operations each Designated Party conducted and what ongoing environmental conditions those operations caused).
2. Apportionment of costs and / or remedial responsibilities among liable Designated Parties for each Site.
3. The nature and relationship of the remedy for each Site.
4. Regional Board authority to bind a Designated Party to perform any future response action the Regional Board may identify after the Phase 1

and Phase 2 proceedings have been concluded and while any remedial activities are being carried out.

Assuming a written decision is available soon after the Phase 1 hearing, Phase 2 discovery could be completed in advance of a September or October hearing date. We refer to the appended timeline for a description of Phase 2 pre-hearing procedures and disclosures.

C. Applicable Rules.

The Proposed Procedures do not identify the Prosecution Team's burden of proof for the hearing. The Proposed Procedures also do not identify any basis on which the Prosecution Team may hold Atlantic Richfield jointly and severally liable under the Draft CAOs, though the Draft CAOs themselves suggest that is the Prosecution Team's intent. Accordingly, Atlantic Richfield urges the Regional Board to adopt the following procedural rules to govern any hearing it sets on the Draft CAOs:

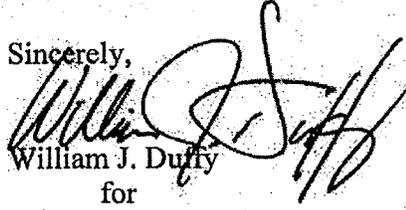
- At any hearing on the Walker Mine Site and / or the Walker Tailings Site, the Prosecution Team will have the burden of production, together with the burden of persuasion by a preponderance of the evidence, as to any finding of fact and as to any finding that one or more parties is responsible for cleaning up and abating the site in question, including the proportionate share of liability which should be allocated to each such party. Each respondent will have the burden of production, together with the burden of persuasion by a preponderance of the evidence, as to any affirmative defense offered at the hearing.
- In any portion of a hearing assigning responsibility to Atlantic Richfield for either remedial activities or the costs of remedial activities, the Prosecution Team shall have the burden to prove that any remedial activities or costs for which it seeks to hold Atlantic Richfield responsible are necessary because Anaconda or International Smelting & Refining Company has caused the specific condition requiring remediation by a discharge of wastes into the waters of the state.
- In any portion of a hearing assigning responsibility to Atlantic Richfield for either remedial activities or the costs of remedial activities, the Prosecution Team shall be precluded from presenting any evidence of remedial activities or costs attributable to a discharge of wastes into the waters of the state by any individual or entity other than Anaconda or International Smelting & Refining Company.

Proceeding to a hearing without additional clarification of the rules proposed above would be a further violation of Atlantic Richfield's due process rights.

David Coupe  
Kenneth Landau  
December 6, 2013  
Page 12

On behalf of Atlantic Richfield, we look forward to the Regional Board's decision as to the appropriate procedures for resolving the claims made in the Draft CAOs.

Sincerely,



William J. Duffy

for

DAVIS GRAHAM & STUBBS LLP

Enclosures

cc: Andrew Tauriainen, Esq.  
Michael Hope, Esq.

**IMPORTANT DEADLINES**  
**Phase 1 Hearing**

December 6, 2013	<ul style="list-style-type: none"> <li>▪ Atlantic Richfield (AR) / USDA will transmit any requests under CPRA to the Regional Board by this date.</li> <li>▪ The Board will respond to each request within 10 days of receipt and produce documents and other responsive information within 30 days of receipt.</li> </ul>
January 17, 2013	<ul style="list-style-type: none"> <li>▪ Each Designated Party may propound up to 20 interrogatories by this date. Responses to interrogatories are due within 20 days of receipt.</li> </ul>
January 31, 2013	<ul style="list-style-type: none"> <li>▪ Each Designated Party may propound up to 20 requests for admission by this date.</li> <li>▪ Responses to requests for admission are due within 20 days of receipt.</li> </ul>
February 7, 2014	<ul style="list-style-type: none"> <li>▪ Designated Parties must ask the Board to add additional parties by this date.</li> </ul>
February 24, 2014	<ul style="list-style-type: none"> <li>▪ Each Designated Party shall disclose a list of witnesses that may be called to testify at the hearing, including a brief description of the topics each witness will cover. This disclosure shall include a general description of the type of experts, if any, the party intends to use. The identity of any expert need not be disclosed until the expert disclosure.</li> </ul>
March 7, 2014	<ul style="list-style-type: none"> <li>▪ The Designated Parties will exchange expert disclosures that shall contain the qualifications of the expert, a summary of all opinions the expert may offer at the hearing, and a description of the basis for those opinions.</li> </ul>
March 19, 2014	<ul style="list-style-type: none"> <li>▪ A Designated Party may make supplemental expert disclosures with opinions or comments in rebuttal to another party's expert, provided that supplementation is completed this day.</li> </ul>
March 21, 2014	<ul style="list-style-type: none"> <li>▪ Each Designated Party may take up to four depositions of percipient witnesses, and depose all expert witnesses designated by the opposing side.</li> <li>▪ Each deposition shall be no longer than six hours. All non-expert depositions shall be completed by this date.</li> </ul>
April 14, 2014	<ul style="list-style-type: none"> <li>▪ All expert depositions shall be completed by this date.</li> </ul>
20 days prior to the date of the hearing	<ul style="list-style-type: none"> <li>▪ The Designated Parties may submit pre-hearing briefs, with a copy provided contemporaneously to each remaining Designated Party, that outline the legal and factual matters for determination by the Board at the Hearing. Any Designated Party may request oral argument on a legal matter raised for determination by the Board.</li> <li>▪ Each Designated Party may append to its pre-hearing brief proposed findings of fact and law for the Board's consideration.</li> </ul>

10 days prior to the hearing	<ul style="list-style-type: none"><li>▪ Each Designated Party shall disclose a list of exhibits it expects to use at the hearing, and disclose any and all demonstrative exhibits including all PowerPoint presentations that may be used at the hearing.</li></ul>
May 2014	<ul style="list-style-type: none"><li>▪ The hearing shall take place on a mutually agreeable date in May 2014 and shall be no more than two days in length, depending upon the number of Designated Parties and Interested Persons involved and issues presented for determination by the Board.</li><li>▪ The first three hours of hearing time will be dedicated to oral argument and questions from the Regional Board regarding legal issues identified in the parties' pre-hearing briefs.</li><li>▪ The remainder of the first day's hearing time, and at least six hours during a second day of hearing, will be used for presentation of testimony and other evidence on factual issues.</li></ul>

**IMPORTANT DEADLINES**  
**Phase 2 Hearing**

	<ul style="list-style-type: none"> <li>▪ Each Designated Party and/or its experts shall be permitted access to the Walker Mine Site and the Walker Mine Tailings Site, provided at least 4 days advanced notice is provided</li> </ul>
15 days following receipt of Board's written decision in the liability hearing	<ul style="list-style-type: none"> <li>▪ AR/USDA will transmit any additional CPRA records requests by this date. The Board will respond to each such request within 10 days of receipt, and produce documents and other responsive information within 30 days of receipt.</li> </ul>
30 days following the Board's written decision	<ul style="list-style-type: none"> <li>▪ Designated Parties must ask the Board to add additional parties by this date.</li> </ul>
30 days following receipt of the Board's written decision	<ul style="list-style-type: none"> <li>▪ Each Designated Party shall disclose a list of witnesses that may be called to testify at the hearing, including a brief description of the topics each witness will cover. This disclosure shall include a general description of the expert testimony, if any, the party intends to offer at the hearing. The identity of any expert need not be disclosed until the expert disclosure, as described below.</li> </ul>
45 days following receipt of the Board's written decision	<ul style="list-style-type: none"> <li>▪ Each Designated Party may propound up to 20 requests for admission by this date. Responses to requests for admission are due within 20 days of receipt.</li> </ul>
45 days following receipt of the Board's written decision	<ul style="list-style-type: none"> <li>▪ Each Designated Party may propound up to 20 interrogatories by this date. Responses to interrogatories are due within 20 days of receipt.</li> </ul>
60 days following receipt of the Board's written decision	<ul style="list-style-type: none"> <li>▪ The Designated Parties will exchange expert disclosures that shall contain the qualifications of the expert, a summary of all opinions the expert may offer at the hearing, and a description of the basis for those opinions.</li> </ul>
14 days following receipt of expert disclosures	<ul style="list-style-type: none"> <li>▪ A Designated Party may make supplemental expert disclosures with opinions or comments in rebuttal to another party's expert, provided that supplementation is completed by this date.</li> </ul>
60 days following receipt of the Board's written decision	<ul style="list-style-type: none"> <li>▪ Each Designated Party may take up to four depositions of percipient witnesses and depose all expert witnesses designated by the opposing side. Each deposition shall be no longer than six hours. All non-expert depositions shall be completed by this date.</li> </ul>
90 days following receipt of the Board's written decision	<ul style="list-style-type: none"> <li>▪ All expert depositions shall be completed by this date.</li> </ul>
20 days prior to the date of the hearing	<ul style="list-style-type: none"> <li>▪ Each Designated Party may submit pre-hearing briefs, with a copy provided contemporaneously to each party, that outline the legal and factual matters for determination by the Board at the Hearing. Any Designated Party may request oral argument on a legal matter raised for determination by the Board.</li> </ul>

	<ul style="list-style-type: none"><li>▪ Each Designated Party may append to its pre-hearing brief proposed findings of fact and law for the Board's consideration.</li></ul>
10 days prior to the hearing	<ul style="list-style-type: none"><li>▪ Each Designated Party shall disclose a list of exhibits it expects to use at the hearing, and disclose any and all demonstrative exhibits including all PowerPoint presentations that may be used at the hearing.</li></ul>
No sooner than one hundred twenty (120) days following publication of the Board's written decision	<ul style="list-style-type: none"><li>▪ The hearing shall take place on a mutually agreeable date no sooner than one hundred twenty (120) days following publication of the Board's written decision on the matters addressed in the Phase 1 hearing.</li><li>▪ The hearing shall be no more than two days in length, depending upon the number of Designated Parties and Interested Persons involved and issues presented for consideration by the Board.</li></ul>