

**POSITION STATEMENT
OF ATLANTIC RICHFIELD COMPANY,
A SUBSIDIARY OF BP AMERICA INC.**

Atlantic Richfield did not operate the tailings impoundment or arrange to dispose of waste there, it is likely to receive little or no share of these costs.

II. STATEMENT OF RELEVANT FACTS

A. History of the Tailings Impoundment

J.R. Walker and other individuals located the first mining claims at the mine site between 1906 and 1909, using a law that allowed anyone to file a mining claim on unreserved federal lands and thereby obtain the right to conduct mining operations thereon. Claimants who proved that the land contained minerals, and that the claimant had begun work to develop them, could obtain a patent conveying full legal and equitable title to the land. Mining Law of 1872, 30 U.S.C. §§ 21-54.

Walker Mining Company was incorporated in Arizona in 1913,⁵ and it obtained a patent for all of the core mining sites at the Walker Mine that same year. J.R. Walker became the first and only president of the company, holding that position until the company dissolved over 30 years later. Fred Cowan was the first secretary of Walker Mining Company, and the person who provided financing needed to develop the first mill on the site. Mr. Cowan agreed to supply the equipment to build an “up to date seventy-five ton mill” on site in 1915. See Supplemental Agreement between Walker Mining Company and John Cowan dated July 28, 1915 (Ex. 5). Walker Mining Company then constructed and operated the mill.

The tailings waste at issue in this dispute was created when ore was sent to the Walker mill to concentrate the copper. This ore was crushed at the mill, then water and various catalysts were added, forming a slurry which passed through a series of flotation, gravity, and filtration processes, all designed to separate the copper from the ore. The “concentrates” were sold and shipped off site. The remaining tailings waste was discarded. See Report of the State Mineralogist, flow sheet of crushing plant and concentrator at Walker Mining Company, p. 100 (Ex. 6).

Initially, it appears that the mill waste was discarded at the Walker Mine site. One former mine site resident has stated that from 1921 to 1927, the town site included a former tailings pond converted into a baseball diamond.  Statement of Louis S. Richards, dated Nov. 20,

⁵ The incorporators were J.R. Walker, John F. Cowan, and G.L. Bemis. Articles of Incorporation for Walker (an Arizona corporation), October 10, 1913. (Ex. 4).

1974 (Ex. 7). Because the mine is located in a mountainous area with limited flat land, however, there was little room for tailings disposal as the mine and town site began to expand.

By 1919, Walker Mining Company had applied for permission to build a tailings reservoir and impoundment on federal land approximately $\frac{3}{4}$ of a mile away from the mine, near the confluence of Dolly Creek and Little Grizzly Creek. Walker's application was "for the main purpose of the storage of tailings produced by the milling and reduction of copper ores." Decision by Dept. of Interior, General Land Office, dated May 14, 1919 (Ex. 8). After its initial application was rejected, Walker filed an appeal with the Department of Interior, making it clear that the project would cause mill slurry to flow downhill to a reservoir, where the tailings would settle out of solution and permanently be disposed of in an impoundment on federal lands. Walker mentioned that the State of California viewed the disposal of the tailings directly into local creek water as a nuisance, and required a tailings impoundment to protect downstream areas. Brief for Walker Mining Company, filed in Ex Parte Walker Mining Company, an Appeal from the Honorable Commissioner of the General Land Office, on June 18, 1919 (Ex. 9).

Before granting Walker's application, the federal government took several steps to ensure that affected federal agencies consented to the proposed reservoir and impoundment. As part of this process, the U.S. Forest Service issued a statement finding that the proposed tailings impoundment would not interfere with the proper occupation and use of U.S. Forest Service lands. Letter from USFS to Walker Mining Company dated Feb. 25, 1919; Letter from U.S. Dept. of Agriculture to U.S. Dept. of Interior, dated July 21, 1920 (Exs. 10 and 11). As a condition of approval, the U.S. Forest Service also required Walker to execute a series of stipulations concerning impoundment operations, indicating that the USFS was aware that such impoundments presented some degree of environmental risk, and further indicating that the U.S. Forest Service had the discretion to require site-specific terms to mitigate the risks. The stipulations included the construction of a tailings dam to standards set by U.S. Debris Commission, and Walker's promise to indemnify the government for any damages to the National Forest that might arise if the dam failed, overflowed, leaked or allowed water to seep out. Stipulations signed by Walker Mining Company, dated May 12, 1920 (Ex. 12); and Map stamped with U.S. Government's approval dated Aug. 4, 1920 (Ex. 13).

Upon receiving approval to build the tailings reservoir and impoundment in 1920, Walker Mining Company proceeded to deposit tailings in the impoundment from the time of its

construction until 1941, when the mine shut down. Throughout this period, all of the U.S. Forest Service's communications about the tailings impoundment were with Walker employees or Walker's attorney. See *infra* p. 25. The Forest Service did not communicate with ISC or Anaconda regarding the impoundment. The Forest Service did not attempt to have ISC, Anaconda, or anyone else guarantee the work that Walker performed at the impoundment.

During the time Walker operated the mine, Dolly Creek was diverted around the tailings area. December 1, 1999 Notice of Tentative Order Revising Waste Discharge Requirements, Atlantic Richfield Company and U.S. Department of Agriculture, Forest Service, Plumas National Forest, Walker Mine Tailings. (Ex. 14). It was only after Walker ceased operations in the 1940s that the U.S. Forest Service allowed Dolly Creek to revert to its original course through the edge of the tailings pond. The creek currently runs through the impoundment, and studies by the U.S. Forest Service claim that the tailings release fine sediments and heavy metals in Dolly Creek and downstream areas. In response, the Forest Service proposes to build another diversion system to channel Dolly Creek around the tailings impoundment again, at Atlantic Richfield's expense. See Amended ROD at 6 (Ex. 1).

B. The Separate Identity of Walker, ISC and Anaconda

Walker Mining Company was an Arizona corporation whose stock was publicly traded and listed on the Salt Lake City and New York Curb exchanges. As a separate corporation, Walker maintained its own separate financial, tax, and corporate records throughout its life. Annual SEC reports show that Walker was never included in Anaconda's consolidated financial statements (Ex. 15), and there are numerous surviving records of Walker's separate financial affairs. See *infra* at 12-14 and 18-19.

ISC and Anaconda established a relationship with Walker Mining Company several years after it incorporated and began to develop the mine. ISC purchased an option to buy approximately half of Walker's stock in 1916, and exercised the option in 1918, becoming a majority (50.4%) shareholder.⁶ Each year thereafter, ISC or its parent company, Anaconda, had at least one employee who served as a director and officer of Walker Mining Company. In some years ISC employees held approximately half of the positions on Walker's Board of Directors.

⁶ Agreement between ISC and Plumas Mining Co. dated Aug. 12, 1916 (Ex. 16); Agreement between ISC and John Cowan dated Aug. 12, 1916. (Ex. 17); Moody's Manual of Railroads and Corporation Securities, at p. 2236 (1920) (Ex. 18).

At the peak of its operations, Walker Mining Company employed as many as 600 people at the mine site, none of whom appear to have been employed by either ISC or Anaconda at the same time. Statement of Elaine Mills, mine resident from 1931 to 1941 (Ex. 19). J.R. Walker appears to have controlled daily operations of the mine with the help of several mine managers who were employed solely by Walker Mining Company at that time.⁷

Walker Mining Company was profitable in the 1920's when the economy was strong. Unfortunately, this company and many others like it suffered when the Great Depression hit. The mine was closed due to low copper prices from 1932 to 1935. Even after the mine reopened, copper prices remained low and Walker Mining Company lost money. The copper content of the known ore bodies began to decline at the same time. An extensive search for additional ore was conducted in 1939 to 1941, with disappointing results. The most valuable ore was deeper underground, at a level that required additional expensive hoisting, water management, and ventilation. Expected production costs for the deeper ore exceeded the market price for copper.

The mine closed in October 1941. Walker Mining Company spent the next two years attempting to find ways to profitably reopen the mine, including discussions with the U.S. Government to reopen the mine on a "cost plus" contract to produce copper for the war effort. However, the price that the Government was willing to pay for copper was far below the estimated cost of production. Memo re Walker Mining Company dated Nov. 30, 1943 (Ex. 23); Letter from ISC to Walker Mining Company dated Jan. 11, 1944 (Ex. 24).

With debts to pay and no anticipated source of income, Walker Mining Company filed for bankruptcy in 1943. The court found that Walker's stock was worthless, and ordered the company to liquidate its assets. A bankruptcy trustee sold the assets to Safeway Signal Co., an unrelated third party, for less than half of the value of its outstanding debts. Walker Mining Company was dissolved and the bankruptcy proceeding was closed in 1945. See In re Matter of Walker Mining Company, Brief Statement of Trustee's Investigation dated Feb. 14, 1945

⁷ As part of an early loan agreement, Walker was required to hire a mine manager "nominated by or acceptable to" ISC, from August 1916 to April 1, 1919. Agreement between ISC and Walker dated Aug. 12, 1916 (Ex. 20); Agreement between same dated June 30, 1917 (Ex. 21). Walker fulfilled this duty by hiring V.A. Hart as one of its mine managers, however, there is no evidence that Mr. Hart was also an employee of ISC or Anaconda during this time, and there are later letters indicating that Mr. Hart refused to take "advice or instruction" from Anaconda. See letter from R. Sales, Anaconda, to P. Billingsley, dated Sept. 20, 1923. (Ex. 22).