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13 STATE WATER RESOURCES CONTROL BOARD

14 STATE OF CALIFORNIA

16 In the Matter of Petition for Stay and
17 Petition for Review of Central Valley
Regional Water Quality Control Board
18 Clean-Up and Abatement Order
R5-2014-0039

SWRCB File No. _____

**ATLANTIC RICHFIELD COMPANY'S
PETITION FOR REVIEW**

19 Atlantic Richfield Company, Petitioner

21
22 Petitioner Atlantic Richfield Company ("Atlantic Richfield") submits this Petition for
23 Review of the Central Valley Regional Water Quality Control Board ("Regional Board") Cleanup
24 and Abatement Order No. R5-2014-0039, Atlantic Richfield Company - Walker Mine, Plumas
25 County ("CAO"), issued on March 28, 2014. This Petition, and the accompanying Petition for
26 Stay of the CAO, are submitted pursuant to California Water Code §§ 13320-13321 and Cal.
27 Code of Regs. tit. 23, §§ 2050-2053. In compliance with the statute and regulations, Atlantic
28 Richfield provides the following specified information:

1 **I. The Petitioner**

2 The Petitioner, Atlantic Richfield Company, a Delaware corporation, maintains its
3 principal place of business at 501 Westlake Park Blvd., Houston, TX 77079. Atlantic Richfield
4 can be contacted through its counsel of record: James A. Bruen (jbruen@fbm.com) and
5 Brennan R. Quinn (bquinn@fbm.com) of Farella Braun + Martel LLP, 235 Montgomery Street,
6 San Francisco, CA 94104, (415) 954-4400; and William J. Duffy (william.duffy@dgslaw.com)
7 and Andrea Wang (andrea.wang@dgslaw.com) of Davis Graham & Stubbs LLP, 1550 17th Street,
8 Suite 500, Denver, CO 80202, (303) 892-7372.

9 **II. Action or Inaction to Be Reviewed**

10 Atlantic Richfield asks that the State Water Resources Control Board ("State Board")
11 review and vacate the Regional Board's action in adopting Central Valley Regional Water
12 Quality Control Board Clean-Up and Abatement Order R5-2014-0039. In an accompanying
13 Petition for Stay, Atlantic Richfield asks that the State Board stay the CAO until the State Board
14 can complete its review and decision in this matter. A copy of the CAO is attached to the
15 Declaration of Brennan R. Quinn in Support of Atlantic Richfield's Petition for Review and
16 Petition for Stay ("Quinn Decl.") as Exhibit 1.

17 **III. Date the Regional Board Acted or Failed to Act**

18 The Regional Board adopted the CAO on March 28, 2014.

19 **IV. Statement of Reasons the Regional Board CAO is Inappropriate or Improper**

20 The Regional Board's issuance of the CAO was inappropriate and improper because:

- 21 A. The CAO's finding and conclusion that Atlantic Richfield is a discharger,
22 which may be held responsible for further clean-up and abatement of the
23 Walker Mine Site, is not supported by substantial evidence.
- 24 B. In its hearing procedures, conduct of the hearing and issuance of the CAO,
25 the Regional Board denied Atlantic Richfield due process of law.
- 26 C. In issuing the CAO, the Regional Board committed significant, additional,
27 legal errors which each, independently, warrant vacating the order.

28 The reasons the Regional Board's action was inappropriate and improper are more fully set forth

1 in Atlantic Richfield's Memorandum of Points and Authorities, which may be found beginning at
2 page 5 of this Petition.

3 **V. Statement that Petitioner is Aggrieved**

4 Neither Atlantic Richfield, nor its predecessors, International Smelting & Refining
5 Company ("IS&R") and Anaconda Copper Mining Company ("Anaconda"),¹ ever owned or
6 operated the Walker mining property during the 1916 – 1941 active mining time period. During
7 that period, there was intermittent exploration and ore reserves development, mine development,
8 ore extraction, concentration of the desired minerals, new product distribution and waste disposal²
9 at the property by the Walker Mining Company. Atlantic Richfield's predecessors were among
10 the shareholders of the Walker Mining Company, which was publicly traded. In 1918, after the
11 Walker Mine was established and producing, Atlantic Richfield's predecessor invested in the
12 Walker Mining Company. In 1944, the Walker Mining Company petitioned for, and was later
13 granted, a declaration of bankruptcy from the United States Bankruptcy Court for the District of
14 Utah. (Quinn Decl. ¶ 5, Ex. 4, Atlantic Richfield ("AR") Ex. 128). Moreover, in the 69 years
15 since the Walker Mining Company bankruptcy, the mining site has been owned and/or operated
16 by a series of individuals, companies and entities, including Safeway Signal Corporation, Plumas
17 Land Company, Robert Barry/Calicopia Corporation, Daniel Kennedy/Cedar Point Properties,
18 and the Regional Board itself.

19 The Regional Board has supervised a series of administrative enforcement actions against
20 the post-1945 owners and/or operators, and also undertaken its own investigation and remedial
21 actions at the mining site. It has previously considered, then declined, to pursue Atlantic
22 Richfield. Now, some fifteen years after Regional Board staff first considered, but declined, to
23 name Atlantic Richfield as a discharger, the Regional Board has conducted a flawed proceeding

24 _____
25 ¹ In 1914, International Smelting and Refining Company became a wholly owned subsidiary of Anaconda Copper
Mining Company.

26 ² Fourth generation miner, former mining executive, Colorado School of Mines and Montana School of Mines
27 graduate and American Mining Hall of Fame Honoree, Terry McNulty, Ph.D., P.E., described (a) exploration and ore
28 reserves development, (b) mine development, (c) ore extraction, (d) concentration of desired minerals, (e) new
product distribution and (f) waste disposal as the "6 phases of mining". (See Quinn Decl. ¶ 3, Ex. 2, Dr. Terry
McNulty Expert Rpt. at pp. 6-8; Quinn Decl. ¶ 4, Ex 3, March 27, 2014 Hearing Tr. at 89-92).

1 (a) with findings and conclusions predicated upon speculation, improper consultant opinions and
2 errors of law; (b) under circumstances that denied Atlantic Richfield due process of law; and (c)
3 that otherwise was compromised by significant, additional errors that each, independently, also
4 warrant vacating the order.

5 A more detailed explanation for the bases by which Atlantic Richfield is aggrieved is set
6 forth in the Memorandum of Points and Authorities submitted herewith, Petition for Stay, and
7 supporting declarations and attachments.

8 **VI. Action Requested of the State Board**

9 Atlantic Richfield requests that the State Board grant this Petition for Review and
10 thereafter vacate the CAO for the reasons set forth in this Petition. In the accompanying Petition
11 for Stay, Atlantic Richfield requests that the State Board immediately stay enforcement of the
12 CAO until the State Board has had an opportunity to consider and act upon this petition.

13 **VII. Statement of Points and Authorities**

14 Atlantic Richfield's Memorandum of Points and Authorities may be found beginning at
15 page 5 of this Petition. The supporting Declaration of Brennan R. Quinn, Declaration of Brian S.
16 Johnson, and Declaration of Andrea McCullough are submitted herewith.

17 **VIII. Statement of Transmittal of the Petition to the Regional Board**

18 This Petition, with its Memorandum of Points and Authorities, as well as the
19 simultaneously submitted Petition for Stay, supporting declarations, and exhibits, were
20 transmitted to Pamela C. Creedon, Executive Officer of the Regional Board, on April 18, 2014
21 via email addressed to Pamela.Creedon@waterboards.ca.gov. Hard copies of the petitions and
22 the declarations were also sent to Ms. Creedon by U.S. Mail on April 18, 2014.

23 **IX. Substantive Issues Raised Before the Regional Board**

24 The substantive issues raised in this Petition were all raised during, or as part of
25 proceedings related to, the March 27 and 28, 2014 hearings on the CAO.

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Atlantic Richfield’s Memorandum of Points and Authorities

The Regional Board’s CAO for the Walker Mining Site is not supported by substantial evidence, violates due process and is otherwise flawed in ways which each independently justify vacating the CAO.

I. Overview of Relevant Facts³

Walker Mining Company was a publicly traded corporation. (Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at p. 6 fn. 11 and documents cited therein). Walker Mining Company (the “Corporation”) and its incorporators established and operated the Walker mine, mill and surrounding mining community, between 1909 and 1941. (Quinn Decl. ¶ 7, Ex. 6, Atlantic Richfield (“AR”) Ex. 136). In 1944, the Corporation petitioned for, and was later granted, a declaration of bankruptcy from the United States Bankruptcy Court for the District of Utah. (Quinn Decl. ¶ 5, Ex. 4, AR Ex. 128). An important issue in the bankruptcy proceeding was whether Atlantic Richfield’s predecessors, IS&R and Anaconda, as stockholders, had control, or lacked proper separation from, the publicly traded Corporation. After a full hearing on the matter, the Federal Court held that they did not. Indeed, the Court specifically “ORDERED, ADJUDGED AND DECREED,” in part:

2. That Debtor [Walker Mining Company] is not and has never at any time been an alter ego or instrument or department of Anaconda Copper Mining Company or of International Smelting and Refining Company, hereinafter called Claimant.

3. That Debtor’s [Walker Mining Company’s] business and affairs have at all times been carried on and conducted in the manner and according to the methods and practice usually employed by corporations free of any domination or control by others.

4. That no act or omission of said Anaconda Copper Mining Company or of said Claimant [International Smelting and Refining Company], their officers, agents and employees, or any of them, established by any evidence, constitutes or proves any domination or control by them or any of them over Debtor or any of Debtor’s acts, business or affairs, or constituted fraud, or occasioned damage or prejudice to or violated any right of Debtor or any of its stockholders.

³ Additional facts will be discussed later in this Petition as they become particularly relevant to subsequent arguments.

1 (See Quinn Decl. ¶ 8, Ex. 7, AR Ex. 131 (bracketed words added)).

2 In the years since the 1945 Walker Mining Company bankruptcy, there have been
3 numerous subsequent owners and/or operators of the Walker mining property, including Safeway
4 Signal Corporation, Plumas Land Company, Robert Barry/Calicopia Corporation, Daniel
5 Kennedy/Cedar Point Properties, and the Regional Board itself. (Quinn Decl. ¶ 9, Ex. 8,
6 Attachment D to April 29, 2013 Draft Mine Site CAO, Chain of Title Guarantee; *see also* Quinn
7 Decl. ¶ 10, Ex. 9, AR Ex. 141 (describing mining and attempted remedial operations by several
8 parties, including Noranda Exploration, AMAX, Inc., Conoco [now known as ConocoPhillips
9 Company], and Standard Bullion Corporation, Inc.)). Part of the former Walker Mining
10 Company operations were also located on public lands held under the stewardship of the United
11 States Forest Service. (Quinn Decl. ¶ 2, Ex. 1, CAO at Attachment B, Map delineating ownership
12 of parcels surrounding the Walker Mine and Tailings Sites).

13 Beginning in 1957, the Regional Board concluded that acid mine drainage was leaking
14 from the mine property⁴ to State waters. (Quinn Decl. ¶ 11, Ex. 10, AR Ex. 179; *see also* Quinn
15 Decl. ¶ 12, Ex. 11, Marc Lombardi Expert Rpt. (“Lombardi Expert Rpt.”) at p. 19). The Regional
16 Board issued a number of successive investigation/remediation orders to the owners and their
17 private companies who controlled the land after the Walker Mining Company bankruptcy in
18 1945. (Quinn Decl. ¶¶ 13-17, Exs. 12-16, AR Exs. 184, 186, 195, 197 at pp. 4-5, 201; *see also*
19 Quinn Decl. ¶ 12, Ex. 11, Lombardi Expert Rpt. at Table 1, Historical Timeline, and documents
20 cited therein). No satisfactory remediation occurred. In 1987, the Regional Board itself
21 undertook steps to stop the discharge of drainage from the 700 level mine portal. With funds
22 partially reimbursed by settlements with then-owner, Robert Barry, the Regional Board hired an
23 independent contractor to design and install a “plug” in the mouth of the portal to stop the
24 discharge of water to Dolly Creek. (Quinn Decl. ¶ 2, Ex. 1, CAO at ¶¶ 16-20; *see also* Quinn
25 Decl. ¶ 18, Ex. 17, AR Ex. 202, SRK Final Feasibility and Design Report). The plug slowed the

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27 ⁴ The Regional Board has since divided the former mine operations into two “sites” based on ownership. The Board
28 calls the privately owned land “the Walker Mine Site”. The Board calls the publicly-owned land “the Walker Mine
Tailings Site.” (See Quinn Decl. ¶ 2, Ex. 1, CAO at p. 1-2, ¶¶ 1, 8).

1 discharge of water, but has not achieved compliance with water quality standards. In fact, the
2 Regional Board's plug caused mine water to back up within the mine workings and discharge
3 metal contamination to groundwater. (Quinn Decl. ¶ 12, Ex. 11, Lombardi Expert Rpt. at pp. 14-
4 17; Quinn Decl. ¶ 4, Ex 3, March 27, 2014 Hearing Tr. at 102-103). Since 1987, this loading of
5 metals has spread the area of groundwater contamination and exacerbated surface water
6 contamination. (Quinn Decl. ¶ 12, Ex. 11, Lombardi Expert Rpt. at p. 17; Quinn Decl. ¶ 4, Ex 3,
7 March 27, 2014 Hearing Tr. at 102-103).

8 Since at least 1997, Regional Board staff has sought information about potentially
9 responsible parties who might further investigate and remediate the property. They focused on
10 only one such party, Atlantic Richfield. Atlantic Richfield's predecessor, IS&R, was an investor
11 that owned 50.4% of the stock of the Walker Mining Company between 1918 and 1945. (Quinn
12 Decl. ¶ 19, Ex. 18, AR Ex. 29; *see also* Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at p.
13 4 and n. 6).

14 The Walker Mining Company continued to operate and manage the mine, and Anaconda
15 and IS&R's involvement in the Walker Mine was limited to certain administrative and
16 procurement services and to providing geological expertise, primarily for long-range planning
17 and ore prospecting. (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty Expert Rpt. at pp. 9-10; Quinn
18 Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at pp. 11-14). Anaconda had special expertise in
19 geology. (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty Expert Rpt. at p. 9). Its exploration
20 geologists served as consultants to the Walker Mining Company in support of exploration and
21 development activities at the Walker Mine, which was the search for ore deposits to book
22 reserves and plan for future mining. (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty Expert Rpt. at p.
23 9). The Anaconda Companies were compensated for these consulting services and Walker
24 Mining Company employees performed all of the underground work related to prospecting,
25 exploration and development. (Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at p. 11;
26 Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty Expert Rpt. at p. 5).

27 Importantly, given the controlling legal test, prospecting and related geological consulting
28 services are not acts relating to matters of environmental compliance or waste disposal. (See

1 detailed discussion of applicable legal standards *infra* at pp. 13-15). After the operator locates
2 and defines the ore body, it must physically remove that ore from the mine. Once the operator
3 removes the ore from the mine, it must mill and process that ore in a concentrator to separate the
4 ore from the rock. After this process is complete, the operator ships the now enriched copper for
5 sale and disposes the mill tailings as waste. (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty Expert
6 Rpt. at p. 15). At the Walker Mine, the Walker Mining Company originally disposed of these
7 tailings at a tailings pile near the mill. (Quinn Decl. ¶ 12, Ex. 11, Lombardi Expert Rpt. at p. 10).
8 The Walker Mining Company later established a tailings impoundment at what is now known as
9 the Tailings Site.

10 There is no evidence that Anaconda directed or controlled those core mining activities of
11 the Walker Company and, important to this proceeding, there is no evidence of Anaconda's
12 involvement in waste disposal decisions. (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty Expert Rpt.
13 at p. 15; Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at pp. 14-16). The Walker
14 Company had hundreds of employees who ran the operations at the Walker Mine. The Anaconda
15 Companies neither operated nor managed the Walker Mine. (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry
16 McNulty Expert Rpt. at p. 10; Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at p. 16).

17 Moreover, nothing the managers and geologists did was ever found to be other than in
18 furtherance of Walker Mining Company's independent interests. (Quinn Decl. ¶¶ 20-21, Exs. 19-
19 20, AR Exs. 33 and 119; Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at pp. 8-9). At the
20 time IS&R purchased shares in the Walker Mining Company, J.R. Walker was the President of
21 the Corporation. Mr. Walker remained President and a minority shareholder in the Corporation
22 for the duration of IS&R's ownership. (Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at p.
23 6 and documents cited therein). Furthermore, there is no evidence that IS&R took any action that
24 violated the norms of proper conduct for investors in a publicly traded corporation. (*Id.* at pp. 9-
25 11).

26 Regional Board staff contacted Atlantic Richfield in 1997 to request negotiations over
27 "past and future remediation activities" at the Walker Mine based on the Regional Board's
28 assertion that Atlantic Richfield was "a responsible party for the required environmental

1 remediation.” (Quinn Decl. ¶ 22, Ex. 21, AR Ex. 144). The Regional Board reiterated this
2 request in 1998, this time stating its intent to issue a CAO if Atlantic Richfield did not cooperate.
3 (Quinn Decl. ¶ 23, Ex. 22, AR Ex. 148). Then, in 1999, the Regional Board sent draft Waste
4 Discharge Requirements to Atlantic Richfield in which the Regional Board had named Atlantic
5 Richfield as a Discharger. (Quinn Decl. ¶ 24, Ex. 23, AR Ex. 149). Atlantic Richfield protested,
6 citing the factual history of the site and relevant portions of the applicable statutory and case law.
7 (Quinn Decl. ¶ 25, Ex. 24, AR Ex. 151). In response, the Regional Board staff declined to pursue
8 the issue further, telling Atlantic Richfield that it had removed the company from the draft Waste
9 Discharge Requirements (“WDR”). (Quinn Decl. ¶ 26, Ex. 25, AR Ex. 152).

10 In 2010, as the Regional Board staff came to realize the long term financial commitment
11 the Regional Board had accepted by constructing its plug remedy, staff began to search again for
12 a potentially responsible party. (Quinn Decl. ¶ 27, Ex. 26, AR Ex. 157). As before, the Regional
13 Board’s search focused on Atlantic Richfield and appears not to have considered any of the
14 numerous other parties with more direct connections to operations at the Walker Mine. (Quinn
15 Decl. ¶ 28, Ex. 27, AR Ex. 159 (“the sooner we bring in ARCO as a RP, the sooner we [*i.e.*, the
16 Regional Board] are relieved of that responsibility.”) But it was not until 2013 that Regional
17 Board staff once again contacted Atlantic Richfield to report its interest in naming the company
18 as a potentially responsible party. (Quinn Decl. ¶ 9, Ex. 8, April 29, 2013 Draft Mine Site CAO).
19 Once again, Atlantic Richfield protested any such designation, citing appropriate factual points
20 and legal authorities. (Quinn Decl. ¶ 29, Ex. 28, AR’s June 3, 2013 Response to Draft CAOs).
21 Once again, the Regional Board staff appeared to walk away.

22 In October 2013, the Regional Board’s Prosecution Team advised Atlantic Richfield that
23 the Regional Board would hold a hearing on Draft CAOs the Team was seeking against Atlantic
24 Richfield to further investigate and remediate environmental conditions at both halves of the
25 mining property: the Walker Mine Site and the Walker Mine Tailings Site. (Quinn Decl. ¶ 30,
26 Ex. 29, October 2, 2013 Notice of Hearing and Proposed Hearing Procedures). Atlantic
27 Richfield’s requests for (a) more time to investigate, and find witnesses and documents, relevant
28 to the 1909 – 1945 conduct of Walker Mining Company and its incorporators, (b) more time to

1 investigate current environmental conditions and causes of conditions at and in the vicinity of the
2 mine property, and (c) more time (in light of the factual and legal complexity, a modest 6 hours)
3 to put on its defenses at a hearing before the Regional Board, were all summarily denied. (Quinn
4 Decl. ¶ 31, Ex. 30, AR's December 6, 2013 Objections to Proposed Hearing Procedures; Quinn
5 Decl. ¶ 32, Ex. 31, January 29, 2014 Hearing Procedures). Subsequently, the Regional Board
6 also denied eight of Atlantic Richfield's nine pre-hearing motions, after an apparently cursory
7 review, including a motion to recuse the Regional Board itself from conducting any hearing on
8 the proposed CAOs as a result of its own financial conflicts of interest. These conflicts were
9 discussed in internal Regional Board documents discovered by Atlantic Richfield during its
10 hurried prehearing preparations. (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 3-25;
11 66-77; 165-171).

12 The Regional Board's hearing on March 27 and 28, 2014 was replete with the Prosecution
13 Team's misstatements of the law and unsupported allegations of fact. As just one example, CAO
14 ¶ 14 provides that the Mine "discharged metals and acid mine drainage (AMD) into Dolly Creek
15 from at least the time production ceased in 1941, if not earlier." To support this factual finding,
16 the Regional Board cited two exhibits, neither of which include any evidence specific to mine
17 discharges to Dolly Creek in any period prior to 1941.⁵ In fact, the CAO findings ignore the
18 testimony of Marc Lombardi who explained the protective measures left in place when Walker
19 Mining Company closed the mine; those protective measures were not maintained by subsequent
20 owners and operators of the mine property.⁶ Other examples of unsupported allegations are
21 plentiful.

22 Moreover, as discussed further below, there were critical admissions of fact by
23 Prosecution Team experts which undermined the Team's ability to meet its burdens of production
24 and persuasion. After some modifications, the Regional Board nonetheless entered the proposed
25 CAO for the Walker Mine Site. These petitions for review and a stay followed. (See Quinn Decl.

26 ⁵ (See Quinn Decl. ¶ 33, Ex. 32, Prosecuting Team ("PT") Ex. 20, October 5, 1957 Walker Mine Report; Quinn
27 Decl. ¶ 34, Ex. 33, PT Ex. 18, April 24, 1958 Central Valley Water Board Resolution 58-180).

28 ⁶ (Quinn Decl. ¶ 12, Ex. 11, Lombardi Expert Rpt. at pp. 17-19; Quinn Decl. ¶ 4, Ex 3, March 27, 2014 Hearing Tr.
at 100:6-101:6).

1 ¶ 4, Ex 3, March 27, 2014 Hearing Tr.; Quinn Decl. ¶ 35, Ex 34, March 28, 2014 Hearing Tr.).

2 Atlantic Richfield asked the Prosecution Team to agree to a stay of the deadlines in the
3 CAO pending State Board review. The Prosecution Team declined to agree, saying that Atlantic
4 Richfield could always take advantage of the available opportunity to seek a stay from the State
5 Board. When Atlantic Richfield then asked the Regional Board for a 90-day extension of the
6 May 30, 2014 deadline obligating Atlantic Richfield to “take control of the mine for remedial
7 purposes...,” the Prosecution Team objected. When Atlantic Richfield noted that the State Board
8 calendar was crowded and that it doubted it could obtain review by May 30 and notwithstanding
9 the Regional Board staff Advisory Team’s acknowledgment that the State Board had a crowded
10 calendar, the Prosecution Team maintained its objection. The Regional Board thereafter accorded
11 Atlantic Richfield only thirty additional days. Neither the Prosecution Team, nor the Advisory
12 Team, nor the Regional Board itself, expressed any view that a mere 30-day extension was
13 sufficient to obtain State Board review (a) without risking significant obligations under the CAO,
14 (b) without risking mooted its petition for stay,⁷ and/or (c) without risking significant potential
15 penalties and other sanctions. (See Quinn Decl. ¶ 35, Ex 34, March 28, 2014 Hearing Tr.).

16 The Prosecution Team’s insistence upon applying an aggressive schedule to prehearing
17 preparation time available to Atlantic Richfield as well as an unreasonably limited hearing time
18 applicable to Atlantic Richfield, coupled with the unreasonably short post-hearing time specified
19 until the deadline for taking over the mine by Atlantic Richfield, all came notwithstanding the
20 lack of any action by the Regional Board against Atlantic Richfield in the preceding fifteen years.
21 The Regional Board took no action in the face of Atlantic Richfield’s initial factual and legal
22 arguments in response to the 1999 staff suggestion that Atlantic Richfield was a discharger/
23 potentially responsible party – and it took no action during the three and a half years beginning in
24 2010 when the Regional Board staff was preparing its case against the company for hearing.
25 When the aggressive schedule is considered along with the staff’s internal acknowledgement of

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27 ⁷ See, e.g., *In the Matter of the Petition of John F. Bosta*, Order No. WQ 91–11 (SWRCB 1991) (noting that “[t]he
28 record indicates that there is substantial compliance with the Regional Board’s cease and desist orders” before
concluding “there will be no substantial harm to the petitioner or the public if the stay is not granted”).

1 the Regional Board's financial interest in the outcome of the hearing, and the Regional Board's
2 willingness to enter the CAO without substantial evidence for key findings, as well as the other
3 material flaws in the CAO proceedings outlined in these papers, there are multiple independent
4 reasons to issue the requested stay and subsequently to vacate the CAO.

5 **II. The Regional Board's Finding and Conclusion in the CAO that Atlantic Richfield is**
6 **A Discharger Responsible for Cleaning-Up and Abating the Walker Mine Site Is**
7 **Based on An Error of Law and is Not Supported by Substantial Evidence.**

8 In issuing the CAO at issue, the Regional Board found, in relevant part, that:

9 36. Anaconda, International [IS&R] and Walker [Mining
10 Company] concurrently managed, directed or conducted operations
11 specifically related to the leakage or disposal of waste, specifically
12 the discharge of mining waste from approximately 1918 through at
13 least 1941. Anaconda and International staff acting on Anaconda
14 and International's behalf regularly directed specific operation and
15 exploration activities at the mine and tailings, particularly during
16 critical periods. These activities included exploration, ore location,
17 mine development work (e.g. placement of underground workings
18 to access and remove ore) and removal of ore, all of which resulted
19 in the condition of discharge and threatened discharge at the mine
20 and tailings. Anaconda and International's involvement at the mine
21 and tailings went well beyond what is normally expected of a
22 responsible corporate parent. Evidence of Anaconda's and
23 International's control over the pollution-related activities at the
24 mine, includes, but is not limited to Prosecution Exhibits 1 [archive
25 documents], 2 [Declaration of Dr. Quivik] and 57 [rebuttal
26 statement of Dr. Quivik]. International managed, directed or
27 conducted operations specifically related to the leakage or disposal
28 of waste, specifically the discharge of mining waste, from 1916 to
1918.

(See Quinn Decl. ¶ 2, Ex. 1, CAO at pp. 6-7, ¶ 36).

In even more conclusory fashion, the CAO at Paragraph 50 provides that:

The Discharger is named in this Order because through its actions
and/or by virtue of its ownership of the site⁸, it has caused or
permitted waste to be discharged or deposited where it has
discharged and threatens to discharge to waters of the state and has
created and threatens to create a condition of pollution or nuisance.

(Id.)

As the Regional Board's Prosecution Team and the Prosecution Team's own consultant,

⁸ This conclusion is also plainly not supported by substantial evidence. There has been no suggestion in any other paragraph of the CAO, or by any party to the CAO proceedings, and there is no evidence in the Regional Board record, that either Atlantic Richfield or either of its predecessors owned the Walker Mine Site.

1 Fred Quivik, have essentially acknowledged, these findings and conclusions are not supported by
2 substantial evidence. As it turns out, the Regional Board's Prosecution Team was wrong on the
3 legal standard relevant to its claim of shareholder direct operator liability and also wrong on the
4 type of evidence it would have had to produce to meet that standard. The Regional Board was led
5 into error.

6 **A. The Legal Standard Relevant to Whether or Not Atlantic Richfield Can Be**
7 **Held Responsible for the Actions Required by the CAO is the Direct Operator**
8 **Liability Standard Adopted in *United States v. Bestfoods*.**

9 In *United States v. Bestfoods*, the United States Supreme Court affirmed the "bedrock
10 principle" of corporate law that protects a shareholder from liability for the conduct of a
11 corporation in which it owns shares. 524 U.S. 51, 62 (1998). See also *Sonora Diamond Corp. v.*
12 *Super. Ct.*, 99 Cal. Rptr. 2d 824, 836 (Cal. Ct. App. 2000) ("Ordinarily, a corporation is regarded
13 as a legal entity, separate and distinct from its stockholders, officers and directors, with separate
14 and distinct liabilities and obligations."). The policy behind this limited liability is to encourage
15 investment. *Dietel v. Day*, 492 P.2d 455, 457 (Ariz. Ct. App. 1972). Accordingly, corporate
16 separateness can be disregarded only under "exceptional circumstances." *Burnet v. Clark*, 287
17 U.S. 410, 415 (1932); see also *NLRB v. Greater Kansas City Roofing*, 2 F.3d 1047, 1051 (10th
18 Cir. 1993) ("The insulation of a stockholder from the debts and obligations of his corporation is
19 the norm, not the exception.") (quoting *NLRB v. Deena Artware, Inc.*, 361 U.S. 398, 402-03
20 (1960)).

21 The United States Supreme Court has identified two exceptional circumstances relevant to
22 this case, supporting shareholder liability. Despite initial suggestions that Atlantic Richfield had
23 liability as a result of Walker Mining Company allegedly being its predecessors' alter ego (April
24 2013 Draft CAO at para. 37), the Prosecution Team has withdrawn any effort to prove the first
25 "exceptional circumstance" for supporting shareholder liability. However, its confusion
26 regarding the legal standard and attempts to conflate outdated notions of shareholder control with
27 direct operator liability, may have misled the Regional Board into concluding that some hybrid
28 form of derivative controlling shareholder/direct operator liability is appropriate here. In any
event, the Prosecution Team failed to meet its burdens of production and persuasion for the one

1 and only remaining “exceptional circumstance”.

2 The first exceptional circumstance justifying a departure from the general rule of
3 shareholder non-liability is variously referred to as corporate veil piercing liability, alter-ego
4 liability, or indirect/derivative liability. Arizona (the state in which the Walker Mining Company
5 was incorporated) and California apply the generally accepted two-prong test for piercing the
6 corporate veil: (1) there must be such unity of interest and ownership that the separate
7 personalities of the corporation and the shareholder no longer exist, and (2) failure to disregard
8 the corporations’ separate identities must result in fraud or injustice. *Sonora Diamond Corp.*, 99
9 Cal. Rptr. 2d at 836; *Gatecliff v. Great Republic Life Ins. Co.*, 821 P.2d 725, 728 (Ariz. 1991). It
10 is extremely difficult to establish a unity of interest between legitimate and conscientious
11 corporations. In fact, it is unheard of with publicly traded corporations, such as the Walker
12 Mining Company. Atlantic Richfield is unaware of any case in the history of American law in
13 which an attempt to pierce the corporate veil of a publicly traded corporation has succeeded.
14 Unsurprisingly, then, the Prosecution Team advised Atlantic Richfield and the Regional Board
15 that it would not pursue a corporate veil piercing (*i.e.*, alter-ego) theory of liability in this
16 proceeding. (Quinn Decl. ¶ 36, Ex. 35, Prosecution Team Opening Brief (“PT Open. Br.”) at 21,
17 § VIII.b).

18 The second exceptional circumstance is known as direct operator liability. In *Bestfoods*,
19 the Supreme Court held that direct-operator liability may only be imposed upon a shareholder for
20 pollution caused by a facility owned by a corporation in which the shareholder has invested if that
21 shareholder itself caused the pollution. The shareholder itself must “manage, direct, or conduct
22 operations specifically related to pollution, that is, operations having to do with the leakage or
23 disposal of hazardous waste, or decisions about compliance with environmental regulations.” *Id.*
24 at 66-67. Thus, the Prosecution Team had the burden of proving that Atlantic Richfield’s
25 predecessors (1) directed or conducted pollution-causing activities at each of the two Sites; (2)
26 which caused the environmental harms the Draft CAOs seek to address. Accord Cal. Water Code
27 § 13304(a) (imposing liability only on those who “caused or permitted . . . waste to be

28 ⁹ The Prosecution Team failed to point to any evidence that IS&R or Anaconda made any such decisions.

1 discharged . . . into the waters of the state and create[d] . . . a condition of . . . nuisance”) and
2 § 13304(n) (defining a “nuisance” as a condition that “occur[red] during, or as a result of, the
3 treatment or disposal of wastes”).

4 The *Bestfoods* Court specifically rejected a third potential exception based on a
5 shareholder’s “authority to control” or “actual control” over the company in which the
6 shareholder invested. “[I]t is hornbook law,” the Supreme Court said, “that the exercise of the
7 ‘control’ which stock ownership gives to the stockholders will not create liability” for the
8 shareholder. *Bestfoods*, 524 U.S. at 61-62 [Emphasis added]; see also *Craig v. Lake Asbestos of*
9 *Quebec, Ltd.*, 843 F.2d 145, 151 (3d Cir. 1988) (“It is to be expected that a corporation seeking to
10 acquire majority ownership of another will seek to achieve control.”); *id.* at 150 (“It is assumed to
11 be the norm that a parent will have ‘not only . . . the potential to exercise control [over the
12 subsidiary], but to exercise it to a substantial degree.’”) (quoting P. Blumberg, *The Law of*
13 *Corporate Groups: Tort, Contract, and Other Common Law Problems in the Substantive Law of*
14 *Parent and Subsidiary Corporations* § 10.02, at 187 (1987)). Thus, because all majority
15 shareholders and parent companies exercise control over the companies in which they invest,
16 allowing a “control” exception to limited liability would create an exception that would swallow
17 the rule. Nonetheless, the Prosecution Team and the Regional Board appeared to disregard this
18 clear controlling precedent and instead focused to a significant degree on whether IS&R and
19 Anaconda controlled Walker Mining Company because they did not have evidence to support a
20 finding of direct operator liability.

21 **B. Despite Repeatedly Citing to *Bestfoods*, The Regional Board Committed**
22 **Legal Error by Actually Applying Different and Erroneous Legal Standards.**

23 Although it acknowledged that *Bestfoods* governs any attempt to prove the direct operator,
24 second exception to shareholder non-liability, the Prosecution Team repeatedly asserted that
25 IS&R exercised “pervasive control” over the Walker Company. (*See, e.g.*, Quinn Decl. ¶ 36, Ex.
26 35, PT Open. Br. at 3; Quinn Decl. ¶37, Ex. 36, Fredric Quivik Expert Rpt. at 2, 20). The
27 Regional Board was influenced (and confused by) the Prosecution Team’s erroneous “pervasive
28 control” legal theory. (*See, e.g.*, Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 175:5-13

1 (in deliberations, Board Member Schneider finding it important that IS&R had “a lot of power to
2 take action when they chose . . . They always have that power. Whether they exercise it or not is
3 up to them . . .”). However, this “pervasive control” theory was the very same theory the
4 Supreme Court rejected in *Bestfoods*. The Prosecution Team also asserted that Atlantic Richfield
5 was liable because its predecessors had participated in activities that *generated* waste at the
6 Walker Mine. Yet, this waste-generation theory also is not the law. The Regional Board thus
7 committed legal error by relying on two inaccurate and unsupported legal standards.

8 In support of its pervasive control theory, the Prosecution Team cited the Regional Board
9 to two pre-*Bestfoods* cases that are no longer good law. The Prosecution Team first cited *Kaiser*
10 *Alum. & Chem. Corp. v. Catellus Dev. Corp.*, 976 F.2d 1338, 1341-42 (9th Cir. 1994) for the
11 proposition that liability attaches when a shareholder “actually exercised . . . control.” (Quinn
12 Decl. ¶ 36, Ex. 35, PT Open. Br. at 12). This “actual control” test is the same test the lower court
13 had applied in *Bestfoods*, the same test the Supreme Court overruled. 524 U.S. at 67 (explaining
14 that “[t]he well-taken objection to the actual control test . . . is its fusion of direct and indirect
15 liability”). Likewise, the Prosecution Team’s citation to *Long Beach Unified Sch. Dist. v.*
16 *Dorothy B. Godwin Cal. Living Trust*, was equally inapposite. 32 F.3d 1364, 1367 (9th Cir.
17 1994) (requiring “active control . . . before someone will be held liable as an ‘operator’”).

18 Given its misunderstanding of the applicable liability standard, much of the Prosecution
19 Team’s evidence was irrelevant. Evidence that IS&R personnel also served as officers or
20 directors of Walker – or even that IS&R controlled or was active in the management of Walker
21 Mining Company as the Prosecution Team alleges – is insufficient to prove the allegation of
22 “direct operator” liability. 524 U.S. at 70. So, too, Dr. Quivik’s extensive discussion of
23 Anaconda’s management structure is irrelevant, as well as the supposed “integration” of
24 management of the Walker Mining Company into Anaconda, overlapping officers and directors,
25 and the oversight of Walker Mining Company by the Anaconda Companies. All are red herrings
26 that misconstrue or conflate the *Bestfoods* standards. Still, the red herrings here misdirected the
27 Regional Board into legal error requiring its CAO to be vacated.

28 Similarly, the Prosecution Team repeatedly took the legal position that Atlantic Richfield

1 should be liable because its predecessors participated in activities (supervised and carried out by
2 Walker employees) that purportedly *generated* waste. (Quinn Decl. ¶ 38, Ex. 37, PT Rebuttal Br.
3 at p. 9 (“[G]eological, mining, and metallurgical activities” in which Atlantic Richfield’s
4 predecessors allegedly participated “generated the mine waste on the surface of the Mine and
5 Tailings sites.”)). Members of the Regional Board appeared to accept this unsubstantiated legal
6 theory at the hearing. (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 154:15-18 (“[A]s
7 [Regional Board Member] Schneider has pointed out, . . . the mining activities that Anaconda and
8 International directed at the Walker facility created the waste. They created the surface mining
9 waste.”)).

10 *Bestfoods* does not, however, allow for liability wherever an investor participates in
11 activities that generate or create waste. Every industrial operation generates some waste. If an
12 investor could be liable for participating in waste *generating* activities, then every investor in
13 every industrial enterprise would be liable for the entirety of the enterprise’s operations. If the
14 Prosecution Team’s simplistic formulation were accepted, the exception would swallow the rule
15 of limited liability. *Bestfoods*, therefore, is far more specific as to what activities will trigger
16 liability for an investor: “operations specifically related to pollution, that is, operations having to
17 do with the leakage or disposal of hazardous waste, or decisions about compliance with
18 environmental regulations.” 524 U.S. at 66-67. In this manner, courts evaluating liability for
19 mining operations have looked closely to see whether the particular activities in which an investor
20 participated actually related to waste disposal. *Compare Friedland*, 173 F. Supp. 2d 1077, 1098
21 (D. Colo. 2001) (rejecting an argument for *Bestfoods* direct operator liability where an investor
22 participated in mining related activities without involvement in waste disposal) *with United States*
23 *v. Newmont USA, Ltd.*, 2008 WL 4621566 at *51 (E.D. Wash. 2008) (imposing liability where an
24 investor’s participation included creation of waste dump areas). The Regional Board’s election to
25 ignore the distinction between investor involvement in activities resulting in incidental generation
26 of waste and direct operational decision-making relating to waste disposal activities is a second
27 and independent legal error requiring reversal of the CAO.

28

1 **C. The Standards of Review Differ Between Findings of Fact and Conclusions of**
2 **Law.**

3 Notwithstanding the Prosecution Team’s persistent protests to the contrary, its burden at
4 the Regional Board hearing was to produce and persuade the Regional Board that it had
5 introduced sufficient evidence to prove the *Bestfoods* direct operator test by a preponderance of
6 the evidence.¹⁰ The Prosecution Team’s misapprehension of the correct evidentiary standard no
7 doubt contributed to the Regional Board’s confusion over the appropriate legal standard and
8 contributed to its concluding that there was sufficient evidence to establish Atlantic Richfield’s
9 liability. Upon review, the standard before this State Board (as distinguished from a Superior
10 Court) is to review findings of fact to ascertain whether they were supported by substantial
11 evidence and to review conclusions of law *de novo*.

12 When a factual determination is attacked on the ground that there is no substantial
13 evidence to sustain it, the power of the reviewing tribunal is to determine on the entire record if
14 there is substantial evidence to support it. Substantial evidence is not just any evidence to support
15 the factual finding. The evidence must be -

- 16 • reasonable in nature,
17 • credible and
18 • of solid value. *Bowers v. Bernards*, 150 Cal. App. 3d 870, 872-73 (1984).

19 In the pre-hearing filings and at the hearing on the subject CAO, there was no substantial
20 evidence to support the Regional Board’s factual findings of liability. Moreover, as explained
21 above, the Regional Board erred in identifying and applying the legal standard for its legal
22 conclusion as to direct operator liability.

23 **D. There Was No Substantial Evidence to Support the Allegation of Direct**
24 **Operator Liability Against Atlantic Richfield.**

25 After spending at least three and one-half years gathering information for the purpose of
26

27 ¹⁰ Compare the argument on burden of proof in the Prosecution Team’s Rebuttal Brief at page 6 with the Board’s
28 ruling at March 27, 2014 Hearing Tr. at 10:6 to 12:17. (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. . at 10:6
to 12:17; Quinn Decl. ¶ 38, Ex. 37, PT Rebuttal Br. at p. 6).

1 bringing the CAO allegations against Atlantic Richfield and reviewing the thousands of pages of
2 exhibits it offered at the hearing in this case, the Prosecution Team's own pre-hearing brief
3 revealed apprehension over its lack of evidence on the critical direct liability issue which caused
4 it to misapply the legal standard and necessitate an unsupported assumption to meet its burden:

5 ...[S]ubstantial evidence in the record demonstrates that Anaconda
6 and International's control was so pervasive that it is reasonable to
7 assume that they *did* direct placement of waste at the Mine and
8 Tailings.

8 (Quinn Decl. ¶ 36, Ex. 35, PT Open. Br. at 13, VII.d.i. (emphasis added)). Clearly if the
9 Prosecution Team was in a position to offer evidence that Anaconda or IS&R directed placement
10 of waste, it would have said so. The fact is that the Prosecution had no such evidence and instead
11 pointed to purported "pervasive control" which as we have shown has been rejected by the US
12 Supreme Court and is not the applicable legal standard for establishing direct operator liability.

13 In fact, the available evidence showed the contrary – that Anaconda and IS&R had limited
14 involvement in the Walker Mine, and there is no evidence showing that Atlantic Richfield's
15 predecessors had any involvement in waste disposal. Anaconda and IS&R expertise was
16 provided around exploration and development. (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty
17 Expert Rpt. at pp. 9-10; Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at pp. 11-14). As
18 Dr. McNulty testified in his report and at the hearing, there are six phases of the type of mining
19 that was undertaken by the Walker Mining Company and its employees: (a) exploration and ore
20 reserves development, (b) mine development, (c) ore extraction, (d) concentration of the desired
21 minerals, (d) new product distribution and (f) waste disposal. (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry
22 McNulty Expert Rpt. at pp. 6-8; Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 89-92). It
23 is waste disposal here that has created environmental conditions. The record is clear and, on this
24 point, uncontested.

25 The vein being mined by the Walker Mining Company was quartz containing the copper
26 mineral chalcopyrite (CuFeS₂). The vein of quartz bearing the ore was light colored, nearly
27 white, whereas the surrounding country rock which did not contain copper minerals was dark
28 colored. Therefore, returning to the six phases of mining, exploration and ore reserve

1 development (*i.e.* locating the copper ore) as well as mine development (providing the miners
2 with access to the ore) involved little if any waste. These operations involved excavating country
3 rock – which Dr. McNulty explained was un-mineralized (did not contain copper).¹¹ Ore
4 extraction (*i.e.*, “mining” to lay people) also involved the removal of little if any non-ore
5 materials, because the ore was so easy to identify – it was light colored, and the surrounding
6 country rock was dark. Also, the country rock was strong and hard, allowing vein removal right
7 up to the contact surface without significant dilution of the ore by un-mineralized rock.
8 Moreover, the un-mineralized rock is not the source of any of the wastes which are the subject of
9 the CAO.

10 The Prosecution Team and its consultant, Fred Quivik predicated the case for Atlantic
11 Richfield liability upon 6 opinions. As Quivik explained:

12 A summary of my opinions regarding the relationship between
13 Anaconda/International and the Walker Mining Company is as
follows:

14 A. The Walker Mining Company developed and operated the
15 Walker mine in Plumas County, California, from 1916 to late 1941,
during which time the Walker mine was an important producer of
16 copper in California.

17 B. In 1918, the Anaconda Copper Mining Company, through its
wholly-owned subsidiary International Smelting & Refining
18 Company, acquired a controlling interest (50.4%) in the stock of the
Walker Mining Company.

19 C. During its period of operation, the Walker mine was one of the
20 major suppliers of copper concentrates to the Tooele smelter of the
International Smelting & Refining Company.

21 D. During the time the Walker mine operated, the Anaconda
22 Copper Mining Company was one the world’s leading copper
producers and one of the largest industrial corporations in the
23 world, with mining, smelting, refining, and fabricating operations
numerous locations in the United States as well as in Mexico and
24 Chile.

25 ¹¹ The wastes which the Board has found create environmental conditions in need of clean-up and abatement are
26 those wastes which are metaliferous (typically sulfides) which are derived from ore mining and discarded in a
27 manner (*e.g.* tailings) where they come into contact with water. The undisputed testimony before the Board was that
country rock, which was not metaliferous or sulfur bearing, did not contribute to metal loading to the environment or
28 acidification of ground or surface waters. As Dr. McNulty observed, “The vein walls (“country rock”) were very
hard, homogeneous, and devoid of sulfide mineralization. It was therefore possible to remove ore selectively with
minimum dilution by barren waste rock.” (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty Expert Rpt. at p. 8).

1 E. Like other large, complex, and geographically diverse industrial
2 enterprises of the early twentieth century, the Anaconda Copper
3 Mining Company developed a tightly-managed corporate structure
4 that allowed top managers of the parent corporation to direct the
5 operations of its several subsidiaries and far-flung operations.
6 Anaconda's top managers in the areas of geology, mining, and
7 metallurgy directed those facets of operations in the ACM's
8 subsidiaries, including the Walker Mining Company.

9 F. Although the Walker Mining Company had its own board of
10 directors, corporate officers, and local managers, management of
11 the Walker mine was fully integrated into the Anaconda Copper
12 Mining Company's enterprise and its management system, so that
13 the ACM's top managers in charge of geology, mining, and
14 metallurgy directed activities at those area at the Walker mine. In
15 this respect, the ACM and its subsidiary International managed the
16 Walker mine concurrently with the Walker Mining Company from
17 1918 to 1941.

18 (Quinn Decl. ¶37, Ex. 36, Fredric Quivik Expert Rpt. at 8 (emphasis added)).

19 In a nutshell, an observer reading these opinions is tempted to ask, "So what?"
20 Involvement in some, early phases of the mining operation does not equate to managing or
21 directing the mining operation as a whole. Even if all Dr. Quivik's opinions were properly
22 considered by the Regional Board (which they weren't – see section IV.E at pages 48 through 53
23 of this Petition) and even if the opinions were correct (which they weren't – see the remainder of
24 this section below), the opinions underlying the Quivik testimony, the Prosecution Team's case
25 and eventually the CAO, do not rely upon the substantial evidence that is necessary to support the
26 order at issue here.

27 Several observations are immediately apparent from reviewing the Quivik opinions:

- 28
- 29 (a) Quivik, the Prosecution Team, and subsequently the Regional Board, had to
30 acknowledge that Walker Mining Company had its own Board of Directors,
31 corporate officers and local managers.
 - 32 (b) Quivik, the Prosecution Team, and subsequently the Regional Board, had to
33 acknowledge that it was Walker Mining Company employees which both
34 developed and operated the Walker Mine from 1916 to 1941.
 - 35 (c) Quivik, the Prosecution Team, and subsequently the Regional Board, were focused
36 on a theory of pervasive control which the Supreme Court rejected as an
37 appropriate legal standard in *Bestfoods*.
 - 38 (d) Quivik, the Prosecution Team, and subsequently the Regional Board, were also
39 focused on waste generation activities rather than waste disposal activities which
40 further contravened the appropriate legal standard in *Bestfoods*.

1 (e) Neither Quivik, the Prosecution Team, nor the Regional Board pointed to any
2 specific evidence in support of a finding that either Anaconda or IS&R
3 “manage[d], direct[ed], or conduct[ed] operations specifically related to pollution,
4 that is, operations having to do with the leakage or disposal of hazardous waste, or
5 decisions about compliance with environmental regulations.” See *Bestfoods*, at
6 66-67 (bracketed letters added).

7 None of this is surprising. When Quivik was cross-examined at the March 27 hearing on
8 the CAO, he made a number of telling admissions that undermine the credibility of his opinions,
9 including:

10 Q: [By Attorney Bruen] Would you agree with me that neither of your reports
11 and no part of your presentation to the Board today
12 contains any document which states that either
13 International or Anaconda controlled the disposal of waste
14 at the Walker Mine?

15 A: [By Dr. Quivik] I have not seen such a statement.

16 (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 66:6-11).

17 Having not seen such a statement, Dr. Quivik was relegated to an attempt to interpret
18 documents written between 1916 and 1941. Yet he could not reliably make such interpretations
19 because as he also admitted upon cross-examination:

20 Q: [By Attorney Bruen] Dr. Quivik, let me proceed so we don't waste time.
21 Would you agree that you do not have a degree in mining?

22 A: I would agree.

23 Q: You have never been an employee of a mining company?

24 A: That's correct.

25 Q: Dr. Quivik, would you agree that you have never
26 spoken to anyone who worked for the Walker Mining Company
27 between 1918 and 1941 about the Walker Mining Company?

28 A: That's correct.

* * * *

Q: You have never spoken to anyone who worked for
International or Anaconda between 1918 and 1941 about the
Walker Mining Company?

A: That's correct.”

1 (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 60:21 – 61:8 and 61:16-19).

2 * * * *

3 Q: All right. Dr Quivik, you have prepared your report today
4 using the historical method, is that correct?

5 A: Yes.

6 * * * *

7 Q: But can you give me a yes or no question [answer]? Let me ask
8 you the question for the third time. Just a simple yes or
9 no question, if you can. If you can't answer, just tell
10 me.

10 Does the historical method allow you to base an
11 opinion on speculation, my third time?

11 A: No.

12
13 (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 61:20 - 64:15) (Bracketed language
14 added.)

15 Yet even using his suspect “historical method” to “interpret” (we would less generously
16 characterize this effort as unreliable speculation) 1916 to 1941 era documents, Quivik could not,
17 and the Prosecution Team could not, produce evidence relevant to the proper *Bestfoods* test of
18 direct operator liability. In his report, Quivik had to admit that, “The Walker Mining Company
19 mined and milled its own ore.” (*Id.* at 25). Therefore, although there is some evidence that
20 International and Anaconda provided occasional input on the exploration for and development
21 (location) of ore (the first of the six phases of mining), and less frequently on mine development
22 (the second phase of mining - providing access to the ore by drilling down to the vein), and even
23 less frequently on ore extraction (the third phase of mining) – Walker Mining Company mined
24 (the third phase of mining) and milled (the fourth phase, also known as concentrating) the copper
25 ore extracted from the mine. Walker Mining Company also distributed new product (the fifth
26 phase) and disposed of waste (the sixth and final phase). Thus, there is no substantial evidence
27 that Anaconda or IS&R ever “manage[d], direct[ed], or conduct[ed] operations specifically related
28 to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or

1 decisions about compliance with environmental regulations.”

2 The absence of substantial evidence explains why:

- 3 1. The Prosecution Team asked the Regional Board to “assume” that such evidence
4 existed.
- 5 2. The Prosecution Team’s sole witness on the issue of operator liability (Quivik)
6 admitted he had no actual mining experience and testified that he had never seen
7 any document which states that either International or Anaconda controlled the
8 disposal of waste at the Walker Mine.
- 9 3. Mining expert Terry McNulty opined, in relevant part, that: “Neither AMC
10 [Anaconda], nor IS&R [International], had any control over WMC [Walker
11 Mining Company] concerning the Walker Mine’s waste disposal activities.”
12 (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty Expert Rpt. at p. 5).¹²
- 13 4. Accounting and business expert William Haegele concluded, based on a review of
14 all surviving accounting and business records, that Anaconda and IS&R’s
15 involvement was with only a very limited portion of the Walker Mine business.
16 (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 112:21–113:6; Quinn Decl.
17 ¶ 39, Ex. 38, William Haegele Expert Test. PowerPoint, slide 7), and was not
18 managing the mine. (Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at 11-
19 15; Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 120:4–121:10).
- 20 5. The Bankruptcy Court examining the relationship between International and
21 Walker Mining Company, in 1945, when there were undoubtedly witnesses alive
22 who had first-hand personal knowledge of the relevant events, held, in part:
23 2. That Debtor [Walker Mining Company] is not and has never at
24 any time been an alter ego or instrument or department of
25 Anaconda Copper Mining Company or of International Smelting
and Refining Company, hereinafter called Claimant.

26 ¹² McNulty testified at the Board hearing that: “Q: [by Attorney Bruen] But with respect to the mining operation
27 which contained – which generated the waste in the last step [of the mining process], is it your testimony that all of
28 that activity was managed and undertaken exclusively by people who worked only for Walker Mining Company. A:
That is my testimony.” (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 95:21-96:1 (bracketed language
added)).

1 3. That Debtor's [Walker Mining Company's] business and affairs
2 have at all times been carried on and conducted in the manner and
3 according to the methods and practice usually employed by
4 corporations free of any domination or control by others.

5 4. That no act or omission of said Anaconda Copper Mining
6 Company or of said Claimant [International Smelting and Refining
7 Company], their officers, agents and employees, or any of them,
8 established by any evidence, constitutes or proves any domination
9 or control by them or any of them over Debtor or any of Debtor's
10 acts, business or affairs, or constituted fraud, or occasioned damage
11 or prejudice to or violated any right of Debtor or any of its
12 stockholders.

13 (See Quinn Decl. ¶ 8, Ex. 7, AR Ex. 131 (bracketed words added)).¹³

14 Quivik and the Prosecution Team's attempts to cloud the record by showing that certain
15 Walker Mining Company general managers had once worked for International are irrelevant for
16 two reasons: (a) it is fully consistent with corporate norms to have overlapping directors and
17 managers and (b) even if some of those individuals "wore two hats" (worked at Walker and some
18 other company at the same time), the law does not recognize that fact as providing undue control
19 by the second employer unless the employee places the interests of the second employer above the
20 interests of the first (i.e., Walker Mining Company). *Bestfoods*, 524 U.S. at 69. The United States
21 Supreme Court in *Bestfoods* explained that the "critical question" for a direct liability analysis "is
22 whether, in degree and detail, actions directed to the facility by an agent of the parent alone are
23 eccentric under accepted norms of parental oversight of a subsidiary's facility." 524 U.S. at 72.

24 As to this point, the consistent evidence before the Regional Board was that Walker
25 Mining Company and its shareholders, Anaconda and International, always acted within the
26 established norms of proper corporate behavior and that nothing they did was contrary to the best
27 interests of Walker Mining Company and all the stockholders. (See Quinn Decl. ¶37, Ex. 36,
28 Fredric Quivik Expert Rpt. at 17-18).

Consequently, shareholders are not generally liable for the acts of the publically-traded
corporations they invest in, with two exceptions that were initially alleged to be applicable here:
(a) corporate veil piercing liability, alter-ego liability, or indirect/derivative liability – which the

¹³ Quivik had never seen the Bankruptcy Court files or decision before he formed his opinions in this matter. He read the Court Decree only when he saw it in Atlantic Richfield's hearing brief.

1 Prosecution Team first alleged and later withdrew and (b) direct operator liability – which the
2 Prosecution Team misapplied after, among other things, citing two pre-*Bestfoods* cases that are no
3 longer good law. The Prosecution Team then compounded the confusion by misapprehending the
4 evidentiary standard which applied to the hearing and predicating its case on irrelevant evidence,
5 speculation and assumptions. As a result, the Prosecution Team misled the Regional Board into
6 erroneously determining that there was sufficient evidence to hold Atlantic Richfield liable under
7 the direct liability theory, notwithstanding the undisputable evidence that its predecessors did not
8 direct any pollution causing activities, did not violate the norms of corporate behavior, and acted
9 solely as investor-shareholders in the Walker Mining Company.

10 **III. The CAO Was Issued In Violation of Atlantic Richfield’s Due Process Rights.**

11 The hearing procedures before the Regional Board were constitutionally inadequate for
12 considering whether the draft CAOs could be issued against Atlantic Richfield. Atlantic
13 Richfield objected to the procedures proposed by the Regional Board Prosecution Team in
14 prehearing letters and motions.¹⁴ The Regional Board Advisory Team rejected each of Atlantic
15 Richfield’s requests and, instead, adopted the Prosecution’s hearing procedures *in toto*.¹⁵

16 A final schedule for the hearing was not announced until January 29, 2014, when the
17 Advisory Team rejected Atlantic Richfield’s challenges to the Prosecution Team’s proposed
18 hearing procedures and, instead, adopted the Prosecution Team’s proposed procedures and
19 deadlines: February 20, 2014 for presentation of Atlantic Richfield’s evidence and legal
20 arguments in written form, and March 27 or 28, 2014 for the hearing. The Hearing Procedures
21 allowed Atlantic Richfield only 45 minutes to present evidence and argument to the Regional

22 ////

23 ////

24 ////

26 ¹⁴ (See Quinn Decl. ¶ 40, Ex. 39, AR’s Renewed Request for Additional Time and Bifurcated Proceedings and
27 December 16, 2013 letter, attached thereto; Quinn Decl. ¶ 41, Ex. 40, AR’s Prehearing Motion No. 4).

28 ¹⁵ (See Quinn Decl. ¶ 32, Ex. 31, January 29, 2014 Hearing Procedures; Quinn Decl. ¶ 4, Ex. 3, March 27, 2014
Hearing Tr. at 25:7-12).

Board.¹⁶ Despite Atlantic Richfield's requests, the Hearing Procedures lacked any provision for formal discovery and deposition procedures, for expert disclosure procedures, or for separate argument of legal issues. Finally, Atlantic Richfield's request for bifurcation of the hearing on the CAOs was rejected. Bifurcation would have allowed the parties to develop and present evidence to the Regional Board first as to liability and, only if necessary, as to the divisibility and proper apportionment of responsibilities for carrying out the CAOs. The Advisory Team did not articulate any reasons for rejecting Atlantic Richfield's requests. The following table outlines the differences between what Atlantic Richfield proposed and what the Advisory Team adopted:

ISSUE	ATL. RICHFIELD PROPOSAL	FINAL PROCEDURES
Written Discovery	20 Interrogatories and 20 Requests for Admission per side	None
Depositions	4 fact depositions per side plus depositions of all opposing experts	None
Bifurcation	Two-phase proceeding to cover questions of liability in first hearing and apportionment / remedial issues in second hearing	Single proceeding
Expert disclosures	Experts to be designated and deposed prior to completion of briefing schedule	No separate disclosures and no depositions
Hearing date	May 2014 (approximately four months after finalization of hearing procedures)	March 2014 (two months after finalization of hearing procedures)
Hearing time for motions	Three hours	None designated
Total hearing time	Twelve hours over two days for first phase; same amount for second phase	55 Minutes for single-phase hearing

¹⁶ Atlantic Richfield was permitted only a modest amount of additional time at the hearing.

1 The truncated procedures adopted by the Advisory Team are inadequate for a case as
2 legally and factually complex as this one. In fact, the Regional Board itself took multiple years
3 just to conduct its own investigation. It began its technical assessment of the Mine Site over 50
4 years ago. (Quinn Decl. ¶ 11, Ex. 10, AR Ex. 179; *see also* Quinn Decl. ¶ 12, Ex. 11, Lombardi
5 Expert Rpt. at p. 19). In 1998, the Regional Board threatened enforcement against Atlantic
6 Richfield upon these same facts, but elected not to proceed. (Quinn Decl. ¶¶ 23-26, Exs. 22-25,
7 AR Exs. 148-149, 151-152; Quinn Decl. ¶ 42, Ex. 41, AR Ex. 150).

8 The U.S. Supreme Court's decision in *Mathews v. Eldridge* determines the constitutional
9 adequacy of proceedings that deprive a person of property. Under *Mathews*, courts analyze three
10 factors to determine what process is due: "First, the private interest that will be affected by the
11 official action; second, the risk of an erroneous deprivation of such interest through the
12 procedures used, and the probable value, if any, of additional or substitute procedural safeguards;
13 and finally, the Government's interest, including the function involved and the fiscal and
14 administrative burdens that the additional or substitute procedural requirement would entail." 424
15 U.S. 319, 335 (1976); *see also* *Ching v. Mayorkas*, 725 F.3d 1149, 1157-59 (9th Cir. 2013)
16 (applying *Mathews* to overturn a U.S. Citizenship & Immigration Services decision). The
17 Regional Board's procedures in this case fail under the *Mathews* test and therefore violate due
18 process.

19 *The CAO Impacts Substantial Interests of Atlantic Richfield.* The CAO imposes a
20 substantial burden on Atlantic Richfield. It requires Atlantic Richfield to "take control of the
21 mine"; submit documents that detail mapping, subsurface drilling, and other field investigations;
22 and to reduce acid mine drainage to a level that the Regional Board itself has been unable to
23 achieve, despite its decades' long remediation of the site and its expenditure of over \$2.6 million.
24 Unreasonable deadlines in the CAO will compound the significant expense associated with the
25 tasks required by the CAO. Atlantic Richfield estimates that its costs of complying with the
26 initial deadlines and requirements set forth in the CAO will exceed \$1 million. (Declaration of
27 Brian S. Johnson, ¶¶ 6-10).

28 *The Insufficient Procedures Resulted in a Great Risk for Error.* In *Mathews*, the Supreme

1 Court recognized that the risk of error is greater in cases involving more complicated legal and
2 factual questions. *See Mathews* (contrasting cases with “sharply focused and easily documented”
3 facts to those where “a wide variety of information may be deemed relevant”).¹⁷ 424 U.S. at 343.
4 Few substantive areas are more factually and legally complex than those in the environmental
5 arena and, in particular, those where issues under *Bestfoods* arise. *See, e.g., New York v. Solvent*
6 *Chem. Co., Inc.*, 664 F.3d 22, 27 (2d Cir. 2011) (“As is typical, the CERCLA claims and defenses
7 below were complex, and entailed years of litigation, weeks of trial, and thousands of pages of
8 briefing.”); *Amoco Oil Co. v. Borden, Inc.*, 889 F.2d 664, 667 (5th Cir. 1989) (“Because of the
9 complexity of CERCLA cases, which often involve multiple defendants and difficult remedial
10 questions, courts have bifurcated the liability and remedial, or damages, phases of CERCLA
11 litigation.”). This matter requires consideration of facts that are more than a hundred years old,
12 that involve historical mining practices, and that call upon the Regional Board to understand
13 multiple aspects of geology and modern environmental sciences. Without adequate time to
14 develop and present evidence, the risk of the Regional Board erring was high.

15 Before the hearing, Atlantic Richfield had but one opportunity to view the site.¹⁸ Nor was
16 Atlantic Richfield able to conduct any additional formal discovery, including discovery of what
17 actions at the site had been caused by subsequent owners and with whom the Regional Board had
18 settled; depositions of the Prosecution Team’s witnesses; or issuing requests for admission and
19 interrogatories. With only 55 minutes allotted for any opening or closing statements, motions
20 argument, witness presentation and cross-examination at the hearing, Atlantic Richfield was
21 unable to argue most of its motions; unable to conduct a full cross-examination of the Prosecution
22 Team’s witness; and was unable to provide all of its evidence of how the Prosecution Team’s
23 witnesses lacked the training and experience to reach their ultimate, speculative opinions on key
24

25 ¹⁷ In simple cases, less robust procedures may satisfy due process. For example, in *Machado v. State Water*
26 *Resources Control Board*, 90 Cal. App. 4th 720 (Cal. App. 2001), a case on which the Prosecution Team relied,
(Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 23:19-24:1), there was only one potentially liable party, that
party was the current owner and operator of the facility, and there was an eye witness to the pollution at issue.

27 ¹⁸ Upon receiving notice that prosecution of the Draft CAOs would go forward in December 2013, Atlantic Richfield
28 was able to visit the Mine Site only one time. The mine is located in a remote mountainous area that cannot be
accessed during the winter, which can last as long as six months.

1 issues before the Regional Board. Atlantic Richfield was also deprived of the opportunity to
2 present all of the direct testimonial evidence available to it on the key issues. Indeed, the
3 deliberations of the Regional Board, discussed in more detail above, reveal that the Regional
4 Board was confused about laws and facts and did err in issuing the CAO.

5 *The Regional Board Has No Legitimate Interest in Such Minimal Procedures.* Having
6 allowed the alleged pollution at the Mine to continue since at least 1958, having decided once
7 already not to take enforcement action against Atlantic Richfield and, more recently, having spent
8 more than three years investigating Atlantic Richfield,¹⁹ the Regional Board has no legitimate
9 argument for not allowing Atlantic Richfield additional time to prepare. Likewise, the Regional
10 Board offered no explanation for giving Atlantic Richfield under an hour to present its evidence
11 and legal arguments at the hearing. The Advisory Team noted that no hearing on a cleanup and
12 abatement order is required by State statute,²⁰ but this misses the point. Due Process is a
13 constitutional protection and no state statute can override this constitutional protection. The
14 Advisory Team also pointed to Atlantic Richfield's appeal rights,²¹ but this does nothing to cure
15 Atlantic Richfield's lack of discovery, lack of time to develop evidence, and lack of time to
16 present the evidence at the hearing. Further, as detailed in Atlantic Richfield Company's Petition
17 For Stay, the aggressive schedule imposed by the CAO prejudices Atlantic Richfield's appeal
18 rights.

19 **IV. In Issuing the CAO, the Regional Board Committed Significant, Additional Errors**
20 **Which Each, Independently, Warrant Vacating the Order.**

21 **A. CERCLA Bars Issuance of the CAO for the Mine Site as a "Challenge" to the**
22 **On-going Federal Response Actions at the Site**

23 The Comprehensive Environmental Response, Compensation and Liability Act of 1980
24 ("CERCLA") prohibits the Regional Board from issuing Cleanup and Abatement Order ("CAO")
25 R5-2014-0039 for the Walker Mine Site. The United States Forest Service ("USFS"), under

26 ¹⁹ The Regional Board staff's more "recent" investigation of the Sites appears to have begun in at least 2010. (See
27 Quinn Decl. ¶ 27, Ex. 26, AR Ex. 157, Sept. 2010 Regional Board email to Anaconda Collection).

28 ²⁰ (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 16:4-16).

²¹ (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 16:17 – 17:2).

1 authority delegated from EPA, selected a CERCLA remedy for the adjacent Walker Mine
2 Tailings site (“Tailings Site”), and CERCLA bars any other party from interfering with or taking
3 actions that could interfere with an on-going CERCLA remedy.²² The Regional Board
4 participated with the USFS in considering and selecting the CERCLA remedy for the Tailings
5 Site, and, under federal law, any response proposed or taken at the Mine Site must proceed under
6 CERCLA to ensure the federal remedy is implemented without interference.

7 The Regional Board acknowledges federal jurisdiction under CERCLA bars state
8 enforcement at the Tailings Site. Thus, the Regional Board elected not to issue a CAO to the
9 USFS or Atlantic Richfield to compel investigation and cleanup of the Tailings Site under state
10 law.²³

11 The Regional Board failed to acknowledge, however, that CERCLA also bars state
12 enforcement at the upstream Walker Mine Site. (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing
13 Tr. at 171:19-20). Little Dolly Creek flows past the Mine Site, less than a mile upstream from the
14 Tailings Site. Regional Board staff attempts to distinguish the Mine Site from the Tailings Site
15 solely because the Mine Site is on lands that are privately owned. (See Quinn Decl. ¶ 36, Ex. 35,
16 PT Open. Br. at p. 1 (“The site requires two CAOs because the Mine is privately-owned while the
17 Tailings are on [USFS] land.”)). Historically, the Walker Mining Company utilized both Sites as
18 part of a single mining operation. More importantly, one integrated hydrogeological system
19 connects the mine workings with the downstream tailings disposal area. Accordingly, “[c]hanges
20 in surface water or groundwater systems in the mine and mill area will affect conditions in the
21 lower tailings impoundment area,” and “[a]ttainment of water-quality objectives for Dolly Creek
22 and other surface waters requires coordination of upstream and downstream response actions.”
23 (Quinn Decl. ¶ 12, Ex. 11, Lombardi Expert Rpt. at pp. 21-22; see also Quinn Decl. ¶ 4, Ex. 3,
24 March 27, 2014 Hearing Tr. at 101:8-25).

25 ²² (See Quinn Decl. ¶ 43, Ex. 42, AR Ex. 145, Record of Decision (“ROD”)). The ROD reports that the USFS and
26 the Board “worked closely to analyze the site and develop treatment alternatives,” and that the Board received copies
27 of all relevant documents. (*Id.* at p. 4). USFS amended the ROD in August 2001. (See Quinn Decl. ¶ 44, Ex. 43,
AR Ex. 153, Amended ROD).

28 ²³ (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 172:17-174:3; Quinn Decl. ¶ 35, Ex. 34, March 28, 2014
Hearing Tr. at 10:20-13:14; 21:8-23:6; 40:4-41:20).

1 CERCLA § 113 Bars Issuance of the CAO for the Walker Mine Site. CERCLA § 113(b)
2 vests “exclusive original jurisdiction over all controversies arising under [CERCLA]” with the
3 federal district courts. 42 U.S.C. § 9613(b). State courts and other state tribunals (e.g., the
4 Regional Board) do not have jurisdiction over such claims. See *ARCO Env’tl. Remediation, L.L.C.*
5 *v. Dep’t of Health & Env’tl. Quality of Mont.*, 213 F.3d 1108, 1115 (9th Cir. 2000). Section
6 113(b)’s “arising under” clause is “coextensive” with CERCLA Section 113(h)’s timing of
7 review bar and thus both provisions bar “any ‘challenge’ to a CERCLA cleanup,” until the
8 cleanup is complete, and then an action is permitted only in federal court. *Fort Ord Toxics*
9 *Project, Inc. v. Cal. Env’tl. Prot. Agency*, 189 F.3d 828, 832 (9th Cir. 1999). The Prosecution
10 Team conceded that this is the correct reading of CERCLA Sections 113(b) and (h), but argued
11 that issuance of the CAO for the Mine Site is not a “challenge” to the ongoing CERCLA cleanup
12 at the Tailings Site. (See Quinn Decl. ¶ 36, Ex. 35, PT Open. Br. at p. 10-11).

13 A claim challenges a CERCLA cleanup if the claim “seeks to improve on the CERCLA
14 cleanup” or “interfere[s] with the remedial actions selected.” *McClellan Ecological Seepage*
15 *Situation v. Perry*, 47 F.3d 325, 330 (9th Cir. 1995); see also *Pakootas v. Teck Cominco Metals,*
16 *Ltd.*, 646 F.3d 1214, 1220 (9th Cir. 2011). Examples include claims or lawsuits “where the
17 plaintiff seeks to dictate specific remedial actions, to postpone the cleanup, to impose additional
18 reporting requirements on the cleanup, or to terminate the RI/FS and alter the method and order of
19 cleanup.” *ARCO Env’tl.*, 213 F.3d at 1115 (internal citations omitted). If the relief requested could
20 impact the response action that the federal government has selected or will select, then it
21 “challenges” the CERCLA cleanup. *McClellan*, 47 F.3d at 329-30; see also *Razore v. Tualip*
22 *Tribes of Wash.*, 66 F.3d 236, 239 (9th Cir. 1995). A claim seeking to improve upon or alter the
23 CERCLA remedy is a challenge regardless of whether the claim is brought under federal or state
24 law. See *ARCO Env’tl.*, 213 F.3d at 1115; *Fort Ord*, 189 F.3d at 832. “Congress concluded that
25 the need for [remedial] action was paramount, and that peripheral disputes, including those over
26 what measures actually are necessary to clean-up the site and remove the hazard, may not be
27 brought while the cleanup is in process.” See *McClellan*, 47 F.3d at 329 (internal quotation
28 omitted).

1 The CAO is a “Challenge” to the Adjacent CERCLA Cleanup. The CAO is a challenge to
2 the USFS remedy. The CAO requires Atlantic Richfield to “clean up and abate the discharge of
3 all mining waste and restore the affected water” in areas immediately adjacent to the Tailings
4 Site. (Quinn Decl. ¶ 2, Ex. 1, CAO at p. 11, ¶52). Atlantic Richfield’s expert Marc Lombardi
5 testified:

6 “So the mill site, underground workings and tailings facilities,
7 they’re all part of the same hydrologic system. Water flows
8 downhill. . . . It flows downhill and [a]ffects what happens on other
9 portions of the site. . . . You need to have [an] integrated remedy in
10 order to have a proper solution for the site.”

11 (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 101). Thus, any remedial activities
12 aimed at restoring water quality upstream at the Mine Site will affect the CERCLA cleanup
13 being carried out as part of the downstream USFS remedy. (See Quinn Decl. ¶ 12, Ex. 11,
14 Lombardi Expert Rpt. at p. 22 (“Changes in surface water or groundwater systems in the mine
15 and mill area will affect conditions in the lower tailings impoundment area, regardless of
16 administrative boundaries.”)). As it must, the Regional Board agreed with Mr. Lombardi’s
17 conclusion in his Expert Report that the water quality issues at the Mine and Tailings are
18 interrelated such that it will be necessary to coordinate efforts between the sites to attain water
19 quality objectives. (Quinn Decl. ¶ 12, Ex. 11, Lombardi Expert Rpt. at p. 21; see, Quinn Decl. ¶
20 38, Ex. 37, PT Rebuttal Br. at p. 16 (“The Prosecution Team agrees with this statement.”)).
21 Thus, the Regional Board’s issuance of the CAO “challenges” the USFS’s cleanup because
22 implementation of the requirements of the Order would “interfere with the remedial actions
23 selected.” *McClellan*, 47 F.3d at 330.

24 Importantly, the Regional Board is not left without a remedy. To the extent EPA may
25 agree with the Regional Board’s belief that further response to mitigate releases of hazardous
26 substances from the Regional Board’s remedy and other sources on the Mine Site is warranted,
27 EPA has authority under CERCLA to expand the federal response to address such impacts.

28 *The Prosecution Team’s legal argument misreads CERCLA.* The Regional Board
mistakenly believed that CERCLA’s so-called savings clauses (42 U.S.C. §§ 9614, 9652, &
9620), preserve the Regional Board’s jurisdiction to issue a CAO and negate Section 113. The

1 Regional Board also relied upon the case *United States v. Colorado*, 990 F.2d 1565 (10th Cir.
2 1993) for asserting jurisdiction here. (See Quinn Decl. ¶ 36, Ex. 35, PT Open. Br. at p. 6-9).²⁴

3 CERCLA itself states that none of its savings clauses affects the operation of section
4 113(h): “[CERCLA] does not affect or otherwise impair the rights of any person²⁵ under Federal,
5 State, or common law, *except with respect to the timing of review as provided in section [113(h)]*
6 *of this title . . .*” 42 U.S.C. § 9659(h) (emphasis added). Thus, Congress contemplated and
7 rejected the Regional Board’s position that CERCLA’s general savings clauses restrict the
8 operation of Section 113(h). See *Anacostia Riverkeeper v. Wash. Gas Light Co.*, 892 F. Supp. 2d
9 161, 171 (D.D.C. 2012) (rejecting argument that CERCLA’s savings clause affects the operation
10 of Section 113(h) because Section 159(h) “makes the primacy of CERCLA § 113(h) explicit”);
11 *see also Razore*, 66 F.3d at 240. CERCLA does not “save” the Regional Board’s challenge to the
12 USFS remedy.

13 The Regional Board Prosecution Team’s reliance on *United States v. Colorado* also was
14 misplaced. The Tenth Circuit left no doubt that, “the language of § 9613(h) does not differentiate
15 between challenges by private responsible parties and challenges by a state.” There, as here, the
16 question was limited to whether the State’s attempt to enforce state environmental laws did, in
17 fact, “challenge” the CERCLA remedy. *Id.* at 1575-80. In *Colorado*, however, the State sought
18 merely to ensure that the federal government conducted its cleanup at the hazardous waste site in
19 accordance with the State’s hazardous waste laws. *Id.* at 1568-69. There was no evidence that
20 application of the hazardous waste laws could interfere with or delay the ongoing cleanup. *Id.* at
21 1576. Here, by contrast, the CAO requires a third party, Atlantic Richfield, to take action because
22 the State-designed remedy for the mine site is not working and the Regional Board is not satisfied
23 with the USFS cleanup.

24 In the Prosecution Team’s words:

25 ²⁴ At one point, the Regional Board’s Prosecution Team wrongly contended that the federal CERCLA remedy for the
26 Tailings is not an action selected under §9604 of CERCLA and, on that basis, did not qualify for CERCLA Section
27 113 protection. The USFS disposed of this argument in its pre-filed papers in which the USFS explained that the
28 legal basis for actions at the Tailings site is EPA-delegated authority under §9604 of CERCLA. (Quinn Decl. ¶ 45,
Ex. 44, USFS Response at pp. 9-10). This argument was not raised further after USFS’s briefing.

²⁵ The term “person” includes a “State.” 42 U.S.C. § 9601(21).

1 “[T]he Mine site contributes copper and other waste to Dolly Creek,
2 which flows to the Tailings. Cleaning the Mine can only help the
3 Tailings.

4 (Quinn Decl. ¶ 46, Ex. 45, PT Resp. to AR Prehearing Mot. No. 1 at p. 1).

5 While the Regional Board may aspire to improve the federal remedy, CERCLA Section
6 113 prohibits issuance of CAO R5-2014-0039, and *United States v. Colorado* makes no provision
7 to the contrary. Nothing prohibits EPA from expanding cleanup under EPA’s CERCLA authority
8 to investigate and take action to mitigate releases from the Mine site to surface water and
9 groundwater, if it chooses to do so. In that way only, will coordination of upstream and
10 downstream actions within a single hydrologic system be assured.

11 **B. The Doctrine of Laches Precludes Issuance of the CAO.**

12 Because the Regional Board inexcusably waited decades to pursue Atlantic Richfield as a
13 discharger, and did so only after substantial exculpatory evidence had been lost, the doctrine of
14 laches precludes the issuance of the CAO against Atlantic Richfield.

15 Under California Civil Code § 3527, “[t]he law helps the vigilant, before those who sleep
16 on their rights.” This is the equitable defense of laches. *See Hamud v. Hawthorne*, 338 P.2d 387,
17 391-92 (Cal. 1959). Laches has two components: “[U]nreasonable delay plus either
18 acquiescence in the act about which plaintiff complains or *prejudice* to the defendant resulting
19 from the delay.” *Conti v. Bd. of Civil Service Comm’rs*, 461 P.2d 617, 622 (Cal. 1969) (emphasis
20 added); *see also Johnson v. City of Loma Linda*, 5 P.3d 874, 878 (Cal. 2000). When paired with
21 unreasonable delay, *either* acquiescence or prejudice is sufficient grounds to invoke laches. *See*
22 *In re Estate of Kampen*, 135 Cal. Rptr. 3d 410, 432 (Cal. Ct. App. 2011). Here, along with
23 unreasonable delay, the record establishes *both* prejudice and acquiescence. Laches therefore
24 precluded the Regional Board from issuing the CAO.

25 *The Regional Board’s Delay Is Unreasonable.* There is no excuse for the Regional
26 Board’s 55-year delay in bringing its case against Atlantic Richfield. IS&R’s status as a
27 shareholder of the Walker Mining Company was a matter of public record as early as 1918 when
28 the Anaconda Copper Mining Company reported IS&R’s investment to Anaconda shareholders.
(*See* Quinn Decl. ¶ 47, Ex. 46, AR Ex. 7). As the Prosecution Team itself acknowledges, the

1 Anaconda geological records and related correspondence upon which the Prosecution Team relies
2 have been publicly available since 1987. (Quinn Decl. ¶ 2, Ex. 1, CAO at ¶ 35).

3 Well after Anaconda's records became publicly available – and apparently based on those
4 records – the Regional Board began pursuing Atlantic Richfield, but then stopped. In letters
5 dated August 13, 1997 and June 15, 1998 (Quinn Decl. ¶ 22, Ex. 21, AR Ex. 144; Quinn Decl. ¶
6 23, Ex. 22, AR Ex. 148), the Regional Board sought to negotiate an agreement with Atlantic
7 Richfield “for past and future environmental remediation activities at the Walker Mine.” (Quinn
8 Decl. ¶ 23, Ex. 22, AR Ex. 148). On December 1, 1999, the Regional Board issued a Notice of
9 Tentative Order that would have named Atlantic Richfield as a Discharger at the Mine Site.
10 (Quinn Decl. ¶ 24, Ex. 23, AR Ex. 149). The Notice stated that “[h]istorical records show that
11 [Atlantic Richfield], as the successor of several companies that owned and operated the mine, is a
12 responsible party of the Walker Mine.” (Quinn Decl. ¶ 42, Ex. 41, AR Ex. 150 at p. 1). Counsel
13 for Atlantic Richfield provided comments on this Notice via a letter dated December 30, 1999.
14 (Quinn Decl. ¶ 25, Ex. 24, AR Ex. 151). In the letter, Atlantic Richfield identified the lack of
15 proof that Atlantic Richfield bore any liability for the Sites, as well as the significant legal hurdles
16 that the Regional Board would face in attempting to name Atlantic Richfield as a Discharger at
17 the Site. (*Id.* at 2-7). Atlantic Richfield specifically noted that, as of 1999, “[v]arious legal
18 doctrines, such as laches [and] equitable estoppel . . . would preclude Regional Board action
19 against [Atlantic Richfield] based on circumstances known for decades . . .” (*Id.* at 7). In
20 response to Atlantic Richfield's objections, on January 24, 2000, the Regional Board sent a letter
21 to counsel for Atlantic Richfield in which the Regional Board stated: “In response to your
22 comments, we have removed [Atlantic Richfield] from the tentative WDRs.” (Quinn Decl. ¶ 26,
23 Ex. 25, AR Ex. 152).

24 The Prosecution Team claimed that it more fully investigated the available records more
25 recently. (Quinn Decl. ¶ 2, Ex. 1, CAO at ¶ 35 (“Regional Board staff recently obtained and
26 reviewed relevant documents from the Anaconda Geological Documents Collection and other
27 sources.”)). Although Atlantic Richfield continues to dispute that the historical records identified
28 by the Prosecution Team prove any liability, the Prosecution Team did not claim, and could not

1 claim, that these records were unavailable or unknown to it. A lack of reasonable diligence does
2 not excuse laches. *Hecht v. Slaney*, 72 Cal. 363, 367 (1887) (“[A] party is presumed to know
3 whatever he might with reasonable diligence have discovered; and when the fundamental facts
4 upon which the alleged frauds rest, are matters of public record, open to his inspection, ignorance
5 of the fraud will not excuse his laches.”); *see also Whitman v. Walt Disney Prods., Inc.*, 148 F.
6 Supp. 37, 39 (S.D. Cal. 1957) (“[D]iligence must be observed to escape a charge of laches.”).

7 California courts have found unreasonable delays based on much shorter periods of time
8 than the decades at issue here. *See, e.g., Vernon Fire Fighters Ass’n v. City of Vernon*, 223 Cal.
9 Rptr. 871, 882 (Cal. Ct. App. 1986) (five-year delay unreasonable); *Kampen*, 135 Cal. Rptr. 3d at
10 432 (“This delay of more than 10 years was clearly unreasonable.”); *Piscioneri v. City of Ontario*,
11 116 Cal. Rptr. 2d 38, 46 (Cal. Ct. App. 2002) (noting that an “extreme delay” of 12 years “could
12 easily support an ultimate finding of laches” on remand); *Brown v. State Personnel Bd.*, 213 Cal.
13 Rptr. 53, 59 (Cal. Ct. App. 1985) (“[U]nless excused, a delay in the initiation of disciplinary
14 proceedings for more than three years is unreasonable as a matter of law.”).

15 *The Regional Board Acquiesced to Atlantic Richfield Not Being A Discharger.* In the
16 laches context, acquiescence is “a resting satisfied with[,] or submission to an existing state of
17 things.” *Lux v. Haggin*, 69 Cal. 255, 270 (Cal. 1886); *see also* Merriam Webster Online (defining
18 acquiesce as “to accept, agree, or allow something to happen by staying silent or by not arguing”).
19 Here, when the Regional Board chose not to investigate Atlantic Richfield or its predecessors for
20 the first thirty-five years it investigated the Mine Site, it acquiesced in Atlantic Richfield’s
21 position that it is not a Discharger. Additionally, the Regional Board acquiesced to Atlantic
22 Richfield not being a Discharger on several specific occasions: First, when the Regional Board
23 chose to take remedial actions at the Mine Site without consulting or involving Atlantic Richfield;
24 Second, when the Regional Board chose not to pursue Atlantic Richfield alongside the Site
25 owners in 1991 and 1997;²⁶ and Third, when the Regional Board affirmatively said that it would
26 *not* name Atlantic Richfield as a Discharger in 1999. In the words of the Regional Board’s own
27

28 ²⁶ The Board’s pursuit of, and settlement with, owners of the site is detailed *infra* at pages 40-41.

1 staff, “In response to [Atlantic Richfield’s] comments, we have removed [Atlantic Richfield]
2 from the tentative WDRs.” (Quinn Decl. ¶ 26, Ex. 25, AR Ex. 152). Laches prohibits the
3 Regional Board from now coming back to Atlantic Richfield complaining of circumstances to
4 which it has already acquiesced.

5 *The Regional Board’s Delay Prejudices Atlantic Richfield.* Though the Regional Board’s
6 acquiescence to Atlantic Richfield’s position several times between 1958 and 2000 is sufficient
7 (along with unreasonable delay) to invoke laches under California law, Atlantic Richfield can
8 also demonstrate prejudice due to the Regional Board’s decades-long delay. Had the Regional
9 Board named IS&R and Anaconda as Dischargers at Walker Mine when it initially investigated
10 the site in 1957, (Quinn Decl. ¶ 11, Ex. 10, AR Ex. 179), or after Atlantic Richfield donated
11 Anaconda’s records to the University of Wyoming in 1987, (Quinn Decl. ¶ 2, Ex. 1, CAO ¶ 35),
12 or when the Regional Board prosecuted Robert Barry and the Calicopia Corporation in 1991, (*id.*
13 ¶ 28), or even when it determined *not* to issue its Tentative Order for the Mine Site in 1999,
14 (Quinn Decl. ¶ 26, Ex. 25, AR Ex. 152), more evidence would have been available to Atlantic
15 Richfield, including witnesses with knowledge of mine operations, Walker Mining Company
16 management practices and perhaps even the Walker Mining Company’s own documents.²⁷

17 Even since 1999, evidence from those with first-hand knowledge of facts related to mine
18 operations has been lost. Exhibit 135 contains notes of interviews conducted with several former
19 residents at the Walker Mine, including Marcie Nielsen, Gilbert Lumen, and Luis Richards. (*See*
20 Quinn Decl. ¶ 48, Ex. 47, AR Ex. 135). Nielsen, Lumen, and Richards were alive in 1999 and
21 could have provided testimony about Walker Mining Company’s operations, but all are now
22 deceased—Nielsen in 2005, Lumen in 2008, and Richards in 2001. (*See* Quinn Decl. ¶ 49, Ex.
23 48, Declaration of Andrea Hamilton at ¶¶ 5-8). Atlantic Richfield is aware of no person still
24 living who could provide first-hand testimony concerning Walker Mining Company operations,
25

26 ²⁷ The lack of Walker Mining Company records greatly prejudices Atlantic Richfield because it means that the only
27 documents available are Anaconda’s and IS&R’s. Those records necessarily emphasize the scope of Walker Mine’s
28 operations in which IS&R and Anaconda had involvement – which were limited – without shedding any light on the
numerous other aspects of the Walker Mine’s operations in which IS&R and Anaconda were never consulted.
(Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty Expert Rpt. at pp. 13-14).

1 including IS&R's role (if any) in pollution-causing activities at Walker Mine.

2 Importantly, when a more extensive record and witnesses *were* available, a federal
3 bankruptcy judge found that, contrary to the Regional Board's conclusion, Atlantic Richfield's
4 predecessors did not control the Mine. In 1945, after an eight-day hearing to consider the
5 relationship between IS&R and the Walker Mining Company, (*See* Quinn Decl. ¶ 50, Ex. 49, AR
6 Ex. 132), based upon the testimony and documentary evidence presented, federal Judge Jackson
7 concluded that the Anaconda companies did not control the Walker Mine. (Quinn Decl. ¶ 8, Ex.
8 7, AR Ex. 131). After receiving notice of the hearing before the Regional Board on the Draft
9 CAO's, Atlantic Richfield searched for the transcripts of this eight-day bankruptcy hearing.
10 Atlantic Richfield was informed that they were recently destroyed.²⁸ Decl. of Andrea
11 McCullough.

12 Although the laches bar to the CAO was presented to the Regional Board²⁹ and members
13 of the Regional Board recognized the unfairness of this extreme delay,³⁰ the Regional Board
14 denied Atlantic Richfield's request.³¹ The Regional Board erroneously concluded that laches can
15 be ignored when a public agency seeks to abate a nuisance. (Quinn Decl. ¶ 2, Ex. 1, CAO ¶ 54).

16 Laches is equally available as a defense to a state agency's claim as it is to any other
17 plaintiff's claim. *Brown v. State Personnel Bd.*, 166 Cal. App. 3d 1151, 1163 (Cal. App. 1985);
18 *City of Los Angeles v. County of Los Angeles*, 9 Cal. 2d 624, 630 (Cal. 1937). And there is no
19 precedent for allowing a nuisance claim to proceed against a party that has not been involved with
20 the site for decades. *Wade v. Campbell*, cited by the Prosecution Team, merely explains that a
21 defendant cannot rely on laches when its current "acts on and uses of" its property cause a
22 continuing nuisance. 200 Cal. App. 2d 54 (1962). Similarly, *City of Turlock v. Clarence*
23 *Bristow*, involved the current owner who failed to abate a continuing nuisance. 103 Cal. App.

24 ²⁸ Atlantic Richfield hereby requests the State Board administratively notice the fact of the recent destruction of these
25 court records.

26 ²⁹ (*See* Quinn Decl. ¶ 51, Ex. 50, AR Prehearing Mot. No. 3).

27 ³⁰ (Quinn Decl. ¶ 35, Ex 34, March 28, 2014 Hearing Tr. at p. 8:10-22; Quinn Decl. ¶ 4, Ex. 3, March 27, 2014
28 Hearing Tr. at p. 179:18-19 (Board Member Moffitt: "[W]hy did we wait until now to start really directing ARCO to
start cleaning up the mine?").

³¹ (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at p. 9:3-4; Quinn Decl. ¶ 2, Ex. 1, CAO ¶ 54).

1 750 (1930). The Prosecution Team was unable to cite to any case in which a defendant whose
2 only involvement in the site ended decades ago was precluded from relying on the defense of
3 laches.

4 **C. The Regional Board Erroneously Denied Atlantic Richfield's Motion for a**
5 **Ruling that the Regional Board Itself is a Discharger/Responsible Party and**
6 **the CAO is, In Essence, a Contribution Adjudication that Must be Filed in a**
7 **Court of Law.**

8 **1. The Regional Board is a Liable Party and may not Issue the CAO and**
9 **Adjudicate Atlantic Richfield's Liability in an Administrative Hearing**

10 The Regional Board is itself liable for abating the alleged nuisance conditions at the Mine
11 Site through its settlements with former owners and operators and responsibility for response
12 actions that have expanded the area of contamination. The Prosecution Team argued that the
13 Regional Board has never itself assumed general liability for the conditions of pollution and
14 nuisance at the Mine site.³² In fact, it has through settlement and release of former owners and
15 operators of the Mine.³³

16 *The Regional Board assumed Site liability through Settlements.* In 1991, the Regional
17 Board settled with then-owners Robert Barry ("Barry"), Calicopia Corporation ("Calicopia"), and
18 several other affiliated individuals. Pursuant to their settlement agreement, these parties paid the
19 Regional Board \$1.5 million and obtained a complete release of all liability associated with the
20 Mine Site, including a release of the lien the Regional Board had placed on the property. This
21 settlement also included a clause whereby the Regional Board agreed to indemnify and hold the
22 settling parties harmless from "any loss, liability, or damages occasioned by or arising out of any
23 act or omission of the [Regional] Board upon the Property pursuant to any right granted to it
24 hereunder."³⁴ (Quinn Decl. ¶ 53, Ex. 52, PT Ex. 16, at p.7).

25 ³² (See Quinn Decl. ¶ 52, Ex. 51, PT Resp. to AR Prehearing Mot. No. 5 at p. 2).

26 ³³ In drafts of the CAO, the Regional Board initially described these settlement agreements as "hold harmless"
27 agreements. After Atlantic Richfield submitted its Prehearing Brief and Prehearing Motions, the Regional Board
28 later retracted those portions of the Draft CAO describing its settlements as hold harmless agreements, saying that
only one of the agreements contained a hold harmless clause (referenced in the text above) which the Regional Board
apparently views as relatively limited. As Atlantic Richfield explained at the hearing, this distinction has no legal
significance given the circumstances under which the Regional Board entered the settlements. (Quinn Decl. ¶ 4,
Ex. 3, March 27, 2014 Hearing Tr. at 20:3-21:6).

³⁴ The "right" granted to the Board in the same paragraph of its agreement with the settling parties included the right
to "conduct such remedial activities as [the Regional Board] deems necessary."

1 In 1999, the Regional Board reached a similar agreement with Cedar Point Properties
2 (“CPP”) and its principal, Daniel Kennedy (“Kennedy”).³⁵ In exchange, CPP and Kennedy paid
3 to the Regional Board the proceeds of a timber harvest on the Site. Before settling with CPP and
4 Kennedy, the Regional Board placed a lien on the Site property for \$238,334, which appears to be
5 the costs associated with Board work completed up to that time that had not been paid for by the
6 \$1.5 million settlement with Barry and Calicopia. (See Quinn Decl. ¶ 54, Ex. 53, AR Ex. 147 at
7 p. 4). By 2004, CPP’s timber harvest had netted sufficient funds to pay off the lien plus an
8 additional \$102,307.60. (See Quinn Decl. ¶ 55, Ex. 54, AR Ex. 154 at p. 2). In 1997, however,
9 the Regional Board had requested and received \$1.2 million in state Abatement Account funds for
10 work at the Mine Site, (see Quinn Decl. ¶ 56, Ex. 55, AR Ex. 146 at p. 1), yet the Regional Board
11 apparently made no effort to recover those funds from CPP or Kennedy before releasing
12 Kennedy.

13 Through these settlements, the Regional Board took on liability for the Site. Without
14 question, the Regional Board assumed liability by agreeing to indemnify and hold Barry and
15 Calicopia harmless for remedial activity the Regional Board conducted at the Site pursuant to the
16 1991 agreement. *Cal. Sch. Boards Assn. v. State Bd. of Educ.*, 191 Cal. App. 4th 530, 568 (Cal.
17 Ct. App. 2010) (“A contractual arrangement whereby one party assumes the liability inherent in a
18 situation, thereby relieving the other party of responsibility.”).

19 Even without a hold harmless agreement, however, the Regional Board still incurred
20 significant liability by settling with and releasing its claims against the Site’s former owners.
21 Water Code sections 13304 and 13305 – the authority under which the Regional Board undertook
22 remedial actions at the Site and entered these settlement agreements – both give the Regional
23 Board authority to impose a lien against the property owner. In reaching these settlements, the
24 Regional Board twice released liens in exchange for payments that were less than the amount
25 required to remediate the Site. Indeed, in settling with CPP and Kennedy, the Regional Board
26 agreed to release Kennedy if he and CPP were able to satisfy *half* of a \$238,334 lien, even though

27 ³⁵ In addition to being CPP’s principal, Kennedy appears to have owned the Mine Site in his personal capacity for
28 some period of time before transferring it to CPP.

1 two years before that, the Regional Board had just requested and received \$1.2 million from the
2 State Abatement Account for remedial activities at Walker Mine. To the extent the Regional
3 Board misjudged the true amount of money necessary to abate the Mine Site and maintain *in*
4 *perpetuity* the remedy it selected and installed, the Regional Board bears that liability itself. The
5 Regional Board certainly cannot shift the liability to Atlantic Richfield.

6 *The Regional Board is Liable as a Site Operator.* The Regional Board is also liable for
7 Site response because it is an “operator” of its own adit plug remedy that has expanded the area of
8 contamination and contributes to surface water contamination. (Quinn Decl. ¶ 4, Ex. 3, March
9 27, 2014 Hearing Tr. Testimony of Marc Lombardi at pp. 102-103)). Atlantic Richfield’s expert
10 testimony on the effect of the adit plug on groundwater contamination was not rebutted. Perhaps
11 more telling, the CAO itself acknowledges contaminants have entered groundwater as a
12 consequence of the Regional Board’s remedy, but attempts to shield the Regional Board from
13 responsibility by concluding the “fate of this subsurface release of AMD from the mine is not
14 known but could pose a long term threat to groundwater or surface water.” (Quinn Decl. ¶ 2,
15 Ex. 1, CAO at p.4, ¶ 19).

16 The Regional Board was previously held liable for similar activities at another mine site.
17 In *Committee to Save Mokelumne River v. East Bay Mun. Util. Dist.*, the U.S. Court of Appeals
18 for the Ninth Circuit affirmed a trial court decision holding the Regional Board liable under the
19 Clean Water Act for remedial actions it took at the Penn Mine. 13 F.3d 305, 310 (9th Cir. 1993).
20 At Penn Mine, as here, the Regional Board had constructed remedial facilities designed to capture
21 acidic runoff from a historical mining operation, but the Regional Board’s facility sometimes
22 allowed the runoff to flow into local waterways. 13 F.3d at 306-07. The Ninth Circuit rejected
23 the Regional Board’s arguments that the releases from its remedial facilities did not count as
24 discharges under the Clean Water Act, *id.* at 308-09, as well as the Regional Board’s claim that it
25 was immune from suit, *id.* at 309-10. So too here, the Regional Board will be unable to avoid
26 liability for its failed or insufficient remediation of Walker Mine. *See also W.Va. Highlands*
27 *Conservancy, Inc. v. Huffman*, 625 F.3d 159, 166 (4th Cir. 2010) (likewise holding a state
28 environmental agency liable under the CWA for failed remedial efforts).

1 The Regional Board's failed remedial efforts also make the Regional Board liable for the
2 Site under CERCLA and California's analogous provisions in the Health & Safety Code. The
3 U.S. District Court for the Eastern District of California considered similar circumstances in
4 *United States v. Iron Mountain Mines*. 881 F. Supp. 1432 (E.D. Cal. 1995). The court in *Iron*
5 *Mountain* agreed with the defendant that the State of California (through the Regional Board and
6 the State Board) could be liable as an operator for participating in the operation of dams that
7 allegedly contributed to environmental harm connected to a historical mining area. *Id.* at 1452.
8 In so holding, the court rejected the State's argument that it was entitled to some kind of
9 immunity because it had acted only in a remedial capacity and pursuant to regulatory authority.
10 *Id.* at 1445-49. The case for operator liability here would be even stronger because the Regional
11 Board, by itself, has conducted several remedial operations on the Mine Site and continues to
12 operate those facilities today. (See Quinn Decl. ¶¶ 57-81, Exs. 56-80, PT Exs. 22-46 (setting
13 forth the Regional Board's O&M Procedures for the Mine Site and documenting the Regional
14 Board's remedial efforts there)). California's Health & Safety Code imposes liability in the same
15 circumstances as does CERCLA, Cal. Health & Safety Code § 25323.5 (defining "responsible
16 party" and "liable person" by reference to CERCLA), so the Regional Board is liable under both
17 federal and state law for these same remedial activities.

18 In prehearing briefing and at the hearing, the Regional Board effectively ignored the
19 multiple bases on which it is liable for its remedial activities, instead focusing almost exclusively
20 on whether the Regional Board could be liable under the Water Code. There are three responses
21 to the Regional Board's arguments. First, the so-called Good Samaritan provision on which the
22 Regional Board relied, Cal. Water Code § 13398, cannot save the Regional Board from liability
23 for having actually caused additional discharges and expanded contamination of groundwater at
24 the Site as a consequence of its response activity, particularly when the Regional Board's actions
25 were not taken pursuant to a remediation plan approved under the Good Samaritan provisions.
26 (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 103:9-23). Second, Water Code section
27 13305 is explicit in imposing a mandatory obligation on the Regional Board to abate conditions
28 where the property owner has refused, Cal. Water Code § 13305(e)(2) ("[T]he regional board

1 *shall* cause the condition to be abated”), and makes no provision for the Regional Board handing
2 off responsibility for such abatement when it has determined the abatement to be more onerous
3 than it thought. Subsequent passage of Cal. Water Code § 13398 does not retroactively operate to
4 relieve the Regional Board of the liabilities it accepted in settlements entered under Cal. Water
5 Code § 13305. Third, and finally, the Regional Board presented no rationale for how this case is
6 different from others where state environmental agencies have been held liable as site operators
7 or dischargers pursuant to federal law; even if they were applicable, which they are not, the state
8 Water Code’s Good Samaritan provision certainly would not bar federal liability and, as in the
9 cases above, courts have regularly rejected state agencies’ attempts to read immunity provisions
10 into federal environmental law.

11 Finally, despite the Regional Board’s repeated assertions that Atlantic Richfield is “the
12 sole remaining viable responsible party,” (Quinn Decl. ¶ 36, Ex. 35, PT Open. Br. at 3), there are
13 in fact multiple other parties who operated the Site and have not been investigated. Multiple
14 Regional Board documents refer to entities that operated at the Mine Site, with the Regional
15 Board’s knowledge, during Barry’s and Calicopia’s tenures as the Site owner. A 1986 memo in
16 the Regional Board files lists the various entities that conducted these operations, including
17 Noranda Exploration, AMAX, Inc., Conoco (now known as ConocoPhillips Company), and
18 Standard Bullion Corporation, Inc. (Quinn Decl. ¶ 82, Ex. 81, AR Ex. 142 at pp. 2-3). Another
19 document from the Regional Board’s files gives additional details about these entities’
20 involvement at the Mine Site, indicating that several of these entities actively undertook both
21 mining related work and remedial work on the Mine Site. (*See, e.g.*, Quinn Decl. ¶ 10, Ex. 9, AR
22 Ex. 141 at p. 5 (describing AMAX as “the operator” and describing its reconstruction of a tunnel,
23 as well as cleaning out of “a major cave-in”); *see also* Quinn Decl. ¶ 4, Ex. 3, March 27, 2014
24 Hearing Tr. at 99:12-100:4; Quinn Decl. ¶ 83, Ex. 82, Marc Lombardi Expert Test. PowerPoint,
25 slide 5 (presenting a timeline detailing activities at the Site by various operators)). When Atlantic
26 Richfield presented this same argument in its prehearing briefing to the Regional Board –
27 including the same exhibits – the Regional Board’s only response was to say, incredibly, that “the
28 Board’s investigations to date have not revealed any additionally potentially responsible parties.”

1 (Quinn Decl. ¶ 84, Ex. 83, PT Resp. to AR Prehearing Mot. No. 2, at p.8). That position must be
2 rejected as it simply does not square with the evidence Atlantic Richfield presented.

3 *The Regional Board's CAO Is Actually A Contribution Claim.* Thus, the Regional
4 Board's claims against Atlantic Richfield are in fact and at law claims for contribution. "When
5 one liable party sues another to recover its equitable share of the response costs, the action is one
6 for contribution." *Amoco Oil Co. v. Borden, Inc.*, 889 F.2d 664, 672 (5th Cir. 1989). Although
7 cloaked as an enforcement action through issuance of the CAO, the Regional Board has issued
8 the CAO to Atlantic Richfield to re-allocate liability for cleaning up the Mine Site; the Regional
9 Board has borne more liability than it thinks is equitable and has, through issuance of the CAO,
10 allocated future costs to Atlantic Richfield for which the Regional Board is itself liable.

11 The Regional Board's intent to use the CAO as a means to shift the Regional Board's
12 liability onto Atlantic Richfield is evident from the record. In 2011, a Regional Board staff
13 member seeking his supervisors' approval for additional investigation of Atlantic Richfield's
14 connection to the Sites wrote that "[i]f the [Regional Board] is to reduce its liabilities for Walker
15 Mine, it must determine if a responsible party exists." (Quinn Decl. ¶ 85, Ex. 84, AR Ex. 158
16 (emphasis in original)). A Regional Board memo from 2013 is even more to the point: "Please
17 bear in mind that the [Regional Board] potentially is a responsible party . . . and the sooner we
18 bring [Atlantic Richfield] in as a RP the sooner we are relieved of that responsibility." (Quinn
19 Decl. ¶ 28, Ex. 27, AR Ex. 159 (emphasis added)).³⁶

20 Federal case law is clear that a plaintiff may not expand its rights by restyling a
21 contribution claim as some other cause of action. In *United States v. Cannons Eng'g Corp.*, a
22 U.S. Court of Appeal considered whether a plaintiff could bring an indemnity claim where
23 CERCLA would bar a contribution claim. 899 F.2d 79 (1st Cir. 1990). The court held that the
24 indemnity claim was "in effect only a more extreme form of a claim for contribution" and thus
25 affirmed the indemnity claim's dismissal. *Id.* at 92 (internal alteration omitted); *see also United*
26 *States v. Pretty Products, Inc.*, 780 F. Supp. 1488, 1495-97 (S.D. Ohio 1991) (dismissing state

27
28 ³⁶ The referenced record was produced with other materials by the Regional Board in response to a CA Public
Records Act Request served by Atlantic Richfield.

1 law claims for indemnity, breach of express or implied contract, and various equitable doctrines
2 including quasi-contract, *quantum meruit*, restitution and unjust enrichment because the claims
3 were simply attempts to bring a contribution action under a different name).

4 Here, through issuance of the CAO, the Regional Board goes further by attempting to
5 transfer all future liability for the Site to Atlantic Richfield, including responsibility for fixing the
6 problems created by the Regional Board's 1987 adit plug installation. In effect, the Regional
7 Board seeks to absolve itself of the obligations it accepted by undertaking remedial actions and
8 settling with, releasing, and holding harmless responsible parties.

9 *The Regional Board Lacks Jurisdiction to Adjudicate a Contribution Claim.* The
10 California Water Code does provide for contribution actions in other circumstances – but the
11 Regional Board does not have jurisdiction to adjudicate such actions. To the contrary, Water
12 Code Section 13350(i) provides that “[a] person who incurs any liability established under this
13 section shall be entitled to contribution for that liability from a third party, *in an action in the*
14 *superior court . . .*” (Emphasis added). Thus, the Water Code plainly expresses the legislature's
15 intent to not give the Regional Board jurisdiction over disputes about who among multiple liable
16 parties, including the Regional Board itself, will bear the costs of a remediation. The Regional
17 Board, like any other liable party, must bring such disputes either to the California Superior Court
18 (under the Water Code) or to federal court (under CERCLA). Indeed, a system by which the
19 Regional Board could sit as the trier of fact and law in an action to shed its own liability onto
20 another party would be unconstitutional on its face. (*See infra* Sec. III.D).

21 **D. The Regional Board Should Have Recused Itself from Hearing the Proposed**
22 **CAOs.**

23 “[A] fair trial in a fair tribunal is a basic requirement of due process.” *Withrow v. Larkin*,
24 421 U.S. 35, 46 (1975). This case required the Regional Board to determine whether to shift all
25 or a portion of its own liability onto the Dischargers named in the Draft CAOs. When a tribunal's
26 members have a financial interest in the outcome of a case, Due Process requires that they recuse
27 themselves. *Id.* The financial interest need not be personal to the tribunal members; instead, a
28 decision-maker's interest in maintaining the funds in a public account is sufficient to disqualify

1 that person from serving as an adjudicator. *See Ward v. Village of Monroeville*, 409 U.S. 57, 59
2 (1972) (holding that a mayor could not be an impartial adjudicator where the revenue produced
3 by fines in his court provided a “substantial portion of [the] municipality’s funds”); *Esso v. Lopez*,
4 522 F.3d 136, 147 (1st Cir. 2008) (holding that the Puerto Rican Environmental Quality Board
5 was not impartial where it sought to impose a fine that would be paid into an account it
6 administered).

7 As discussed, *supra* at pages 40-44, the Regional Board is itself a responsible party
8 because of its settlements with prior owners and its own activities on the site. Indeed, its own
9 staff recognized the Regional Board’s obligations and pursued Atlantic Richfield, at least in part,
10 as a means of reducing its own obligations.

11 For example, in a memorandum from Jeff Huggins to Victor Izzo requesting funds to
12 further research Atlantic Richfield, Mr. Huggins noted:

13 For the past 20 years, the Central Valley Water Board has incurred
14 considerable obligations for long term operations and maintenance
15 of the mine seal. This is expensive and the liabilities are not
16 insignificant. If the Central Valley Water Board is to reduce its
liabilities for Walker Mine, it must determine if a responsible party
exists.

17 (Quinn Decl. ¶ 85, Ex. 84, AR Ex. 158 (emphasis in original)). Similarly, when Victor Izzo
18 requested that the draft CAOs against Atlantic Richfield be issued, he explained:

19 Please bear in mind that the Central Valley Water Board potentially
20 is a responsible party for the mine seal and remedial actions that
21 currently exist at the site and the sooner we bring ARCO in as a RP
the sooner we are relieved of that responsibility.

22 (Quinn Decl. ¶ 28, Ex. 27, AR Ex. 159; *see also* Quinn Decl. ¶¶ 86-87, Exs. 85-86, AR Exs. 294
23 and 301).³⁷

24 No court or other adjudicating body would determine that it is proper for it to sit in
25 judgment of a matter in which it has a direct, admitted financial interest. Indeed, the United

26 ³⁷ There were additional indications that the issuance of the CAO against Atlantic Richfield was a foregone
27 conclusion. For example, the revised CAO circulated by the Advisory Team on the second day of the hearing reveals
28 that the Advisory Team edited the CAO on March 26, 2014, before the hearing even began, to match the ultimate
ruling of the Regional Board (to issue only the Mine CAO and not the Tailings CAO).

1 States Supreme Court has explained that whether or not the tribunal would consciously act on its
2 bias, “the probability of actual bias on the part of the [tribunal] is too high to be constitutionally
3 tolerable.” *Withrow*, 421 U.S. at 46.

4 Atlantic Richfield raised this financial conflict to the Regional Board both in pre-hearing
5 motions and in argument at the hearing,³⁸ but the Regional Board declined to recuse itself.³⁹ This
6 was a constitutional error that must be reversed.

7 **E. The Regional Board Erroneously Denied Atlantic Richfield’s Motion to**
8 **Exclude Certain Speculative and Improper Opinions of Historian Fred**
Quivik.

9 In the proceedings below, Atlantic Richfield sought to exclude certain of Dr. Quivik’s
10 opinion testimony: his opinions based on speculation, and his testimony derived from other,
11 wholly unrelated cases. (*See* Quinn Decl. ¶ 89, Ex. 88, AR Prehearing Mot. No. 9; Quinn Decl. ¶
12 4, Ex. 3, March 27, 2014 Hearing Tr. at 66-69). The Regional Board erroneously refused to grant
13 Atlantic Richfield’s motion. As described below, the Regional Board’s refusal was improper
14 because, as to Atlantic Richfield’s arguments, the Regional Board ignored the legal standard and
15 thus denied Atlantic Richfield’s motion based on considerations that are irrelevant or incorrect.

16 **1. The Legal Standard Relevant to the Admissibility of Expert Testimony**
17 **before the Regional Board in this Matter Requires Analysis of**
Whether the Testimony Meets the *Sargon* Standard.

18 A Regional Board is required to exclude any expert testimony, like certain testimony of
19 Dr. Quivik, that fails to meet the requirements of California Evidence Code sections 801 and 802.
20 *See* Cal. Code Regs. tit. 23, 648(b) (explicitly incorporating California Evidence Code sections
21 801-805 into adjudicatory proceedings). Under Evidence Code sections 801 and 802, the
22 Regional Board “acts as a gatekeeper to exclude expert opinion testimony that is (1) based on
23 matter of a type on which an expert may not reasonably rely, (2) based on reasons unsupported by
24 the material on which the expert relies, or (3) speculative.” *Sargon Enterprises, Inc. v. Univ. of*
25 *Southern California*, 55 Cal. 4th 747, 771-72 (2012).

26 _____
27 ³⁸ (*See* Quinn Decl. ¶ 88, Ex. 87, AR Prehearing Mot. No. 4; Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at
19:17–22:23).

28 ³⁹ (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 25:7-12).

1 Evidence Code section 801(b) requires that experts only rely on matters that may
2 “reasonably be relied upon” in “forming opinions on the subject.” Under this provision, the court
3 or administrative hearing body must determine whether the matter relied upon provides “a
4 reasonable basis *for the particular opinion offered.*” *Sargon Enterprises, Inc.*, 55 Cal. 4th at 770
5 (citation omitted; emphasis added). In other words, it isn’t sufficient under section 801 that the
6 matter relied upon is reliable in general. *Id.* “Thus, under Evidence Code section 801, the
7 [adjudicative body] acts as a gatekeeper to exclude speculative or irrelevant expert’s opinion.”
8 *Id.*

9 Evidence Code section 802 provides the basis for a court, before admitting an expert’s
10 testimony, to inquire into whether the material the expert relies on actually supports the expert’s
11 reasoning. *Sargon Enterprises, Inc.*, 55 Cal. 4th at 771. Under this provision, a court may
12 exclude expert testimony or opinion if it “conclude[s] that there is simply too great an analytical
13 gap between the data and the opinion proffered.” *Id.* (quotation marks and citation omitted).

14 Together, Evidence Code sections 801 and 802 require the court or administrative hearing
15 body to “determine whether the matter relied on can provide a reasonable basis for the opinion or
16 whether that opinion is based on a leap of logic or conjecture.” *Sargon Enterprises, Inc.*, 55 Cal.
17 4th at 772. This is because, as the California Supreme Court has explained:

18 The chief value of an expert’s testimony . . . rests upon the *material*
19 from which his opinion is fashioned and the *reasoning* by which he
20 progresses from his material to his conclusion; . . . it does not lie in
21 his mere expression of conclusion. . . . In short, [e]xpert evidence
is really an argument of an expert to the court, and is valuable only
in regard to the proof of the *facts* and the validity of the *reasons*
advanced for the conclusions.”

22 *People v. Lawley*, 27 Cal. 4th 102, 132 (2002) (emphasis in original; additional internal quotation
23 marks omitted) (quoting *People v. Bassett*, 69 Cal. 2d 122, 141 (1968)).

24 Expert opinions that fail to meet these requirements should be excluded under Evidence
25 Code section 803. *See* Cal. Evid. Code § 803.

26 **2. The Regional Board Committed Legal Error By Misapplying the**
27 ***Sargon* Standard.**

28 At the hearing, the Regional Board’s legal counsel acknowledged that California Evidence

1 Code sections 801-803 and *Sargon* apply to the Regional Board’s proceeding. (See Quinn Decl. ¶
2 4, Ex. 3, March 27, 2014 Hearing Tr. at 71:24-72:15). Yet instead of confronting Atlantic
3 Richfield’s arguments by applying these rules to Dr. Quivik’s opinions, the Regional Board, as
4 advised by its legal counsel, denied the motion based on irrelevant, incorrect, and thus improper
5 considerations. In particular, the Regional Board’s denial appeared to have been based on the
6 following considerations: that Dr. Quivik’s opinions “seem to be based on” a large quantity of
7 reliable sources (*id.* 74:13-23; 75:4-5, 76:19-22; 77:10-14); that the Prosecution Team did not
8 object to any of Atlantic Richfield’s experts’ reports and there are competing expert opinions (*id.*
9 73:2-11; 75:19-21); that granting Atlantic Richfield’s motion would result in excluding too much
10 of Dr. Quivik’s testimony and opinions (*id.* 75:17-19; 76:9-12; 77:3-4; 77:7-8); and that Dr.
11 Quivik’s opinions are “informed” by his purported methodology, the historical method, which has
12 been applied in federal environmental litigation lawsuits involving mining (*id.* 74:24-75:3).

13 Most striking about this list is the absence of any discussion of whether the material cited
14 by Dr. Quivik actually supports the specific opinions Atlantic Richfield disputed as speculative.
15 Indeed, a review of the hearing transcript reveals that neither the Regional Board nor its legal
16 counsel considered whether the evidence actually and logically supported Dr. Quivik’s opinions.
17 (See Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 69-77). But *Sargon* dictates that the
18 Regional Board must act as a gatekeeper to exclude not only expert opinion testimony that is
19 “based on matter of a type on which an expert may not reasonably rely,” but also opinion that is
20 “*based on reasons unsupported by the material on which the expert relies, or . . . speculative.*”
21 *Sargon Enterprises, Inc. v. Univ. of Southern California*, 55 Cal. 4th 747, 771-72 (2012)
22 (emphasis added). The Regional Board failed to properly apply *Sargon*. As a result, the reasons
23 the Regional Board did cite in denying Atlantic Richfield’s motion are irrelevant, inappropriate,
24 or simply wrong.

- 25 a. **That Dr. Quivik’s opinions “seem to be based on” a large**
26 **quantity of reliable sources is irrelevant under the correct legal**
standard and to Atlantic Richfield’s actual argument.

27 That Dr. Quivik’s opinions “seem to be based on” a large quantity of reliable sources is an
28 improper basis for denying Atlantic Richfield’s motion. First, the quantity of documents cited by

1 an expert is simply irrelevant. Logically, even an expert opinion that is based on thousands of
2 records is not admissible if the records do not actually support the ultimate opinion. Dr. Quivik's
3 opinion that Anaconda and International "managed" the mine concurrently with the Walker
4 Mining Company is simply not supported by the documents he cites. (*See, e.g.*, Quinn Decl. ¶ 4,
5 Ex. 3, March 27, 2014 Hearing Tr. at 176:20-21 (Advisory team member explaining his
6 conclusion that, after reviewing documents "the vast majority of the [historical] documents aren't
7 clear one way or the other [on the question of Anaconda's and International's control over the
8 Walker mine.]); *id.* at 66:6-11 (Dr. Quivik admits he has not seen a "any document which states
9 that either International or Anaconda controlled the disposal of waste at the Walker Mine.");
10 Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at 11-15 (after reviewing all of the available
11 documents, concluding that neither IS&R or Anaconda managed the Walker Mine)). Similarly,
12 even if an expert cites material that is reliable *in general*, such as primary sources, if the material
13 does not support the expert's *particular* opinion, then that opinion must be excluded. *See Sargon*,
14 55 Cal. 4th at 770 (an adjudicating body must determine whether the matter relied upon provides
15 "a reasonable basis for the particular opinion offered" (citation omitted; emphasis added)); *id.*
16 at 770 ("[A]n expert may not base his opinion upon a comparison if the matters compared are not
17 reasonably comparable"). Thus, Atlantic Richfield properly objected to Dr. Quivik's speculative
18 opinions and his opinions derived from other, wholly unrelated cases involving completely
19 different parties, different time periods, and different mines.⁴⁰ (*See* Quinn Decl. ¶ 89, Ex. 88, AR
20 Prehearing Mot. No. 9 at p. 2). Yet the Regional Board's discussion of the admissibility of Dr.
21 Quivik's opinions completely failed to address Dr. Quivik's inappropriate reliance on these other
22 cases. As a result, the Regional Board erroneously failed to exclude Dr. Quivik's testimony
23 based on these unrelated cases.

24 ⁴⁰ In its Response to Atlantic Richfield's Motion to Exclude Certain Testimony of Dr. Quivik, the Prosecution Team
25 argued that Dr. Quivik's citation to other cases is appropriate because it is relevant to qualify him as an expert on
26 direct operator legal theory. (*See* Quinn Decl. ¶ 90, Ex. 89, PT Resp. to AR Prehearing Mot. No. 9 at 1). Atlantic
27 Richfield has assumed that the Prosecution's statement was a typo, as of course Dr. Quivik, a historian, would not be
28 a proper expert on legal theory and, moreover, that is not the subject on which Dr. Quivik states he was asked to
opine. *See* Dr. Quivik expert report. To the extent the Prosecution Team was arguing that his reliance on other cases
was relevant to establish him as an expert on historical mining operations, Atlantic Richfield contends that reference
to such other cases is, at most, only relevant to Dr. Quivik's background, and not to how he arrived at his opinion in
this particular case.

1 b. **That the prosecution team did not object to any of Atlantic**
2 **Richfield's experts' reports and there are competing expert**
3 **opinions is irrelevant.**

4 Legal counsel to the Regional Board misconstrued *Sargon*. That case does not say that
5 where there are competing expert opinions, the adjudicating body should not exclude any
6 speculative or improper opinions. *Sargon* merely said that the adjudicating body should be
7 cautious in doing so. Perhaps as a result of legal counsel's misconstruction of *Sargon*, neither
8 legal counsel nor the Regional Board actually analyzed Dr. Quivik's report, testimony, and
9 opinions to determine if the evidence and assertions Dr. Quivik made actually, logically, lead to
10 his conclusions, notwithstanding Atlantic Richfield's objections. This was error.

11 c. **That Atlantic Richfield's motion would result in excluding too**
12 **much of Dr. Quivik's testimony and opinions is irrelevant.**

13 This consideration is wholly improper. That the law, if applied, might seriously
14 compromise one party's unsupported case does not provide a basis to ignore the law. In any
15 event, Atlantic Richfield was not seeking a "severe" remedy: it did not argue for exclusion of Dr.
16 Quivik as an expert altogether, nor for exclusion of the majority of Dr. Quivik's opinions.

17 d. **That Dr. Quivik's opinions are "informed" by his purported**
18 **methodology, the historical method, which has been applied in**
19 **federal environmental litigation lawsuits involving mining is**
20 **irrelevant.**

21 This consideration is simply irrelevant to Atlantic Richfield's contention that the Regional
22 Board should exclude opinions based on speculation and irrelevant matters. That is, the fact that
23 Dr. Quivik's expert testimony has been admitted in some cases does not mean that all of his
24 opinions should be admitted here.⁴¹ Certainly, there is no evidence in the record showing that his

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26 ⁴¹ In its Response to Atlantic Richfield's Prehearing Motion No. 9, the Prosecution Team argued that Atlantic
27 Richfield "has already lost a challenge like this involving Dr. Quivik." (*See* Quinn Decl. ¶ 90, Ex. 89, PT Resp. to
28 AR Prehearing Mot. No. 9 at p. 2). The Prosecution Team is wrong, and misrepresented the case it cites, *Pinal Creek*
 Group v. Newmont Mining Corporation, 352 F. Supp. 2d 1037 (D. Ariz. 2005). After discussing *Bestfoods*, the
 Magistrate Judge in that case ruled that, while evidence relating to the factual background concerning the business
 relationship between the parent company and the subsidiary in that case "cannot be determinative of the issue of
 direct operator or arranger liability, evidence of the corporate relationship between Anaconda and Inspiration is
 relevant to provide important factual background in this matter." 352 F. Supp. 2d at 1041 (emphasis added).
 Furthermore, the Magistrate Judge held that before admitting Dr. Quivik's testimony, the a *Daubert* hearing should
 be held "to determine whether Dr. Quivik qualifies as an expert and that his testimony is reliable." *Id.* at 1047.

1 expert opinion in other cases is based on similar speculation and irrelevant matters. In fact, Dr.
2 Quivik himself admits that the historical method prohibits reliance on the very type of sources
3 Atlantic Richfield objected to: evidence from other cases involving other mining companies or
4 even documents from secondary sources, such as newspaper accounts. He claims that his
5 “historical method” is based on review of primary documents involving the relevant companies—
6 not primary documents involving *other* companies. (See Quinn Decl. ¶37, Ex. 36, Fredric Quivik
7 Expert Rpt. at p. 7; see also *id.* at p. 2-3 (explaining “the historical method,” which he describes
8 as a method for creating “a coherent and verifiable narrative recitation of the past’’)). Dr.
9 Quivik’s reliance on other facts from other, unrelated cases is particularly egregious here, where
10 he failed to even look for primary sources involving the key parties and issues in this case, such
11 as the bankruptcy records from the U.S. Bankruptcy Court that held that Atlantic Richfield’s
12 predecessor did not control the Walker Mining Company. (See Quinn Decl. ¶ 4, Ex. 3, March 27,
13 2014 Hearing Tr. at 63:9-16). Moreover, he formed his opinions without reviewing those court
14 records. (See *id.* at 63:17-20). Thus, under Dr. Quivik’s own methodology, his testimony based
15 on other, unrelated cases should have been excluded, as Atlantic Richfield requested.

16 **F. The Regional Board Erroneously Concluded that Liability is not Several in**
17 **this Matter, and Even if Joint and Several Liability Were Proper, the**
18 **Regional Board Erred by Refusing to Consider Allocating Responsibility**
Between the Regional Board Itself, Previously Settling Dischargers/
Responsible Parties, and Atlantic Richfield.

19 The Regional Board erred by rejecting Atlantic Richfield’s argument for several liability
20 or, alternatively, for apportionment. Water Code Section 13304’s plain language establishes that
21 liability is several only. In relevant part, Water Code Section 13304 provides that,

22 Any person . . . who has caused or permitted . . . any waste to be
23 discharged or deposited where it is, or probably will be, discharged
24 into the waters of the state and creates, or threatens to create, a
25 condition of pollution or nuisance, shall upon order of the regional
26 board, clean up the waste or abate the effects of the waste, or, in the
27 case of threatened pollution or nuisance, take other necessary
28 remedial action, including, but not limited to, overseeing cleanup
and abatement efforts.

27 Cal. Water Code §13304(a) (emphasis added).

28 Thus, Section 13304 refers specifically to “the waste” a discharger has “caused or

1 permitted . . . to be discharged.” Section 13304 does not provide that a discharger shall be liable
2 for cleaning up *all* waste or abating the effects of *all* waste. *See id.* Imposing joint and several
3 liability therefore would be inappropriate under Water Code Section 13304.

4 Further, Section 13304’s plain language comports with the *United States v. Bestfoods*
5 legal standard the Regional Board identified as governing this case. “Under *Bestfoods*, operator
6 liability occurs where” a corporate shareholder “operated the [corporation’s] facility and directed
7 the activities that caused the pollution.” (Quinn Decl. ¶ 36, Ex. 35, PT Open. Br. at p. 12). As
8 with the Water Code, direct operator liability pursuant to *Bestfoods* is limited in scope to the harm
9 arising from the particular activities the shareholder caused. The reason for this is that a direct
10 operator liability finding under *Bestfoods* does not mean the shareholder stepped into the shoes of
11 the corporation; to the contrary, a direct operator liability finding recognizes that the shareholder
12 is liable only because of, and only to the extent of, specific pollution-causing activities in which
13 the shareholder participated.

14 The Regional Board did not address Atlantic Richfield’s interpretation of Water Code
15 section 13304, but instead said simply that the Regional Board’s long-standing practice (as well
16 as administrative convenience) favored joint and several liability. (Quinn Decl. ¶ 91, Ex. 90, PT
17 Resp. to AR Prehearing Mot. No. 7 at pp.1-3; Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr.
18 at 12:24-13:17). Practice and convenience, however, cannot override the Water Code’s plain
19 language. The Regional Board also did not address *Bestfoods* in this context, instead saying only
20 that the state is free to impose liability more broadly than does the federal government. The
21 Regional Board’s unexplained logic is meritless here given that the Regional Board itself elected
22 to proceed based on a *Bestfoods* theory of liability. Under both *Bestfoods* and the Water Code,
23 the Regional Board could hold Atlantic Richfield responsible only for that harm, if any, which
24 Atlantic Richfield actually caused.

25 Moreover, even if joint and several liability were appropriate, the Regional Board erred by
26 not apportioning liability. Under traditional tort law regarding joint and several liability:

27 Damages for harm are to be apportioned among two or more causes
28 where (a) there are distinct harms, or (b) there is a reasonable basis
for determining the contribution of each cause to a single harm.

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And

If two or more persons, acting independently, tortiously cause distinct harms or a single harm for which there is a reasonable basis for division according to the contribution of each, *each is subject to liability only for the portion of the total harm that he has himself caused.*

Restatement (Second) of Torts §§ 433A, 481 (emphasis added).

Both federal law (under CERCLA) and state law (the California Hazardous Substance Account Act) are to the same effect. *See Burlington Northern & Santa Fe Ry. v. United States*, 556 U.S. 599, 613-15, 619 (2009), quoting *United States v. Chem-Dyne Corp.*, 572 F. Supp. 802, 808 (S.D. Ohio 1983); Cal. Health & Safety Code § 25363(a) (“Except as provided in subdivision (f), any party found liable for any costs or expenditures recoverable under this chapter who establishes by a preponderance of the evidence that only a portion of those costs or expenditures are attributable to that party’s actions, shall be required to pay only for that portion.”).

Atlantic Richfield’s prehearing briefing set out several bases on which the Regional Board could apportion liability among itself, other potentially responsible parties, and (if necessitated by liability findings) Atlantic Richfield. (Quinn Decl. ¶ 92, Ex. 91, AR Prehearing Motion No. 7 at pp. 4-5; Quinn Decl. ¶ 93, Ex. 92, AR Prehearing Br. at pp. 30-32; Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty Expert Rpt. at p. 16 (describing the quantity of waste attributable to exploration development as “negligible”); Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 94:16-22 (explaining the lack of mineralization in waste rock from exploration development activities); Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 107:19-20 (“country rock doesn’t weather to produce acid mine drainage.”)). Far from “simplistic,” as the Regional Board claimed in its prehearing briefing, (Quinn Decl. ¶ 91, Ex. 90, PT Resp. to AR Prehearing Mot. No. 7 at p. 5), Atlantic Richfield detailed apportionment analysis that would have accounted for the temporal period during which Atlantic Richfield was alleged to be liable (less than half of the Site’s history) as well as the amount of waste that would have been generated by activities in which Atlantic Richfield’s predecessors were alleged to have participated (a fraction of the overall total).

Indeed, the Regional Board’s Advisory Team recognized that any Atlantic Richfield

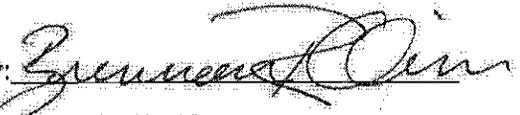
1 liability would be related only to waste from exploration and development activities (Quinn Decl.
2 ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 177:11-178:7 (distinguishing between exploration and
3 development activity and associated waste versus the tailings pile)), and at least one Regional
4 Board member appeared to rest her vote on documents related to a very limited period of time,
5 (Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 174:23-175:4 (Regional Board member
6 Ramirez explaining that “the last grab in the 40s I think ropes in ARCO”)). Even the CAO itself
7 shows the need for an apportionment analysis by stating that “International managed, directed, or
8 conducted operations specifically related to the leakage or disposal of waste . . . from
9 approximately 1916 through 1918.” (Quinn Decl. ¶ 2, Ex. 1, CAO at ¶ 36 (emphasis added)).⁴²
10 The 1916 through 1918 period accounts for only three years of more than a hundred years over
11 which operations have occurred at the Walker Mine and Atlantic Richfield’s expert offered
12 specific evidence that would have allowed the Regional Board to apportion liability related to
13 those three years. (Quinn Decl. ¶ 6, Ex. 5, William Haegele Expert Rpt. at pp. 16-17). That the
14 Regional Board refused to allow Atlantic Richfield to prove apportionable harm, in the face of
15 Atlantic Richfield’s obviously limited relationship to the Site and the Regional Board’s own
16 members’ and staff’s concerns, constitutes legal error.

17 **V. Conclusion/Request for Relief**

18 Atlantic Richfield asks that the State Board stay the deadlines of the CAO pending review
19 and thereafter vacate the Regional Board CAO in its entirety.

20
21 Dated: April 18, 2014

DAVIS GRAHAM & STUBBS LLP
FARELLA BRAUN + MARTEL LLP

22
23 By: 
24 Attorneys for Petitioner
25 Atlantic Richfield Company

26
27 ⁴² Atlantic Richfield contests this finding because the single exhibit on which it relies (Quinn Decl. ¶ 94, Ex. 93, AR
28 Ex. 167), an agreement to provide a loan and expertise, does not support the conclusions regarding waste related
activities that are set out in the CAO.

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13 STATE WATER RESOURCES CONTROL BOARD
14 STATE OF CALIFORNIA
15

16 In the Matter of Petition for Stay and
17 Petition for Review of Central Valley
Regional Water Quality Control Board
18 Clean-Up and Abatement Order
R5-2014-0039
19 Atlantic Richfield Company, Petitioner
20

SWRCB File No. _____
**ATLANTIC RICHFIELD COMPANY'S
PETITION FOR IMMEDIATE STAY**

1 Petitioner Atlantic Richfield Company (“Atlantic Richfield” or “Petitioner”) faces a
2 severe dilemma: whether to comply with an unjust order that should not have been issued, or
3 face penalties and other sanctions for noncompliance. This is the situation in which a stay should
4 be granted. Accordingly, Atlantic Richfield hereby petitions the State Water Resources Control
5 Board (“State Board”) for an immediate stay of Cleanup and Abatement Order No. R5-2014-
6 0039, Atlantic Richfield Company - Walker Mine, Plumas County (“CAO”), which the Regional
7 Water Quality Control Board, Central Valley Region (“Regional Board”) adopted on March 28,
8 2014. *See* Cal. Water Code § 13321(a) and Cal. Code Regs. tit. 23, § 2053.

9 **I. Introduction**

10 Unlike many petitioners seeking stays from the State Board, Atlantic Richfield is not, and
11 has never been, an owner or operator of the site at issue in the CAO. Nor did Atlantic Richfield’s
12 predecessors ever own or operate the Walker Mine Site.

13 The Walker Mine was owned and operated by the Walker Mining Company and its
14 incorporators from 1909 to 1944. (Decl. of Brennan R. Quinn in Supp. of Atlantic Richfield’s
15 Pet. for Review and Pet. for Stay (“Quinn Decl.”) ¶¶ 5 and 7, Exs. 4 and 6, Atlantic Richfield
16 (“AR”) Exs. 128, 136). During that period, the Walker Mining Company intermittently¹ mined
17 and processed copper minerals on the Plumas County property, conducting all six phases of the
18 conventional mining operation with its own employees: (a) exploration and ore reserves
19 development, (b) mine development, (c) ore extraction, (d) concentration of the desired minerals,
20 (e) new product distribution, and (f) waste disposal.² (Quinn Decl. ¶ 3, Ex. 2, Dr. Terry McNulty
21 Expert Rpt. at pp. 6-8). Atlantic Richfield’s predecessors were among the shareholders of the
22 Walker Mining Company, which was publicly traded. (Quinn Decl. ¶ 6, Ex. 5, William Haegele
23 Expert Rpt. at p. 6 n. 11 and documents cited therein). In 1918, after the Walker Mine was
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25 ¹ The Great Depression and World War II affected the minerals markets in such a way as to cause intermittent pauses
in ore extraction.

26 ² Fourth generation miner, former mining executive, Colorado School of Mines and Montana School of Mines
27 graduate and American Mining Hall of Fame Honoree, Terry McNulty, Ph.D., P.E., described (a) exploration and ore
28 reserves development, (b) mine development, (c) ore extraction, (d) concentration of desired minerals, (e) new
product distribution and (f) waste disposal as the “6 phases of mining.” (See Quinn Decl. ¶ 3, Ex. 2, Dr. Terry
McNulty Expert Rpt. at pp. 6-8; Quinn Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 89-92).

1 established and producing, Atlantic Richfield's predecessor invested in 50.4% of Walker Mining
2 Company. (Quinn Decl. ¶ 19, Ex. 18, AR Ex. 29). In 1944, the Walker Mining Company
3 petitioned for, and was later granted, a declaration of bankruptcy from the United States
4 Bankruptcy Court for the District of Utah. (Quinn Decl. ¶ 5, Ex. 4, AR Ex. 128).

5 In the 69 years since the Walker Mining Company ceased operating, the mining site has
6 been owned and/or operated by a series of other individuals, companies and entities, including
7 Safeway Signal Corporation, Plumas Land Company, Robert Barry/Calicopia Corporation,
8 Daniel Kennedy/Cedar Point Properties, and the Regional Board itself. (Quinn Decl. ¶ 9, Ex. 8,
9 Attachment D to April 29, 2013 Draft Mine Site CAO, Chain of Title Guarantee; *see also* Quinn
10 Decl. ¶ 10, Ex. 9, AR Ex. 141 (describing mining and attempted remedial operations by several
11 parties, including Noranda Exploration, AMAX, Inc., Conoco (now known as ConocoPhillips
12 Company), and Standard Bullion Corporation, Inc.)). Currently the Walker Mine property is
13 owned by Cedar Point Properties. (Quinn Decl. ¶ 2, Ex. 1, CAO at ¶ 29).

14 Enforcement activities at the site began in the late 1950s. (Quinn Decl. ¶ 11, Ex. 10, AR
15 Ex. 179; *see also* Quinn Decl. ¶ 12, Ex. 11, Marc Lombardi Expert Rpt. ("Lombardi Expert
16 Rpt.") at p. 19). In the subsequent decades, the Regional Board issued numerous enforcement
17 orders to then-owners and/or operators of the site and entered into settlements with these same
18 parties. (Quinn Decl. ¶¶ 13-17, Exs. 12-16, AR Exs. 184, 186, 195, 197 at pp. 4-5, 201; Quinn
19 Decl. ¶¶ 53, 95, Exs. 52, 94, Prosecuting Team ("PT") Exs. 16, 54; Quinn Decl. ¶ 2, Ex. 1, CAO
20 at ¶¶ 28-29; *see also* Quinn Decl. ¶ 12, Ex. 11, Lombardi Expert Rpt. at Table 1, Historical
21 Timeline, and documents cited therein). In the 1980s, with funding provided by the settlements,
22 the Regional Board undertook its own investigation and remedial action at the site, principally the
23 installation of a concrete plug in the 700 Level adit to stop discharges of mine water to Dolly
24 Creek. (Quinn Decl. ¶ 2, Ex. 1, CAO at ¶¶ 16-20; *see also* Quinn Decl. ¶ 18, Ex. 17, AR Ex. 202,
25 SRK Final Feasibility and Design Report). Since installing the plug in 1987, the Regional Board
26 has been maintaining the plug and monitoring water quality at, and in the vicinity of, the site.
27 (Quinn Decl. ¶¶ 57-81, Exs. 56-80, PT Exs. 22-46, lab data and inspection reports).

28 The Regional Board first contacted Atlantic Richfield about the Walker Mine in 1997.

1 The Regional Board proposed to negotiate with Atlantic Richfield over “past and future
2 environmental remediation activities at the Walker Mine” based on the Regional Board’s
3 assertion that Atlantic Richfield was “a responsible party for the required environmental
4 remediation.” (Quinn Decl. ¶ 22, Ex. 21, AR Ex. 144). In 1998, the Regional Board indicated it
5 would issue a CAO against Atlantic Richfield and later, in 1999, the Regional Board issued draft
6 waste discharge requirements naming Atlantic Richfield as a Discharger. (Quinn Decl. ¶¶ 23-24,
7 Exs. 22-23, AR Exs. 148-149). However, after receiving Atlantic Richfield’s arguments against
8 naming it as a discharger, the Regional Board declined to pursue Atlantic Richfield. (Quinn Decl.
9 ¶¶ 25-26, Exs. 24-25, AR Exs. 151-152).

10 More than a decade later, the Regional Board again contacted Atlantic Richfield,
11 proposing to issue two CAOs for the integrated properties that comprise the site.³ (Quinn Decl.
12 ¶¶ 9, 96, Exs. 8, 95, April 29, 2013 Draft CAOs). The Regional Board subsequently conducted a
13 flawed proceeding (a) with findings and conclusions predicated upon speculation, improper
14 consultant opinions and errors of law, (b) under circumstances that denied Atlantic Richfield due
15 process of law, and (c) that was fraught with significant, additional errors that each,
16 independently, also warrant vacating the CAO.

17 Concurrently with this Petition, Atlantic Richfield submitted to the State Board a Petition
18 for Review of the CAO that resulted from the Regional Board’s flawed proceeding. The Petition
19 for Review demonstrates the serious legal and factual errors that underlie the Regional Board’s
20 adoption of the CAO, and shows:

21 (1) The CAO’s finding and conclusion that Atlantic Richfield is a discharger, which
22 may be held responsible for further clean-up and abatement of the Walker Mine Site, is not
23 supported by substantial evidence.

24 (2) In the conduct of its proceedings and issuance of the CAO, the Regional Board

25 _____
26 ³ Regional Board staff advised Atlantic Richfield that it would issue two CAOs against the company, one covering
27 the private lands on which the mine workings, mill site, and former town are located (the Walker Mine Site) and one
28 covering the tailings disposal area located directly downstream of the mine and which is on public lands (the Walker
Mine Tailings Site). Staff advised Atlantic Richfield that the CAO for the Walker Mine Tailings Site, which is on
public lands under the stewardship of the United States Forest Service, would also name the United States Forest
Service as a Discharger. The CAO for the Walker Mine Tailings Site was not ultimately issued.

1 denied Atlantic Richfield due process of law.

2 (3) In its rulings on Atlantic Richfield's pre-hearing motions and hearing objections,
3 and in issuing the CAO, the Regional Board committed significant, additional legal errors which
4 each, independently, warrant vacating the CAO.

5 During the period in which Atlantic Richfield's Petition for Review is pending, however,
6 the CAO compels performance of numerous activities and studies. For example, the CAO orders
7 Atlantic Richfield to "take control of the mine" by June 30, 2014. (*See* Quinn Decl. ¶ 2, Ex. 1,
8 CAO at p. 11, Task 4). Less than 30 days later, Atlantic Richfield is required to submit
9 documents that detail mapping, subsurface drilling and other field investigations. (*See id.*, pp. 12,
10 Task 6). Thereafter, Atlantic Richfield is charged with implementing a comprehensive remedial
11 investigation of the site and developing a full remedial plan. (*See id.*, pp. 12-13, Tasks 7-11).

12 Thus, Atlantic Richfield faces an impossible choice: incur significant costs to comply
13 with aggressively scheduled tasks required by the CAO, which itself should not have been issued
14 in the first place, or face potential exposure to penalties and other sanctions for noncompliance.
15 As shown more fully below, a stay is warranted in these circumstances.

16 **II. Argument**

17 A stay should be issued where, as here, a petitioner alleges facts and produces proof of:
18 (1) substantial harm to the petitioner or to the public interest if a stay is not granted; (2) a lack of
19 substantial harm to other interested persons and to the public interest if a stay is granted; and
20 (3) substantial questions of law and fact regarding the disputed action. Cal. Code Regs. tit. 23,
21 § 2053. Atlantic Richfield meets each and all of these requirements, as described in this Petition,
22 its attachments and in the Declaration of Brian Johnson filed herewith.

23 **A. Atlantic Richfield Will Suffer Substantial Harm If the CAO Is Not**
24 **Immediately Stayed.**

25 Without an immediate stay of the CAO, Atlantic Richfield's statutory and due process
26 rights will be violated, and Atlantic Richfield will be forced to incur significant costs or risk
27 exposure to large penalties along with unquantifiable risk to its business reputation. (*See* Decl. of
28 Brian S. Johnson in Supp. of Atlantic Richfield's Pet. for Stay and Pet. For Review ("Johnson

1 Decl.”)).

2 Petitioner, like any person aggrieved by an action of a Regional Board, has a statutory
3 right to petition the State Board for review of the Regional Board’s action. Cal. Water Code
4 § 13321. Indeed, the CAO at issue here specifically acknowledges and confirms that right.
5 (Quinn Decl. ¶ 2, Ex. 1, CAO at p. 14, ¶ 20). In addition, the Regional Board’s legal counsel
6 cited this appeal right as an important safeguard of Petitioner’s due process rights. (See Quinn
7 Decl. ¶ 4, Ex. 3, March 27, 2014 Hearing Tr. at 16:17–17:2). Of course, the right to seek
8 review—and the due process it supposedly guarantees—is meaningless if a petitioner is required
9 to immediately comply with the very order it is appealing. This is precisely the situation Atlantic
10 Richfield faces here.

11 Atlantic Richfield filed a Petition for Review of the CAO on April 18, 2014, concurrently
12 with this Petition. The State Board has at least 270 days to act on Atlantic Richfield’s Petition for
13 Review, if not longer.⁴ Cal. Code Regs. tit. 23, § 2050.5(b). In other words, State Board action
14 on Atlantic Richfield’s Petition for Review is not required until January 13, 2015 (270 days from
15 April 18, 2014), at the very earliest. *See id.*

16 The CAO, however, requires Petitioner to take significant and costly actions well before
17 then. For example, by June 30, 2014, the CAO orders Atlantic Richfield to “take control of the
18 mine.” The CAO states this requirement “would include at a minimum the operation and
19 maintenance of the 700 level adit and the concrete plug or seal, and managing all mine waste and
20 preventing discharges of mine waste to waters of the state.” (Quinn Decl. ¶ 2, Ex. 1, CAO at p.
21 11, ¶ 4 (emphasis added)). The CAO otherwise fails to define the scope of what else might be
22 involved in “tak[ing] control of the mine for remedial purposes necessary to clean-up and abate
23 the discharge of all mining waste at the mine, and restore the affected water.” (*See id.*). That
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25 ⁴ In fact, the State Board typically has more than 270 days before it is required to act. First, if the State Board holds
26 a hearing, then it has 330 days from the date of the mailing of the notification or 120 days from the date of the close
27 of the hearing, whichever is later, to act on the petition. Cal. Code Regs. tit. 23, § 2050.5(b). In addition, neither the
28 270 days nor the 330 days begins to run until the State Board issues a written notification. *Id.* The State Board’s
recently proposed regulations indicate the State Board has such a backlog of petitions for review that it may take over
one year for the written notification to be issued. (*See* OAL, California Regulatory Notice Register 2014, No. 11-Z,
at 470-72 (March 14, 2014)).

1 burden falls on Atlantic Richfield, as the CAO requires Atlantic Richfield to “submit a report . . .
2 describing measures taken to obtain control of the mine for remedial purposes” on June 30, 2014.
3 (*Id.*). If Atlantic Richfield’s response is deemed insufficient, it could be liable for penalties. (*See*
4 Quinn Decl. ¶ 2, Ex. 1, CAO at p. 10, ¶ 55).

5 Further, the CAO requires Atlantic Richfield, by July 28, 2014, to submit a detailed work
6 plan to:

7 [I]dentify all mining waste as defined in Water Code section 13050,
8 subdivision (q)(1) at the mine. This work plan shall include a
9 strategy/plan to characterize and classify the mining waste in compliance
10 with Title 27 section 22480 and the extent to which the site is degrading
water quality above background concentrations. This work plan shall also
include a method to establish a Water Quality Protection Standard (Water
Standard) per Title 27 section 20390.

11 (Quinn Decl. ¶ 2, Ex. 1, CAO at p. 12, ¶ 6).⁵

12 To satisfy these immediate requirements, Atlantic Richfield must undertake significant,
13 costly, and time-consuming work. Within the time period during which the Petition for Review
14 may be pending before the State Board, Atlantic Richfield must review all existing information
15 regarding the remediation of the mine, formulate plans for extensive and costly field
16 investigations, and implement those on-site investigations. Initially, Atlantic Richfield must hire
17 experts and consultants; review prior mine site studies and investigations; and review the
18 operation and maintenance procedures/plans for the Regional Board’s remedy in place at the
19 mine. A report describing measures performed by Atlantic Richfield to take control of the mine
20 site must be prepared and submitted by June 30, 2014. A Site Characterization work plan must
21 then be prepared and submitted by July 28, 2014 that describes the field investigations that will be
22 performed to identify/classify mining waste, and to determine the extent to which the mine site is
23 degrading water quality. (*See* Johnson Decl., ¶¶ 4–7 and Attachment A).

24 Moreover, the CAO requires that field investigations described in the Site Characterization
25 work plan be substantially completed in 2014 so that Atlantic Richfield can collect the

26 _____
27 ⁵ The CAO also requires Petitioner to “provide the name and address where the invoices shall be sent” by May 27,
28 2014 (60 days from the effective date of the CAO), and notes that “[f]ailure to provide a name and address for
invoices and/or failure to reimburse the Central Valley Water Board’s oversight costs in a timely manner shall be
considered a violation of this Order.” (Quinn Decl. ¶ 2, Ex. 1, CAO at pp. 11-12, ¶ 5).

1 environmental data necessary to prepare and submit a report summarizing its investigations and
2 findings by February 2, 2015. (See Quinn Decl. ¶ 2, Ex. 1, CAO at p. 12, ¶ 6(b)). Atlantic
3 Richfield's costs for preparing the Site Characterization work plan, as described in the CAO, and
4 to complete such on-site investigations are difficult to predict with the current information base,
5 but these tasks are preliminarily estimated by Atlantic Richfield's technical team to cost
6 \$927,000. (Johnson Decl. ¶ 7). In total, the estimated cost to complete the near-term Task and
7 Reporting activities through February 2, 2015, as required by the CAO, is \$1,187,000. (*Id.* ¶ 8).

8 Future CAO compliance deadlines in June 2015 and July 2015 compel submittal of plans
9 to close the mine and remediate the site, and perform long-term monitoring. (See Quinn Decl.
10 ¶ 2, Ex. 1, CAO at p. 12, ¶¶ 6(b)-9). Certainly, Atlantic Richfield would be prejudiced if required
11 to carry out these requirements of the CAO during the pendency of its appeal. However, there is
12 insufficient information upon which to estimate costs to close and remediate the mine site, as may
13 be required by the Regional Board. (See Johnson Decl. ¶ 10).

14 Moreover, if Atlantic Richfield fails to timely take these actions while its Petition for
15 Review is pending, it faces exposure to potential penalties and other sanctions for failing to
16 comply with the CAO. (See Quinn Decl. ¶ 2, Ex. 1, CAO at p. 10, ¶ 55; Johnson Decl. ¶ 11).
17 Penalties available under the statutes cited in the CAO can exceed \$25,000 per day. See Cal.
18 Water Code § 13385. Moreover, some State Board decisions on stays have, in denying a request
19 for a stay based on a finding of no substantial harm, cited a petitioner's compliance with the order
20 sought to be stayed. See, e.g., *In the Matter of the Petition of John F. Bosta*, Order No. WQ 91-
21 11 (SWRCB 1991) (noting that "[t]he record indicates that there is substantial compliance with
22 the Regional Board's cease and desist orders" before concluding "there will be no substantial
23 harm to the petitioner or the public if the stay is not granted").

24 In sum, the CAO requires Atlantic Richfield either to undertake costly actions or face
25 exposure to significant monetary penalties during the period the Petition for Review is pending
26 before the State Board. In addition to this harm, the CAO's aggressive deadlines deprive Atlantic
27 Richfield of a meaningful opportunity to seek State Board review of the Regional Board's action,
28 in violation of Atlantic Richfield's statutory and due process rights.

1 **B. A Stay of the CAO During the State Board's Review Will Not Cause**
2 **Substantial Harm To Other Interested Persons or To the Public Interest.**

3 The State Board has previously found that in cases where some remedial action has
4 already been taken and the other requirements for a stay are met, no substantial harm to the public
5 results from allowing the status quo to exist while the State Board reviews the petition. *See In the*
6 *Matter of the Petition of Fairchild Semiconductor Corp.*, Order No. WQ 89-5 (SWRCB 1989).
7 As shown below, the Regional Board has been maintaining the plug and monitoring water quality
8 at the site for over 25 years, and there is no reason it cannot continue to do so during the period
9 for State Board review of the Regional Board's action.

10 The Regional Board recognized the occurrence of acid mine drainage from the mine
11 property to state waters as early as 1957. (Quinn Decl. ¶ 11, Ex. 10, AR Ex. 179; *see also* Quinn
12 Decl. ¶ 12, Ex. 11, Lombardi Expert Rpt. at p. 19). To address the problem, over the next two
13 decades the Regional Board issued a number of successive orders to the owners and operators
14 who controlled the site to investigate and/or remediate the mining property. (Quinn Decl. ¶¶ 13-
15 17, Exs. 12-16, AR Exs. 184, 186, 195, 197 at pp. 4-5, 201; *see also* Quinn Decl. ¶ 12, Ex. 11,
16 Lombardi Expert Rpt. at Table 1, Historical Timeline, and documents cited therein). When no
17 satisfactory remediation resulted, however, the Regional Board elected to settle with the then-
18 owners and operators of the mine property and design a remedy to stop the discharge of drainage
19 from the mine. (Quinn Decl. ¶¶ 53, 95, Exs. 52, 94, PT Exs. 16, 54; Quinn Decl. ¶ 2, Ex. 1, CAO
20 at ¶¶ 16-20, 28-29; *see also* Quinn Decl. ¶ 18, Ex. 17, AR Ex. 202, SRK Final Feasibility and
21 Design Report). In November 1987, the Regional Board "installed an engineered concrete mine
22 seal to prevent the direct discharge of [acid mine drainage]." (Quinn Decl. ¶ 97, Ex. 96, SWRCB
23 Res. No. 2010-0023).⁶ According to the Regional Board, the seal has "successfully prevented a
24 direct discharge of acid mine drainage from the underground workings of the mine into Dolly
25 Creek and Little Grizzly Creek," and has made "a significant improvement in the water quality of
26 Dolly Creek and Little Grossly Creek." (Quinn Decl. ¶ 98, Ex. 97, CVRWQCB Res. No. 2010-

27 _____
28 ⁶ Atlantic Richfield hereby requests the State Board take administrative notice of this State Board Resolution, which
is publicly available on the State Board's website.

1 0036).⁷

2 Since installing the mine seal more than 25 years ago, the Regional Board has been
3 monitoring water quality at the site and conducting maintenance of the plug. (Quinn Decl. ¶¶ 57-
4 81, Exs. 56-80, PT Exs. 22-46, lab data and inspection reports). The Regional Board's ongoing
5 maintenance and monitoring activities are funded through June 20, 2015. (See Quinn Decl. ¶ 97,
6 Ex. 96, SWRCB Res. No. 2010-0023; Quinn Decl. ¶ 98, Ex. 97, CVRWQCB Res. No. 2010-
7 0036). In addition, the Regional Board may seek an extension of the June 20, 2015 deadline.
8 (Quinn Decl. ¶ 97, Ex. 96, SWRCB Res. No. 2010-0023).

9 Thus, there is no reason the status quo cannot be maintained through the duration of State
10 Board review. Indeed, when Atlantic Richfield requested a stay at the Regional Board hearing,
11 no reasoned explanation for denying the request was given. Counsel for the Prosecution Team
12 refused to agree to the request, and yet provided no reasoned argument against the request (other
13 than the availability of the process for requesting a stay from the State Board). (See Quinn Decl.
14 ¶ 35, Ex. 34, March 28, 2014 Hearing Tr. at 27:21-28:1). When Atlantic Richfield then asked the
15 Regional Board for a 90-day extension of the first, near-term deadline obligating Atlantic
16 Richfield to "take control of the mine for remedial purposes..." (Quinn Decl. ¶ 2, Ex. 1, CAO at
17 p. 11, Task 6), the Prosecution Team objected. (Quinn Decl. ¶ 35, Ex. 34, March 28, 2014
18 Hearing Tr. at 25:4-22). When Atlantic Richfield said that the State Board calendar was crowded
19 and that it doubted it could obtain review by May 30, 2014, the Prosecution Team maintained its
20 objection notwithstanding the Advisory Team's acknowledgment that the State Board had a
21 crowded calendar. (See *id.* at 28:3-10; 31:18-19).

22 As a result, the Regional Board extended Atlantic Richfield's deadlines by only 30 days.
23 Neither the Prosecution Team, nor the Advisory Team, nor the Regional Board itself, expressed
24 any view that a mere 30-day extension was sufficient to obtain State Board review without risking
25 significant obligations under the CAO and/or incurring significant potential penalties and other
26

27 ⁷ Atlantic Richfield hereby requests the State Board take administrative notice of this Regional Board Resolution,
28 which is in the Regional Board's files and was produced by the Regional Board in response to Atlantic Richfield's
California Public Records Act request. This Resolution is also publicly available on the State Board's website.

1 sanctions. Nor did any Regional Board Member, Advisory Team member, or anyone else offer
2 an explanation of why the status quo could not be maintained during the pendency of Atlantic
3 Richfield's petition for State Board review. (*See generally id.* at 31:7-33:20).

4 In sum, there is no reason the status quo cannot be or should not be maintained through
5 the duration of State Board review of Atlantic Richfield's Petition for Review. Thus, a stay will
6 not cause substantial harm to other interested persons or to the public interest.

7 **C. The Regional Board's Action Raises Substantial Questions of Law and Fact.**

8 In 2013, after approximately 55 years of Regional Board enforcement actions, settlements,
9 and remedial activity — and a decision not to pursue Atlantic Richfield — Regional Board staff
10 advised that it would recommend that the Regional Board issue CAOs to Atlantic Richfield to
11 compel further investigations and to remediate environmental conditions at the mining site. *See*
12 *supra* n. 3. The Prosecution Team acknowledged that “[t]he proposed cleanup and abatement
13 orders involve significant issues.” (*See* Quinn Decl. ¶ 99, Ex. 98, January 21, 2014 e-mail from
14 A. Tauriainen to D. Coupe, et al. RE: Walker Mine: Update Concerning Objections and Reply to
15 Proposed Hearing Procedure). Notwithstanding the admitted significance of the issues, the
16 Prosecution Team objected to, and the Regional Board's Advisory Team and Board Chair denied,
17 Atlantic Richfield's requests for (a) more time to investigate, and find witness and documents,
18 relevant to the 1916-1941 conduct of Walker Mining Company, (b) more time to investigate
19 current environmental conditions and causes of conditions at and in the vicinity of the mine
20 property, and (c) a reasonable amount of time (six hours) in which to present its defenses at a
21 hearing before the Regional Board.

22 As set forth in Atlantic Richfield's Petition for Review, the March 27 and 28, 2014
23 hearing before the Regional Board was replete with the Prosecution Team's misstatements of the
24 law and unsupported allegations of fact. The Regional Board denied all but one of Atlantic
25 Richfield's nine pre-hearing motions and entered the proposed CAO for the Walker Mine Site,
26 with modifications.

27 The Regional Board's issuance of the CAO was inappropriate and improper because:

28 1. CERCLA bars issuance of the CAO for the Mine Site as a “challenge” to the

- 1 ongoing Federal Response Actions at the Site.
- 2 2. The doctrine of laches precludes issuance of the CAO.
- 3 3. The Regional Board erroneously denied Atlantic Richfield's Motion for a Ruling
- 4 that the Regional Board Itself is a Discharger/Responsible Party and the CAO is, in
- 5 essence, a contribution adjudication that must be filed in a court of law.
- 6 4. The Regional Board should have recused itself from hearing the Proposed CAOs.
- 7 5. The CAO was issued in violation of Atlantic Richfield's due process rights.
- 8 6. The Regional Board erroneously denied Atlantic Richfield's Motion to Exclude
- 9 Certain Speculative and Improper Opinions of Historian Fred Quivik.
- 10 7. The Regional Board committed legal error by misapplying the applicable standard of
- 11 liability in this case, and therefore the Regional Board also failed to recognize that
- 12 much of the Prosecution Team's evidence was irrelevant.
- 13 8. There is no substantial evidence to support the allegation of "direct operator"
- 14 liability against Atlantic Richfield.
- 15 9. The Regional Board erroneously concluded that liability is not several in this matter,
- 16 and even if joint and several liability were proper, the Regional Board erred by
- 17 refusing to consider allocating responsibility among the Regional Board itself,
- 18 previously settling dischargers/responsible parties, orphan shares and Atlantic
- 19 Richfield.

20 Atlantic Richfield's Petition for Review⁸ describes these errors in detail, demonstrating that the

21 Regional Board's issuance of the CAO was improper.

22 In sum, Atlantic Richfield's Petition for Review demonstrates that there are serious

23 concerns about the propriety of the Regional Board's action. Without a stay of the CAO,

24 Petitioner is denied meaningful review of the factual and legal issues raised by the Regional

25 Board's action. A stay is warranted under the State Board's procedures.

26

27 ⁸ Petitioner's concurrently-filed Petition for Review is hereby incorporated by reference into this Petition for

28 Immediate Stay. (See generally Atlantic Richfield's Petition for Review).

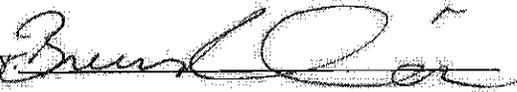
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III. Conclusion

For all of the reasons set forth above, Petitioner requests the State Board immediately grant a stay of the CAO. In the event that the State Board finds that additional facts must be alleged or that additional proof must be produced before a stay can be granted, Petitioner requests a hearing on its Petition for Immediate Stay, or, in the alternative, an opportunity to supplement the record.

Dated: April 18, 2014

FARELLA BRAUN + MARTEL LLP
DAVIS GRAHAM & STUBBS

By 

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11 Attorneys for Petitioner
Atlantic Richfield Company



13 STATE WATER RESOURCES CONTROL BOARD
14 STATE OF CALIFORNIA

16 In the Matter of Petition for Stay and
Petition for Review of Central Valley
17 Regional Water Quality Control Board
Clean-Up and Abatement Order
18 R5-2014-0039
19 Atlantic Richfield Company, Petitioner

SWRCB File No. _____

**DECLARATION OF BRIAN S. JOHNSON
IN SUPPORT OF ATLANTIC RICHFIELD
COMPANY'S PETITION FOR STAY AND
PETITION FOR REVIEW**

21 I, Brian S. Johnson, declare the following:

22 1. I am over the age of 18 years. I have personal knowledge of the matters set forth
23 below and am competent to testify with respect to them.

24 2. I am employed by BP Corporation North America Inc. as a Strategy Manager for
25 BP's Remediation Management functional group with responsibility for management of potential
26 cleanup responsibilities at former mine properties and at other sites where BP's affiliates,
27 including Atlantic Richfield Company, have or may have alleged legacy liabilities. My office is

28
**DECL. OF BRIAN S. JOHNSON ISO
ATLANTIC RICHFIELD'S PETITION
FOR STAY & PETITION FOR REVIEW**

1 located at 201 Helios Way, Houston, TX 77079. I hold a B.S. degree in geophysics and a M.S.
2 degree in geology from Texas A&M University. I am a registered professional geologist in the
3 State of Texas, registration #6798.

4 3. In November 2013, I toured the Walker Mine site, including the downstream
5 tailings impoundment that is located on public lands managed by the U.S. Forest Service. During
6 the course of that site visit, I spoke with Jeffery Huggins, a Water Resources Control Engineer,
7 within the Title 27 Permitting and Mining Unit for the Central Valley Regional Water Quality
8 Control Board ("CVRWQCB"). Through the site visit and discussions with Mr. Huggins, I
9 gained a better understanding of the 700 Level adit remedy installed by the Regional Board and
10 mine site conditions that impact surface water and groundwater.

11 4. I participated in preparation of Atlantic Richfield's experts who testified during the
12 March 27-28 CVRWQCB hearing, and I attended the hearing. With the CVRWQCB's adoption
13 of Cleanup and Abatement Order ("CAO") R5-2014-0039 on March 28, 2014, I have reviewed
14 the elements of work required under the CAO and worked with other Atlantic Richfield technical
15 representatives to estimate the costs for carrying out the required investigations and tasks, should
16 the validity of the CAO be affirmed by a reviewing body. In particular, I have worked with other
17 Atlantic Richfield technical representatives to estimate the costs that would be incurred by
18 Atlantic Richfield if the company performed the following tasks that are part of the CAO during
19 the appeals process.

20 **TASKS [from CAO R5-2014-0039]**

- 21
- 22 4. **By 30 June 2014**, the Discharger shall take control of the mine for remedial
23 purposes necessary to clean-up and abate the discharge of all mining waste at the
24 mine, and restore the affected water. This would include at a minimum the
25 operation and maintenance of the 700 level adit and the concrete plug or seal, and
26 managing all mine waste and preventing discharges of mine waste to waters of the
27 state. The Central Valley Water Board hereby authorizes Atlantic Richfield to
28 access the site for remediation purposes pursuant to the Board's legal access to
the site under the 1991 and 2004 stipulated judgments, to the extent necessary to
comply with this Order. The Discharger shall submit a report on **30 June 2014**
describing measures taken to obtain control of the mine for remedial purposes.

- 1 6. The Discharger shall investigate, identify, and classify all sources of mining waste
2 in compliance with Title 27 section 22480. This would include at a minimum all
3 mining waste associated with surface impoundments, waste piles, tailings and
4 leachate associated with mining at the site. The Discharger shall submit the
5 following reports related to characterization of the mining waste:
6
7 a. **By 28 July 2014**, submit a work plan to identify all mining waste as defined
8 in Water Code section 13050, subdivision (q)(1) at the mine. This work
9 plan shall include a strategy/plan to characterize and classify the mining
10 waste in compliance with Title 27 section 22480 and the extent to which
11 the site is degrading water quality above background concentrations. This
12 work plan shall also include a method to establish a Water Quality
13 Protection Standard (Water Standard) per Title 27 section 20390.
14
15 b. **By 2 February 2015**, submit a characterization report that identifies all
16 mine waste locations and basis for classification of mine waste at each
17 location per the work plan submitted above. All the laboratory data shall be
18 submitted with the characterization report. This report shall also include the
19 establishment of the Water Standard.

20 5. In addition to the above referenced provisions of the CAO, the CAO establishes
21 certain reporting requirements, including specific formatting for submittal of data (CAO p. 13,
22 para. 12), submittal of a Health and Safety Plan to the CVRWQCB fourteen days prior to
23 conducting any fieldwork (CAO p. 13, para. 13), and mandatory notification prior to conduct of
24 non-routine on-site work (CAO p. 13, para. 16).

25 6. Based upon information gathered from publicly available reports and other
26 materials assembled for purposes of the March 2014 hearing, Atlantic Richfield technical
27 representatives estimate the cost that would be incurred by Atlantic Richfield for planning and
28 implementation of these initial activities to take control of the mine site and comply with CAO
Task ¶ 4 above is \$260,000.

1 7. CAO Task ¶ 6 requires development of a Site Characterization work plan for field
2 investigations to map, classify and describe mine waste present at the site, and to assess the
3 condition of ground water, surface water and other site media. A report summarizing the results
4 of the field investigations must be prepared and submitted to the Regional Board by February 2,
5 2015. The estimated cost for development of the work plan, carrying out the field investigations

1 and preparation of quarterly progress reports and a final Site Characterization report, as required
2 by CAO Task ¶ 6 (and related Reporting requirements) is \$927,000.

3 8. In total, the estimated cost to complete the near-term Task and Reporting activities
4 through February 2, 2015, as required by the CAO is \$1,187,000.

5 9. The activities required to plan and carry out each of the above-described CAO
6 Tasks are summarized in Attachment I to my Declaration. This cost estimate is preliminary and
7 the costs for completing the CAO tasks may be significantly higher. Inspection of the site and a
8 thorough reconnaissance of site conditions is necessary to develop better information for purposes
9 of planning site investigations and estimating costs.

10 10. In addition to the CAO requirements discussed above and addressed in
11 Attachment A to my Declaration, the CAO requires that Atlantic Richfield submit a plan to the
12 Regional Board in June 2015 for final closure and remediation of the mine site. A plan for long-
13 term site monitoring must be submitted to the Regional Board by July 2015, under the schedule
14 set forth in the CAO. Based upon my understanding of site conditions today, reclamation and
15 closure costs for the mine site likely will cost millions of dollars. However, at this time there is
16 insufficient information upon which to determine an appropriate closure strategy for the mine site
17 in coordination with the adjacent federal cleanup of the downstream tailings area. Thus, there is
18 no reasonable basis upon which to accurately estimate closure and post-closure monitoring costs
19 for the mine site.

20 11. Compliance with state and federal agency orders related to health, safety and the
21 environment is critically important to Atlantic Richfield. I believe there is substantial risk to
22 Atlantic Richfield's business reputation if Atlantic Richfield is assessed monetary penalties for
23 non-compliance with the deadlines for deliverables or failing to satisfy other Regional Board
24 requirements described in the CAO. Yet, that is the situation Atlantic Richfield faces if it chooses
25 to appeal what we believe is an unlawful order.

26 12. In addition, the unreasonable deadlines imposed by the CAO do not reflect the
27 reality of doing business in the remote alpine environment represented by this site. Developing a
28 work plan for submittal and approval by the Regional Board in late July 2014, ensures that very

1 little field season would be left to actually accomplish the fieldwork identified in the work plan.
2 This limited timing for fieldwork would result in increased costs and potential health and safety
3 risks, all of which occur on a site that the Regional Board has controlled since 1957 and elected to
4 pursue remedies in a sporadic and leisurely fashion. The schedule imposed under the CAO is
5 arbitrary and not reasonable given the nature of the required investigations. Thus, the CAO
6 schedule requirements reinforce for Atlantic Richfield Company the unfairness of this entire
7 process.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11 Executed this 16th day of April 2014 in Houston, TX.

12
13 
14 Brian S. Johnson

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Attachment A to Declaration of Brian S. Johnson

In Support of Atlantic Richfield Company's Petition for Stay and Petition for Review

**Attachment A to Declaration of Brian S. Johnson
In Support of Atlantic Richfield Company's Petition for Stay and Petition for Review**

CAO Requirement	Task	Task Description	Cost Estimate
None	1	Remediation Management Project Management Activities (e.g., establish and educate project technical team, engage consultants, internal management reviews to obtain approvals to proceed).	\$40,000
Reporting 13	2	Prepare and submit Health, Safety, Security, and Environment Plan.	\$20,000
Task 4	3	Take Control of the Site; prepare and submit report by June 30, 2014 . <u>Objectives:</u> Limit potential exposure to hazardous materials and physical hazards by site workers and the public. <u>Field Activity:</u> Install fencing and signs around the mill site area, subsidence features, shafts, and adits.	\$200,000
Task 6a	4	Prepare and submit Characterization Work Plan; prepare and submit by July 28, 2014 .	\$40,000
	5	Mine Waste Characterization <u>Objectives:</u> Determine the spatial extent of mine waste, and classify based on its designation as hazardous/non-hazardous waste and potential to cause water quality degradation. <u>Field Activity:</u> Mapping the horizontal and vertical extent of mine waste; collection and analysis of samples to provide data needed to classify the mine waste. (field investigations at approximately 50 locations, with drilling and sampling at 25 locations, laboratory analysis of 50 samples).	\$135,000
	6	Acid Drainage Characterization <u>Objectives:</u> Document the chemical characteristics of water in the flooded mine. <u>Field Activity:</u> Locate the existing monitoring well that intersects the flooded mine workings; collect water samples, and analyze to provide geochemical characterization data. (Assume that the well can be used without any rehabilitation.	\$15,000

CAO Requirement	Task	Task Description	Cost Estimate
		Assume one sampling event, duplicate samples.	
	7	<p>Surface Water Characterization</p> <p><u>Objectives:</u> Evaluate the effect of the mine on surface water quality. Evaluate background concentrations for use in developing Water Quality Protection Standard.</p> <p><u>Field Activity:</u> Collection of surface water samples from the existing monitoring network on Dolly Creek, Ward Creek, Nye Creek, and in the mill site area. Sample three additional locations in the headwaters of Ward and Nye Creeks. Laboratory analysis for inorganic analytes.</p>	\$40,000
	8	<p>Groundwater Characterization</p> <p><u>Objectives:</u> Evaluate the effect of releases from the mine workings to groundwater that may discharge to Dolly Creek, Wade Creek, or Nye Creek.</p> <p><u>Field Activity:</u> Install a network of shallow and deep monitoring wells in the mill site area, and deep monitoring wells near the ore bodies, Wade Creek, and Nye Creek (4 shallow/10 deep wells). Develop and hydraulically test new wells, and samples for a suite of inorganic analytes (2 rounds).</p>	\$620,000
	9	<p>Water Quality Protection Standard</p> <p><u>Objectives:</u> Develop Water Quality Protection Standards for the constituents of concern for the site.</p> <p><u>Field Activity:</u> Waste characterization data needed to identify the constituents of concern will be collected during the mine waste characterization task. Water quality data that will be used in this activity will be collected as part of the surface water characterization task.</p>	\$15,000
Task 6b	10	Prepare and Submit Characterization Report; prepare and submit by February 2, 2015 .	\$60,000
Task 9	11	Prepare and Submit Quarterly Progress Reports; reports submitted quarterly after July 1, 2014.	\$2,000

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Atlantic Richfield Company
12



13 STATE WATER RESOURCES CONTROL BOARD
14 STATE OF CALIFORNIA
15

16 In the Matter of Petition for Stay and
Petition for Review of Central Valley
17 Regional Water Quality Control Board
Clean-Up and Abatement Order
18 R5-2014-0039
19 Atlantic Richfield Company, Petitioner
20

SWRCB File No. _____
**DECLARATION OF ANDREA
MCCULLOUGH IN SUPPORT OF
ATLANTIC RICHFIELD COMPANY'S
PETITION FOR REVIEW**

21 I, Andrea McCullough, declare the following:
22 1. I am over the age of 18 years. I have personal knowledge of the matters set forth
23 below and am competent to testify with respect to them.
24 2. I am a Research & Reference Librarian for Davis Graham & Stubbs LLP. I have
25 held this position since November 2012. Previously I worked as a research librarian at Faegre
26 Baker Daniels from August 2011 to November 2012. I hold a Master's degree in Library and
27 Information Science.
28

Exhibit A

▶ Fax

2/12/2014

From: Rick Martinez
 Phone: 303-604-4740
 Fax: 303-604-4750
 Company Name: National Archives At Denver

To: «Andrea McCollough»
 Phone: «303-892-7505»
 Fax: «303-893-1379»
 Company Name:

Comments:

Andrea- had no luck with the actual case file. Looked through all of our paperwork of what we've had for Utah bankruptcies as well as what was transferred to Kansas. We apparently have never had bankruptcy cases from 1931 to about the mid to late 1970's. The most likely place for them to be would be with the court, or with the Federal Records Center (FRC). The information you gave me (021-65A0560, and 62763) is actually records center information. You might want to run this by them at 303-407-4767, Ask them to check their database to see if it was either destroyed or transferred to the archives. If it was transferred, they should be able to find some sort of transfer number, but I really doubt that's the case. -rm

Urgent For Review Please Comment Please Reply Please Recycle

Records in the National Archives & Records
Administration, Rocky Mountain Region
Archival Operations

RG No. 021 US District Court of Utah
8NN-021-85-001
Box 6

D. C. 117

BANKRUPTCY DOCKET

CENTRAL - REORGANIZATION UNDER CHAP. X

16087

TITLE OF CASE	CASH RECEIVED AND DISBURSED		
	DATE	RECEIVED	DISBURSED
CAUSE NO. 16087	11-22-48 Frank A. Johnson	15.00	
In the matter of	1-10-49 Trans. Vou. #3		10.00
	MR 1150 Vo. #58 - Wm. G. Davis Trustee		5.00
WALKER MINING COMPANY, Debtor	<i>7-6 still open - hold</i>		
	<i>J. S. 24 Mailed</i>		
	<i>J. S. 20 mailed</i>		
REFEREE AND TRUSTEE	ATTORNEYS		
Referee: William H. Lusk, Clinton D. Vernon	P. T. Farnsworth, Jr., for Walker Mining Co.		
Trustee: Willard H. Davis, Sacramento, Calif.	Stephen F. Otis & Gerald R. Johnson, Sacramento, Cal for Willard H. Davis, Trustee.		

DATE	PROCEEDINGS			
8-24-44	Petition for reorganization of debtor under Chapter 10 of the Bankruptcy Act filed at 10:00 A.M., together with the following papers, all of which were transferred from the Northern District of California: affidavit of Willard H. Davis; order approving petition, appointing trustee, etc.; affidavit of Gerald R. Johnson; petition for appointment of attorneys for trustee; order appointing attorneys for trustee; trustee's oath of office; bond of trustee; order approving bond; notice of motion to transfer proceedings to District of Utah; affidavit of George E. Baglin; points and authorities; affidavit of mailing; minute order of hearing on qualifications of trustee continued to August 21, 1944; notified attorneys; notice of continuance of motion to transfer; affidavit of mailing notice of hearing; affidavit of mailing notice of hearing; affidavit of mailing notice of hearing; affidavit in opposition to motion to transfer; affidavit of mailing; minute order ordering trustee be retained; ordered case transferred to Central Division, District of Utah; order retaining trustee; certified copy of order of transfer, and clerk's certificate.			
8-25-44	List of stockholders filed. Affidavit of mailing filed.			
9-14-44	Petition filed by trustee for order barring tax claims. Petition			

CAUSE NO. 16087

RE: WALKER MINING COMPANY

7-1000

DATE	PROCEEDINGS				
	filed by trustee to fix time and prescribe manner of filing and and allowing proofs of claim. Order signed by Judge Johnson and filed in accordance with prayer of petitions, and all claims to be filed by December 5, 1944, and hearing on objections to claims will be heard December 15, 1944. Copies mailed S.E.C. and Secretary of the Treasury.				
9-27-44	Petition No. 5 filed for authority to borrow money. One witness sworn and examined. Order to be prepared and presented for signature.				
9-28-44	Order No. 6 signed by Judge Johnson and filed authorizing loan of \$7500.00 and to execute trustee's certificate payable in 90 days. Copies of order and petition No. 5 mailed to S.E.C. and Secretary of the Treasury.				
9-29-44	Proof of claims by Mary Ellen Loufek, George C. Heimich, Nellie Cook Hall, and Albert M. Hammond filed.				
10-2-44	Proof of claims filed by the following: Bertha Morris, George E. Baglin, Shearson, Hammill & Co., Edward Fitzgerald Est., H. A. Whitten & Co., Mrs. Walborg Holmstrom, and Carl Holstrom, Eda Hudson, Bayard S. Magee, Philip B. McDonald, Gertrude Irwin and Harry Irwin, Hattie Peters, Charles C. Nelson, and Beebe Realty Corp.				
10-3-44	Proof of claim filed by Mary E. Cody, and V. J. Facinelli.				
10-4-44	Proof of claims filed by Harriet S. Nell and James A. Nell, Miss Clara L. Hall, and Walter H. Reiman, Gus J. Cutrubus, Darrell J. Harris, Marie N. Harris,				
10-7-44	Proof of claims filed by the following: Ethel V. Reilley, Judith E. Brines, Louise E. Aulabaugh, Marion Dibert Suppes, Mrs. Gertrude M. Nolan, Chester Hard as Assessor and Tax Collector of Plumas County, California, James P. Britt, Cora Willis, Mrs. Lillian A. Schmittroth, Jno. M. Carroll, Kathleen H. Covey, Eugene F. Smith, Cleo H. Smith, James T. Gentry, Celia L. Morley, Jacob J. Barth, Evelyn S. Johnston, Adeline Hevener, J. H. Wright, John Vormedal, Peter Byrne, Mrs. Lucy Mayer, J. A. Schill, John Kaporich, James D. Austin, Margaret Kendall, Bob Moore, Martin E. Donahus, George C. Heinrich, Pete Mandich, J. Emerson Fleming, Miss Christine Setera, Lilly L. Tanner, Edward B. Martin, Shields & Co., A. R. Tiernan, Buso Vidric, Chester M. Hausknecht, Mrs. Laura M. Hausknecht, Rudolph E. Ames, Arthur W. Bryan, Myron E. Morris, Mrs. Clara B. Bills, Mrs. T. Donaghue Barrett, Walter L. Morris, O. L. Fester,				

CAUSE NO. 16087

RE: WALKER MINING COMPANY

DATE	PROCEEDINGS			
	Ole Hansen, Fred Ritson, Mrs. Edith Ritson, LeRoy Bishop, Grace Rolfe, John A. Woods, Frederick G. Kronmiller, Solomon Reinauer, Cecelia K. Loeb, Mrs. Guasie F. Kropf, Eugene Martino, Edna B. Clarke, Mrs. Florence Larkin May, H. Hunt Parsons, Joseph Schie, Mrs. Clara Johannes, Glenn D. Plyler, C. L. Fritchett, Richard Moore, Florence R. Marshall, Maurice Brampton, Sarah Brampton, Michael Addison, Ellen S. Brett, Charles L. Roy.			
10-9-44	Proofs of claim filed by the following: M. Mattson, Rosaline Berger, Wm. G. Cloon and Mary King Cloon, Miss Gertrude M. Hoerle, Margaret Leahy, Emilie L. Wild, Egbert S. Newbury, Cora R. Joseph.			
10-10-44	Proofs of claim filed by the following: Rebecca Garelick, M. Garelick, Nellie C. Schweikhart, Ashkan Kertighian Ourfalian, H. Marilyn Heinz, Miss Anne Morrison, Joseph A. Deck, Harry Rattner, Gust Boukas, Dwayne W. Alder.			
10-11-44	Proofs of claim filed by Mrs. Rita Rogan and Miss Marion R. Sonner.			
10-12-44	Proofs of claim filed by Lorenzo Snow, Edward N. Anderson, Charles Neely Leatherbury.			
10-13-44	Proofs of claim filed by Mrs. Sara Suffes Ashman, Mrs. Barbara G. Burkhard, Elizabeth Schwantes, Miss Louis Travers, Mrs. Carlotta A. Cookson, Claude G. Bennethum, Mrs. Zo G. Bennethum, King P. Bennethum, Miss Anna L. Cyphers.			
10-14-44	Proofs of claim filed by Julianna Margaret Brodie, George Woodruff Brodie, Robert E. DeBarger, George Baglin, Olof Hanson, Mrs. Edna Hautt.			
10-16-44	Proofs of claim filed by the following: John J. Semmer, Miss Helen Power, Joseph Assanti, James T. Moon, Albert Gokenbach, Mrs. Myrna J. H. Hinton, Mrs. Minnie S. Ryan, Mrs. Mary J. Howley, Ralph Albert Wilhoit, Mrs. Helen Barbara Wilhoit, Frank E. Hawkes, Herman Schineller, Egbert S. Newbury, Mrs. Olga Herberg, Edwin C. Thiedt, Clem L. Yaeger, James Gardner, Mary Peck Gardner, Harry G. McCabe, Nellie C. Schweikhart, Julius Carlson, Mrs. Delima Rankin, T. Tomimatsu, Capt. Ian Lindsay Ried, Agnes F. Wallace, Philip S. Kantor, Joseph J. Strutzel and Mary C. Strutzel, Chas. A. Corey, Lewis L. Banks, Mrs. Ida F. Bistline, Paul P. Thompson, Richard Faulkner, Edward S. Murphy and Margaret B. Murphy, Hugh T. Barron, Bess R. Flesher, Wm. J. Reay, Henry Weil, Arthur G. Smith, Thomas Sorensen, Mrs. Edna Dane, Edna W. Allen, Fred L. Bishop, Mrs. Maude M. Roos, Anna McDonald, Otto E. Miller and Greta J. Miller, Steve Amdets, James E. McKenna, William C. McCahill and Doris Dowd McCahill, Harley W. Magee, Mrs. Lora V. Randall,			

CAUSE NO. 16087

RE: WALKER MINING COMPANY

DATE	PROCEEDINGS			
	Bernhard F. Koepsell, Ward Tabler and Mrs. Lillie V. Tabler, Oliver J. Hurley, Mrs. Alice E. Lamb, E. A. Hincheliff, Ralph Harris, Jr., Miss Minnet Batka, Henry Lehmborg, Clinton L. Babcock, Mrs. Lena Kreidemaeker, Miss Ida M. Wolff, T. William Dickinson, Helen E. Bamraeber, Minnie P. Howlett, Mrs. Lillian L. LaMonte, Mrs. Rose Powarchik, Mrs. Mabel R. Robineau, Harry Sonner, Nora L. Thompson, Margaret E. Cahill, Thomas F. Cahill, John N. Spitznagel, Mrs. Helen B. Willits, Carl G. Nelson, Clyde M. Willis, Mrs. Margaret Maggini, Zaidee W. Miles, Arthur F. Miles.			
0-16-44	First report of Willard H. Davis, Trustee, filed. Copies mailed to Securities Exchange Commission at Washington D. C. and San Francisco and U. S. Treasury Department.			
0-17-44	Proof of claim filed by the following: Miss Margaret McLoughney, Frank G. Link, John J. Daly, Helen E. Barnard, Martin Myrleco, Thomas T. Davies and Mrs. Sarah Ella Davies, John B. Beresford, Frank King and Katharina King, Gustav Pieniak, G. J. Samuel, Ray Purdy, Thomas Shields, George Rollis, Dora N. Taylor, M. E. O'Byrne, Hemming R. Larson, J. E. Carlson, Jr., Ruth Phillips Hansen.			
0-18-44	Proofs of claim filed by Leonard Van Lenten, LeRoy B. Young, John J. Wataba.			
0-19-44	Proofs of claim filed by John B. Marks, Lillian K. Frankenberg, T. L. Stewart, Charles L. Menning, Jerome P. Crittenden, Mrs. Betty Strom Lodell, Franklin M. Warner.			
10-20-44	Proofs of claim filed by Edward G. Schwartz, Mrs. Ruth Davis, Miss Elsie Rost, Morgan Davis & Co., Joe Michell, Frederick C. Mayer, Morris O. Weig, Spencer O. Weig.			
0-21-44	Proofs of claim filed by Mrs. Addie G. Barney, Mrs. Jane W. Laird, William A. Laird, Wallace G. Hunter, Barney McGreevey and Teresa McGreevey, Hugh McGreevey, Alice McGreevey, Mr. & Mrs. L. Gordon Allen.			
0-23-44	Proofs of claim filed by Jack F. May, Florence May Barlow, Chris C. Thompson, Louis G. Ehnenn, Henry W. Doscher.			
0-24-44	Proofs of claim filed by John Bokert, Florence Glenn, Leona Jamieson, Harley & Company, Mrs. Ida Eastman.			
10-25-44	Proofs of claim filed by Erich A. Enler, James J. Driscoll, Wm. R. Taylor, Mrs. Ethleen Taylor, Beatrice L. Penhale and Albert Penhale.			
10-27-44	Proofs of claim filed by Walter C. Roney, Glenn Draper, Elizabeth Fellenz, Mrs. Josephine Weisz, Dorothy L. Hanzel, James S. Hanzel, Mrs. Elizabeth Griggs.			

CAUSE NO. 16087

RE: WALKER MINING COMPANY

DATE	PROCEEDINGS			
11-7-44	Proofs of claim filed by the following: William A. Hollub, Mrs. Mildred M. Phillips, Louis Sabbatini, Angeline Sabbatini, Alfred Bonaventuri, Nina, Bonaventuri, Lucille L. Jones, Thomas McCabe, Charles E. Baker, Mrs. Rose Conrad, A. A. Macpherson, Esther J. Eokman, James M. Hanlon, Dr. Anthony Geo. Maratea, Mrs. Rose Wright, Joseph James Duffy, Harold Sonner, Charles Nix, Mrs. May Ellis, Nellie Grant, Elizabeth J. Grant, Miss Nelle Fowler, Edwin S. Wood, Harry F. Martin, William D. Manuel, F. O. Wilcox, Elizabeth Buntsing, W. Fringing.			
11-9-44	Proofs of claim filed by Kenyon G. Burck. Proof of claim heretofore filed by Josephine Weiss withdrawn.			
11-11-44	Proofs of claim filed by William B. Elkin, Goodbody & Company.			
11-15-44	Proof of claim filed by William M. Shay.			
11-21-44	Proofs of claim filed by Gilbert E. Mains, and Gilbert E. Mains, Executor of the Estate of Effie May Gilbert.			
11-23-44	Proofs of claim filed by the following: J. E. Carlson, Mrs. Elizabeth Griggs, Michael J. McCabe, Mrs. Vivian MacMillan, Arthur V. Dunn, Andy T. Elmont, Rowana H. Kitts, W. G. Hayes, Fred Summ, Margaret Meister, Altie I. Bryant and Jay G. Bryant, Frank Florek.			
11-24-44	Proof of claim filed by Joseph L. Petersen.			
11-16-44	Proofs of claim filed by Wells L. Brimhall and Al Parry.			
11-25-44	Proof of claim filed by Mrs. Mary Berry.			
11-28-44	Proofs of claim filed by Katherine White, Mrs. Anna Maassen, Mrs. George E. Maule, T. William Dickinson, Mrs. Jessie L. DeVinney, John E. Yrazoqui, Fred L. Biederman, George R. Thomas, C. M. Baysinga, Jr., Samuel J. Elkins, Frank B. Steele, Carrie Birdsell, Catherine Rice, Calvin Bleyl, Mrs. Margaret Rost, D. M. Ravitz, Norma Rost, George A. Parker, William C. Finlay, Elizabeth Elkin, Grant, Helen Benus Cleary, Henry C. Borcharding, Myrtle Gardiner, George W. Ramey, Nellie Manning, R. G. Daniels, Mrs. Cynthia Stein, Mrs. Emma Louise Knapp, Mrs. Ellen Kargacin.			
11-29-44	Objections of Minority Stockholders to the claim filed by International Smelting and Refining Co. etc. Copies mailed to S.E.C. and Secretary of Treasury.			
1-30-44	Proof of claim filed by Miss Winifred Lemkau.			
12-4-44	Objections filed by Geo. Baglin, et al, to claim filed by International Smelting Co. Letter of objection and other papers filed by Mrs. Lorane F. Stephan.			
2-5-44	Certificate of representation filed by Harry D. Fugley, attorney for Geo. Baglin, et al.			

CAUSE NO. 16087

RE: WALKER MINING COMPANY

DATE	PROCEEDINGS			
0-28-44	Proofs of claim filed by Kate B. East, Clara B. Steele, Violet Atwood Smith, Mrs. Gertrude M. Frank, Helen Cloud, Mary Louise Cloud, Joseph Francis Cloud, Helen Patricia Cloud, James Leo Cloud, Martha Ann Cloud, Agnes Loretta Cloud, W. H. Manthe, Bessie M. Prickett, George A. Parker, Mrs. Sadie Manretty, McCaffery & McCaffery on behalf of Finlay Beaton, deceased.			
0-30-44	Proofs of claim filed by Anna Hunter, Margaret Christensen, Mabel Danielson, Mrs. Elizabeth R. Sharp, Mrs. C. K. Solomonson, Mrs. Chester W. Walters, Charlotte R. Garvin, Industrial Accident Commission on behalf of 21 claimants.			
0-30-44	Leon R. Boyd, J. R. Hutchinson, Anaconda Copper Mining Co., Mrs. John Gerendas, Henry C. Borcharding, Mrs. Loraine F. Stefan, Mrs. Margaret Rost and Norma Rost filed proofs of claim.			
0-30-44	Report of Trustee filed concerning sale of property. Exhibit A filed.			
0-31-44	Proofs of claim filed by Richard C. Badger, William P. Schwartz, J. R. Carlson, Arthur W. Hawley, George E. Bauman, Miss Gertrude P. Wood, James McEaney, William O'Neill, Nicholas Tobin, Cecil A. Stevens, Agnace Easton, Mrs. Marie Bakkeby, James A. Barksdale, Harry Cohen, Miss Elsie Rost, Daniel P. More, Mike Horan, Mrs. Margaret Leahy, Mrs. Gertrude I. Mitchell, Jacob Bekkala, Edward G. Schwartz, T. L. Stewart, Sadie M. Arnold, Ernest B. Hitchcock, Irvine E. Lindholm, A. R. Kohlmetz, Charles L. Mennin, Mrs. May H. McGinty, Edna B. Eckersley, Albert Guscatt, John B. Marks, Abe Raskin, Frank F. Winsell, Mrs. Bridget Murphy, Mrs. A. P. Balch and Alford P. Balch, Mrs. Cornelia E. Kremer, Haig Simeonian, Ruby M. Boone, Minnie Ulrich Bowers, Herbert L. Bowers, Neil Bayle, Grayce B. Bray, Antony Domstiovich, Max Fader, Mrs. Veronica Cannon, Edward T. Jenkins, Mrs. Patricia Powers, Mrs. Dorothy O'Leary, Ralph Harris, Sadie P. Mullins, Irving Lindholm, Michael McKean, John McMahon, Rose Bolotto, Miss Amelia Ordron, Mrs. Ethel J. Jenkins, International Smeltine & Refining Co., Mary W. Lang			
1-1-44	Proofs of claim filed by George E. Giles, John E. Deardorff, deceased, by Continental Bank and Trust Company, Halle & Stierlitz.			
1-2-44	Proofs of claim filed by Ralph A. Badger & Co., Tony Kavros, Leon M. Bolter, Miss Jessie M. Sankey, Harold Gene Harris.			
1-3-44	Proofs of claim filed by Ruth D. Woods.			
1-4-44	Proofs of claim filed by Lottie Mellen Rowett, Ralph W. Miller, deceased, by J.B.C. Knight, J.B.C. Knight, Mrs. Mary E. Ryan.			
1-6-44	Proofs of claim filed by J.A. Hogle & Co., Robert H. Baglin.			

CAUSE NO. 16087 RE: WALKER MINING COMPANY

DATE	PROCEEDINGS			
2-5-44	Order appointing T. D. Lewis special master signed by Judge Johnson and filed.			
12-6-44	Oath of T. D. Lewis as special master filed. Proof of claim filed by H. M. Friedel.			
12-9-44	Proofs of claim filed by Gertrude P. Wood, Jesse T. Badger, W. L. & Amelia Barr, Daniel E. & Virginia M. Nelson.			
12-13-44	Præcipe filed for witnesses by Geo. A. Baglin's attorney, and subpoenas issued.			
12-15-44	Ordered that all claims filed herein are approved except contested claim of International Smelting & Refining Company. Order to be prepared and presented for signature. Affidavit of mailing certain papers filed by trustee.			
12-16-44	Subpoena filed showing service on three witnesses.			
12-18-44	Præcipe filed for two witnesses, and subpoena issued.			
12-26-44	Petition No. 6 filed for authority to borrow money on trustee's certificate filed.			
1-3-45	Official report of proceedings in two volumes filed by court reporter, and certain exhibits filed.			
1-4-45	Order No. 7 signed by Judge Johnson and filed authorizing trustee to borrow \$15,000.00 on trustee's certificate. Copies mailed SEC and Secretary of the Treasury.			
1-12-45	Stipulation of facts filed.			
1-15-45	Memo decision of special master filed. Copies mailed to F. T. Farnsworth and Harry D. Pugsley. Affidavit of mailing filed. Proof of claim filed by Mrs. Ruth E. Toomey.			
1-29-45	Stipulation filed to correct stipulation of January 12, 1945. Exhibit D received.			
2-1-45	Objections to proposed findings of fact and conclusions of law of special master and suggested form of decree filed. Stipulation filed setting case for hearing February 1, 1945, at 2 PM.			
2-5-45	Suggested form of master's findings, unsigned, filed. Special master's findings of fact, and suggestions as to form of decree signed by T. D. Lewis, and filed, together with stipulation of counsel. Copies mailed S.E.C. and Secretary of the Treasury.			
2-6-45	Order signed by Judge Johnson and filed to hear objections on form of decree February 9, 1945, in accordance with stipulation filed.			
2-9-45	Hearing on objections to findings of fact and conclusions of law signed by T. D. Lewis, Special Master. The court heard			

CAUSE NO. 16087

RE: WALKER MINING COMPANY

DATE	PROCEEDINGS			
	arguments of counsel and denied objections to findings. Findings of fact, conclusions of law and suggested form of decree approved and adopted as signed by special master. Decree to be prepared and presented for signature.			
2-10-45	Decree signed by Judge Johnson and filed. Notice of entry mailed Harry D. Pugsley.			
2-15-45	Notice of entry of decree filed. Cost bill against objecting creditors filed by International Smelting and Refining Company for \$522.50. Notice mailed Harry D. Pugsley, attorney for objecting creditors that same would be taxed February 15, 1945.			
2-14-45	Petition No. 7 filed by trustee for order fixing time for certain matters. Order No. 8 signed by Judge Johnson and filed giving trustee to February 24, 1945, to mail copies of order, etc., to creditors and fixing March 21, 1945, to file with trustee a plan of reorganization and hearing on any proposed plan at Salt Lake City for March 23, 1945. Copies of petition and order mailed to Secretary of Treasury and S.E.C.			
2-15-45	Cost bill of claimant, International Smelting and Refining Company, taxed as claimed for \$522.50. Copy of taxation mailed attorneys for claimant and objecting creditors.			
3-22-45	Report of trustee why a plan of reorganization cannot be effected pursuant to Sec. 169 of Bankruptcy Act filed. Petition No. 8 filed by trustee for order authorizing sale of principal assets. Two affidavits of mailing filed.			
3-23-45	Hearing on proposed plan. Trustee sworn and examined. Order signed by Judge Johnson and filed authorizing sale of principal assets and continuing further hearing until May 24, 1945, and authorizing sale of property to highest bidder. Sealed bids to be addressed to trustee and mailed to Clerk on or before April 14, 1945, at which bids will be opened. Copy of order mailed to S.E.C. and Secretary of the Treasury.			
3-28-45	Assignment of claim of Anaconda Copper Mining Company and consent to entry of subrogation filed. Order subrogating Safeway Signal Co. to the claim of Anaconda Copper Mining Company signed by Judge Johnson and filed. Assignment of claim of International Smelting and Refining Company and consent to entry of order of subrogation filed. Order subrogating Safeway Signal Co. to claim of International Smelting and Refining Company signed by Judge Johnson and filed. Stipulation and order signed by Judge Johnson and filed authorizing release of every exhibit introduced at			

CAUSE NO.

16087

RE:

WALKER MINING COMPANY

16087

DATE	PROCEEDINGS			
	hearing before Special Master.			
3-29-45	Receipts for exhibits D, E, and C, 6, 10, 7, and 7a, b, c, d, e and f signed by Rom Warburton and filed.			
	Letter from Mrs. Lorane Stefan filed requesting all papers heretofore filed by her be returned. Request granted by the court and papers mailed.			
	Order signed by Judge Johnson and filed eliminating publication in certain newspapers and trustee to mail notices to prospective bidders.			
4-14-45	Hearing on sale of property. Court called for bids. After competitive bidding in open court by prospective buyers, property sold to Safeway Signal Company by Frank Johnson, its attorney, for \$15,000.00 for land and \$188,000.00 for other property, total bid \$203,000.00. Trustee recommended sale. Necessary papers to be prepared by counsel. Affidavits of mailing filed. Proof of publication filed. Decree confirming sale, ordering deed, bills of sale, and writ of possession signed by Judge Johnson and filed. Copies mailed to Secretary of the Treasury and S. E. C.			
5-14-45	Order signed by Judge Johnson and filed fixing hearing for May 24, 1945.			
5-18-45	Order signed by Judge Johnson and filed authorizing trustee to terminate employment of registrars and transfer agents.			
5-21-45	Trustee's application for certain orders filed.			
5-24-45	Objection to fees of trustee, etc. filed by Safeway Signal Co. Supplemental account of trustee covering period April 26, 1945, to May 24, 1945, filed. Canceled checks, etc. for month of April, 1945, filed. Affidavit of mailing filed.			
5-24-45	On motion of Frank Johnson, Charles J. Katz admitted to practice for this case only. Hearing on report of trustee and petition to fix fees of attorneys, trustee, and other items. Court authorized payment to J. R. Hutchinson in sum of \$81.23 for services. Three witnesses sworn and examined. Continued to May 25, 1945, at 9:30 AM.			
5-25-45	Memorandum of authorities re compensation of trustee and his attorneys filed by Safeway Signal Co. Arguments of counsel. Hearing resumed. With consent of Frank Johnson, ordered that \$1,000.00 be paid to Rom Warburton. Further ordered that Frank Johnson handle insurance matters, and trustee to be paid the			

CAUSE NO. 16087

RE: WALKER MINING COMPANY

DATE	PROCEEDINGS			
	sum of \$500.00 per month for 11 $\frac{1}{2}$ months, total \$6,750; Gerald Johnson, attorney for trustee, allowed \$750.00 per month, total \$8,625.00. The present trustee and his attorney to resign, effective this date, and upon written resignation, Frank Johnson of Salt Lake City, to be appointed successor to trustee and bond to be approved by the court. Order to be prepared and presented for signature.			
5-26-45	Order signed by Judge Johnson and filed re report and account of trustee, and fixing and allowing expenses of administration, declaring dividend, and accepting resignation of trustee and his counsel. Copies mailed to S. E. C. and Secretary of the Treasury.			
6-13-45	Resignation of Gerald R. Johnson filed. Resignation of Willard H. Davis, Trustee, filed. Vouchers and canceled checks received and filed. Order approving resignation of trustee and exonerating bond and appointing Frank A. Johnson as his successor signed by Judge Johnson and filed. Copies mailed to S. E. C. and Secretary of the Treasury.			
7-28-45	Continued to September 22, 1945.			
9-22-45	Hearing on order of dismissal or adjudication as bankrupt continued to September 25, 1945.			
9-25-45	Order signed by Judge Johnson and filed, adjudging Walker Mining Company a bankrupt. Frank A. Johnson, Trustee, to notify all creditors of 1st meeting. This Court reserving full right and jurisdiction of this proceeding.			
10-11-45	Order signed by Judge Johnson and filed approving appointment of Frank Johnson, Trustee, signed by Judge Johnson and filed. Trustee's report filed. Copies mailed to SEC and Treasury Department.			
10-12-45	Bond of trustee, Frank A. Johnson, in sum of \$500.00 approved by Judge Johnson and filed.			
2-12-46	Petition for discharge filed by J. B. Whitehill, Secretary for Walker Mining Company.			
2-13-46	Order fixing time for filing objections as March 20, 1946, signed by Judge Johnson and filed. Notice of order mailed to creditors by Frank Johnson, Trustee.			
2-15-46	Notices fixing March 20, 1946, as last day for filing objections mailed to creditors. Affidavit of mailing filed.			
4-2-46	Discharge of Bankrupt signed by Judge Johnson and filed.			
4-22-46	Trustee's report of claims and petition for allowance or disallowance thereof and fixing the status of allowed claims by the Court, filed.			

CAUSE NO. 16087

RE: WALKER MINING COMPANY

DATE	PROCEEDINGS			
	Order signed by Judge Johnson and filed that objections to allowances of Claims be filed with Clerk before May 10, 1946 and that Rearing on such claims and objections be heard before the court at 9 A.M. on May 29, 1946.			
5-10-46	Trustee's objections to allowances of claims filed.			
5-11-46	Affidavit of Mailing re. trustee objections filed.			
5-29-46	Called for hearing on Trustee's objection to allowance of claims. It appearing that notice of said hearing was mailed to each claimant and no one appeared to represent them, the Court heard statement of Trustee and allowed claim of Mine Safety Appliance Co., E. J. Dudley ^(2 claims) and Rom Warburton and disallowed \$84.93 from claim of Pacific Gas & Electric Co.			
	Order to be prepared by Frank Johnson.			
5-31-46	Order regarding claims signed by Judge Johnson and filed. Affidavit of mailing of order signed April 22, 1946, filed.			
6-3-46	Affidavit of mailing order regarding claims filed.			
4-17-56	Report of trustee, Frank A. Johnson, filed.			
5-3-56	Notice mailed for hearing report on 5-18-56. Vacated.			
5-21-56	Notice mailed for hearing Report of Trustee on 6-1-56.			
6/1/56	Order approving trustee's report and account, signed by J.R., filed.			
7 1957	Order referring matter to Clinton D. Vernon, Referee, signed by Judge Ritter and filed.			
4-14-59	Petition for reconsideration of claims filed. Order fixing time and place for hearing on petition of J. J. Sugarman Co. and directing notice of time, place and purpose of said hearing filed. Points and authorities in support of petition for reconsideration of "Proof of unsecured claims" filed.			
4-29-59	Notice of time, place and purpose of hearing on May 15, 1959, filed, together with copy of petition for reconsideration of claims and points and authorities in support of petition for reconsideration of "Proof of Unsecured claims".			
5/11/59	Notice mailed to Frank A. Johnson and David M. Turner for hearing on May 15, 1959 at 10:00 a.m.			
5-25-59	Order of Special Reference for Hearing on Petition for Reconsideration of Claims signed by Judge Ritter delegating authority to Clinton D. Vernon, Referee, filed.			

D. C. 114

7-1768

CAUSE NO. _____ RE: _____

DATE	PROCEEDINGS				
8-4-59	Order signed by Clinton D. Vernon, Referee in Bankruptcy, granting "Petition for Reconsideration of Claims" and rejecting in whole "Proof of Unsecured Claims filed October 30, 1944, by General Referee of the Industrial Accident Commission of State of California" purporting to be a claim on behalf of 26 former employees of Walker Mining Company, filed.				
8-11-59	Final report and account of trustee in bankruptcy of Walker Mining Company; Petition for approval thereof; for allowance of trustee's fees and for discharge of trustee filed.				
8-12-59	Notice mailed for hearing Final Report of Trustee on Friday, August 28, 1959 at 10:00 a.m.				
8-28-59	Bill of Sale of Samuel C. Rudolph filed. Bill of Sale of Willis Hirsch filed. Bill of Sale of Ben Bail filed. Copy of Order for Instructions - Superior Court of the State of California - together with affidavit of mailing filed. Affidavit of N. N. Sugarman filed. Copy of Bill of Sale by Estate of Jacob J. Sugarman, et al, filed, together with Affidavit of Mailing. Letter together with Claim of Dominic Battistuzzi filed.				
8-28-59	Order Approving Final Report and Account of Trustee in Bankruptcy of Walker Mining Company. Allowing Trustee's Fees and Directing Discharge of Trustee signed by Judge Ritter on 8-28-59 filed. Notice mailed re. signing of order. Case came on for hearing on final report and accounting of trustee and for allowance for trustee's fee and for discharge of trustee. The, after hearing statements of counsel approved the final report, allowed trustee's fee and signed order directing discharge of trustee.				

Exhibit B

From: [Laura Rogers](#)
To: [McCullough, Andrea](#)
Subject: Re: Looking for an old bankruptcy case
Date: Wednesday, February 19, 2014 9:57:39 AM
Attachments: [image001.png](#)

Hello,
I apologize for not getting back with you sooner, the transfer, box and case that you are requesting has been recently destroyed our system is in the process of being updated.

Thank you,
Laura A. Rogers
laura.rogers@nara.gov
Archives Technician
NARA-Federal Records Center
Telephone: 303-604-4767 Fax: 303-604-4761
Reference Request, please e-mail denver.reference@nara.gov

On Wed, Feb 19, 2014 at 8:15 AM, McCullough, Andrea
<Andrea.McCullough@dgslaw.com> wrote:

Hi Laura—

Any word on this case file?

Thanks,

Andrea McCullough

ANDREA McCULLOUGH RESEARCH/REFERENCE LIBRARIAN

P: [303.892.7505](tel:303.892.7505) • F: [303.893.1379](tel:303.893.1379) • [vcard](#)



Davis Graham & Stubbs LLP
1550 17th Street, Suite 500 • Denver, CO 80202

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From: Laura Rogers [mailto:laura.rogers@nara.gov]
Sent: Friday, February 14, 2014 10:44 AM

To: McCullough, Andrea
Subject: Re: Looking for an old bankruptcy case

Yes! Thank you so very much. I will keep you updated.

Thank you,

Laura A. Rogers

laura.rogers@nara.gov

Archives Technician

NARA-Federal Records Center

Telephone: [303-604-4767](tel:303-604-4767) Fax: [303-604-4761](tel:303-604-4761)

Reference Request, please e-mail denver.reference@nara.gov

On Fri, Feb 14, 2014 at 10:35 AM, McCullough, Andrea
<Andrea.McCullough@dgsllaw.com> wrote:

Laura,

Ruth at USDC Utah said she is looking at form #134. She said the box number, also called the agency container in her experience, is 4. And she confirmed the FRC container number as 62763.

Does this help?

Thank you,

Andrea

From: Laura Rogers [mailto:laura.rogers@nara.gov]
Sent: Friday, February 14, 2014 9:26 AM
To: McCullough, Andrea

Subject: Re: Looking for an old bankruptcy case

Hello,

We are still searching for an answer to give you-currently what I do know is that this transfer V021-65A0560 the disposition has been generated, this means the boxes will be destroyed, what has me concerned is the courts have told you that the box number is 62 of 763. Looking in our history there were only 6 boxes for the "A" . "B" contained 12 boxes and "C" contained 9 boxes.

Would you please contact the courts and ask them to look at the transfer/accession and box number again just in the event it was mis-read?

In the meantime I will continue to look for the correct answer as to the history of the file you are requesting.

Thank you,

Laura A. Rogers

laura.rogers@nara.gov

Archives Technician

NARA-Federal Records Center

Telephone: 303-604-4767 Fax: 303-604-4761

Reference Request, please e-mail denver.reference@nara.gov

On Thu, Feb 13, 2014 at 4:48 PM, McCullough, Andrea
<Andrea.McCullough@dgsllaw.com> wrote:

Hello,

I just wanted to check in on my request. Is there any other information you need to find this case?

Thank you,

Andrea McCullough

ANDREA McCULLOUGH RESEARCH/REFERENCE LIBRARIAN

P: 303.892.7505 • F: 303.893.1379 • vcard



Davis Graham & Stubbs LLP
1550 17th Street, Suite 500 • Denver, CO 80202

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Member
LexMundi
World Ready

From: McCullough, Andrea
Sent: Thursday, February 13, 2014 10:41 AM
To: 'Laura Rogers'; 'denver.reference@nara.gov'
Subject: RE: Looking for an old bankruptcy case

Thank you for your reply. Since the bankruptcy court did not exist in 1944, it was the USDC of Utah that had this information.

The accession number is **021-65A0560 (B-A-N)**

FRC container number **62763**

The case number has been verified.

Thanks,

Andrea

From: Laura Rogers [<mailto:laura.rogers@nara.gov>]
Sent: Thursday, February 13, 2014 10:31 AM
To: denver.reference@nara.gov
Cc: McCullough, Andrea
Subject: Re: Looking for an old bankruptcy case

Hello,

Please contact the Bankruptcy Court in Utah at [801-524-6687](tel:801-524-6687) please ask them for the Transfer/Accession number, The box number and confirm your case number. Once you have this information I will be able tell you if its still here or not.

Please let me know what you find out.

On Thursday, February 13, 2014 8:18:46 AM UTC-7, McCullough, Andrea wrote:

Good morning,

I'm looking for the case file of an old bankruptcy case from the U.S. Dist. of Utah that was filed on 8/24/1944. The cause number is 16087 and it is in the matter of Walker Mining Company. I was able to get the docket from the National Archives and have already contacted the court itself. All indication is that if the FRC doesn't have it, it may not be available at all.

We plan on either sending a runner or coming down there to make copies if this is available. Please let me know if you need additional information.

ANDREA McCULLOUGH RESEARCH/REFERENCE LIBRARIAN

P: 303.892.7505 • F: 303.893.1379 • vcard

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9 Denver CO 80202
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10 Facsimile: (303) 893-1379

11 Attorneys for Petitioner
Atlantic Richfield Company



13 STATE WATER RESOURCES CONTROL BOARD
14 STATE OF CALIFORNIA

16 In the Matter of Petition for Stay and
17 Petition for Review of Central Valley
Regional Water Quality Control Board
18 Clean-Up and Abatement Order
R5-2014-0039
19 Atlantic Richfield Company, Petitioner

SWRCB File No. _____
**DECLARATION OF BRENNAN R. QUINN
IN SUPPORT OF ATLANTIC RICHFIELD
COMPANY'S PETITION FOR REVIEW
AND PETITION FOR STAY**

21 I, Brennan R. Quinn, hereby declare and state as follows:
22 1. I am licensed to practice law in the State of California and am an attorney with the
23 law firm of Farella Braun + Martel LLP, attorneys for Petitioner Atlantic Richfield Company in
24 this matter. I have personal knowledge of the matters set forth herein, and could and would
25 competently testify thereto if called upon to do so.
26 2. Attached hereto as **Exhibit 1** is a true and correct copy of the Central Valley
27 Regional Water Quality Control Board Clean-Up and Abatement Order R5-2014-0039,
28 transmitted on April 4, 2014.

1 3. Attached hereto as **Exhibit 2** is a true and correct copy of the February 20, 2014
2 Opinions Relating to All Phases of Mining Operations and Estimates of Tailings Production by
3 Terry McNulty, D. SC., P.E., Appendix IV to Atlantic Richfield's Prehearing Motions.

4 4. Attached hereto as **Exhibit 3** is a true and correct copy of the March 27, 2014
5 hearing transcript.

6 5. Attached hereto as **Exhibit 4** is a true and correct copy of a July 19, 1944 letter
7 from the U.S. Securities and Exchange Commission to Walker Mining Company, Atlantic
8 Richfield's Hearing Exhibit 128.

9 6. Attached hereto as **Exhibit 5** is a true and correct copy of the February 20, 2014
10 Expert Report of William Haegele, Appendix III to Atlantic Richfield's Prehearing Motions.

11 7. Attached hereto as **Exhibit 6** is a true and correct copy of Patented and Unpatented
12 Quartz Mining Claims, Atlantic Richfield's Hearing Exhibit 136.

13 8. Attached hereto as **Exhibit 7** is a true and correct copy of the February 16, 1945
14 Decree in the Walker Mining Company bankruptcy matter, Atlantic Richfield's Hearing Exhibit
15 131.

16 9. Attached hereto as **Exhibit 8** is a true and correct copy of the April 29, 2013 Draft
17 Cleanup and Abatement Order for Walker Mine (mine), served on Atlantic Richfield on May 1,
18 2013.

19 10. Attached hereto as **Exhibit 9** is a true and correct copy of a paper, Walker Mine,
20 The On-Going Effort to Improve the Environment, Atlantic Richfield's Hearing Exhibit 141.

21 11. Attached hereto as **Exhibit 10** is a true and correct copy of a December 3, 1957
22 Inter-departmental Communication from the Department of Fish and Game to the Central Valley
23 Regional Water Pollution Control Board regarding Comments and Recommendations Concerning
24 Walker Mine and Walker Mine Tailings, Atlantic Richfield's Hearing Exhibit 179.

25 12. Attached hereto as **Exhibit 11** is a true and correct copy of the February 20, 2014
26 Expert Report of Marc R. Lombardi, PG, CEM, Appendix V to Atlantic Richfield's Prehearing
27 Motions.

28 13. Attached hereto as **Exhibit 12** is a true and correct copy of the July 28, 1972

1 Central Valley Regional Water Quality Control Board Resolution No. 73-1, Violation of
2 Abatement Order for Discharge of Toxic Wastes from the Walker Mine to Dollie Creek and Little
3 Grizzly Creek, Plumas County by Calicopia Corporation and Its President, Robert R. Barry,
4 Atlantic Richfield's Hearing Exhibit 184.

5 14. Attached hereto as **Exhibit 13** is a true and correct copy of an October 30, 1978
6 Memorandum from Larry Nash to J. Lawrence Pearson regarding Walker Mine WDR Order No.
7 75-119, Atlantic Richfield's Hearing Exhibit 186.

8 15. Attached hereto as **Exhibit 14** is a true and correct copy of the December 9, 1983
9 Central Valley Regional Water Quality Control Board Order No. 83-148, Request to Abate
10 Pollution from Walker Mine, Robert R. Barry, and Calicopia Corporation, Atlantic Richfield's
11 Hearing Exhibit 195.

12 16. Attached hereto as **Exhibit 15** is a true and correct copy of the July 15, 1984
13 Declaration of William J. Marshall in *The People of the State of California v. Robert R. Barry, et*
14 *al.*, No. 11901 (Plumas Cnty. Super. Ct.), Atlantic Richfield's Hearing Exhibit 197.

15 17. Attached hereto as **Exhibit 16** is a true and correct copy of the January 25, 1985
16 Central Valley Regional Water Quality Control Board Order No. 85.033 Waste Discharge
17 Requirements for Walker Mine, Robert R. Barry, Calicopia Corporation, and the Standard
18 Bullion Company, Inc., Atlantic Richfield's Hearing Exhibit 201.

19 18. Attached hereto as **Exhibit 17** is a true and correct copy of the November 1985
20 Central Valley Regional Water Quality Control Board Walker Mine Project Final Feasibility and
21 Design Report, Atlantic Richfield's Hearing Exhibit 202.

22 19. Attached hereto as **Exhibit 18** is a true and correct copy of the 1920 Moody's
23 Manual of Railroads and Corporation Securities, Twenty-first Annual Number, Industrial Section
24 on Anaconda Copper Mining Co., Atlantic Richfield's Hearing Exhibit 29.

25 20. Attached hereto as **Exhibit 19** is a true and correct copy of the November 24, 1922
26 George Baglin Analysis of Facts and History of the Walker Mining Company, Subsidiary of the
27 Anaconda Copper Mining Company, Atlantic Richfield's Hearing Exhibit 33.

28 21. Attached hereto as **Exhibit 20** is a true and correct copy of an August 21, 1941

1 letter from the General Manager of Anaconda Copper Mining Company to the President of
2 Anaconda Copper Mining Company regarding the Walker Mine, Atlantic Richfield's Hearing
3 Exhibit 119.

4 22. Attached hereto as **Exhibit 21** is a true and correct copy of an August 13, 1997
5 letter from the Central Valley Regional Water Quality Control Board to ARCO regarding Walker
6 Mine, Atlantic Richfield's Hearing Exhibit 144.

7 23. Attached hereto as **Exhibit 22** is a true and correct copy of a June 15, 1998 letter
8 from the Central Valley Regional Water Quality Control Board to Atlantic Richfield Company
9 regarding the Walker Mine, Atlantic Richfield's Hearing Exhibit 148.

10 24. Attached hereto as **Exhibit 23** is a true and correct copy of the December 1, 1999
11 Central Valley Regional Water Quality Control Board Notice, Tentative Order Revising Waste
12 Discharge Requirements, Atlantic Richfield Company and U.S. Department of Agriculture Forest
13 Service, Plumas National Forest, Walker Mine Tailings, Atlantic Richfield's Hearing Exhibit 149.

14 25. Attached hereto as **Exhibit 24** is a true and correct copy of a December 30, 1999
15 letter from ARCO counsel to the Central Valley Regional Water Quality Control Board
16 responding to the Tentative Revised Waste Discharge Requirements for the Walker Mine
17 Tailings, Atlantic Richfield's Hearing Exhibit 151.

18 26. Attached hereto as **Exhibit 25** is a true and correct copy of a January 24, 2000
19 letter from the Central Valley Regional Water Quality Control Board to ARCO counsel removing
20 ARCO from the tentative Waste Discharge Requirements, Atlantic Richfield's Hearing
21 Exhibit 152.

22 27. Attached hereto as **Exhibit 26** is a true and correct copy of a September 23, 2010
23 e-mail chain between the Montana Historical Society and the Central Valley Regional Water
24 Quality Control Board regarding the Anaconda Copper Mining Company records, Atlantic
25 Richfield's Hearing Exhibit 157.

26 28. Attached hereto as **Exhibit 27** is a true and correct copy of the April 11, 2013
27 memorandum from the Central Valley Regional Water Quality Control Board Senior Engineering
28 Geologist to the Executive Officer, Assistant Executive Officer and Supervising Engineering

1 Geologist regarding Tentative Cleanup and Abatement Orders, Atlantic Richfield's Hearing
2 Exhibit 159.

3 29. Attached hereto as **Exhibit 28** is a true and correct copy of a June 3, 2013 letter
4 from Atlantic Richfield's counsel to the Central Valley Supervising Engineering Geologist and
5 the State Water Resources Control Board Senior Staff Counsel providing Atlantic Richfield
6 Company Comments on Draft Orders.

7 30. Attached hereto as **Exhibit 29** is a true and correct copy of the October 2, 2013
8 letter from the Central Valley Regional Water Quality Control Board to Atlantic Richfield
9 Company, the United States Forest Service, and the United States Department of Agriculture
10 regarding Notification of Hearing and Proposed Hearing Procedures.

11 31. Attached hereto as **Exhibit 30** is a true and correct copy of a December 6, 2013
12 letter setting forth Atlantic Richfield Company's Objections to the Prosecution Team's
13 November 22, 2013 Proposed Hearing Procedures.

14 32. Attached hereto as **Exhibit 31** is a true and correct copy of the amended
15 January 29, 2014 Hearing Procedure for Cleanup and Abatement Orders R5-2014-XXXX and
16 R5-2014-YYYY.

17 33. Attached hereto as **Exhibit 32** is a true and correct copy of the October 5, 1957
18 Walker Mine Report, Prosecution Team's Exhibit 20.

19 34. Attached hereto as **Exhibit 33** is a true and correct copy of the April 24, 1958
20 Central Valley Water Board Resolution 58-180, Prosecution Team's Exhibit 18.

21 35. Attached hereto as **Exhibit 34** is a true and correct copy of the March 28, 2014
22 hearing transcript.

23 36. Attached hereto as **Exhibit 35** is a true and correct copy of the Prosecution Team's
24 Opening Brief and Response to Dischargers' 3 June 2013 Comments on Draft Cleanup and
25 Abatement Orders.

26 37. Attached hereto as **Exhibit 36** is a true and correct copy of the January 17, 2014
27 Expert Witness Statement of Frederic L. Quivik, Ph.D., Prosecution Team's Hearing Exhibit 2.

28 38. Attached hereto as **Exhibit 37** is a true and correct copy of the Prosecution Team's

1 Rebuttal Brief.

2 39. Attached hereto as **Exhibit 38** is a true and correct copy of the March 27, 2014
3 Expert PowerPoint presentation of William Haegele.

4 40. Attached hereto as **Exhibit 39** is a true and correct copy of the March 6, 2014
5 Atlantic Richfield Company Renewed Request for Additional Time and Bifurcated Proceedings
6 and December 6, 2013 letter attached thereto.

7 41. Attached hereto as **Exhibit 40** is a true and correct copy of the February 20, 2014
8 Atlantic Richfield Prehearing Motion No. 4.

9 42. Attached hereto as **Exhibit 41** is a true and correct copy of an information sheet on
10 Waste Discharge Requirements, Atlantic Richfield's Hearing Exhibit 150.

11 43. Attached hereto as **Exhibit 42** is a true and correct copy of an August 19, 1997
12 letter from the United States Department of Agriculture to Atlantic Richfield, Atlantic Richfield's
13 Hearing Exhibit 145.

14 44. Attached hereto as **Exhibit 43** is a true and correct copy of the July 2001 Record
15 of Decision Amendment for Remediation of the Walker Mine Tailings, Atlantic Richfield's
16 Hearing Exhibit 153.

17 45. Attached hereto as **Exhibit 44** is a true and correct copy of the U.S. Forest
18 Service's Response brief.

19 46. Attached hereto as **Exhibit 45** is a true and correct copy of the Prosecution Team's
20 Response to Atlantic Richfield Company's Prehearing Motion No. 1.

21 47. Attached hereto as **Exhibit 46** is a true and correct copy of a December 31, 1918
22 Report 6 on Anaconda Copper Mining Company, Atlantic Richfield's Hearing Exhibit 7.

23 48. Attached hereto as **Exhibit 47** is a true and correct copy of Walker Mine 1943
24 information and interviews, Atlantic Richfield's Hearing Exhibit 135.

25 49. Attached hereto as **Exhibit 48** is a true and correct copy of the February 20, 2014
26 Declaration of Andrea Hamilton.

27 50. Attached hereto as **Exhibit 49** is a true and correct copy of a February 14, 1945
28 Brief Statement of Trustee's Investigation Pursuant to Section 167(5) of the Act of Congress

1 Relating to Bankruptcy, Atlantic Richfield's Hearing Exhibit 132.

2 51. Attached hereto as **Exhibit 50** is a true and correct copy of the February 20, 2014
3 Atlantic Richfield Prehearing Motion No. 3.

4 52. Attached hereto as **Exhibit 51** is a true and correct copy of the Prosecution Team's
5 Response to Atlantic Richfield Company's Prehearing Motion No. 5.

6 53. Attached hereto as **Exhibit 52** is a true and correct copy of the January 2, 1991
7 Judgment Pursuant to Stipulation in *The People of the State of California v. Anne Benjamin*
8 *Barry, et al.*, NO. 340529 (San Mateo Cnty. Super. Ct.), Prosecution Team's Hearing Exhibit 16.

9 54. Attached hereto as **Exhibit 53** is a true and correct copy of a March 17, 1998 letter
10 from CVRWQCB to Cedar Point Properties regarding Cleanup and Abatement Account Lien,
11 Atlantic Richfield's Hearing Exhibit 147.

12 55. Attached hereto as **Exhibit 54** is a true and correct copy of the August 16, 2004
13 Judgment in *People of the State of California, et al. v. Cedar Point Properties, Inc., et al.*, No.
14 19897 (Plumas Cnty. Super. Ct.), Atlantic Richfield's Hearing Exhibit 154.

15 56. Attached hereto as **Exhibit 55** is a true and correct copy of the September 18, 1997
16 SWRCB Approval of Funds from the State Water Pollution Cleanup and Abatement Account to
17 Continue Monitoring and Maintenance of the Acid Mine Drainage Abatement Project at Walker
18 Mine, Atlantic Richfield's Hearing Exhibit 146.

19 57. Attached hereto as **Exhibit 56** is a true and correct copy of a May 1997 Central
20 Valley Water Board Walker Mine Acid Mine Drainage Abatement Project Operations and
21 Maintenance Procedures, Prosecution Team's Hearing Exhibit 22.

22 58. Attached hereto as **Exhibit 57** is a true and correct copy of a June 2011 Table
23 showing Walker Mine and Tailings Water Quality Monitoring Locations, Prosecution Team's
24 Hearing Exhibit 23.

25 59. Attached hereto as **Exhibit 58** is a true and correct copy of an August 2006 Water
26 Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 24.

27 60. Attached hereto as **Exhibit 59** is a true and correct copy of an October 2006
28 Regional Water Board Inspection Report, Prosecution Team's Hearing Exhibit 25.

- 1 61. Attached hereto as **Exhibit 60** is a true and correct copy of a November 2006
2 Water Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 26.
- 3 62. Attached hereto as **Exhibit 61** is a true and correct copy of June 2007 Regional
4 Water Board Inspection Report, Prosecution Team's Hearing Exhibit 27.
- 5 63. Attached hereto as **Exhibit 62** is a true and correct copy of a June 2007 Water
6 Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 28.
- 7 64. Attached hereto as **Exhibit 63** is a true and correct copy of an October 2007
8 Regional Water Board Inspection Report, Prosecution Team's Hearing Exhibit 29.
- 9 65. Attached hereto as **Exhibit 64** is a true and correct copy of an October 2007 Water
10 Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 30.
- 11 66. Attached hereto as **Exhibit 65** is a true and correct copy of a July 2008 Water
12 Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 31.
- 13 67. Attached hereto as **Exhibit 66** is a true and correct copy of a November 2008
14 Water Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 32.
- 15 68. Attached hereto as **Exhibit 67** is a true and correct copy of a June 2009 Water
16 Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 33.
- 17 69. Attached hereto as **Exhibit 68** is a true and correct copy of an October 2009
18 Regional Water Board Inspection Report, Prosecution Team's Hearing Exhibit 34.
- 19 70. Attached hereto as **Exhibit 69** is a true and correct copy of an October 2009 Water
20 Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 35.
- 21 71. Attached hereto as **Exhibit 70** is a true and correct copy of a June 2010 Water
22 Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 36.
- 23 72. Attached hereto as **Exhibit 71** is a true and correct copy of a July 2010 Regional
24 Water Board Inspection Report, Prosecution Team's Hearing Exhibit 37.
- 25 73. Attached hereto as **Exhibit 72** is a true and correct copy of a July 2010 Beck
26 Enterprises Beck's Enterprises Safety and Stabilization Inspection Report, Prosecution Team's
27 Hearing Exhibit 38.
- 28 74. Attached hereto as **Exhibit 73** is a true and correct copy of a November 2010

- 1 Water Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 39.
- 2 75. Attached hereto as **Exhibit 74** is a true and correct copy of a June 2011 Water
3 Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 40.
- 4 76. Attached hereto as **Exhibit 75** is a true and correct copy of a November 2011
5 Water Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 41.
- 6 77. Attached hereto as **Exhibit 76** is a true and correct copy of a June 2012 Water
7 Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 42.
- 8 78. Attached hereto as **Exhibit 77** is a true and correct copy of a June 2013 Regional
9 Water Board Inspection Report, Prosecution Team's Hearing Exhibit 43.
- 10 79. Attached hereto as **Exhibit 78** is a true and correct copy of a June 2013 Water
11 Quality Laboratory Analysis, Prosecution Team's Hearing Exhibit 44.
- 12 80. Attached hereto as **Exhibit 79** is a true and correct copy of a November 2013
13 Regional Water Board Inspection Report, Prosecution Team's Hearing Exhibit 45.
- 14 81. Attached hereto as **Exhibit 80** is a true and correct copy of a November 2013
15 Water Quality Laboratory Analysis, the Prosecution Team's Hearing Exhibit 46.
- 16 82. Attached hereto as **Exhibit 81** is a true and correct copy of a report on historical
17 and technical records of Walker Gold-Copper Mine, Atlantic Richfield's Hearing Exhibit 142.
- 18 83. Attached hereto as **Exhibit 82** is a true and correct copy of the March 27, 2014
19 Expert PowerPoint presentation of Marc R. Lombardi.
- 20 84. Attached hereto as **Exhibit 83** is a true and correct copy of the Prosecution Team's
21 Response to Atlantic Richfield Company's Prehearing Motion No. 2.
- 22 85. Attached hereto as **Exhibit 84** is a true and correct copy of a July 28, 2011
23 CVRWQCB Memorandum regarding Responsible Party Records Search, Atlantic Richfield's
24 Hearing Exhibit 158.
- 25 86. Attached hereto as **Exhibit 85** is a true and correct copy of an August 8, 1997
26 CVRWQCB letter to SWRCB regarding Remediation Plan for the Walker Mine Acid Mine
27 Drainage Abatement Project, Atlantic Richfield's Hearing Exhibit 294.
- 28 87. Attached hereto as **Exhibit 86** is a true and correct copy of a June 16, 2011 e-mail

1 chain from a Water Board Senior Engineering Geologist regarding Walker Mine Responsible
2 Party Search, Atlantic Richfield's Hearing Exhibit 301.

3 88. Attached hereto as **Exhibit 87** is a true and correct copy of the February 20, 2014
4 Atlantic Richfield Prehearing Motion No. 4.

5 89. Attached hereto as **Exhibit 88** is a true and correct copy of the February 20, 2014
6 Atlantic Richfield Prehearing Motion No. 9.

7 90. Attached hereto as **Exhibit 89** is a true and correct copy of the Prosecution Team's
8 Response to Atlantic Richfield Company's Prehearing Motion No. 9.

9 91. Attached hereto as **Exhibit 90** is a true and correct copy of the Prosecution Team's
10 Response to Atlantic Richfield Company's Prehearing Motion No. 7.

11 92. Attached hereto as **Exhibit 91** is a true and correct copy of the February 20, 2014
12 Atlantic Richfield Prehearing Motion No. 7.

13 93. Attached hereto as **Exhibit 92** is a true and correct copy of the February 20, 2014
14 Atlantic Richfield Prehearing Brief.

15 94. Attached hereto as **Exhibit 93** is a true and correct copy of an August 1916
16 Agreement, Atlantic Richfield's Hearing Exhibit 167.

17 95. Attached hereto as **Exhibit 94** is a true and correct copy of a September 2, 1999
18 memorandum from the California Department of Justice to the Central Valley Regional Water
19 Quality Control Board regarding Cedar Point Properties, the Prosecution Team's Hearing
20 Exhibit 54.

21 96. Attached hereto as **Exhibit 95** is a true and correct copy of the April 29, 2013
22 Draft Cleanup and Abatement Order for the Walker Mine Tailings Site.

23 97. Attached hereto as **Exhibit 96** is a true and correct copy of the May 28, 2010
24 SWRCB Res. No. 2010-0023.

25 98. Attached hereto as **Exhibit 97** is a true and correct copy of the March 28, 2010
26 CVRWQCB Res. No. 2010-0036.

27 99. Attached hereto as **Exhibit 98** is a true and correct copy of a January 21, 2014
28 e-mail from A. Tauriainen to D. Coupe, et al. regarding Walker Mine: Update Concerning

1 Objections and Reply to Proposed Hearing Procedure.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct.

4 Executed on this 18th day of April 2014, in San Francisco, California.

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Brennan R. Quinn

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Exhibit 1

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

CLEANUP AND ABATEMENT ORDER NO. R5-2014-0039

FOR

ATLANTIC RICHFIELD COMPANY

**WALKER MINE
PLUMAS COUNTY**

This Order is issued to Atlantic Richfield Company (Atlantic Richfield or ARCO or Discharger) pursuant to Water Code section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue Cleanup and Abatement Orders, and Water Code section 13267, which authorizes the Board to issue Orders requiring the submittal of technical reports.

The Central Valley Water Board finds:

1. The Walker Mine (mine) is an abandoned underground copper mine located about 15 miles northeast of Quincy in Plumas County, California, on nearly 800 acres of private property within the Plumas National Forest. The site includes APNs 009-080-001, 009-090-001, 009-090-002 and 009-100-009, Sections 5, 6, 7 and 8, T24N, R12E, and Sections 29, 30, 31 and 32, T25N, R12E Mount Diablo Base and Meridian as shown in Attachments A, B, and C.
2. Acid mine drainage and other pollutants (notably copper) from the mine discharge or threaten to discharge to Dolly Creek and other waters of the state within the Little Grizzly Creek watershed, impairing beneficial uses and creating a condition of pollution or nuisance.
3. The Walker Mining Company (Walker) acquired the mine around 1915 and began mining around 1916. International Smelting and Refining Company (International) acquired the controlling interest in Walker in approximately 1918. International was a wholly-owned subsidiary of, and later merged into, the Anaconda Copper Mining Company (Anaconda).
4. Anaconda, International and Walker concurrently managed, directed, or conducted operations specifically related to the leakage or disposal of waste, specifically the discharge of mining waste, at the mine beginning in approximately 1918. They ceased production in approximately 1941 and ceased all operations in approximately 1943. Walker filed for bankruptcy in approximately 1944, and its assets were sold in approximately 1945. The mine has been a continuous source of pollutants to the watershed from at least the time production ceased.

5. Atlantic Richfield is the successor by merger to Anaconda and is therefore properly named as Discharger and is legally responsible for complying with this Order.

BACKGROUND

6. Most active exploration and mining took place during the 1920s and 1930s. In the late 1930s, the mine was the largest copper mine in California, with at times more than 600 employees. Between 1916 and 1941, the mine produced approximately 6 million tons of ore. (Steffen Robertson & Kirsten ["SRK"], November 1985 [Prosecution Team Exhibit 14]).
7. The mine had an on-site mill and about 13 miles of underground workings containing twelve working levels and 3,300 feet of vertical shafts. The 700 Level Adit (700 level adit) was the main haulage level to access ore, and the 700 level adit portal (portal) is the lowest point at which the underground workings reach the surface. Other openings and land disturbances related to the Central and Paiute workings of the mine are located elsewhere on the site. The total void volume of the underground workings is estimated to be 543 million gallons (SRK, November 1985).
8. The mine's mill and concentrator were located a short distance from the 700 level portal. The mill and concentrator initially discharged tailings into a small pond below the mill. By 1920, tailings discharged as slurry were conveyed by wooden chute or trough about 0.75 miles to a tailings impoundment adjacent to the mine on land administered by the United States Forest Service (Forest Service) within the Plumas National Forest. The Walker Mine Tailings Site includes APNs 009-010-USA, 009-100-USA and 009-110-USA within Section 12 T24N, R11E and Sections 7 and 18, T24N, R12E Mount Diablo Base and Meridian.
9. A hearing on this matter took place on 27/28 March 2014, in accordance with the Hearing Notice and Procedure and California Code of Regulations, title 23, sections 648-648.8. The Central Valley Regional Water Board heard relevant evidence and testimony to decide whether to adopt, modify, or reject the proposed order.

WATER QUALITY ISSUES

10. The 700 level portal, mill and concentrator are located along Dolly Creek, which is a tributary to Little Grizzly Creek. The tailings impoundment is located at the confluence of Dolly Creek and Little Grizzly Creek. Other mine openings and mining waste from the Central and Paiute workings are located in the Nye Creek and Ward Creek drainages. Little Grizzly Creek, Nye Creek and Ward Creek are all tributary to Indian Creek, which is a tributary to the North Fork of the Feather River. All are waters of the state and of the United States.
11. "Mining Waste" is defined under Water Code section 13050, subdivision (q)(1), as *"all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and*

overburden, as defined in Public Resources Code section 2732, and tailings, slag, and other processed waste materials....”

12. The mining waste at the mine contains metals including copper, which oxidizes and become soluble when exposed to water. As such, mining waste at the mine is classified as Group B mining waste in accordance with Title 27 of the California Code of Regulations, section 22480(b)(2)(B), “*mining wastes that consist of or contain nonhazardous soluble pollutants of concentrations which exceed water quality objectives for, or could cause, degradation of waters of the state;*”
13. The mine includes waste management units for the treatment, storage, or disposal of mining waste (*Mining Unit*) as defined in Title 27, section 22470.
14. The mine and tailings together have discharged metals and acid mine drainage (AMD) into Dolly Creek from at least the time production ceased in 1941, if not earlier. The mine and tailings discharged enough metals and AMD to eliminate aquatic life in Little Grizzly Creek to the confluence with Indian Creek 10 miles downstream. (Central Valley Water Board Resolution 58-180 [adopting waste discharge requirements for Walker Mine] see also L.E. Trumbull, Walker Mine Report, October 5, 1957 [Prosecution Exhibit 20; documenting fish mortality in Little Grizzly Creek caused by drainage from the mine and tailings].)
15. Until 1987, the 700 level adit was the primary source of pollution in Dolly Creek and Little Grizzly Creek. The adit acted as a conduit for AMD and metals leached when groundwater or surface inflows from upper openings contacts mineralized areas of the worked out ore body and mining waste within the underground workings.¹
16. In November 1987, pursuant to Resolution No. 86-057, the Central Valley Water Board installed an engineered concrete plug, or seal, 2,700 feet inside the 700 level adit in order to stop AMD discharges from the underground ore zone to surface waters of Dolly Creek.
17. The seal impounds groundwater and surface inflows within the mine, flooding much of the underground workings. The impounded water is acidic and contains metals leached through contact with the mined out ore body and mining waste behind the seal. The Central Valley Water Board maintains access and regularly monitors the seal for effectiveness, leakage and hydrostatic pressure.
18. The seal has successfully eliminated most or all of the direct discharge of AMD and metals through the 700 level adit. Immediately after installation, there was no flow passing the mine seal. In subsequent years, a small seepage has been observed dripping from existing rock joints near the upper left hand corner of the seal. This seepage rate has been

¹ In 1985, SRK estimated that AMD was discharging from the 700 level adit at 275 gallons per minute (gpm) (SRK, November 1985.) This flow rate compares well with a reported 300 gpm mine pumping rate referenced in Milling Methods at the Concentrator of the Walker Mining Company (U.S. Bureau of Mines, Information Circular 6555, March 1932 [Prosecution Exhibit 49]).

estimated at approximately 0.15 gpm at a hydraulic head of 140 feet. The seepage accumulates in a pool at the downstream toe of the seal which drains into a small ditch on the floor of the 700 level adit and then seeps into the floor within 200 feet of the seal.

19. Hydrostatic pressure data indicates that the water level behind the seal varies seasonally, peaking after the spring snowmelt, and then gradually declining during the remainder of the year (see Figure 1, attached). Impounded water apparently seeps through joints, fractures, and faults into the deep groundwater system using the underground workings as a conduit. The fate of this subsurface release of AMD from the mine is not known but could pose a long term threat to groundwater or surface water.
20. There is an occasional discharge of approximately 2 to 5 gallons per minute at the portal which appears to be from shallow groundwater infiltration from the hillside directly above the timber supported section (first 900 feet) of the 700 level adit. This discharge is not acidic, but it does contain copper and other metals.
21. Since 1957, the Central Valley Water Board and others have regularly collected and analyzed surface water samples from the mine. Attachment D shows the current water quality sampling locations used by the Central Valley Water Board. Copper concentrations exceeding water quality objectives have been detected in the portal drainage, the settling pond, Dolly Creek, the tailings impoundment and Little Grizzly Creek. However, as illustrated in Figure 2 (attached), samples taken from Dolly Creek below the Walker Mine access road (between the portal area and the tailings impoundment) show a significant drop in copper concentrations after the mine seal was installed in 1987.
22. However, copper related to exposed mining wastes continues to exceed water quality objectives. Figure 3 (attached) shows exceedances in copper in Dolly Creek after installation of the seal. Figure 4 (attached) compares water quality in Dolly Creek immediately upstream of the mine with that in Dolly Creek immediately downstream, and shows that the mine site causes exceedances in copper in Dolly Creek. The apparent source of the continuing elevated levels of copper is leachate being generated by surface water run-off from rainfall and/or snowmelt that comes in contact with the 700 level adit, the ruins of the mill and concentrator, exposed mining waste piles in and around the portal area, mining waste in the Dolly Creek drainage and mining waste in the tailings impoundment.
23. Mining waste associated with the Central and Piute ore bodies in the Nye Creek and Ward Creek drainages poses a potential threat to water quality. The Central and Piute workings also contain subsidence areas, waste piles and open shafts which pose safety hazards.
24. Figure 5 (attached) shows copper levels and pH in the water seeping through and around the mine seal, as measured from the shallow pool at the base of the mine seal plug. Figure 5 shows that water impounded behind the seal is highly acidic, and contains extremely high levels of copper. Figure 6 (attached) shows copper levels in the settling pond below the portal several times higher than the water quality objective. Although the seal appears

to be sound for the moment, the passage of time coupled with the exposure of the seal and surround rock to the highly acidic impounded water poses a threat to the integrity of the seal. Failure of the seal and/or settling pond could result in significant discharges of AMD and/or copper into Dolly Creek, with likely catastrophic harm to beneficial uses for many miles downstream.

25. The Walker Mine was an underground mining operation. The underground mine workings include access tunnels, drifts, cross-cuts and other openings where ore was accessed and removed for processing. The underground mine workings are the source of all mine waste at the surface of the mine and tailings. In addition, the underground mine workings are now conduits by which groundwater becomes AMD through contact with exposed ore and mine waste within the underground workings, and by which the AMD would reach the surface but for the mine seal.
26. Since 1984, the Central Valley Water Board has spent more than \$2.6 million on the Walker Mine acid mine drainage abatement project. The Board does not seek any reimbursements for past costs through this Order.

OWNERSHIP AND REGIONAL BOARD ACTION AFTER 1945

27. Safeway Signal Corporation purchased the mine property out of Walker's bankruptcy proceedings in April, 1945. Subsequent ownership of the property is listed in the Chain of Title Guarantee shown in Prosecution Exhibit 48. Central Valley Water Board staff has been unable to locate successors to the owners prior to Robert Barry, who took ownership in 1965 and may have been involved in the earlier ownership groups.
28. In 1991, the Central Valley Water Board obtained a \$1.5 million stipulated judgment against then-owners Robert Barry and Calicopia Corporation, and others, wherein the Board released Calicopia and the other defendants from all causes of action, claims, liabilities, demands and costs relating to provisions over which the Board has jurisdiction, arising out of or occasioned by any act or omission pertaining to the Walker Mine property which occurred up to and including August 22, 1990. (Prosecution Exhibit 16, p. 5). Money from the judgment was paid into the State Water Pollution Cleanup and Abatement Account. Money from this account has been used to maintain the mine seal and perform other work in accordance with the Walker Mine Acid Mine Drainage Abatement Project Operations and Maintenance Procedures (Central Valley Water Board, May 1997).
29. In 1997, Cedar Point Properties (CPP) acquired most of the mine property at tax auction, and remains the title owner of most of the site.² Shortly after CPP purchased the site, the Central Valley Water Board issued Cleanup and Abatement Order No. 97-715 directing CPP to apply for an NPDES permit and to continue remedial efforts. CPP did not comply. In 1999, the State Water Resources Control Board (State Board) and the Central Valley

² CPP acquired all of the private parcels except APN 009-090-002, a small parcel which was acquired by Clifford and Bunny Brown. In 1997, the Board determined that there was no evidence of pollution being discharged from the Brown parcel sufficient to trigger permitting requirements or enforcement action (see 24 September 1997 letter [Prosecution Exhibit 15]).

Water Board reached a settlement with CPP over legal responsibility for cleanup, remediation, and abatement activities at the Walker Mine, wherein the Board agreed to “release and settle their claims against Daniel R. Kennedy” if fifty percent of the boards’ lien was paid off. (Prosecution Exhibit 54, p. 6.) Provided that half the lien was paid, the Board “contemplates that the Agreement will be a complete and final resolution of all liability for all claims, differences, and disputes between the Boards and Daniel R. Kennedy individually pertaining to the Walker Mine Property.” (Id.) That settlement agreement was later incorporated into a 2004 stipulated judgment. CPP remains potentially liable, but its corporate status has been suspended and it appears to be inactive and insolvent.

30. The Central Valley Water Board retains legal access to the site for remediation purposes through the 1991 and 2004 stipulated judgments. Pursuant to this right of access, the Board may authorize the Discharger to access the site for remediation purposes.
31. Atlantic Richfield was not a party to the 1991 or 2004 stipulated judgments.
32. The Central Valley Water Board sought to begin negotiations with Atlantic Richfield for past and future environmental remediation activities at the mine as early as 1997, but Atlantic Richfield resisted and nothing of substance came from those attempts.
33. In December 1999, the Board proposed to name Atlantic Richfield as a discharger for the tailings impoundment (tentative order revising WDRs No. 91-017), but the new WDRs were never finalized against Atlantic Richfield based on communications between Atlantic Richfield and the Board, and the Board’s then-understanding of Anaconda’s involvement at the mine. The tailings WDRs were finalized against Forest Service in Order No. 5-00-028.
34. During a 2005 lawsuit, the Forest Service and Atlantic Richfield obtained a consent decree whereby Atlantic Richfield provided \$2.5 million for future response costs involved with federal CERCLA remedial activities at the tailings impoundment. That decree did not address the mine property, the mine property is not subject to any CERCLA action, and the Central Valley Water Board was not a party to the 2005 lawsuit or consent decree.

ATLANTIC RICHFIELD OPERATOR LIABILITY

35. In 1987, Atlantic Richfield conveyed the Anaconda Geological Documents Collection to the University of Wyoming. The Anaconda Geological Documents Collection is a publicly accessible database containing hundreds of documents related to the Walker Mine and Tailings. The database became available online sometime after 1999. Central Valley Regional Board staff recently obtained and reviewed relevant documents from the Anaconda Geological Documents Collection and other sources.
36. Anaconda, International and Walker concurrently managed, directed, or conducted operations specifically related to the leakage or disposal of waste, specifically the discharge of mining waste, at the mine from approximately 1918 through at least 1941. Anaconda and International staff acting on Anaconda and International’s behalf regularly

directed specific operation and exploration activities at the mine and tailings, particularly during critical periods. These activities included exploration, ore location, mine development work (e.g., placement of underground mine workings to access and remove ore) and removal of ore, all of which directly resulted in the condition of discharge and threatened discharge currently at the mine and tailings. Anaconda and International's involvement at the mine and tailings went well beyond what is normally expected of a responsible corporate parent. Evidence of Anaconda and International's control over the pollution-related activities at the mine, includes, but is not limited to, Prosecution Exhibits 1 [archive documents], 2 [Declaration of Dr. Quivik], and 57 [rebuttal statement of Dr. Quivik]. International managed, directed, or conducted operations specifically related to the leakage or disposal of waste, specifically the discharge of mining waste, from approximately 1916 through 1918.

37. Atlantic Richfield is liable as Anaconda and International's successor.

LEGAL PROVISIONS

38. Section 303(d) of the Federal Clean Water Act (CWA) requires states to identify waters not attaining water quality standards (referred to as the 303(d) list). Dolly Creek and Little Grizzly Creek below the Walker Mine have been identified by the Central Valley Water Board as an impaired water bodies because of high aqueous concentrations of copper and zinc.
39. Once a water body is identified as impaired and added to the 303d list, the CWA requires the states to develop a Total Daily Maximum Load (TMDL) for the water body. The Central Valley Water Board plans to develop a TMDL for Dolly Creek and Little Grizzly Creek by 2020, unless the cleanup action proposed herein results in the attainment of the water quality objectives.
40. The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The designated beneficial uses of the North Fork of the Feather River and its tributaries are municipal and domestic supply; hydropower generation; water contact recreation; non-contact water recreation; cold freshwater habitat; spawning, reproduction, and/or early development; and wildlife habitat.
41. The beneficial uses of underlying groundwater, as stated in the Basin Plan, are municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply.
42. Because the site contains mining waste as described in Water Code section 13050, closure of the Mining Unit(s) must comply with the requirements of Title 27 California Code

of Regulations, sections 22470 through 22510 and with such provisions of the other portions of Title 27 that are specifically referenced in that article.

43. Affecting the beneficial uses of waters of the state by exceeding applicable WQOs constitutes a condition of pollution as defined in Water Code section 13050, subdivision (l)(1).

44. Water Code section 13304, subdivision (a) states in part that:

"Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Regional Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant."

45. Water Code section 13304, subdivision (b), authorizes the Central Valley Water Board to perform cleanup, abatement, or remedial work where necessary to prevent substantial pollution, nuisance, or injury to waters of the state. Water Code section 13304, subdivision (c), authorizes the Central Valley Water Board to seek reimbursement from the Discharger for the costs associated with such cleanup, abatement or remedial work.

46. The State Water Resources Control Board (State Board) has adopted Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under CWC Section 13304*. Resolution No. 92-49 sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Board Resolution No. 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution No. 92-49 and the Basin Plan establish cleanup levels to be achieved. Resolution No. 92-49 requires waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, section 2550.4. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.

47. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which describes the Central Valley Water Board's policy for managing contaminated sites. This policy is based on Water Code sections 13000 and 13304, California Code of Regulations, title 23, division 3, chapter 15; California Code of Regulations, title 23, division 2, subdivision 1; and State Board Resolution Nos. 68-16 and 92-49. The policy addresses site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the basis for establishment of soil and groundwater cleanup levels.
48. The State Board's Water Quality Enforcement Policy states in part: "*At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the Central Valley Water Board allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the Order should require the discharger(s) to abate the effects of the discharge.*" (Water Quality Enforcement Policy, p. 35).
49. Water Code section 13267 states, in part:

"(b)(1) In conducting an investigation, the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."
50. The Discharger is named in this Order because through its actions and/or by virtue of its ownership of the site, it has caused or permitted waste to be discharged or deposited where it has discharged and threatens to discharge to waters of the state and has created and threatens to create a condition of pollution or nuisance.
51. Water Code section 13304, subdivision (j) provides: "This section does not impose any new liability for acts occurring before January 1, 1981, if the acts were not in violation of existing laws or regulations at the time they occurred." Because the pollution-causing activities directed by Anaconda and International violated state law at the time they occurred, this Order is not proscribed by Water Code section 13304, subdivision (j). Specifically, the activities resulted in a continuing discharge described in Finding 14 that eliminated all aquatic life in Little Grizzly Creek to the confluence with Indian Creek 10 miles downstream. This discharge and its resulting effects constituted an illegal public nuisance within the meaning of California Civil Code sections 3479 and 3480 as they existed at the time of the discharge because they greatly interfered with and impaired the public's right to the fish within the affected state waters. *People v. Truckee Lumber Co.* (1897) 116 Cal. 397, 399-400.

52. In accordance with Water Code section 13304, the Discharger must take all actions necessary to clean up and abate the discharge and threatened discharge of all mining waste from the Mine (including the ongoing monitoring and maintenance of the seal), restore the affected waters, and reimburse the Central Valley Water Board for the Board's expenditures associated with the mine.
53. In accordance with Water Code section 13267, the reports required herein are necessary to formulate a plan to remediate the wastes at the mine, to assure protection of waters of the state, and to protect public health and the environment.
54. The equitable doctrine of laches requires unreasonable delay plus either acquiescence in the act about which the plaintiff complains or prejudice to the defendant resulting in the delay. The Board has considered Atlantic Richfield's laches defense and finds that the doctrine of laches does not apply in this case. Laches has generally been held to not be a defense when its operation would nullify an important policy adopted for the benefit of the public. Operation of laches in this case would nullify an important policy adopted for the benefit of the public, namely that the Board may require responsible parties to clean up or abate the discharge of waste to waters of the State. In addition, in evaluating the defense of laches, the Board finds that the alleged prejudice that ARCO arguably may have demonstrated or incurred is outweighed by the strong public policy for environmental protection, namely, the public interest to clean up or abate waste at the Walker Mine site that is discharging, or threatening to discharge, to waters of the State and is causing, or threatening to cause, a condition of pollution or nuisance.
55. Failure to comply with the remedial provisions of this Order may result in enforcement action(s), which may include the imposition of administrative civil liability pursuant to Water Code section 13350 (up to \$5,000 per day of violation) or 13385 (up to \$10,000 per day of violation). Failure to comply with the reporting provisions of this Order may result in enforcement action(s), which may include the imposition of administrative civil liability pursuant to Water Code section 13268 (up to \$5,000 per day of violation).
56. Issuance of this Order is being taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061(b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Discharger to submit plans for approval prior to implementation of cleanup activities at the Site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Discharger's proposed remedial activities and possible associated environmental impacts. If the Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Board will conduct the necessary and appropriate environmental review prior to Executive Officer's approval of the applicable plan. The Discharger will bear the costs, including the Board's costs, of determining

whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handing any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Board shall enter into a memorandum of understanding with the Board regarding such costs prior to undertaking any environmental review.

57. The Central Valley Water Board provided Atlantic Richfield with a draft copy of this order, along with all of the attachments and documents referenced in the draft, on 29 April 2013. Atlantic Richfield provided comments on 3 June 2013. Central Valley Water Board staff has prepared the Response to Comments addressing the Discharger's comments and describing how the Order has been changed as a result.

IT IS HEREBY ORDERED pursuant to Water Code sections 13304 and 13267, that

1. Atlantic Richfield, its agents, successors, and assigns, shall investigate the discharges and threatened discharges of waste, clean up the waste, and abate the effects of the waste, forthwith, from the Walker Mine.
2. The work shall be completed in conformance with Title 27 California Code of Regulations ("Title 27"), sections 22470 through 22510, State Board Resolution No. 92-49 and with the Central Valley Water Board's Basin Plan (in particular the Policies and Plans listed within the Control Action Considerations portion of Chapter IV), any other applicable state and local laws, and consistent with California Health and Safety Code, Division 20, chapter 6.8.
3. "Forthwith" means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below.

TASKS

4. **By 30 June 2014**, the Discharger shall take control of the mine for remedial purposes necessary to clean-up and abate the discharge of all mining waste at the mine, and restore the affected water. This would include at a minimum the operation and maintenance of the 700 level adit and the concrete plug or seal, and managing all mine waste and preventing discharges of mine waste to waters of the state. The Central Valley Water Board hereby authorizes Atlantic Richfield to access the site for remediation purposes pursuant to the Board's legal access to the site under the 1991 and 2004 stipulated judgments, to the extent necessary to comply with this Order. The Discharger shall submit a report on **30 June 2014** describing measures taken to obtain control of the mine for remedial purposes.
5. The Discharger shall reimburse the Central Valley Water Board for reasonable costs associated with oversight of the investigation and remediation of the mine pursuant to Water Code section 13304, subdivision (c)(1). Within **60 days** of the effective date of this Order, the Discharger shall provide the name and address where the invoices shall be sent. Failure to provide a name and address for invoices and/or failure to reimburse the

Central Valley Water Board's oversight costs in a timely manner shall be considered a violation of this Order. If the Central Valley Water Board adopts Waste Discharge Requirements (WDRs), review of reports related to writing of the WDRs and all compliance measures thereafter would be subject to the fees required by issuance of the Order and the reimbursement for associated costs under this requirement would no longer apply.

6. The Discharger shall investigate, identify, and classify all sources of mining waste in compliance with Title 27 section 22480. This would include at a minimum all mining waste associated with surface impoundments, waste piles, tailings and leachate associated with mining at the site. The Discharger shall submit the following reports related to characterization of the mining waste:
 - a. **By 28 July 2014**, submit a work plan to identify all mining waste as defined in Water Code section 13050, subdivision (q)(1) at the mine. This work plan shall include a strategy/plan to characterize and classify the mining waste in compliance with Title 27 section 22480 and the extent to which the site is degrading water quality above background concentrations. This work plan shall also include a method to establish a Water Quality Protection Standard (Water Standard) per Title 27 section 20390.
 - b. **By 2 February 2015**, submit a characterization report that identifies all mine waste locations and basis for classification of mine waste at each location per the work plan submitted above. All the laboratory data shall be submitted with the characterization report. This report shall also include the establishment of the Water Standard.
7. **By 1 June 2015**, submit a work plan and Time Schedule to close and maintain the mine in compliance with Title 27 sections 22470 through 22510 and to remediate the site in such a way to prevent future releases of mining waste (copper and other pollutants) to surface and ground waters.
8. **By 30 July 2015**, submit a Report of Waste Discharge with a complete characterization of the waste discharged in accordance with Water Code section 13260, subdivision (k). The Report of Waste Discharge shall also be in compliance with Title 27 section 21710 et seq., and include a short and long term monitoring plan per Title 27 section 22500. The mine waste units shall meet the construction standards in Title 27 section 22490, and the closure and post closure maintenance requirements in Title 27 section 22510.
9. **Beginning 90 Days after Central Valley Water Board approval of the Work Plan and Time Schedule defined in item 4. above**, submit regular quarterly reports documenting progress in completing remedial actions.
10. **By 31 January 2018**, complete all remedial actions and submit a final construction report.

11. The requirements of this Order are specific to the Walker Mine site. Given the ongoing remedial activities being undertaken pursuant to CERCLA by the United States Forest Service at the Walker Mine Tailings Site, the Central Valley Water Board has exercised its discretion to not adopt a proposed cleanup and abatement order pertaining to the Walker Mine Tailings Site at this time. This Order may be revised or a subsequent order by the Board may be issued to remediate conditions at the Walker Mine Tailings site.

REPORTING

12. When reporting data, the Discharger shall arrange the information in tabular form so that the date, the constituents, and the concentrations are readily discernible. The data shall be summarized in such a manner as to illustrate clearly the compliance with this Order.
13. Fourteen days prior to conducting any fieldwork, the Discharger shall submit a Health and Safety Plan that is adequate to ensure worker and public safety during the field activities in accordance with Title 8, section 5192.
14. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by a registered professional or their subordinate and signed by the registered professional.
15. All reports must be submitted to the Central Valley Water Board as both paper and electronic copies. Electronic copies of all reports and analytical results are to be submitted over the Internet to the State Water Board Geographic Environmental Information Management System database (GeoTracker) at <http://geotracker.swrcb.ca.gov>. Electronic copies are due to GeoTracker concurrent with the corresponding hard copy. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Water Board's web site.
16. The Discharger shall notify Central Valley Water Board staff at least five working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection.

GENERAL

17. Any person signing a document submitted under this Order shall make the following certification:

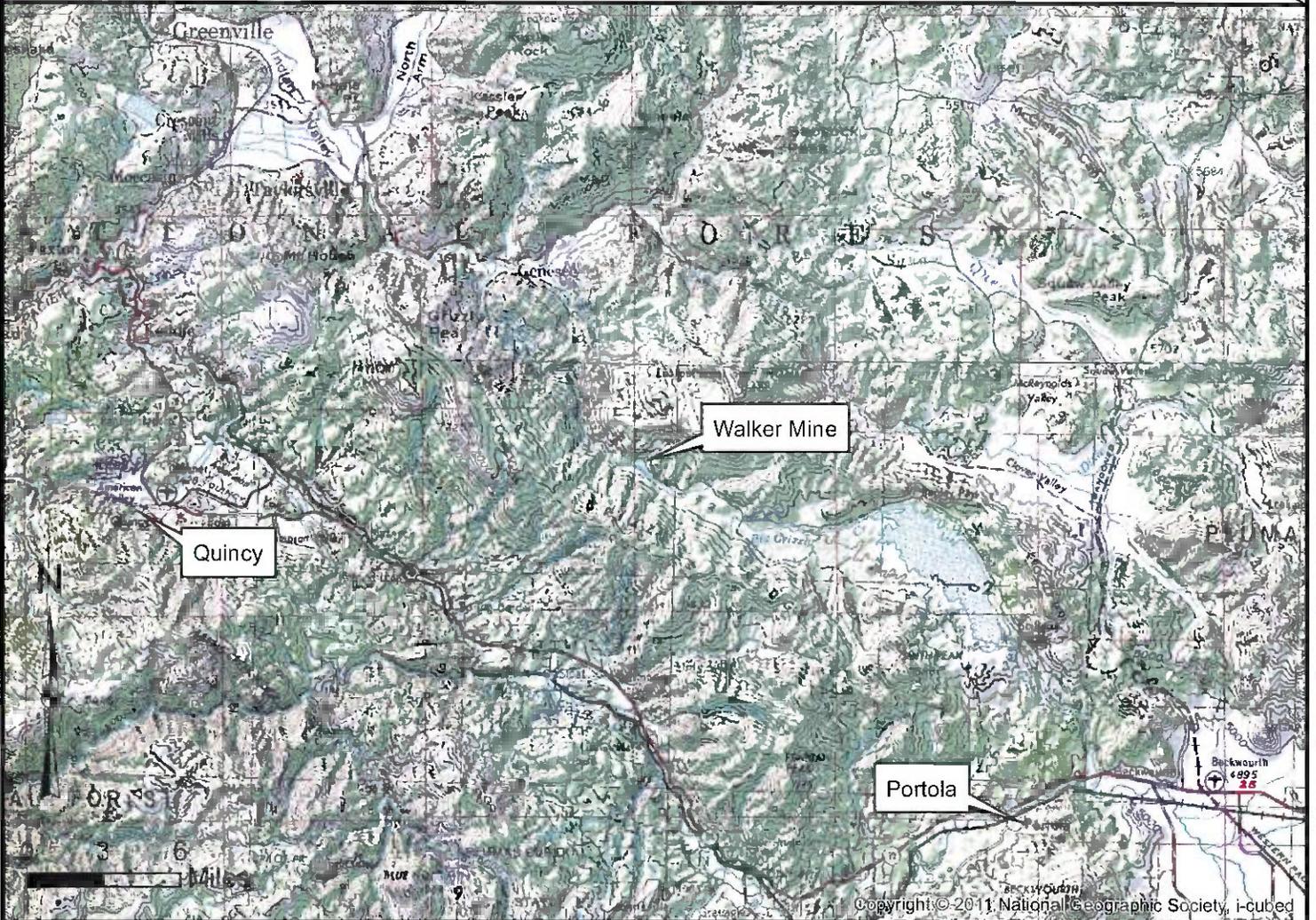
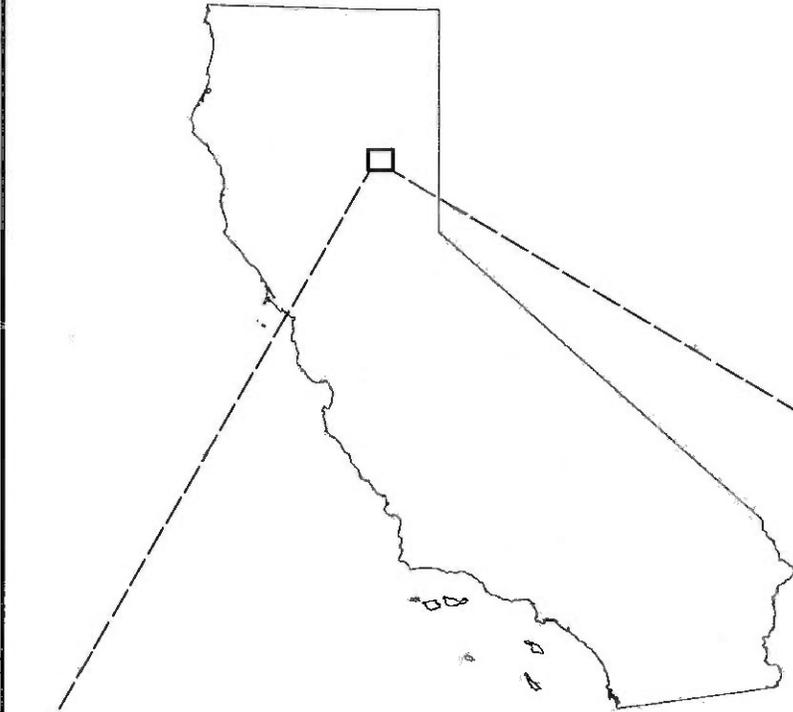
"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

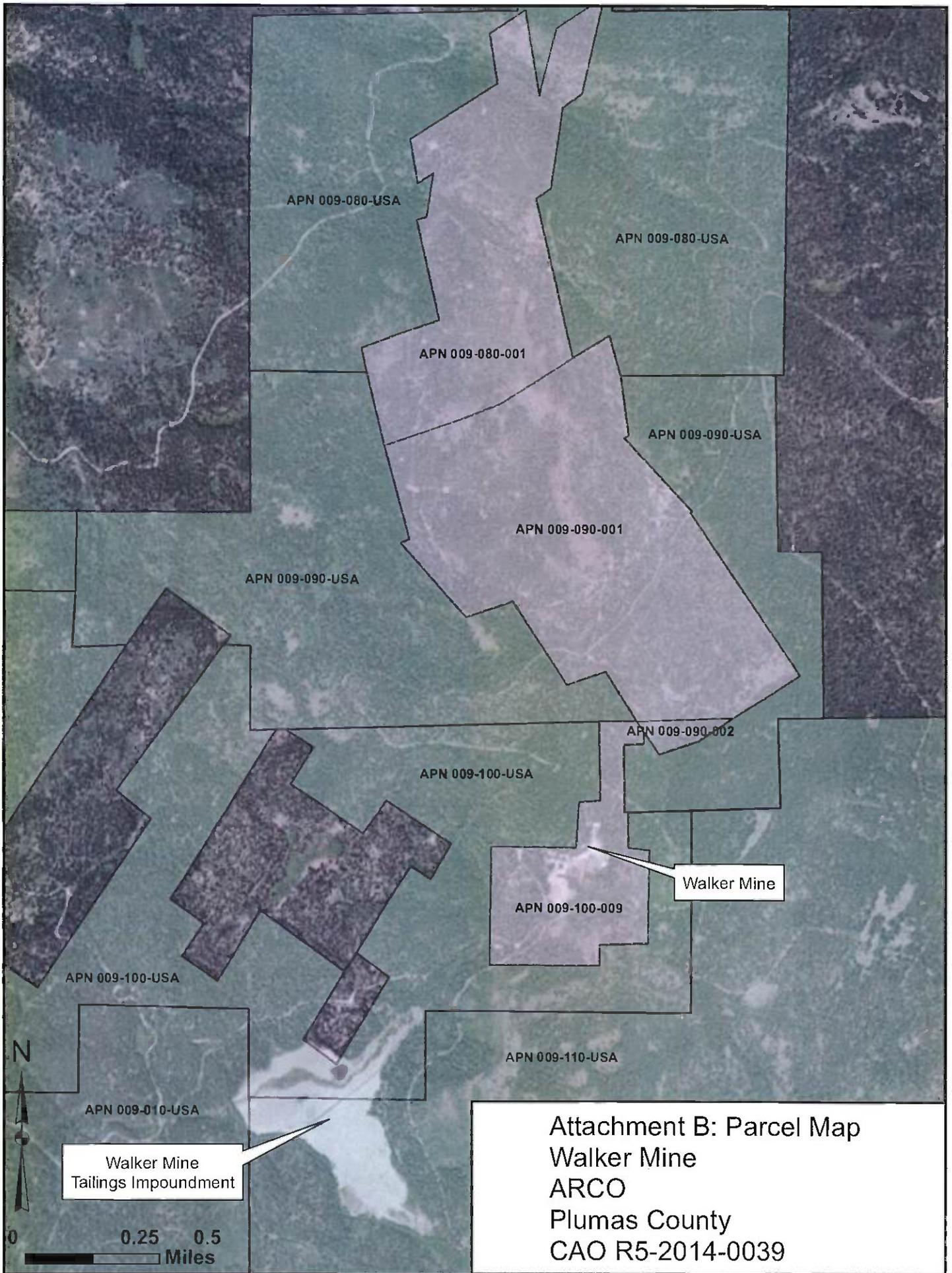
18. In the event that compliance with any deadlines set forth in this Order becomes impossible, despite the timely good faith efforts of the Discharger, due to circumstances beyond the control of the Discharger or its agents, employees, contractors, consultants and any other person acting on the Discharger's behalf, and which could not have been reasonably foreseen and prevented or minimized by the exercise of due diligence by the Discharger, the Discharger shall notify the Executive Officer in writing within five (5) days of the date that the Discharger first knew of the event or circumstance that caused or would cause a violation of this Order, and in any event no later than the applicable compliance deadline. The written notice shall describe the reason for the nonperformance and specifically refer to this Paragraph. The Discharger shall take all reasonable measures to avoid and minimize such delays. The written notice shall also describe the anticipated length of time the delay may persist, the cause or causes of the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The determination as to whether the circumstances were beyond the control of the Discharger and their agents will be made by the Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite the timely good faith efforts of the Discharger, due to circumstances beyond the control of the Discharger that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the Discharger, a new final compliance deadline shall be established. Where the Executive Officer does not concur that compliance was or is impossible, the Discharger may be subject to additional enforcement action for failure to comply with this Order.
19. This Order in no way limits the authority of the Central Valley Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the Site consistent with the Water Code.
20. This Order is effective upon the date of adoption. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

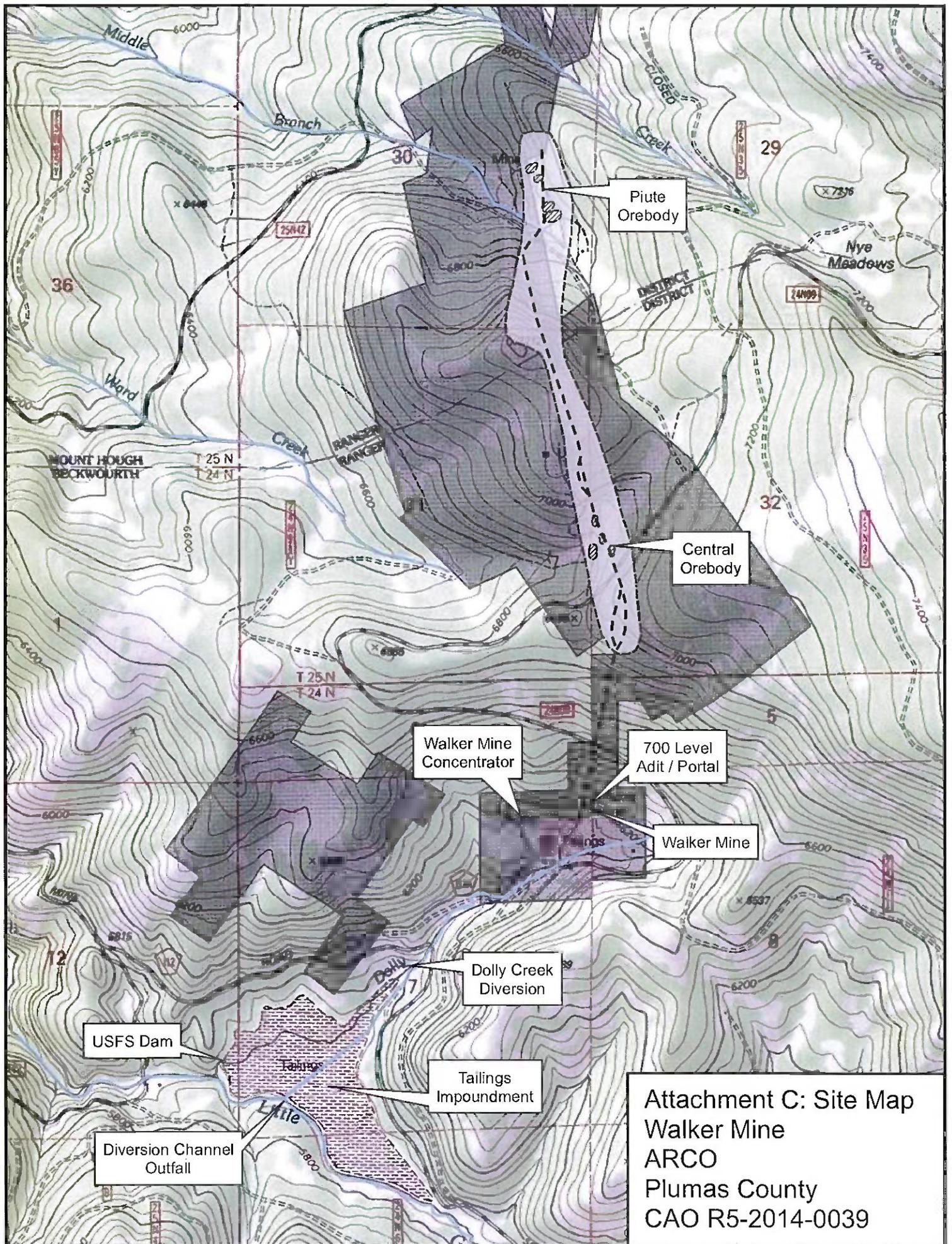
I, Kenneth D. Landau, Assistant Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 28 March 2014.


KENNETH D. LANDAU Assistant Executive Officer

Attachment A: Location Map
Walker Mine
ARCO
Plumas County
CAO R5-2014-0039







Attachment C: Site Map
 Walker Mine
 ARCO
 Plumas County
 CAO R5-2014-0039

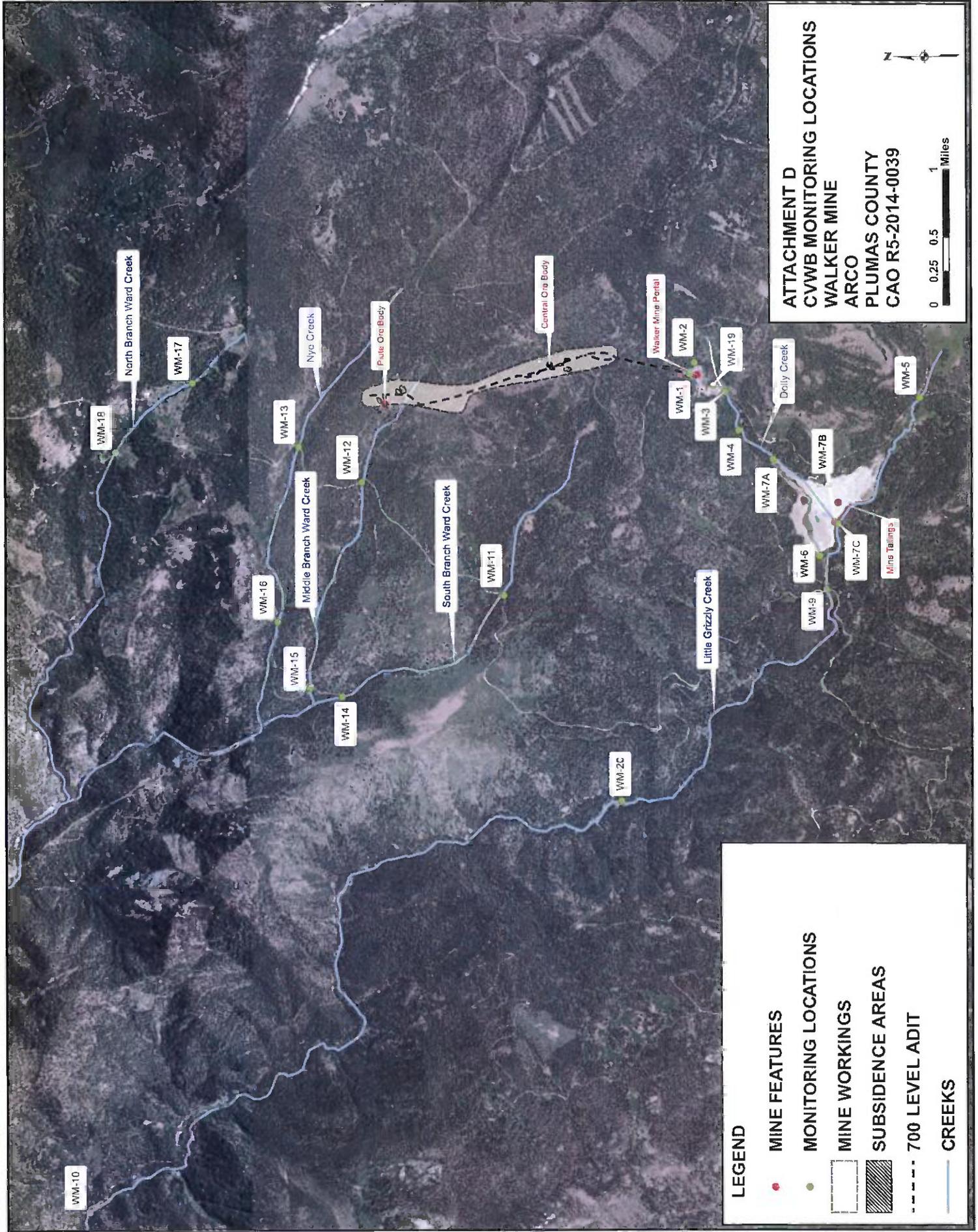


Figure 1: Concrete Seal Pressure Head and Snow Water Content
 CAO R5-2014-0039
 Atlantic Richfield Company
 Walker Mine, Plumas County

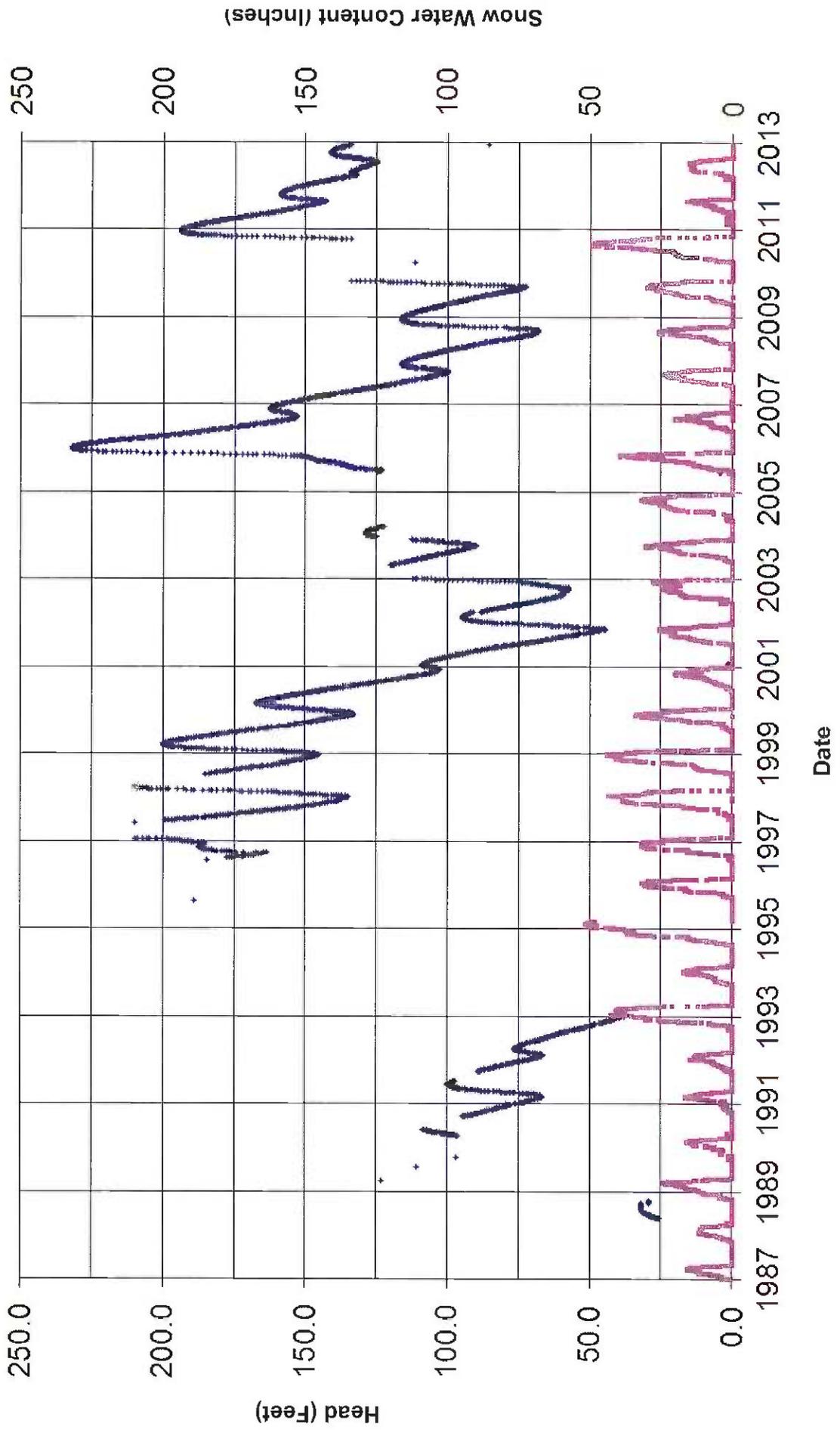


Figure 2: Copper in Dolly Creek Downstream
CAO R5-2014-0039
Atlantic Richfield Company
Walker Mine, Plumas County

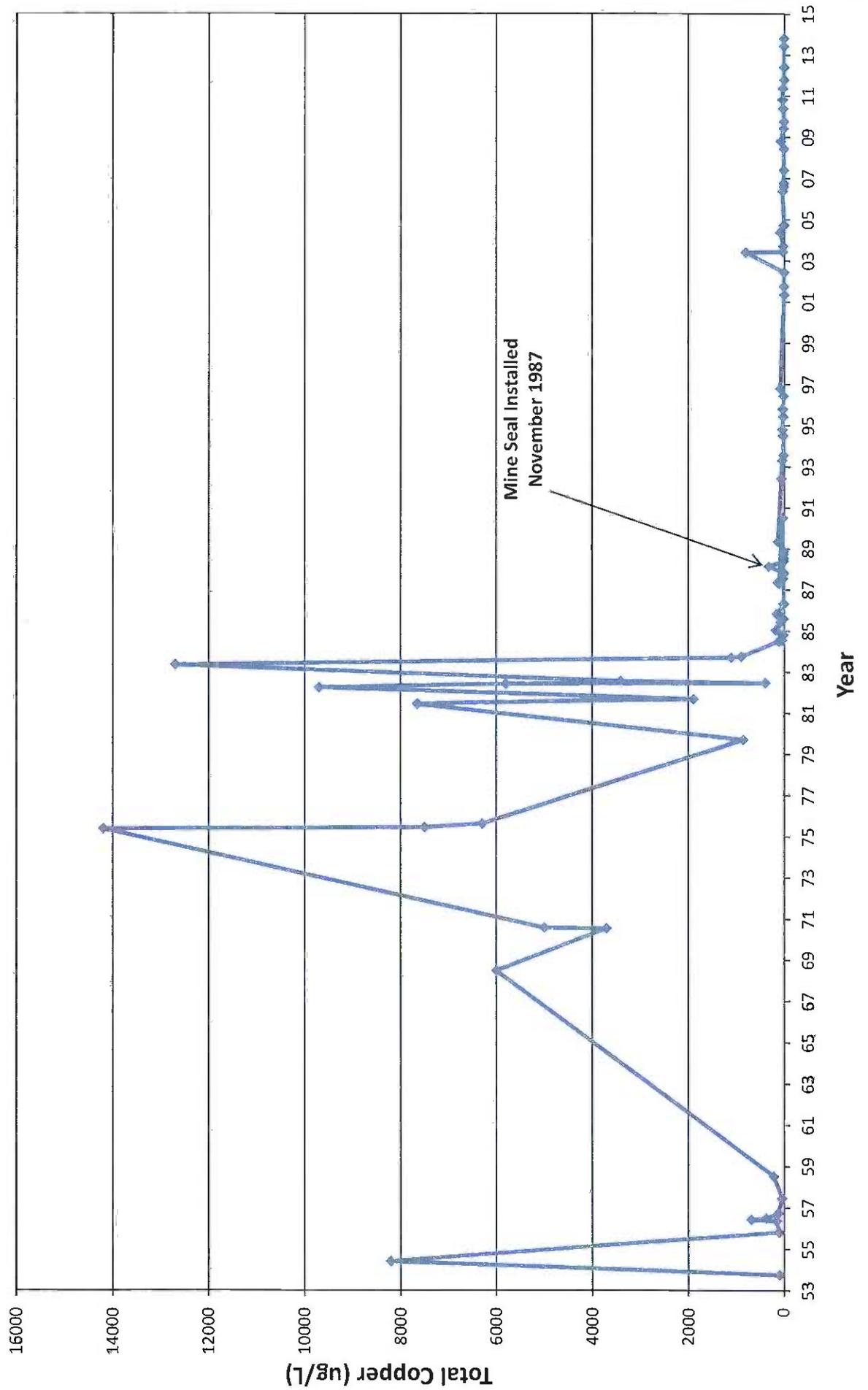
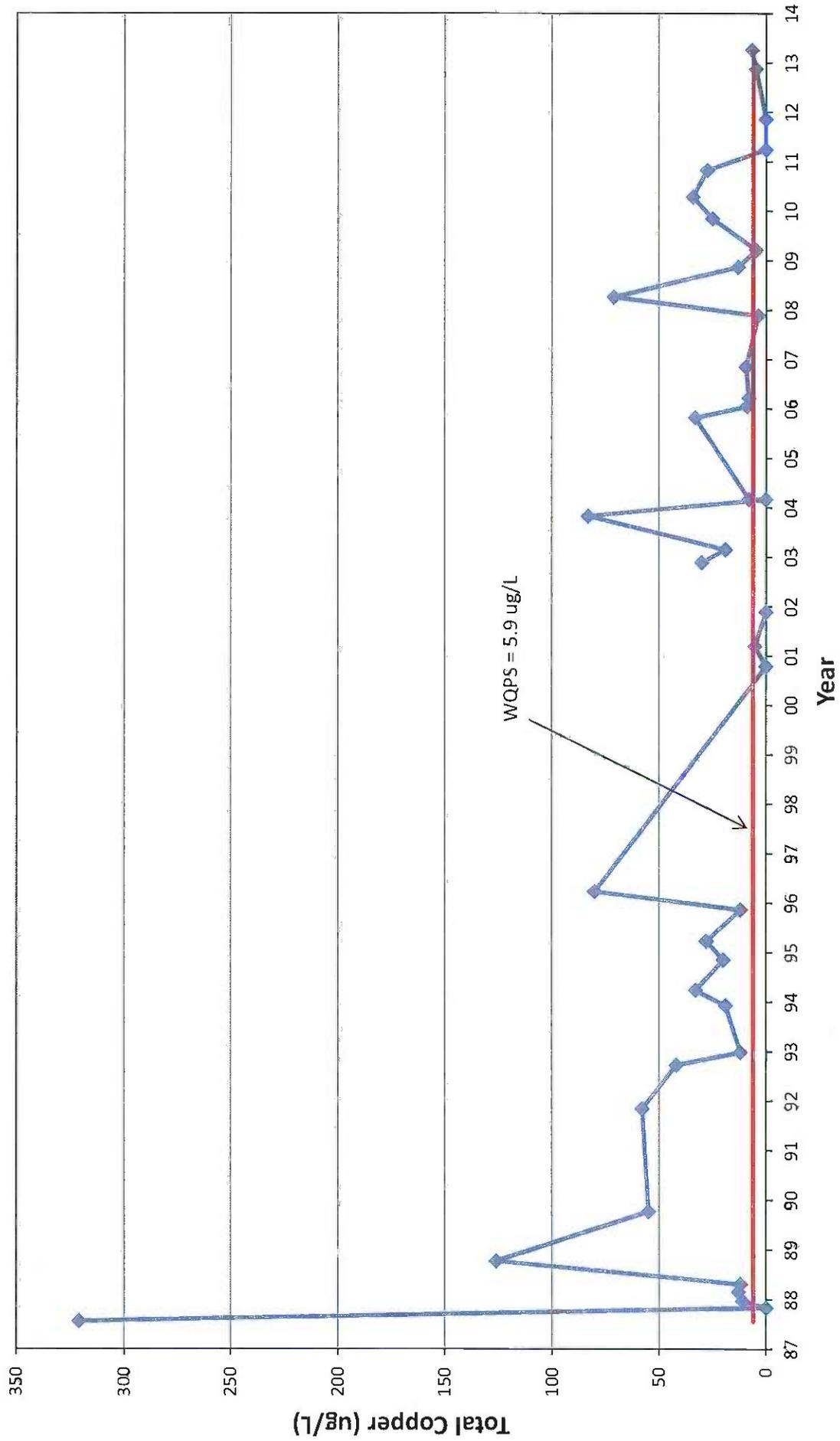


Figure 3: Copper in Dolly Creek Downstream, Post Plug (WM-3)
CAO R5-2014-0039
Atlantic Richfield Company
Walker Mine, Plumas County



Notes: *Possible outlier (800 ug/L) not included in dataset graph, 6/11/2003
 *WQPS of 5.9 ug/L determined by an average Hardness of 62 mg/L for the above range

Figure 4: Comparison of Copper Concentrations Upstream and Downstream of Walker Mine & Mill Complex
 CAO R5-2014-0039
 Atlantic Richfield Company
 Walker Mine, Plumas County

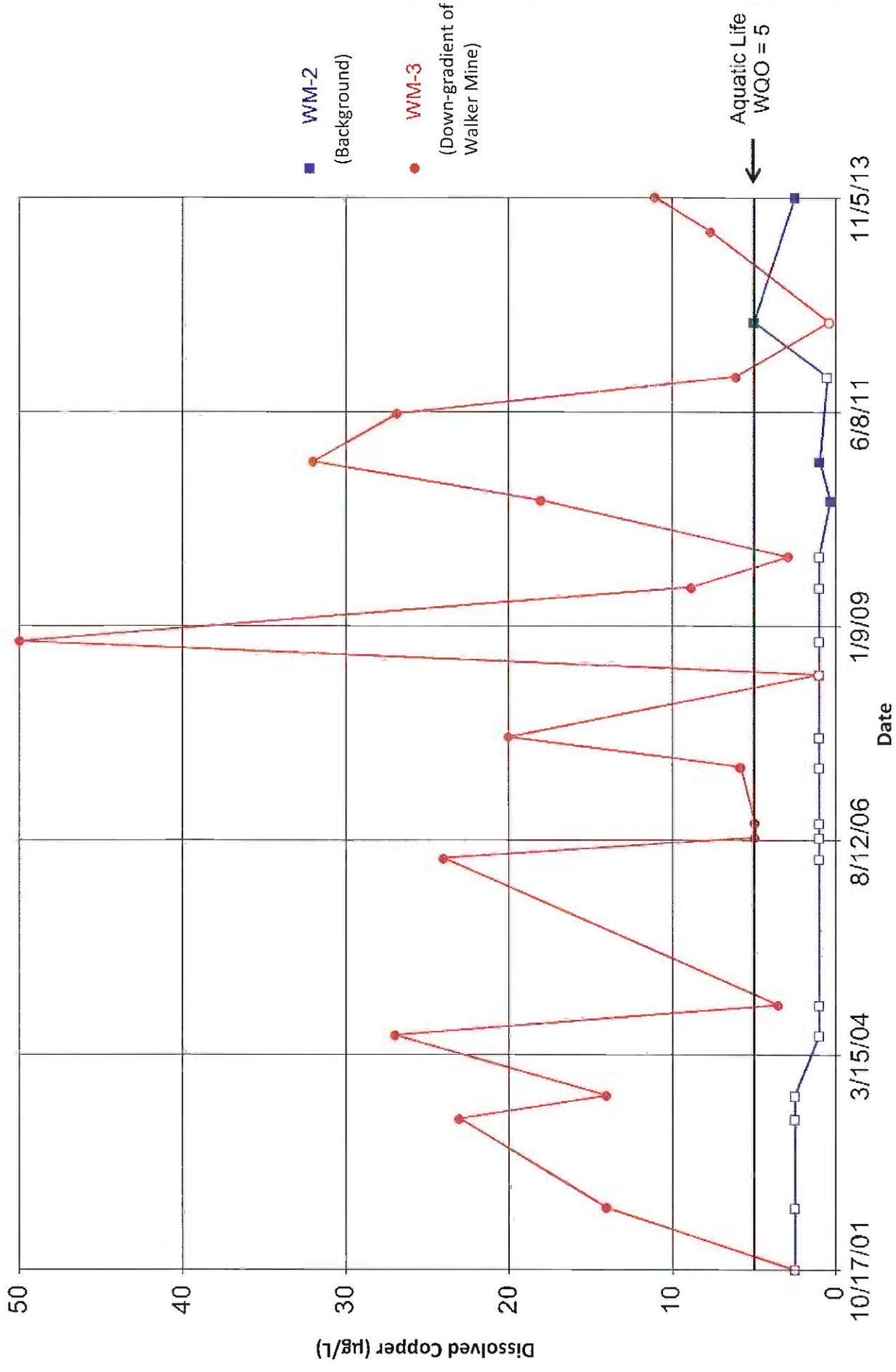


Figure 5: Copper Concentrations and pH Contained Behind Mine Plug (WM-30)

CAO R5-2014-0039

Atlantic Richfield Company

Walker Mine, Plumas County

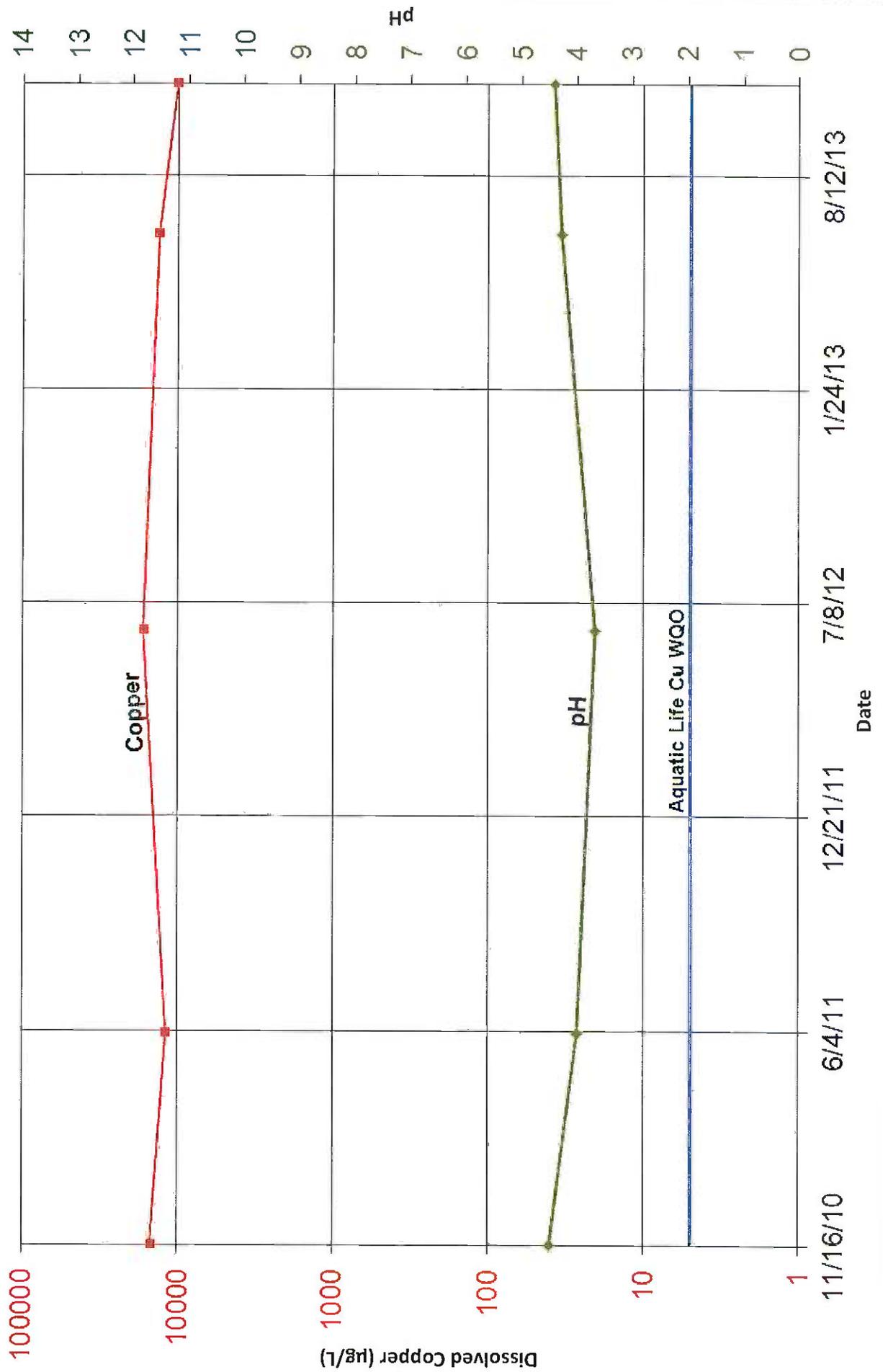


Figure 6: Potential Risk of Water Quality Degradation Posed by Portal Discharge & Settling Pond (WM-1 & WM 19)

CAO R5-2014-0039

Atlantic Richfield Company

Walker Mine, Plumas County

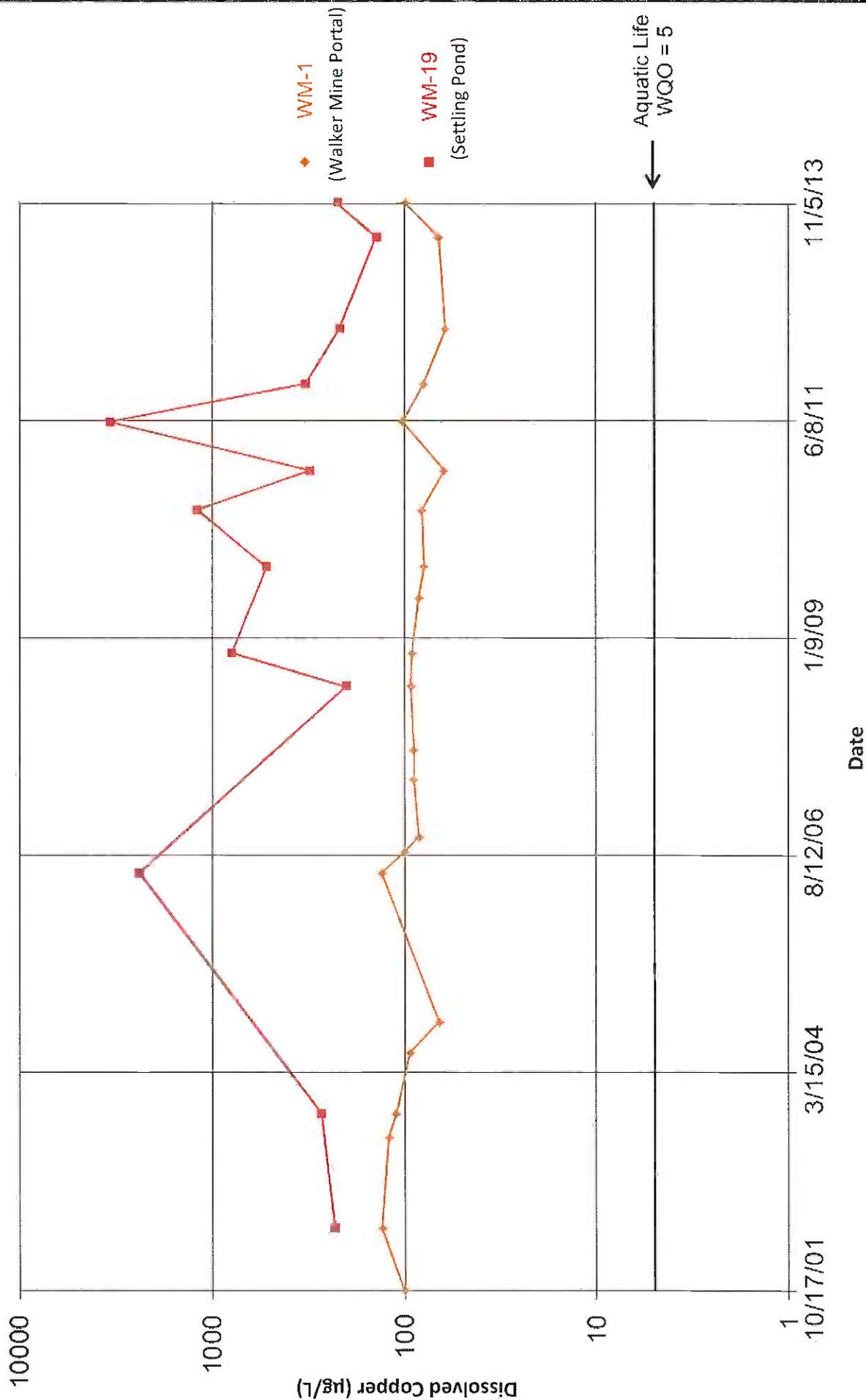


Exhibit 2

APPENDIX IV

**OPINIONS RELATING TO ALL PHASES OF MINING OPERATIONS AND
ESTIMATES OF TAILINGS PRODUCTION**

TERRY MCNULTY, D. SC., P. E.

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

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**

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

**WALKER MINE
PLUMAS COUNTY**

**WALKER
MINING COMPANY**

**Opinions Relating to All Phases of Mining
Operations and Estimates of Tailings
Production**

Terry McNulty, D. Sc., P. E.

A handwritten signature in black ink, appearing to read 'Terry McNulty', is written over a horizontal line. The signature is somewhat stylized and cursive.

February 20, 2014

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Opinions of Mineral Engineer Terry McNulty

I, Terry McNulty, D.Sc. P.E., am a fourth generation miner, with a Doctorate in Extractive Metallurgy and Professional Engineer registration in Metallurgical Engineering. I offer opinions in the case on the basis of my lifelong experience in the mining industry, my undergraduate and graduate education, and my 60-years of working with mining companies and around mines in North and South America and overseas.

1. Experience Growing Up in a Mining Family

I represent the fourth generation in my family to work in the mining industry. In April 1859, my paternal great grandfather was part of a group of prospectors that entered the Summit District north of where Leadville, CO is now located. The north boundary of the Climax waste dumps is McNulty Gulch. He later managed a turquoise mine near Cerrillos, NM for the Tiffany Company. His son, my paternal grandfather, began as a miner, but advanced to Mine Manager at Mineral Park, AZ. My maternal grandfather worked all of his life as a timberman, blacksmith, and underground miner in Arizona. My father and his two brothers were underground miners, but my father learned chemistry through the ICS and ultimately became a Chief Chemist.

As a youth, I lived with my parents in very remote prospecting and mining exploration camps in the interiors of Brazil and former British Guiana. I also lived in the mining and milling camps of Goldroad, AZ and Vanadium, NM. I began working as an apprentice assayer at Anaconda's uranium mining operation near Grants, New Mexico at age 15 and had the advantage of good summer/vacation jobs throughout my last 2 years of high school and all of undergraduate school. My entire professional life has been spent working for, or providing technical services to, the mining industry.

2. Education and Employment Related to Mining

I obtained a B. S (Chemical Engineering), an M. S.(Metallurgical Engineering), and a D. Sc. (Extractive Metallurgy) Degrees from Stanford University, Montana School of Mines, and Colorado School of Mines, respectively. (Refer to my CV at the end of this report.) I also studied geology, mineralogy, mining and processing practices. From 1954 through 1960, I worked as an intern in various mining industry operations. During 1961 to 1983, I was employed by various mining

companies with responsibilities for process development, plant operations supervision, technical support, and general management, as detailed in my CV. As a mineral industry consultant for the last 26 years, I have been employed by scores of mining and processing entities throughout the U. S. and overseas. As a consultant I have provided consulting services in application of new technologies, process development, and productivity improvements to approximately 150 mines and processing plants worldwide. This has given me the opportunity to observe operations and management structures that have prevailed in many diverse corporate cultures. My CV also includes a list of my patents and publications

During my career with ACM, I worked in or visited many mines and concentrators and worked closely with mine geologists and exploration geologists. I was Concentrator Superintendent at a Canadian copper operation with responsibilities for plant operations, maintenance, and tailings disposal and all related decisions. I have served as a Manager of R&D and Technical Services, where my department and I provided a spectrum of services to all mining and processing operations and made appropriate recommendations to senior managers. In this role, we never gave orders to foremen, miners, equipment operators, or concentrator operators. We followed industry custom by supplying technical expertise and advice, but did not supervise. Please see my attached Curriculum Vitae for the story of my work in mining going back some 60 years.

3. Honors Received for My Work In Mining

As noted in the copy of my Curriculum Vitae (attached), during my career in mining, I have been honored to receive –

- (a) Medal of Merit, American Mining Hall of Fame, 2010
- (b) Election to National Academy of Engineering, 2005
- (c) Richards Award for Distinction in Mineral Processing, AIME, 2003
- (d) Distinguished Alumni Award, Montana Tech., 2002
- (e) Henry Krumb Memorial Lecturer, AIME, 1989
- (f) Distinguished Career Achievement Medal, Colorado School of Mines, 1989

4. Materials Considered

In preparation of my report and development of my opinions, I have reviewed ACM Sales Co. records, historical records produced by California Regional Board

and the Prosecution Team exhibits, various historical and non-historical files from other sources, and Walker Mining Company annual reports.

5. Compensation

I am being compensated by Atlantic Richfield Company at a uniform hourly rate of \$300 for consulting and testimony.

6. Statement of My Opinions

On the basis of my lifelong experience with mines, my undergraduate and graduate training in mine-related disciplines, and my 60-year work experience in the mines and mining industry, together with my review of voluminous documents produced in this case, including materials in the Anaconda collection at the University of Wyoming, I have developed the following opinions:

1. All mines are different because of location, geology, nature of target minerals, extractive resource economics and the individual and corporate personalities of the companies which operate and consult with respect to each mine.
2. Yet mining generally occurs in six phases: (a) exploration and development of ore reserves, (b) mine development, (c) ore extraction, (d) concentrating, (e) product shipment, and (f) waste disposal.
3. In reviewing the documents available relating to the Walker Mine, I see no evidence that Anaconda Copper Mining Company ("ACM") or International Smelting and Refining Company ("IS&R") sought to have, or in fact had, any influence over WMC's ore extraction, concentrating, product (concentrate) shipment, or waste disposal.
 - (a) Mine development work was performed by WMC's own staff. ACM and IS&R guided and made recommendations concerning prospecting and mine development, and at times required WMC to seek approval before commencing underground activities about prospecting and reserve development, but all underground prospecting work, including core drilling was undertaken by WMC.
 - (b) Geologists on the WMC staff received the recommendations from IS&R / ACM geologists and supported mine development with WMC's own staff.

- (c) Day-to-day, mining geologists on WMC's staff also supported mining and ore extraction.
- (d) Processing ore through the concentrator was undertaken by WMC.
- (e) Handling and shipment of concentrate was undertaken by WMC.
- (f) Construction and maintenance of the tailings ponds and the disposal of concentrator waste ("tailings") was undertaken by WMC.
- (g) Neither AMC, nor IS&R, had any control over WMC concerning the Walker Mine's waste disposal activities.
- (h) These spheres of influence in mining operations at the Walker Mine were generally consistent with what I have observed in the other mines I have visited, studied, and/or worked in.

7. Bases for My Opinions

A. Basis for Opinions Concerning Prospecting, Exploration, and Development

In most mining operations, underground mining (referred to above as ore extraction) is guided on a daily basis by geological engineers, usually referred to as mine geologists, and the responsibilities of the mine geologist are described in the following sections of my report. On the other hand, identification and definition of a mineralized zone that can be added to the mines reserve inventory is based on prospecting by a specialist called an exploration geologist. Exploration geologists are key personnel in the first of the six phases of mining (referred to above as exploration and development of ore reserves).

Underground mining and mineral concentration are universally the same as to general features, although each mine is different with regard to the physical and chemical characteristics of the ore, accessory minerals, and host rock. The common features are as follows:

(1) Exploration and Reserve Development

Prospecting by diamond drilling and extraction of core samples is done from "stations", often excavated into one side of a main drift or haulage tunnel. With the exception of the volume of rock removed to create the station, typically a room no more than ten feet on each side and 6-8 feet high, little material has to be blasted and moved.

(2) Mine Development (to Gain Access to Ore)

Often, vertical shafts are sunk from the ground surface, and they usually begin at exposed mineralization, called an "outcrop" on the surface. Additionally, or alternatively, horizontal openings (drifts or crosscuts), inclines or declines, or raises or winzes are driven from a haulage tunnel to a location near or in mineralization. Ideally, these openings are made in ore, but they sometimes must be made in waste. They are advanced by drilling small-diameter holes, loading the holes with cylindrical "sticks" of explosive, arming the explosives with detonators ("caps") and breaking the rock into fragments of manageable size.

(3) Ore Extraction (breaking and removing ore from the mine workings)

Diamond drilling guides short-range definition of the geometry and grade of a mineralized section of rock, often a vein structure, by providing the mine geologist with the information needed to assist the mine foreman with planning of shift-to-shift work.

Production drilling, using the same equipment ("jacklegs" and "stopers") used in mine development makes hole that can be loaded and blasted.

Mucking, originally done by men with hand shovels, was by the 1930s, almost entirely done with the aid of small front-end loaders called "mucking machines". The broken rock ("muck") was loaded into small rail cars, typically with a capacity of 0.5-5 tons.

Tramming was the act of hauling loaded cars to a location on the surface, typically just outside the portal of the haulage tunnel.

(4) Concentrating (milling and treatment of ore)

Concentrating of the desired minerals such as copper sulfide grains is almost always carried out on the surface, although a few concentrating plants have been located inside underground mines. The ore is crushed and ground in successive stages by various types equipment to reduce the maximum particle dimension to a few hundredths of an inch or less. At this size distribution, and it varies with local mineralization, the desired mineral grains have been "liberated" from the country rock and are small enough to be readily suspended by mechanical agitation of a mud "slurry" that usually consists of three parts water to one part ore by weight.

The concentrate, typically representing only a small fraction of the ore weight, but containing over 90 percent of the desired mineral originally present in the ore, is

filtered to remove most of the water, the filtrate is returned to the grinding mills, and the concentrate is ready for shipment.

(5) Product Shipment

Unless there is a smelter adjacent to the concentrator, the concentrates must be shipped. In order to minimize the cost of shipping water, it is customary to thicken the concentrate slurry, then filter it to a point where it contains only about 8-12 percent moisture. Both the thickener overflow water and the filtrate are recycled.

Shipment of the concentrate to a smelter was once done in mule-drawn wagons, but truck and rail transportation became the industry standard by the late-1920s.

(6) Waste Disposal

The economics of mining are such that a careful distinction is made regarding waste rock even before it has been drilled and blasted. If it can be left in-place without impairing access to ore, it will be. If it must be moved, it will be left underground as backfill if possible. If waste rock must be trammed to the surface, it will be placed in a dump located so as to minimize transportation cost. Outside the mine workings, the waste (tailings) created during concentration usually has no value, so it is accumulated for disposal on the mine property. However, the water contained in the tailings has value and is often reclaimed from the settled tailings for reuse.

At the Walker mine, all of the foregoing operations were carried out, but there were local variations that suited copper sulfide ("chalcopyrite") mineralization associated with iron ("pyrite" and "magnetite") in quartz vein rock. The vein was essentially a tilted tablet over 500 feet deep, 15 to 50 feet thick and about two miles long. The vein was not continuously mineralized; instead, there were five distinct orebodies that were separated by hundreds up to several thousand feet along the vein. Some extended nearly to the surface, while two were deeper below-surface. The vein walls ("country rock") were very hard, homogeneous, and devoid of sulfide mineralization. It was therefore possible to remove ore selectively with minimum dilution by barren waste rock.

Mine development at Walker began with shafts, and the ore was initially hoisted to the surface ("shaft collar") and loaded into tram cars suspended from a cable running in a continuous loop. The mile-long tramway descended approximately 900 feet to the concentrator feed bins and crushers. There was a personnel camp

near the shaft and another near the concentrator. Draft animals and wagons originally hauled concentrates to a rail siding, but a 9-mile overhead tramway to the railroad was constructed in 1919 and 1920. During 1920 and 1921, the 700 level haulage tunnel was driven 3,000 feet northward from a portal near the concentrator to intersect the vein. Electric trolley locomotives and cars with 2.75 ton capacity were used to tram ore¹.

Concentration was always accomplished by the selective flotation process. The ore was reduced in a series of jaw and roll crushers to a top size of 0.375-inch, then ground in rotating cylindrical ball mills to a top size of about 0.01-inch with half of the particles finer than 0.003-inch. Although the ore initially contained as much as 10 percent copper, the ore "grade" had declined to less than 2 percent copper by 1926².

The concentrates were thickened and filtered before being conveyed by a 9-mile tram way to a rail loading station for transportation to the IS&R smelter at Tooele, UT.

"Development" is a term which was used by WMC in the same two ways as the term was generally used throughout the mining industry and described above. In extensive correspondence between WMC geologists and IS&R and ACM geologists who provided advice on "development", the term was used to mean development of future reserves. In this context, the goal of development was not to open up access for extraction of ore, but to create a path through the country rock adjacent to the vein. If mineralized rock was produced in development, it would have been removed and processed. In my opinion, the volume of waste created by reserve development through mineralized rock (if any) would have been negligible, compared with tailings wastes generated from WMC's ore extraction.

Generally, in this first of the six phases of mining, the exploration geologist is looking to the future with the objective of ensuring that the mine's life will be sufficient, not only to pay back major investments like a new and larger concentrator, but also to maximize shareholders' return on their earlier investments. At WMC's Walker Mine, exploration geologist Reno Sales, who had developed the science of underground exploration in Butte, and Paul Billingsley, provided guidance on matters relating to exploration on behalf of ACM and IS&R

¹ *Anaconda's Walker Mine and Mill*, Engineering and Mining Journal, Vol.117, No. 18, May 3, 1924, pages 725-730. (Ex. 36.)

² Walker Mining Company Annual Report for 1926. (Ex. 52.)

to Walker Mining Company's geologists for their consideration, and at times required WMC's staff geologists to obtain their approval to proceed.

At times, the correspondence shows Reno Sales expressed frustration that his geological direction and advice related to development of ore reserves was not being followed. While it is clear that his opinions were respected, it is also clear that local variables may have influenced acceptance. (Exs. 115, 39, 47.)

Although WCM's mine geologists, like Seth Droubay, were very competent, they likely did not possess the interest, training, or expertise to serve as exploration geologists. In any case, their day-to-day job was to direct the second phase of mining (ore extraction). If Sales and Billingsley had not been available, WCM would have had to pay for a geological exploration consultant, but it is very unlikely that they could have found any as competent as the ones made available to them by their IS&R and ACM.

Of all the documents reviewed in this case, none present any evidence that exploration geologists (active in the first phase of mining) or any other representative of IS&R or ACM had any direction, supervision or control, over the disposal of mining wastes produced by the Walker Mine operations.

B. Basis for Opinions Concerning Ore Extraction Operations

Whereas the art and science of prospecting, exploration, and resource development is essentially strategic and long-range, the practice of operating a mining and processing complex (that is, the activities constituting the later five phases – mine development, ore extraction, concentrating, product shipment and waste disposal) is purely tactical. Generally, in the mining industry, there are daily, weekly, and monthly production targets, and every attempt is made to plan for periodic and very brief maintenance and repair shutdown, but most decisions are reactionary and based either on brief conversations between supervisors and subordinates at the beginning or end of a shift or are made on-the-run during the shift. The information on which these decisions are based may range from changes in ore characteristics underground to a change in equipment availability to substitution for an ill or injured worker.

I will address organizational structure and personnel classifications and responsibilities in the following sections of this report, but want to preface those comments with clarification of jurisdictional considerations regarding the creation and management of wastes.

(1) Mining Phase Three – Ore Extraction

Extraction of the copper ore from the Walker Mine was driven by economics that govern the so-called cutoff grade (COG), the copper concentration below which downstream processing would cost more than the recovered value. At Walker, the cutoff grade varied with the market price, but likely followed an industry standard of 0.5% copper, or 10 pounds of copper per ton of ore. Any rock containing less than the COG was likely designated “waste rock”. If the waste rock came from the ore vein and contained some copper mineralization, WMC would have treated it as a mineral asset, not waste. This asset was probably hauled (“trammed”) to a dump outside the 700 level tunnel’s portal and stockpiled for future processing in response to favorable copper price. However, the host (“country”) rock that bounded the vein on both sides of the Walker Mine contained no copper. If it was drilled and blasted to provide access to a mineralized zone that could be stoped,³ waste rock would likely have been used to backfill the stope to minimize future unintended caving or to provide a working platform. The expense of tramping waste rock from underground would only have been authorized by WMC management if there were no cheaper or better destination.

The mining method used in the Walker Mine was a technique called “shrinkage stoping” and it basically involved driving access workings into a steeply tipped nearly tabular quartz vein over 500 feet high, two miles long, and 15-50 feet thick. This vein structure contained five orebodies, the South, Central, North, 712, and Piute (or Paiute). The shrinkage stoping technique is described in an E&MJ article⁴ and a summary in *The Mines Handbook*⁵

Mining was occurring in tandem with ore reserve development in different parts of the mine, e.g., above the 700 level, while WMC was prospecting below or in other ore bodies. (Exs. 65, 81, 64, 60.) I estimate that waste rock trammed from the underground amounted to less than 5 percent of the total mass or volume of material (ore plus waste rock) removed from the Walker Mine. This type of information was presented in weekly reports from the Mine Manager to the President of WMC. In the report dated March 13, 1937 from L. F. Bayer to J. R.

³ In shrinkage stoping, ore is mined out in successive inclined (or vertical) slices, working upward from a haulage level. After each slice is blasted, enough broken ore is drawn down from below to provide a working space between the top of the broken ore and the top (“back”) of the stope.

⁴ “Anaconda’s Walker Mine and Mill,” *Engineering and Mining Journal*, Vol. 117, pages 725-730, May 3, 1924. (Ex. 36.)

⁵ “Walker Mining Company,” *The Mines Handbook*, pages 685-687, 1931. (Ex. 69.)

Walker,⁶ under the General heading, total breakage (rock drilled and blasted) was 13,340 tons of ore and 531 tons of waste (3.99%), but total production (rock hauled from underground) was 11,649 tons of ore and 208 tons of waste (1.75%). Clearly, about 60 percent of the waste was left underground. Some waste rock could have been deposited near the portal and the concentrator (where hand-sorting of waste rock from a conveyor was sometimes practiced), but it likely contributed no pollution because it contained minimal metal concentrations (less than the COG). Regardless, creation, haulage, and disposal of waste rock were the responsibility of the WMC mine supervisors (the Mine Foreman and his shift foremen). This was also true of any waste rock displaced during prospecting activities, since the same foremen, drillers, miners, and trammers who produced ore also produced and handled the waste rock.

Water draining from the Walker Mine workings was used by WMC for drinking and drilling underground if it was clean and potable, but excess clean water was used in processing and became the responsibility of the WMC Concentrator Superintendent. In about the first half of 1926, WMC stope mining caused surface subsidence which allowed ingress of oxygenated surface water and, likely, naturally-occurring microbes such as *thiobacillus ferro-oxidans* that would have generated ferric iron, a powerful oxidant for metal sulfides. This caused the mine water to become acidic, for copper to dissolve, and for processing to be initiated for removal of dissolved copper. This process, called "cementation", involved WMC contacting the acidic water with metallic iron scrap to precipitate metallic copper (Ex. 54.). According to the 1932 (Ex. 72.), 60 tons of precipitates containing 60-63% copper were produced by this method. Cementation is a process whose optimization requires knowledge of chemistry and metallurgy, so the WMC Concentrator Superintendent devised a metallurgical solution to address this aspect of WMC mining operations. I have seen no evidence that IS&R/ACM directed management of clean or contaminated waters.

A June 20, 1926 report from V. A. Hart to J. R. Walker⁷ makes it clear that surface subsidence that followed underground stope mining diminished the miner's access to known ore reserves and allowed surface water to enter the workings. Furthermore, Hart leaves no doubt that WMC operators were responsible for prompt expansion of tailings pond capacity.

⁶ Mine Progress Report and Report on Concentration Operations, March 13, 1937. (Ex. 81.)

⁷ Walker Mining Company report, V. A. Hart to J. R. Walker, June 20, 1926. (Ex. 51.)

(2) Mining Phase Four – Concentrating

At the Walker Mine, ore was processed by crushing and grinding to a consistency resembling fine beach sand. When the ore fragments were reduced to this size, the copper sulfide minerals, along with undesirable grains of iron sulfides, were physically liberated from the quartz host. Also, the particles were then small enough to be readily suspended in water to yield a fluid mud, called "slurry", that was suitable for treatment by the flotation process. A reagent called a "collector" and *pine oil*, one of a family of "frothers" were added to the slurry. Finely ground lime was added to alter the surface chemistry of the iron sulfides and air was introduced to the bottoms of Callows-type flotation cells. Copper mineral grains became attached to rising air bubbles and overflowed the cells as froth "concentrates", while iron sulfide particles and bits of quartz left the flotation cells as an under-flowing "tailings" stream that was conveyed by a sluice or flume to an impoundment as a waste containing less than about 0.1-0.2 percent copper. WMC filtered the concentrate which was sent to the IS&R smelter at Tooele, UT, via overhead tramway to a railway terminal.

Dr. F. L. Quivik, a historian, in his Expert Witness Statement, page 19, noted that B. S. Morrow, who was ACM's Superintendent of Concentration, submitted recommendations about the design of the new WMC concentrator. ACM made Morrow available as a consultant to offer suggestions concerning the design of the new concentrator. Morrow did not, and could not, order WMC to follow his suggestions. Moreover, Morrow never had any role in the ongoing concentrator operations.

The Walker Mining Company's sole operation was at Walkermine, CA, and it was fully integrated with all of the support required for sustaining, maintaining, and repairing equipment. In addition to the operating, maintenance, and service personnel and facilities, there were bunkhouses and family homes, mess hall and kitchens, commissary, clinic and hospital, sawmill, machine shop, electrical shop, warehouse, a theater, various recreational facilities, and a school suitable for about 65 children. Total employment at Walkermine typically included 350-550 hourly personnel and 30 monthly (salaried) staff.

In a typical mining operation the size of the Walker underground mine in the late-1920s to late-1930s, there would have been about 200-250 hourly employees including stope miners, development miners, equipment operators, railcar motor men, support miners, diamond drillers, electricians, mechanics, maintenance workers, helpers, underground laborers, and surface laborers. In the concentrator

(mill) there would have been approximately 60 hourly employees including crusher operators, flotation operators, thickener and filter operators, samplers, mechanics, electricians, and laborers. (Ex. 138.)

Salaried WMC personnel reporting to the WMC Mine Manager included a Mill Superintendent (with responsibility for concentrator operations), Mine Foreman, Chief Engineer and Geologist, Master Mechanic, Chief Clerk, and administrators responsible for the hospital and medical staff, school, fire protection, street and building maintenance, heating plant, and livestock stables for draft animals. There were clerks, accountants, draftsmen, assayers, stenographers, custodians, and other support personnel. (*Id.*)

Reporting to the President of the Walker Mining Company located in Salt Lake City, the Managers during the life of the operation at Walkermine, CA, included L. F. Bayer, H. A. Geisendorfer, V. A. Hart, H. M. Hartmann, and H. R. Tunnel. It was the Manager's role to receive information from subordinates, to make decisions that their direct-reports could not make, and to communicate with the President and his Board of Directors. The Manager was totally responsible for steady and profitable operation and could only do this if he conversed regularly with subordinates, then exercised absolute authority. Differing personality traits and technical expertise would have influenced the degree to which he accepted and implemented suggestions and recommendations from outsiders and the extent to which he delegated his responsibilities. There were a few examples of bypassed authority such as correspondence between Seth Droubay and both Murl Gidel and Reno Sales, but appear to have been infrequent. I have seen no documentation of communication between employees of ACM or IS&R and the WMC Mine Foreman, who would have supervised all mining activities, including prospective diamond drilling and exploration development. Here, it is important to recognize that diamond drilling was an integral part of short-range ore development, but that the same men and equipment also drilled prospecting holes when instructed to do so by the WMC Mine Geologist on recommendations from his exploration consultants, Sales and Billingsley.

(3) Mine Phases Five and Six – Waste Disposal / Product Shipment

I was asked to offer my opinion on tailings management and to estimate annual production of tailings by the WMC flotation concentrators and my methodology was as follows:

- 1) At Walker Mine, tailings management was the responsibility of the WMC concentrator personnel (who reported to the Mill Superintendent), not only because it was produced at Walker Mine, but also because those workers were experienced in pumping and handling of slurries and in reclaiming water for use by the concentrator. Geologists were not involved in these operations.
- 2) Concentration of ores from the Walker Mine began in September 1916. However, the first WMC document that I have noted relating to tons of ore milled and concentrates produced was the "Report of Walker Mining Company at The Special Stockholders' Meeting Held At Phoenix, Arizona May 3, 1925". This report presented monthly statistics, including copper recovery and concentration ratio (grade of copper in concentrates divided by ore grade). The ore grade was 7.96 percent copper in May 1922, declining to 4.40% in February 1923. The earliest concentration ratio given was 3.104 and I have assumed that a ratio of 3 was applicable to all earlier production unless better information was available.
- 3) I then referred to annual volumes of the USGS publication, Mineral Resources of the United States ("MR"). No statistics were presented prior to 1920, but a 75 tons of ore per day (tpd) concentrator was started up in September 1916, shipping concentrates to the IS&R smelter at Toole, Utah. The mill (concentrator) was expanded to 100 tpd in 1917 and continued at this capacity through 1918. In 1920, the Walker mill at 200-225 tpd apparently ran continuously and was second in Plumas County production to the Engel mill. During 1921, the mill did not operate, as the tramway that had delivered ore to the mill from the production shaft collar was replaced by the 700 level haulage tunnel, and the mine camp was moved to the vicinity of the mill camp. The mill was operated again during 1922 at a capacity of 225 tpd and the ore tonnage milled was given in E&MJ for that calendar year. By 1924, the new concentrator was at full capacity. The first two WMC annual reports were for Fiscal Years that ended July 31, 1924 and July 31, 1925. This left unreported gaps for the first half of calendar year 1924 and the last half of calendar year 1925, so I have used the annual statistics from MR for calendar years 1924 and 1925.
- 4) Related to tailings disposal, a June 20, 1926 report from V. A. Hart to J. R. Walker⁸ makes it clear that WMC operators were responsible for prompt

⁸ Walker Mining Company report, V. A. Hart to J. R. Walker, June 20, 1926. (Ex. 51.)

expansion of tailings pond capacity, noting that WMC needed to raise the tailings dam. Furthermore, correspondence seeking approval of the downstream tailings location was between WMC and the U.S. Forest Service. (Exs. 8-22.) WMC alone provided the assurances required by the Department of the Interior to approve the downstream tailings reservoir. (Ex. 24.)

- 5) Any waste rock that was hauled to the surface would have been stockpiled, not crushed and concentrated, so that waste would not have contributed to the tailings volume. Ore extracted during exploration development would have been concentrated and tailings would have been produced, but my examination of the documents has led me to conclude that the quantity attributable to exploration would have been negligible.
- 6) The following estimates for 1916 through 1921 assume 4 months of operation in 1916, 9 months in 1920, and 12 months in all other years. I have further assumed that, during 1916, 1917, and 1918, the mill only ran at 80 percent of design capacity. This was typical for small single-circuit inexpensive concentrating plants during that era. I assumed that, by the end of 1918, the miners and the mill operators and maintenance personnel had developed sufficient experience that 90 percent "availability" was likely. The operation was closed on October 1, 1920 and remained closed throughout 1921.

Table 1
Estimated Tailings Production 1916 through 1921

Year	Capacity	Months	Avail.	Tons Ore	Tons Conc.	Tons Tailing
1916	75 tpd	4	0.8	9,000	3,000	6,000
1917	100	12	0.8	29,040	9,670	19,370
1918	100	12	0.8	29,040	9,670	19,370
1919	200	12	0.9	65,340	21,780	43,560
1920	200	9	0.9	49,005	16,335	32,670
1921	200	0	0	0	0	0

Table 2 summarizes WMC's annual production from 1916 through closure on October 30, 1941, with the figures for 1922 through 1941 based on published statistics for annual tons milled and concentrates produced. I have relied on Mineral Resources of the United States for 1939 because the best available copy of the WMC Annual Report for 1939 was illegible. Tailings production by the WMC

concentrator simply equaled the dry tons of ore milled minus the dry tons of concentrates produced.

Table 2
Annual Tailings Production (all figures in dry short tons)

YEAR	ORE	CONCT.	TAILINGS	SOURCE
1916	9,000	3,000	6,000	MR, 1916, p.244
1917	29,040	9,670	19,370	MR, 1917, p. 244
1918	29,040	9,670	19,370	MR, 1918, p. 435
1919	65,340	21,780	43,560	MR, 1919, p. 206
1920	49,005	16,335	32,670	MR, 1920, p. 179
1921	0	0	0	MR, 1921, pp. 186,188
1922	38,652	12,884	25,768	E&MJ, Vol. 116, No. 8, 1923, p. 338
1923	87,041	14,567	72,474	MR, 1923, p. 211*
1924	205,903	25,738	180,165	MR, 1924, p. 218*
1925	263,411	25,079	238,332	MR, 1925, p. 312*
1926	250,082	17,824	232,258	WMC Annual Report
1927	340,156	19,268	320,888	WMC Annual Report
1928	391,275	22,654	368,621	WMC Annual Report
1929	457,637	32,375	425,262	WMC Annual Report
1930	518,509	33,266	485,243	WMC Annual Report
1931	432,294	25,342	406,952	WMC Annual Report
1932	34,741	1,771	32,970	WMC Annual Report
1933	0	0	0	WMC Annual Report
1934	0	0	0	WMC Annual Report
1935	89,524	3,995	85,529	WMC Annual Report
1936	453,794	21,998	431,796	WMC Annual Report
1937	447,050	21,116	425,934	WMC Annual Report
1938	66,822	2,516	64,306	WMC Annual Report
1939	367,041	17,342	349,699	MR, 1940, p. 241**
1940	437,450	20,881	416,569	WMC Annual Report
1941	291,438	14,387	277,051	WMC Annual Report
1942	0	0	0	WMC Annual Report
TOTAL	5,354,245	393,458	4,960,787	

- The WMC Fiscal Years were 8/1/1924-7/31/1925, leaving unreported gaps. FY 1926 was CY 1926 and thereafter.
- The best available WMC Annual Report copy was illegible.

TERRY MCNULTY
MINERAL PROCESSING and CHEMICAL ENGINEERING
CONSULTANT

EDUCATION

B.S. Chemical Engineering, 1961, Stanford University
M.S. Metallurgical Engineering, 1963, Montana School of Mines (now Montana Tech)
D.Sc. Extractive Metallurgy, 1967, Colorado School of Mines
Registered Professional Engineer, Colorado, No. 24789
Registered Member, *Society for Mining, Metallurgy, and Exploration*

1989 – Present

PRESIDENT - T. P. McNulty and Associates, Inc.

Work has personally been conducted for over 250 clients including mining companies, secondary metal producers, utilities, chemical and hydrocarbon producers, engineering and environmental service firms, law firms, the World Bank and other financing institutions, agencies of domestic and foreign governments, universities, and technology developers. These clients have been located in the U.S., U.K., Brazil, Australia, Canada, Switzerland, Mongolia, Colombia, Mexico, Venezuela, Russia, South Africa, and Chile.

Types of work performed have included (1) evaluation of acquisition candidates and expert testimony, (2) management consulting and strategic planning, (3) project management, process engineering, and cost estimation in base and precious metals, uranium, nonmetallic minerals, and industrial chemicals, (4) direction of research programs, (5) plant audits, (6) participation in formal (NI 43-101 compliant) studies, and (7) assistance in developing and commercializing innovative technologies. Currently (February 2014), 9 of the original Associates are still consulting; they include metallurgists, a chemical engineer, a geologist, and a mining engineer.

1983 - 1988

PRESIDENT and CEO of Hazen Research, Inc.

I provided general and technical management to this R&D contracting company through the mineral industry depression of the mid-1980's. There were 105 employees at the low point and 145 at the end of 1988, a year of record profits. I participated in many of the 1400 projects completed during my tenure and managed a variety of them. Project activity included precious metals, base metals, yttrium and the Rare Earths, heavy minerals, coal, brine chemicals, uranium, beryllium, gallium, germanium, boron and lithium compounds, other nonmetallic minerals, and industrial wastes. Processing technologies included comminution, flotation, gravity concentration, heap leaching, CIP/CIL, autoclave oxidation, solvent extraction, electrolysis, selective crystallization, roasting, and smelting.

1980 – 1983

VICE PRESIDENT- TECHNICAL OPERATIONS, Kerr-McGee Chemical Corp.

I was responsible for overall direction of technical activities, for licensing of in-house technology, and for identification and evaluation of acquisition candidates. Working with other

officers, marketing personnel, centralized technical groups, and engineering and technical staffs at local operations, I directed the development and implementation of programs for new plant construction, plant performance improvement, cost reduction, environmental compliance, product quality improvement, and commercialization of new products. Business units for which I had these responsibilities included potash, soda ash, sodium chloride, sodium borates, sodium sulfate, boric acid, potassium sulfate, synthetic rutile, titanium dioxide pigments, vanadium metal and chemicals, lithium compounds, sodium chlorate, perchlorates of sodium, potassium, and ammonium, electrolytic manganese metal and manganese dioxide, phosphate pebble and concentrates, co-generated electric power, carbon dioxide, and treated forest products.

1974 - 1980

MANAGER - RESEARCH and TECHNICAL SUPPORT - The Anaconda Co.

I managed all ore processing R&D, process engineering, and technical support related to design, equipment selection, commissioning, and plant performance improvement. R&D projects covered the spectrum from laboratory testing of exploration samples to extensive pilot plant programs. Processing flow-sheet development and plant design and startup services were provided to nine operations employing minerals beneficiation, hydro-metallurgy, or pyrometallurgy. Commodities influenced by this work included aluminum, copper, lead, zinc, manganese, nickel, uranium, vanadium, chromium, molybdenum, gold, silver, tungsten, Platinum Group, and various nonmetallic minerals.

1972 - 1974

SUPERVISOR of PROCESS ENGINEERING - The Anaconda Company

I managed process development, process engineering, and equipment selection activities for a copper concentrator, a lead/zinc/silver concentrator, a copper smelter retrofit, and two hydrometallurgical (leach/SX/EW) copper plants. I participated in or directed the startups of all of these facilities.

1970 - 1972

CONCENTRATOR SUPERINTENDENT - Anaconda Canada Ltd.

I supervised completion of design and construction of a 1,000 ton/day copper, zinc, gold and silver flotation concentrator with an acid leaching and copper cementation circuit, and then was responsible for startup and operation. Other duties included supervision of plant maintenance, tailings disposal, water reclamation, and the analytical laboratory.

1966 -1970

SENIOR RESEARCH ENGINEER - The Anaconda Company

I participated in or managed projects including recovery and refining of beryllium oxide, recovery of alumina from clay, and the hydrometallurgy and pyrometallurgy of copper. My contributions included three novel processing routes for recovery of copper from complex non-sulfide ores.

1960 - 1965

RESEARCH & TESTING ENGINEER - The Anaconda Company

I provided plant testing and startup or temporary operating supervision in plants producing copper, lead, and zinc concentrates, electrolytic zinc, refined copper, ferromanganese, sulfuric acid, phosphoric acid, and various by-products such as arsenic trioxide. During 1961-63, I worked full-time while pursuing a Masters degree part-time. From late-1963 to early-1966, I was on leave to complete doctoral studies, but continued to work on copper smelting and copper fire refining projects for Anaconda.

PROFESSIONAL SOCIETY MEMBERSHIPS & ADVISORY APPOINTMENTS

I am a member of AIME (TMS and SME), the National Academy of Engineering, the Mining and Metallurgical Society of America, and the Mining Foundation of the Southwest.

Trustee Emeritus - Colorado School of Mines

Board of Governors - The Mining Foundation of the Southwest

PATENTS & PUBLICATIONS

Two patents in copper metallurgy and over 40 publications in the fields of (1) minerals processing and the extractive metallurgy of iron, copper, uranium, and precious metals, (2) process control, (3) energy conservation, (4) mineral industry trends, (5) waste treatment, (6) project management, and (7) technology development.

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PUBLICATIONS & PRESENTATIONS

Studies in the System Iron-Carbon-Oxygen, M.S. Thesis, Montana School of Mines, May 1963.

A Study of the Physical Chemistry of Copper Fire Refining, D.Sc. Thesis, Colorado School of Mines, June 1966.

Absorption of Sulfur Dioxide in Mercury, Transactions of the AIME, T. P. McNulty and A. H. Larson, June 1967.

Leaching of Copper Silicate Ore with Aqueous Ammonium Carbonate, International Symposium on Hydrometallurgy, T. P. McNulty and R. F. Frantz, Chicago, February 1973.

Applications of Hydrometallurgy in Future Mineral Processing Operations, presented to the National Science Foundation, Washington, D.C., July 1975.

The Role of Instrumentation in Energy Conservation in Copper Production, Proceedings of the 7th Mining and Metallurgy Division Symposium of ISA, Denver, February 1978.

Challenges in the Minerals Industry, Mines Magazine, April 1979.

Instrumentation Requirements in Uranium Mining and Processing, Proceedings of the Mining and Metallurgy Division Symposium of ISA, Phoenix, May 1980.

Changing Energy Economics in Extractive Metallurgy, Society of Mining Engineers Annual Meeting, Salt Lake City, October 1983.

A Profile of Control in Process Metallurgy, First International Symposium on Modeling and Control in Mineral Processing and Process Metallurgy, Los Angeles, February 1984

Processing of Gold and Silver Ores, AIME 12th Intermountain Minerals Conference, Vail, CO August 1984.

Innovation Sharpens the Competitive Edge, American Mining Congress, Phoenix, September 1984.

Trends in Mineral Processing, Northwest Mining Association Annual Convention, Spokane, December 1984.

Frontier Technology in Hydrometallurgy: 1980-1984, T. P. McNulty, P. B. Queneau, and J. E. Litz, AIME Annual Meeting, New York, February 1985.

Modular and Portable Processing Plants, Society of Mining Engineers Annual Meeting, at St. Louis, September 1986.

Process Mineralogy of Precious Metals, AIME, Mineral Processing Division Annual Meeting, Colorado Springs, May 1987.

The Role of Ore Testing in the Development of Small Mines, Clear Creek County Metal Miners' Association, Idaho Springs, CO, January 1988.

Comparative Costs of Pretreatment of Refractory Gold Ores, AIME Mineral Processing Division Annual Meeting, Colorado Springs, May 1988.

Pretreatment of Refractory Gold Ores, American Mining Congress, (Denver), September 1988.

Impact of Environmental Regulation on Mineral Processing and Hydrometallurgical Plants, R. B. Coleman and T. P. McNulty, Chapter 37 in the D.W. Fuerstenau Symposium, Volume II, December 1988.

Research and Development, Materials and Society, pp. 189-191, 1989.

1989 Henry Krumb Lecturer in Extractive Metallurgy, a 5-lecture traveling series sponsored jointly by the Society of Mining Engineers and The Metallurgical Society of AIME.

A Metallurgical History of Gold, American Mining Congress, San Francisco, September 1989.

Treatment of Smelter Flue Dusts, a presentation only at the American Mining Congress, New Orleans, September 1990.

Economics of Bioleaching, T. P. McNulty and D. L. Thompson, *Microbial Mineral Recovery*, pp.171-182, 1990.

Adjustable Speed Drives Cut Costs in Mining and Processing, T. P. McNulty and D. L. Thompson, National Western Mining Conference, Denver, February 1991.

Some Advantages of Using Contract Research and Development, N. Hazen and T. P. McNulty, 205th ACI National Meeting (Denver), April 1993.

Technologies for Treatment of Mining and Processing Wastes, T. P. McNulty and D. L. Thompson, SME Short Course, "Remediation: The Foundation of Our Future", 1993.

Pollution Prevention in Mining and Mineral Processing, Plenary Session Paper at USBM/CSM/EPA Joint Symposium, Snowmass, CO, July 1993.

Electricity in Mine Transportation, D. L. Thompson and T. P. McNulty, November 1993.

Adjustable Speed Drives Yield Process Improvements in Mining and Minerals Processing, L. E. Kissinger, D. L. Thompson and T. P. McNulty, September 1995.

Innovative Technology: Its Development and Commercialization, written for presentation in SME Session, *Managing Innovation*, Orlando, FL, March 1998.

Recommendations Arising from Plant Performance Audits, written for presentation in SME Plant Operators' Symposium, Orlando, FL, March 1998.

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Sulfate Disposal from Ammoniacal Solutions, Copper Hydromet Roundtable 2000, September 2000.

Banning Cyanide Use at McDonald - An Attack on Open-Pit Mining, R. H. DeVoto and T. P. McNulty, Mining Engineering, December 2000, pp. 19-27.

Comparison of Alternative Gold Extraction Lixiviants, Mining Environmental Management, May 2001.

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Overview of Metallurgical Testing Procedures and Flowsheet Development, Mineral Processing Plant Design, Control and Practice Conference, Vancouver, BC, October 20-24, 2002, pp.119-122.

Mineral Processing in the Third Millennium, Robert H. Richards Award Annual Lecture, SME Annual Conference, Cincinnati, OH, February 26, 2003.

Minimization of Delays in Plant Startups, SME Plant Operators' Forum, February 25, 2004.

Metallurgical Advances and Their Impact on Mineral Exploration and Mining, K.O. Hoal, T. P. McNulty, and R. Schmidt, 2006 Society of Economic Geologists Special Publication 12, Chapter 12, pp.243-261.

Leaching, a section prepared for Perry's Chemical Engineers' Handbook, 8th Ed., 2007.

Minerals, Critical Minerals, and the U.S. Economy, NRC Committee on Critical Mineral Impacts on the U. S. Economy, the National Academies Press, October 2007.

The Role of Process Development in Risk Reduction, Prepared for presentation at the 2014 Conference of Metallurgists in Vancouver.

PROFESSIONAL RECOGNITION

Distinguished Career Achievement Medal, Colorado School of Mines, 1989

Henry Krumb Memorial Lecturer, AIME, 1989

Distinguished Alumni Award, Montana Tech, 2002

Robert H. Richards Award for Distinction in Mineral Processing, AIME, 2003

Election to the National Academy of Engineering in 2005

Medal of Merit, American Mining Hall of Fame, 2010

Exhibit 3

Central Valley Regional Water Quality Control Board Proceeding

Item 15 - Partial Transcript - 03/27/14

Page 1 to Page 185

CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

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(1) STATE OF CALIFORNIA
(2) CENTRAL VALLEY REGIONAL
(3) WATER QUALITY CONTROL BOARD
(4) ITEM 15
(5) PARTIAL TRANSCRIPT
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(4) Ms. Jenny Moffitt, Vice Chairperson
(5) Ms. Sandra Meraz
(6) Ms. Carmen Ramirez
(7) Mr. Robert Schneider
(8)
(9) BOARD COUNSEL
(10) Mr. David Coupe
(11) Mr. Alex Mayer
(12) Mr. Ken Landau
(13)
(14) PROSECUTION TEAM
(15) Ms. Pamela Creedon, Executive Officer
(16) Mr. Mayumi E. Okamoto
(17) Mr. Andrew Turiainen
(18)
(19)
(20) ATLANTIC RICHFIELD
(21) Mr. James A. Bruen, Farella Braun & Martel, LLP
(22) Mr. William J. Duffy, Davis, Graham & Stubbs, LLP
(23) Ms. Andrewa Wang, Davis, Graham & Stubbs, LLP
(24)
(25)

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(1) PROCEEDINGS
(2) CHAIRPERSON LONGLEY: We're back in session on
(3) Agenda Item 15, Walker Mine and Walker Mine Tailings,
(4) Plumas County.
(5) This is the time and place for a public hearing
(6) to consider Cleanup and Abatement Order regarding the
(7) Walker Mine and Walker Mine Tailings in Plumas County.
(8) The designated parties of this proceeding are as
(9) follows: The Board's prosecution team, Atlantic Richfield
(10) Company, otherwise known as ARCO, and the United States
(11) Forest Service. All other parties are considered
(12) interested parties.
(13) The prosecution team has a combined total of 55
(14) minutes for direct testimony, cross-examination, and
(15) closing statement. ARCO and the United States Forest
(16) Service each have a total of 55 minutes for the same.
(17) Interested persons shall limit their comments to
(18) three minutes.
(19) Pursuant to Government Code Section 11126(c)(3),
(20) please note that the Board may meet in closed session to
(21) deliberate on a decision to be reached based upon evidence
(22) introduced in a hearing.
(23) All persons expecting to testify, please stand at
(24) this time, raise your right hand, and take the following
(25) oath.

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- (1) (Whereupon all prospective witnesses were sworn.)
(2) CHAIRPERSON LONGLEY: Thank you.
(3) At this time, evidence should be introduced on
(4) the following issues:
(5) First, whether the Board should issue, reject, or
(6) modify the proposed Cleanup and Abatement Order regarding
(7) discharges from Walker Mine, naming ARCO.
(8) Second, whether the Board should issue, reject,
(9) or modify the proposed Cleanup and Abatement Order
(10) regarding the Walker Mine Tailings naming ARCO and the
(11) U.S. Forest Service.
(12) The order of this hearing is as follows: First,
(13) testimony and cross-examination of the prosecution team.
(14) Second, testimony and cross-examination of ARCO. Third,
(15) testimony and cross-examination of the U.S. Forest
(16) Service. Fourth, comments by interested persons. Fifth,
(17) closing statement by the U.S. Forest Service, followed by
(18) closing statement from ARCO, and finally by the
(19) prosecution team.
(20) Please state your name, address, affiliation, and
(21) whether you've taken the oath before testifying. If you
(22) haven't submitted a speaker card, now is the time to
(23) submit one to Ms. Lanfranchi-Rizzardi, who is sitting over
(24) here to my right.
(25) Does Regional Board Advisory Team Counsel have

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- (1) contribution cannot be adjudicated in an administrative
(2) hearing.
(3) The sixth pre-hearing motion that ARCO has
(4) brought is a request -- is in requesting a Regional Board
(5) ruling that the prosecution team has the burden to prove
(6) each element of its case, seeking each proposed Cleanup
(7) and Abatement -- each element of its case seeking in the
(8) proposed Cleanup and Abatement Orders that that burden of
(9) proof is governed by the preponderance of evidence.
(10) The seventh pre-hearing ruling that ARCO has
(11) brought pertains to a request -- is in requesting a
(12) Regional Board ruling that ARCO cannot be jointly and
(13) severally liable for cleanup and abatement of the mine
(14) and/or the mine tailing site.
(15) There was an eighth motion that was brought
(16) requesting a Regional Board ruling that past costs are not
(17) recoverable in this proceeding. It's my understanding
(18) that Atlantic Richfield has dropped that particular
(19) pre-hearing motion. So unless I hear otherwise from
(20) Atlantic Richfield, my suggestion is to not take up that
(21) particular motion.
(22) And finally, the ninth pre-hearing motion that
(23) Atlantic Richfield has brought forward is to request
(24) certain opinions of the prosecution team's expert, Dr.
(25) Quivik be excluded and stricken from the record.

(Continued)

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- (1) any legal issues to discuss at this time?
(2) LEGAL COUNSEL COUPE: I have more than a few
(3) legal issues that I need to discuss.
(4) This pertains to nine pre-hearing motions that
(5) ARCO had filed. Just for the Board's edification, I've
(6) been in consultation with Dr. Longley with reference to
(7) the respective motions. Again, for the benefit of the
(8) Board for reiteration purposes, the first motion -- in the
(9) first motion of ARCO's requesting a Regional Board ruling
(10) that CERCLA prohibit the Regional Board from issuing
(11) Cleanup and Abatement Orders.
(12) In the second pre-hearing motion, ARCO is
(13) requesting a Regional Board ruling that the Regional Board
(14) is a discharger at the sites.
(15) In the third pre-hearing motion, ARCO is
(16) requesting a Regional Board ruling that the Doctrine of
(17) Laches precludes the Board from issuing the draft Cleanup
(18) and Abatement Orders.
(19) The fourth pre-hearing motion ARCO has brought is
(20) to request a Regional Board ruling that due process
(21) requires to Board to recuse itself from this particular
(22) matter.
(23) The fifth pre-hearing motion brought by ARCO
(24) requests a Regional Board ruling that the prosecution
(25) team's claim -- or alleged or purported claim for

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- (1) So with that as a kind of roadmap for the Board,
(2) my suggestion at this particular point in time is
(3) certainly the parties can feel free to use their allocated
(4) time to argue the merits of the pre-hearing motions
(5) themselves. But for the benefit of the Board, I've
(6) consulted with Dr. Longley about the motions extensively.
(7) Certainly, Dr. Longley is free to solicit input from Board
(8) members on any of the pre-hearing motions themselves.
(9) But my suggestion at this point in the hearing is
(10) that we go ahead and get some rulings on all the
(11) pre-hearing motions, except perhaps for the very first
(12) pre-hearing motion itself, which the Board Chair had the
(13) discretion to consider, for example, at the close of
(14) evidence.
(15) So with that, let me just run through the
(16) pre-hearing motions themselves and --
(17) BOARD MEMBER RAMIREZ: Did you want to speak?
(18) MR. DUFFY: Good afternoon. William Duffy on
(19) behalf of Atlantic Richfield Company, with the Law Firm
(20) Davis Graham & Stubbs located in Denver, Colorado.
(21) I just want to clarify -- I'm sorry. I don't
(22) know the gentleman's name. Who am I speaking to?
(23) LEGAL COUNSEL COUPE: Coupe, like the car.
(24) MR. DUFFY: Mr. Coupe, as to Motion Number eight,
(25) we did not withdraw the motion. It's my understanding

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- (1) that the prosecution withdrew its claim for past costs. I
(2) just want to be clear that's the status.
(3) LEGAL COUNSEL COUPE: Fair enough.
(4) MR. DUFFY: As to the motions themselves, we did
(5) want to use some of our time to argue a couple of them.
(6) One of them -- in fact, two of them I should say. And if
(7) you're going to proceed, Mr. Coupe, with the rulings, I'd
(8) ask that you consider arguments on Quivik as well as due
(9) process arguments we'd like to present.
(10) CHAIRPERSON LONGLEY: I'll allow that and you
(11) have, of course, 55 minutes. You can use your time as you
(12) see fit.
(13) MR. DUFFY: Thank you.
(14) LEGAL COUNSEL COUPE: So I think with that, why
(15) don't we go ahead and see if we can get some rulings on
(16) the pre-hearing motions, except for pre-hearing Motion
(17) Number one, pre-hearing Motion Number four that deals with
(18) due process as raised by Mr. Duffy, and pre-hearing Motion
(19) Number 9, which deals with Dr. Quivik's testimony. So
(20) with that --
(21) CHAIRPERSON LONGLEY: Could you address the Board
(22) on beginning with 2?
(23) LEGAL COUNSEL COUPE: As far as the second motion
(24) itself is concerned, I've had an opportunity to review the
(25) briefs and the rebuttal submitted by both Atlantic

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- (1) Richfield and the prosecution team in this regard. And my
(2) advise to the Board Chair and to the Board as it pertains
(3) to the second pre-hearing motion is to deny the motion.
(4) My rationale at least in part -- and doesn't
(5) pretend to be exclusive -- but my rationale in part is
(6) based on the fact that the Board itself is not a
(7) discharger for purposes of Water Code Section 13304. The
(8) Board is not adjudicating its liability in this particular
(9) case. It's merely considering whether it's appropriate to
(10) issue a Cleanup and Abatement Order to ARCO as to the mine
(11) and the U.S. Forest Service and ARCO as it pertains to the
(12) mine tailing site.
(13) I'd also just want to add that 13305, the
(14) provision that the Regional Board used as a basis for
(15) doing the interim cleanup work and actually ongoing work
(16) as it pertains to the Walker Mine site itself was
(17) essentially used as a basis to help remediate the site.
(18) And I think it's more than adequate and fair to say that
(19) the Board was acting as a good samaritan in its capacity
(20) pursuant to Water Code Section 13305. And at least in
(21) part for those reasons, my recommendation to the Board
(22) Chair is to deny the motion.
(23) CHAIRPERSON LONGLEY: And before I make my
(24) ruling, let me state that this ruling and subsequent
(25) rulings have come about after significant discussion

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- (1) between myself and legal counsel available to me. So I
(2) will deny this motion.
(3) LEGAL COUNSEL COUPE: With that said, we can move
(4) onto ARCO pre-hearing Motion Number 3.
(5) Again, that as the motion that's requesting a
(6) Regional Board ruling of the Doctrine of Latches precludes
(7) the Board from issuing the draft Cleanup and Abatement
(8) Orders.
(9) Again, I've reviewed both the briefs and the
(10) rebuttal and all the legal argument from both ARCO and
(11) from the prosecution team. And my recommendation as it
(12) pertains to pre-hearing Motion Number 3 is to deny the
(13) motion.
(14) And I say that at least in part because latches
(15) is essentially an equitable court-based doctrine. Latches
(16) is an equitable defense that generally doesn't apply when
(17) you have a public agency that's dealing with a continuing
(18) public nuisance. That's been cited favorably in at least
(19) one State Board Order.
(20) With that said, if the Board is inclined after
(21) the close of evidence that it does want to adopt one or
(22) both of the Cleanup and Abatement Orders that the Advisory
(23) Team would likely have some additional suggested findings
(24) for the Board's consideration as it pertains to the issue
(25) of latches.

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- (1) And again with that, my recommendation is denial
(2) of pre-hearing Motion Number 3.
(3) CHAIRPERSON LONGLEY: My ruling, as I stated
(4) before, is with considerable consultation is to deny.
(5) LEGAL COUNSEL COUPE: We'll move onto ARCO
(6) pre-hearing Motion Number four. Again, that's the motion
(7) that's requesting a Regional Board ruling that due process
(8) according to ARCO requires the Board to recuse itself in
(9) this particular situation.
(10) Again, I've reviewed the briefs and the rebuttal
(11) from -- I'm sorry. You're right. Thank you, Alex.
(12) That's the one where they want additional time to argue
(13) that one.
(14) Let's move from pre-hearing Motion Number 5 and
(15) move to pre-hearing -- pre-hearing motion -- from 4 to
(16) pre-hearing motion 5.
(17) Pre-hearing Motion Number 5, again that's the
(18) request for Regional Board ruling that the Prosecution
(19) Team's claim for contribution cannot be adjudicated in an
(20) administrative hearing. Again, I've reviewed the briefs,
(21) the rebuttal, the evidence in the record. It's my
(22) recommendation to the Board Chair that that motion be
(23) denied. This particular action is not a contribution
(24) action, as the Board is not seeking past costs. At one
(25) point, the prosecution team did make a specific request

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- (1) for past costs, but it's my understanding that's been
(2) dropped.
(3) And with that, my recommendation is that that
(4) particular motion be denied.
(5) CHAIRPERSON LONGLEY: And I deny.
(6) Takes us to 6.
(7) LEGAL COUNSEL COUPE: Number 6, again, that's the
(8) pre-hearing motion by the Regional Board request for a
(9) ruling that the prosecution team has the burden to prove
(10) each element of its case, as to the findings in the
(11) proposed Cleanup and Abatement Order by a preponderance of
(12) the evidence. And the Mr. Mayer was nice enough to step
(13) in on late notice and help me out with that one. And
(14) he'll guide you through that one.
(15) LEGAL COUNSEL MAYER: Thank you, David.
(16) My advise on this motion is for the Board Chair
(17) to issue a ruling on standard of proof, ruling that the
(18) preponderance of the evidence standard of proof applies to
(19) the findings proposed in the Cleanup and Abatement Orders.
(20) And I can go through a brief reasoning behind my
(21) recommendation at this time. The statute that we're
(22) acting under here is the 13304 for Cleanup and Abatement
(23) Orders and 13267 for investigative reports. And that
(24) statute is silent on the burden of proof. Therefore, more
(25) general rules I consulted to -- and also in consideration

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- (1) of the briefs filed and two bodies of law provides some
(2) further guidance on this question. And it's the Evidence
(3) Code on the one hand and, secondly, there's some guidance
(4) provided in the Code of Civil Procedure for the standard
(5) of review that a trial court would undertake in reviewing
(6) discretionary action, should the Board take one in this
(7) case.
(8) And both of those authorities support the notion
(9) of a preponderance of the evidence. The prosecution team,
(10) in one of its briefs, actually cited an Evidence Code 115
(11) that reads in part that, "except as otherwise provided by
(12) law, the burden of proof requires proof by a preponderance
(13) of the evidence." And similarly in one of the rebuttal
(14) briefs, there was a statement made that seemed to
(15) acknowledge that Regional Boards like yourself implicitly
(16) make a finding based on the preponderance of the evidence
(17) just typically for all hearings that they conduct such as
(18) this one. So there seems to be some agreement about the
(19) preponderance of the evidence standard there.
(20) Secondly, the standard of review that a trial
(21) court might exercise if this went to court would be an
(22) independent judgment standard of review. It's set forth
(23) in the Water Code on that standard of review and also the
(24) Code of Civil Procedure. And according to that
(25) independent review, a trial court would look at all the

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- (1) evidence in the record. And if a challenge is made to the
(2) Order that the Board abused its discretion in adopting the
(3) Cleanup and Abatement Order, the party challenging the
(4) action would have the burden of showing that the
(5) evidence -- that the weight of the evidence did not
(6) support particular findings or the Board's decisions.
(7) So the Board should be cognizant of the standard
(8) of review that the trial court is going to try as well.
(9) And that is equivalent to the preponderance of the
(10) evidence standard that ARCO is advocating for here.
(11) So that's my discussion. And in light of those
(12) authorities, I believe that the correct ruling is to rule
(13) that the standard of proof in this particular hearing is
(14) preponderance of the evidence.
(15) CHAIRPERSON LONGLEY: Thank you, Mr. Mayer. And
(16) I will grant, based upon the information that you
(17) provided.
(18) Takes us to item 7.
(19) LEGAL COUNSEL COUPE: Pre-hearing Motion Number
(20) seven, again, that's a request by -- requesting a Regional
(21) Board ruling that Atlantic Richfield cannot be jointly and
(22) severally liable for cleanup and abatement of the mine
(23) and/or the mine tailing site.
(24) My recommendation to the Board Chair and Board
(25) members is that the motion be denied. Again, I've

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- (1) reviewed all the submittals, looked at all the cases, the
(2) pertinent State Board authority. The subject of liability
(3) is joint and several is supported by a number of previous
(4) State Board Orders. Certainly, courts are in a better
(5) position to apportion any liability that may be needed and
(6) for the Board to direct its focus more on the technical
(7) issues pertaining to protection of water quality.
(8) And that again -- with that said, that doesn't
(9) mean that the Board is precluded from apportioning if they
(10) chose to do so in this particular case. But with that
(11) said, in light of the previous State Board Orders on the
(12) issue that liability is joint and several, and my given at
(13) least in my experience that a Regional Board has never
(14) gone through a specific apportioning exercise, at least in
(15) my experience, with this Board, and again given the
(16) Presidential authority from previous State Board Orders,
(17) again my recommendation is that the motion be denied.
(18) CHAIRPERSON LONGLEY: I'll accept that
(19) recommendation and deny.
(20) Moves us to number 8, counsel for ARCO provided
(21) some input on this.
(22) LEGAL COUNSEL COUPE: He did provide some input.
(23) I guess in response to the input from Mr. Duffy requesting
(24) a Regional Board ruling past costs are not recover able in
(25) this proceeding. Again, you know as I mentioned

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(1) previously the prosecution team did agree to remove the
(2) language about recovery of past costs. I understand
(3) there's still a renewed effort to seek a ruling from the
(4) Board in that regard in response to the request my
(5) recommendation in reviewing the briefs is to deny the
(6) motion.

(7) CHAIRPERSON LONGLEY: I'll deny. Takes us back
(8) to Motion Number 4, I believe.

(9) LEGAL COUNSEL COUPE: Where we are now is we're
(10) at Motion Number 4 and Motion Number 9. So at this time,
(11) we can certainly call the parties and they can choose to
(12) use their time however they want as it pertains to the
(13) pre-hearing motions, despite the fact that you've may
(14) issue rulings.

(15) But it sounds like they want to reserve a portion
(16) of their time to specifically discuss pre-hearing Motion
(17) Number 4 and pre-hearing Motion Number 9. As I mentioned
(18) earlier, I've made a recommendation pertaining to
(19) pre-hearing Motion Number 1 about preemption that would
(20) probably be best to consider that after the close of
(21) evidence.

(22) CHAIRPERSON LONGLEY: Mr. Duffy.

(23) MR. DUFFY: Dr. Longley, Ms. Wang will address
(24) the due process motion.

(25) What we'd like to do, with the Board's

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(1) reviewed the briefs and the cases that are cited. And
(2) it's my opinion that for purposes of pre-hearing Motion
(3) Number 4 that that particular motion be denied.

(4) I say that at least in part because the issuance
(5) of the Cleanup and Abatement Order does not require a
(6) hearing under State law. We certainly have on occasion
(7) held hearings on Cleanup and Abatement Orders,
(8) particularly contentious issues or particularly
(9) complicated issues technically or that involve lots of
(10) conveyances or a long site history. It looks like this
(11) particular matter fits into that category, and I think
(12) that's at least in part in reason why the Board decided to
(13) conduct a hearing on the Cleanup and Abatement Order in
(14) this case. As mentioned previously, state law supports
(15) the position that a hearing is not required on Cleanup and
(16) Abatement order.

(17) In reference to the due process issues arguably
(18) that may flow from that, I also would like to point out
(19) that certainly ARCO has a right to appeal both the State
(20) Board through the administrative appellate process to
(21) review the decision of the Regional Board. And obviously,
(22) if they receive an adverse decision or no decision at all
(23) from State Board, they have the ability to file for a
(24) petition for writ of mandate in superior court.

(25) So we believe that there are sufficient -- there

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(1) permission, is to withhold argument or have argument about
(2) the Quivik issues when Dr. Quivik testifies and is
(3) cross-examined. I think it will be put in more context
(4) for the Board.

(5) At this point, we would argue the due process
(6) motion and then move on from there.

(7) CHAIRPERSON LONGLEY: And you would want to do
(8) that before his testimony?

(9) MR. DUFFY: I'll leave it to Mr. Bruen whether he
(10) wishes to argue before or following the cross-examination.
(11) I believe he wants to cross-examine him first.

(12) MR. BRUEN: Good morning. James Bruen for
(13) Atlantic Richfield. I'm with the Farella firm in San
(14) Francisco. I would like to cross-examine Dr. Quivik and
(15) then argue the motion, if I may, in that pleases the
(16) court.

(17) CHAIRPERSON LONGLEY: I'll grant that. Just for
(18) everybody's information, we record this in addition to the
(19) court reporter. And that microphone is not very friendly.
(20) You have to get very close to it for it to hear you.
(21) Thank you for your cooperation representation.

(22) We'll do Number 4 now. Go ahead, David.

(23) LEGAL COUNSEL COUPE: Motion Number 4, again
(24) that's the due process argument that's been raised by
(25) Atlantic Richfield. And again, I've gone back and

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(1) is a sufficient venue and process for ARCO in this context
(2) that is not a violation of due process.

(3) CHAIRPERSON LONGLEY: Of course, we've moved to
(4) split functions partially for this reason, to be able to
(5) shield the Board from --

(6) LEGAL COUNSEL COUPE: Absolutely. Absolutely.
(7) One other strand of the motion I do want to pick
(8) up again very quickly is there's an allegation made that
(9) somehow the Board itself is biased as a result of the fact
(10) that according to the record there are a couple of e-mails
(11) from staff which are arguably suggestive of the fact that
(12) perhaps there may be an interest or a need or value in
(13) finding another responsible party for purposes of
(14) remediating the Walker Mine site and the Walker Mine
(15) tailing site.

(16) With that as some kind of context, I think it's
(17) important to point out -- and I think this was cited in
(18) one of the briefs -- the United States Supreme Court
(19) decision Winthrow versus Larkin which has been cited too
(20) extensively and very favorable by the California courts
(21) and which essentially grants a presumption of impartiality
(22) as to administrative agencies. I think that's a
(23) particularly important concept in this case because at
(24) least on the record as I understand it, there has not been
(25) any demonstrated evidence of bias on behalf of any State

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- (1) Board member that I'm aware of.
(2) CHAIRPERSON LONGLEY: Or Regional Board.
(3) LEGAL COUNSEL COUPE: Or Regional Board member.
(4) My understanding of the record and the arguments made is
(5) that there is a general claim of bias being made as to
(6) financial interest. But at least in my judgment, I don't
(7) find that argument persuasive for a couple of reasons, but
(8) not limited to the fact that, number one, I don't believe
(9) it's certainly -- it's not fair, it's not appropriate.
(10) It's not legally supported that you can necessarily impute
(11) staff opinion to Board members themselves, which are
(12) specifically independent adjudicators in this case
(13) appointed by the Governor. I think that's an important
(14) distinction to make in this context.
(15) CHAIRPERSON LONGLEY: And also for the record,
(16) the only conversation I've had -- I presume other Boards
(17) members -- on this issue is with you, with Alex, and with
(18) Ken, the three of you. And beyond that, nothing more.
(19) LEGAL COUNSEL COUPE: Correct. I think picking
(20) up the financial strand a little bit that I think is a
(21) theme of the motion that ARCO has brought is because the
(22) Board presumably has this generalized financial interest
(23) that therefore they're presumed to be biased as a matter
(24) of law. Again -- and there's some cases that ARCO sites
(25) for the particular proposition that somehow the Board

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- (1) problem. It did not fix the conflict problem and I'd like
(2) to explain why.
(3) By way of background, the first two drafts of the
(4) mine CAO included a discussion about the Regional Board
(5) settlement with prior owners of the mine site. In that
(6) discussion, there was some language describing a hold
(7) harmless agreement as part of that settlement. The
(8) prosecution team in its rebuttal papers explained they
(9) were mistaken about that fact. There wasn't a hold
(10) harmless provision.
(11) That hold harmless provision, whether it existed
(12) or not however, has no legal significance for this
(13) hearing. Hold harmless provisions create an indemnity
(14) obligation with respect to third party claims against the
(15) settled parties. There is no third-party claim here
(16) against settled parties. The claims here and the
(17) conflict -- the financial conflict that arises here arises
(18) out of the Regional Board's own legal responsibilities at
(19) this site.
(20) When a regulator settles with other parties, they
(21) cannot then go after remaining parties for that portion
(22) that it settled for. So in effect, it's increased its own
(23) liability through those settlements. So what matters is
(24) not whether it's been held harmless, but whether they have
(25) released the liability of those parties. It's undisputed

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- (1) ought to be biased as a result.
(2) I think it's important to make a distinction in
(3) this context between a Cleanup and Abatement Order, which
(4) you're asked to consider today, which does not impose
(5) fines or penalties, and the cases that were sited as part
(6) of ARCO's submittal that specifically go to the imposition
(7) of fines themselves, which a court did find depending on
(8) the circumstances could result in bias.
(9) So again, I think that's an important distinction
(10) to be made. I think that coupled with the fact that there
(11) are no past costs being sought by the Board in this
(12) regard, again my recommendation is to deny the motion.
(13) CHAIRPERSON LONGLEY: Yes.
(14) MS. WANG: Good afternoon. Would you like
(15) Atlantic Richfield's argument on this motion now?
(16) CHAIRPERSON LONGLEY: Certainly. Go ahead.
(17) MS. WANG: I'm Andrea Wang from the law firm of
(18) Davis, Graham & Stubbs in Denver here on behalf of
(19) Atlantic Richfield.
(20) I wanted to take a minute to discuss the conflict
(21) piece of the due process motion that Mr. Coupe just
(22) finished with. And the reason why I wanted to take some
(23) time to address that today is because a couple of weeks
(24) ago in the prosecution team's rebuttal brief, they amended
(25) their draft CAO and indicated that that fixed the conflict

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- (1) that the Regional Board has released three parties from
(2) liability at this site. It's released Calicopia
(3) Corporation, Robert Barry and Mr. Kennedy, all prior
(4) owners and operators.
(5) So the Board is a liable party with respect to
(6) those settlements. It's also a liable party because of
(7) its own work at the site. You'll hearing some testimony
(8) today about some of the problems the Board remedy is
(9) creating at the site. But even if the Board remedy is not
(10) exacerbating anything at the site, just by the fact of it
(11) being the operator makes it liable.
(12) And I respectfully disagree with Mr. Coupe's
(13) reliance on the good samaritan as a bar to liability.
(14) That argument has been rejected, and we site that case in
(15) our briefing.
(16) It's the United States versus Iron Mountain case.
(17) LEGAL COUNSEL COUPE: Which is a CERCLA.
(18) MS. WANG: Yes. CERCLA. Under CERCLA or Clean
(19) Water Act or the California analogue is more reliable.
(20) So the other piece of this that Mr. Coupe
(21) mentioned I'd like to touch on is the Board's own staff
(22) recognition that there really is this financial conflict.
(23) There are many memos in which -- I'm sorry -- there are
(24) three memos in one e-mail in which the Board staff is
(25) concerned about the Regional Board's financial

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(1) obligations. The Board staff is concerned about the
(2) Regional Board's status of the potentially responsible
(3) party. And equally important or perhaps most importantly,
(4) it shows a link to the prosecution of Atlantic Richfield
(5) in this matter as a means to lessen the financial
(6) obligations of the Board.

(7) It doesn't matter that they're not lawyers that
(8) wrote these letters. What matters is that the Board's own
(9) staff members are worried about the Board's liability and
(10) at least in part is motivating the prosecution against
(11) Atlantic Richfield. This creates a financial conflict of
(12) interest.

(13) The case Mr. Coupe sites, the landmark U.S.
(14) Supreme Court decision he sites makes very clear when
(15) there is a financial conflict you do not have to show
(16) actual bias. In the words of that court, when there is a
(17) financial interest, the chance of bias is too high to be
(18) constitutionally tolerated. So there doesn't have to be
(19) proof of actual bias. There is a financial component to
(20) it. This Board cannot constitutionally hear this case.

(21) Atlantic Richfield is not saying that this case
(22) should not be decided. We're simply saying this Board
(23) should not decide it. Thank you.

(24) CHAIRPERSON LONGLEY: Thank you.

(25) I'm familiar with your arguments and --

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(1) feel they've been wronged below.

(2) And to be frank, the prosecution team provided
(3) Atlantic Richfield with this additional process because we
(4) did feel we wanted to allow them to have the opportunity
(5) to be heard by you today. We just didn't want to go ahead
(6) and issue the Cleanup Order without a hearing.

(7) With respect to the settlement agreements that
(8) counsel for Atlantic mentioned, we do discuss them briefly
(9) in our response to their objection -- to their pre-hearing
(10) Motion Number 2. And we site to the specific language of
(11) the agreement. I'm not going to read it into the record
(12) today. But I will direct your attention to prosecution
(13) team Exhibit 54, which is the settlement agreement between
(14) the Water Board and I believe Cedar Point Properties as
(15) well as prosecution team Exhibit 16, which is the
(16) settlement agreement between the Board and Calicopla. And
(17) the specific language within those agreements I think
(18) makes clear that the Board has not released all liability
(19) or has not -- is not prohibited from seeking out
(20) additional responsible parties for cleanup obligations at
(21) this site.

(22) And with that, I think we'd like to reserve the
(23) rest of our time for arguing pre-hearing Motion Number 9
(24) at the appropriate time in the hearing. And as well, we
(25) wanted some direction I think from you, Dr. Longley, or

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(1) LEGAL COUNSEL COUPE: Dr. Longley, before you
(2) make a ruling, you may want to ask if the prosecution team
(3) is interested in providing a response.

(4) CHAIRPERSON LONGLEY: Thank you. Yes.

(5) Apparently they are. They're standing up.

(6) LEGAL COUNSEL OKAMOTO: Thank you, Dr. Longley.
(7) My name is Mayumi Okamoto. I'm an attorney with the
(8) Office of Enforcement. I'll just briefly address and
(9) touch upon some of the matters that your counsel had
(10) addressed earlier as well as Atlantic Richfield.

(11) We do believe that ARCO's fourth motion related
(12) to due process should be denied by the Board. As Mr.
(13) Coupe mentioned, the hearing procedures issued for this
(14) matter do provide Atlantic Richfield with reasonable
(15) notice and a meaningful opportunity to be heard. And
(16) pursuant to Section 13304 of the Water Code, there is no
(17) obligation for the Boards to conduct hearings on this
(18) matter.

(19) In a similar case, titled Machado versus the
(20) State Water Resources Control Board, Machado in that
(21) matter petitioned for review of a Cleanup Order arguing
(22) that they were not provided with adequate due process.
(23) And the court stated there are adequate protections in
(24) place within Porter-Cologne to allow for grieved parties
(25) to seek review of Cleanup Orders if they are -- if they do

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(1) the advisory team on when it would be appropriate for us
(2) to argue pre-hearing Motion Number 1 with respect to
(3) CERCLA.

(4) CHAIRPERSON LONGLEY: We'll do that later in the
(5) hearing.

(6) LEGAL COUNSEL OKAMOTO: Thank you.

(7) CHAIRPERSON LONGLEY: Thank you.
(8) After hearing the prosecution's team input and
(9) input from ARCO. As I started to say earlier, I'm
(10) familiar with the arguments made by ARCO, and I believe
(11) that the preponderance of what's been presented to me
(12) substantiates that I should deny this motion.

(13) With that, we're going to reserve Number 9 and
(14) Number 1 until later in the hearing. And does the -- do
(15) you have any other issues to discuss at this time?

(16) LEGAL COUNSEL COUPE: Not at this time.

(17) CHAIRPERSON LONGLEY: Thank you. Are there any
(18) procedural issues that the designated parties would like
(19) to raise?

(20) MR. TAURIAINEN: Not at this time.

(21) CHAIRPERSON LONGLEY: Mr. Duffy?

(22) MR. DUFFY: Not at this time, Your Honor.

(23) CHAIRPERSON LONGLEY: Thank you, sir. Thank you
(24) very much.

(25) I'm sorry you have to get up each time. Maybe

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- (1) some day we'll get mikes and tables.
(2) The other thing is if you feel that you're going
(3) to be responding quite a bit at a particular point in
(4) time, we do have three other microphones up here. If you
(5) could come up and sit at one of these, if you feel like
(6) you're hopping up and down and going back and forth, to
(7) preclude that, you can stay closer to a mike. Good.
(8) We'll now proceed with the prosecution testimony.
(9) MR. TAURIAINEN: Thank you, Dr. Longley. Andrew
(10) Tauriainen's of the State Water Board's Office of
(11) Enforcement for the prosecution team. You met Mayumi
(12) Okamoto with me today.
(13) (Thereupon an overhead presentation was
(14) presented as follows.)
(15) MR. TAURIAINEN: Before you now are two Cleanup
(16) and Abatement Orders, one for the Walker Mine and one for
(17) the Walker Mine tailings. The evidence will show that the
(18) mine and tailing sites were operated as one industrial
(19) copper mine complex and that the mining activity created a
(20) significant water quality problem.
(21) The evidence will also show that the two sites
(22) are separately owned, which is why there are two proposed
(23) Orders. The Forest Service is named to the tailings Order
(24) only as the site owner and the discharger of the current
(25) Waste Discharge Order.

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- (1) ARCO was named to both Orders because the
(2) evidence will show it's predecessors operated the
(3) facility. Its long been time for ARCO to assume its
(4) responsibility for these sites.
(5) --o0c--
(6) MR. TAURIAINEN: The terms of the Orders are
(7) fairly standard for Cleanup and Abatement Orders. They
(8) require in the case of ARCO to assume responsibility for
(9) the sites, for both parties to conduct site
(10) characterization of their respective sites, ARCO's both
(11) sites, develop a work plan, actually implement the work
(12) plan and clean up and abate the sites, submit regular
(13) reports to the Board, and the Orders continue in effect
(14) until the threat to water quality has been removed.
(15) --o0c--
(16) MR. TAURIAINEN: The Orders are brought under
(17) Water Quality Sections 13304 and 13267, both of which
(18) allow the Board to issue orders against those responsible
(19) for discharge or threatened discharges.
(20) Please ignore, given the ruling on the
(21) substantial evidence standard, the bullet for substantial
(22) evidence.
(23) I would like at this time to point out the
(24) definition of preponderance of the evidence. In the legal
(25) context, preponderance doesn't mean quantity or even

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- (1) necessarily weight in terms of how that might be
(2) quantifiable. It really means persuasive effect or the
(3) convincing force of the evidence. So with that in mind --
(4) --o0c--
(5) MR. TAURIAINEN: -- there are two central issues
(6) for this part of the hearing. First, is there a
(7) discharge? And the evidence will show that both sites do
(8) create a condition of pollution or a nuisance. And the
(9) evidence will show that ARCO essentially agrees with us on
(10) these points, that the sites are contributing pollution to
(11) waters of the state.
(12) The next is whether ARCO is a responsible party.
(13) ARCO contests its liability as being a responsible party,
(14) but the evidence will show that ARCO is a responsible
(15) party because its predecessors operated the facility.
(16) --o0c--
(17) MR. TAURIAINEN: The prosecution team will call
(18) two witnesses to present the case. Jeff Huggins is with
(19) the Title 27 Permitting and Mining Section. Jeff gathered
(20) most of the evidence today. And he will go through the
(21) site history and describe the current discharge
(22) conditions. Dr. Fredric Quivik is an industrial
(23) historian. He's our expert witness and he will discuss
(24) the historical evidence showing that ARCO's predecessors
(25) operated the facility.

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- (1) Now I'll turn it over to Mr. Huggins.
(2) MR. HUGGINS: Good afternoon, Mr. Chairman and
(3) members of the Board.
(4) I'm Jeff Huggins of the Board's Title 27
(5) Permitting and Mining Unit here on behalf of the
(6) prosecution team.
(7) I've been a staff engineer for the Walker mine
(8) and tailing sites since 2006. I inspect the sites twice
(9) per year to identify maintenance issues and collect water
(10) quality samples.
(11) My declaration is prosecution team Exhibit 3.
(12) LEGAL COUNSEL COUPE: Could you just confirm that
(13) Mr. Huggins has taken the oath?
(14) CHAIRPERSON LONGLEY: Did you take the oath?
(15) MR. HUGGINS: Yes, sir.
(16) CHAIRPERSON LONGLEY: Thank you. Proceed.
(17) MR. HUGGINS: My declaration is prosecution team
(18) Exhibit 3. That declaration authenticates prosecution
(19) team Exhibits 1 and 4 through 50.
(20) My supplemental declaration is prosecution team
(21) Exhibit 51. That declaration authenticates prosecution
(22) team Exhibits 52 through 56.
(23) I have reviewed both declarations and I have no
(24) changes to them. I hereby submit them into the record
(25) along with the exhibits they reference and the prosecution

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- (1) team's electronic records submitted by reference.
(2) --o0o--
(3) MR. HUGGINS: I need to take a moment and explain
(4) a few mining terms I will be using.
(5) The first is mining waste. Mining waste includes
(6) but is not limited to soil, waste rock, overburden,
(7) tailings, and other processed waste materials.
(8) The second term is tailings. Tailing consist of
(9) sand-like particles from crushing, grinding, or processing
(10) of ore material. They're generally discharged as a slurry
(11) to a tailings impoundment.
(12) The third term is acid mine drainage. Acid mine
(13) drainage refers to acidic water that is created when
(14) sulfide minerals are exposed to air and water, producing
(15) sulfuric acid, which has the potential to introduce
(16) acidity and dissolved metals into water.
(17) --o0o--
(18) MR. HUGGINS: The site is located in a very
(19) remote part of Plumas County, about 15 miles northeast of
(20) Quincy. The site is near Lake Davis but drains northwest
(21) to the north fork of the Feather River, which flows to
(22) Lake Oroville.
(23) This map shows the privately-owned Walker Mine
(24) property in dark green surrounded by the public lands in
(25) light green. Mining activity extended from Nye Creek

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- (1) drainage at the top of the map to the Little Grizzly Creek
(2) drainage at the bottom of the map. Later in the
(3) presentation, I'll talk about mining activities that
(4) impacted the middle and south forks of Ward Creek.
(5) --o0o--
(6) MR. HUGGINS: This is a 2013 aerial image of the
(7) mine and tailing sites. The mill facility and town site
(8) is shown at the upper right. Tailings in the form of a
(9) slurry were conveyed from the mill down the hill to the
(10) 100-acre tailing site in the center.
(11) Dolly Creek flows below the mine site -- mill
(12) site across the tailings and discharges to Little Grizzly
(13) Creek. Little Grizzly Creek located below the tailings
(14) flows to Indian Creek, which flows to the north fork of
(15) the Feather River.
(16) --o0o--
(17) MR. HUGGINS: Walker Mine Company acquired the
(18) site in approximately 1915. International Smelting and
(19) Refining Company, a wholly-owned subsidiary Anaconda
(20) Copper Company entered into an agreement with Walker
(21) Mining Company to conduct mining activities starting in
(22) August 1916.
(23) At the time, Anaconda was one of the world's
(24) largest producers of copper and one of the world's largest
(25) industrial corporations.

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- (1) In October 1918, Anaconda's wholly-owned
(2) subsidiary, International, acquired the controlling
(3) interest of the Walker Mine Company. The tailing site was
(4) constructed around 1920, received mill tailings discharge
(5) from the concentrate.
(6) Mining took place between 1916 and 1941 when the
(7) mine produced approximately six million tons of ore. The
(8) mine was shut down in October of 1941, remained inactive
(9) until 1944 when Walker Mining Company went bankrupt. The
(10) equipment, buildings, and property were sold at auction in
(11) 1945.
(12) --o0o--
(13) MR. HUGGINS: This photo shows the scale of the
(14) Walker Mine and milling facilities. Walker Mine was an
(15) underground copper mine and included a mill and
(16) concentrator to produce copper concentrates. By 1940, the
(17) capacity of the Walker Mill was 1800 tons per day.
(18) Concentrated ore was shipped via aerial tramway to the
(19) railroad and shipped by train to international shelter in
(20) Tooele, Utah.
(21) --o0o--
(22) MR. HUGGINS: This slide, taken from another
(23) vantage point, shows the mill facility and the town site
(24) in the foreground and the trailing site located further
(25) down the valley.

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- (1) --o0o--
(2) MR. HUGGINS: This cross section from a 1924
(3) Walker Mine report provides a good picture of the
(4) underground mine workings. The colored area shows where
(5) ore was removed from the underground mine workings.
(6) By 1941, this mine included over 13 miles of
(7) underground workings and was 1200 feet deep. Mining
(8) activities honeycombed the ore body, creating conditions
(9) for acid mine drainage to occur when water infiltrated in
(10) the mine workings. The 700 level was the drain level for
(11) the mine. It was the discharge point of acid mine
(12) drainage until the mine seal was installed in 1987.
(13) --o0o--
(14) MR. HUGGINS: This is the 1951 photo of the
(15) Walker Mine just six years after it had been sold. The
(16) pumps were pulled in 1941, and the lower levels flooded
(17) and began discharging acid mine drainage from the 700
(18) level within three to four months. The rate of discharge
(19) was around 300 gallons per minute, which remained fairly
(20) constant until the mine seal was installed in 1987.
(21) --o0o--
(22) MR. HUGGINS: This picture from 1984 shows Dolly
(23) Creek below the mine. The blue/green color is indicative
(24) of acid mine drainage and copper and other metals toxic to
(25) fish and aquatic life.

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(1) The mine caused water quality impacts, even
(2) during mining operations. The record indicates that when
(3) a mine was operating, the mine waters were pumped into
(4) Ward Creek north of the Walker Mine and that Ward Creek
(5) was barren of fish life during that period.

(6) By 1947, the Department of Fish and Game found
(7) that the portal discharge and the surface water runoff for
(8) mining waste at the mining and tailings had killed all
(9) aquatic life in Dolly Creek and Little Grizzly Creek for
(10) ten miles downstream.

(11) --o0o--

(12) MR. HUGGINS: The Board issued resolutions
(13) regarding the mine and tailings in 1958 and attempted to
(14) work with the Forest Service and the post-Walker Mining
(15) Company owners to mitigate the impacts of acid mine
(16) drainage.

(17) In 1986, after following the procedures set forth
(18) in Water Code 13305, the Regional Board adopted Resolution
(19) 86-057, which authorized construction of a mine seal
(20) described in a technical report commissioned by the Board
(21) which was prepared by SRK Consulting. The mine seal was
(22) installed in November of 1987.

(23) The Board has also conducted tunnel
(24) rehabilitation projects to keep the adit open and also
(25) rehabilitated and lined surface flow diversion channels at

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(1) measure the height of the water stored behind the mine
(2) seal. The height generally averages about 150 to 170 feet
(3) and varies with the seasons.

(4) --o0o--

(5) MR. HUGGINS: This slide shows copper and pH
(6) levels in the seepage pool at the base of the mine seal
(7) shown on the previous slide. We believe these
(8) constituents levels are indicative of conditions behind
(9) the seal.

(10) Copper concentrations are quite high and pH
(11) levels low, which is characteristic of acid mine drainage.
(12) These constituent levels are very similar to pre-seal
(13) conditions which average 13,700 micrograms per liter at a
(14) pH of 4.8. This shows that insulation of the mine seal
(15) has not changed the chemistry of what's going on inside
(16) the underground workings.

(17) --o0o--

(18) MR. HUGGINS: This slide shows the surface
(19) conditions at the Walker Mine site in November of 2013.
(20) There is mining waste nearly everywhere, as shown here and
(21) in the ruins of the concentrator in the mill. The mining
(22) waste contains copper and other pollutants. Surface water
(23) runoff from this area causes exceedance of copper in Dolly
(24) Creek.

(25) --o0o--

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(1) the central and pit mine workings to reduce surface
(2) water inflow into the mine subsidence areas. This helps
(3) reduce the amount of water behind the mine seal.

(4) --o0o--

(5) MR. HUGGINS: This slide shows the south end of
(6) the 700 level adit and the location of the mine seal. The
(7) seal is about 12 feet in diameter and 15 feet thick. It
(8) is designed to hold back 500 feet of head. The mine seals
(9) stop the discharge of acid mine drainage from the 700
(10) level of the Walker Mine.

(11) --o0o--

(12) MR. HUGGINS: This slide shows how the mine seal
(13) dramatically reduced the levels have copper into Dolly
(14) Creek. According to the Forest Service biological
(15) surveys, life has returned to Little Grizzly Creek, which
(16) is downstream from the Dolly Creek.

(17) --o0o--

(18) MR. HUGGINS: This slide shows the mine seal in
(19) 2013. You can see some minor seepage at the top of seal,
(20) which collects in a shallow pool at the base of the mine
(21) seal. Minor seepage was anticipated by SRK, and it isn't
(22) a sign of anything wrong.

(23) You can also see the valves, which were installed
(24) to drain and allow acid mine drainage water to be treated,
(25) if necessary. There is a pressure censor which is used to

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(1) MR. HUGGINS: This slide shows the upper portion
(2) of the concentrator ruins in November of 2013. The green
(3) material in the concrete foundations is residual copper
(4) leaching from the concentrator plant ruins. This copper
(5) is mobilized during surface water runoff events. This
(6) area drains to Dolly Creek.

(7) --o0o--

(8) MR. HUGGINS: This is the close-up photo of an
(9) area of mining waste located below the concentrator plant.
(10) The green-looking tint is copper. During precipitation
(11) wind events, this material is transported to Dolly Creek.

(12) --o0o--

(13) MR. HUGGINS: This picture from 2007 shows Ward
(14) Creek below the central group workings. It shows a toe of
(15) a mining waste pile in Ward Creek. The green material at
(16) the toe is copper.

(17) --o0o--

(18) MR. HUGGINS: Now to summarize water quality
(19) conditions for the mine site, the mine site contributes
(20) significant amounts of copper to Dolly Creek, causing
(21) violations of aquatic life water quality objective in
(22) measurements taken below the mine site.

(23) Background water quality samples taken from
(24) upstream for the mine site on Dolly Creek are below
(25) aquatic life water quality objectives. Given the seal

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(1) stopped the discharge from underground mine workings, the
(2) discharge today comes from the runoff of the surface
(3) mining waste. ARCO does not dispute these conditions or
(4) their causes.

(5) --o0o--

(6) MR. HUGGINS: Now let's look at the tailing site.
(7) This slide shows the old Dolly Creek Diversion Channel and
(8) outfall, the old Dolly Creek Channel, the Forest Service
(9) Dam, and the tailings facility point of compliance.

(10) In 2007, the Forest Service constructed the lined
(11) Dolly Creek Diversion Channel to prevent Dolly Creek from
(12) coming in contact with the tallings and transporting
(13) copper to the Forest Service dam location where it
(14) discharges to Little Grizzly Creek.

(15) --o0o--

(16) MR. HUGGINS: However, this June 2010 picture
(17) shows water from the old Dolly Creek Channel discharging
(18) from the Forest Service dam. Water frequently flows
(19) through the tailings and discharges from this location to
(20) Little Grizzly Creek, indicating that the Dolly Creek
(21) Diversion Channel is not entirely effective.

(22) --o0o--

(23) MR. HUGGINS: This slide provides a sense of the
(24) condition and scale of the tailings facility. It's big.
(25) It's about 100 acres. In the late 1990s, the Forest

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(1) Service installed wind fences to control wind-induced
(2) erosion and initiate vegetation.

(3) --o0o--

(4) MR. HUGGINS: This photograph is from a June 2010
(5) inspection, shows the Dolly Creek Diversion Channel with
(6) wind-borne tallings blowing across the channel and
(7) depositing tails into the stream. In my experience,
(8) wind-borne tallings are a regular occurrence at the
(9) tailings.

(10) --o0o--

(11) MR. HUGGINS: This slide is taken at the Dolly
(12) Creek Diversion Channel outfall to Little Grizzly Creek.
(13) It shows tailings in the Little Grizzly Creek Channel in
(14) violation of Order 5-00-028. Copper concentrations here
(15) regularly exceed the water quality objective.

(16) --o0o--

(17) MR. HUGGINS: Now to summarize for the tailing
(18) site. The Regional Board has not been active on the
(19) tailing site at all, except to conduct inspections and to
(20) collect water quality samples. The Forest Service
(21) repaired the tailings levy and the Forest Service dam in
(22) about 1980. The Forest Service has also conducted some
(23) activities under CERCLA pursuant to a 1994 record of
(24) decision and a 2001 amended record of decision.

(25) And finally, in 2005, ARCO and the Forest Service

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(1) obtained a consent degree where ARCO paid and two and a
(2) half million dollars towards the Forest Service's CERCLA
(3) costs. The Regional Board was not a party to that
(4) lawsuit.

(5) --o0o--

(6) MR. HUGGINS: In summary, water quality
(7) conditions at the mine site and the tailing sites are
(8) caused by mining that took place between 1916 and 1941.
(9) Specifically, the underground mine workings were created
(10) to mine copper ore, which was transported to the surface
(11) for processing. These mine workings were the source of
(12) the tailings and other surface mining waste at the site
(13) which caused existing water quality impairments.

(14) The underground mine workings are now conduits by
(15) which groundwater becomes acid mine drainage that would
(16) reach surface waters but for the mined seal.

(17) Exhibit 1 of your agenda packet contains over 330
(18) specific and indexed examples of Anaconda and
(19) International directing mining activities at the facility.

(20) I'll now turn the presentation back to Andrew
(21) Tauriainen. Thank you.

(22) MR. TAURIAINEN: Thank you.

(23) I just wanted to take a minute to discuss the
(24) prosecution team's legal theory tying ARCO to the site.
(25) This is important because ARCO's briefs and presumably

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(1) their oral arguments address the wrong legal theory.

(2) --o0o--

(3) MR. TAURIAINEN: ARCO's liable at the mine and
(4) tailings because its predecessors Anaconda Copper Company
(5) and International Smelting and Refining Company directed,
(6) managed, or conducted pollution-causing activities at the
(7) Walker Mine facility.

(8) Anaconda owned 100 percent of International and
(9) International owned the controlling interest in the Walker
(10) Mining Company. ARCO concedes here if it is the successor to
(11) any liability of Anaconda and International, it just
(12) contests the liability.

(13) --o0o--

(14) MR. TAURIAINEN: The prosecution team's legal
(15) theory is called the direct or operator liability theory,
(16) and it comes from a Supreme Court case generally known as
(17) Best Foods, which holds that a person who operates a
(18) polluting facility is liable for the cleanup costs. When
(19) we're looking at a parent company who is operating at a
(20) subsidiary facility, we have to look to whether the
(21) parent's involvement went beyond what Best Foods calls the
(22) norms of corporate behavior. And that case defines those
(23) norms as monitoring performance, supervising the
(24) subsidiary, finance, and capital budget decisions and
(25) articulating general policy and procedures. If a parent

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- (1) corporation does more than that, it could be liable as an
(2) operator.
(3) Courts have defined various triggers for operator
(4) liability. These are some of them. And our evidence
(5) speaks to these particular triggers where an employee
(6) manages or directs -- an employee of the parent manages or
(7) directs or conducts activities at a subsidiary facility
(8) where such employee may establish or design the facility,
(9) open or close the facility, make personnel decisions, or
(10) even where the parent company makes public declarations
(11) regarding responsibility.
(12) In its briefs, ARCO argues the other theory
(13) listed in the Best Foods case. It's called the alter ego
(14) liability. It's based on how a parent company operates
(15) the subsidiary's company corporate affairs, very different
(16) from how you operate the facility versus how you operate
(17) the corporate affairs.
(18) The prosecution team's legal theory has nothing
(19) to do with how Anaconda or International operated or
(20) managed Walker Mining Company's corporate affairs. We're
(21) focused instead on how Anaconda and International operated
(22) or managed the pollution-causing activities at the Walker
(23) facility.
(24) --o0o--
(25) MR. TAURIANEN: It's now my pleasure to

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- (1) Exhibit 2. That statement contains my CV and my expert
(2) qualifications. My expert rebuttal statement is
(3) prosecution team Exhibit 57. I have reviewed both
(4) statements and have no changes to them. I hereby submit
(5) them into the record.
(6) --o0o--
(7) MR. QUIVIK: In my expert statement, I presented
(8) several conclusions or opinions. I think the first four
(9) of them are foundational and not contested here so I'd
(10) like to focus on the last of those conclusions.
(11) The first is that the Anaconda Copper Mining
(12) Company, which was a giant global mining enterprise by the
(13) time the Walker Mine was operating, had developed a very
(14) sophisticated management organization so that it could
(15) centrally manage the operations of several facets of its
(16) and its subsidiary's operations, including geology,
(17) mining, and metallurgy. And also Anaconda and
(18) International's managers who were in charge of geology,
(19) mining, and metallurgy, directed activities in those areas
(20) at the Walker Mine facility.
(21) --o0o--
(22) MR. QUIVIK: This is a big enterprise, the
(23) Anaconda Enterprise. And including Anaconda,
(24) International, and Walker, there are several key people we
(25) need to pay attention to. So I'd like to introduce you to

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- (1) Introduce Dr. Fredric Quivik, the prosecution team's
(2) expert witness, who will discuss the archived evidence in
(3) Exhibit 1 and his conclusions regarding the scope and
(4) extent to which Anaconda and International operated the
(5) facility.
(6) CHAIRPERSON LONGLEY: Thank you.
(7) Dr Quivik, before we hear your testimony, I'm
(8) ready now to entertain a discussion by the ARCO attorneys
(9) on this motion -- pre-hearing motion they have on Dr.
(10) Quivik, number 9, I believe on the list.
(11) MR. BRUEN: Good afternoon, Your Honor. James
(12) Bruen on behalf of Atlantic Richfield.
(13) Mr. Chairman, if it would please the Board, I
(14) would prefer to delay my argument until after I can
(15) cross-examine Dr. Quivik. I think it will mean more to
(16) the Board if I raise the arguments then, if that's
(17) acceptable.
(18) LEGAL COUNSEL COUPE: That's fine with me.
(19) CHAIRPERSON LONGLEY: Very good. Dr. Quivik.
(20) MR. QUIVIK: Good afternoon, Mr. Chairman,
(21) members of the Board. I'm Fred Quivik. I live in
(22) Houghton, Michigan. I'm here to testify on behalf of the
(23) prosecution team. I took the oath at the beginning of the
(24) hearing.
(25) My expert witness statement is prosecution team

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- (1) just a few of them.
(2) The first one is Reno Sales. He was the Chief
(3) geologist at the Anaconda Company, head of the Anaconda
(4) Company's Geological Department, which in the American
(5) mining industry in the early 20th century pioneered the
(6) technique for using mine drawings as an effective tool for
(7) understanding underground ore bodies, directing development
(8) of those ore bodies, and prosecuting actual mining. And
(9) he served in that position for almost 40 years.
(10) Also, at the top of the Anaconda Company
(11) hierarchy of experts were managers of mines for the whole
(12) Anaconda enterprise, William Daily for the 20s and part of
(13) the 30s. And then he was succeeded by Clyde Weed, who
(14) eventually became president of the Anaconda Company. And
(15) then Cornelius Kelley who was President of the Anaconda
(16) Company.
(17) --o0o--
(18) MR. QUIVIK: International had a parallel kind of
(19) structure. It had Chief Geologists Paul Billingsly and
(20) Tom Lyon. Jack Dugan was the Superintendent of Mines for
(21) Operations within the International organization. And
(22) J.O. Elton was the General Manager at International. And
(23) he's an important individual because he was a Director of
(24) the Walker Mining Company and also was the Vice
(25) President -- a Vice President of the Walker Mining

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- (1) Company. We could call him the Vice President for
(2) Operations.
(3) Across those 25 years that the Walker Mine
(4) operated, it had a succession of managers at the mine and
(5) I've listed their names here. And then working at the
(6) Walker Mine were also a number of Chief Geologists and
(7) Engineers at the Walker Mine.
(8) So this is a number of organizations to keep
(9) track of. And in order to help illustrate that
(10) organizational structure in my rebuttal statement, I
(11) prepared two illustrative exhibits.
(12) --o0o--
(13) MR. QUIVIK: The first of these is to illustrate
(14) the way the Walker Mining Company would have been
(15) organized had it been a normal mining company. And so
(16) we'd have corporate affairs taking place at this level,
(17) and then here we have operations at the mine headed by a
(18) manager or general manager. And these are the several
(19) facets of activity at the mine: Geology, mining
(20) engineering, mining itself, operating the mill, and then
(21) the office functions. But at the Walker Mine --
(22) --o0o--
(23) MR. QUIVIK: -- it was a very different
(24) organizational structure. The lower half shows the Walker
(25) Mining Company itself. Here's operations. And here's

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- (1) corporate affairs for the Walker Mining Company. But
(2) facets of the Walker Mining Company's operations were
(3) directed by individuals who had key positions at both the
(4) International Company and Anaconda.
(5) Here's Reno Sales, that Chief Geologist. He
(6) oftentimes directly managed the activities. I should say
(7) that I've linked these two because after 1930 the
(8) geologist and the mining engineer, those positions were
(9) combined into one position.
(10) So Reno Sales directed the work of the geologist
(11) and the mining engineer. William Daily, Manager of Mines
(12) and later Clyde Weed directly managed these individuals.
(13) And then they also directed the activities of
(14) these two figures: Tom Lyon, the Geologist at
(15) International and Jack Dugan, the General Superintendent
(16) of Mines at International. And oftentimes, decisions that
(17) these individuals made were actually conveyed by these
(18) International officials to the Chief Engineer and
(19) Geologist. And it's important to add that these
(20) individuals had no titles in the Walker Mining Company.
(21) Had I more time, I could have also gone through
(22) an organizational chart showing how these individuals at
(23) Anaconda and International directed the manager at the
(24) Walker Mining Company.
(25) --o0o--

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- (1) MR. QUIVIK: So in sum, employees and managers of
(2) Anaconda and International who were not Walker managers or
(3) officials managed Walker's Chief Engineering Geologist who
(4) worked at the mine implementing exploration and
(5) development decisions and those employees and managers of
(6) Anaconda and International managed Walker's general
(7) manager.
(8) --o0o--
(9) MR. QUIVIK: In my expert statement, I have many
(10) pages -- couple of dozen pages siting to specific
(11) documents showing that these Anaconda and International
(12) individuals were directing Walker employees and some of
(13) them have to do with the Chief Geologist and Engineer.
(14) What I'd like to focus on today is just five
(15) examples of those individuals directing Walker's manager.
(16) In October of 1923, Paul Billingsly, International's
(17) geologist, directed the Walker manager concerning the
(18) placement of drifts and cross-cuts. And in his letter, he
(19) said, "This letter authorizes you to do that work." In
(20) September of 1925, International's geologist Tom Lyon
(21) directed the manager, Mr. Tunnel, and authorized him
(22) concerning drift placement and cross-cutting.
(23) --o0o--
(24) MR. QUIVIK: In 1937, Lyon issued directives to
(25) this manager at Walker regarding drifts and cross-cutting

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- (1) at the mine.
(2) In February of 1913, Dugan directed another
(3) manager regarding drifts and cross-cuts.
(4) And then in July of 1941, when the mine was in
(5) the stage of winding down, Dugan directed the manager to
(6) discontinue work on the 2000 level. So these are specific
(7) documents that show this kind of direction of operations
(8) at the Walker Mine.
(9) --o0o--
(10) MR. QUIVIK: And then we also have evidence in
(11) the public record that shows that these people understood
(12) that Anaconda was managing operations at the Walker Mine.
(13) One really important document I think is this 1916
(14) contract that's ARCO Exhibit 167. And it explicitly
(15) states that under terms of this contract International
(16) would control the manager at the Walker Mine and would
(17) manage the Walker Mine for the benefit of the Walker
(18) Mining Company.
(19) In 1920, there was an article in the Salt Lake
(20) Mining Review that reported on a statement made by the
(21) President of the Walker Mining Company in which he said --
(22) the President of the Walker Mining Company said that
(23) Anaconda was managing the mine for the benefit of the
(24) Walker Mining Company.
(25) In 1924, there was a very informative

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- (1) several-page article about the Walker Mine and Mill
(2) describing the technical features. And it also says that
(3) Anaconda controls the property and that Mr. Torkelson, an
(4) Anaconda employee, superintended the construction of the
(5) Walker Mill.
(6) And then finally in 1922, Mr. Baglen, writing a
(7) prospectus to prospective investors in the Walker Mining
(8) Company quoted JR Walker, President of the Walker Mining
(9) Company, saying that Anaconda had charge of development
(10) and exploitation of the property. Thank you.
(11) --o0o--
(12) MR. TAURIAINEN: Just to briefly conclude, the
(13) prosecution team respectfully requests that the Board
(14) adopt the Walker Mine and Walker Mine Tailings Cleanup and
(15) Abatement Orders as proposed. These Orders will direct
(16) ARCO to finally and at long last assume its responsibility
(17) for the mine and tailings. And they'll direct ARCO and
(18) the Forest Service together to carry out the necessary
(19) investigations, work plan, and cleanup activities of the
(20) tailings and to submit regular reports to the Board.
(21) Thank you.
(22) CHAIRPERSON LONGLEY: Thank you.
(23) At this time, we're ready for cross-examination
(24) of the prosecution team by ARCO.
(25) MR. DUFFY: Good afternoon, Dr. Longley, members

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- (1) of the Board.
(2) I will conduct the cross-examination of Mr.
(3) Huggins, and Mr. Bruen then will cross-examine and argue
(4) the motion with respect to Dr. Quivik.
(5) CROSS-EXAMINATION OF MR. HUGGINS
(6) BY MR. DUFFY:
(7) Q Mr. Huggins, with respect to the time line which you
(8) presented in the course of your testimony -- I apologize
(9) I'm trying to page through the materials. I believe it
(10) was slide 12.
(11) In slide 12, you note on your time line there was
(12) a contract in 1916. Your time line doesn't show the date
(13) of purchase of the shares in Walker Mining Company by us,
(14) does it?
(15) A It does not.
(16) Q And that purchase occurred in October 1918; correct?
(17) A That's correct.
(18) Q And also on your time line, it shows the -- perhaps I
(19) should show the time line. Can you bring it up, sir?
(20) Thank you for stopping the clock, somebody.
(21) Looking at slide 12 -- and I appreciate that
(22) you've clarified that you don't have the date of purchase
(23) of October 1918 on here. And it's a fact, is it not, that
(24) the record does not have a statement of the amount of tons
(25) of ore that were mined prior to October 1, 1918; is that

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- (1) correct?
(2) A The record doesn't, but ARCO has an exhibit that
(3) does.
(4) Q Excuse me?
(5) A I said ARCO submitted an exhibit or in the brief
(6) submitted the 67,000 tons of they mined before 1918.
(7) Q Thank you.
(8) And the -- as a fact, is it not, Mr. Huggins when
(9) IS&R purchased this stock in the Walker Mining Company,
(10) there was an operating mill at the site?
(11) A I believe there was.
(12) Q And is it a fact that tailings disposal had occurred
(13) prior to October 1918?
(14) A I believe so.
(15) Q Thank you.
(16) As described in your affidavit, the Regional
(17) Board approved the settlement with Mr. Barry, his heirs,
(18) and the Calicopia Corporation; is that correct?
(19) A I believe so.
(20) Q And does that settlement release Barry and Calicopia
(21) of further liability to the State of California for site
(22) response?
(23) MR. TAURIAINEN: I object. He's calling for
(24) speculating regarding legal matters beyond Mr. Huggins'
(25) expertise.

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- (1) LEGAL COUNSEL COUPE: Can you repeat the
(2) question, please?
(3) MR. DUFFY: I was asking the witness whether he
(4) knew whether or not Mr. Barry and the Calicopia
(5) Corporation has been released of any further
(6) responsibility for the site?
(7) CHAIRPERSON LONGLEY: I'll uphold the objection,
(8) but you have the opportunity to ask those on the
(9) prosecution team who have that expertise.
(10) MR. DUFFY: All right. Thank you. That would be
(11) the lawyers?
(12) CHAIRPERSON LONGLEY: That's correct.
(13) MR. DUFFY: I would note it is in his affidavit.
(14) BY MR. DUFFY:
(15) Q And the same thing would be true if I asked you about
(16) the settlement with Daniel Kennedy? You don't know the
(17) effect of that settlement either?
(18) A I do not.
(19) Q All right. Thank you, sir.
(20) Now, if I could figure out how to get to my
(21) presentation. Mr. Huggins, have you ever seen this
(22) document before? It's submitted as Atlantic Richfield's
(23) Exhibit 297.
(24) A I have.
(25) Q And what is it, sir?

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- (1) A A remediation plan for the Walker Mine acid mine
(2) drainage project.
(3) Q Dated September 1999; correct?
(4) A Yes.
(5) Q Has this document been approved by -- submitted to
(6) and approved by the State Board?
(7) A I don't know.
(8) Q Do you know whether it's ever been submitted?
(9) A Once again, I don't know.
(10) Q Do you know -- are you familiar with the contents of
(11) this plan?
(12) A Some of the contents, yes.
(13) Q Do you -- does the remediation plan for the Walker
(14) Mine include a contingency plan?
(15) A I'm not aware of it, if it does.
(16) Q Let me direct you to -- I hope you can see this on
(17) your screen -- to page 8 of the remediation plan. Does
(18) this refresh your recollection that there is a contingency
(19) plan for the Walker Mine?
(20) A Once again, I'm not real familiar with this document.
(21) Q All right. Is there any plan to require treatment of
(22) water at the Walker Mine that is backed up behind the plug
(23) in the 700 level adit?
(24) A Not that I'm aware of.
(25) Q So as this document says in the first paragraph, it

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- (1) says affirmatively that the Regional Board will develop a
(2) detailed contingency plan containing the steps necessary
(3) for treatment and discharge of the mine water. Your
(4) testimony today is that that's not occurred?
(5) A I'm not aware of any plan to treat the water behind
(6) the plug.
(7) Q All right. Thank you.
(8) CHAIRPERSON LONGLEY: Mr. Duffy, what was the
(9) date on this document? I'm sorry. I missed it.
(10) MR. DUFFY: September 1999. And as an offer of
(11) proof, I would show that there was a submittal -- there is
(12) a signed copy of this letter, which was produced by the
(13) State of California in the public records request, which
(14) demonstrates that I believe that the remediation plan was
(15) submitted to the State Board.
(16) CHAIRPERSON LONGLEY: Thank you.
(17) LEGAL COUNSEL COUPE: Do you mind if I ask a
(18) follow up question, Dr. Longley?
(19) CHAIRPERSON LONGLEY: Go ahead.
(20) LEGAL COUNSEL COUPE: In reference to Exhibit
(21) Number 296, the letter that was submitted from the Central
(22) Valley Water Board to the State Board as to the
(23) remediation plan, are you aware of any evidence in the
(24) record that the remediation plan was specifically approved
(25) by State Board or not? And that's addressed to both

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- (1) parties.
(2) MR. HUGGINS: On my behalf, no.
(3) MR. DUFFY: I do not. I have copy of the signed
(4) letter that it was submitted to the State Board, but I
(5) don't have any further evidence. And that's why I was
(6) asking the question.
(7) MR. TAURIAINEN: If I may, Jeff answered on his
(8) own behalf.
(9) If I may answer on behalf of the prosecution
(10) team, the record doesn't have any evidence of this report
(11) or this proposed remediation plan having been approved by
(12) the State Board. And I would note for the record that
(13) pursuant to the PRA request that Mr. Duffy mentioned, ARCO
(14) received the entire file of the Regional Board or at least
(15) access to the entire file going back to as far back as we
(16) have records off site. So I assume they would have found
(17) it if it was there.
(18) MR. DUFFY: Well, I'll just make a brief offer of
(19) proof if I could.
(20) What the remediation plan says is that Cedar
(21) Point Properties, who had settled with the Board and been
(22) released of further liability, was obligated to prepare a
(23) contingency plan for the mine site, which included the
(24) treatment of water that was being backed up by the adit
(25) plug.

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- (1) If they failed to do so, the document requires
(2) that the Regional Board produce that contingency plan and
(3) actually go forward with the treatment of water if it was
(4) necessary -- or if the triggers as were described in the
(5) plan are triggered. Thank you. Let me move on then.
(6) BY MR. DUFFY:
(7) Q Do you believe, Mr. Huggins, that the Regional Board
(8) settlements and election to implement the 700 level adit
(9) project at the site make the Board a liable party?
(10) MR. TAURIAINEN: Objection. Again, he's asking
(11) for conclusions regarding legal matters that are beyond
(12) Jeff's expertise. I'm not even sure what the question was
(13) regarding what settlements and --
(14) CHAIRPERSON LONGLEY: Could you restate, please?
(15) MR. DUFFY: Yes. My question was very simple.
(16) Does he believe that the settlements which have been
(17) entered with prior owners and operators of the site,
(18) namely Robert Barry, Calicopia Corporation, and Daniel
(19) Kennedy, render the Board liable for response activities
(20) at the site to be a responsible party?
(21) MR. TAURIAINEN: Same objection.
(22) BY MR. DUFFY:
(23) Q I'm showing on the Board what is ARCO Exhibit 158.
(24) Have you ever seen this memo before, Mr. Huggins?
(25) CHAIRPERSON LONGLEY: Before you go on -- David,

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- (1) would you comment on the objection?
(2) LEGAL COUNSEL COUPE: Well, there is a call for a
(3) legal conclusion. But with that said, I think the purpose
(4) of the question is to direct the Board to Exhibit 158, if
(5) I'm correct, and seek some additional clarification from
(6) Mr. Huggins in response to Exhibit 158; is that correct?
(7) MR. DUFFY: That's correct, yes.
(8) LEGAL COUNSEL COUPE: My suggestion is to allow
(9) the questioning to continue.
(10) CHAIRPERSON LONGLEY: Proceed, please.
(11) BY MR. DUFFY:
(12) Q Mr. Huggins, did you author this memo?
(13) A I did.
(14) Q And it's a July 28, 2011, memo, please; is that
(15) correct?
(16) A Yes.
(17) Q And who is Victor Izzo?
(18) A He was my boss at the time.
(19) Q Is Mr. Izzo still with the Regional Board?
(20) A He is not. He retired in December.
(21) Q And is that your -- are those your initials that
(22) appear in the upper right hand?
(23) A They are.
(24) Q And it appears that this is signed by Mr. Izzo and
(25) another gentlemen. Who is that?

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- (1) A I think it's Richard Loncarovich, but I'm not
(2) positive.
(3) Q Could you read the paragraph for the record as it
(4) appears?
(5) A "However, the Walker Mine has since been abandoned
(6) and Calicopia Corporation any potential successors no
(7) longer exist. For the past 20-years, the Central Valley
(8) Water Board has incurred considerable obligations for
(9) long-term operations and maintenance of the mine seal.
(10) This is expensive, and the liabilities are not
(11) insignificant. If the Central Valley Water Board is to
(12) reduce its liabilities for the Walker Mine, it must
(13) determine a responsible party exists."
(14) Q Thank you.
(15) Were the statements that appear in this
(16) memorandum truthful when the memo was prepared in July
(17) 2011?
(18) A From the staff engineering point of view, yes.
(19) Q Thank you. Are they still truthful today?
(20) A I would say I don't have any reason to change them.
(21) Q Is it fair to say that the prosecution's goal for
(22) this proceeding is to have the Board issue the mine site
(23) CAO and hand off or transfer responsibility for the
(24) current project that the Board has constructed in November
(25) 1987?

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- (1) A The question is a little more complicated than that.
(2) Q Okay.
(3) BOARD MEMBER RAMIREZ: Mr. Duffy, can you ask the
(4) question again?
(5) MR. DUFFY: I'll ask it this way.
(6) BY MR. DUFFY:
(7) Q Is it your intent that if the Board would issue an
(8) order to Atlantic Richfield Company for the mine site, the
(9) Atlantic Richfield Company would assume responsibility for
(10) operation, maintenance, and anything else that would be
(11) required to take care of the project that was constructed
(12) in November of 1987?
(13) A I'd say yes, that is the intended goal I wrote in
(14) here at the time.
(15) Q Thank you. That's all I have.
(16) CHAIRPERSON LONGLEY: Thank you.
(17) MR. BRUEN: May it please the Board, James Bruen
(18) to cross-examine Dr. Quivik.
(19) CROSS-EXAMINATION OF DR. QUIVIK
(20) BY MR. BRUEN:
(21) Q Dr. Quivik, let me proceed so we don't waste time.
(22) Would you agree that you do not have a degree in mining?
(23) A I would agree.
(24) Q You've never been an employee of a mining company?
(25) EXECUTIVE OFFICER CREEDON: You will have to

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- (1) speak into the microphone.
(2) BY MR. BRUEN:
(3) Q You have never been an employee of a mining company?
(4) A That's correct.
(5) Q Dr. Quivik, would you agree that you have never
(6) spoken to anyone who worked for the Walker Mining Company
(7) between 1918 and 1941 about the Walker Mining Company?
(8) A That's correct.
(9) Q You have never spoken to anyone who has worked for
(10) either Independent or the Anaconda Mining Company between
(11) 1918 and 1941 about the Walker Mining Company?
(12) A You said Independent. Do you mean International?
(13) Q International.
(14) A Can you repeat the question?
(15) Q Yes. Of course.
(16) You have never spoken to anyone who worked for
(17) International or Anaconda between 1918 and 1941 about the
(18) Walker Mining Company?
(19) A That's correct.
(20) Q All right. Dr. Quivik, you have prepared your report
(21) today using the historical method; is that correct?
(22) A Yes.
(23) Q Does the historical method allow you to base any of
(24) your opinions upon speculation?
(25) A The historical method would begin with -- I would

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- (1) **prefer to use the word I develop hypotheses and then I**
(2) **test those hypotheses. So I don't further any speculation**
(3) **to use your word or hypotheses unless I've tested them and**
(4) **conclude that they are sound conclusions or opinions.**
(5) CHAIRPERSON LONGLEY: Excuse me. Could you be a
(6) little more specific in saying that you developed
(7) hypotheses and test the hypotheses? What do you mean by
(8) that?
(9) MR. QUIVIK: In this case and other projects that
(10) I work on as an historian, there will tend to be a lot of
(11) historical data. I look at those data and I begin to --
(12) and I should say that when -- as an historian, I'm looking
(13) at these data, these historical documents and other kinds
(14) of sources, it's because of questions that we have in the
(15) present about the past. And so in trying to find answers
(16) to those questions or draw conclusions that address those
(17) questions, eventually I begin to see what look like
(18) patterns or explanations of the historical data that are
(19) responsive to the question, the research question at hand.
(20) Once I formulate ideas about those patterns in
(21) the form of a hypotheses, then I begin to look for
(22) evidence in the historical record that would contradict
(23) that hypotheses. So it's an iterative kind of process of
(24) sometimes having to throw out a hypothesis. Sometimes
(25) revising the hypotheses because there are slight anomaly

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- (1) or inaccuracies in it. But eventually, hopefully I'm able
(2) to arrive at a hypothesis that I keep testing and I can no
(3) longer contradict it and then I'm ready to conclude or
(4) develop an expert opinion in legal parlance concerning
(5) that question.
(6) CHAIRPERSON LONGLEY: Thank you.
(7) Continue, sir.
(8) BY MR. BRUEN:
(9) Q Dr. Quivik, in looking for information that might
(10) contradict any hypotheses that you might form in this
(11) case, did you look for the bankruptcy records of the
(12) bankruptcies court of the Eastern District of California?
(13) A **I did not look for them. But I did see that document**
(14) **in the exhibits that you produced -- or I should say --**
(15) Q So we found them; you did not?
(16) A **That's correct.**
(17) Q And you formed your opinions without reviewing the
(18) testimony, exhibits, and records of the bankruptcy court
(19) for the Walker Mine Company bankruptcy in 1945; correct?
(20) A **Yes.**
(21) Q But you did read the decision of the bankruptcy court
(22) in 1945 that in essence neither Independent nor Anaconda
(23) controlled the management or activities of Walker Mining
(24) Company. That's true; isn't it?
(25) A **Yes, I read that opinion.**

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- (1) Q All right. Now, my question prior to starting this
(2) line of examination, Doctor, was whether your historical
(3) method allowed you to speculate. And really what I want
(4) to ask again -- I want to repeat that question. I want to
(5) know if the historical method allows you to base an
(6) opinion upon speculation; does it or does it not?
(7) A **The historical method would require that I base an**
(8) **opinion upon historical evidence.**
(9) Q But can you give me a yes or no question? Let me ask
(10) you the question for the third time. Just a simple yes or
(11) no question, if you can. If you can't answer, just tell
(12) me.
(13) Does the historical method allow you to base an
(14) opinion on speculation, my third time?
(15) A **No.**
(16) LEGAL COUNSEL COUPE: I think the question has
(17) been asked and answered, Dr. Longley.
(18) CHAIRPERSON LONGLEY: Proceed, sir.
(19) MR. BRUEN: Dr. Quivik, is there a known rate of
(20) error for historians so that we know in testing the
(21) validity of historian's opinions using the historical
(22) method whether or not there is a known rate of error, as
(23) there is with other type of scientific and other opinions.
(24) A **The way that question is addressed in the historical**
(25) **literature is that opinions or conclusions are published**

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- (1) **or in the case of a legal proceeding submitted as expert**
(2) **reports. And then there is an opportunity for those**
(3) **conclusions or opinions to be contested by other people**
(4) **who would care to differ with them.**
(5) Q Let me ask the question a different way. Wouldn't
(6) you agree there is no known rate of error among opinions
(7) expressed by historians using the historical method. You
(8) would agree with that, would you not?
(9) A **I have not seen one.**
(10) Q All right. And Doctor, is there a known -- well, let
(11) me ask you it in this way. If we were to take another
(12) historian and give him the exhibits you read in this case,
(13) do you have for us a percentage that you believe is
(14) reliable, as reliable as anything else you've written, as
(15) to the chance that that historian could replicate your
(16) process and would come to your conclusions without
(17) speaking to you, just reading the documents you've read?
(18) A **Would come to the same conclusions?**
(19) Q Would come to the same conclusions.
(20) CHAIRPERSON LONGLEY: I believe the Board gets
(21) where you're going on this. Could you move on, please?
(22) MR. BRUEN: Yes, absolutely, Doctor.
(23) BY MR. BRUEN:
(24) Q Can you tell me -- let me ask you one more -- two
(25) more questions.

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- (1) The purpose of your report, Dr. Quivik, is to
(2) prepare a detailed and corporate operational history of
(3) the Walker Mining Company and its Walker Mine in
(4) California as documentation permits; correct, sir?
(5) A Yes.
(6) Q Would you agree with me that neither of your reports
(7) and no part of your presentation to the Board today
(8) contains any document which states that either
(9) International or Anaconda controlled the disposal of waste
(10) at the Walker Mine?
(11) A I have not seen such a statement.
(12) MR. BRUEN: No further questions.
(13) CHAIRPERSON LONGLEY: Thank you very much.
(14) Is there any further cross-examination by ARCO?
(15) MR. DUFFY: No.
(16) MR. BRUEN: I was going to argue the motion on
(17) Dr. Quivik very briefly if I may, Dr. Longley.
(18) CHAIRPERSON LONGLEY: You can at this time.
(19) MR. BRUEN: Thank you very much.
(20) There are three reasons we believe Dr. Quivik's
(21) opinions on the relationship between Anaconda and
(22) Independent on one hand and the Walker Mine Company on the
(23) other should not be considered by this Board as an expert
(24) opinion.
(25) The first is that in California under the Sargon

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- (1) case, California courts now follow the approach used by
(2) the famous federal Daubert case in evaluating expert
(3) opinions.
(4) And in that regard, we believe for the reasons
(5) stated in our brief that Dr. Quivik's opinions on the
(6) control of waste or management of something called the
(7) concentrator, which you'll hear more about in our case,
(8) and the waste disposal activities are pure speculation and
(9) cannot be accepted as opinion.
(10) In addition to that, under the Sargon case, there
(11) is no metric for evaluating this type of an opinion.
(12) There is no error rate for evaluating this opinion. This
(13) opinion has not been peer reviewed. It is classically the
(14) type of opinion that would be rejected by the courts under
(15) the Daubert standard and now should be rejected by the
(16) courts having adopted that standard in the Sargon case.
(17) Secondly, Your Honor, much of Mr. Quivik's -- Dr.
(18) Quivik's opinion is based on his experience in other
(19) cases. And I believe those are completely irrelevant.
(20) Certainly, other cases can be cited for their holdings on
(21) matters of law, as we all cite the Best Foods case.
(22) I've never seen -- and there are very few cases,
(23) however, which can be decided because of their discussions
(24) of law, which are not holding. Here, Dr. Quivik's report
(25) cites the other cases for discussions of fact. And no

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- (1) case, no law case, can be cited to any adjudicatory body
(2) for its holding for its discussion of fact, unless they're
(3) talking about exactly the same subject matter and exactly
(4) the same parties.
(5) And there is no pretense that that's the case
(6) here. So those analogies with the Newmont Mining case and
(7) others in Dr. Quivik's report should be rejected as
(8) improper.
(9) Finally, with respect to this opinion -- and I
(10) will just mention speculation again, we believe that there
(11) is a lot of speculation on Dr. Quivik's report. He lacks,
(12) as you will see, evidence on the critical issue in this
(13) case. And the prosecuting team admits the shortcoming
(14) because they advise the Board, this Board, that it is
(15) perfectly logical for this Board to assume that -- pardon
(16) me -- that Anaconda or Independent controls the disposal
(17) of waste at the Walker Mine Company. And that assumption
(18) is not based on evidence. It's based on activities and
(19) other spheres of mining. That assumption is what's not
(20) allowed.
(21) The burden of producing evidence as well as the
(22) burden of persuading you by a preponderance of the
(23) evidence rests on the prosecution. And their own briefs
(24) in this case tell you that on the critical direct control
(25) issue, which Mr. Tauriainen has said, is the issue before

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- (1) the Board. There is no evidence that either Anaconda or
(2) International controlled the disposal of waste here.
(3) Because of these defects in the Quivik report, we
(4) ask you to reject his opinions on the relationship between
(5) Anaconda, Independent, and the Walker Mining Company.
(6) Thank you.
(7) BOARD MEMBER RAMIREZ: Is the prosecution team
(8) going to respond?
(9) CHAIRPERSON LONGLEY: Yes. Prosecution team
(10) response. And then I'm going to go to Mr. Coupe and then
(11) I'm going to state my own opinion. Go ahead.
(12) MR. TAURIAINEN: Just for a point of order, I'm
(13) responding now to their --
(14) CHAIRPERSON LONGLEY: Understand.
(15) MR. TAURIAINEN: -- motion. Will we have time
(16) for a brief redirect following their cross-examination?
(17) CHAIRPERSON LONGLEY: You will. Go ahead.
(18) MR. TAURIAINEN: The three points leading from --
(19) not exactly sure if they're in order as presented by Mr.
(20) Bruen.
(21) Dr. Quivik's testimony regarding Newmont USA and
(22) his involvement in other cases is directly relevant to
(23) both his qualifications as an expert in this case and to
(24) his prior experience and the types of evidence and the
(25) quality of evidence and the results before various courts

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- (1) as to his legal conclusions regarding the direct operator
(2) liability.
(3) We cited in our briefs and he cited in his expert
(4) witness report multiple instances, including one as
(5) recently as -- I believe it was June of 2013 where the
(6) Eastern District of California heavily relied on his
(7) expert witness testimony on evidence similar in kind to
(8) what's been presented here in this case and resulted in
(9) conclusions that direct operator liability apply.
(10) He cites a number of exhibits throughout his
(11) statement. If you look at his statement, you will see --
(12) and he mentioned literally dozens upon dozens of
(13) documents. There is no speculation. He formed his
(14) hypotheses based on evidence in the record. He formed his
(15) opinion based on evidence in the record.
(16) The ARCO is reading the Sargon case way too
(17) narrowly. That court essentially upholds what the
(18) Evidence Code 801 and 802 standards apply to this
(19) proceeding that an expert can provide opinion testimony
(20) based on a matter of the type on which -- a court can only
(21) exclude expert testimony if it's based on the type upon
(22) which an expert may not reasonably rely based on reasons
(23) unsupported by the material on which the expert relies or
(24) which is speculative. And none of those cases apply here.
(25) That's all for the response.

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- (1) CHAIRPERSON LONGLEY: Thank you.
(2) Mr. Coupe.
(3) LEGAL COUNSEL COUPE: Actually, Mr. Mayer is
(4) going to step in on this.
(5) CHAIRPERSON LONGLEY: Thank you.
(6) LEGAL COUNSEL MAYER: Mr. Chair, I have listened
(7) to the arguments that the two parties have made just now.
(8) Also reviewed the motion submitted by ARCO, Motion Number
(9) 9, and the response by the prosecution team.
(10) The arguments are a little bit different in terms
(11) of what ARCO had argued in their motion versus what
(12) they're arguing now. What I'll do is first cover -- I
(13) think there is quite a bit of overlap. I'll first cover
(14) what is in the written motion and then touch on what was
(15) stated here orally.
(16) In summary though, before I get started, I will
(17) be recommending that the Chair overrule the motion to
(18) exclude -- the motion to strike certain testimony from Dr.
(19) Quivik's expert report. And from that, I'd like to go
(20) into the reasoning behind that. And I can also touch upon
(21) the specific arguments. So there's some basic authorities
(22) here that I'd like to provide a background before further
(23) explaining it.
(24) This proceeding, as Mr. Taurialnen mentioned, it
(25) follows the adjudicative regulations for the State Water

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- (1) Board in which the Evidence Code on expert testimony has
(2) been specifically incorporated by reference. So the
(3) reference is to Sections 801, 802 of the Evidence Code are
(4) relevant here for an administrative proceeding, even
(5) though those typically apply to the court. That's because
(6) we've explicitly incorporated them by reference. I'd like
(7) to read Section 801 to the Board because it describes the
(8) standard of excluding or objecting expert testimony.
(9) "An expert opinions must be based on matter --
(10) and I'm reading this in part -- perceived by or personally
(11) known to the witness or made known to a matter before the
(12) hearing whether or not admissible that is of the type that
(13) reasonably may be relied upon by an expert in forming an
(14) opinion upon the subject to which his testimony relates."
(15) So that's Evidence Code 801(b).
(16) And there are some -- the Sargon case was
(17) mentioned. That Sargon case has a lot of informative
(18) explanations of how this Evidence Code section is
(19) interpreted.
(20) And one of the statements in there said, "the
(21) presiding officer must not weigh an opinion's probative
(22) value or substitute its own opinion for the expert's
(23) opinion. Must simply determine whether or not the matter
(24) relied upon can provide a reasonable basis for the opinion
(25) or whether that opinion is based upon a belief of logic or

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- (1) conjecture."
(2) And the Sargon case also advises courts to be
(3) cautious. There is a citation -- a statement in that
(4) decision saying that, "courts and administrative bodies
(5) must be cautious in excluding expert testimony. The
(6) court's gatekeeping rule does not involve choosing two
(7) competing expert opinions."
(8) ARCO has put on several expert reports into the
(9) record. And to my knowledge, prosecution team is not
(10) objecting to any of those. There are competing experts in
(11) this particular case.
(12) What's being asked by in this motion is to
(13) exclude a significant portion of the opinion from Dr.
(14) Quivik's report. And that -- the motion itself talks
(15) about three particular opinions. One is an opinion (e)
(16) page 8 of his report that "Anaconda developed a tightly
(17) managed corporate structure that allowed top managers of
(18) the parent corporation to direct the operations of its
(19) several subsidiaries. Anaconda's top managers in the
(20) areas of geology, mining, and metallurgy directed those
(21) facets and operations and the subsidiaries."
(22) And then there was an objection to several pages
(23) in the report that I'll summarize as Dr. Quivik's
(24) statement that it was comparing the standard 20th century
(25) corporate model of management to what was employed by

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- (1) Walker and the sources.
(2) And finally, the last opinion that's being
(3) objected to in the written motion is a statement on page 8
(4) of the report. Opinion F says that Anaconda and
(5) International managed the Walker Mine concurrently with
(6) the Walker Mining Company from 1918 to 1941.
(7) So the objections that are being made now -- that
(8) that background has been presented, the objections are
(9) that these particular opinions need to be struck because
(10) they are speculative, that they rely upon leaps of logic,
(11) and that are based on experience on Dr. Quivik's
(12) experience in other cases.
(13) And the reason I'm recommending to overrule those
(14) objections is that I'm looking at the record -- it's clear
(15) and it was discussed earlier -- these opinions about the
(16) management structure in general, what was going on in
(17) terms of directing activities at the Walker Mine, these
(18) opinions seem to be based on hundreds of individual
(19) documents in the record that were generated either by
(20) Anaconda's employees or Walker's employees. They're also
(21) based in part on published treatise on the mining industry
(22) that were published contemporaneously with the activities
(23) in this case.
(24) And the opinion is further informed by this use
(25) of the historical method which has been applied in other

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- (1) federal environmental litigation lawsuits involving the
(2) very type of parent subsidiary relationships in the mining
(3) industry.
(4) So not only are the opinions based upon the
(5) record admissible evidence in the record, but they're also
(6) informed by a proven method that has been used by the
(7) expert in multiple instances.
(8) So when you go back to the standard of -- in the
(9) Code, is this the type of opinion that is reasonably may
(10) be relied upon -- is this a method -- is the basis the
(11) type that may reasonably be relied upon by an expert
(12) informing an opinion on the subject on which his testimony
(13) relates.
(14) And all of the bases are appropriate for an
(15) expert opinion. That doesn't mean that the Regional Board
(16) is going to agree with this opinion. They're competing
(17) expert opinions in this case. But the remedy that's being
(18) pursued is this report be excluded from the record. And
(19) that -- again, the presiding officer of the administrative
(20) agencies need to be cautious in excluding expert testimony
(21) and not chose between competing experts.
(22) And for those reasons, I believe that the items
(23) pointed out in Motion Number 8 should not be excluded.
(24) And for the same reasons, ARCO's renewed motion or new
(25) motion to strike certain statements about the disposal,

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- (1) the control of Anaconda and International over the
(2) disposal of the mines, I haven't heard any particular page
(3) number that is wanting to be stricken.
(4) But again regardless, it's the same type of
(5) analysis that I brought forth in regards to the written
(6) motion objection and that there's enough of a basis for
(7) that opinion to be given to this Board. As the triers of
(8) fact, as the fact finders in this case, it's your job to
(9) decide what weight to give that or not. But in terms of
(10) excluding it, the report in its entirety, I believe that
(11) that type of remedy is an extreme one that I would not
(12) recommend the Board Chair undertake.
(13) CHAIRPERSON LONGLEY: Thank you.
(14) BOARD MEMBER RAMIREZ: Dr. Longley?
(15) CHAIRPERSON LONGLEY: Yes, Carmen.
(16) BOARD MEMBER RAMIREZ: Well, are you done?
(17) You're done?
(18) I was just going to say that I was following our
(19) counsel's logic and I do think that Dr. Quivik's testimony
(20) is the kind that can reasonably be relied upon. You know,
(21) we talked about the historical letters, their articles
(22) printed. I don't think these are fabricated.
(23) I do think that we're not going to blindly accept
(24) any expert's opinion with respect -- with all due respect
(25) to you and I'm sure opposing witness. I mean, they give

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- (1) us something to think about and we take into consideration
(2) during deliberation.
(3) But, you know, I also agree that the remedy being
(4) sought by ARCO is extreme. I think that certainly ARCO's
(5) cross-examination of the expert's effective, but I think
(6) that will just go at the end to the total credibility that
(7) this Board chooses to give to the expert. I would tend to
(8) agree with counsel when saying that we don't exclude.
(9) CHAIRPERSON LONGLEY: Yes. And you make a good
(10) point. But in addition to that, we have a very
(11) considerable body of evidence so to speak of -- I don't
(12) know how many letters are in this record of correspondence
(13) back and forth, which speaks to itself, even without Dr.
(14) Quivik's testimony. So based upon the input I've
(15) received, yes.
(16) LEGAL COUNSEL COUPE: I don't want to put too
(17) fine a point on it. I want to point out briefly the
(18) provision of the Government Code Section 11513(c) in part
(19) which is arguably even more liberal for purposes of
(20) evidence.
(21) CHAIRPERSON LONGLEY: That's fine. You've
(22) introduced that. We've got to move on.
(23) I'll rule against -- I'll deny the motion.
(24) MR. TAURIANEN: And then would this be the
(25) appropriate time for a brief redirect to the witnesses

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- (1) while we're all still up here?
(2) CHAIRPERSON LONGLEY: Yes. Go ahead.
(3) REDIRECT EXAMINATION OF DR. QUIVIK
(4) BY MR. TAURIAINEN:
(5) Q Very briefly, Dr. Quivik, you were asked about the
(6) bankruptcy court decision, the 1945 decision. It's
(7) entered as ARCO's Exhibit 130. To your recollection, and
(8) in your opinion, was the bankruptcy court asked to rule on
(9) the question of whether Anaconda or International employees
(10) or agents or managers operated, directed, or managed
(11) pollution-causing activities at the Walker Mine facility?
(12) A No.
(13) Q Would a bankruptcy court have been asked to make such
(14) a ruling in 1945?
(15) A I'm not an historian of those sorts of things.
(16) BOARD MEMBER RAMIREZ: I think that's beyond his
(17) scope of expertise.
(18) CHAIRPERSON LONGLEY: You're stretching.
(19) MR. TAURIAINEN: Withdrawn. That's enough.
(20) MR. BRUEN: May I redirect?
(21) CHAIRPERSON LONGLEY: Certainly.
(22) RECROSS EXAMINATION OF DR. QUIVIK
(23) BY MR. BRUEN:
(24) Q Dr. Quivik, you've read the bankruptcy court
(25) decision, have you not, in the Walker bankruptcy matter?

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- (1) A Yes.
(2) Q Isn't it a fact that the bankruptcy court held that
(3) Walker Mining Company businesses and affairs had at all
(4) times been carried on and conducted in the manner and
(5) according to the methods and practices usually employed by
(6) corporations free of any domination or control of any
(7) kind? That's in the bankruptcy --
(8) A I remember that language.
(9) Q Is it also not the case that the bankruptcy court in
(10) the Walker bankruptcy proceeding said that, "No act or
(11) omission of Anaconda or Independent, their officers,
(12) agent, and employees, or any of them, establishes any
(13) evidence, constitutes or proves any domination or control
(14) by them or any of them over the debtor or any debtor's
(15) acts, business, or affairs or constitute fraud or occasion
(16) damage or prejudice to or violated any right of the debtor
(17) or any of its stockholders." They also said that?
(18) A Yes.
(19) Q And finally, isn't it true then the bankruptcy
(20) decision of 1945, the Eastern District of California said
(21) that "the debtor" -- that's Walker Mining Company;
(22) correct?
(23) A Yes.
(24) Q "Is and has never at any time been the alter ego or
(25) instrument or department of Anaconda or of Independent."

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- (1) They said that, too?
(2) A Yes.
(3) Q And the question before the bankruptcy court was
(4) whether the would-be creditors of Walker Mining Company
(5) could get to the assets of Anaconda or Independent to pay
(6) the creditor's debts; correct?
(7) A I believe so.
(8) Q So the issue of control, that issue of control is the
(9) very same issue that's before this Water Board today;
(10) isn't it?
(11) A Well, in part I think that may be a legal question.
(12) But the kinds of things I look at in terms of the
(13) operation of the facility, I don't see a lot of language
(14) in there that's addressing actual day-to-day operations.
(15) And those are the kinds of things that I was researching.
(16) And regardless of what the bankruptcy court said, the
(17) evidence that I reviewed shows that these, Anaconda and
(18) Inspiration officials, were directing the activities at
(19) the Walker Mine.
(20) Q But Doctor, the evidence that you're talking about in
(21) the bankruptcy court would be in the records of the court
(22) themselves, which you did not review; correct?
(23) A I did not review those records; correct.
(24) Q All right. Thank you very much.
(25) CHAIRPERSON LONGLEY: Thank you. Any further

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- (1) cross-examination by ARCO?
(2) MR. DUFFY: No.
(3) CHAIRPERSON LONGLEY: Thank you very much, sir.
(4) At this point in time then we're ready for
(5) cross-examination by the Forest Service. Is there a
(6) representative of the Forest Service here?
(7) Seeing none, we'll go on to testimony by ARCO.
(8) MR. DUFFY: I have one housekeeping in my
(9) cross-examine --
(10) CHAIRPERSON LONGLEY: Excuse me. Mr. Duffy, I'm
(11) getting requests from my Board up here that we take a
(12) short break.
(13) (Off record)
(14) CHAIRPERSON LONGLEY: Ready for ARCO.
(15) MR. DUFFY: Good afternoon, again.
(16) William Duffy for Atlantic Richfield Company.
(17) Just a housekeeping note, I have handed to Kiran
(18) the signed copy of Exhibit 296, which I referred to in Mr.
(19) Huggins' testimony. That was the transmittal letter of
(20) the remediation plan from the Regional Board to the State
(21) Board.
(22) Another housekeeping note I'd like to make is to
(23) move for submittal of the pre-filed materials submitted
(24) with both the February 20th case-in-chief and rebuttal
(25) materials, as well as all the exhibits that accompanied

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- (1) that into the record.
(2) Any objections? Thank you.
(3) And then one last housekeeping point is we did
(4) register an objection to the pre-filed -- in the
(5) pre-hearing conference to Exhibit 55, which was an
(6) attachment to Mr. Huggins' affidavit and was referred to
(7) in the testimony of Dr. Quivik. That document is double
(8) hearsay. It being offered for the truth of the matter
(9) asserted. And we would object to its use as evidence for
(10) a point of law that must be satisfied in the prosecution's
(11) case -- point of fact -- excuse me -- in the prosecution's
(12) case.
(13) MR. TAURIAINEN: Can I have a response to that
(14) objection?
(15) LEGAL COUNSEL MAYER: I think that would be
(16) appropriate, and I think it's appropriate to make a
(17) ruling.
(18) CHAIRPERSON LONGLEY: The item number was what?
(19) MR. DUFFY: Exhibit 55 attached to Mr. Huggins'
(20) affidavit or submitted with his submittal affidavit.
(21) CHAIRPERSON LONGLEY: Certainly.
(22) BOARD MEMBER RAMIREZ: I think the prosecution
(23) wants to respond.
(24) CHAIRPERSON LONGLEY: Yes.
(25) MR. TAURIAINEN: There's two purposes for

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- (1) introducing that evidence that -- the prosecution
(2) introduced the evidence.
(3) On Dr. Quivik's slide where it was introduced, it
(4) was introduced as evidence of public declarations that
(5) Anaconda operated the Walker Mine property. It's actually
(6) not a hearsay purpose. Hearsay is an out-of-court
(7) declarative statement entered for the truth of the matter
(8) asserted. In that case, we were submitting it along with
(9) several other documents to demonstrate that it was
(10) publicly declared at various points in time.
(11) CHAIRPERSON LONGLEY: Before we go any further,
(12) there's considerable evidence being submitted to the Board
(13) on this. Could you point out to me where I could find
(14) Exhibit 55?
(15) MR. TAURIAINEN: Exhibit 55 is in the prosecution
(16) team's rebuttal packet. I'm not sure how that may have
(17) been packaged with your --
(18) CHAIRPERSON LONGLEY: I'd just like to be
(19) directed how far back it is.
(20) BOARD MEMBER RAMIREZ: Just give us a second.
(21) EXECUTIVE OFFICER CREEDON: Quite a bit.
(22) BOARD MEMBER RAMIREZ: It's towards the back
(23) after the pink.
(24) CHAIRPERSON LONGLEY: Those were not well
(25) labeled, I might point out.

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- (1) BOARD MEMBER RAMIREZ: Here it is.
(2) Dr. Longley, there's only like seven pages before
(3) the end.
(4) CHAIRPERSON LONGLEY: Have you found it? That's
(5) it. I was starting with 42 in the upper left-hand corner.
(6) BOARD MEMBER RAMIREZ: Yes.
(7) LEGAL COUNSEL MAYER: Yes.
(8) CHAIRPERSON LONGLEY: Proceed.
(9) MR. TAURIAINEN: Exhibit 55 is a newspaper
(10) article from 1920. November 30th, 1920.
(11) As I've mentioned, Dr. Quivik sited to it in his
(12) presentation for the point that there were at various
(13) times public declarations that Anaconda operated the site.
(14) We were offering it at that time to demonstrate that there
(15) were such public declarations. That actually does not
(16) rely on the truth of anything in the newspaper article,
(17) which takes it out of the hearsay realm entirely. It's
(18) not hearsay.
(19) But not to make this an evidence class lecture,
(20) we're also offering it for a purpose where it could be
(21) considered hearsay. We're offering it. Dr. Quivik sites
(22) to it in his expert report various points on pages 13
(23) through 17 for -- as one of the foundational documents for
(24) his opinion that Anaconda did operate the site. He also
(25) sites several other documents in that report together

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- (1) for -- hearsay is admissible in these types of proceedings
(2) provided that there is other non-hearsay evidence to
(3) support the finding. Therefore, if it is admitted as
(4) hearsay, it is permissible hearsay. So thank you.
(5) LEGAL COUNSEL MAYER: Dr. Longley, I'd like to
(6) advise you on the particular objection. I advise that you
(7) overrule the objection, largely for the similar reasons
(8) that the prosecution team just explained.
(9) Without going into too much detail on the public
(10) declaration purpose of the exhibit, that could be a basis
(11) for overruling the objection. But one that you're
(12) probably most familiar with is the Government Code Section
(13) 11513 that applies to Regional Board adjudicative
(14) proceedings which says that hearsay upon objection is
(15) admissible as long as it's not in it for the purposes of
(16) supplementing or explaining other admissible evidence in
(17) the record and as long as this particular exhibit is not
(18) the sole support for any particular finding.
(19) As Mr. Tauriainen explained, there are other
(20) elements in the record that are being offered to support
(21) findings regarding control of the Walker Mine. And so it
(22) does not appear that this Exhibit 55 is being used as a
(23) sole support for any findings in either Cleanup and
(24) Abatement Order.
(25) For those reasons, I would recommend that you

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- (1) would overrule the objection.
(2) CHAIRPERSON LONGLEY: In the past, this Board has
(3) revisited that Government Code and I'll rule accordingly,
(4) overruled or denied. The practice of what this Board,
(5) given that Government Code to accept this on the basis of
(6) what was just explained by Mr. Mayer.
(7) MR. DUFFY: Thank you. Appreciate your
(8) consideration of the motion.
(9) I'll be very brief in my opening remarks, because
(10) I think the important thing is to have the Board have an
(11) opportunity to hear from the Atlantic Richfield witnesses
(12) who are in the room with us today.
(13) There's a couple points I want to revisit before
(14) we get to that. The first is the burden of proof. I
(15) believe, as you might well imagine, that the Board made
(16) the right ruling in the sense that you have granted the
(17) motion that the burden of proof is on the prosecution team
(18) to prove their case by a preponderance of the evidence.
(19) What does that mean? You're sitting there
(20) wondering, what does it mean? What it means for us and
(21) the reasons we're making this important point to the Board
(22) is that that requires that the prosecution prove each
(23) element of its case in order to succeed in this matter and
(24) support the issuance of a CAO to the Atlantic Richfield
(25) Company.

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- (1) That means, further, that in the context of the
(2) Best Foods case, which we agree is the standard here for
(3) direct liability, the US Supreme Court, that the Board
(4) must hear evidence -- direct evidence from the prosecution
(5) team and the witnesses in the record that supports the
(6) finding that Anaconda and/or IS&R participated in
(7) pollution-causing activities. And folks, you're not going
(8) to hear that because they have admitted in their brief
(9) that they don't have any evidence on that very point.
(10) I'm taking you to the prosecution's opening brief
(11) where it says -- referencing the wrong standards.
(12) "Substantial evidence in the record demonstrates that
(13) Anaconda International's control was so pervasive that it
(14) is reasonable to assume that they did" -- emphasis from
(15) the prosecution team -- "direct placement of waste at the
(16) mine and tailings." They're asking you in short to assume
(17) facts that are not in evidence. That, you cannot do.
(18) You're going to hear from three witnesses today.
(19) Two of them have studied the record extensively, and
(20) they're going to offer you their observations in the lens
(21) to which -- their expertise to which they bring this case.
(22) Dr. Terry McNulty is the life-long mining
(23) engineer. He grew up in mining camps. He's lived the
(24) mining life and worked the mining life for many years. He
(25) will testify about the actual activities of the Walker

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- (1) Mine, who's doing what, and what were the activities in
(2) which Anaconda and IS&R had interest.
(3) The second witness you'll hear from is Mark
(4) Lombardi. He will testify about the response actions that
(5) have taken place at the mine to date, as well as other
(6) issues related to the condition of the mine site. And
(7) I'll speak more to that in a minute.
(8) And then the third witness is William Haegele.
(9) Mr. Haegele is a forensic accountant and he has reviewed
(10) of the record from the perspective of an accountant and
(11) will be prepared to provide his thoughts on what does the
(12) record show as to the relationship between these parties.
(13) Because at the end of the day, we believe you
(14) will conclude there simply is no evidence that Anaconda
(15) and IS&R directed pollution-causing activities at the
(16) Walker Mine. Thank you. I think I'll rest on that and
(17) save the time.
(18) Dr. McNulty will be the first speaker.
(19) MR. McNULTY: Thank you, Mr. Duffy, ladies and
(20) gentlemen of the Board, Dr. Longley.
(21) I have taken the oath. And I'm going to try to
(22) quickly offer a miner's perspective on the Walker Mining
(23) Company. This slide has already been used. I'm going to
(24) go directly to slide five, which is one portrayed here.
(25) --o0o--

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- (1) MR. McNULTY: I'd like to talk about the Walker
(2) Mining Company and its relationship to its major
(3) shareholders, the Anaconda Company and the International
(4) Smelting and Refining in the context of my background and
(5) to explain my perspective on how the company worked. I'd
(6) like to do that in the context and the framework of six
(7) phases of resource development beginning with exploration
(8) and ore reserve development.
(9) And Dr. Quivik mentioned that Reno Sales,
(10) Anaconda's Chief Geologist, developed the technique of
(11) applying mine mapping to underground exploration to
(12) looking into the future, looking into the rock and seeing
(13) where the future reserves would be that would ensure
(14) continuity of operation of that mine.
(15) He was arguably the best in the business. Since
(16) Anaconda was a major shareholder, I think it was
(17) appropriate that Reno Sales' expertise be made available
(18) to ensure that the reserves be defined, developed, and
(19) expanded as effectively as possible.
(20) Certainly, he offered a lot of advise. We know
(21) from the record that it wasn't always taken. And I think
(22) that's appropriate with Walker Mining Company being a
(23) public company, standing on its own.
(24) Moving to mine development, this is where
(25) openings are made into an ore body to provide access

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- (1) tunnels, drifts, cross-cuts, raises, to allow workers and
(2) equipment to go into the mine to drill and blast rock,
(3) remove it, and produce ore.
(4) Whereas, exploration was almost entirely done in
(5) the host rock. And let me briefly explain that the ore
(6) body was a quartz bay unit clearly defined, white bonded
(7) on two sides by dark hard rock that contained essentially
(8) no copper sulfide mineralization. So their development
(9) work was nearly entirely in that wall of rock, country
(10) rock so-called.
(11) Mine development, on the other hand, was made
(12) peculiarly efficient because of the geology at Walker
(13) because of the delineation and the configuration of that
(14) ore deposit. It was possible for nearly all development
(15) to be done in the ore, not in waste.
(16) So the amount of waste actually produced
(17) concurrently with ore removal was very small, probably
(18) five percent or less of the total tonnage of rock removed.
(19) Mine development, the equipment used in exploration were
(20) essentially the same amount as those used in mine
(21) development. They use the same equipment. They had the
(22) same training. They worked for the Walker Mining Company
(23) foremen, who were employees of Walker Mining Company.
(24) And moving onto ore extraction, the production of
(25) the ore from underground, the employees of Walker Mining

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- (1) Company may have come from the Anaconda Company or from
(2) International Smelting and Refining. But they didn't wear
(3) two hats. They were employees of the Walker Mining
(4) Company and did not put the interests of Anaconda or IS&R
(5) above the interests of the Walker Mining Company. They
(6) rode for the brand in the sense they were paid by Walker
(7) Mining Company. They managed that property the best way
(8) they could.
(9) The ore, once it was broken in the stope,
(10) so-called -- was trimmed to the surface down to the 700
(11) level portal -- into the portal out to the location of the
(12) concentrator. It was crushed, delivered to the
(13) concentrator by conveyor belt, and ground to a fine size
(14) about like beach sand and exposed to the floatation
(15) process for concentrating of copper sulfide minerals,
(16) primarily chalcopyrite, the copper iron sulfide.
(17) Ore extraction was managed by Walker Mining
(18) Company foreman, directed by their Geologist and Chief
(19) Engineer and carried out by Walker Mining Company
(20) employees. There is no evidence that I've seen that ore
(21) extraction was influenced by Anaconda and IS&R, except in
(22) the late 1930s when the Walker Mining Company was becoming
(23) uncompetitive because of higher costs. And acting I think
(24) in proper best interests for their shareholders,
(25) management of Anaconda and IS&R became increasingly

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- (1) involved in the operations of the Walker Mine.
(2) But they weren't on the ground doing it. That
(3) work was being done by Walker employees. The ore was
(4) concentrated, as I mentioned, and there were two products.
(5) There was concentrate, which was put into an aerial
(6) tramway, hauled eight miles or a little more to a railroad
(7) siding, and tailings were produced.
(8) And the management of the tailings facility was
(9) exclusively in the hands of the concentrator
(10) superintendent or mill superintendent. Directing his
(11) hourly employees to be in charge of how a tailing slurry
(12) was delivered to the tailings pond, determining whether
(13) the enclosing berm that enclosed the tailings should be
(14) raised to provide additional capacity. None of this was
(15) done through the direction or under the direction of
(16) Anaconda or IS&R management.
(17) And time is short, so I'll just summarize that
(18) there was certainly involvement in exploration and
(19) development. I think it was appropriate because Reno
(20) Sales and to a lesser extent Paul Billingsly who was Chief
(21) Geologist for IS&R knew their stuff. They were
(22) exploration geologists. They weren't mine geologists.
(23) They had an involvement in the first phase of exploration
(24) and development, through mine development. And I've seen
(25) no evidence of control of the concentrating stuff or waste

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- (1) disposal or product haulage by Anaconda or IS&R
(2) management.
(3) Thank you.
(4) CHAIRPERSON LONGLEY: Any questions from members
(5) of the Board?
(6) Thank you, sir.
(7) MR. DUFFY: Excuse me.
(8) BOARD MEMBER RAMIREZ: Actually, I do have two
(9) questions. So he can answer just from there.
(10) So you were testifying that Reno Sales was -- you
(11) know, someone who had like a great expertise and he was
(12) hired by this company. So, of course, he would serve all
(13) the companies that that company had an interest for. Is
(14) that what you were saying?
(15) MR. McNULTY: I was saying that the Geologist and
(16) Chief Engineer at Walker Mining Company, an employee of
(17) that company, was a mine geologist. I need to make a
(18) distinction between mine geology and prospecting and
(19) exploration geology.
(20) Those geologists, Drew Bay and others, understood
(21) how to do short-range geological projections into an ore
(22) deposit in order to direct miners, mine foreman, where
(23) they should be drilling and blasting and extracting ore,
(24) among other reasons to ensure that the feed of the
(25) concentrator was a fairly constant composition. That was

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- (1) their expertise.
(2) Sales and Billingsly, particularly Sales, kind of
(3) developed the technology of using underground mine maps --
(4) and Dr. Quivik mentioned this -- as a tool to look into
(5) the rock and to determine the direction of mineralization.
(6) Does that answer your question, ma'am?
(7) BOARD MEMBER RAMIREZ: Yeah, that does, because
(8) that's what I thought I got out of your presentation.
(9) And then you were -- were you also alluding to
(10) the fact that you believe there were no tailings that
(11) occurred based on the way that they were processing the
(12) product as they were mining?
(13) MR. McNULTY: No, ma'am. I may have misspoken.
(14) Tailings were certainly produced as a waste product from
(15) concentration in the copper sulfide minerals.
(16) The point I was trying to make is in the first
(17) phase of prospecting, exploration, and development, nearly
(18) all of that work was done in the country rock so-called
(19) the aura of boundary rock outside of the ore deposits. So
(20) any waste that they produced -- and I think it was not
(21) very much -- didn't contain significant copper
(22) mineralization.
(23) BOARD MEMBER RAMIREZ: Okay. Thank you for that
(24) clarification.
(25) MR. McNULTY: You're welcome.

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- (1) MR. BRUEN: I don't know if prosecution team has
(2) cross.
(3) CHAIRPERSON LONGLEY: We'll do cross after you're
(4) done.
(5) MR. BRUEN: Let me ask just two clarifying
(6) questions, if I may.
(7) BY MR. BRUEN:
(8) Q Dr. McNulty, as I understand you have a doctorate
(9) from Colorado School of Minds?
(10) A **That's correct.**
(11) Q You've worn the awarding metal of merit from the
(12) American Mining Company Hall of Fame?
(13) A **That's correct.**
(14) Q Your testimony with respect to Reno Sales is that he
(15) and Anaconda had some activities -- I'm looking at your
(16) slide now -- with respect to locating and getting to the
(17) valuable resource.
(18) A **That's correct.**
(19) Q That's what An investor was interested in; correct?
(20) A **Yes.**
(21) Q But with respect to the mining operation which
(22) contained -- which generated the waste in the last step,
(23) is it your testimony that all of that activity was managed
(24) and undertaken exclusively by people who worked only for
(25) Walker Mining Company?

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- (1) A **That is my testimony.**
(2) Q Thank you.
(3) BOARD MEMBER SCHNEIDER: Is that a little bit
(4) like I milk the cow, but I'm not responsible for what came
(5) out of the other end of the cow and went into the lagoon.
(6) or wherever it went?
(7) MR. BRUEN: May I follow up on that?
(8) CHAIRPERSON LONGLEY: You've been asked to. Go
(9) ahead.
(10) MR. BRUEN: If I may respond to that, Mr.
(11) Schneider I'd be glad to ask Dr. McNulty, too.
(12) No, there are two aspects of mining as we're
(13) pointing out here through the six phases. There's
(14) something that an investor might be interested in which is
(15) finding out where the valuable minerals are. And the
(16) investor provided some suggestions there. They weren't
(17) always followed.
(18) But in terms of actually doing mining, which is a
(19) more pedestrian thing, lots of people who know how to
(20) mine, that was the Walker Mining Company that did that all
(21) by itself.
(22) So the question before the house is whether or
(23) not Anaconda controlled the disposal of waste and that
(24) disposal of waste was generated by the people who actually
(25) mined the ore.

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- (1) BOARD MEMBER SCHNEIDER: I guess that's a little
(2) what I mean is how can you be a miner or mine geologist
(3) and not know the end result is going to be mine waste and
(4) tailings that are going to --
(5) MR. BRUEN: Again, without arguing it all, it's
(6) the question of whether they directed and controlled the
(7) disposal of waste. And as Dr. Quivik said, he's found no
(8) evidence of that. We submit there is no evidence.
(9) BOARD MEMBER SCHNEIDER: I believe we have a
(10) friend in common, the late John Livermore.
(11) MR. McNULTY: I knew him well and grieved his
(12) passing.
(13) BOARD MEMBER SCHNEIDER: Thank you.
(14) MR. DUFFY: Just want to briefly introduce the
(15) next witness, who will be Mark Lombardi with AMEC. He's a
(16) professional registered geologist in the state of
(17) California.
(18) I want to put in context why some of the
(19) testimony you're going to hear from Mr. Lombardi
(20) specifically in addition to describing conditions at the
(21) mine site, he's going to speak to the effects that the
(22) Regional Board's remedy was taken in November 1987. What
(23) effects that remedy has had on the environment. And it's
(24) important to understand that that remedy has had some
(25) negative effects on the environment. It's our position

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(1) that the Board -- the Regional Board, not Atlantic
(2) Richfield, responsible for operating and maintaining that
(3) remedy and any actions that may be required because of it
(4) as it is a remedy that was designed and implemented by the
(5) Board.

(6) I say this for two reasons. First, the state of
(7) California did enter into settlements with several owners
(8) and operators, absolved them of liability for the site and
(9) took action.

(10) Secondly is the testimony you're going to hear
(11) from Mr. Lombardi, which is that while the plug did work
(12) and stop metals coming out of the mine, the plug has also
(13) forced the metals to go into the deeper groundwater
(14) system. That deeper groundwater system is impacting a
(15) broad area of surface water and groundwater. And that's
(16) one of the points that Mr. Lombardi will explain in his
(17) testimony. Thank you.

(18) MR. LOMBARDI: Good afternoon. Thank you.

(19) I have been -- I did take the oath. I know we're
(20) under a time crunch so I'll try to move through my
(21) presentation fairly quickly. Most of this information or
(22) all of this information is provided in my expert report
(23) that was submitted for this case.

(24) --o0o--

(25) MR. LOMBARDI: So in overview of my presentation,

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(1) I'd first like to talk about the actions of the owners and
(2) operators after Walker Mining Company that explains the
(3) current site conditions. I'd like to talk about the fact
(4) Walker Mine is one integrated site. It's not two sites.
(5) Like to talk, as Bill mentioned, that the Regional Water
(6) Quality Control Board's response has acted to spread the
(7) contamination at the site. And like to also talk about
(8) the fact that the current environmental conditions are
(9) caused by the mining wastes, not by the development
(10) activities.

(11) --o0o--

(12) MR. LOMBARDI: So my first point, this is a time
(13) line. I think we've seen the time line. Been established
(14) when Walker Mining Company owned and operated at the site.
(15) Walker Mining Company was there from 1913 to 1941. Went
(16) bankrupt in 1944. After that, there were a number of
(17) owners and operators at the site. Most notably, Robert
(18) Barry and his company Calicopia. And under them, there
(19) were a number of leasees that looked to reopen mining and
(20) had different activities at the site, including Miranda,
(21) Amex, Coneco, that occurred over 40 years at the site.
(22) There is a number of activities they did that are well
(23) documented in the record.

(24) Following them, Cedar Point Properties, my
(25) understanding, current owner that they have since

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(1) abandoned it. It's been established the Water Board has
(2) been involved since the late '50s, installed the plug in
(3) '87, and the U.S. Forest Service lined Dolly Creek across
(4) the tailings in 2007.

(5) --o0o--

(6) MR. LOMBARDI: So let's look here real quick at
(7) some protective features that were left in place by Walker
(8) Mining Company when they closed the site. Those features
(9) have since been abandoned by subsequent property owners.
(10) The first being Dolly Creek. Dolly Creek was diverted by
(11) Walker Mining Company around the northern end of the
(12) tailings impoundment. There was no water flowing across
(13) the tailings impoundment when Walker Mine left the site.

(14) The examination of this aerial photo also shows
(15) that the tailings impoundment berm was in good shape and
(16) 41 when they left. What you can't see off to the east in
(17) this photo, we also constructed diversionary features to
(18) try to limit inflow of groundwater -- surface water into
(19) the subsidence features that we have been talking about.

(20) We looked at the 1954 photo after subsequent
(21) property owners took over. You can see that the
(22) diversionary feature was allowed to fall into disrepair
(23) and fail. That caused Dolly Creek to flow across the
(24) tailings impoundment, which we've seen when the creek flow
(25) across the tailings of the impoundment. That impairs

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(1) water quality.

(2) We can also see those subsequent owners did not
(3) maintain the tailings impoundment dam. They allowed it to
(4) fail. And you can see here this pattern is erosional
(5) feature, and that demonstrates that the tailings were
(6) allowed to erode into Little Grizzly Creek.

(7) --o0o--

(8) MR. LOMBARDI: So why do we say Walker Mining is
(9) one integrated site. So this is an aerial overview. This
(10) area up here in blue, this is the area where the ore body
(11) was. This line coming down, this is where they drove that
(12) 700 level tunnel to access that ore. And as Dr. McNulty
(13) said, this was done through country rock. This is where
(14) the mill, the mine concentrator was. And this is where
(15) Walker Mining Company placed tailings on site prior to
(16) 1918. And then here's the main tailings facility.

(17) --o0o--

(18) MR. LOMBARDI: So the mill site, the underground
(19) workings and tailings facilities, they're all part of the
(20) same hydrologic system. Water flows downhill. So what
(21) you do on one part of the site up hill, it will pick up
(22) contaminants. It flows downhill and effects what happens
(23) on other portions of the site. So you need to keep this
(24) in mind. You need to have integrated remedy in order to
(25) have a proper solution for the site.

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- (1) --o0o--
(2) MR. LOMBARDI: So let's talk about the Regional
(3) Water Quality Control Board's response action. Prior to
(4) installation of the plug, SRK, the Water Board's
(5) consultant, indicated through their studies that the major
(6) source of water into the mine was through surface flow
(7) through subsidence features. And their recommendation
(8) part of that remedy include control and sealing of the
(9) subsidence features. Inflow to those subsidence features
(10) wasn't adequately addressed. When the Water Board
(11) installed the plug, that allowed the mine workings to
(12) flood.
(13) Data collected from the Water Board over time as
(14) Mr. Huggins talked about shown here, this is a hydrograph
(15) that shows how the water level built up in the workings,
(16) but it also shows it fluctuates. The Water Board's
(17) contractor pointed out before the plug that the mine loses
(18) water to deep groundwater. And that's why they stress the
(19) importance of controlling water into the mine because the
(20) more you let in, the more acid mines gets generated, the
(21) more that goes out to deep groundwater. This was known
(22) before the plug was put in by the Water Board.
(23) Instead, the Board put the plug in, but they did
(24) an inadequate job of reducing that inflow into the mine
(25) workings. So now what happens is surface water goes in

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- (1) and that water level inside the workings goes up and down.
(2) And it goes up and down in that zone and sulfide minerals
(3) so it gives it what it needs to generate acid. That's
(4) water and that's oxygen. Essentially, the plug without
(5) limiting the inflow, it's created an AMD, acid mine
(6) drainage generating machine. This thing is generating
(7) acid mine drainage. That is being lost to groundwater.
(8) --o0o--
(9) MR. LOMBARDI: So what's happening -- let's look
(10) at this. Here's the hydrograph how it's fluctuating.
(11) It's fluctuating between two elevation contours, a 6300
(12) foot elevation and 6400 foot elevation. If we take that
(13) and superimpose that on this aerial photo, those contours
(14) are shown by the blue line. We go and we look at water
(15) quality monitoring data collected by the Board over time
(16) on south Ward Creek, Middle Ward Creek, and Nye Creek.
(17) These are average concentrations here shown. When you
(18) look at them over time, they show an increasing
(19) concentration with time. That's a direct reflection that
(20) the water that's been impounded behind this plug that's
(21) going out to deep groundwater is now migrating out and
(22) impacting surface water that wasn't impacted prior to
(23) installation of the mine plug by the Water Board.
(24) --o0o--
(25)

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- (1) CHAIRPERSON LONGLEY: I have a question for you
(2) here. So you're saying that acid mine drainage is leaking
(3) is causing an impact on groundwater. Did I hear you
(4) correctly?
(5) MR. LOMBARDI: It's causing an impact on
(6) groundwater and surface water.
(7) CHAIRPERSON LONGLEY: As it resurfaces, right, as
(8) it meets the stream.
(9) MR. LOMBARDI: Correct. The Board knew before
(10) they put the plug in it would impact groundwater.
(11) CHAIRPERSON LONGLEY: And as I look at this
(12) graphic that you have up, the map, the lower part of it is
(13) in the general direction of flow; am I correct?
(14) MR. LOMBARDI: Well, there's topography here that
(15) you can't see. So these streams up here are flowing
(16) north. These down here are flowing to kind of the
(17) southwest.
(18) CHAIRPERSON LONGLEY: To the southwest, right.
(19) I guess what concerns me is we're talking about
(20) acid mine drainage. And in every case here, pH is
(21) alkaline. So if you're going to --
(22) MR. LOMBARDI: I'm not showing pH. I'm sorry. I
(23) didn't explain that well.
(24) What's shown here, these are dissolved copper
(25) concentrations in groundwater. When you look at the data,

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- (1) I don't have time to go over the complete data set. When
(2) you look at this data graphed over time, what it shows is
(3) those concentrations in surface water have increased over
(4) time. And they've done so as this flooded workings have
(5) been allowed to fill and that water has sit in there and
(6) seeped out through groundwater and is now emerging through
(7) seeps to surface water.
(8) CHAIRPERSON LONGLEY: So that's your hypotheses.
(9) Has there been any tracer work or anything else done to
(10) substantiate in fact that groundwater is reaching these
(11) streams?
(12) MR. LOMBARDI: I wouldn't call it a hypothesis.
(13) That's my conclusion based on the data. There hasn't been
(14) any tracer studies. The Water Board's contractor SRK made
(15) numerous recommendations prior to the plug being
(16) installed. And one of those was that there be a
(17) monitoring program put in place. And to my knowledge,
(18) that hasn't been done.
(19) CHAIRPERSON LONGLEY: Thank you. Proceed.
(20) MR. LOMBARDI: Just one other example of loading.
(21) We see as the Dolly Creek flows past the mill site, it
(22) picks up loading. And these are dissolved copper
(23) concentrations, over time average concentrations. You can
(24) see it going from 1.7 to 15.5. That's picking up loading
(25) from the tailing that were deposited there by Walker

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- (1) Mining Company. Also from seepage from a pond that was
(2) constructed by Callicopia Corporation.
(3) And the other point I'd just like to point out
(4) real quick here is below the mill site and above the mine
(5) tailings feature, you see the concentrations go back up.
(6) And again, that's a fact that the mine workings have been
(7) flooded are at higher elevation. They're upgradient.
(8) That water has been impacted. That impacted water is
(9) migrating down from deep groundwater. This is something
(10) that was supported by SRK prior to plug installation that
(11) this would happen. And now you see it's seeping into the
(12) water here and effecting concentrations before it even
(13) gets to tailings and common.
(14) CHAIRPERSON LONGLEY: Are all the numbers
(15) there -- some back shaded in yellow and others in green.
(16) Is that all copper concentrations?
(17) MR. LOMBARDI: That's all copper concentrations.
(18) What I don't have time to cover, the green is just the
(19) concentrations on Little Dolly Creek -- Little Grizzly
(20) Creek, and the yellow just show concentrations coming down
(21) Dolly Creek.
(22) CHAIRPERSON LONGLEY: You don't have to worry
(23) when it's on my time.
(24) MR. LOMBARDI: Okay.
(25) CHAIRPERSON LONGLEY: Okay. Proceed.

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- (1) MR. LOMBARDI: Thank you.
(2) --o0o--
(3) MR. LOMBARDI: So my last point I'd like to cover
(4) real quickly is that the current environmental conditions
(5) are due to the mining and milling of the ore as has been
(6) discussed. That ore contains sulfide minerals. When it
(7) weathers, it produces acid mine drainage. The country
(8) rock that's developed through exploration, that's getting
(9) to that ore body, whether you're driving a tunnel,
(10) drilling a hole, you produce rock. That rock is produced
(11) from exploration and country rock.
(12) That rock has minimal sulfides. It doesn't
(13) weather to produce acid mine drainage. The Board's
(14) contractor, Westeck, in their report of 1992, they came
(15) out and characterized the mining waste that are in the
(16) mill site area. The tailings that were deposited by
(17) Walker Mining Company, some of the miner ore that's at the
(18) surface and then the country waste rock and their backs
(19) that up. The country rock doesn't weather to produce acid
(20) mine drainage.
(21) --o0o--
(22) MR. LOMBARDI: And that concludes my
(23) presentation. Thank you.
(24) CHAIRPERSON LONGLEY: Based upon your
(25) professional experience, if the Regional Board had taken

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- (1) no actions, would there have been considerable acid mine
(2) drainage released to the creek?
(3) MR. LOMBARDI: There would have been and more of
(4) a point source.
(5) CHAIRPERSON LONGLEY: But it would have impacted
(6) the creek throughout its -- as it had previously. It
(7) would be a reasonable assumption.
(8) MR. LOMBARDI: That would be a reasonable
(9) assumption, yes.
(10) CHAIRPERSON LONGLEY: Thank you.
(11) MS. WANG: Dr. Longley, I'd like to ask you in
(12) your discretion to allow us a little more time. I can
(13) attest to the fact that we have tried very hard to keep to
(14) our time and planned extensively to keep to our time, but
(15) despite our best efforts, we're running behind.
(16) My specific request is that you allow us 13
(17) additional minutes. Ten minutes -- that would be a total
(18) of 15 all together, because we have two minutes on the
(19) clock. That would give us ten minutes to allow you to
(20) hear Mr. Haegele's testimony and save us five minutes to
(21) offer a closing statement
(22) CHAIRPERSON LONGLEY: I'll do even better than
(23) that. I'll give you 15 minutes so that gives you 17.
(24) MS. WANG: Thank you. We appreciate it. I'd
(25) like to introduce William Haegele.

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- (1) BOARD MEMBER SCHNEIDER: That goes to both sides,
(2) of course.
(3) CHAIRPERSON LONGLEY: We will see if the
(4) prosecution team --
(5) BOARD MEMBER SCHNEIDER: If they request it, they
(6) would get it.
(7) CHAIRPERSON LONGLEY: They will get something.
(8) MS. WANG: Thank you. Dr. Haegele is a forensic
(9) partner in the San Francisco office of KPMG, an
(10) international accounting firm. He has certified public
(11) accountant, certified insolvency restructuring advisor,
(12) and certification in financial forensics.
(13) To put his testimony in context for the Board, as
(14) you heard, Mr. Tauriainen described at the beginning of
(15) this case the US Supreme Court Best Foods case requires --
(16) holes that shareholders only liable for liabilities of the
(17) companies in which they invest, if their interaction with
(18) those companies or the facilities of the companies exceeds
(19) corporate norms.
(20) Mr. Haegele is our expert that will describe
(21) corporate norms and whether the behavior of the Anaconda
(22) companies exceeded the corporate norms.
(23) He will also directly repute Dr. Quivik's
(24) conclusion that the Anaconda Companies managed the Walker
(25) Mine alongside the Walker Mining Company.

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- (1) MR. HAEGELE: Good afternoon. I'm William
(2) Haegele. I'm going to make a quick correction. I'm not a
(3) doctor. I'm a CPA and also a certified financial
(4) forensics. I'll jump right to it. I want to use my time
(5) judiciously that you graciously gave us.
(6) --o0o--
(7) MR. HAEGELE: So I was asked to analyze the
(8) documents in this matter to understand the relationship
(9) between, on the one hand, the Anaconda Companies and WMC,
(10) their relationship, and also to gain understanding of
(11) Anaconda Company's involvement in the operations of the
(12) Walker Mine company.
(13) To complete that task, I considered all available
(14) documents. I looked at all the accounting records, the
(15) full set of historical documents. I read them. I
(16) analyzed them. I looked at the accounting records,
(17) finance records, all the correspondence, governance
(18) records, and the bankruptcy records that exist.
(19) --o0o--
(20) MR. HAEGELE: After looking at those documents
(21) and analyzing them, I was able to reach three opinions
(22) supported by those documents. The first opinion is that
(23) the Anaconda Companies provided typical investor
(24) monitoring and oversight. They invested in the Walker
(25) Mine Company and they monitored it, and that was their

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- (1) invest funds in the form of a loan.
(2) Additionally, here and somewhat unique here is
(3) that the Walker Mine Company was a publicly traded
(4) company. Its stock was publicly traded. The president of
(5) the Walker Mine Company, Mr. Walker, was independent of
(6) the Anaconda Companies. Mr. Walker was the president
(7) before the Anaconda Companies purchased their stock and
(8) after.
(9) Further, Mr. Walker sat on the Board and
(10) represented his interest and the other minority
(11) shareholder interests on that Board. So he was the
(12) president of the company, had a Board seat, and maintained
(13) the president. As I just said, minority shareholders,
(14) they are were represented as well on the Walker Board.
(15) --o0o--
(16) MR. HAEGELE: I brought up the services they
(17) provided, so I'm going to talk about that a little bit.
(18) We heard that they -- the Anaconda companies possessed
(19) geological expertise.
(20) --o0o--
(21) MR. HAEGELE: Their involvement in the
(22) administrative service and geological expertise was
(23) limited.
(24) One thing the Anaconda Companies did, as did
(25) Walker Mine Company as publicly-traded companies, they

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- (1) involvement.
(2) The second opinion supported by the documents is
(3) that the Anaconda Company's involvement in the Walker Mine
(4) was limited. It was limited to administrative services
(5) and the provision of expertise. And that expertise was of
(6) a geological nature.
(7) Now one thing to keep in mind when you make an
(8) investment in a company and you have expertise, it's
(9) perfectly reasonable and permissible and expected that you
(10) would provide that expertise to your investment. As you
(11) heard, they possessed unique geological expertise.
(12) And finally, the documents support that the
(13) Anaconda Companies did not manager the Walker Mine.
(14) --o0o--
(15) MR. HAEGELE: I'm going to get right into typical
(16) investor involvement and what the Anaconda Companies were
(17) doing.
(18) First, overlapping officers and directors.
(19) That's common, and it existed in this case and the
(20) documents clearly show that.
(21) Also, the Anaconda Companies at certain times
(22) provided loans to the Walker Mine Company. That's not
(23) uncommon either. That would be in times of expansion or
(24) times of hardship. You do an evaluation. Investor would
(25) look at it and make a decision as to whether they'll

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- (1) kept track of expenditures. They accounted for things.
(2) Everything they did was accounted for.
(3) I was able to look at the accounting records and
(4) look at the amount of services they provided, and it's
(5) that small little reddish colored sliver up there is 3.7
(6) percent of total sales in 1923 and 1.6 percent of total
(7) sales in 1924.
(8) --o0o--
(9) MR. HAEGELE: Operation of the Walker Mine.
(10) Again, looking at all the historical documents, it's clear
(11) that the Anaconda Companies did not operate the mine. I
(12) know I heard earlier today that there was some question
(13) around I think it was Dr. Quivik's Exhibit 55, which is a
(14) newspaper article that talks about a contract to operate
(15) the Walker Mine.
(16) --o0o--
(17) MR. HAEGELE: There is no such contract. It
(18) didn't exist. I know that because the accounting records
(19) do not reflect the contract. Again these are
(20) publicly-traded companies, both of them. They both have
(21) annual reports.
(22) A contract of that nature county would require it
(23) be disclosed. More importantly, what you see on your
(24) screen is an example of the accounting for expenditures on
(25) the part of Walker Mine Company. You see statement of

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(1) amounts paid to affiliated companies. You see they kept
(2) track of \$15. On the bottom statement, you see an
(3) expenditure for \$1.42. I looked at all the accounting
(4) records that exist, tax returns, annual reports, all of
(5) them. There is no mention. There is no accounting for a
(6) contract to operate the Walker Mine.

(7) --o0o--

(8) MR. HAEGELE: To understand -- I'm going the
(9) wrong way.

(10) I'm going to use -- ask you to take a look at Dr.
(11) Quivik's Figure 2, because I think that's going to help
(12) explain the involvement of the Anaconda Companies in the
(13) Walker Mine operations.

(14) So Dr. Quivik prepares an organization chart. If
(15) you look at it, you'll see that in the middle of the chart
(16) on the bottom half you see a president, vice president,
(17) general manager, and a whole bunch of people underneath
(18) those individuals. There is no connection in this chart
(19) from those individuals that are running the company up to
(20) the Anaconda Companies or the International -- the
(21) International Company.

(22) What you do see is Mr. Sales, a geologist, and
(23) Mr. Weed, you see some lines coming down to the geologist
(24) and the mining engineer. And I'm going to talk about that
(25) briefly. I want to put this in context for you because I

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(1) letters back and forth around those events. Remaining
(2) communications are around -- communications around for Mr.
(3) Sales directing the geology.

(4) --o0o--

(5) MR. HAEGELE: What is also important to
(6) understand is I bring up that the president and general
(7) manager, they're running things. There exists in the
(8) documents reports from the mine manager up to the
(9) president. These reports appear to be prepared on a
(10) weekly basis. There are several of them in the record.
(11) What's interesting is on that side there is an absence of
(12) communications to the Anaconda companies. But these
(13) reports show --

(14) --o0o--

(15) MR. HAEGELE: I'll walk you through it real fast
(16) that -- this is an example of one. It's directed to the
(17) president, Mr. Walker. It says, "find our progress report
(18) and report on concentration operations for the second
(19) period seven days." If you go through this report and
(20) read it, you'll see it talks about the mill.

(21) --o0o--

(22) MR. HAEGELE: Talks about the mine. Talks about
(23) the ore body, the extraction of ore, the results of that.
(24) Other reports talk about profitability. This one talks
(25) about the tramway, how it's operating. Hospital. It also

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(1) said their involvement was limited.

(2) On the right side of this organization chart,
(3) under the direction of the president through the general
(4) manager, the mine foreman, the mill supervisor, where all
(5) the operations are going on, there's 300 to 500 workers.

(6) On the geologist side of it, Mr. Sales is
(7) communicating with eight workers. Mr. Weed is
(8) communicating with eight workers. And the documents I
(9) looked at show that the direction they were giving those
(10) eight workers at times the president or the general
(11) manager disagreed with that, didn't take it up. He made
(12) his own decisions as to that.

(13) Also the directions is coming from Mr. Lyon made
(14) it clear you will not give direction to the miners. So
(15) that's what the documents show.

(16) Looking at these lines, there's two events that
(17) can be depicted by the line going down to the mine
(18) engineer in 1923 and 1929. 1923, they expanded the mill.
(19) There's communications around that expansion that show
(20) that, again, as an investor, Anaconda Companies brought
(21) the expertise in designing that mill. You see
(22) communications on that.

(23) Within six years later, they expanded the
(24) concentrator. You see communications there. Over 20-plus
(25) years of operations, there's two sets of communications,

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(1) talks about the tailings, what they've done. Other
(2) reports have recommendations around the tailings. And
(3) it's signed by the manager. During the course of over
(4) 20 years, there would be a thousand of these reports.
(5) Demonstrates the operation of the mine.

(6) --o0o--

(7) MR. HAEGELE: One thing to think about here is
(8) they weren't operating -- the Anaconda Companies weren't
(9) operating the mine. It's a publicly-traded company. Had
(10) they on a Monday morning sold their stock, divested of it,
(11) Mr. Sales stopped the communication. Mr. Lyon stopped the
(12) communication, stopped the direction of the geology, on
(13) Tuesday, the mine would have opened up.

(14) --o0o--

(15) MR. HAEGELE: These 3- to 500 workers and these
(16) eight workers all would have gone to work. Seven days
(17) later, another report would have been prepared discussing
(18) what was happening. Recommendations to the president.
(19) And the president would have made the decisions to either
(20) act upon those recommendations or not.

(21) I'm happy to answer any questions you might have.

(22) CHAIRPERSON LONGLEY: Questions from members of
(23) the Board?

(24) LEGAL COUNSEL MAYER: I have a question, if you
(25) don't mind.

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- (1) CHAIRPERSON LONGLEY: Certainly.
(2) LEGAL COUNSEL MAYER: Yes. And you had mentioned
(3) in your presentation that there was no contract between
(4) any of the Anaconda Companies and the Walker Mining
(5) Company?
(6) MR. HAEGELE: Yes, sir.
(7) LEGAL COUNSEL MAYER: I'm confused because the
(8) prosecution team had asserted there was an exhibit in the
(9) record. I think it's 167 of the ARCO exhibits. They
(10) mention that in their presentation there was a contract
(11) between certain entities. Could you explain that exhibit
(12) to us?
(13) MS. WANG: Do you have the exhibit? I'm sorry.
(14) I'm not sure what exhibit you're referring to. Do you
(15) have it with you?
(16) He was testifying about a contract to operate the
(17) mine. Is that what you're referring to, that you believe
(18) you have evidence of contract to operate the mine?
(19) LEGAL COUNSEL MAYER: I was talking about a
(20) contract in general. Between -- so I'd just like to know
(21) if you have familiarity with that contract that the
(22) prosecution team referenced in their presentation Exhibit
(23) 167.
(24) MR. HAEGELE: I'm happy to look at 167, but maybe
(25) I'll try to answer your question. I think it will help.

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- (1) I did see contracts. I also saw there was a
(2) smelting contract. That contract, as I would expect, is
(3) accounted for in the accounting records and is disclosed.
(4) What I was referring to is the discussion that
(5) took place earlier around a newspaper article dated
(6) November 30th I think it is in 1920 that makes reference
(7) to -- that the Anaconda Company is under contract with the
(8) Walker copper people to operate the mine.
(9) Couple things. Anaconda Company accounted for
(10) this investment as an investment, not a consolidated --
(11) they did not consolidate the results of this company. If
(12) they would have -- if they were operating this, either
(13) under contract or not, they would have to -- they would
(14) consolidate those results because they controlled it.
(15) Also, you would see in the accounting records
(16) disclosure. It would be a significant contract. It would
(17) be disclosed. Either in the annual reports -- these are
(18) publicly traded companies. They were audited by
(19) independent auditors.
(20) And further, as I looked at the records, it's
(21) clear that they kept track of things. They accounted for
(22) things. So the cost associated with this contract, the
(23) effort put into it, would be in the accounting records.
(24) It is not. So I'm speaking specifically to this contract.
(25) But I'll contrast it to the other contracts that were

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- (1) accounted for.
(2) CHAIRPERSON LONGLEY: Mr. Mayer, do you have any
(3) further questions?
(4) BOARD MEMBER RAMIREZ: I do. I understand your
(5) ultimate conclusion. So I appreciate you being clear on
(6) that point.
(7) Did you find any evidence that would tend to
(8) support the prosecution team's position that there were
(9) day-to-day involvement or some other kind of direct
(10) management activities that the Anaconda Company had with
(11) the Walker Company?
(12) MR. HAEGELE: There were certainly communications
(13) that were at times direct. Mr. Sales at times could be
(14) very direct about what he wanted done. For example, there
(15) was -- the documents show that at periods of time where
(16) the ore body was running out, they went through a period
(17) of prospecting and looking for more ore. And they would
(18) make a decision to spend money or not to do that to drill.
(19) So you see a lot of communications around whether to do
(20) that or not.
(21) But then when they were spending that money, you
(22) have Mr. Sales who knows how -- has the expertise to go
(23) try to find the profitable ore, the direction -- the
(24) communications became very direct. And Mr. Sales would
(25) get very upset if they weren't followed. There were

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- (1) certainly times where the mine manager would do something
(2) that Mr. Sales didn't like in those efforts.
(3) But that in no way would let you reach a
(4) conclusion that they were managing the mine. You look at
(5) the manager's reports done on a weekly basis -- I evaluate
(6) companies on a consistent basis to see what it would take
(7) to extract management, put in new management. What it
(8) would take if you divested of a company or purchased a
(9) company. The effort here, there would be no effort,
(10) because they weren't managing it.
(11) CHAIRPERSON LONGLEY: Thank you.
(12) MS. WANG: Dr. Longley, I just realized this
(13) witness did not claim that he took the oath. Would you
(14) like to do that for a housekeeping measure?
(15) CHAIRPERSON LONGLEY: I should have asked the
(16) question, and I apologize. Did you take the oath, sir?
(17) MR. HAEGELE: I apologize for not stating at the
(18) beginning. I did take the oath, yes.
(19) CHAIRPERSON LONGLEY: Thank you very much. Are
(20) you through with your testimony?
(21) MS. WANG: That's our last witness.
(22) CHAIRPERSON LONGLEY: Very good.
(23) Prosecution team, do you wish to cross-examine?
(24) While you're going through that, just to make sure that --
(25) has anybody -- is there anybody here from the Forest

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- (1) Service who wishes to participate in this hearing? Very
(2) good. Thank you. I see nobody.
(3) MR. TAURIAINEN: Ms. Okamoto is going to start
(4) with Mr. Lombardi.
(5) And before she does, I have -- I guess I have a
(6) housekeeping question that may turn into an objection
(7) regarding Mr. Lombardi's -- the updated version of his
(8) report that was submitted in the March 7th binder.
(9) First, I didn't see that submitted electronically
(10) to the advisory team or the other parties at any point.
(11) And then second, that table that was the updated part,
(12) it's a six-page table towards the back of Mr. Lombardi's
(13) report, sites to Exhibits 263 through 293.
(14) Again, I don't see any evidence that those were
(15) submitted in accordance with the hearing procedures. And
(16) to the extent they're not in the record, I would object to
(17) inclusion of that table and those exhibits and reference
(18) to those exhibits.
(19) MR. DUFFY: It's unfortunate that is brought up
(20) now, Andrew.
(21) But let me respond by saying what we did -- what
(22) was done was no changes to the text of the report. We for
(23) consistency of how the documents were referenced, the
(24) designations in the back of the document, back of the
(25) report, changed so that we had a consistent Exhibit 1, 2,

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- (1) 3, 4, type thing. And the exhibits themselves had been
(2) submitted as part of the materials. There were no new
(3) exhibits added, if that's the claim. It simply was we
(4) changed the designations of the exhibits in the references
(5) at the back of the document.
(6) MR. TAURIAINEN: Again, I don't see where
(7) Exhibits 263 through 293 are and where they were filed.
(8) The original version of the table referenced a number of
(9) TIF documents. They had names that didn't have any
(10) particular semblance with the rest of the exhibits. And
(11) then the new table had references to exhibits. But again
(12) just don't see them here.
(13) MR. DUFFY: I would also point out I don't have
(14) the e-mail with me, but there was correspondence with Mr.
(15) Tauriainen's office when this occurred and it was
(16) disclosed and discussed. I'm sorry I can't be more --
(17) CHAIRPERSON LONGLEY: Mr. Coupe, does this
(18) discussion -- it appears they were here. Does it have
(19) relevance?
(20) LEGAL COUNSEL COUPE: Well, it appears that the
(21) prosecution team is lodging a specific objection. Is that
(22) fair to say or are you just pointing it out as a possible
(23) housekeeping measure or are you asking for a specific
(24) ruling from the Board?
(25) MR. TAURIAINEN: If the Exhibits 293 through --

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- (1) 263 through 293 were never submitted in accordance with
(2) the hearing procedures, my objection is that they -- the
(3) table that references them at least the reference to those
(4) exhibits be stricken, unless we can point out anywhere
(5) where they were submitted in accordance with the hearing
(6) procedure.
(7) LEGAL COUNSEL COUPE: That's a fair objection.
(8) CHAIRPERSON LONGLEY: Unless you're prepared to
(9) answer now, I can rule on that later and give you some
(10) time to find those and you can go ahead.
(11) MR. DUFFY: Thank you. Let me call my office and
(12) see if I can track this down. Thank you.
(13) CHAIRPERSON LONGLEY: Thank you. So you go ahead
(14) with cross-examination.
(15) MS. OKAMOTO: Thank you. Again, for the record,
(16) this is Mayumi Okamoto with the Office of Enforcement.
(17) CROSS-EXAMINATION OF MR. LOMBARDI
(18) BY MS. OKAMOTO:
(19) Q Mr. Lombardi, I'm going to start with you if that's
(20) okay.
(21) I'm going to reference you to page 10 of your
(22) testimony, if you have it available. On page 10 and in
(23) opinion six of your testimony, you explain that surface
(24) waters including Nye and Ward Creeks are potentially being
(25) impacted by acid mine drainage from seepage of water

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- (1) impounded behind the mine seal; is that correct?
(2) A That's correct.
(3) Q Are you aware of any specific evidence in the record
(4) indicating that Nye and Wards Creeks are hydrologically
(5) connected underground to the flooded ore body?
(6) A Only the data.
(7) Q So no specific studies though in the record?
(8) A Correct.
(9) Q If I can direct your attention to Figure 10 of your
(10) testimony. For the Board, this is the aerial photograph
(11) that has the contoured lines on it.
(12) The data referenced at data points WM 11 and 12
(13) and WM 13, they only show dissolved copper concentrations;
(14) is that correct?
(15) A That's correct.
(16) Q If seepage is impacting surface waters at Nye and
(17) Ward Creeks, would you expect to see dissolved copper
(18) concentrations similar to those at the base of the seal
(19) shown here in red?
(20) A Not necessarily. The Board's contractor SRK in their
(21) argument to the fact that impounding the water -- the
(22) impacts that it would migrate out to deep groundwater,
(23) they argued that you would get attenuation of those
(24) impacts as they migrate out.
(25) So the fact that the concentrations don't exactly

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- (1) **match at this date is not an indication of that. As this**
(2) **plume migrates out, as you get attenuation of the**
(3) **different chemicals as they migrate out, they may**
(4) **attenuate and appear in different factions at a later**
(5) **date. They may reach this level or some may continue to**
(6) **attenuate and not reach it.**
(7) Q Thank you. On your screen now, this is a picture
(8) from prosecution team Exhibit 27. And it's photo 19 from
(9) the June 2007 inspection report. It shows mining waste in
(10) the Ward Creek channel below the central group workings.
(11) Could this type of waste be the source of elevated
(12) dissolved copper readings in Ward Creek?
(13) **A I can't tell from the photo the type of rock material**
(14) **that it is. If there was residual or associated with**
(15) **country waste rock or that residual ore could be, however,**
(16) **the fact that this is just one example on Ward Creek. It**
(17) **doesn't explain the elevated concentrations that are seen**
(18) **over time on the south branch that says there's two**
(19) **branches of Ward Creek. This doesn't explain the elevated**
(20) **concentrations over time on the other branch of Ward Creek**
(21) **and it doesn't explain the elevated concentrations on Nye**
(22) **Creek.**
(23) Q Okay. Is it accurate to say that dissolved copper is
(24) not the only indicator of acid mine drainage?
(25) **A Yeah. That's true.**

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- (1) Q Is a low pH value below 5.0 also an indicator of acid
(2) mine drainage?
(3) **A Yes.**
(4) Q Are you aware of the corresponding pH levels at data
(5) points WM 11, 12, and 13 from your Attachment 10?
(6) **A I don't recall those off the top of my head, no.**
(7) Q This slide is an excerpt of data submitted as
(8) prosecution team Exhibits 42, 44, and 46. The values in
(9) the blue chart show pH data at data points WM 11, 12, and
(10) 13. Are these pH values indicative of acid main drainage
(11) at Nye and Ward Creeks?
(12) **A I think you're taking that a little bit out of**
(13) **context. There are a number of things that can buffer the**
(14) **pH and can cause a chemical to attenuate. So looking at,**
(15) **you know, acid mine drainage, the formulation of that**
(16) **acid, the dissolution of metals and carrying that through**
(17) **just because the pH is not at the same concentrations, it**
(18) **doesn't mean it's not associated with acid mine drainage.**
(19) Q Thank you. Are there any visual indicators of acid
(20) mine drainage that you're aware of?
(21) **A Can you clarify that question?**
(22) Q Such as the blue/green chlorpyrifos or maybe iron
(23) staining as indicators of acid mine drainage?
(24) **A Where are you referring to? Is it a specific**
(25) **question, specific location?**

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- (1) Q No. Just does acid mine drainage typically have
(2) visual indicators?
(3) **A Acid mine drainage can typically have indicators,**
(4) **depending upon the type of metals that are there and the**
(5) **concentrations.**
(6) Q And just one last question for you. Did you visit
(7) Nye or Ward Creeks on your November 6th, 2013 site visit?
(8) **A We didn't. We did visit. We didn't walk up and down**
(9) **the creeks.**
(10) MS. OKAMOTO: Thank you. I'm going to move to
(11) Dr. McNulty, please.
(12) CROSS-EXAMINATION OF DR. McNULTY
(13) BY MS. OKAMOTO:
(14) Q Are you aware of any evidence in the record that
(15) indicated that International itself was conducting mining
(16) activities at the site at any point in time?
(17) **A No.**
(18) Q Can you turn your microphone on?
(19) **A Got it.**
(20) Q Do you want me to repeat the question?
(21) **A Please do.**
(22) Q Are you aware of any evidence in the record that
(23) indicated that International itself was conducting mining
(24) activities at the site at any point in time?
(25) **A Do you mean with their own crews or with Walker**

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- (1) **Mining Company employees?**
(2) Q With their own crews.
(3) **A I don't recall seeing the record, no.**
(4) Q With Walker Mine employees?
(5) **A No.**
(6) Q I'm going to direct your attention -- this is ARCO
(7) Exhibit 167. This is a 1916 contract. I have a hard copy
(8) if it's easier for you to read this, Dr. McNulty.
(9) **A This is just fine. Thank you.**
(10) Q This is an excerpt of the contract dated August 12th,
(11) 1916, between International Smelting and Walker Mining
(12) Company. This selection comes from paragraph two of the
(13) contract on Page 2 continuing on to page three. Can you
(14) read this paragraph aloud, please?
(15) **A "The smelting company shall forthwith begin the**
(16) **following development work upon said group of mining**
(17) **claims: It shall, at its own expense and without the**
(18) **right to recover from the Mining Company any part of the**
(19) **cost thereof, continue the sinking of a two-compartment**
(20) **shaft on the Bullion mining claim. Two hundred feet of**
(21) **sinking additional to what is already done shall be done**
(22) **by the Smelting Company in this shaft. In addition**
(23) **thereto, the Smelting Company shall also at its own**
(24) **expense and without cost to the Mining Company drive five**
(25) **hundred (500) feet of drifts of cross-cuts or both" --**

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- (1) Q If you could go to the next slide.
(2) A **"from acid shaft at such point or points as in its**
(3) **judgement will lend best to develop the mining ground.**
(4) **Said sinking and driving are to be done in good and**
(5) **minerlike fashion and are to be completed to July 1,**
(6) **1917."**
(7) Q Thank you. Would you agree that this is evidence
(8) that International conducted mining activities in the form
(9) of development on this site?
(10) MR. BRUEN: Objection, members of the Board. The
(11) date itself is before 1918. And the word "mining
(12) activities" is vague, given the six phases of mining.
(13) They're all mining activities. So the question is to
(14) which one.
(15) CHAIRPERSON LONGLEY: Can you reword that?
(16) MS. OKAMOTO: I believe I was specific as to
(17) mining activities. I did specify in the form of
(18) development in that question. But I'm happy to rephrase
(19) it.
(20) BY MS. OKAMOTO:
(21) Q Would you agree that this evidence -- strike that.
(22) Would you degree agree this is evidence that
(23) International conducted development activities on this
(24) site?
(25) A **I'm struggling to remember where the Bullion claim is**

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- (1) **with respect to the entire claim group. And I don't know**
(2) **whether they managed to sink the shaft into ore. I don't**
(3) **know the characteristics of the waste. So I'm afraid I**
(4) **can't give you a very comprehensive answer to your**
(5) **question.**
(6) Q That's fine. Thank you. I'm going to have to ask
(7) you to read one more slide. This is also Anaconda excerpt
(8) from ARCO's Exhibit 167. This selection comes from
(9) paragraph 3 of the contract on page 3. And if you could
(10) please read this paragraph aloud.
(11) A **"Walker Mining Company hereby agrees during the**
(12) **entire period until July 1, 1917, it will place and keep**
(13) **in charge of the operations of its mine and mill a manager**
(14) **nominated by or satisfactory to the smelting company and**
(15) **up to and not including July 1, 1917, the entire**
(16) **management of the business of the mining company so far as**
(17) **pertains to the completion and operation of the mill and**
(18) **the conducts of its mining and milling operations shall be**
(19) **under the exclusive supervision and control of such**
(20) **manager."**
(21) Q Thank you. Would you agree that this is evidence
(22) that International controlled the management and
(23) operations of Walker Mining Company specifically related
(24) to mining and milling?
(25) MR. BRUEN: Objection. That calls for a legal

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- (1) conclusions as to its significance.
(2) CHAIRPERSON LONGLEY: I'll have to -- David,
(3) before I say something, go ahead.
(4) LEGAL COUNSEL COUPE: Can you pull up the exhibit
(5) again, please?
(6) Maybe the way to phrase the question is the
(7) exhibit itself specifically references and says, "The
(8) entire management of the business of the mining company so
(9) far as it pertains to the completion and operation of its
(10) mill and the conduct of its mining and milling operations
(11) shall be under the exclusive supervision and control of
(12) such manager."
(13) So asking whether you think that's somehow
(14) indicative of activity that's occurred at the site to the
(15) extent that's within his professional judgment or
(16) expertise, I think that's an appropriate question to ask.
(17) CHAIRPERSON LONGLEY: Dr. Bruen, do you have a
(18) comment at this point?
(19) MR. BRUEN: Your Honor, the exhibit speaks for
(20) itself. The significance for this case is a matter of
(21) law, is a matter of argument of counsel. I just don't
(22) want to put the witness in the position of having to tell
(23) the Board what the significance of this document is.
(24) MS. OKAMOTO: Dr. Longley, I can move on.
(25) CHAIRPERSON LONGLEY: It's been read into the

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- (1) record. We'll move on. Thank you.
(2) BOARD MEMBER RAMIREZ: Can I interject here
(3) quickly? I'll wait.
(4) MS. OKAMOTO: I just have one more line of
(5) questioning.
(6) BY MS. OKAMOTO:
(7) Q This is an excerpt of your testimony on page 16 at
(8) Table 1. During the year 1916 to 1918, if my arithmetic
(9) is correct, you estimated that approximately 67,060 tons
(10) of ore was mined; 22,340 tons concentrated; and 44,740
(11) tons of tailings were at the site; is that correct?
(12) A Your arithmetic looks pretty good to me.
(13) Q If the contract between International and Walker
(14) Mining Company was executed on August 12th, 1916, wouldn't
(15) that mean that a majority of the ore mined between 1916
(16) and 1918 was mined under International's management of
(17) Walker Mining Company?
(18) A Done at least under the manager nominated or approved
(19) by International. I might point out that the total
(20) tonnage is about one and a half percent of the total
(21) production through 1941.
(22) Q Thank you. I have no further questions.
(23) CHAIRPERSON LONGLEY: Thank you.
(24) BOARD MEMBER RAMIREZ: I have a question.
(25) CHAIRPERSON LONGLEY: Go ahead.

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- (1) BOARD MEMBER RAMIREZ: This is to the attorney
(2) related to an objection you made earlier. You objected
(3) based on the year, 1916. What was the significance of
(4) that objection as to the year?
(5) MR. BRUEN: I believe the purchase of stock
(6) occurred in 1918.
(7) MR. HAEGELE: Late 1918. Either August or
(8) October.
(9) MR. BRUEN: Have I answered your question?
(10) BOARD MEMBER RAMIREZ: So I can deduct from what
(11) you're saying that even if this is true that is occurred
(12) before the stock purchase, it should not be attributed to
(13) your company today?
(14) MR. BRUEN: I think it's a different analysis,
(15) because the analysis of when the shareholder interest in
(16) it has been the thrust of the prosecution case. And I'm
(17) very glad to address this contract later on, because it
(18) makes a point that we've been making. So I'm anxious to
(19) discuss it.
(20) BOARD MEMBER RAMIREZ: I'll look forward to that
(21) too.
(22) MR. TAURIAINEN: Chair Longley, Andrew Tauriainen
(23) again from the Office of Enforcement. I just have a
(24) couple of more minutes of cross-examination for Mr.
(25) Haegele. But I will note that we are running short on

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- (1) time as well and will probably end up requesting -- given
(2) that we do have to argue first motion --
(3) CHAIRPERSON LONGLEY: If you folks take much more
(4) time, you're going to lose one Board member.
(5) MR. TAURIAINEN: It will not take long. But I do
(6) appreciate it.
(7) FURTHER CROSS-EXAMINATION OF MR. HAEGELE
(8) BY MR. HAEGELE:
(9) Q Mr. Haegele, your expert witness qualifications which
(10) is in your statement on Page 2, states you're a certified
(11) public accountant. I'm going to quote it a little bit and
(12) ask you to confirm -- with expertise in distressed
(13) entities and creditors, corporate restructuring, mergers,
(14) acquisitions, forensic accounting, fraud investigations,
(15) and similar accounting services.
(16) Same page goes onto describe your experiences
(17) including evaluating and analyzing complex accounting and
(18) financial matters, including evaluating and advising
(19) corporate restructuring, business combinations,
(20) acquisitions, bankruptcy, creditor and shareholder rights,
(21) fraudulent transfer and insolvency, among other things,
(22) SEC financial reporting investigations and the restatement
(23) projects and financial statement audits and retail
(24) accounting.
(25) Do I accurately paraphrase/quote your expert

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- (1) qualifications?
(2) A **In total, I think you did. I don't remember if I**
(3) **said retail accounting. I served as a CFO and effectively**
(4) **ran a large retail company for a period of a couple years.**
(5) **I think I put that in there. Didn't say retail**
(6) **accounting.**
(7) Q What in your Statement of Qualifications demonstrates
(8) specific expertise on the question of whether or not
(9) employees or agents of Anaconda or International managed,
(10) directed, or operated pollution-causing activities at the
(11) Walker Mine facility?
(12) A **I don't direct specifically to pollution-causing. I**
(13) **direct to all operations, which would include**
(14) **pollution-causing.**
(15) Q Well, let's talk about your report. The first
(16) portion of your report talks about investor oversight and
(17) monitoring, correct, pages 3 and 4 of your report of your
(18) summary of opinions. Part -- and forgive me. I think
(19) it's Section 5 or 6 or maybe 7 talks about the bankruptcy
(20) court.
(21) BOARD MEMBER RAMIREZ: Counsel, where are you
(22) talking about? Tell me again the page.
(23) MR. TAURIAINEN: Let me get to his statement so I
(24) can pinpoint it. Page 5 of 15 has a quote from the
(25) bankruptcy court.

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- (1) BY MR. TAURIAINEN:
(2) Q Does any element of that quote from the bankruptcy
(3) court decision specifically reference operation,
(4) direction, or control of pollution-causing activities
(5) Walker Mining facility?
(6) A **The opinion did not use those words, no.**
(7) Q It's because the opinion addresses corporate affairs;
(8) is that correct?
(9) A **The opinion speaks for itself. I'm certainly not**
(10) **going to try to put myself in the mind of the judge that**
(11) **issued that opinion. I think that would be --**
(12) Q Let's move on. Your part eight, which also starts on
(13) page 5. I'm going to briefly summarize what these
(14) sections say. The next couple pages 8(a) roman numeral
(15) 8(a) discusses based on the title of that section that
(16) Walker was a stand-alone publicly-traded corporation with
(17) separate corporate and accounting existence from
(18) International and Anaconda. Does that speak to corporate
(19) affairs for direction, operation, or management of
(20) pollution-causing activities at the Walker mining
(21) facility?
(22) A **Where are you exactly?**
(23) Q The heading (A) on page -- right about middle of page
(24) 5 of 15. Is anything about that heading and anything
(25) about the section that follows discuss pollution-causing

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- (1) activities? Prosecution would request a --
(2) A **Are you all the way to B on page --**
(3) Q B starts on page 9. Does anything between five and
(4) nine talk about anything but corporate oversight?
(5) A **I don't agree that it's -- I wouldn't characterize it**
(6) **as corporate oversight.**
(7) Q Well, let's move to page nine under heading B.
(8) Heading B(1), what does that heading say?
(9) A **On 9(1) corporate governance and oversight.**
(10) Q So that section talks about corporate governance and
(11) oversight?
(12) A **Correct.**
(13) Q B (2) which starts on page 10, what does heading say?
(14) A **Financial assistance.**
(15) Q **Is financial assistance directly related to operation**
(16) **of pollution-causing activities at the facility?**
(17) A **In this case, it certainly was not.**
(18) Q The evidence that you site and discuss appear to be
(19) primarily accounting records; correct, and shareholder
(20) reports and the like?
(21) A **My opinions are based on the totality of everything I**
(22) **looked at. I site certainly they accounted for the loan**
(23) **they made to increase the capacity of the mill. That loan**
(24) **was for \$300,000 -- in excess of \$300,000 as an example.**
(25) Q At this point, I'd just like to point out for the

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- (1) record that Mr. Haegele's qualifications don't appear to
(2) be geared towards the prosecution team's legal theory of
(3) the direct operator legal theory, and nor does really
(4) anything on pages one through the top of 11 of his expert
(5) witness statement. But I will move on.
(6) Assuming that Anaconda and International did
(7) provide services and administrative services and
(8) geological expertise to the Walker Mine facility, does
(9) that mean that Anaconda employees and managers didn't
(10) directly oversee or manage pollution-causing activities at
(11) the site? Let me rephrase that. Is it mutually exclusive
(12) to provide corporate oversight -- let me rephrase that
(13) again. I apologize.
(14) Are you aware of any evidence in the record of
(15) Anaconda or International managers, specifically mining
(16) operations managers, directing or authorizing work to the
(17) general manager of the Walker Mine facility?
(18) A **There's communications -- there is a body of**
(19) **communications. I think it's around a time -- I'm happy**
(20) **to look at the document and refresh my memory around the**
(21) **time --**
(22) Q We can do that. I'd like you to take a look at --
(23) this is an excerpt from prosecution team Exhibit 1, Item
(24) 269, of February 13th, 1941, letter from Dugan who Dr.
(25) Quivik described as being the superintendent of mining

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- (1) operations at International to Hartmann, who at the time
(2) in 1941 was the general manager of the Walker Mine
(3) facility. Can you read the middle paragraph for me?
(4) A **"Please get 903b drift south started as soon as**
(5) **possible on the foot wall or in push it."**
(6) Q Can you read -- this is page 2 of the same exhibit,
(7) same item number. Can you read the first whole sentence
(8) at the top of this page beginning with the word "so."
(9) A **"So please give it your personal attention and see**
(10) **that the work is kept going and driven as rapidly as**
(11) **possible."**
(12) Q In your opinion, to the extent you're qualified to
(13) give an opinion on this question, is this an indication of
(14) Anaconda or International providing expert geological
(15) services to the Walker Mining Company?
(16) MR. BRUEN: Objection. This is an excerpt, not
(17) the complete document.
(18) MR. TAURIAINEN: I can offer the complete
(19) document. I can pull it up on the screen. I can hand out
(20) a copy.
(21) CHAIRPERSON LONGLEY: Can you hand out a copy?
(22) MR. TAURIAINEN: I have one copy.
(23) CHAIRPERSON LONGLEY: Pull up the whole document.
(24) MR. TAURIAINEN: Okay.
(25) ASSISTANT EXECUTIVE OFFICER LANDAU: All the

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- (1) documents are on the computer here.
(2) MR. TAURIAINEN: I'm not sure where this is.
(3) LEGAL COUNSEL MAYER: Might this be in the Board
(4) member agenda binder?
(5) MR. TAURIAINEN: Yeah, the Board members do all
(6) have copies of this. Thank you, Mr. Mayer.
(7) Page 557, again, big stack of documents paginated
(8) at the top of Exhibit 1.
(9) MS. WANG: Can you provide it to the witness as
(10) well?
(11) MR. TAURIAINEN: Sure. The first excerpt is here
(12) towards the bottom on page one.
(13) MS. WANG: Do you have a copy for counsel, Mr.
(14) Tauriainen?
(15) MR. TAURIAINEN: You. Thought they were
(16) providing you with a copy.
(17) LEGAL COUNSEL MAYER: I have a copy of the agenda
(18) package so counsel has a copy of this as well.
(19) MR. TAURIAINEN: It is Item 269.
(20) BY MR. TAURIAINEN:
(21) Q First excerpt I asked him to read was from the second
(22) sentence up from the bottom paragraph on page 1. And the
(23) second excerpt was at the top of page 2. I apologize.
(24) The big screens are not great for showing these kinds of
(25) exhibits.

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- (1) My question was to those two quotes is is that
(2) specialized expertise directed to the local on-site
(3) geologist?
(4) **A I'm familiar with this document. I've read it and**
(5) **now I recall it completely. I also recall there was**
(6) **documented around as well. So this is like looking at one**
(7) **part of an e-mail chain, if you will.**
(8) **But in looking at this document in its entirety,**
(9) **you see the e-mail going to Henry. So it's going to the**
(10) **manager Hartmann and paragraph three says, "your suggested**
(11) **location just north of 636(c) cross-cut looks all right."**
(12) **This is a dialogue along with the documents**
(13) **around it, back and forth. To get a whole picture, you**
(14) **need to look at all the documents and also consider what**
(15) **was going on at the time. This was a time of heavy**
(16) **drilling to try to find more ore. So in looking at this,**
(17) **obviously, Mr. Hartmann was playing a key role in this as**
(18) **well as the manager, your suggested location.**
(19) **Q Let's look at all the documents in order to move it**
(20) **on further.**
(21) **The next document is prosecution team Exhibit 1**
(22) **Item 270, page 559. Just follows the last one. This is a**
(23) **letter from Mr. Dugan, again the International**
(24) **Superintendent of Mining Operations to CE Weed, who is the**
(25) **General Manager of Mines at the Anaconda Copper Company.**

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- (1) Please read the second to the last paragraph.
(2) **A I'm not quite there yet. Can I read the letter or do**
(3) **you want me only to read the second paragraph.**
(4) **Q I'd like you to read the second to last paragraph.**
(5) **A "I told Hartmann to get 903B drift started right away**
(6) **and push it as rapidly as possible. They have been held**
(7) **up on account of getting the stobe started and The other**
(8) **work on the south end. However, Hartmann told me**
(9) **yesterday he will start immediately and push it."**
(10) **Q Let's look at the next one. This is a letter from**
(11) **Reno Sales. Here's a geologist. Here's the first one**
(12) **we've come across in the series of correspondence. Please**
(13) **read the last sentence.**
(14) **A The last sentence is "Mr. Dugan advises me that he's**
(15) **writing fully concerning his instructions to Hartmann."**
(16) **Q The question to you is if the relationship between**
(17) **Anaconda International and the Walker Mining Company was**
(18) **lent to the provision of expert technical expertise and**
(19) **consulting services in the realm of geology that was**
(20) **generally spearheaded by Mr. Reno Sales, why did the**
(21) **direction have to come from the superintendent for mines**
(22) **past through the general manager of mines at Anaconda and**
(23) **addressed to the on-site mining manager. Why didn't the**
(24) **communication go directly to the on-site geologist?**
(25) **A I think if you look at the full body around this time**

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- (1) **frame, you're going to see that this was an intense time**
(2) **of prospecting. They were desperate to find additional**
(3) **ore during this time frame. The communications got rather**
(4) **brief even. Very kurt telegrams at the time. It was**
(5) **clearly a search for additional ore. And given the**
(6) **severity of the situation, I would expect the -- as I do**
(7) **see here, the mine manager to play a role in that and have**
(8) **suggestions. The other documents also show that at times**
(9) **the manager didn't follow the expertise advise that was**
(10) **given.**
(11) **Q No further questions.**
(12) **MS. WANG: Very brief redirect if I may?**
(13) **CHAIRPERSON LONGLEY: Yes.**
(14) **MS. WANG: I would like to for the record**
(15) **disagree with Mr. Tauriainen's description of the Mr.**
(16) **Haegle's report. His final section clearly addresses**
(17) **exactly the direct liability theory in which he talks**
(18) **about the relationship between Anaconda Companies and the**
(19) **Walker Mine itself, the facility.**
(20) **REDIRECT EXAMINATION OF MR. HAEGELE**
(21) **BY MS. WANG:**
(22) **Q I'd like to draw your attention -- just for sake of**
(23) **time I'll pass you your slide back. Mr. Tauriainen asked**
(24) **you a question about whether the bankruptcy court examined**
(25) **the relationship between the Anaconda Companies and the**

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- (1) **facility itself. I'll refer you to slide pack and you can**
(2) **read to the Board the bankruptcy court's conclusions with**
(3) **respect to the operations of the Walker Mine and the**
(4) **control of those operations.**
(5) **A So the bankruptcy court after employing a special**
(6) **master to look at the conduct and holding a hearing issued**
(7) **a declaration. And that declaration read, in part, "no**
(8) **act of omission of said Anaconda Copper Mining Company or**
(9) **of IS&R established by any evidence constitutes or proves**
(10) **any domination or control over debtor or any of debtor's**
(11) **acts, businesses, or affairs."**
(12) **MS. WANG: Thank you. Nothing further.**
(13) **CHAIRPERSON LONGLEY: Thank you very much. At**
(14) **this time, then we're ready for closing statements.**
(15) **MR. TAURIAINEN: Dr. Longley?**
(16) **CHAIRPERSON LONGLEY: Before we go to closing**
(17) **statements, yes.**
(18) **MR. TAURIAINEN: There's the matter of the Motion**
(19) **Number 1.**
(20) **CHAIRPERSON LONGLEY: We'll handle those motions**
(21) **in a minute.**
(22) **Are there any interested parties at this time?**
(23) **I'm getting ahead of myself here. Good. We're ready now**
(24) **to go to closing statements. And after the closing**
(25) **statements, I'll make my rulings. ARCO.**

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(1) BOARD MEMBER RAMIREZ: I've got a question on my
(2) mind I'm going to get out to the expert there.

(3) Assuming that there is this one -- let's say this
(4) is an isolated time. This one time that the entities are
(5) directing Walker Mine on how to do things. In your
(6) opinion, is one time of being deeply involved in actual
(7) mining direction and hiring people, is one time enough to
(8) find that they're directing operations?

(9) MR. HAEGELE: I want to make sure I answer your
(10) question. And if this doesn't answer your question,
(11) please tell me and I'll try again.

(12) Specifically to 1941, when the mine was in
(13) jeopardy and there is a significant investment that was
(14) made, for them to come in and if they would have -- if
(15) they directed those to try to save the mine, I would say
(16) their involvement would be limited to just that time
(17) period. And it would be what I would expect a normal
(18) investor to do.

(19) BOARD MEMBER RAMIREZ: To try to save their
(20) investment during desperate times. I understand that.
(21) But I guess you did answer my question. So thank you.

(22) MR. BRUEN: Dr. Longley, members of the Board.
(23) Before I proceed with my closing statements, which I'm
(24) ready to give now, I would like to ask you to consider in
(25) this long and complicated case allowing the parties to

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(1) about. It was a 1916 contract that said in part -- we
(2) only got to see part of it during the hearing -- that the
(3) mine manager had to be either nominated by or approved by
(4) the shareholders to a company, which is not unusual at
(5) all. Shareholders can go quite a ways in interacting with
(6) the public company without having direct control under
(7) Best Foods.

(8) As a matter of fact, as of the time I'm sitting
(9) here today, there has been no published decision in the
(10) United States where any public company which has held
(11) shares in another public company -- and those are the
(12) facts here -- has been held liable for direct control of
(13) the second public company's disposal of hazardous waste.
(14) Not one published decision ever.

(15) And why is that? Well, when you look at the
(16) cases cited in our briefing materials such as the
(17) Freedlander case, you could have for example in that case
(18) where AO Smith Engineers -- this is the Anaconda --
(19) frequently visited the mines -- it's a mining case -- to
(20) review operations and to make operational -- operational
(21) suggestions. Those are suggestions in this part of the
(22) case, at this point of the mining. Not what we have here.

(23) But even there, AO Smith made operational
(24) suggestions. AO Smith shipped ore for analysis, part of
(25) the mining operation. AO Smith's director assumed

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(1) exchange closing briefs, because there is a lot of
(2) information to cover here. And I'm only going to be able
(3) to in four minutes and 20 seconds hit the tops of the
(4) list. But I'm ready to start now and will do the best we
(5) can.

(6) CHAIRPERSON LONGLEY: Go ahead.

(7) MR. BRUEN: Members of the Board, there is no
(8) question here that the issue before the Board is whether
(9) under Best Foods there is sufficient relationship between
(10) International and Anaconda on one hand and the Walker
(11) Mining Company on the other hand. We've begun this case
(12) with the assertion that you would not see the prosecution
(13) team meet its burden of both producing and persuading you
(14) with evidence of the necessary relationship. And I submit
(15) to you, you haven't seen it yet through this hearing.

(16) The relationship is that under the Best Foods
(17) decision of the United States Supreme Court, you must see
(18) evidence that the company alleged to be the responsible
(19) party here managed, directed, or conducted operations
(20) specifically related to pollution that is operations
(21) having to do with the leakage or disposal of hazardous
(22) waste or decisions about compliance with environmental
(23) regulations. Dr. Quivik had seen no such evidence. You
(24) have seen, I submit to you, no such evidence.

(25) Let me start with the contract that was asked

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(1) responsibility for reviewing certain aspects of mine
(2) operations. AO Smith ordered the mine manager to submit
(3) frequent reports to him about mine operations. The facts
(4) here aren't that good. But what was the holding in
(5) Freedlander? No direct control of the waste disposal
(6) operations in that case. The Best Foods case was not met.

(7) And so we have the case here. Dr. Quivik says
(8) he's not found after his extensive search reading
(9) whatever, hundreds of documents, a document which
(10) indicates or says that either Anaconda or International
(11) controlled the disposal of waste at this site.

(12) The prosecution team has tried to distinguish a
(13) way the bankruptcy court, which said on several occasions
(14) in a very broad way -- and remember the creditors are
(15) trying to find any relationship in 1945 between Anaconda
(16) or International and the Walker Mining Company because
(17) Walker is out of money. They have debts. They want the
(18) parents to stand financially in the place of Walker. Just
(19) like this case. A different reason, of course. You're an
(20) environmental body. They were creditors, but they're
(21) trying to do exactly the same thing.

(22) What's so significant about the bankruptcy court?
(23) This is 1945. There were people who worked at Walker
(24) Mines who were available to testify there. Memories were
(25) fresh. Walker, you see the letters involving Walker Mine

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(1) here in 1941. This is when this case really should have
(2) been analyzed in fairness to all the parties. And there
(3) the bankruptcy court made the three comments that I found
(4) that there was no direct control over anything. It said
(5) there was no act or omission of conduct of Anaconda or
(6) International, their officers, agents, or employees or any
(7) of them that establishes any evidence. Not the ultimate
(8) issue, but any evidence that constitutes or approved any
(9) domination or control by them or any of them over the
(10) debtor, which is Walker Mine.

(11) So all of these letters that the prosecution has
(12) showed you today were all available to the bankruptcy
(13) court. And the bankruptcy court with these creditors
(14) thinking if we don't make this case, we're out of money,
(15) could not make it in the bankruptcy court, could not have
(16) been more clear.

(17) Mr. Haegeler was clear that analyzing the
(18) finances, this was not a case where Anaconda or
(19) International --

(20) LEGAL COUNSEL COUPE: Dr. Longley, I'm sorry to
(21) interrupt.

(22) I just want to clarify something that I think Mr.
(23) Bruen either maybe didn't say, but he seemed to suggest
(24) that somehow all the letters that are in the
(25) administrative record were specifically relied upon or

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(1) MR. BRUEN: The bankruptcy court required the
(2) same standard of proof that is required by this body:
(3) Proof by a preponderance of the evidence to my
(4) understanding. The general civil standard of proof, I
(5) believe. I'm not a bankruptcy lawyer.

(6) BOARD MEMBER RAMIREZ: Neither am I.

(7) MR. BRUEN: I know we're both lawyers, but I
(8) believe that's the case in all civil proceedings.

(9) So again, Dr. Quivik has looked hard. His
(10) question was, you know, did International and Anaconda
(11) have a sufficient control over Walker Mine to establish
(12) whatever the legal standard is here? On cross-examination
(13) he admitted he saw no evidence of direct control. The
(14) contract --

(15) CHAIRPERSON LONGLEY: Sir, how much longer will
(16) it take you to wrap up?

(17) MR. BRUEN: 60 seconds.

(18) CHAIRPERSON LONGLEY: Good. 60 seconds.

(19) MR. BRUEN: That's why I'm asking for a brief.

(20) I'd like to say so much more.

(21) The contract that was asked about is a contract
(22) which says at most -- at least the parts we read this
(23) afternoon -- that if Walker picked a mine manager, they
(24) either have to pick someone nominated by the shareholders
(25) or at least get that person approved by the shareholders.

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(1) consulted or conducted as part of the bankruptcy
(2) proceeding in 1945. I haven't heard any evidence today to
(3) suggest that's the case.

(4) CHAIRPERSON LONGLEY: That's a good question. I
(5) was asking myself the same question.

(6) MR. BRUEN: I'm glad to answer that, Your Honor.

(7) BOARD MEMBER RAMIREZ: I have a follow-up
(8) question.

(9) MR. BRUEN: Let me address if I ask this very
(10) point.

(11) The point -- if I didn't say this, it's what I
(12) have should have said -- that all these letters were
(13) available to the parties then. The bankruptcy court
(14) records have since 1999 when the Water Board staff first
(15) started investigating Atlantic Richfield and today then
(16) destroyed. What we have left is the decision.

(17) But my point is that in 1945, within four years
(18) after the time International ceased operations, clearly
(19) there were live witnesses available who could have come
(20) before a body like this or the bankruptcy court and we
(21) wouldn't have to piece together the information here.
(22) They'd just say it. The court that heard that testimony
(23) found no evidence of control. That is the point.

(24) BOARD MEMBER RAMIREZ: What's the standard of
(25) proof that the bankruptcy court requires?

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(1) That is not enough under the Best Foods case or under
(2) Freedlander to show direct operations. Certainly not to
(3) show that they actually ran the mill here which generated
(4) the waste. That's what Best Food is saying. Let's get
(5) these people responsible. And the answer is who was
(6) responsible? Walker Mining Company.

(7) Thank you very much for your attention.

(8) CHAIRPERSON LONGLEY: Thank you. And we'll take
(9) closing statement by the prosecution team.

(10) Let me say I'll never consume a Best Food product
(11) again in the way I have in the past.

(12) BOARD MEMBER RAMIREZ: I think I'll enjoy it
(13) more.

(14) CHAIRPERSON LONGLEY: I didn't say I wouldn't.
(15) I'm just saying it's a whole different world.

(16) MR. TAURIANEN: I have a point of clarification.

(17) I apologize for keep asking for clarification about number
(18) one. Should I argue number one now as part of our closing
(19) or is that going to be -- are we going to have time for
(20) arguing after closing?

(21) CHAIRPERSON LONGLEY: Let's wait until we get
(22) there.

(23) MR. TAURIANEN: Okay. Thank you.

(24) CHAIRPERSON LONGLEY: How do you like that for
(25) clarification?

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- (1) MR. TAURIAINEN: Very clear.
(2) ARCO -- we're talking about Best Foods. ARCO is
(3) asking to read Best Foods too narrowly. Number one, most
(4) of their briefs and a significant portion of their expert
(5) witness testimony addresses the corporate -- what's called
(6) derivative liability. The alter ego that involves
(7) piercing the corporate veil. I just threw out a whole
(8) string of corporate legalize that probably made you all go
(9) blank.
(10) What I need to do is direct us back to the real
(11) question. That is: Best Foods requires or it provides
(12) for liability in a parent corporation where it directs,
(13) operates, or manages pollution-causing activities at a
(14) facility. It does not require direct placement of waste.
(15) I would point out here though, as Mr. Schneider has
(16) pointed out, that the mining activities that Anaconda and
(17) International directed at the Walker facility created the
(18) waste. They created the surface mining waste. They
(19) created the underground mine workings, which are now
(20) filled with acid main drainage this used to be pouring out
(21) into the stream killing everything for ten miles. Now
(22) it's contained in a mountain.
(23) Without the activities and involvement of ARCO
(24) and the funding by International Walker Mining Company
(25) would have never opened up on the Tuesday after Anaconda

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- (1) International to the nine managers at the Walker Mine
(2) site.
(3) The record is replete with them. Dr. Quivik
(4) statement showed you five separate documents ranging from
(5) 1923 to 1941. Again, some of only a few due to time
(6) limitations of the hundreds of documents. Had we had the
(7) proceeding that ARCO wanted to have, which would have
(8) taken several days, we would have gone through each one
(9) individually. We don't need to. They're there. That's
(10) what the evidence says.
(11) With that, I will reserve our time for argument
(12) and wait until we argue number one.
(13) CHAIRPERSON LONGLEY: Thank you. Ms. Ramirez.
(14) Before you go away, I think --
(15) MR. TAURIAINEN: I'll be at a microphone.
(16) BOARD MEMBER RAMIREZ: In reading the hundreds of
(17) letters that you just talked about that point to
(18) management and control, do you find that those letters are
(19) surrounding specific investments or specific events? Or
(20) do you see those letters being sort of ongoing all the
(21) time, they're always watching? Or as ARCO represents,
(22) they're only -- the letters are only generated and their
(23) involvement is limited to specific investments,
(24) significantly sized investment.
(25) MR. TAURIAINEN: There is really both. The

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- (1) and International divested itself in the hypothetical that
(2) Mr. Haegele provided. Walker Mining Company never made
(3) enough of a profit to keep it open. We have an
(4) embarrassment of riches of evidence here as you can see by
(5) the thick binder that you have.
(6) In that evidence and then in the -- many, many,
(7) many more hundreds of documents in the electronic record
(8) that we didn't print out for you is all sorts of examples
(9) that Walker Mining Company and JR Walker in particular
(10) needed Anaconda and International to be there. The mine
(11) wouldn't have been a mine without them.
(12) The 1916 contract that we're talking about shows
(13) that International was on site, was conducting mining
(14) activities, and was controlling the general manager for
(15) two years while 50,000 or more tons were taken out of the
(16) ground. That along is sufficient to trigger operator
(17) liability. There is no corporate parent relationship
(18) before 1918. Discharges have been found liable for --
(19) jointly and severally liable for entire sites based on
(20) less involvement than International, even on its own
(21) before 1918.
(22) And finally, there was a statement in the closing
(23) that there was relatively few examples of evidence of
(24) direction from the mine operators -- from the supervisors
(25) and managers of mine operations at Anaconda and

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- (1) system that ARCO developed -- or that Anaconda developed,
(2) the Anaconda system that Dr. Quivik references calls for
(3) essentially continuous direction and oversight and
(4) management and operation by the folks at the Anaconda
(5) Geological Department and the International Geological
(6) Department over mine geologists and mine engineers at the
(7) Walker Mine facility. The record goes on and on about
(8) that.
(9) And then the record is punctuated by events where
(10) superintendent of mines and superintendent of -- general
(11) manager of mines and Anaconda became directly involved,
(12) and they gave specific direction regarding specific mining
(13) activities. Where did to dig a whole. Where to dig a
(14) tunnel. Those tunnels of still there. They're still
(15) fueled with acid mine drainage.
(16) BOARD MEMBER RAMIREZ: I think you've answered my
(17) question. Thank you.
(18) MR. BRUEN: Ms. Ramirez, may I also answer your
(19) question?
(20) BOARD MEMBER RAMIREZ: Sure.
(21) MR. BRUEN: This is where I think --
(22) EXECUTIVE OFFICER CREEDON: You do need to speak
(23) into a microphone.
(24) MR. BRUEN: I would really urge -- I think this
(25) is why we need closing briefs in this case.

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- (1) Much of Mr. Tauriainen's closing argument was
(2) with a paint brush painting way too broad. And there was
(3) no testimony, for example, on the Anaconda method here
(4) today. Anaconda had a different management system after
(5) the 1970s. But this case involves 1916 to 1941. So the
(6) question is what's all that got to do with this case. Dr.
(7) Quivik did not present that information.
(8) And with respect to Ms. Ramirez's --
(9) BOARD MEMBER SCHNEIDER: I think that answered
(10) the question.
(11) MR. BRUEN: -- about involvement in the mining
(12) operation, this is why we'd like to do the briefs to be
(13) much more precise --
(14) CHAIRPERSON LONGLEY: Appreciate it. This Board
(15) typically relies upon Board members reading the record.
(16) I've read the record. And I'll talk about what I found
(17) reading the record after we close the hearing.
(18) At this point in time, we need to make a decision
(19) on a couple of items. First of all, prosecution asked
(20) that Exhibits 263 through 293 be excluded from the record
(21) because of the manner in which they were transmitted or
(22) not transmitted, as this case may be. Who wants to
(23) address that?
(24) MS. WANG: I'd be happy to address that.
(25) I think I have the answer, but I'll tell you we

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- (1) didn't understand about subsection until we walked in
(2) today. I was able to get in touch with our associate Ben
(3) Strong. And he was able to forward me an e-mail that he
(4) sent to Mr. Tauriainen that I can read on my phone. It
(5) appears he sent --
(6) MR. TAURIAINEN: I can provide a copy of the
(7) e-mail and my declaration to the Board and to the parties
(8) here today, if the Board would like to see it.
(9) MS. WANG: Okay. I mean, I would love to see
(10) that. And I'd love an opportunity to consult with Mr.
(11) Strong who is the one who explained the exhibits and
(12) apparently has to do with substance --
(13) MR. TAURIAINEN: The e-mail is from Mr. Duffy
(14) CHAIRPERSON LONGLEY: We're going to take three
(15) or four minutes here, and I want you two to get together
(16) and figure this out.
(17) MS. WANG: Okay. Be happy to.
(18) CHAIRPERSON LONGLEY: Thank you.
(19) We're going to if you step off to the side and do
(20) that or go outside here in the hallway, we'll find you a
(21) secluded place if you need it some place. And let's go
(22) on to the other pre-hearing motion.
(23) LEGAL COUNSEL COUPE: We should wait until they
(24) return. We lost a couple counsel.
(25) MS. WANG: What I understand Mr. Tauriainen to be

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- (1) saying -- please jump in if I have this wrong -- is that
(2) Mr. Duffy -- I thought it was Mr. Strong in the e-mail
(3) forwarded this to me. Mr. Duffy e-mailed Mr. Tauriainen
(4) and explained there was a mix up in our exhibit numbering
(5) and send him a link to color copies of black and white
(6) exhibits. Mr. Tauriainen is telling me, although I can't
(7) verify because my office is closed -- that we never took
(8) the extra step to provide those exhibits to you all. If
(9) that's true, that's a administrative error. And I would
(10) be happy to submit them to the Board as soon as I get back
(11) to my office tomorrow.
(12) MR. TAURIAINEN: There is much more to it than
(13) that.
(14) One week after the ARCO's case in chief deadline,
(15) I was send an e-mail by Mr. Duffy informing me that they
(16) had needed to correct some of Mr. Lombardi's figures, his
(17) pictures that are attached in the back. And they attached
(18) color versions of what formerly had been black and white.
(19) And that was what was submitted on ARCO to all of you and
(20) I got a copy as well on March 7th.
(21) The e-mail also indicated that they had neglected
(22) to include 31 Exhibits 263 through 293. The rebuttal on
(23) March 7th included Exhibits 294 through 301, but there was
(24) no 263.
(25) CHAIRPERSON LONGLEY: So basically what you're

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- (1) saying is that you received some exhibits, but they were
(2) not provided to the Board.
(3) MR. TAURIAINEN: I received them a week late with
(4) an indication that ARCO intended to submit them. I
(5) couldn't object to them until now because they haven't
(6) submitted them.
(7) CHAIRPERSON LONGLEY: Exactly. Mr. Coupe, could
(8) you determine what those exhibits are and see if they're
(9) in the Board's records?
(10) LEGAL COUNSEL COUPE: We could, but I'd have to
(11) sit down with the -- we have to recess. I have sit down
(12) and talk to the prosecution team and talk to ARCO and
(13) specifically talk about -- identify what documents that
(14) we're talking about.
(15) And couple of threshold questions. One, has
(16) there been an affirmative demonstration made that those
(17) exhibits came into the record in compliance with the
(18) hearing procedure? That's a simple yes or no question.
(19) I'm hearing the answer to that question is no. That's
(20) what I'm hearing. So if that is in fact the case, feel
(21) free to speak up.
(22) CHAIRPERSON LONGLEY: That's what I heard from
(23) you. They did not come in.
(24) LEGAL COUNSEL COUPE: There was a quote
(25) administrative error.

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- (1) MS. WANG: I can't verify it because --
(2) LEGAL COUNSEL COUPE: Regardless, if you can
(3) verify or not verify it, you can't make an affirmative
(4) demonstration it came in under compliance.
(5) MS. WANG: I cannot. This issue was not raised
(6) until the middle of this hearing. I was not personally
(7) responsible. My colleague Ben Strong was, and he's not
(8) here at this hearing. So I apologize. I would be happy
(9) to submit an explanation tomorrow on this issue if the
(10) Board Chair would like.
(11) LEGAL COUNSEL COUPE: That's the first issue.
(12) The second issue is even assuming for the sake of
(13) argument whether -- even if they come in, the Board Chair
(14) obviously has discretion under the regulations to evaluate
(15) whether in fact those exhibits constitute prejudice to any
(16) party of the Board. It's difficult to make a
(17) determination at this time because I don't know what these
(18) exhibits are there the extent to which they may constitute
(19) prejudice to any party or the Board.
(20) So until we know what they are, it would be
(21) difficult to answer that second question.
(22) MR. DUFFY: The only thing I would add, Mr.
(23) Chairman, is that -- I can't tell you whether they were
(24) submitted or not either. But I find this more difficult
(25) to accept if they are, in fact, records which were

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- (1) produced to us by the state of California under our
(2) records request, which is what -- the only thing they were
(3) records that came from you from the offices of the
(4) prosecution that we were making part of the record going
(5) forward. So there can't be prejudice if in fact they were
(6) California records. That's the one thing I would add to
(7) this.
(8) LEGAL COUNSEL COUPE: It depends upon the purpose
(9) upon which the records are being used to support. Just
(10) because they're state of California records isn't
(11) necessarily a sufficient basis to say that there isn't
(12) prejudice on behalf of the Board or a particular party.
(13) CHAIRPERSON LONGLEY: And then there is the other
(14) issue that -- I hearing from the prosecution that they
(15) came in late. Is that correct? Did I hear you directly?
(16) MR. TAURIANEN: That's correct. I was informed
(17) one week after their case in chief deadline they intended
(18) to submit some additional documents. I waited for them to
(19) do that so I could object to them as being late filed.
(20) That never happened. That's why I raised my objection
(21) essentially when Mr. Lombardi had concluded his testimony,
(22) because they were never admitted.
(23) LEGAL COUNSEL COUPE: Dr. Longley, not to put too
(24) fine a point on it, if, in fact, there was an e-mail that
(25) went from ARCO counsel to the prosecution team's counsel

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- (1) saying there was a screw up administratively, we're going
(2) to submit some exhibits within the next week, I would
(3) think that ARCO would have put the advisory team on notice
(4) of that fact and consequently you could have communicated
(5) that information to the Board accordingly. I didn't get
(6) any communication --
(7) CHAIRPERSON LONGLEY: I didn't hear about it. If
(8) you got it, I would have heard it.
(9) I'm going to rule on this that I'm going to
(10) uphold the objection of prosecution and exhibits -- ARCO
(11) Exhibits 263 and 293 are excluded.
(12) MR. TAURIANEN: 263 through 293.
(13) CHAIRPERSON LONGLEY: Yes. That's what I said.
(14) And I don't think we have them anyway.
(15) MR. DUFFY: Again, I ask that qualification. If
(16) I can -- when I get to the office tomorrow, if I can show
(17) you that, in fact, they were available in the original
(18) transmittal, which I believe is the case, that they were
(19) submitted, would then the Board change its ruling?
(20) BOARD MEMBER SCHNEIDER: I think we're going to
(21) decide this shortly.
(22) CHAIRPERSON LONGLEY: We're going to decide this
(23) today.
(24) BOARD MEMBER SCHNEIDER: What else do we need?
(25) CHAIRPERSON LONGLEY: Let's move on to the other

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- (1) motion. I made my motion on that.
(2) LEGAL COUNSEL COUPE: The one outstanding motion
(3) from the Board's consideration has to do with -- it's a
(4) threshold legal question. I think it's a very important
(5) question in my mind, and it's one that really hasn't
(6) gotten much discussion in the context of this hearing,
(7) given how much focus there's been on the other I think
(8) really core legal issue concerning direct liability.
(9) And again, Atlantic Richfield has made a specific
(10) request for a Regional Board ruling to say that CERCLA
(11) specifically prohibits the Regional Board from issuing the
(12) Cleanup and Abatement Orders in had case, both as it
(13) pertains to the mine site itself and as it pertains to the
(14) tailing site.
(15) And I know that the U.S. Forest Service is not
(16) here today, but they made similar arguments in their
(17) briefs as well as on the rebuttal. And in addition to a
(18) late e-mail that came in from Mr. Hope, counsel for the
(19) Forest Service. I solicited whether, in fact, there were
(20) any objections to the e-mail. I received none. That was
(21) admitted as part of the administrative record.
(22) The threshold question here is whether, in fact,
(23) CERCLA precludes the ability of the Regional Board to
(24) issue Cleanup and Abatement Orders as to the mine site and
(25) as to the tailing site itself.

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- (1) I think one important distinction to make for
(2) purposes of the analysis is at least on the record, as I
(3) understand it, the CERCLA action is specific to the mine
(4) tailing site itself. It is not specific to the Walker
(5) Mine site itself. And some of the reasons why I think
(6) that's a fair assessment to make is based in part on,
(7) number one, the 1994 record of decision that was entered
(8) into with the U.S. Forest Service as the lead specifically
(9) identifying the remedial efforts to take place at the
(10) Walker Mine tailing site, specifically making a reference
(11) to the Regional Board's activities to deal with and
(12) remediate the mine site itself. It's also specific in the
(13) context of the 1994 record decision that was then amended
(14) in 2001 as a result of, in part, of waste discharge
(15) requirements that the Regional Board had issued in 2000.
(16) The other evidence in the record that I think
(17) helps support the fact that, in fact, we're dealing with
(18) the tailing site itself is subject to CERCLA and not the
(19) mine site itself goes back to I believe the 2005 consent
(20) decree that was entered into between the Forest Service
(21) and ARCO pertaining to the mine tailing site. I don't
(22) pretend that's all the evidence in the record to support
(23) my suggested recommendation. But in this context, that's
(24) an important initial distinction to make.
(25) The second point I want to make is that the

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- (1) action that the Regional Board can take against it.
(2) With that said, we've routinely issued NPDES
(3) permits to federal entities, including the Forest Service.
(4) We have issued a Cleanup and Abatement Order against one
(5) or more federal entities.
(6) The wrinkle here and I think at least on my
(7) understanding of the record is that arguably this is the
(8) first time at least to my knowledge that the Regional
(9) Board has specifically issued a Cleanup and Abatement
(10) Order to a set of entities where there is an existing
(11) CERCLA action ongoing, not that they want to issue a
(12) Cleanup and Abatement Order to those same entities for an
(13) action outside of the CERCLA action. But as it pertains
(14) to the CERCLA action itself.
(15) So the short answer is I don't think CERCLA in
(16) this case provides a basis for preemption. We have the
(17) ability to do so under 120(a)(4). We've held that
(18) position for a number of years, many, many years. And I
(19) don't see any reason at this time to depart from that.
(20) For that, I recommend denying the motion
(21) CHAIRPERSON LONGLEY: US v. Colorado.
(22) LEGAL COUNSEL COUPE: Again, US v. Colorado
(23) doesn't have any specific binding legal authority on the
(24) Board. The prosecution team's argument is more than just
(25) strictly based on US v Colorado. They specifically

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- (1) Regional Board has always reserved our rights under state
(2) law, and particularly under CERCLA Section 120(a)(4) to
(3) enforce state law requirements, particularly as it
(4) pertains to non-NPL sites. We're dealing with a site in
(5) this particular case not listed on the national priorities
(6) list.
(7) I'm aware of the authority that the prosecution
(8) team has raised as a basis to support the position that
(9) the Board can issue a Cleanup and Abatement Order separate
(10) from the ongoing CERCLA action. That's the United States
(11) versus Colorado case out of the 10th Circuit. I followed
(12) up on that correspondence -- or we held a pre-hearing
(13) conference with the parties. And I asked them some other
(14) specific questions about the ongoing cleanup as it
(15) pertains to the mine site itself and the tailing site.
(16) I'm hoping that as part of the parties arguing on the
(17) motion that I'll get some additional clarification in
(18) response to some of those questions.
(19) But the bottom line is that 120(a)(4) allows us
(20) the proceed under state law in order to enforce state law
(21) requirements. And 113 of CERCLA does not specifically
(22) preclude us from doing so. For example, we have
(23) routinely -- and there are similar arguments that the
(24) Forest Service has raised as it pertains to somehow the
(25) Forest Service is a federal entity being immune from any

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- (1) highlighted some of the statutory provision in CERCLA they
(2) believe also allow for the Regional Board to proceed to
(3) issue these Cleanup and Abatement Orders.
(4) And I think probably the argument that I was most
(5) persuaded about pertaining to our provision to enforce
(6) state law requirements under 120(a)(4). Not to say there
(7) aren't other good arguments. But that was one that
(8) specifically stood out to me.
(9) CHAIRPERSON LONGLEY: I'm prepared to deny the
(10) motion. Give you a couple minutes to argue.
(11) MR. DUFFY: Thank you, Dr. Longley.
(12) I think the analysis is a bit different than what
(13) counsel has suggested to you. The question is whether or
(14) not the State Order constitutes the challenge to a CERCLA
(15) remedy. And the way CERCLA is structured, the federal
(16) government when it asserts jurisdiction, they have
(17) jurisdiction. That's what's happened here.
(18) The federal government, the Forest Service acting
(19) under delegated authority from EPA, has selected a record
(20) of decision. They have as their intent they should do
(21) under the NCP invited the participation of the state of
(22) California. The state has fully participated in the
(23) remedy selection. They have submitted the DWRs to the
(24) Forest Service to use in the analysis.
(25) And what is happening now is the State wishes to

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- (1) impose a different -- potentially different remedy or
(2) approach superimpose that upon us like a remedy. That's
(3) what's barred by Section 113(h) of CERCLA. And in all due
(4) respect to counsel, it does say in the savings clause upon
(5) which he is relying is not accepted from the effect of
(6) Section 113(h). In other words, state law is, in fact,
(7) preempted by federal law in terms of timing of challenges.
(8) And this is a challenge to the CERCLA remedy.
(9) CHAIRPERSON LONGLEY: Thank you. Prosecution
(10) team.
(11) MR. TAURIAINEN: Thank you, Andrew Tauriainen for
(12) the prosecution team.
(13) I certainly think that the advisory counsel's
(14) recommendation is well reasoned. And I won't try to
(15) elaborate much on it.
(16) What I do want to explain is it's important to
(17) note the Forest Service has had kind of a shift in tone
(18) through its submittals in these proceedings. The
(19) relationship -- one of the questions Mr. Coupe posed to
(20) the parties the other day after the pre-hearing conference
(21) was what's the relationship with the Forest Service
(22) between the Forest Service and the Board.
(23) At the staff level, as I understand it, it's
(24) always been good. And hopefully we'll continue to be so.
(25) I think the submittals by the Forest Service counsel who

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- (1) things.
(2) It's an opinion of my six processes, it is the
(3) Walker Mine and it's one mine site. And that's my
(4) thinking.
(5) Also, as I peruse all these documents and I think
(6) about human nature, I think this is pretty clear that
(7) these people are working together. And just because there
(8) might be three or eight people in each of the first two
(9) offices and three or five hundred people in the other,
(10) there's just one head person in each of those offices.
(11) And I think that those kinds of ratios don't have the
(12) meaning that the obvious connection and direct involvement
(13) that I see in all these letters is pretty clear. So I'm
(14) going to -- I'll make a motion we support adopting the two
(15) proposed Cleanup and Abatement Orders as written. Staff's
(16) recommendation.
(17) CHAIRPERSON LONGLEY: I have a slightly different
(18) take, and then we'll go to Carmen.
(19) First of all, I accept what you say in so far as
(20) it pertains to the mine. But right now, the Forest
(21) Service is working under an order ROD, from a ROD from
(22) EPA. And they have seemed to have renewed vigor. I'm not
(23) sure that we have exhausted the remedies under that
(24) LEGAL COUNSEL COUPE: Dr. Longley, if I could
(25) clarify my understanding of the record and the

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- (1) chose not to be here today are more based on knee jerk
(2) reactions or perhaps management level decisions.
(3) BOARD MEMBER SCHNEIDER: I'm sorry to interrupt,
(4) Karl. I think, you know, the relationship aren't what
(5) we're talking about. We're talking about the legal issues
(6) and I have to go with David Coupe on that
(7) MR. TAURIAINEN: You're very correct.
(8) CHAIRPERSON LONGLEY: Can you summarize quickly?
(9) MR. TAURIAINEN: Well, the Forest Service started
(10) out arguing that we will no authority at all. And most
(11) recently, they acknowledged in their March 24th e-mail
(12) that they're essentially committed to complying with the
(13) DWRs. We believed them in 1994 when they said they were
(14) going to comply with those WDRs. We believed them in 1991
(15) --
(16) CHAIRPERSON LONGLEY: We understand. You're
(17) arguing the case now. Thank you very much.
(18) MR. TAURIAINEN: Thank you.
(19) CHAIRPERSON LONGLEY: My ruling will be that I
(20) deny.
(21) Now we're going to close the hearing and confine
(22) the discussion to the Board members. We will be speaking
(23) with our advisory team I'm sure as we go through this.
(24) Who wants to lead the discussion here?
(25) BOARD MEMBER SCHNEIDER: Karl, I'll say a few

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- (1) relationship that Board staff is having with the Forest
(2) Service. I don't pretend to understand what that
(3) relationship is. But what I can say at least based on the
(4) e-mail from Mr. Hope that was admitted as part of the
(5) administrative record, he specifically said there is -- he
(6) specifically recognized that --
(7) CHAIRPERSON LONGLEY: Mr. Hope is the Forest
(8) Service; is that correct?
(9) LEGAL COUNSEL COUPE: Forest Service senior
(10) attorney. He specifically recognized, hey, we recognize
(11) that there are still problems out there. We're not going
(12) to wait around for the five-year review period as required
(13) under CERCLA to take a look at reopening the remedy, if
(14) necessary. Maybe looking at new remedial action
(15) objectives and coming to a different decision how best to
(16) remediate the conditions of the site.
(17) What I think he did specifically mention in that
(18) e-mail is that there is an ongoing focused feasibility
(19) study, which is essentially a CERCLA document which serves
(20) as a precursor to a record of decision which will be an
(21) enforceable requirement that will include all of the
(22) state's applicable or relevant and appropriate
(23) requirements as it pertains to the mine site itself.
(24) CHAIRPERSON LONGLEY: Exactly. And in making
(25) this recommendation to the Board, I'm not prejudicing

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- (1) our -- hopefully not in any way biasing the Board so goes
(2) this direction, coming back and reopening the issues with
(3) the tailing site.
(4) Carmen.
(5) BOARD MEMBER RAMIREZ: Mine was more of a general
(6) thought. I'm not as convinced I guess as Member
(7) Schneider. I do think there is a relationship. There was
(8) a relationship between Anaconda and International with the
(9) Walker Mine.
(10) The question in my mind is whether or not that is
(11) sufficient to meet the legal standard that we're required
(12) to establish in order to find responsibility under Best
(13) Foods or under the standard we're choosing today.
(14) You know, I found the testimony by William
(15) Haegele to be convincing. I think that if there was a
(16) significant relationship, it would have shown up in the
(17) books. So I'm really persuaded by that.
(18) On the other hand, you know, the letters that say
(19) hey dig here, dig this deep, move it over, whatever, I
(20) mean that's really a lot of control. And I understand
(21) that it was maybe, you know, an act of desperation because
(22) they could see maybe they were going under.
(23) But you know that's -- I'm tended to sway towards
(24) sort of the last grasp is maybe what hooks in ARCO.
(25) Because short of that I don't -- I tend to believe the way

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- (1) that William Haegele explains the way there are certain
(2) instances, big investments. I tend to accept that
(3) explanation. But the last grab in the 40s I think ropes
(4) in ARCO. But just kind of my thoughts.
(5) BOARD MEMBER SCHNEIDER: I think it's just a
(6) demonstration the ongoing through this is a lot of power
(7) to take action when they chose. And as long as things are
(8) going well, that we don't have a lot maybe because it
(9) wasn't necessary. As soon as things -- they wanted to
(10) involve themselves, they involve themselves and in a
(11) meaningful manner, from my perspective. They always have
(12) that power. Whether they exercise it or not is up to them
(13) when they want to. But they have it.
(14) BOARD MEMBER RAMIREZ: But the acting of the
(15) power is what the law requires.
(16) BOARD MEMBER SCHNEIDER: They did do that at the
(17) end.
(18) BOARD MEMBER RAMIREZ: That's what I think.
(19) LEGAL COUNSEL COUPE: Dr. Longley, I think Mr.
(20) Ken Landau of the advisory team has a few comments to
(21) make.
(22) CHAIRPERSON LONGLEY: And then Ms. Moffitt wishes
(23) to talk after. We hear from Mr. Landau.
(24) ASSISTANT EXECUTIVE OFFICER LANDAU: Yeah, the
(25) advisory attorneys asked me to look at a couple questions

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- (1) very pertinent to the discussion. The first being did
(2) Anaconda or International Smelting have control over the
(3) activities of the site. And the second, did those
(4) activities result in or are they associated with the
(5) pollution and nuisance conditions there.
(6) I did not go through all hundreds and hundreds of
(7) letters. I basically went through the sited references by
(8) the various arguments to pick out selected documents to
(9) look at.
(10) I'm going to divide my discussion on the actual
(11) mining versus the milling versus the tailings because it's
(12) somewhat different.
(13) For the mining, there's obviously a lot of
(14) correspondence on specifics. So what I started looking at
(15) is this more of a command control or the Anaconda and
(16) International smelting geologists are actually telling
(17) them what to do in a command and control, or are they
(18) simply trusted experienced consultants providing
(19) direction?
(20) And the vast majority of the documents aren't
(21) clear one way or the other. They're just technical
(22) discussions. But there are a number of them. You've seen
(23) most of them up here discussed today. That it's very
(24) clear that Walker Mine is asking for permission to proceed
(25) with something or the Anaconda directives are not just to

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- (1) a staff level at the mine providing directive, but they
(2) are directions to the manager of Walker Mine, which to me
(3) indicates a command and control type situation.
(4) Now I would agree that this is -- with ARCO this
(5) is predominantly related to exploration and development.
(6) There is documentation of discussions related to mining
(7) activities. This appears to be mostly related to keeping
(8) track of the amount of ore as opposed to direction, which
(9) is a perfectly reasonable thing for a parent company to
(10) look at what is the actual asset going on.
(11) To me though, even if they weren't directly
(12) involved in the major part of the mining as was stated by
(13) ARCO's experts, there is a certain amount of copper and
(14) sulfide in the rock. There is a certain amount of the
(15) mineralized rock that comes out with this. That's all
(16) gone in the tailings.
(17) The rock itself even, if it has no sulfides or
(18) copper in it is itself polluting. You saw a stream,
(19) pictures of the stream with rocks and sediment in it.
(20) Whether that's copper or sulfide rock, it is still a water
(21) quality issue. So those activities which I believe were
(22) directed by Anaconda and International Smelting did relate
(23) to pollution activities for the work in the mine.
(24) The milling operation, there is very little.
(25) There is only really only one document I saw that to me

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- (1) could be taken either as a directive or a recommendation.
(2) But there is very little else on that.
(3) And regarding the actual tailings piles, there
(4) is -- the record is basically silent in regards to
(5) correspondence on that. But again, the rock that came out
(6) even from exploration and development went somewhere, and
(7) it went into that tailing pile so it is part of that.
(8) I do have some difficulty with the concept of we
(9) haul it out of the mine and then washed our hands. But
(10) that gets into a legal issue.
(11) There's certainly the question about whether you
(12) can extrapolate the command and control from the mining
(13) operation into the milling and disposal. There is again
(14) what I said is there's a lack -- it's not an unreasonable
(15) assumption, but there is not a lot of hard evidence on
(16) that.
(17) CHAIRPERSON LONGLEY: And in my discussion, I
(18) certainly would agree with you with the problem that I'm
(19) having is that there's already a CERCLA activity ongoing
(20) that shows at least in my mind some promise of coming to
(21) the successful conclusion. And as I stated, I didn't want
(22) to in any way if we go that direction want to bias us
(23) towards future actions.
(24) Go ahead, Jenny.
(25) LEGAL COUNSEL MAYER: Mr. Chair, do you --

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- (1) CHAIRPERSON LONGLEY: Let's let Ms. Moffitt talk.
(2) BOARD MEMBER MOFFITT: Thank you.
(3) So some of the things I was going to say were
(4) exactly that, you know, even though the argument can be
(5) tried to be made that the mining activities were not
(6) done -- being I guess directly supervised by
(7) International, which I don't necessarily agree with
(8) anyway. But even despite that, the exploration, the waste
(9) from the exploration is certainly a discharge of -- that
(10) has -- that we see there in the water.
(11) One question I have -- and I guess this would be
(12) maybe for prosecution but maybe I can get it from the
(13) advisory team is why did it take us so long to get to this
(14) point? I mean, you see the picture of the creek in the
(15) '80s and it looks -- it's startling. And this mine closed
(16) and the '40s. I understand that certainly as the rocks --
(17) as lapses more and more copper and more and more acid is
(18) going to be leaching. But why did we wait until now to
(19) start really directing ARCO to start cleaning up the mine?
(20) ASSISTANT EXECUTIVE OFFICER LANDAU: I can't have
(21) not -- aside from the advisory team, I have not been
(22) involved in those decisions. The Board certainly from the
(23) record has not done nothing. We had waste discharge
(24) requirements. We went in with our own moneys.
(25) As to why ARCO was not pursued earlier or

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- (1) successfully, I have no personal knowledge one way or the
(2) other.
(3) LEGAL COUNSEL COUPE: There is some evidence in
(4) the record of some activity on behalf of Regional Board
(5) staff to try and get ARCO involved either as an applicant
(6) or as a discharger on an NPDES permit or otherwise, and
(7) there is evidence in the record I think to suggest that --
(8) and there was some back and forth and some briefing done
(9) on that issue or at least a letter from ARCO with some
(10) pretty extensive legal argument.
(11) And the prosecution team is probably more
(12) familiar with the record than I am quite frankly. But my
(13) recall is that as a result of that, that the Regional
(14) Board staff eventually issued a letter saying that at this
(15) time we aren't going to take any action.
(16) Now, the way I read that record -- that letter,
(17) that doesn't suggest to me that the Regional Board staff
(18) is precluded from coming back and seeing if there's other
(19) information that may be available to support the position
(20) that ARCO arguably has some liability for the site. But
(21) again, that's a determination for the Board to make.
(22) BOARD MEMBER MOFFITT: It just seems to me
(23) that -- and I appreciate staff's -- I guess our
(24) progressive approach, progressive enforcement approach.
(25) But the water quality, the damages to the water bodies

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- (1) here were quite egregious. I'd like to have seen some
(2) action sooner than that. But that's just I guess a point
(3) outside of this.
(4) LEGAL COUNSEL COUPE: Ms. Moffitt -- and I think
(5) that at least on the record as I understand it, part of
(6) the -- one of the reasons that the prosecution team has
(7) proffered rightly or wrongly I'm not -- is -- and they can
(8) speak to this more directly. I think their position
(9) rightly or wrongly is we were able to procure some
(10) documents in archives from University of Wyoming and
(11) elsewhere. As a result of that presumably painstaking
(12) effort, that as a result of that investigation, they were
(13) then in a position to at least in their mind put forward a
(14) case for your consideration concerning whether ARCO should
(15) be responsible or not.
(16) BOARD MEMBER MOFFITT: I'm done.
(17) CHAIRPERSON LONGLEY: Yes, Alex.
(18) LEGAL COUNSEL MAYER: Yes, Mr. Chair. I just
(19) want to very briefly put a finer point on what the request
(20) was from the advisory team.
(21) Ken did a good job explaining it. You probably
(22) got this understanding. But I just want to be clear what
(23) we asked is whether the parent companies, Anaconda or
(24) International, directed or controlled activities at the --
(25) certain activities at the mine related to pollution

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- (1) control, not whether they directed or controlled the mine
(2) as a whole. It was just the pollution-related activities.
(3) So just want to make that clear for everybody's
(4) understanding.
(5) Relating to control over the mine from the
(6) parents, Ken talked about certain evidence in the record.
(7) Just wanted to mention a few other bits that I can recall
(8) that might help inform the deliberations.
(9) There was that contract that was memorable in my
(10) mind where the parent International Smelting was able --
(11) had the contractual authority or ability to ensure that
(12) the manager of the Walker site -- and this is a time frame
(13) from 1916 to 1918 -- to ensure that the manager of that
(14) site was satisfactory to the parent. I thought that was a
(15) notable piece of evidence in the record.
(16) And there was another one that came to mind is a
(17) prospectus mentioned in the prosecution team's statement
(18) from a stock Analyst ensuring to potential purchasers of
(19) this Walker Mine stock that in its written prospectus that
(20) the parents had control over this mine to ensure that the
(21) stock -- that potential stockholders could be assured that
(22) everything operated smoothly.
(23) CHAIRPERSON LONGLEY: Thank you, Alex.
(24) We have a motion on the table. Do we have a
(25) second to the motion?

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- (1) LEGAL COUNSEL COUPE: Dr. Longley, if, in fact,
(2) the Board is inclined to adopt one or more of the motions,
(3) the advisory team at some point would request a brief
(4) recess. We have some suggested changes for the Board's
(5) consideration. If, in fact, the Board is inclined to
(6) adopt the Orders.
(7) BOARD MEMBER SCHNEIDER: I'm going to have to go.
(8) If there is some discussion that you have, Karl, over
(9) whether to do both of these or one of these, I'd be happy
(10) to vote on the one on the mine.
(11) Or I don't mind if they're going to want to take
(12) a break to continuing this until tomorrow morning and do
(13) it then when we're all --
(14) CHAIRPERSON LONGLEY: I think we better continue
(15) it until tomorrow morning. This is continued until 8:30
(16) tomorrow morning. In the mean time --
(17) LEGAL COUNSEL COUPE: Dr. Longley, it's fair to
(18) continue it until tomorrow morning. I'd like to hear from
(19) the parties specifically on that.
(20) CHAIRPERSON LONGLEY: Right. And Mr. Duffy,
(21) continue until tomorrow morning, does that cause you any
(22) particular grief?
(23) MR. DUFFY: This is your party. We'll be here.
(24) 8:30 tomorrow.
(25) CHAIRPERSON LONGLEY: And I have already ruled on

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- (1) those exhibits. But if you can present evidence tomorrow
(2) morning, I would be happy to accept that.
(3) MR. DUFFY: Thank you. I will check on that this
(4) evening.
(5) CHAIRPERSON LONGLEY: Prosecution team.
(6) MR. TAURIAINEN: Everybody is local, except for
(7) our expert witness, Dr. Quvik. And if we are done with
(8) him, I think he won't need to be here tomorrow morning.
(9) CHAIRPERSON LONGLEY: Good. See you here at 8:30
(10) tomorrow morning.
(11) (Whereupon Item 15 was recessed at 5:52 PM)
(12)
(13)
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(23)
(24)
(25)

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- (1) CERTIFICATE OF REPORTER
(2) I, TIFFANY C. KRAFT, a Certified Shorthand
(3) Reporter of the State of California, and Registered
(4) Professional Reporter, do hereby certify:
(5) That I am a disinterested person herein; that the
(6) foregoing hearing was reported in shorthand by me,
(7) Tiffany C. Kraft, a Certified Shorthand Reporter of the
(8) State of California, and thereafter transcribed into
(9) typewriting.
(10) I further certify that I am not of counsel or
(11) attorney for any of the parties to said hearing nor in any
(12) way interested in the outcome of said hearing.
(13) IN WITNESS WHEREOF, I have hereunto set my hand
(14) this 1st day of April, 2014.
(15)
(16)
(17)
(18)
(19)
(20)
(21)
(22) TIFFANY C. KRAFT, CSR, RPR
(23) Certified Shorthand Reporter
(24) License No. 12277
(25)

Exhibit 4

C
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P
Y

United States
SECURITIES AND EXCHANGE COMMISSION 1-1528
18th and Locost Streets
PHILADELPHIA, PENNSYLVANIA 3

July 19, 1944

Mr. Rom Warburton, Cashier
Walker Mining Company
P. O. BOX 1079
Salt Lake City 10, Utah

Dear Sir:

This will acknowledge your letter of July 5, 1944, in respect of our letter of March 14, 1944, wherein it was suggested that in view of the cessation of operations because of unfavorable ore development and inability to operate profitably, charges should be made to deficit account for all losses, including write-down of fixed assets, and development no longer used or useful.

You advise us that on June 7, 1944, petition was filed in the District Court of the United States in and for the Northern District of California, Northern Division, for a reorganization of the Walker Mining Company under Chapter X of an act of Congress of the United States entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States."

In view of this action, changes in the financial statements in respect of our suggestion may be deferred until the present proceedings are completed. However, with regard to financial Statements to be included in the annual reports filed in the future, a note should be appended to the Financial Statements setting forth the filing of the petition under the aforesaid Chapter X, together with an appropriate statement of the status of the matter. In addition, the recent negative operating and developmental results and questionable value of the properties should be disclosed in a footnote to the balance sheet.

Very truly yours,

/s/ Ernest W. Ramspeck
Assistant Director
Corporation Finance Division

COPY

MIN 000012585

Exhibit 5

APPENDIX III

EXPERT REPORT OF WILLIAM HAEGELE

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

—
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**

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

**WALKER MINE
PLUMAS COUNTY**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
CENTRAL VALLEY REGION, CLEANUP AND ABATEMENT ORDER NO.
R5-2014-XXXX AND ORDER NO. R5-2014-YYYY ISSUED TO ATLANTIC
RICHFIELD COMPANY, ET AL.**

EXPERT REPORT OF WILLIAM HAEGELE

**This report was prepared solely for the purposes of the above-referenced matter and is not
to be used or relied upon for any other purpose without the express written consent of
KPMG LLP and William Haegele.**

February 20, 2014

I. Introduction

I have been asked by counsel for Atlantic Richfield Company ("Counsel") to evaluate the relationship and involvement of the Anaconda Copper Mining Company ("Anaconda,"), and Anaconda's subsidiary International Smelting & Refining Company ("IS&R," together with Anaconda, the "Anaconda Companies"), with respect to Walker Mining Company ("WMC"). Additionally, I have been asked to examine and consider the full set of historical documents provided to me for 1) fraud or fraudulent intent on the part of the Anaconda Companies, 2) whether WMC acted as anything other than a separate entity apart from IS&R and Anaconda, and 3) whether the involvement by the Anaconda Companies in the Walker Mine are outside of corporate norms.

II. Summary of Qualifications

I am a Forensic Partner in the San Francisco office of the audit, tax, and advisory firm KPMG LLP. I am a Certified Public Accountant ("CPA") licensed to practice in California. Additionally, I am a Certified Insolvency and Restructuring Advisor ("CIRA") and Certified in Financial Forensics ("CFF"). My practice focuses on distressed entities and creditors, corporate restructurings, mergers and acquisitions, forensic accounting, fraud investigations, and similar accounting services. I have specific experience evaluating and analyzing complex accounting and financial matters, including evaluating and advising on corporate restructurings, business combinations, acquisitions, bankruptcy, creditor and shareholder rights, fraudulent transfers, and insolvency. I have led SEC financial reporting investigations and restatement projects involving accounting irregularities. As a CPA, I have participated in financial statement audits. Finally, I was a Chief Financial Officer with overall responsibility for the accounting, finance, and legal functions of a retail company. A copy of my resume is included as Appendix A to this report.

III. Exhibits

For purposes of presenting my opinions and their bases, I may develop exhibits, including PowerPoint presentations, overheads, flip charts, and other summary graphics. I may also use certain demonstrative aids and illustrations to assist in presenting technical concepts.

IV. Compensation

KPMG's compensation for preparing this report, including preparation for and testimony in any hearings, is based upon the actual time expended at the hourly rates for the individuals assigned to the engagement. In addition to professional fees, KPMG is reimbursed for any travel and out-of-pocket expenses. The hourly rate for KPMG professionals working on this engagement ranges between \$150 and \$490 per hour. My hourly rate is \$490 per hour.

V. Information Considered and Methodology

I have been provided by Counsel what has been represented to me to be the available historical documents, accounting records, and communications related to this matter. I reviewed, analyzed, and considered each of these documents including, but not limited to,

- WMC, Anaconda, and IS&R financial statements, tax returns and accounting records;
- WMC and Anaconda annual reports;
- WMC operational reports and similar documents;
- Corporate governance records;
- Correspondence;
- Bankruptcy Court records; and
- Other historical documents provided.

Utilizing my experience in accounting, business combinations, fraud, forensic investigations, bankruptcy, and auditing, I analyzed these documents in an effort to understand the relationship between the Anaconda Companies and WMC, including the Anaconda Companies' involvement in the operations of WMC. In doing so, I analyzed whether WMC operated as a standalone corporate entity, the financial relationship between the parties, and the involvement of the Anaconda Companies in WMC's activities and operations, among other things. The results of my review and analysis are described in detail in the following sections of this report.

I understand that discovery and depositions may not be completed. To the extent that the record is supplemented, I reserve the right to issue an amended report.

A complete list of documents cited in this report is included as Appendix B.

VI. Summary of Opinions

After review, consideration, and analysis of the information provided, I have reached the following opinions:

- WMC was a standalone, publicly traded corporation with a separate corporate, financial, and accounting existence from IS&R and Anaconda. I did not find any indication of fraud in the interactions and transactions between WMC, IS&R, and Anaconda.
- The Anaconda Companies provided typical investor monitoring and oversight of their investment, in this case WMC.
- The Anaconda Companies' involvement in the Walker Mine was limited to certain administrative and procurement services and the provision of expertise. The provision of

these services and expertise is consistent with normal involvement on the part of a majority investor. The Anaconda Companies did not manage the Walker Mine.

These summary opinions are discussed in greater detail in the ensuing sections of this report.

VII. Background

Walker Mining Company was incorporated in 1913 in the State of Arizona.¹ The company was headed by President J.R. Walker and had offices in Salt Lake City, Utah and Phoenix, Arizona.² WMC owned the Walker Mine, a copper mine located in Plumas County, California.³ The Walker Mine produced copper ore until 1941; however, mining and milling operations were suspended from 1920 to 1922 and 1932 to 1935 due to unfavorable market conditions.⁴ The mine and mill closed permanently in 1941 due to rising production costs and the low price of copper.⁵

In 1918, International Smelting & Refining Company exercised an option to purchase 630,000 shares of WMC, resulting in an ownership interest of 50.4%.⁶ IS&R was a wholly owned subsidiary of Anaconda Copper Mining Company.⁷

The Walker Mine closed permanently in October 1941 and in June 1944, WMC filed for reorganization under Chapter 10 of an act of Congress of the United States entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States."⁸

In February 1945, the Bankruptcy Court found that WMC's business and affairs were at all times conducted in a manner consistent with a corporation that is free from domination or control by others, and that WMC was not at any time the alter ego of the Anaconda Companies. The Court also found that WMC "greatly benefited" from its relationship with the Anaconda Companies and that the minority shareholders were treated fairly.⁹

¹ Articles of Incorporation of the Walker Mining Company, as Amended to February 3, 1930 (Ex. 61).

² Articles of Incorporation of the Walker Mining Company, as Amended to February 3, 1930 (Ex. 61).

³ Moodys Manual of Railroads and Corporation Securities, 1920, p. 2236 (Ex. 29).

⁴ Report of Walker Mining Company at the Special Stockholders' Meeting, May 3, 1923 (Ex. 34); Report of State Mineralogist, undated, p. 102 (Ex. 133).

⁵ "Ceiling on Copper Price Forces Big Producer to Close," October 26, 1941 (Ex. 120).

⁶ At the time of the stock purchase, IS&R was known as International Smelting Co. See Moodys Manual of Railroads and Corporation Securities, 1920, p. 2236 (Ex. 29). WMC's authorized shares increased from 1,250,000 to 1,750,000 and IS&R's share increased from 630,000 to 882,000. IS&R's ownership interest remained the same at 50.4%. See untitled document containing WMC corporate information (Ex. 2) and letter from E.O. Sowerwine to Rom Warburton, September 27, 1944 (Ex. 129).

⁷ Report of the Anaconda Copper Mining Company For the Year Ended December 31st, 1932 (Ex. 73).

⁸ Letter from Ernest W. Ramspeck to Rom Warburton, July 19, 1944 (Ex. 128).

⁹ Memo Decision in the Matter of Walker Mining Company, Debtor, by Special Master T.D. Lewis, January 15, 1945 (Ex. 130).

Specifically, Judge Tillman D. Johnson adopted the findings of the Special Master and decreed, in part, the following:

“That Debtor [WMC] is not and has never at any time been an alter ego or instrument or department of Anaconda Copper Mining Company or of International Smelting and Refining Company...

That Debtor’s business and affairs have at all times been carried on and conducted in the manner and according to the methods and practice usually employed by corporations free of any domination or control by others.

That no act or omission of said Anaconda Copper Mining Company or of said Claimant [IS&R], their officers, agents and employees, or any of them, established by any evidence, constitutes or proves any domination or control by them or any of them over Debtor or any of Debtor’s acts, business or affairs, or constituted fraud, or occasioned damage or prejudice to or violated any right of Debtor or any of its stockholders.”¹⁰

VIII. Observations, Analyses, and Opinions

- A. **WMC was a standalone, publicly traded corporation with a separate corporate, financial, and accounting existence from IS&R and Anaconda. I did not find any indication of fraud in the interactions and transactions between WMC, IS&R, and Anaconda.**

During my review and analysis of the historical documents, I did not find any indication of fraud on the part of the Anaconda Companies in their interactions with WMC. Further, I did not find any documents that contradict the Bankruptcy Court and Special Master findings, including that WMC was not at any time the alter ego of the Anaconda Companies, and that WMC shareholders were treated fairly.

Additionally, as a result of my examination and analysis of the available documents, I found that WMC was a publicly traded company and observed corporate formalities, including holding regular shareholder meetings, maintaining separate accounting records, and preparing financial statements and tax returns. Additionally, significant contracts and other business dealings with the Anaconda Companies were negotiated and approved independently and benefited WMC and its minority shareholders.

Finally, the Anaconda Companies could have divested some or all of their stock in WMC and WMC would have continued to exist as a standalone entity.

¹⁰ Decree in the Matter of Walker Mining Company, Debtor, by Judge Tillman D. Johnson, February 10, 1945 (Ex. 131).

1. Corporate Formalities

WMC and Anaconda were separate publicly traded companies, each with its own board of directors.¹¹ J.R. Walker served as WMC President and served on the WMC Board from inception through bankruptcy in 1944.¹² In 1918, Anaconda, through its wholly owned subsidiary IS&R, purchased stock representing a 50.4% equity interest in WMC.¹³ The Walker family and other minority shareholders held the remaining 49.6% of outstanding shares.¹⁴ WMC and Anaconda existed as separate corporate entities before and after Anaconda's investment in WMC.

The WMC Board of Directors remained active and was kept informed of mine operations.¹⁵ For example, in May 1940, Reno H. Sales and Clyde E. Weed, Anaconda Geologist and Manager of Mines, respectively, prepared a report regarding the status of the Walker Mine for the WMC Board.¹⁶ WMC also held annual shareholder meetings and special shareholder meetings when necessary.¹⁷

WMC paid dividends to all shareholders, including the Anaconda Companies. On March 7, 1930 WMC paid its first dividend in the amount of \$131,198.10 and on December 23, 1937, WMC paid its second and last dividend in the amount of \$87,465.40.¹⁸

2. Anaconda's Accounting for WMC

Based on my review and analysis of Anaconda's accounting records, I observed that Anaconda and IS&R accounted for its interest in WMC as an investment and did not consolidate or otherwise report WMC's operating results in its financial statements.¹⁹ This accounting treatment was consistently applied until Anaconda and IS&R wrote off the investment as a result of WMC's bankruptcy filing.²⁰

The Notes to Anaconda's Consolidated Balance Sheet state, "Accounts of subsidiaries in which the Company's interest is less than 75% of the issued stock are not consolidated and the shares

¹¹ Annual reports of the Walker Mining Company between fiscal years 1924 and 1943 (Ex. 37, 46, 52, 54, 59, 63, 67, 71, 72, 75, 78, 79, 83, 88, 98, 106, 117, 122, 123, and 126). Annual reports of the Anaconda Copper Mining Company between fiscal years 1932 and 1941 (Ex. 73, 76, 77, 80, 82, 87, 97, 107, 116, and 121).

¹² Annual reports of the Walker Mining Company between fiscal years 1924 and 1943.

¹³ Report of the Anaconda Copper Mining Company For the Year Ended December 31st, 1918 (Ex. 13).

¹⁴ "Analysis of Facts and History of the Walker Mining Company, Subsidiary of the Anaconda Copper Mining Company," November 24, 1922 (Ex. 33).

¹⁵ Annual reports of the Walker Mining Company between fiscal years 1924 and 1943; correspondence between C.E. Weed and Reno H. Sales, May and June, 1940 (Ex. 108, 109, and 110).

¹⁶ Correspondence between C.E. Weed and Reno H. Sales, May and June, 1940 (Ex. 108, 109, and 110).

¹⁷ By-laws of the Walker Mining Company, as amended February 3, 1930 (Ex. 62); Report of Walker Mining Company at the Special Stockholders' Meeting, May 3, 1923 (Ex. 34).

¹⁸ Report of the Walker Mining Company For the Year Ending December 31, 1930 (Ex. 67); Statement 1937, Walker Mining Company (Ex. 88).

¹⁹ Annual reports of the Anaconda Copper Mining Company, 1918, 1919, and 1920 (Ex. 13, 23, and 57).

²⁰ Annual Report, Anaconda Copper Mining Company, 1941 (Ex. 121).

owned in these subsidiaries are carried as investments in the Consolidated Balance Sheet.”²¹ The Anaconda Companies held a 50.4% interest in WMC, and as such, WMC was not reflected as a consolidated subsidiary of Anaconda.

3. WMC’s Books and Records

WMC maintained its own books and records, prepared standalone financial statements,²² tax returns,²³ and filed annual reports (Form 10-K) with the SEC.²⁴ WMC’s financial statements were subject to audits conducted in accordance with Generally Accepted Auditing Standards (“GAAS”) by an independent accounting firm.²⁵

Based on my review and analysis of the available accounting records, I observed that WMC’s assets, expenses, and results of operations were accounted for separately from the Anaconda Companies. For example, WMC’s results of operations were recorded only in the financial statements of WMC. Further, WMC entered into various debt agreements with the Anaconda Companies, which were recorded on WMC’s balance sheet as “indebtedness to International Smelting and Refining Company.” WMC also recorded the interest expense associated with its debt to IS&R on its profit and loss statement.²⁶

WMC filed individual, unconsolidated tax returns with the U.S. Internal Revenue Service.²⁷

4. Significant Business Dealings

WMC and the Anaconda Companies entered into various agreements relating to the delivery and sale of copper ore. These agreements appear to have been negotiated and approved independently. Moreover, WMC’s business dealings with the Anaconda Companies do not appear to favor the Anaconda Companies to the detriment of WMC.

In June 1921, WMC and IS&R entered into an agreement under which WMC would sell to IS&R copper ore and copper concentrates mined from the Walker Mine (or from any other mining properties operated by WMC) for a five year period (the “1921 Smelting Agreement”).²⁸ The 1921 Smelting Agreement was approved separately by IS&R and WMC. In June 1921, the

²¹ Anaconda Copper Mining Company, Notes to Consolidated Balance Sheet – December 31st 1940 (Ex. 114).

²² Annual reports of the Walker Mining Company between fiscal years 1924 and 1943.

²³ WMC Corporate Income Tax Returns for 1923 and 1924 (Ex. 6 and 42).

²⁴ Form 10-K for Walker Mining Company, For Fiscal Years Ended December 31, 1942 and December 31, 1943 (Ex. 124 and 127).

²⁵ Opinion letters issued by Pogson, Peloubet & Co., Certified Public Accountants (Ex. 124 and 127).

²⁶ WMC Balance Sheet and Profit and Loss Statement (Ex. 124 and 127).

²⁷ WMC Corporate Income Tax Returns for 1923 and 1924 (Ex. 6 and 42).

²⁸ Agreement between Walker Mining Company and International Smelting Company, June 7, 1921 (Ex. 53).

IS&R Board of Directors ratified the execution of the agreement during a regular meeting of the board of directors.²⁹ The agreement was executed by J.R. Walker as President of WMC.

In April 1937, WMC cancelled its contract with IS&R for the sale of ore and concentrates and entered into a new contract under the terms of which the recoverable copper was returned to WMC (the "1937 Smelting Agreement").³⁰

These agreements do not appear to favor the financial interests of the Anaconda Companies to the detriment of WMC. The Notes to Anaconda's Consolidated Profit and Loss Statement state,

"The principal transactions with unconsolidated subsidiaries consist of sales of copper and other metals to Anaconda Wire and Cable Company and smelting and refining on toll of ores and concentrates produced by Mountain City Copper Company and Walker Mining Company...Smelting and refining tolls are charged on the same basis as those charged to outside customers."³¹

Additionally, overlapping officers and directors appear to have acted in a manner to safeguard the interests of WMC with respect to the various agreements described above. For example, J.O. Elton wrote to Anaconda officer B.B. Thayer, "Since I am a director and vice-president of the Walker Mining Company, I did not think it would be right for me to sign this contract for the International Smelting Company."³²

5. WMC and its Minority Shareholders

WMC's business dealings with the Anaconda Companies also benefited WMC's minority shareholders. WMC President, J.R. Walker, stated,

"The conduct of the affairs of the Walker Mining company [sic] by the Anaconda company [sic] has always been for the best interests of all the stockholders. Minority stockholders have always had a square deal."³³

As discussed above, WMC entered into various agreements with IS&R relating to copper ore. The 1921 Smelting Agreement was extended in 1928 (the "1928 Smelting Agreement"), with the approval of WMC's minority shareholders. J.O. Elton described the 1928 Smelting Agreement in a letter to Anaconda officer B.B. Thayer as follows:

²⁹ Minutes of a Regular Meeting of the Board of Directors of the International Smelting Company, June 23, 1921 (Ex. 30).

³⁰ Statement 1937, Walker Mining Company (Ex. 88).

³¹ Anaconda Copper Mining Company and Subsidiary Companies Notes to Consolidated Profit and Loss Statement, undated (Ex. 134).

³² Letter from J.O. Elton to B.B. Thayer, April 12, 1928 (Ex. 55).

³³ "Analysis of Facts and History of the Walker Mining Company, Subsidiary of the Anaconda Copper Mining Company," November 24, 1922 (Ex. 33).

“For some little time Mr. Walker...has been endeavoring to get the minority directors to petition for a five-year’s extension of the Walker Mining Company’s notes held by the International Smelting Company...Messrs Baglin and Storey, two of the minority directors objected to a renewal of the contract, saying that they considered the contract was not fair. After considerable investigation carried on independently by George Baglin, he found that it was impossible to get rates on copper ores from the other smelters that were materially lower than the International Smelting Company rates...We are all of the opinion that it is good business to do as requested by the minority directors, that is, to extend the notes and write a new contract...The rates as contained in the contract are in line with other contract rates being offered at this time in this district”³⁴ (emphasis added).

The documents further indicate that the Anaconda Companies, as the majority shareholder, did not act in their own self interest to the detriment of minority shareholders. In an August 1941 letter, Clyde E. Weed, Anaconda Manager of Mines wrote to Anaconda President J.R. Hobbins regarding the potential closure of the Walker Mine, stating,

“If this property was entirely owned by the Anaconda Copper Mining Company we would have a different situation than we have to face at present. However, as we own only 51% of the stock of the Company we have minority stockholders to consider.”³⁵

B. The Anaconda Companies provided typical investor monitoring and oversight of their investment, in this case WMC.

Based on my review of the documentation, analyses performed, and my experience, the Anaconda Companies’ interactions with WMC were within the bounds of corporate norms and typical oversight of a majority equity investor.

1. Corporate Governance and Oversight

It is common for a significant investor to obtain and retain positions on the board of directors. I observed that both the minority shareholders and the Anaconda Companies were represented on WMC’s Board. Specifically, individuals affiliated with the Anaconda Companies, including J.O. Elton, John F. Dugan, William Wraith, and others served as directors, and the minority shareholders were represented by J.R. Walker, W.R Walker, W.M. Story, and Geo Baglin.³⁶

As is also common, the Anaconda Companies and WMC shared certain overlapping officers and other personnel, including the aforementioned individuals.³⁷ I have seen no documents indicating

³⁴ Letter from J.O. Elton to B.B. Thayer, April 12, 1928 (Ex. 55).

³⁵ Letter from C.E. Weed to J.R. Hobbins, August 21, 1941 (Ex. 119).

³⁶ Annual reports of the Walker Mining Company between fiscal years 1924 and 1943.

³⁷ J.O. Elton, William Wraith, and J.F. Dugan held various positions with the Anaconda Companies (and their subsidiaries) and served as officers and/or directors of WMC.

that these officers and directors behaved in a manner that would be detrimental to WMC for the benefit of the Anaconda Companies.

Additionally, during times of significant business expansion or financial instability it is common for a majority investor to increase oversight, receive additional reporting, conduct independent evaluations, and if merited, provide financial assistance. Between 1913 and 1941, WMC at times expanded operations and at other times ceased operations, either partially or in totality.³⁸ During such times, the Anaconda Companies appropriately sought information on the status of WMC's activities and operations, as described by the following examples.

- Leading up to the Walker Mine closure in 1941, WMC experienced instability due to low copper prices and lack of available ore. In 1938, J.O. Elton provided a "report of operations" from the Walker Mine to Anaconda Vice President, Robert E. Dwyer.³⁹
- In 1939, John F. Dugan wrote to J.O. Elton to report on operations at the Walker Mine, specifically relating to operating losses. Dugan referred to an "inspection trip" and wrote, "Of course, the question is a financial one, as the International Company will have to finance the set-up...I earnestly recommend that Walker be allowed to operate and vigorously push its development work."⁴⁰

These documents demonstrate that the Anaconda Companies monitored WMC's operations. These interactions represent a typical level of oversight by a majority investor.

2. Financial Assistance

It is not uncommon for a majority investor to provide financial assistance to its investment if warranted. The documents indicate that the Anaconda Companies provided financial assistance to WMC during times of expansion, and also during times of instability. Frederick Laist, Vice President of IS&R, explained in a letter to the WMC Board of Directors that IS&R made advances to WMC "from time to time to increase the mill capacity to handle lower grade ore and to make possible vigorous exploration work...in an effort to develop pay ore in the mine and to keep the mine operating under unfavorable conditions."⁴¹

For example, in May 1923, WMC's Directors prepared a report for a special stockholders' meeting regarding a proposed increase in capitalization "for the purpose of building a new mill,

³⁸ Mining and milling operations at Walker Mine were suspended from 1920 - 1922 and 1932 - 1935, and the Walker Mine closed permanently in October 1941. Report of Walker Mining Company at the Special Stockholders' Meeting, May 3, 1923 (Ex. 34); Report of State Mineralogist, undated, p. 102 (Ex. 133); "Ceiling on Copper Price Forces Big Producer to Close," October 26, 1941 (Ex. 120).

³⁹ Letter from J.O. Elton to R.E. Dwyer, May 26, 1938, with enclosures, including a report of operations at the Walker Mine (Ex. 94, 93, 90, 92, and 91).

⁴⁰ Letter from J.F. Dugan to J.O. Elton, June 19, 1939 (Ex. 100).

⁴¹ Letter from Frederick Laist to The Board of Directors of WMC, January 11, 1944 (Ex. 125).

and for adding to the mine and camp equipment.” WMC estimated the cost of these improvements to be \$382,942.⁴² In August 1923, WMC issued a note to IS&R in exchange for \$333,133.24.⁴³ These transactions were accounted for separately in the books and records of both WMC and IS&R.

The financial assistance provided by the Anaconda Companies represents typical involvement by a majority investor, and benefited WMC and its shareholders.

C. The Anaconda Companies’ involvement in the Walker Mine was limited to certain administrative and procurement services and the provision of expertise. The provision of these services and expertise is consistent with normal involvement on the part of a majority investor. The Anaconda Companies did not manage the Walker Mine.

Based on my review of the documents, analyses performed, and my experience, the Anaconda Companies’ involvement in the Walker Mine appears to have been limited to providing office space and administrative services; expertise, particularly with respect to geological and development work; and assisting with the procurement of supplies and equipment. Both the type and the amount of services provided appear to be consistent with a normal level of involvement by a majority investor.

1. Services and Related Expenses

WMC recorded liabilities and payments to the Anaconda Companies.⁴⁴ Similarly, IS&R recorded the amounts it charged to affiliated companies, including WMC.⁴⁵ The documents indicate that these services benefited WMC, were charged at cost, and that WMC reimbursed the Anaconda Companies for the services it received. The Notes to Anaconda’s Consolidated Profit and Loss Statement illustrate this point:

“Other transactions with unconsolidated subsidiaries not material in amount include sales of miscellaneous products and supplies which are made on the same basis as those to outside customers and furnishing of various services, principally of a technical nature, which are charged for at cost or approximate cost.”⁴⁶

As stated above, WMC tracked and accounted for expenses associated with services provided by the Anaconda Companies. I performed an analysis of the available accounting and tax records

⁴² Report of Walker Mining Company at the Special Stockholders’ Meeting, May 3, 1923 (Ex. 34).

⁴³ Handwritten document outlining the terms of the note, undated (Ex. 58).

⁴⁴ WMC Statement of Amounts Paid to Affiliated Companies and Statement of Amounts Shown as Liabilities to Affiliated Companies, 1923 (Ex. 35); WMC Balance Sheet as of September 30, 1931 (Ex. 68).

⁴⁵ International Smelting Company Statement of Charges to Affiliated Companies, 1924. (Ex. 43).

⁴⁶ Anaconda Copper Mining Company and Subsidiary Companies Notes to Consolidated Profit and Loss Statement, undated (Ex. 134).

for WMC, IS&R, and Anaconda and was able to identify detailed expense records associated with these services for 1923 and 1924.⁴⁷

I observed that the expenses shown in these accounting records were consistent with the services described in various communications contained throughout the historical documents. Both the accounting records and historical documents demonstrate that these expenses relate to utilization of office space and administrative services, salary and expenses of individuals, and WMC's proportional share of the costs associated with the Anaconda Companies' geological department.

Further analysis of the accounting records indicates that these costs amounted to \$29,883 and \$20,330, representing 3.7% and 1.7% of total WMC sales in calendar years 1923 and 1924, respectively. This represents a modest portion of WMC's overall operations.

2. Procurement of Supplies and Equipment

In addition to the services discussed above, the documents indicate that it was not unusual for WMC to utilize the Anaconda Companies procurement capabilities to obtain equipment and supplies. For example, WMC requested that Anaconda procure wood preservative and stated, "We are sending the order to you as we are of the opinion that you may be able to obtain a better price than we could."⁴⁸ These purchases were recorded and accounted for in WMC's books and records.⁴⁹

3. Geological Expertise

Included in the expenses identified in section C.1 are costs associated with services provided by the Anaconda Companies' geological department. These costs are consistent with my review of the documents which, when taken as a whole, indicate that the primary involvement of the Anaconda Companies was the provision of geological expertise.

This geological support from Anaconda is not surprising. An important consideration for an investor is whether value can be created and a premium can be realized by way of synergies between the company and the investor (or the investor's subsidiaries). Upon making the investment, it is common for the investor to collaborate and share expertise with its investment, and otherwise take advantage of such synergies.

The Anaconda Companies had access to skilled personnel and a deep knowledge base, particularly with regards to its geological department. Paul Billingsley, Geologist with the Anaconda Companies, wrote in an article for the *Mining and Scientific Press*:

⁴⁷ Records containing sufficient detail to analyze expenses associated with the Anaconda Companies could only be located for 1923 and 1924.

⁴⁸ Letter to the Anaconda purchasing department, June 27, 1928 (Ex. 56).

⁴⁹ International Smelting Company Statement of Charges to Affiliated Companies, 1924 (Ex. 43).

“The Anaconda Copper Mining Co., of Butte, has developed its geological department into an important branch of its organization.”

“The geological department has thus from its formation kept for its prime objective the helping of the mine foremen and superintendents through a knowledge of the structure of the ground. Its members have realized that the geologist should be the servant of the man who is responsible for the work of the mine.”⁵⁰

As expected, WMC availed itself of this valuable expertise. I observed various “recommendation sheets” which show that the Anaconda Companies’ Geological Department provided WMC with recommendations for development work. Paul Billingsley wrote,

“In order to transmit to the proper officers the geologic conclusions reached, a system of ‘recommendation sheets’ is employed. These sheets are made out by each geologist as he reaches his conclusions...The recommendations...are forwarded to the mine-foremen for execution.”⁵¹

And in October 1924, Reno Sales, Anaconda Chief Geologist, wrote to William Wraith, “We wish to give the Walker management as much assistance as possible, we have always done so and hope to continue to the best of our ability.”⁵² Wraith, replied, “the work of the geological department at the Walker is highly appreciated.”⁵³

The Anaconda Companies also provided valuable geological training. In October 1940, John F. Dugan wrote to M.H. Gidel, Assistant Chief Geologist at Anaconda, to request training for Seth K. Droubay, Geologist at the Walker Mine.⁵⁴ Droubay wrote about this training in a letter to Dugan, stating,

“The trip was very educational to me, and I feel that I learned many things that will help our work here at Walker...[I] will recommend certain changes in our sampling methods, which I am quite sure will be of material benefit to the Company.”⁵⁵

The documents I observed support the findings of the Bankruptcy Court Special Master that, “the Walker Mining Company has been greatly benefited through exercising the available

⁵⁰ “Some Features of the Geological Department of the Anaconda Copper Mining Company,” by Paul Billingsley, June 19, 1920 (Ex. 25).

⁵¹ “Some Features of the Geological Department of the Anaconda Copper Mining Company,” by Paul Billingsley, June 19, 1920 (Ex. 25). See also “Recommendation Sheets” dated January 20, 1939 and August 1941 (Ex. 96 and 118, respectively).

⁵² Letter from Reno H. Sales to William Wraith, October 25, 1924 (Ex. 38).

⁵³ Letter from William Wraith to Reno H. Sales, November 17, 1924 (Ex. 40).

⁵⁴ Letter from J.F. Dugan to M.H. Gidel, October 12, 1940 (Ex. 112).

⁵⁵ Letter from S.K. Droubay to J.F. Dugan, November 5, 1940 (Ex. 113).

organization of the claimant [IS&R] for necessary services of experts and for office facilities furnished by the claimant corporation.”⁵⁶

It should be noted that while the documents demonstrate the involvement of the Anaconda Companies’ procurement and geological departments in certain aspects of the Walker Mine, there is a relative absence of communication with the Anaconda Companies regarding the day-to-day operations and activities of WMC.

4. Operation of the Walker Mine

The documents demonstrate that WMC maintained responsibility for the overall operation of the Walker Mine. For example, WMC employed a mine manager to oversee operations. The mine manager directed the day-to-day activities of the Walker Mine,⁵⁷ and directly interacted with third parties relating to its operations.

The mine manager reported to WMC President J.R. Walker and regularly prepared progress reports which were provided to Mr. Walker. These reports appear to have been prepared as often as weekly and include detailed descriptions of activities at the Walker Mine, including the amount of available ore and corresponding copper percentage; operating status and amount of material processed by the mill; progress on raising the tailing dam; results of a new tailing flume; the state of various ongoing improvements; and the health status of the mine camp.⁵⁸

The mine manager’s oversight of operations at the Walker Mine included routine management activities, mining activities, and management of local operating costs, as exemplified by the following:

- In January 1931, mine manager Geisendorfer authored an “Outline of Operations,” which describes mining activities relating to the different orebodies at the Walker Mine.⁵⁹
- In a 1932 letter, mine manager Geisendorfer directed Assistant Manager J.H. Cooper to update third period reports, clarify staffing cuts with mine personnel, and install coils in the furnace and hot water tank at the boardinghouse.⁶⁰
- In 1941, Reno Sales, Anaconda Geologist, wrote, “...that is the mine management’s job, to develop the vein and at the same time have a satisfactory haulage way.”⁶¹

⁵⁶ Memo Decision in the Matter of Walker Mining Company, Debtor, by Special Master T.D. Lewis, January 15, 1945 (Ex. 130).

⁵⁷ H.A. Geisendorfer, WMC mine manager, signed a notarized affidavit stating that he was in charge of operation of the Walker Mine, May 31, 1933 (Ex. 74).

⁵⁸ See for example, report from V.A. Hart to J.R. Walker, June 20, 1926 (Ex. 51); report from H.A. Geisendorfer to J.R. Walker, September 19, 1929 (Ex. 60); report from H.A. Geisendorfer to J.R. Walker, January 6, 1931 (Ex. 65); report from L.F. Bayer to J.R. Walker, March 13, 1937 (Ex. 81).

⁵⁹ Outline of Operations, by H.A. Geisendorfer, January 10, 1931 (Ex. 66).

⁶⁰ Letter from H.A. Geisendorfer to J.H. Cooper, January 30, 1932 (Ex. 70).

Additionally, WMC directly interacted with third parties regarding WMC's operations, including government agencies with respect to land use, construction projects, and land exchanges. For example, the documents show that WMC submitted applications with the U.S. Forest Service for right-of-way for a tram road and a tailings pond. WMC also submitted an application with the U.S. Department of the Interior for right-of-way for a tailings reservoir within the Plumas National Forest.⁶²

IX. Conclusion

Based on my experience, analyses performed, and review of the documents provided, it is my opinion that the relationship between WMC and the Anaconda Companies was consistent with the relationship of a majority shareholder in its investment and followed the appropriate corporate governance, accounting, and record keeping norms of distinct and separate entities. The Anaconda Companies provided oversight, financial assistance, and certain administrative and procurement services. In addition, the Anaconda Companies provided expertise, primarily in the form of geological services to the Walker Mine. The type and amount of services and support provided were typical of a majority shareholder and do not demonstrate that the Anaconda Companies managed the Walker Mine.

Respectfully Submitted,



William Haegele

February 20, 2014

⁶¹ Letter from Reno H. Sales to S.K. Doubray, January 9, 1941 (Ex. 115)

⁶² I observed numerous correspondences between WMC personnel and government agencies. In one instance, Walker mine manager V.A. Hart authored a letter to the U.S. Forest Service which was written on International Smelting Company letterhead. However, Hart signed the letter as a representative of WMC. Subsequent correspondence from Hart utilized WMC letterhead and correspondence received from government agencies clearly and consistently identified WMC as the responsible party. See for example, letter from V.A. Hart to D.R. Rogers, Forest Supervisor, February 7, 1919 (Ex. 8); letter from the Department of the Interior Commissioner, July 30, 1920 (Ex. 27); letter from the Department of the Interior Commissioner, May 26, 1926 (Ex. 48); letter from J.B. Whitehill to the Department of the Interior, June 12, 1926 (Ex. 50); Forms for Filing Evidence of Construction signed by J.O. Elton, June 7, 1926 (Ex. 49); and others.

APPENDIX A

William Haegele, CPA, CFF, CIRA Partner

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Position

William Haegele is a Partner in KPMG LLP's Forensic Services Practice and serves as the Lead for the Restructuring Services in the West.

Qualifications

- Certified Public Accountant
- Certified Insolvency and Restructuring Advisor
- Certified in Financial Forensics

Experience

Mr. Haegele has nineteen years of accounting and finance experience, both domestic and international, in various industries including retail, manufacturing, financial services, technology, hospitality, and telecommunications.

Mr. Haegele has assisted distressed companies with the development and implementation of profit enhancement, corporate and debt restructuring, and asset disposition solutions. He has served clients as the Financial Advisor planning for and filing for protection under Chapter 11.

Mr. Haegele has provided forensic accounting services in multiple matters involving fraud and accounting irregularities. He has served clients and their audit committees during investigations by the Securities and Exchange Commission, and has led SEC financial reporting investigations and in matters involving earnings management and accounting irregularities.

Mr. Haegele has provided litigation support in matters involving complex accounting matters, bankruptcy, finance and solvency. Services have included review and analysis of accounting and auditing records, interpretation of supporting documents preparation of expert reports.

Mr. Haegele has experience providing merger and acquisition services including financial and accounting due diligence and the evaluation of enterprise value. In addition, Mr. Haegele has served as the sole arbitrator in a purchase price dispute.

In addition to Mr. Haegele's professional services experience, he served as the Chief Financial Officer of a retail company with overall responsibility for accounting, finance and legal functions.

Previous Experience

Advisory and Restructuring Services, Deloitte & Touche LLP

Chief Financial Officer, Devon Convenience Holdings

Mergers and Acquisition Services Group, Deloitte & Touche LLP

Audit Services, Deloitte & Touche LLP

Audit, Coopers & Lybrand LLC

William Haegele, CPA, CFF,
CIRA
Partner
KPMG LLP

Professional Affiliations

American Institute of Certified Public Accountants
Association of Fraud Examiners
Association of Insolvency and Restructuring Advisors
California Society of Certified Public Accountants
American Bankruptcy Institute

Education

B.S. in Business Administration, San Diego State University

Deposition and Trial Testimony

Howard M. Ehrenberg, Chapter 7 Trustee v. BDO Seidman LLP
Deposition October 2010 – Arbitration before the American Arbitration
Association

United States of America v Marmon Holdings, Inc. and Marmon Wire &
Cable, Inc. Deposition and Trial Testimony December 2012 - U.S District
Court, District of Idaho

Settlers' Housing Services Inc., Debtor – Case No. 13-28022
Trial Testimony December 2013 – U.S. Bankruptcy Court, Northern
District of Illinois Eastern Division

Speaking Engagements

Institute of Internal Auditors Conference, Feb 2008
Financial Executives International Business Seminar, May 2008
KPMG Legal CLE Program, July 2009
KPMG Distressed Mergers and Acquisition Conference, June 2010

Appendix B

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL VALLEY REGION,
CLEANUP AND ABATEMENT ORDER NO. R5-2014-XXXX AND ORDER NO. R5-2014-YYYY
ISSUED TO ATLANTIC RICHFIELD COMPANY, ET AL.**

The following is a listing of documents cited in the Expert Report of William Haegle.

<u>Document Description</u>	<u>Exhibit #</u>
Untitled document containing WMC corporate information	2
WMC Corporate Income Tax Return for 1923	6
Letter from V.A. Hart to D.R. Rogers, Forest Supervisor, February 7, 1919	8
Report of the Anaconda Copper Mining Company For the Year Ended December 31st, 1918	13
Report of the Anaconda Copper Mining Company For the Year Ended December 31st, 1919	23
"Some Features of the Geological Department of the Anaconda Copper Mining Company," by Paul Billingsley, June 19, 1920	25
Letter from the Department of the Interior Commissioner, July 30, 1920	27
Moodys Manual of Railroads and Corporation Securities, 1920, p. 2236	29
Minutes of a Regular Meeting of the Board of Directors of the International Smelting Company, June 23, 1921	30
"Analysis of Facts and History of the Walker Mining Company, Subsidiary of the Anaconda Copper Mining Company," November 24, 1922	33
Report of Walker Mining Company at the Special Stockholders' Meeting, May 3, 1923	34
WMC Statement of Amounts Paid to Affiliated Companies and Statement of Amounts Shown as Liabilities to Affiliated Companies, 1923	35
Report of the Walker Mining Company For the Year Ending July 31, 1924	37
Letter from Reno H. Sales to William Wraith, October 25, 1924	38
Letter from William Wraith to Reno H. Sales, November 17, 1924	40
WMC Corporate Income Tax Return for 1924	42
International Smelting Company Statement of Charges to Affiliated Companies, 1924	43
Report of the Walker Mining Company For the Year Ending July 31, 1925	46
Letter from the Department of the Interior Commissioner, May 26, 1926	48
Forms for Filing Evidence of Construction signed by J.O. Elton, June 1926	49
Letter from J.B Whitehill to the Department of the Interior, June 12, 1926	50
Report from V.A. Hart to J.R. Walker, June 20, 1926	51
Report of the Walker Mining Company For the Year Ending December 31, 1926	52
Agreement between Walker Mining Company and International Smelting Company, June 7, 1921	53
Report of the Walker Mining Company For the Year Ending December 31, 1927	54
Letter from J.O. Elton to B.B. Thayer, April 12, 1928	55
Letter to the Anaconda purchasing department, June 27, 1928	56
Report of the Anaconda Copper Mining Company For the Year Ended December 31st, 1920	57
Handwritten document outlining the terms of the note, undated	58
Report of the Walker Mining Company For the Year Ending December 31, 1928	59
Report from H.A. Geisendorfer to J.R. Walker, September 19, 1929	60
Articles of Incorporation of the Walker Mining Company, as Amended to February 3, 1930	61
By-laws of the Walker Mining Company, as amended February 3, 1930	62
Report of the Walker Mining Company For the Year Ending December 31, 1929	63
Report from H.A. Geisendorfer to J.R. Walker, January 6, 1931	65
Outline of Operations, by H.A. Geisenforfer, January 10, 1931	66
Report of the Walker Mining Company For the Year Ending December 31, 1930	67
WMC Balance Sheet as of September 30, 1931	68
Letter from H.A. Geisendorfer to J.H. Cooper, January 30, 1932	70

<u>Document Description</u>	<u>Exhibit #</u>
Statement 1931, Walker Mining Company	71
Statement 1932, Walker Mining Company	72
Report of the Anaconda Copper Mining Company For the Year Ended December 31st, 1932	73
Notarized affidavit, May 31, 1933	74
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Exhibit #

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Exhibit 6

Plumas County, California.

All of the following Patented and Unpatented Quartz Mining Claims, each approximately 1,500 feet by 600 feet in size, located in Unorganized Mining District, Plumas County, California, lying largely in Sections 30, 31 and 32, Township 25 North, Range 12 East and lots 2, 3 and 4 in Section 5, lot 1 in Section 6, and Section 8, Township 24 North, Range 12 East Mt. Diablo Meridian.

Unpatented Claims

Digger:

Located October 6, 1915.

Recorded October 18, 1915, in Volume 12, Page 47, Quartz Claims, and on December 9, 1915, in Volume 48, of Deeds, Page 76, Plumas County California Records.

Piute No. 1:

Located August 6, 1915.

Recorded August 23, 1915, in Volume 12, Page 11, Quartz Claims, and on December 9, 1915, in Volume 48, of Deeds, Page 75, Plumas County, California, Records.

Piute No. 2:

Located August 6, 1915.

Recorded August 23, 1915, in Volume 12, Page 12, Quartz Claims, and on December 9, 1915, in Volume 48, of Deeds, Page 75, Plumas County California, Records.

Piute No. 3:

Located August 6, 1915.

Recorded August 23, 1915, in Volume 12, Page 13, Quartz Claims, and on December 9, 1915, in Volume 48, of Deeds, Page 75, Plumas County, California, Records.

Pacific No. 1:

Located October 25, 1913.

Recorded November 10, 1913, in Volume 11, Page 85, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.

Pacific No. 2:

Located October 25, 1913.

Recorded November 10, 1913, in Volume 11, Page 85, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.

Pacific No. 3:

Located October 25, 1913.

Recorded November 10, 1913, in Volume 11, Page 86, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.

- Pacific No. 4: Located October 25, 1913.
Recorded November 10, 1913, in Volume 11, Page 87, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.
- Pacific No. 5: Located October 25, 1913.
Recorded November 10, 1913, in Volume 11, Page 87, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.
- Pacific No. 6: Located October 25, 1913.
Recorded November 10, 1913, in Volume 11, Page 88, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.
- Pacific No. 7: Located October 25, 1913.
Recorded November 10, 1913, in Volume 11, Page 89, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.
- Pacific No. 8: Located October 25, 1913.
Recorded November 10, 1913, in Volume 11, Page 89, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.
- Pacific No. 9: Located October 25, 1913.
Recorded November 10, 1913, in Volume 11, Page 90, Quartz Claims, and on October 19, 1914, in Volume 40, of Deeds, Page 332, Plumas County, California, Records.
- Pacific No. 10: Located October 25, 1913.
Recorded November 10, 1913, in Volume 11, Page 91, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.
- Panama No. 1: Located October 27, 1913.
Recorded November 10, 1913, in Volume 11, Page 81, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.
- Panama No. 2: Located October 27, 1913.
Recorded November 10, 1913, in Volume 11, Page 82, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.

Panama No. 3:

Located October 27, 1913.

Recorded November 10, 1913, in Volume 11, Page 83, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.

Panama No. 4:

Located October 27, 1913.

Recorded November 10, 1913, in Volume 11, Page 83, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.

Panama No. 5:

Located October 27, 1913.

Recorded November 10, 1913, in Volume 11, Page 84, Quartz Claims, and on October 19, 1914, in Volume 46, of Deeds, Page 332, Plumas County, California, Records.

Sioux:

Located October 10, 1909.

Recorded October 13, 1909, in Volume 9, Page 87, Quartz Claims, and on February 13, 1914, in Volume 45, of Deeds, Page 405, also on October 19, 1914 in Volume 46, of Deeds, Page 331, Plumas County, California, Records.

Standard:

Standard Extension:

Reliable:

Reliable Extension:

Proof of labor on above 4 claims recorded December 22, 1913, in Volume 4, Proofs of Labor, Page 56, and on January 13, 1915, in Volume 4, Proofs of Labor, Page 206, Plumas County, California, Records.

The following unpatented Claims were acquired at about the date set opposite each.

Washoe	October, 1915
Washoe No. 1	October, 1915
Washoe No. 2	October, 1915
Grizzly	April, 1918
Grizzly No. 1	April, 1918
Grizzly No. 2	April, 1918
Grizzly No. 3	April, 1918
Grizzly No. 4	April, 1918
Grizzly No. 5	April, 1918
Grizzly No. 6	April, 1918
Grizzly No. 7	April, 1918
Grizzly No. 8	April, 1918
Grizzly No. 9	April, 1918
Grizzly No. 10	April, 1918
Grizzly No. 11	April, 1918
Grizzly No. 12	April, 1918

Survey has been made of all unpatented claims, 40 in number, which survey has been forwarded to Surveyer General for approval.

When approval is secured, application for patent will be made.

Dolly Gulch Placer Claim:

Being the E $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 7, and W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 8, Township 24N, Range 12E, Mt. Diablo Meridian.

Bullion Mill Site:

Located in E $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 7, Township 24N, Range 12E, Mt. Diablo Meridian, Being part of Dolly Gulch Placer Claim.

Exhibit 7

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

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IN THE MATTER OF)
WALKER MINING COMPANY)

No. B 16087

Debtor)

D E C R E E

A full hearing before the Court of all objections to the Findings of Fact and Conclusions of Law of the Special Master herein with respect to the claim of International Smelting and Refining Company against debtor above named having been had and concluded on February 9, 1945, pursuant to stipulation of all parties concerned;

NOW, THEREFORE, the Court being fully advised in the premises, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That said Findings of Fact and Conclusions of Law of said Special Master be and they are hereby approved and adopted as the Findings of Fact and Conclusions of Law of this Court.

2. That Debtor is not and has never at any time been an alter ego or instrument or department of Anaconda Copper Mining Company or of International Smelting and Refining Company, hereinafter called Claimant.

3. That Debtor's business and affairs have at all times been carried on and conducted in the manner and according to the methods and practice usually employed by corporations free of any domination or control by others.

4. That no act or omission of said Anaconda Copper Mining Company or of said Claimant, their officers, agents and employees, or any of them, established by any evidence, constitutes or proves any domination or control by them or any of them over Debtor or any of Debtor's acts, business or affairs, or constituted fraud, or occasioned damage or prejudice to or violated any right of Debtor or any of its stockholders.

5. That any and all advances of money made by said Claimant to Debtor were thus made as loans and not as capital investments.

6. That on December 31, 1940, Debtor was indebted to Claimant in the principal sum, to wit, \$804,909.45, named in Debtor's promissory note to Claimant of that date; that on and prior to January 30, 1942, payments aggregating \$320,000.00 were made on the principal sum named in said promissory note, thus leaving a balance of principal sum remaining unpaid of \$484,909.45; that on said January 30, 1942, there was accrued interest on unpaid balances due and owing to Claimant pursuant to the terms of said promissory note aggregating \$1,219.69; that no part of said last mentioned interest and no part of said \$484,909.45 or of interest accruing on said last mentioned sum since said January 30, 1942, has been paid; that on October 16, 1944, said unpaid balance of principal sum, to wit, \$484,909.45, plus interest thereon at said agreed rate of two and a half per cent per annum, plus said unpaid interest item of \$1,219.69 aggregated the sum of \$519,916.88 as set forth in Claimant's proof of claim on file herein; that there is now unpaid, due and owing from Debtor to Claimant said principal sum of \$484,909.45, plus interest thereon at said rate of two and a half per cent per annum from and after said January 30, 1942, plus said interest item aggregating \$1,219.69, and that the whole thereof be and is hereby approved and allowed as a valid indebtedness due and owing from Debtor to Said Claimant.

7. That any and every objection to the Claim made by said Claimant against Debtor for said indebtedness be and they are hereby dismissed.

8. That said Claimant recover from and have judgment herein against the persons who filed objections herein against said claim of said Claimant against

MIN 000001533

debtor, to wit; George E. Baglin, George Baglin, S. J. Price, Edwin McCarthy, J. T. Evans, Albert Penhale, Beatrice L. Penhale and Hulda Van Steeter and each of them for its costs necessarily expended upon the hearing on said objections before said Special Master, said costs to be taxed herein.

Done this 18th day of February, 1945.

TILLMAN D. JOHNSON

JUDGE

Received a copy hereof this 10th day of February, 1945, and subject to objections heretofore filed herein, consent is hereby given that said Decree may be signed forthwith.

HARRY D. PUGSLEY

Attorney for all stockholders objecting
to claim of International Smelting and
Refining Company

MIN 000001534

Exhibit 8



CORPORATION SERVICE COMPANY

Notice of Service of Process

AYZ / ALL
Transmittal Number: 11129115
Date Processed: 05/02/2013

Primary Contact: LaTrisha Charles
BP America Inc.
501 Westlake Park Blvd.
Houston, TX 77079

Copy of transmittal only provided to: Melanie Johnson - WL1 16-121A
Malika Herring

Entity:	Atlantic Richfield Company Entity ID Number 2101336
Entity Served:	Atlantic Richfield Company
Title of Action:	Central Valley Regional Water Quality Control Board vs. Atlantic Richfield Company
Document(s) Type:	Letter Re: Cleanup and Abatement Order, Walker Mine, Plumas County California
Nature of Action:	Environmental
Jurisdiction Served:	California
Date Served on CSC:	05/01/2013
Answer or Appearance Due:	05/20/2013
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	Victor Izzo 916-464-4626
Enclosures:	Original Attachment Pending: Compact Disc; Color Photos

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com



FIRST CLASS MAIL

Walker Mine, Plumas County CA
Tentative Cleanup and Abatement Order
&
Supporting Documents
April 2013

CAUTION:
DO NOT BEND OR FOLD
AVOID EXPOSURE TO ALL MAGNETIC FIELDS



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

29 April 2013

CERTIFIED MAIL NUMBER
7012 2210 0002 1420 1500

Atlantic Richfield Company
ATTN: Legal/Environmental Affairs
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr, Suite 150N
Sacramento, CA 95833

DRAFT CLEANUP AND ABATEMENT ORDER, WALKER MINE, PLUMAS COUNTY CALIFORNIA

The Walker Mine is an inactive copper mine in Plumas County, California. Acid mine drainage and other pollutants (notably copper) from the mine openings and onsite mining waste discharge to waters of the state and of the United States within the Little Grizzly Creek watershed, where they impair beneficial uses and create a condition of pollution or nuisance. The mine has been a continuous source of pollutants since the mine was operated by the Walker Mining Company (Walker) beginning around 1916. Beginning in 1918, the International Smelting and Refining Company (International), a subsidiary of the Anaconda Copper Mining Company (Anaconda), owned a majority of Walker stock. Anaconda itself became the majority owner upon a 1928 merger with International, and remained so until after the mine closed.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) has obtained records documenting that Anaconda, International and Walker concurrently operated the mine from 1918 through at least 1943. Anaconda operated the mine as it would have any of its directly-owned assets; Anaconda staff acting on Anaconda's behalf regularly directed specific operation and exploration activities at the mine, particularly during critical periods. Anaconda's involvement went well beyond what is normally expected of a responsible corporate parent. Anaconda was a direct operator of the mine; ARCO is liable as Anaconda's successor.

The Central Valley Water Board has prepared the enclosed draft Cleanup and Abatement Order (Order) directing ARCO to take control of the mine for remedial purposes and to investigate, characterize, and close and maintain the facility in such a way as to prevent further discharges of waste to surface and groundwater. The draft Order also requires ARCO to reimburse the Regional Board for prior cleanup and abatement expenses and to submit a report of waste discharge. The draft Order sets forth a specific scope of work and enforceable time schedule for compliance.

The Regional Board intends to adopt the Order, but we offer you the opportunity to provide comments on the draft prior to doing so. Please provide any comments to this office by **20 May 2013**. If you have any questions or would like to discuss legal aspects of the draft Order before then, please contact Andrew Tauriainen, Senior Staff Counsel, State Water Resources Control

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95870 | www.waterboards.ca.gov/centralvalley

ARCO
Walker Mine
Plumas County

- 2 -

29 April 2013

Board, Office of Enforcement, at (916) 341-5445. Please direct technical questions to Victor Izzo, Senior Engineering Geologist, Title 27 & Mining Unit, at (916) 464-4626.



ROBERT BUSBY, M.S., P.G., C.E.G.
Supervising Engineering Geologist

Enclosure: Draft Cleanup and Abatement Order and attachments

cc with encl.:

Victor Izzo, Regional Board, Sacramento
Andrew Tauriainen, SWRCB Office of Enforcement, Sacramento
Jeffrey Moulton, USDA, San Francisco
Dennis Geiser, USFS, Vallejo
Dan Kennedy, Cedar Point Properties, Paradise

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2013-XXXX

FOR

ATLANTIC RICHFIELD COMPANY

WALKER MINE
PLUMAS COUNTY

This Order is issued to Atlantic Richfield Company (ARCO or Discharger) pursuant to Water Code section 13304 which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue Cleanup and Abatement Orders and Water Code section 13267, which authorizes the Executive Officer to issue Orders requiring the submittal of technical reports.

The Executive Officer of the Central Valley Water Board finds:

1. The Walker Mine (mine) is an abandoned underground copper mine located about 15 miles northeast of Quincy in Plumas County, on nearly 800 acres of private property within the Plumas National Forest. The site includes APNs 009-080-001, 009-090-001, 009-090-002 and 009-100-009, Sections 5, 6, 7 and 8, T24N, R12E, and Sections 29, 30, 31 and 32, T25N, R12E Mount Diablo Base and Meridian as shown in Attachments A, B, and C, incorporated by reference.
2. Acid mine drainage and other pollutants (notably copper) from the mine discharge or threaten to discharge to Dolly Creek and other waters of the state within the Little Grizzly Creek watershed, impairing beneficial uses and creating a condition of pollution or nuisance.
3. The Walker Mining Company (Walker) acquired the mine in 1915 and began mining around 1916. International Smelting and Refining Company (International) acquired the controlling interest in Walker in 1918. International was a wholly-owned subsidiary of, and in 1928 merged into, the Anaconda Copper Mining Company (Anaconda).
4. Anaconda, International and Walker concurrently operated the mine beginning in 1918. They ceased production in 1941 and ceased all operations in 1943. Walker filed for bankruptcy in 1944, and its assets were sold in 1945. The mine has been a continuous source of pollutants to the watershed from at least the time production ceased.
5. ARCO is the successor by merger to Anaconda and is therefore properly named as Discharger and is legally responsible for complying with this Order.

BACKGROUND

6. Most active exploration and mining took place during the 1920s and 1930s. In the late 1930s, the mine was the largest copper mine in California, with at times more than 600 employees. Between 1916 and 1941, the mine produced approximately 6 million tons of ore. (Steffen Robertson & Kirsten, or "SRK," November 1985).
7. The mine had an on-site mill and about 13 miles of underground workings containing twelve working levels and 3,300 feet of vertical shafts. The 700 Level Adit (700 level adit) was the main haulage level to access ore, and the 700 level adit portal (portal) is the lowest point at which the underground workings reach the surface. Other openings and land disturbances related to the Central and Paiute workings of the mine are located elsewhere on the site. The total void volume of the underground workings is estimated to be 543 million gallons (SRK, November 1985).
8. The mine's mill and concentrator were located a short distance from the 700 level portal. The mill and concentrator initially discharged tailings into a small pond below the mill. By 1920, tailings discharged as slurry were conveyed by wooden chute or trough about 0.75 miles to a tailings impoundment that eventually grew to approximately 100 acres in size.
9. The tailings impoundment is on public land within the Plumas National Forest administered by the United States Forest Service (Forest Service), and is subject to a separate Cleanup and Abatement Order issued to ARCO and the Forest Service.

WATER QUALITY ISSUES

10. The 700 level portal, mill and concentrator are located along Dolly Creek, which is a tributary to Little Grizzly Creek. The tailings impoundment is located at the confluence of Dolly Creek and Little Grizzly Creek. Other openings and mining waste from the Central and Paiute workings are located in the Nye Creek and Ward Creek drainages. Little Grizzly Creek, Nye Creek and Ward Creek are all tributary to Indian Creek, which is a tributary to the North Fork of the Feather River. All are waters of the state and of the United States.
11. "Mining Waste" is defined under Water Code section 13050, subdivision (q)(1), as *"all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and overburden, as defined in Public Resources Code section 2732, and tailings, slag, and other processed waste materials...."*
12. The mining waste at the mine contains metals including copper, which oxidizes and become soluble when exposed to water. As such, mining waste at the mine is classified as Group B mining waste in accordance with Title 27 of the California Code of Regulations, section 22480(b)(2)(B), *"mining wastes that consist of or contain nonhazardous soluble pollutants of concentrations which exceed water quality objectives for, or could cause, degradation of waters of the state,"*

13. The mine includes waste management units for the treatment, storage, or disposal of mining waste (*Mining Unit*) as defined in Title 27, section 22470.
14. The mine and tailings together have discharged metals and acid mine drainage (AMD) into Dolly Creek from at least the time production ceased in 1941, if not earlier. The mine and tailings discharged enough metals and AMD to eliminate aquatic life in Little Grizzly Creek to the confluence with Indian Creek 10 miles downstream.
15. Until 1987, the 700 level adit was the primary source of pollution in Dolly Creek and Little Grizzly Creek. The adit acted as a conduit for AMD and metals leached when groundwater or surface inflows from upper openings contacts mineralized areas of the worked out ore body and mining waste within the underground workings.¹
16. In November 1987, pursuant to Resolution No. 86-057, the Central Valley Water Board installed an engineered concrete plug, or seal, 2,700 feet inside the 700 level adit in order to stop AMD discharges from the underground ore zone to surface waters of Dolly Creek.
17. The seal impounds groundwater and surface inflows within the mine, flooding much of the underground workings. The impounded water is acidic and contains metals leached through contact with the mined out ore body and mining waste behind the seal. The Central Valley Water Board maintains access and regularly monitors the seal for effectiveness, leakage and hydrostatic pressure.
18. The seal has successfully eliminated most or all of the direct discharge of AMD and metals through the 700 level adit. Immediately after installation, there was no flow passing the mine seal. In subsequent years, a small seepage has been observed dripping from existing rock joints near the upper left hand corner of the seal. This seepage rate has been estimated at approximately 0.15 gpm at a hydraulic head of 140 feet. The seepage accumulates in a pool at the downstream toe of the seal which drains into a small ditch on the floor of the 700 level adit and then seeps into the floor within 200 feet of the seal.
19. Hydrostatic pressure data indicates that the water level behind the seal varies seasonally, peaking after the spring snowmelt, and then gradually declining during the remainder of the year. Impounded water apparently seeps through joints, fractures, and faults into the deep groundwater system using the underground workings as a conduit. The fate of this subsurface release of AMD from the mine is not known but could pose a long term threat to groundwater or surface water.
20. There is a discharge of approximately 2 to 5 gallons per minute at the portal which appears to be from shallow groundwater infiltration from the hillside directly above the timber

¹ In 1985, SRK estimated that AMD was discharging from the 700 level adit at 275 gallons per minute (gpm) (SRK, November 1985.) This flow rate compares well with a reported 300 gpm mine pumping rate referenced in Milling Methods at the Concentrator of the Walker Mining Company (U.S. Bureau of Mines, Information Circular 6555, March 1932).

supported section (first 900 feet) of the 700 level adit. This discharge is not acidic, but it does contain copper and other metals.

21. Since 1957, the Central Valley Water Board and others have regularly collected and analyzed surface water samples from the mine. Copper concentrations exceeding water quality objectives have been detected in the portal drainage, the settling pond, Dolly Creek, the tailings impoundment and Little Grizzly Creek. However, as illustrated in Figure 1, samples taken from Dolly Creek below the Walker Mine access road (between the portal area and the tailings impoundment) show a significant drop in copper concentrations after the mine seal was installed in 1987.

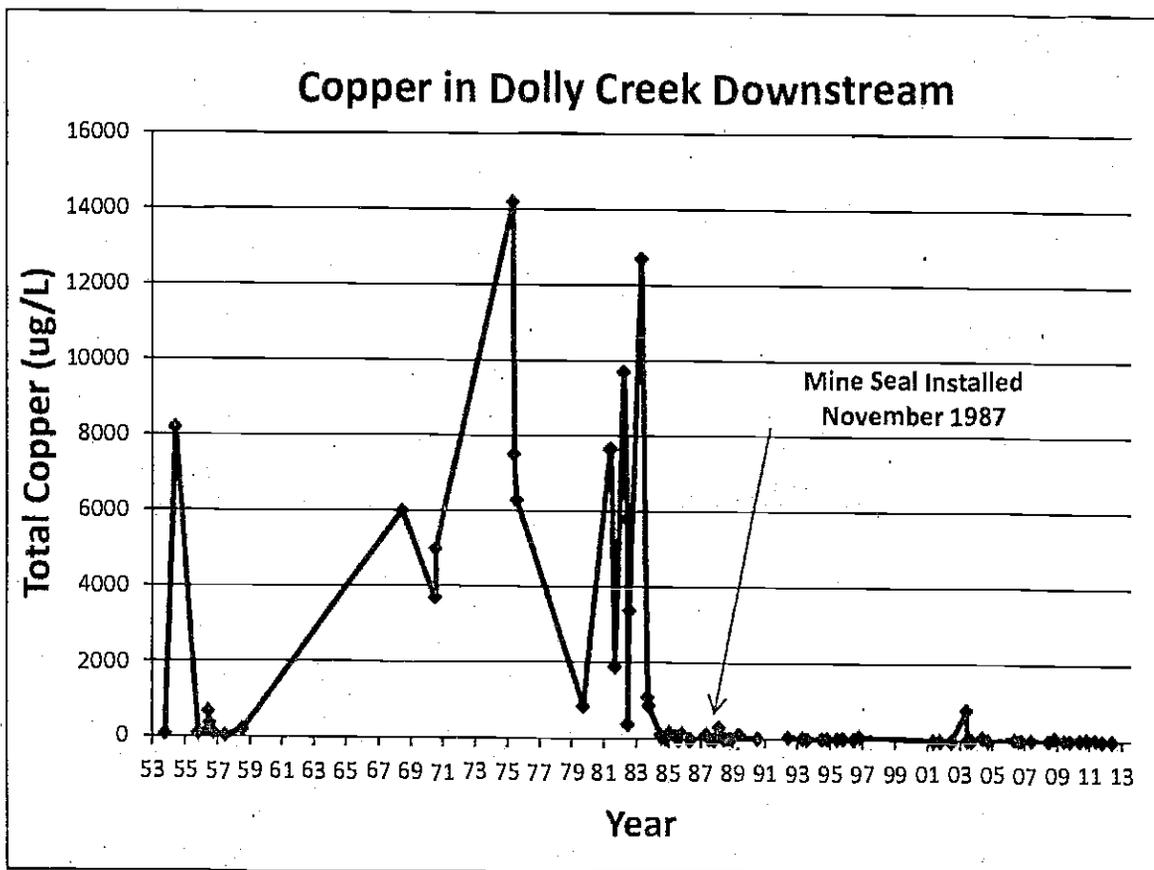


Figure 1: Copper concentrations in Dolly Creek downstream of the mine access road at sample location WM-3. Unfiltered (total) copper concentrations used because they represent the entire range of data (1953 to present).

22. However, copper related to exposed mining wastes continues to exceed water quality objectives. Figure 2 shows exceedances in copper after installation of the seal. The apparent source of the continuing elevated levels of copper is leachate being generated by

surface water run-off from rainfall and/or snowmelt that comes in contact with the 700 level adit, the ruins of the mill and concentrator, exposed mining waste piles in and around the portal area, mining waste in the Dolly Creek drainage and mining waste in the tailings impoundment.

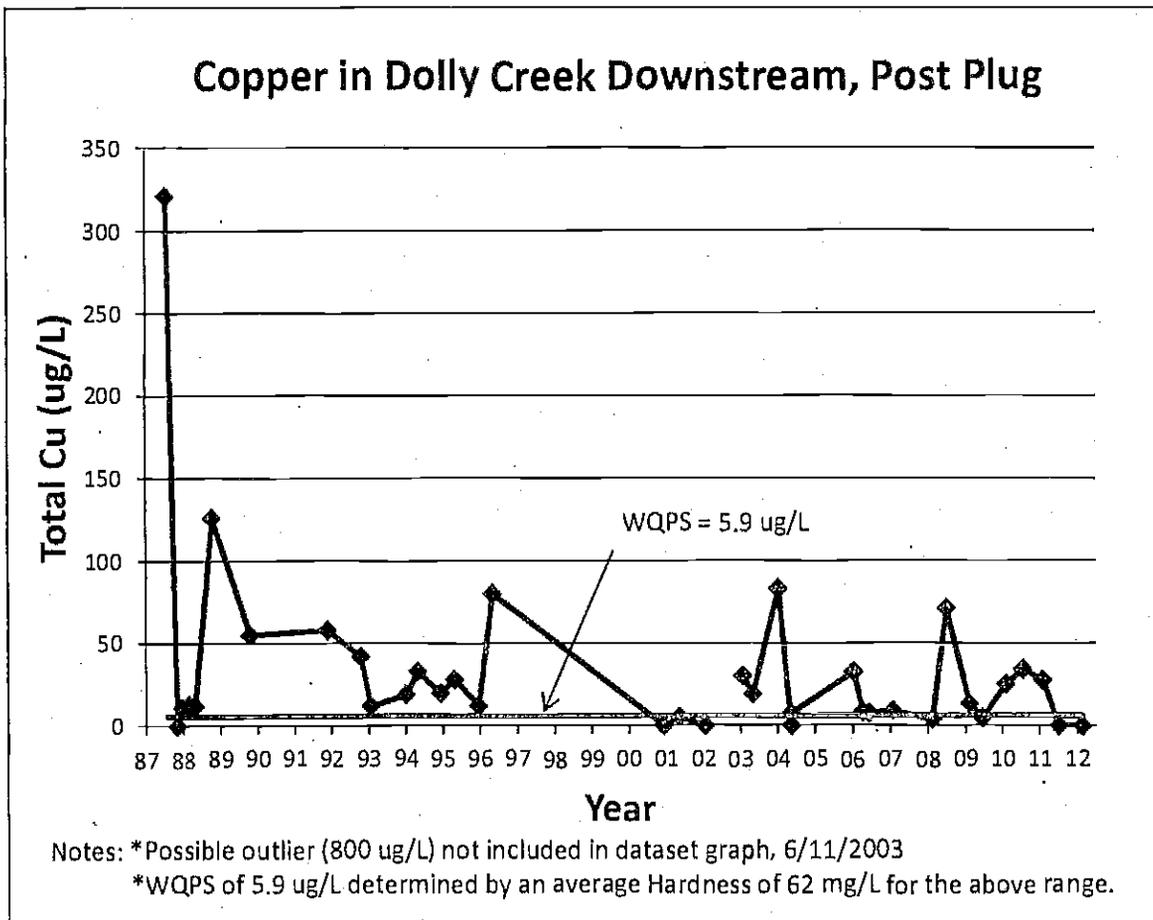


Figure 2: Copper concentrations in Dolly Creek downstream of the mine access road at sample location WM-3 after the mine seal was installed.

23. Mining waste associated with the Central and Piute ore bodies in the Nye Creek and Ward Creek drainages poses a potential threat to water quality. The Central and Piute workings also contain subsidence areas, waste piles and open shafts which pose safety hazards.
24. Moreover, although the seal appears to be sound for the moment, the passage of time coupled with the exposure of the seal and surround rock to the highly acidic impounded water poses a threat to the integrity of the seal. Failure of the seal could result in significant discharges of AMD into Dolly Creek, with likely catastrophic harm to beneficial uses for many miles downstream.

25. Since 1984, the Central Valley Water Board has spent more than \$2.6 million on the Walker Mine acid mine drainage abatement project.

OWNERSHIP AND REGIONAL BOARD ACTION AFTER 1945

26. Safeway Signal Corporation purchased the mine property out of Walker's bankruptcy proceedings in April, 1945. Subsequent ownership of the property is listed in the Chain of Title Guarantee shown in Attachment E, which is incorporated herein by reference. Central Valley Water Board staff has been unable to locate successors to the owners prior to Robert Barry, who took ownership in 1965 but who also appears to have been involved in the earlier ownership groups.
27. In 1991, the Central Valley Water Board obtained a \$1.5 million stipulated judgment against then-owners Robert Barry and Calicopia Corporation, and others, wherein the Board agreed to hold Calicopia and the other defendants harmless for pollution at the site. Money from the judgment was paid into the State Water Pollution Cleanup and Abatement Account. Money from this account has been used to maintain the mine seal and perform other work in accordance with the Walker Mine Acid Mine Drainage Abatement Project Operations and Maintenance Procedures (Central Valley Water Board, May 1997).
28. In 1997, Cedar Point Properties (CPP) acquired most of the mine property at tax auction, and remains the title owner of most of the site.² Shortly after CPP purchased the site, the Central Valley Water Board issued Cleanup and Abatement Order No. 97-715 directing CPP to apply for an NPDES permit and to continue remedial efforts. CPP did not comply. In 1999, the State Water Resources Control Board (State Board) and the Central Valley Water Board reached a settlement with CPP over legal responsibility for cleanup, remediation, and abatement activities at the Walker Mine, wherein the Board agreed to hold the other defendants harmless for pollution at the site. That settlement agreement was later incorporated into a 2004 stipulated judgment. CPP remains potentially liable, but its corporate status has been suspended and it appears to be inactive and insolvent.
29. The Central Valley Water Board retains legal access to the site through the 1991 and 2004 stipulated judgments.
30. ARCO was not a party to the 1991 or 2004 stipulated judgments.
31. The Central Valley Water Board sought to begin negotiations with ARCO for past and future environmental remediation activities at the mine as early as 1997, but ARCO resisted and nothing of substance came from those attempts.
32. In December 1999, the Board proposed to name ARCO as a discharger for the tailings impoundment (tentative order revising WDRs No. 91-017), but the new WDRs were never

² CPP acquired all of the private parcels except APN 009-090-002, a small parcel which was acquired by Clifford and Bunny Brown. In 1997, the Board determined that there was no evidence of pollution being discharged from the Brown parcel sufficient to trigger permitting requirements or enforcement action (see 24 September 1997 letter).

finalized against ARCO based on ARCO's resistance and the Board's then-understanding of Anaconda's involvement at the mine. The WDRs were finalized against Forest Service in Order No. 5-00-028.

33. During a 2005 lawsuit, the Forest Service and ARCO obtained a consent decree whereby ARCO provided \$2.5 million for future response costs involved with federal remedial activities at the tailings impoundment. That decree did not address the mine property, and the Central Valley Water Board was not a party to that action.

ARCO OPERATOR LIABILITY

34. In 1987, ARCO conveyed the Anaconda Geological Documents Collection to the University of Wyoming. The Anaconda Geological Documents Collection is a publicly accessible database containing hundreds of documents related to the Walker Mine. The database became available online sometime after 1999. Central Valley Regional Board staff recently obtained and reviewed relevant documents from the database and other sources.
35. The record shows that Anaconda, International and Walker concurrently operated the mine and tailings from 1918 through at least 1943. Anaconda operated the site as it would have any of its directly-owned assets; Anaconda staff acting on Anaconda's behalf regularly directed specific operation and exploration activities at the mine, particularly during critical periods. Anaconda's involvement at the mine went well beyond what is normally expected of a responsible corporate parent. Documents showing Anaconda's direct operation of the mine are contained in Attachment E, which is incorporated herein.
36. Anaconda was a direct operator of the mine and ARCO is liable as Anaconda's successor.
37. In the alternative, ARCO is liable as Anaconda's successor because Anaconda operated Walker as a corporate alter ego. The record reveals that Anaconda, through International, financed the indebtedness of Walker from at least 1922 through 1944. Moreover, Anaconda, through International, carried the costs of Walker Mine exploration and development during periods when Walker was not profitable, in part because Anaconda believed that Walker would eventually become profitable, and because Walker supplied copper concentrate to International's Tooele smelter.

LEGAL PROVISIONS

38. Section 303(d) of the Federal Clean Water Act (CWA) requires states to identify waters not attaining water quality standards (referred to as the 303(d) list). Dolly Creek and Little Grizzly Creek below the Walker Mine have been identified by the Central Valley Water Board as an impaired water bodies because of high aqueous concentrations of copper and zinc.
39. Once a water body is identified as impaired and added to the 303d list, the CWA requires the states to develop a Total Daily Maximum Load (TMDL) for the water body. The Central

Valley Water Board will develop a TMDL for Dolly Creek and Little Grizzly Creek by 2020, unless the cleanup action proposed herein results in the attainment of the water quality objectives.

40. The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The designated beneficial uses of the North Fork of the Feather River and its tributaries are municipal and domestic supply; hydropower generation; water contact recreation; non-contact water recreation; cold freshwater habitat; spawning, reproduction, and/or early development; and wildlife habitat.
41. The beneficial uses of underlying groundwater, as stated in the Basin Plan, are municipal and domestic supply, agricultural supply, industrial service supply, and industrial process supply.
42. Because the site contains mining waste as described in Water Code sections 13050, closure of the Mining Unit(s) must comply with the requirements of Title 27 California Code of Regulations, sections 22470 through 22510 and with such provisions of the other portions of Title 27 that are specifically referenced in that article.
43. Affecting the beneficial uses of waters of the state by exceeding applicable WQOs constitutes a condition of pollution as defined in Water Code section 13050, subdivision (l)(1).
44. Water Code section 13304, subdivision (a) states in part that:

"Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Regional Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant."
45. Water Code section 13304, subdivision (b), authorizes the Central Valley Water Board to perform cleanup, abatement, or remedial work where necessary to prevent substantial

pollution, nuisance, or injury to waters of the state. Water Code section 13304, subdivision (c), authorizes the Central Valley Water Board to seek reimbursement from the Discharger for the costs associated with such cleanup, abatement or remedial work.

46. The State Water Resources Control Board (State Board) has adopted Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under CWC Section 13304*. Resolution No. 92-49 sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Board Resolution No. 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution No. 92-49 and the Basin Plan establish cleanup levels to be achieved. Resolution No. 92-49 requires waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, section 2550.4. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.
47. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which describes the Central Valley Water Board's policy for managing contaminated sites. This policy is based on Water Code sections 13000 and 13304, California Code of Regulations, title 23, division 3, chapter 15; California Code of Regulations, title 23, division 2, subdivision 1; and State Board Resolution Nos. 68-16 and 92-49. The policy addresses site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the basis for establishment of soil and groundwater cleanup levels.
48. The State Board's Water Quality Enforcement Policy states in part: "*At a minimum, cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the Central Valley Water Board allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the Order should require the discharger(s) to abate the effects of the discharge.*" (Water Quality Enforcement Policy, p. 35).
49. Water Code section 13267 states, in part:

"(b)(1) In conducting an investigation, the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

50. The Discharger is named in this Order because through its actions and/or by virtue of its ownership of the site, it has caused or permitted waste to be discharged or deposited where it has discharged and threatens to discharge to waters of the state and has created and threatens to create a condition of pollution or nuisance.
51. In accordance with Water Code section 13304, the Discharger must take all actions necessary to clean up and abate the discharge and threatened discharge of all mining waste (including the ongoing monitoring and maintenance of the seal), restore the affected waters to background conditions (i.e., the water quality that existed before mining activities began), and reimburse the Central Valley Water Board for the Board's expenditures associated with the mine.
52. In accordance with Water Code section 13267, the reports required herein are necessary to formulate a plan to remediate the wastes at the mine, to assure protection of waters of the state, and to protect public health and the environment.
53. Failure to comply with the remedial provisions of this Order may result in enforcement action(s), which may include the imposition of administrative civil liability pursuant to Water Code section 13350 (up to \$5,000 per day of violation) or 13385 (up to \$10,000 per day of violation). Failure to comply with the reporting provisions of this Order may result in enforcement action(s), which may include the imposition of administrative civil liability pursuant to Water Code section 13268 (up to \$5,000 per day of violation).
54. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, §§ 21000 et seq.), pursuant to California Code of Regulations, title 14, section 15321, subdivision (a)(2). The implementation of the Order is also an action to assure the restoration of natural resources and/or the environment and is exempt from the provisions of CEQA in accordance with California Code of Regulations, title 14 sections 15307 and 15308. This Order may also be classified as a minor action to prevent, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous waste or substances, and is exempt from the provisions of CEQA in accordance with California Code of Regulations, title 14, section 15330.

IT IS HEREBY ORDERED pursuant to Water Code Sections 13304 and 13267, that ARCO, its agents, successors, and assigns, shall investigate the discharges of waste, clean up the waste, and abate the effects of the waste, forthwith, from the Walker Mine. The work shall be completed in conformance with Title 27 California Code of Regulations ("Title 27"), sections 22470 through 22510, State Board Resolution No. 92-49 and with the Central Valley Water Board's Basin Plan (in particular the Policies and Plans listed within the Control Action Considerations portion of Chapter IV), other applicable state and local laws, and consistent with California Health and Safety Code, Division 20, chapter 6.8. "Forthwith" means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below.

Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

1. **By XX July 2013**, the Discharger shall take control of the mine for remedial purposes necessary to clean-up and abate the discharge of all mining waste and restore the affected water to background conditions (i.e., the water quality that existed before the discharge began). This would include at a minimum the operation and maintenance of the 700 level adit and the concrete plug or seal, and managing all mine waste and preventing discharges of mine waste to waters of the state. The Central Valley Water Board hereby assigns to ARCO the Board's legal access to the site under the 1991 and 2004 stipulated judgments, to the extent necessary to comply with this Order. The Discharger shall submit a report on **XX July 2013** describing measures taken to obtain control of the mine for remedial purposes.
2. The Discharger shall reimburse the Central Valley Water Board for reasonable costs associated with oversight of the investigation and remediation of the mine, including the Central Valley Water Board's previous expenditures for remedial actions, pursuant to Water Code section 13305, subdivision (c)(1). Within **30 days** of the effective date of this Order, the Discharger shall provide the name and address where the invoices shall be sent. Failure to provide a name and address for invoices and/or failure to reimburse the Central Valley Water Board's oversight costs in a timely manner shall be considered a violation of this Order. If the Central Valley Water Board adopts Waste Discharge Requirements (WDRs), review of reports related to writing of the WDRs and all compliance measures thereafter would be subject to the fees required by issuance of the Order and the reimbursement for associated costs under this requirement would no longer apply.
3. The Discharger shall investigate, identify, and classify all sources of mining waste in compliance with Title 27 section 22480. This would include at a minimum all mining waste associated with surface impoundments, waste piles, tailings and leachate associated with mining at the site. The Discharger shall submit the following reports related to characterization of the mining waste:
 - a. **By XX September 2013**, submit a work plan to identify all mining waste as defined in Water Code section 13050, subdivision (q)(1) at the mine. This work plan shall include a strategy/plan to characterize and classified the mining waste in compliance with Title 27 section 22480 and the extent to which the site is degrading water quality above background concentrations. This work plan shall

also include a method to establish a Water Quality Protection Standard (Water Standard) per Title 27 section 20390.

- b. **By XX December 2013**, submit a characterization report that identifies all mine waste locations and basis for classification of mine waste at each location per the work plan submitted above. All the laboratory data shall be submitted with the characterization report. This report shall also include the establishment of the Water Standard.
 4. **By XX April 2014**, submit a work plan and Time Schedule to close and maintain the mine in compliance with Title 27 sections 22470 through 22510 and to remediate the site in such a way to prevent future releases of mining waste (copper and other pollutants) to surface and ground waters.
 5. **By XX June 2014**, submit a Report of Waste Discharge with a complete characterization of the waste discharged in accordance with Water Code section 13260, subdivision (k). The Report of Waste Discharge shall also be in compliance with Title 27 section 21710 et seq., and include a short and long term monitoring plan per Title 27 section 22500. The mine waste units shall meet the construction standards in Title 27 section 22490, and the closure and post closure maintenance requirements in Title 27 section 22510.
 6. **Beginning 90 Days after Central Valley Water Board approval of the Work Plan and Time Schedule defined in item 5. above**, submit regular quarterly reports documenting progress in completing remedial actions.
 7. **By 31 December 2016**, complete all remedial actions and submit a final construction report.
 8. Responsibilities for the water quality problems associated with the mine and the Walker Mine acid mine drainage abatement project shall end when the mine no longer poses a threat to water quality.
- REPORTING**
9. When reporting data, the Discharger shall arrange the information in tabular form so that the date, the constituents, and the concentrations are readily discernible. The data shall be summarized in such a manner as to illustrate clearly the compliance with this Order.
 10. Fourteen days prior to conducting any fieldwork, the Discharger shall submit a Health and Safety Plan that is adequate to ensure worker and public safety during the field activities in accordance with Title 8, section 5192.
 11. As required by the California Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by a registered professional or their subordinate and signed by the registered professional.

12. All reports must be submitted to the Central Valley Water Board as both paper and electronic copies. Electronic copies of all reports and analytical results are to be submitted over the Internet to the State Water Board Geographic Environmental Information Management System database (GeoTracker) at <http://geotracker.swrcb.ca.gov>. Electronic copies are due to GeoTracker concurrent with the corresponding hard copy. Electronic submittals shall comply with GeoTracker standards and procedures as specified on the State Water Board's web site.
13. The Discharger shall notify Central Valley Water Board staff at least five working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day.

Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

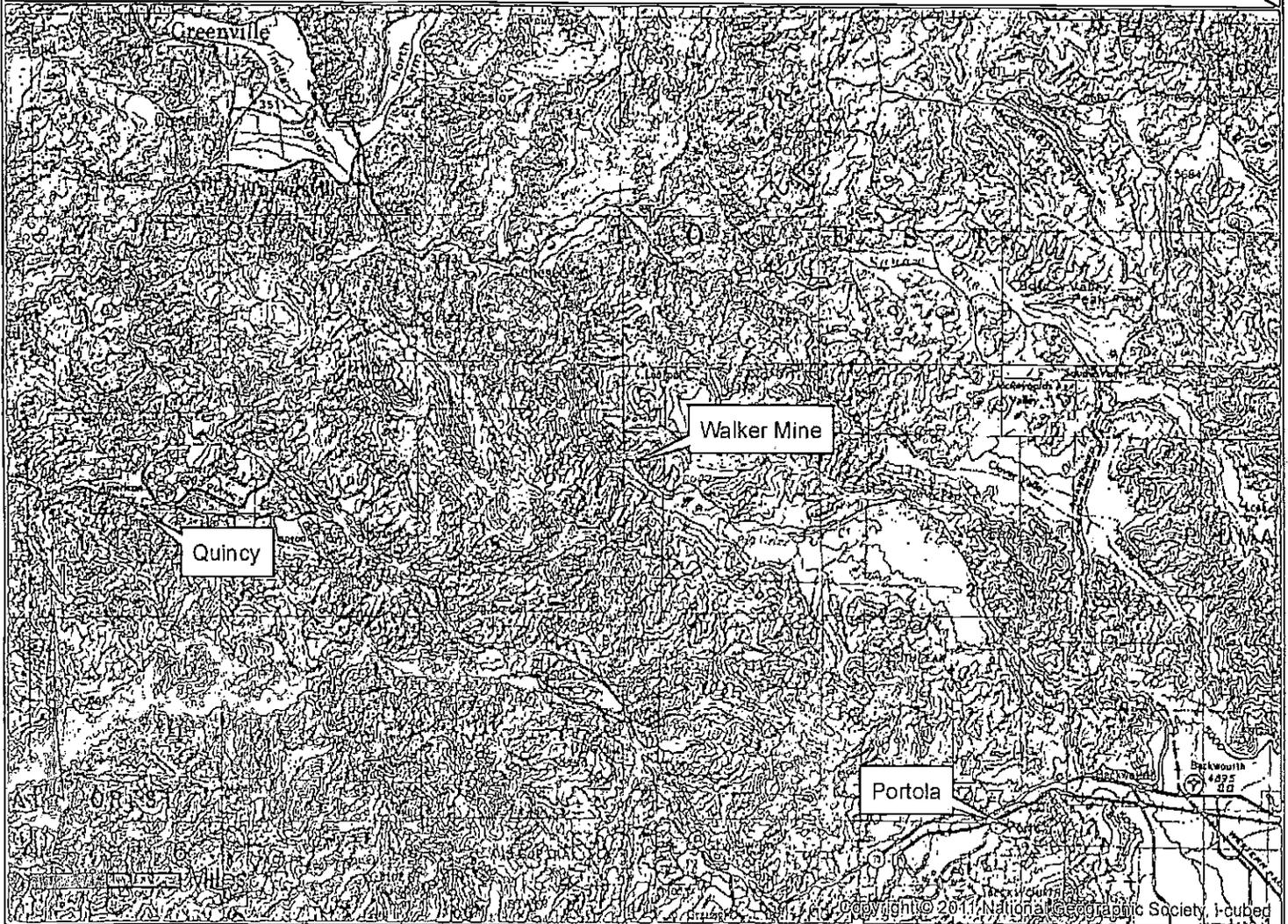
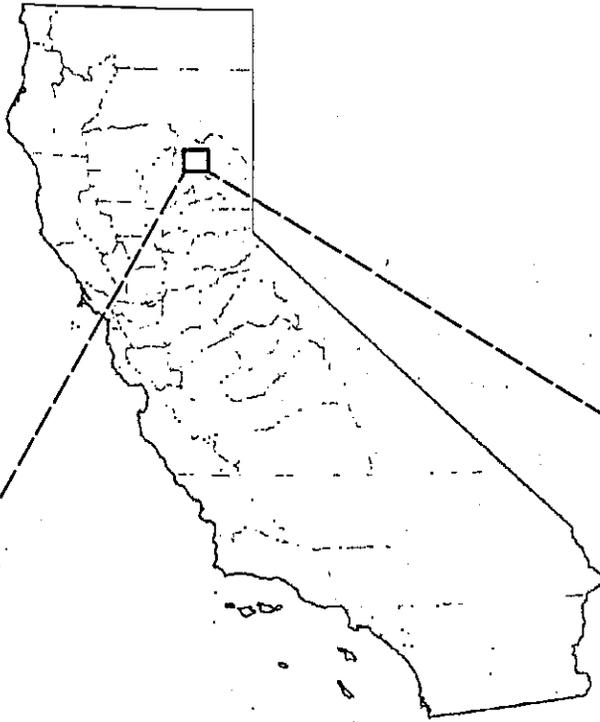
This Order is effective upon the date of signature.

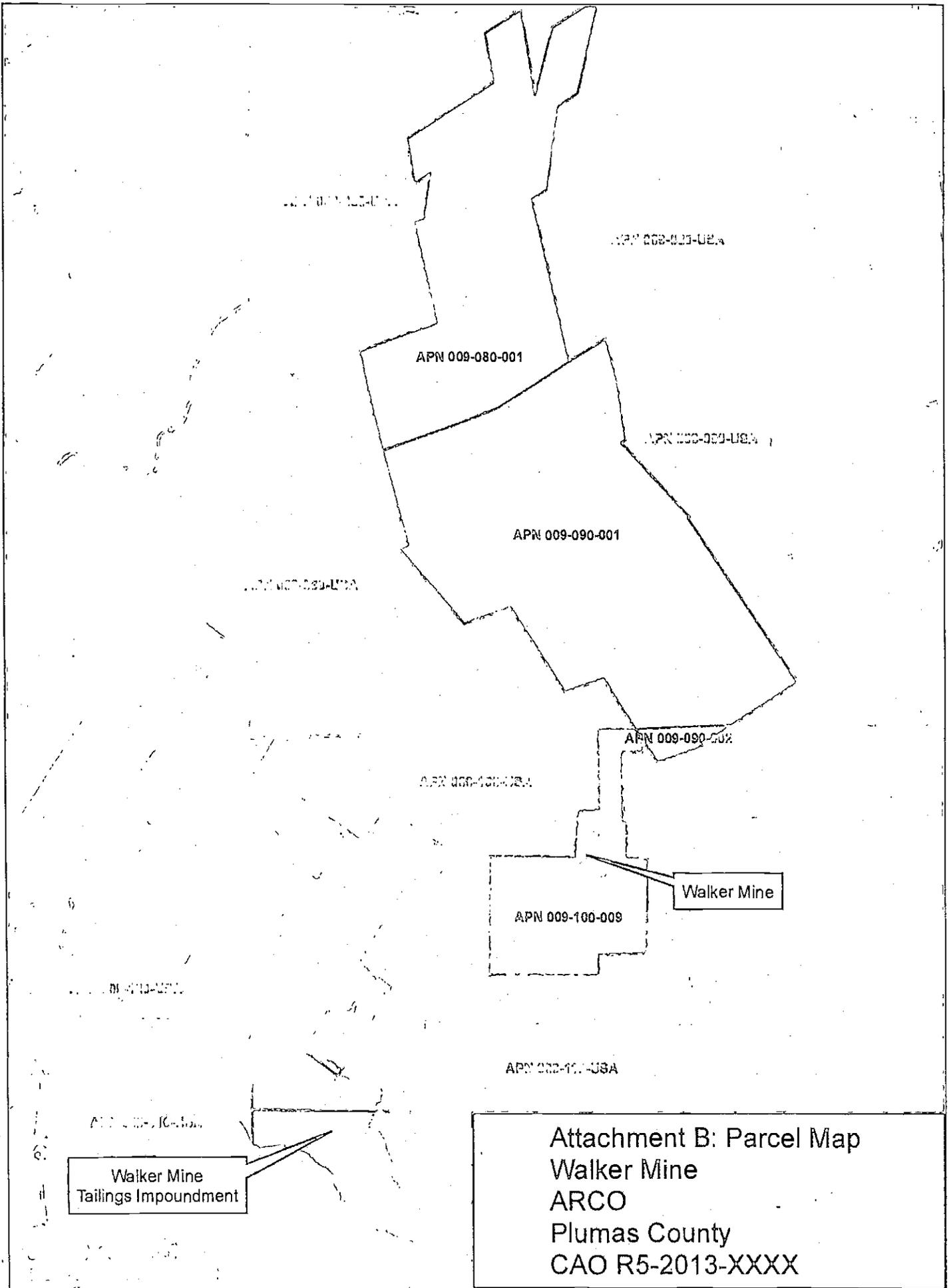
Ordered by:

PAMELA C. CREEDON Executive Officer

(Date)

Attachment A: Location Map
Walker Mine
ARCO
Plumas County
CAO R5-2013-XXXX

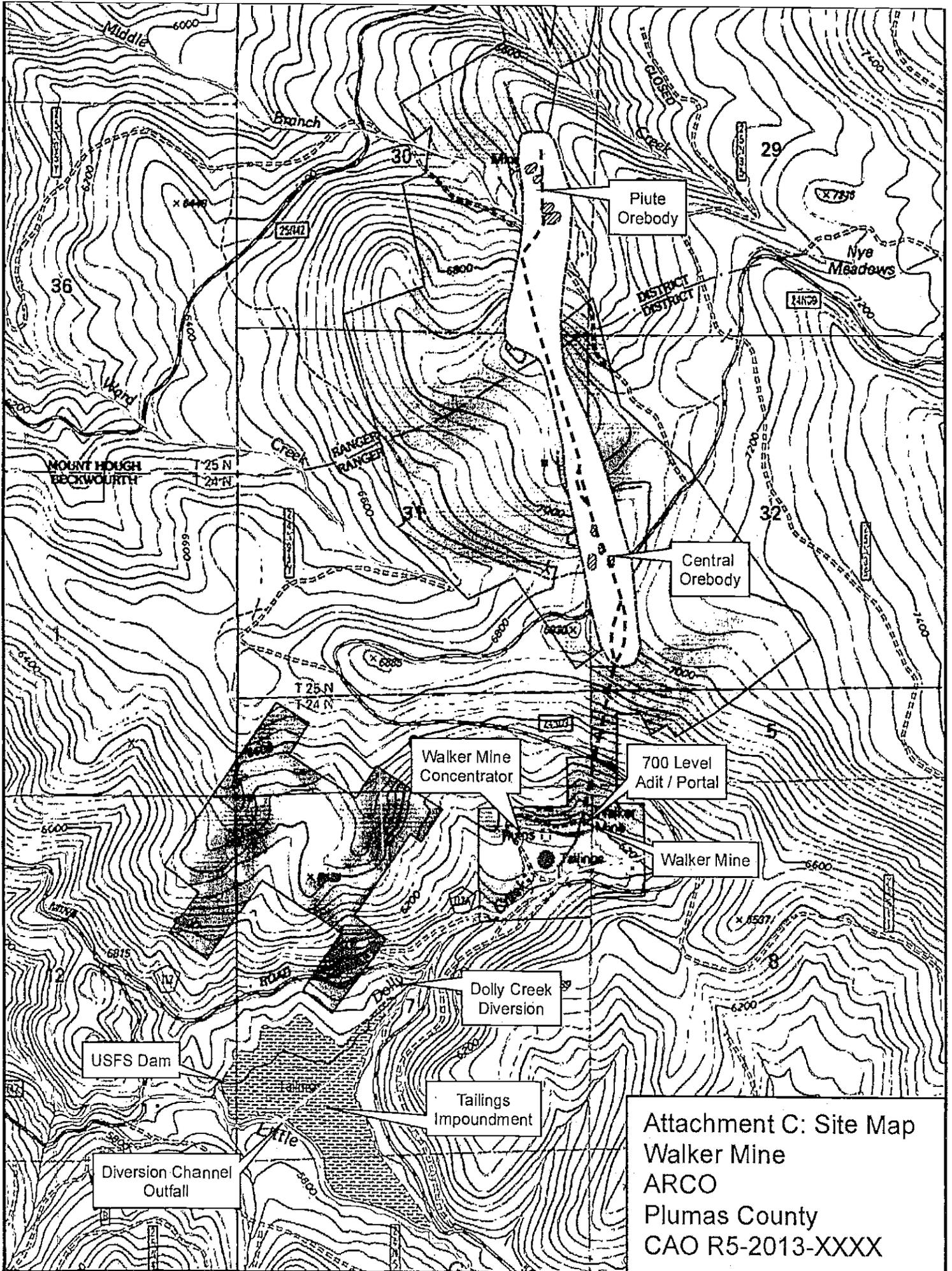




Walker Mine
Tailings Impoundment

Walker Mine

Attachment B: Parcel Map
Walker Mine
ARCO
Plumas County
CAO R5-2013-XXXX



Attachment C: Site Map
Walker Mine
ARCO
Plumas County
CAO R5-2013-XXXX

Attachment D: Chain of Title Guarantee
Walker Mine
ARCO
Plumas County
CAO R5-2013-XXXX

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND THE CONDITIONS AND STIPULATIONS OF THIS GUARANTEE,

STEWART TITLE GUARANTY COMPANY

a corporation, herein called the Company

GUARANTEES

the Assured named in Schedule A against actual monetary loss or damage not exceeding the liability stated in Schedule A, which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

In witness whereof, Stewart Title Guaranty Company has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.

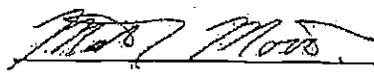
Countersigned by:

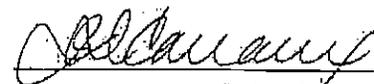

Authorized Countersignature

Cal-Sierra Title Company
295 Main Street
Quincy, CA 95971
Agent ID: 050213

stewart
title.guaranty.company




Matt Morris
President and CEO


Denise Carraux
Secretary

**CHAIN OF TITLE GUARANTEE
SCHEDULE A**

File No.: 063-48181

Amount of Insurance: \$1,000.00

CLTA Guarantee No.: G-1495-000007411

Premium: \$470.00

1. Name of Assured:

California Regional Water Quality Control Board

2. Date of Guarantee: February 01, 2013 at 7:30 a.m.

3. The assurances referred to on the face page are:

That, according to those public records which, under the recording laws, impart constructive notice of matters relating to the interest, if any, which was acquired by

Walker Mining Company, an Arizona corporation

pursuant to a Patents recorded in Plumas County, California September 8, 1916 in Book 8 Page 322; December 29, 1928 in Book 9, Page 339; June 20, 1929 in Book 9, Page 351; July 22, 1935 in Book 9, Page 432 in and to the land described as follows:

SEE LEGAL DESCRIPTION ATTACHED HERETO

Only the following matters appear in such records subsequent to March 21, 1913:

SEE ATTACHED EXHIBIT

This Guarantee does not cover:

1. Taxes, assessments and matters related thereto.
2. Instruments, proceedings, or other matters not contained in deeds purporting to convey the property described.

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Plumas, Unincorporated Area, and described as follows:

THAT CERTAIN PARCEL MADE UP OF THE FOLLOWING PATENTED LODGE MINING CLAIMS: SEPTEMBER MORN NO. 1, SEPTEMBER MORN NO. 2, SEPTEMBER MORN NO. 3, SEPTEMBER MORN NO. 4, SEPTEMBER MORN NO. 5, PIUTE NO. 1, PIUTE NO. 2, PIUTE NO. 3, DIGGER, WALKER EXT., VALLEY VIEW, PACIFIC NO. 7, PACIFIC NO. 8 IN SECTIONS 19, 30 AND 31, TOWNSHIP 25 NORTH, RANGE 12 EAST, M.D.B.&M.

APN: 009-080-001

THAT CERTAIN PARCEL MADE UP OF THE FOLLOWING PATENTED LODGE MINING CLAIMS: PACIFIC NO. 1, PACIFIC NO. 2, PACIFIC NO. 4, PACIFIC NO. 5, PACIFIC NO. 6, VALLEY VIEW EXT. COPPER CENTER, COPPER CENTER EXTENSION, WALKER, BULLION, BULLION EXT., ROB, ROB EXT., SIOUX, PANAMA NO. 1, PANAMA NO. 2, PANAMA NO. 3, PANAMA NO. 4, PANAMA NO. 5, AND THOSE PORTIONS OF THE STANDARD AND RELIABLE EXT. CLAIMS LYING NORTHERLY OF THE SOUTHERLY LINE OF SECTION 32.

ALSO INCLUDING THE S 1/2 OF THE SW 1/4 OF SW 1/4 OF SW 1/4 OF SECTION 32 AND ALL BEING PORTIONS OF SECTIONS 29, 30, 31 AND 32, TOWNSHIP 25 NORTH, RANGE 12 EAST, M.D.B.&M.

APN: 009-090-001

LOT 6;

SW/4 NW/4 NW/4 NW/4; NW/4 SW/4 NW/4 NW/4; AND SW/4 SW/4 NW/4 NW/4 OF SECTION 5, TOWNSHIP 24 NORTH, RANGE 12 EAST, M.D.M.

SE/4 SE/4 NE/4 NE/4 OF SECTION 6, TOWNSHIP 24 NORTH, RANGE 12 EAST, M.D.M.; NE/4 NE/4 NE/4 NE/4; S/2 NE/4 NE/4 NE/4; S/2 NW/4 NE/4 NE/4; SE/4 NE/4 NW/4 NE/4; E/2 SE/4 NW/4 NE/4; E/2 NE/4 SW/4 NE/4; SW/4 NE/4 NE/4; NW/4 SE/4 NE/4; SE/4 NE/4 NE/4; NE/4 SE/4 NE/4 OF SECTION 7, TOWNSHIP 24 NORTH, RANGE 12 EAST, M.D.M.

NW/4 NW/4 NW/4 NW/4; SE/2 NW/4 NW/4 NW/4; SW/4 NW/4 NW/4; N/2 NW/4 SW/4 NW/4 OF SECTION 8, TOWNSHIP 24 NORTH, RANGE 12 EAST, M.D.M.

APN: 009-100-009

THAT CERTAIN PARCEL MADE UP OF PORTIONS OF THOSE PATENTED LODGE MINING CLAIMS THE STANDARD AND RELIABLE EXT., WHICH LIE SOUTHERLY OF THE NORTHERLY LINE OF SECTION 5, TOWNSHIP 24 NORTH, RANGE 12 EAST, M. D. B. & M.

APN: 009-090-002

EXHIBIT

1. Order for Sale:
Grantor : Walker Mining Company, Debtor
Grantee : Safeway Signal Company, a corporation
Recorded : April 23, 1945
Book/Page : 82/103 of Deeds

2. Trustee's Deed:
Grantor : Walker Mining Company, Debtor
Grantee : Safeway Signal Company, a corporation
Recorded : April 23, 1945
Book/Page : 82/106 of Deeds

3. Quitclaim Deed:
Grantor : Safeway Signal Company, a corporation
Grantee : R. P. Wilson
Recorded : August 19, 1946
Book/Page : 84/372 of Deeds

4. Quitclaim Deed:
Grantor : R. P. Wilson
Grantee : Plumas Land Company, a corporation
Recorded : September 20, 1946
Book/Page : 85/5 of Deeds

5. A deed of trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby
Trustor : Plumas Land Company, a Nevada corporation
Trustee : California Trust Company
Beneficiary : Coleman Burke
Recorded : January 14, 1947
Book/Page : 7/122 of Official Records
NOTE: The holders of this note/indebtedness should be contacted for all pertinent information.

6. Grant Deed (Timber):
Grantor : Plumas Land Company, a corporation
Grantee : Plumas Lumber Company, a California corporation
Recorded : March 5, 1948
Book/Page : 88/309 of Deeds

7. Quitclaim Deed (Timber):
Grantor : Plumas Lumber Company
Grantee : Plumas Land Company
Recorded : November 19, 1965
Book/Page : 171/1079 of Official Records

8. Trustee's Deed:
Grantor : California Trust Company, Trustee (Pursuant to Item No. 5 herein)
Grantee : Coleman Burke
Recorded : November 19, 1965
Book/Page : 171/1082 of Official Records

9. Quitclaim Deed:
Grantor : Coleman Burke
Grantee : Robert R. Barry

- Recorded : November 19, 1965
Book/Page : 171/1088 of Official Records
10. Grant Deed:
Grantor : Robert R. Barry and Anne R. Barry, his wife
Grantee : Calicopia Corporation, a New York corporation
Recorded : November 19, 1965
Book/Page : 171/1092 of Official Records
11. Easement Deed (Road):
Grantor : Calicopia Corporation
Grantee : United States of America
Recorded : September 25, 1970
Book/Page : 197/661 of Official Records
12. Tax Deed:
Grantor : Tax Collector of Plumas County
Grantee : Cedar Point Properties, Inc.
Recorded : September 8, 1997
Book/Page : 716/311 of Official Records
APN : 009-090-001
13. Tax Deed:
Grantor : Tax Collector of Plumas County
Grantee : Cedar Point Properties, Inc.
Recorded : September 8, 1997
Book/Page : 716/312 of Official Records
APN : 009-080-001
14. Tax Deed:
Grantor : Tax Collector of Plumas County
Grantee : Cedar Point Properties, Inc.
Recorded : December 14, 1998
Book/Page : 762/29 of Official Records
APN : 009-100-009
15. Tax Deed:
Grantor : Tax Collector of Plumas County
Grantee : Clifford R. Brown and Bunny Brown
Recorded : July 2, 1997
Book/Page : 711 / 29 of Official Records
APN : 009-090-002

ATTACHMENT 1: Relevant Documents Index
 Walk # Mine
 ARCO
 Pima County
 CAD # 2001-0000

ID#	DOC#	FILE #	PG#	From	To	Position	File #	Subject	Source	Comments
1	24-Nov-1943	18264.01	23	Ward, Clyde	Ward, Clyde	Vice President, Anaconda	None	Possible option on Walker Mine	Anaconda Geological Documents Collection	Ward writes that, "There but you do not believe the Anaconda Company should be interested in this property right."
2	9-Jan-1944	18264.01	27	Ward, Clyde	Ward, Clyde	Vice President, Anaconda	None	Possible option on Walker Mine	Anaconda Geological Documents Collection	Ward writes that, "Obviously costs have gone up considerably since we reported them..."
3	7-Jun-1942	18201.04	17	Tom Lyon	Tom Lyon	Chief Geologist ARCO	J.O. Elliot	Other Copper Property Near Walker Mine	Anaconda Geological Documents Collection	Approximate managed grading (ISRC) not to discuss any potential deal on Walker Mine. Any proposition would have to be made by New York (Anaconda)
4	16-Oct-1941	18406.02	1	Kelley, C.F.	Kelley, C.F.	Chairman of the Board, ARCO	Ward, J.R.	Other Copper Property Near Walker Mine	Anaconda Geological Documents Collection	Ward states that the property is not of interest to Anaconda Company or the Walker Mining Company, indicating it is a ACME grade mine.
5	23-Nov-1941	303.01	7	Chamberlain, V.R.	Chamberlain, V.R.	Chief Geologist, WAC	Cham, M.H.	Assistant Chief Geologist, Anaconda	Anaconda Geological Documents Collection	Chamberlain indicates that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
6	18-Oct-1941	303.01	18	Cham, M.H.	Chamberlain, V.R.	Assistant Chief Geologist, Anaconda	Cham, M.H.	Assistant Chief Geologist, WAC	Anaconda Geological Documents Collection	Chamberlain indicates that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
7	10-Oct-1941	303.01	19	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Ward, Reno	Chief Geologist, WAC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
8	4-Oct-1941	303.01	18	Hartman, H.M.	Hartman, H.M.	Manager WAC	Dugan, J.F.	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward Mining Co., Phoenix Co., AZ.
9	2-Sep-1941	303.01	20	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Ward, Reno	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Development
10	30-Aug-1941	303.01	28	Chamberlain, V.R.	Chamberlain, V.R.	President, Anaconda	Ward, Reno	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	On Reserve/Abandoned Work
11	8-Aug-1941	19020.01	30	Hobbs	Hobbs	President, Anaconda	Dugan, Lyon, Hartman	Surfact Geology of 112 Footwall Area	Anaconda Geological Documents Collection	Does not appear that notes and books to form title (ARCO) of the relevant instruments, but also seems to be a ACME grade mine.
12	5-Sep-1941	303.01	31	Chamberlain, V.R.	Chamberlain, V.R.	President, Anaconda	Ward, Reno	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward Mining Co., Phoenix Co., AZ.
13	4-Sep-1941	303.01	34	Lyon, Tom	Lyon, Tom	Chief Geologist, WAC	Ward, Reno	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward Mining Co., Phoenix Co., AZ.
14	3-Sep-1941	18204.01	108	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Ward, Reno	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward Mining Co., Phoenix Co., AZ.
15	21-Aug-1941	30302.02	22	Ward, Clyde	Ward, Clyde	General Manager of Mines, Anaconda	Roskins, J.R.	President, Anaconda	Anaconda Geological Documents Collection	Assess title (ARCO) that he will likely require the title and also plug the completed document.
16	18-Aug-1941	303.02	20	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Dugan, J.F.	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Clear shows final construction of exploration and new development between WAC, ISRC, and Anaconda.
17	16-Aug-1941	303.02	19	Dugan, J.F.	Dugan, J.F.	General Supt of Mines, ISRC	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Anaconda associate (presumably senior government) employees for production costs or that WAC be closed. Note reference to the fact that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
18	13-Aug-1941	303.02	14	Dugan, J.F.	Dugan, J.F.	General Supt of Mines, ISRC	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
19	10-Aug-1941	303.02	13	Dugan, J.F.	Dugan, J.F.	General Supt of Mines, ISRC	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
20	8-Aug-1941	303.02	14	Dugan, J.F.	Dugan, J.F.	General Supt of Mines, ISRC	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
21	5-Aug-1941	303.02	16	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Dugan, J.F.	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
22	3-Aug-1941	303.02	18	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Dugan, J.F.	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
23	30-Jul-1941	303.02	13	Hartman, H.M.	Hartman, H.M.	Manager WAC	Dugan, J.F.	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
24	26-Jul-1941	18204.01	111	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Dugan, J.F.	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
25	24-Jul-1941	303.02	11	Dugan, J.F.	Dugan, J.F.	General Supt of Mines, ISRC	Hartman, H.M.	Manager WAC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
26	23-Jul-1941	303.02	8	Chamberlain, V.R.	Chamberlain, V.R.	Chief Geologist WAC	Lyon, Tom	Chief Geologist ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
27	18-Jun-1941	303.02	8	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Dugan, J.F.	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
28	8-May-1941	303.02	7	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
29	25-Feb-1941	18204.01	118	Droubay, S.K.	Droubay, S.K.	Chief Geologist WAC	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
30	13-Feb-1941	303.01	21	Dugan, J.F.	Dugan, J.F.	General Supt of Mines, ISRC	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
31	11-Feb-1941	303.01	29	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
32	13-Feb-1941	303.01	30	Dugan, J.F.	Dugan, J.F.	General Supt of Mines, ISRC	Hartman, H.M.	Manager WAC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
33	7-Feb-1941	18202.02A	6	Droubay, S.K.	Droubay, S.K.	Chief Geologist WAC	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
34	2-Feb-1941	303.01	26	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Dugan, J.F.	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
35	31-Jan-1941	303.01	34	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Dugan, J.F.	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
36	1-Feb-1941	303.01	16	Droubay, S.K.	Droubay, S.K.	Chief Geologist WAC	Dugan, J.F.	General Supt of Mines, ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
37	26-Jan-1941	303.01	10	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Droubay, S.K.	Chief Geologist WAC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
38	20-Jan-1941	303.01	8	Lyon, Tom	Lyon, Tom	Chief Geologist ISRC	Droubay, S.K.	Chief Geologist WAC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
39	20-Jan-1941	303.01	9	Dugan, J.F.	Dugan, J.F.	General Supt of Mines, ISRC	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
40	15-Jan-1941	303.01	3	Droubay, S.K.	Droubay, S.K.	Chief Geologist WAC	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
41	8-Jan-1941	303.01	2	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Droubay, S.K.	Chief Geologist WAC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
42	28-Dec-1940	303.01	4	Droubay, S.K.	Droubay, S.K.	Chief Geologist WAC	Lyon, Tom	Chief Geologist ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
43	27-Dec-1940	303.01	6	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Lyon, Tom	Chief Geologist ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
44	20-Dec-1940	303.01	11	Lyon, Tom	Lyon, Tom	Chief Geologist ISRC	Droubay, S.K.	Chief Geologist WAC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
45	18-Dec-1940	18204.01	104	Ward, Reno	Ward, Reno	Chief Geologist Anaconda, 1909-1949	Lyon, Tom	Chief Geologist ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
46	18-Dec-1940	303.01	18	Ward, Clyde	Ward, Clyde	General Manager of Mines, Anaconda	Lyon, Tom	Chief Geologist ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
47	28-Nov-1940	303.01	22	Ward, Clyde	Ward, Clyde	General Manager of Mines, Anaconda	Lyon, Tom	Chief Geologist ISRC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.
48	27-Nov-1940	303.01	27	Lyon, Tom	Lyon, Tom	Chief Geologist ISRC	Droubay, S.K.	Chief Geologist WAC	Anaconda Geological Documents Collection	Ward states that the mine is to be developed if another Anaconda operation such as Comstock (Arizona), indicating it is a ACME grade mine.

Attachment B: Relevant Document Index
Walker Mine
ARCQ
Pitkin County
CAG 062013-000

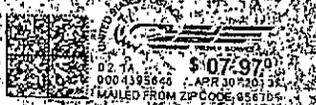
Date	PDF File #	PDF Page #	From	Position	To	Position	Subject	Source	Comments	
147 12-May-1928	16201.01	62	Sikes, Reno	Chief Geologist Anasconda, 1908-1948	Lyon, Tom	Chief Geologist SRG	None	Development at Walker Mine	Anasconda Geological Documents Collection	States case I plan to unwork Tunnel (WMC) and convey WMA (ACMC) request for the North Ore body to be developed at Walker Mine.
148 9-May-1928	16204.01	22	Wicks, William	VP WMC, VP Anasconda	Sikes, Reno	Chief Geologist Anasconda, 1908-1948	None	Walker Mine Development	Anasconda Geological Documents Collection	WMA (ACMC) gets State to transmit instructions to Lyon (SRG) re work in the north ore body at Walker Mine.
149 14-May-1928	16201.01	24	Sikes, Reno	Chief Geologist Anasconda, 1908-1948	Wicks, William	VP WMC, VP Anasconda	None	Walker Mine Development	Anasconda Geological Documents Collection	SRG gives specific instructions on reworking above proceeds at the SRG level at Walker Mine (not Anasconda).
150 23-Apr-1928	16204.01	1	Sikes, Reno	Chief Geologist Anasconda, 1908-1948	Wicks, William	VP WMC, VP Anasconda	None	Walker Mine Development	Anasconda Geological Documents Collection	State writes to WMA (ACMC) discussing ore reserves and recommending specific development work to be done at Walker Mine.
151 24-Nov-1924	16209.01	22-23	Sikes, Reno	Chief Geologist Anasconda, 1908-1948	Wicks, William	VP WMC, VP Anasconda	None	Walker Mine Development	Anasconda Geological Documents Collection	State informs WMA (ACMC) that Geological Department's recommendations not being followed at WMA, that the Geological Department should not be held responsible for work being done at WMA, and that WMA (ACMC) will have to find another person to talk to re: accounting for Walker Mine.
152 12-Nov-1924	16201.01	78	Wicks, William	VP WMC, VP Anasconda	Lyon, Tom	Chief Geologist SRG	Overlapping Ellen	Accounting matters at Walker Mine	Anasconda Geological Documents Collection	Accounting matters at Walker Mine.
153 23-Oct-1924	16201.01	78	Sikes, Reno	Chief Geologist Anasconda, 1908-1948	Wicks, William	VP WMC, VP Anasconda	Lyon	Open book at Walker Mine	Anasconda Geological Documents Collection	State informs WMA (ACMC) that Geological Department's recommendations not being followed at WMA, that the Geological Department should not be held responsible for work being done at WMA, and that WMA (ACMC) will have to find another person to talk to re: accounting for Walker Mine.
154 14-Apr-1924	16202.01	pages 11-12	Billingley, Paul	Geologist, Anasconda Geological Dept.	Wicks, William	VP WMC, VP Anasconda	None	WMC Development Work	Anasconda Geological Documents Collection	Detailed description of mine status and recommendations for development work.
155 24-Mar-1924	16202.01	17	Billingley, Paul	Geologist, Anasconda Geological Dept.	Wicks, William	VP WMC, VP Anasconda	None	WMC Development Work	Anasconda Geological Documents Collection	Detailed description of mine status and recommendations for development work.
156 15-Jun-1924	16201.01	82	Ellen, J.D.	Manager SRG	Ellen, J.D.	Manager WMC	Billingley	Geological Recommendations	Anasconda Geological Documents Collection	Ellen is SRG, Geological recommendations are to be carried out as directed by Billingley (ACMC).
157 12-Dec-1923	16202.01	31	Billingley, Paul	Geologist, Anasconda Geological Dept.	Ellen, J.D.	Manager SRG	None	WMC Development Recommendations	Anasconda Geological Documents Collection	Detailed description of mine development recommendations. ACMC is providing highly specialized geological services for WMC.
158 12-Oct-1923	16202.01	23-33	Billingley, Paul	Geologist, Anasconda Geological Dept.	Ellen, J.D.	Manager SRG	None	WMC Development Recommendations	Anasconda Geological Documents Collection	Detailed description of mine development recommendations. ACMC is providing highly specialized geological services for WMC. Best authorization is secured.
159 20-Sep-1923	16201.01	66-71	Sikes, Reno	Chief Geologist Anasconda, 1908-1948	Billingley, Paul	Geologist, Anasconda Geological Dept.	None	Problems with V.A. Hart	Anasconda Geological Documents Collection	Nothing later than V.A. Hart knows how the ACMC structure is being set up by account of the manager of its subsidiary.
160 23-Jul-1923	1615		Whelan, J.B.	Purchasing Agent & Director WMC	Ellen, J.D.	Manager SRG	None	WMA Changes on Concentrator	Montana Historical Society	WMA changes on Concentrator.
161 15-Jun-1923	1615		Monte, Raymond S.	Sup of Concentration, Anasconda Smelter	Lusk, Frederick	Manager, Anasconda	Ellen, Foyell	Walker Mine Power Contract	Montana Historical Society	WMA changes on Concentrator.
162 4-Jun-1923	1615		Hartman, F.C.	WMC	Lusk, Frederick	Manager, Anasconda	None	Working Run of Walker Mine Concentrator	Montana Historical Society	Working Run of Walker Mine Concentrator.
163 21-Aug-1922	1615		Wicks, William	General Manager, Anasconda Smelter	Lusk, Frederick	Manager, Anasconda	Ellen	Walker Mine	Montana Historical Society	Detailed report on modifications of Walker Mine concentrator, including location (highlighting the recommendations the give to Ellen re: Walker Mine).
164 2-Aug-1922	1615		Worlow, Royal S.	Sup of Concentration, Anasconda Smelter	Lusk, Frederick	Manager, Anasconda	None	Recommendations for Increasing Capacity of Walker Mine Concentrator	Montana Historical Society	WMA fully and I have had some discussion as to the financing (WMC) in order that we might get our money back... Dividend of how Walker Mine's operations can be improved.

CERTIFIED MAIL

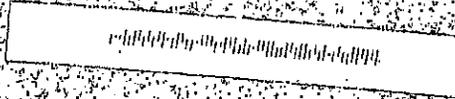


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SUITE 200
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RANCHO CORDOVA CA 95670



\$07.97



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