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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

El Paso Natural Gas Co., L.L.C.,
Plaintiff and Counterclaim-
Defendant,
v.
United States of America, et al.,
Defendants and Counter-
Claimants.

No. 3:14-cv-08165-DGC

PARTIAL CONSENT DECREE

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I. BACKGROUND

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2 A. In 1991, Regions 6, 8 and 9 of the United States Environmental Protection
3 Agency (“EPA”) entered into a Memorandum of Agreement with the Navajo Nation,
4 which made EPA Region 9 the lead EPA Region responsible for all environmental
5 matters affecting the Navajo Nation, which includes environmental response actions
6 associated with the investigation and cleanup of uranium contamination on the Navajo
7 Nation. On May 17, 2012, EPA informed El Paso Natural Gas Company, L.L.C.
8 (“EPNG” or “Settling Defendant”) that it is a potentially responsible party under the
9 Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.
10 §§ 9601-9675 (“CERCLA”), with respect to the release or threatened release of
11 hazardous substances from facilities at and near 19 historic uranium mines located on the
12 Navajo Nation Reservation in and around Cameron, Arizona (collectively “Mine Sites”).
13 On August 23, 2013, EPA entered into an administrative agreement and settlement order
14 (“AOC”) in which EPNG agreed to perform four tasks: (1) site signage and fencing, (2)
15 a cultural resources survey to ensure compliance with the National Historic Preservation
16 Act of 1966 and Executive Orders that address protection of cultural sites and Indian
17 Sacred Sites, (3) studies to assess background levels of radiation in undisturbed areas in
18 proximity to the Mine Sites, and (4) gamma scanning studies to determine the lateral
19 extent of impact from mining at each of the Sites. Work by EPNG pursuant to the AOC
20 under EPA oversight is currently ongoing.
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1 B. On September 3, 2014, EPNG sued the United States of America (“United
2 States”) in this matter for contribution, cost recovery, and declaratory judgment as to
3 liability for future costs, under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and
4 9613, with respect to EPNG’s costs associated with the investigation and cleanup of
5 uranium contamination in and around the Mine Sites. The complaint alleges the liability
6 of the United States Department of the Interior (“DOI”), United States Bureau of Indian
7 Affairs (“BIA”), United States Geological Survey (“USGS”), United States Department
8 of Energy (“DOE”), and the United States Nuclear Regulatory Commission (“NRC”).
9
10

11 C. The United States, on behalf of EPA, DOI, BIA, USGS, DOE, and NRC,
12 filed a counterclaim in this matter pursuant to Sections 107 and 113 of CERCLA, 42
13 U.S.C. §§ 9607 and 9613, seeking reimbursement of costs incurred or to be incurred by
14 the United States for response actions taken at or in connection with the release or
15 threatened release of hazardous substances from facilities at and near the Mine Sites. The
16 United States’ counterclaim also sought contribution with respect to the counter-
17 defendant’s CERCLA Section 107 claims against the United States, and a declaratory
18 judgment of liability for future response costs incurred by the United States at the Mine
19 Sites.
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23

24 D. By entering into this Partial Consent Decree (“Consent Decree”), the
25 Settling Defendant (counter-defendant EPNG), does not admit any liability to the United
26 States arising out of the transactions or occurrences alleged in the counterclaim. Nor
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28

1 does the United States admit any liability arising out of the transactions or occurrences
2 alleged in the complaint asserted by Settling Defendant. Nor does the United States
3 admit, and reserves the right to assert all defenses and deny, liability to Settling
4 Defendant for any of its alleged costs, including those paid pursuant to this Consent
5 Decree.
6

7
8 E. The United States and Settling Defendant intend that this Consent Decree
9 will, with respect to the Mine Sites (as defined herein), and as more fully described in and
10 subject to Sections V, VII, VIII, IX, and X herein, fully resolve the United States'
11 counterclaim as to EPA Past Response Costs without prejudice to the Settling
12 Defendant's claims for response costs and contribution from the United States asserted in
13 Settling Defendant's complaint, and without prejudice to the counterclaim for
14 contribution asserted by the United States against the Settling Defendant on behalf of
15 agencies other than EPA. The United States and Settling Defendant also intend that, by
16 entering into this Consent Decree, the Parties and the Court will avoid unnecessary
17 expenditure of time and resources litigating over the United States' counterclaim for EPA
18 Past Response Costs; that, absent significant new information or developments not
19 currently known or reasonably anticipated by the Parties, the United States does not
20 intend to take further discovery into Settling Defendant's liability for EPA Past Response
21 Costs, and Settling Defendant does not intend to take further discovery of EPA or EPA
22 personnel in pursuing the claims asserted in its complaint; and, that settlement of the
23 United States' counterclaim for EPA Past Response Costs will promote efficiency and
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1 allow the Parties and the Court to use their time and resources resolving the contested
2 issues that remain.

3
4 F. The United States and Settling Defendant agree, and this Court by entering
5 this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in
6 good faith, that settlement of this matter without further litigation and without the
7 admission or adjudication of any issue of fact or law is appropriate and will avoid
8 prolonged and complicated litigation between the Parties as to the issues addressed in this
9 Consent Decree, and that this Consent Decree is fair, reasonable, and in the public
10 interest.
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12

13
14 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
15 ADJUDGED, AND DECREED:

16
17 **II. JURISDICTION**

18 1. This Court has jurisdiction over the subject matter of this action pursuant to
19 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal
20 jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and
21 the underlying counterclaim, Settling Defendant waives all objections and defenses that it
22 may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall
23 not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to
24 enter and enforce this Consent Decree.
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1 **III. PARTIES BOUND**

2
3 2. This Consent Decree is binding upon the United States and upon Settling
4 Defendant and its successors and assigns. Any change in ownership or corporate or other
5 legal status, including but not limited to, any transfer of assets or real or personal
6 property, shall in no way alter the status or responsibilities of Settling Defendant under
7 this Consent Decree.
8

9 **IV. DEFINITIONS**

10
11 3. Unless otherwise expressly provided in this Consent Decree, terms used in
12 this Consent Decree that are defined in CERCLA or in regulations promulgated under
13 CERCLA shall have the meanings assigned to them in CERCLA or in such regulations.
14 Whenever terms listed below are used in this Consent Decree or in any appendix attached
15 hereto, the following definitions shall apply:
16

17
18 “09 9R Costs” shall mean all direct and indirect costs, including accrued Interest,
19 that EPA has incurred for response actions to investigate and characterize uranium and
20 other hazardous substance contamination related to approximately 523 abandoned
21 uranium mines, including the Mine Sites, located on the Navajo Nation, that have been
22 billed to the EPA Site ID Number 09 9R.
23

24
25 “AOC” shall mean the administrative settlement agreement and order on consent
26 in the matter of Cameron Areas Mine Sites, CERCLA Region 9 Docket No. 2013-9, that
27 EPA and EPNG entered into on August 23, 2013 with respect to the Mine Sites.
28

1 “Cameron Area Mines Sites Special Account” shall mean the special account,
2 within the EPA Hazardous Substances Superfund, established for the Site by EPA
3 pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the AOC.
4

5 “CERCLA” shall mean the Comprehensive Environmental Response,
6 Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.
7

8 “Consent Decree” shall mean this Partial Consent Decree and Appendix A,
9 attached hereto. In the event of conflict between this Consent Decree and any appendix,
10 the Consent Decree shall control.
11

12 “Day” or “day” shall mean a calendar day. In computing any period of time under
13 this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or
14 State of Arizona holiday, the period shall run until the close of business of the next
15 working day.
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17

18 “DOJ” shall mean the U.S. Department of Justice and its successor departments,
19 agencies, or instrumentalities.
20

21 “Effective Date” shall mean the date upon which the approval of this Consent
22 Decree is recorded on the Court’s docket.
23

24 “EPA” shall mean the U.S. Environmental Protection Agency and its successor
25 departments, agencies, or instrumentalities.
26
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1 “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance
2 Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

3
4 “EPA Past Response Costs” shall mean all costs, including but not limited to
5 direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection
6 with the Mine Sites through August 13, 2015, plus accrued Interest on all such costs
7 through such date. EPA Past Response Costs include a share of 09 9R Costs allocated to
8 the Mine Sites. EPA Past Response Costs do not include costs incurred pursuant to the
9 AOC, nor any 09 9R Costs not allocated to the Mine Sites.

10
11
12 “Interest” shall mean interest at the rate specified for interest on investments of the
13 EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded
14 annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The
15 applicable rate of interest shall be the rate in effect at the time the interest accrues. (The
16 rate of interest is subject to change on October 1 of each year. Rates are available online
17 at [http://www2.epa.gov/superfund/superfund-interest-rates.](http://www2.epa.gov/superfund/superfund-interest-rates))
18

19
20 “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic
21 numeral or an upper or lower case letter.

22
23 “Parties” shall mean the United States and Settling Defendant.

24
25 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
26 §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).
27
28

1 “Section” shall mean a portion of this Consent Decree identified by a Roman
2 numeral.

3
4 “Settling Defendant” or “EPNG” shall mean El Paso Natural Gas Company,
5 L.L.C.

6
7 “Site” or “Mine Sites” shall mean the 19 historic uranium mines located on the
8 Navajo Nation Reservation in and around Cameron, Arizona, and generally shown on the
9 map included in Appendix A.

10
11 “United States” shall mean the United States of America and each department,
12 agency, and instrumentality of the United States, including EPA, DOI, BIA, USGS,
13 DOE, and NRC.

14
15 **V. PAYMENT FOR EPA PAST RESPONSE COSTS**

16
17 4. Payment by Settling Defendant for EPA Past Response Costs. Within 30
18 days after the Effective Date, Settling Defendant shall pay to the United States \$502,500,
19 plus an additional sum for Interest on that amount calculated from August 13, 2015
20 through the date of payment.

21
22
23 5. Settling Defendant shall make payment at <https://www.pay.gov> to the U.S.
24 Department of Justice account, in accordance with instructions provided to Settling
25 Defendant by the Financial Litigation Unit (FLU) of the U.S. Attorney’s Office for the
26 District of Arizona after the Effective Date. The payment instructions provided by the
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1 FLU will include a Consolidated Debt Collection System (CDCS) number, which shall
2 be used to identify all payments required to be made in accordance with this Consent
3 Decree. The FLU will provide the payment instructions to:
4

5 David R. DeVeau, Vice President
6 El Paso Natural Gas Company L.L.C.
7 c/o Daniel J. Schnee
8 Assistant General Counsel
9 P.O. Box 1087
10 Colorado Springs #954
11 CO 80903
12 (719) 520-4337
13 daniel_schnee@kindermorgan.com

14 on behalf of Settling Defendant. Settling Defendant may change the individual to receive
15 payment instructions on its behalf by providing written notice of such change to DOJ and
16 EPA in accordance with Section XIII (Notices and Submissions).

17 6. Deposit of Payment. The total amount to be paid pursuant to Paragraph 4
18 shall be deposited by EPA in the Cameron Area Mines Sites Special Account to be
19 retained and used to conduct or finance response actions at or in connection with the Site,
20 or to be transferred by EPA to the EPA Hazardous Substance Superfund.

21 7. Notice of Payment. At the time of payment, Settling Defendant shall send
22 notice that payment has been made to EPA and DOJ in accordance with Section XIII
23 (Notices and Submissions), and to the EPA Cincinnati Finance Center by email or by
24 regular mail at:
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1 **Email:** cinwd_acctsreceivable@epa.gov

2

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4 **Regular mail:** EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
5 Cincinnati, Ohio 45268

6 Such notice shall reference the CDCS Number, Site/Spill ID Number A901 and DOJ

7 Case Number 90-11-3-11170.

8

9 **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

10

11 8. Interest on Late Payments. If Settling Defendant fails to make any payment
12 under Paragraph 4 (Payment by Settling Defendant for EPA Past Response Costs) by the
13 required due date, Interest shall continue to accrue on the unpaid balance through the date
14 of payment.

15

16 9. Stipulated Penalty.

17

18 a. If any amounts due to EPA under Paragraph 4 (Payment by Settling
19 Defendant for EPA Past Response Costs) are not paid by the required date, Settling
20 Defendant shall be in violation of this Consent Decree and shall pay to the United States,
21 as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$500 per
22 violation per day that such payment is late.

23

24 b. Stipulated penalties are due and payable within 30 days after the
25 date of the demand for payment of the penalties by EPA. All payments to EPA under this
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1 Paragraph shall be identified as “stipulated penalties” and shall be made by Fedwire EFT
2 to:

3
4 Federal Reserve Bank of New York
5 ABA = 021030004
6 Account = 68010727
7 SWIFT address = FRNYUS33
8 33 Liberty Street
9 New York, NY 10045

9 Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental
10 Protection Agency” and shall reference the CDCS Number, Site/Spill ID Number A901,
11 and DOJ Case Number 90-11-3-11170.
12

13
14 c. At the time of payment, Settling Defendant shall send notice that
15 payment has been made to EPA and DOJ as provided in Paragraph 7 (Notice of
16 Payment).

17
18 d. Penalties shall accrue as provided in this Paragraph regardless of
19 whether EPA has notified Settling Defendant of the violation or made a demand for
20 payment, but need only be paid upon demand. All penalties shall begin to accrue on the
21 day after payment is due and shall continue to accrue through the date of payment.
22
23 Nothing in this Consent Decree shall prevent the simultaneous accrual of separate
24 penalties for separate violations of this Consent Decree.
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1 10. If the United States brings an action to enforce this Consent Decree,
2 Settling Defendant shall reimburse the United States for all costs of such action,
3 including but not limited to costs of attorney time.
4

5 11. Payments made under this Section shall be in addition to any other
6 remedies or sanctions available to the United States by virtue of Settling Defendant's
7 failure to comply with the requirements of this Consent Decree.
8

9 12. Notwithstanding any other provision of this Section, the United States may,
10 in its unreviewable discretion, waive payment of any portion of the stipulated penalties
11 that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall
12 not excuse Settling Defendant from payment as required by Section V (Payment of
13 Response Costs) or from performance of any other requirements of this Consent Decree.
14
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16 **VII. COVENANT FOR SETTLING DEFENDANT BY THE UNITED STATES**
17

18 13. Except as specifically provided in Section VIII (Reservation of Rights by
19 United States), the United States covenants not to sue or to take administrative action
20 against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),
21 to recover EPA Past Response Costs. This covenant shall take effect upon the Effective
22 Date. This covenant is conditioned upon the satisfactory performance by Settling
23 Defendant of its obligations under this Consent Decree. This covenant extends only to
24 Settling Defendant and does not extend to any other person.
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VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

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14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant for Settling Defendant by the United States in Paragraph 13.

Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of EPA Past Response Costs;
- c. liability under the CERCLA counterclaim asserted against Settling Defendant by the United States in this action on behalf of agencies other than EPA, and all defenses (whether asserted heretofore or in the future) to Settling Defendant's claims against the United States in this action;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- e. criminal liability; and
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANTS BY SETTLING DEFENDANT

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3 15. Settling Defendant covenants not to sue and agrees not to assert any claims
4 or causes of action against the United States, or its contractors or employees, with respect
5 to EPA Past Response Costs and this Consent Decree, including but not limited to:

6
7 a. any direct or indirect claim for reimbursement from the EPA
8 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of
9 CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of
10 law;
11

12 b. any claim arising out of the response actions at the Site for which the
13 EPA Past Response Costs were incurred, including any claim under the United States
14 Constitution, the Constitution of the State of Arizona, the Tucker Act, 28 U.S.C. § 1491,
15 the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or
16

17 c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C.
18 § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for EPA
19 Past Response Costs.
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22 16. Notwithstanding the foregoing covenants by Settling Defendant, Settling
23 Defendant reserves all rights against the United States with respect to its claims for
24 response costs and contribution from the United States that Settling Defendant asserted in
25 its complaint against the United States in this action, including its right to seek
26 contribution for the payment made pursuant to Paragraph 4 of this Consent Decree. The
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1 United States in turn reserves its rights to assert all defenses and counterclaims against
2 Settling Defendant in connection with such claims.

3
4 17. Nothing in this Consent Decree shall be deemed to constitute approval or
5 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C.
6 § 9611, or 40 C.F.R. § 300.700(d).
7

8 18. Waiver of Claims by Settling Defendant.

9
10 a. Settling Defendant agrees not to assert any claims and to waive all
11 claims or causes of action (including but not limited to claims or causes of action under
12 Sections 107(a) and 113 of CERCLA) that it may have:

13
14 (1) De Micromis Waiver. For all matters relating to the Site
15 against any person where the person's liability to Settling Defendant with respect
16 to the Site is based solely on having arranged for disposal or treatment, or for
17 transport for disposal or treatment, of hazardous substances at the Site, or having
18 accepted for transport for disposal or treatment of hazardous substances at the Site,
19 if all or part of the disposal, treatment, or transport occurred before April 1, 2001,
20 and the total amount of material containing hazardous substances contributed by
21 such person to the Site was less than 110 gallons of liquid materials or 200 pounds
22 of solid materials;
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26 (2) De Minimis/Ability to Pay Waiver. For response costs
27 relating to the Site against any person that has entered or in the future enters into a
28

1 final CERCLA § 122(g) *de minimis* settlement, or a final settlement based on
2 limited ability to pay, with EPA with respect to the Site.
3

4 b. Exceptions to Waivers.

5
6 (1) The waivers under this Paragraph 18 shall not apply with
7 respect to any defense, claim, or cause of action that Settling Defendant may have
8 against any person otherwise covered by such waivers if such person asserts a
9 claim or cause of action relating to the Site against Settling Defendant.
10

11 (2) The waiver under Paragraph 18.a(1) (De Micromis Waiver)
12 shall not apply to any claim or cause of action against any person otherwise
13 covered by such waiver if EPA determines that: (i) the materials containing
14 hazardous substances contributed to the Site by such person contributed
15 significantly or could contribute significantly, either individually or in the
16 aggregate, to the cost of the response action or natural resource restoration at the
17 Site; or (ii) such person has failed to comply with any information request or
18 administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of
19 CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA,
20 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the
21 performance of a response action or natural resource restoration with respect to the
22 Site; or (iii) such person has been convicted of a criminal violation for the
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1 conduct to which the waiver would apply and that conviction has not been vitiated
2 on appeal or otherwise.

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4 **X. EFFECT OF SETTLEMENT/CONTRIBUTION**

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6 19. Except as provided in Paragraph 18 (Waiver of Claims by Settling
7 Defendant), nothing in this Consent Decree shall be construed to create any rights in, or
8 grant any cause of action to, any person not a Party to this Consent Decree. Except as
9 provided in Section IX (Covenants by Settling Defendant), each of the Parties expressly
10 reserves any and all rights (including, but not limited to, pursuant to Section 113 of
11 CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may
12 have with respect to any matter, transaction, or occurrence relating in any way to the Site
13 against any person not a Party hereto. Nothing in this Consent Decree diminishes the
14 right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C.
15 § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or
16 response action and to enter into settlements that give rise to contribution protection
17 pursuant to Section 113(f)(2).
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22 20. The Parties agree, and by entering this Consent Decree this Court finds, that
23 this Consent Decree constitutes a judicially-approved settlement for purposes of Section
24 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as
25 of the Effective Date, to protection from contribution actions or claims as provided by
26 Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters
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1 addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are
2 EPA Past Response Costs.
3

4 21. Settling Defendant shall, with respect to any suit or claim brought by it
5 after the Effective Date for matters related to this Consent Decree, notify EPA and DOJ
6 in writing no later than 60 days prior to the initiation of such suit or claim. Settling
7 Defendant also shall, with respect to any suit or claim brought against it for matters
8 related to this Consent Decree, notify EPA and DOJ in writing within 10 days after
9 service of the complaint or claim upon it. In addition, Settling Defendant shall notify
10 EPA and DOJ within 10 days after service or receipt of any Motion for Summary
11 Judgment, and within 10 days after receipt of any order from a court setting a case for
12 trial, for matters related to this Consent Decree.
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16 22. In any subsequent administrative or judicial proceeding initiated by the
17 United States for injunctive relief, recovery of response costs, or other relief relating to
18 the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim
19 based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion,
20 claim-splitting, or other defenses based upon any contention that the claims raised by the
21 United States in the subsequent proceeding were or should have been brought in the
22 instant case; provided, however, that nothing in this Paragraph affects the enforceability
23 of the Covenant by the United States set forth in Section VII.
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XI. ACCESS TO INFORMATION

1
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3 23. Settling Defendant shall provide to EPA, upon request, copies of all
4 records, reports, documents, and other information (including records, reports,
5 documents, and other information in electronic form) (hereinafter referred to as
6 “Records”) within its possession or control or that of their contractors or agents relating
7 to activities at the Site, including, but not limited to, sampling, analysis, chain of custody
8 records, manifests, trucking logs, receipts, reports, sample traffic routing,
9 correspondence, or other documents or information regarding the Site.
10
11

12 24. Privileged and Protected Claims.
13

14 a. Settling Defendant may assert that all or part of a Record is
15 privileged or protected as provided under federal law, provided it complies with 24.b, and
16 except as provided in Paragraph 24.c.
17

18 b. If Settling Defendant asserts a claim of privilege or protection, it
19 shall provide the United States with the following information regarding such Record: its
20 title; its date; the name, title, affiliation (e.g., company or firm), and address of the author,
21 each addressee, and of each recipient; a description of the Record’s contents; and the
22 privilege or protection asserted. If a claim of privilege or protection applies only to a
23 portion of a Record, Settling Defendant shall provide the Record to the United States in
24 redacted form to mask the privileged or protected information only. Settling Defendant
25 shall retain all Records that it claims to be privileged or protected until the United States
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1 has had a reasonable opportunity to dispute the privilege or protection claim and any such
2 dispute has been resolved in the Settling Defendant's favor.

3
4 c. No claim of privilege or protection shall be made with respect to any
5 data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic,
6 scientific, chemical, radiological, or engineering data, or any other documents or
7 information evidencing conditions at or around the Site.

8
9
10 25. Business Confidential Claims. Settling Defendant may assert that all or
11 part of a Record submitted to the United States under this Section or Section XII
12 (Retention of Records) is business confidential to the extent permitted by and in
13 accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R.
14 2.203(b). Settling Defendant shall segregate and clearly identify all Records or parts
15 thereof submitted under this Consent Decree for which Settling Defendant asserts a
16 business confidentiality claim. Records submitted to EPA determined to be confidential
17 by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no
18 claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA
19 has notified Settling Defendant that the Records are not confidential under the standards
20 of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given
21 access to such Records without further notice to Settling Defendant.
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25
26 26. Notwithstanding any provision of this Consent Decree, the United States
27 retains all of its information gathering and inspection authorities and rights, including
28

1 enforcement actions related thereto, under CERCLA, RCRA, and any other applicable
2 statutes or regulations.

3
4 **XII. RETENTION OF RECORDS**

5
6 27. Until 10 years after the Effective Date, Settling Defendant shall preserve
7 and retain all non-identical copies of records, reports, documents, and other information
8 (including records, reports, documents, and other information in electronic form)
9 (hereinafter referred to as “Records”) now in its possession or control or that come into
10 its possession or control, that relate in any manner to response actions taken at the Site or
11 to the liability of any person under CERCLA with respect to the Site, regardless of any
12 corporate retention policy to the contrary.
13
14

15 28. After the conclusion of the ten-year record retention period, Settling
16 Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such
17 Records, and, except as provided in Paragraph 24 (Privileged and Protected Claims) upon
18 request by EPA or DOJ, Settling Defendant shall deliver any such Records to EPA.
19
20

21 29. Settling Defendant certifies that, to the best of its knowledge and belief,
22 after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise
23 disposed of any Records (other than identical copies) relating to its potential liability
24 regarding the Site since notification of potential liability by the United States and that it
25 has fully complied with any and all EPA requests for information regarding the Site
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1 pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and
2 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927.

3
4 **XIII. NOTICES AND SUBMISSIONS**

5
6 30. Whenever, under the terms of this Consent Decree, notice is required to be
7 given or a document is required to be sent by one party to another, it shall be directed to
8 the individuals at the addresses specified below, unless those individuals or their
9 successors give notice of a change to the other Parties in writing. Written notice, by
10 email or U.S. mail as specified in this Section, shall constitute complete satisfaction of
11 any written notice requirement of the Consent Decree with respect to EPA, DOJ, and
12 Settling Defendant, respectively.
13
14

15 **As to DOJ:** Chief, Environmental Enforcement Section
16 Environment and Natural Resources Division
17 U.S. Department of Justice
18 P.O. Box 7611
19 Washington, D.C. 20044-7611
Re: DJ # 90-11-3-11170

20 **As to EPA:** Xiao Zhang (ORC-3)
21 Madeline Gallo (ORC-3)
22 Office of Regional Counsel
23 EPA Region 9
24 75 Hawthorne Street
25 San Francisco, CA 94105
26 Zhang.Xiao@epa.gov
27 Gallo.Madeline@epa.gov
28
Zizi Angelica Searles (SFD-7-1)
Superfund Division
EPA Region 9
75 Hawthorne Street

1 San Francisco, CA 94105
2 Searles.Zizi@epa.gov

3
4 **As to Settling Defendant:** El Paso Natural Gas Company, L.L.C.
5 c/o General Counsel
6 1001 Louisiana
7 Houston, TX 77002

8 Daniel Schnee, Esq.
9 2 North Nevada, #954
10 Colorado Springs, CO 80903
11 Daniel_Schnee@kindermorgan.com

12 **XIV. RETENTION OF JURISDICTION**

13 31. This Court shall retain jurisdiction over this matter for the purpose of
14 interpreting and enforcing the terms of this Consent Decree.

15 **XV. INTEGRATION/APPENDIX**

16 32. This Consent Decree and its appendix constitute the final, complete and
17 exclusive agreement and understanding among the Parties with respect to the settlement
18 embodied in this Consent Decree. The Parties acknowledge that there are no
19 representations, agreements, or understandings relating to the settlement other than those
20 expressly contained in this Consent Decree. Appendix A is a map of the Site (Mine
21 Sites) and is attached to and incorporated into this Consent Decree.
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1 **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

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3 33. This Consent Decree shall be lodged with the Court for a period of at least
4 30 days for public notice and comment. The United States reserves the right to withdraw
5 or withhold its consent if the comments regarding the Consent Decree disclose facts or
6 considerations that indicate that this Consent Decree is inappropriate, improper, or
7 inadequate. Settling Defendant consents to the entry of this Consent Decree without
8 further notice.
9

10
11 34. If for any reason this Court should decline to approve this Consent Decree
12 in the form presented, this agreement is voidable at the sole discretion of any Party and
13 the terms of the agreement may not be used as evidence in any litigation between the
14 Parties.
15

16 **XVII. SIGNATORIES/SERVICE**

17
18 35. Each of the undersigned representatives of Settling Defendant and the
19 Assistant Attorney General, Environment and Natural Resources Division, U.S.
20 Department of Justice, respectively, certifies that he or she is authorized to enter into the
21 terms and conditions of this Consent Decree and to execute and bind legally such Party to
22 this document.
23
24

25 36. Settling Defendant agrees not to oppose entry of this Consent Decree by
26 this Court or to challenge any provision of this Consent Decree, unless the United States
27
28

1 has notified Settling Defendant in writing that it no longer supports entry of the Consent
2 Decree.

3
4 37. Settling Defendant shall identify, on the attached signature page, the name
5 and address of an agent who is authorized to accept service of process by mail on behalf
6 of that Party with respect to all matters arising under or relating to this Consent Decree.
7
8 Settling Defendant hereby agrees to accept service in that manner and to waive the formal
9 service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any
10 applicable local rules of this Court, including but not limited to, service of a summons.
11

12 **XVIII. FINAL JUDGMENT**

13
14 38. Upon entry of this Consent Decree by the Court, this Consent Decree shall
15 constitute the final judgment between and among the United States and the Settling
16 Defendant as to the United States' counterclaim against Settling Defendant with respect
17 to EPA Past Response Costs at the Mine Sites. The Court finds that there is no just
18 reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ.
19 P. 54 and 58.
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1 Signature Page for Partial Consent Decree Regarding Cameron Mine Sites

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**FOR THE UNITED STATES OF
AMERICA:**



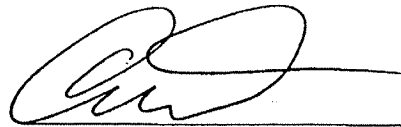
JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7415
Washington, D.C. 20044-7415



PATRICIA L. HURST
Senior Counsel
DAVID ROSSKAM
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

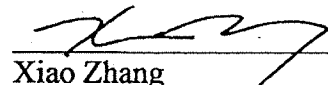
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Signature Page for Partial Consent Decree Regarding Cameron Mine Sites



11/16/15

Enrique Manzanilla
Director, Superfund Division, Region 9
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105



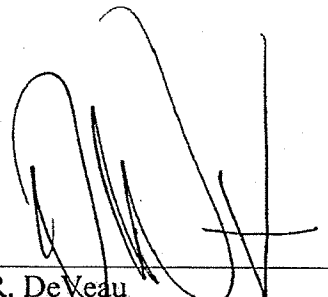
Xiao Zhang
Assistant Regional Counsel
Madeline Gallo
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

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Signature Page for Partial Consent Decree Regarding Cameron Mine Sites

**FOR SETTLING DEFENDANT EL PASO
NATURAL GAS COMPANY, L.L.C.:**

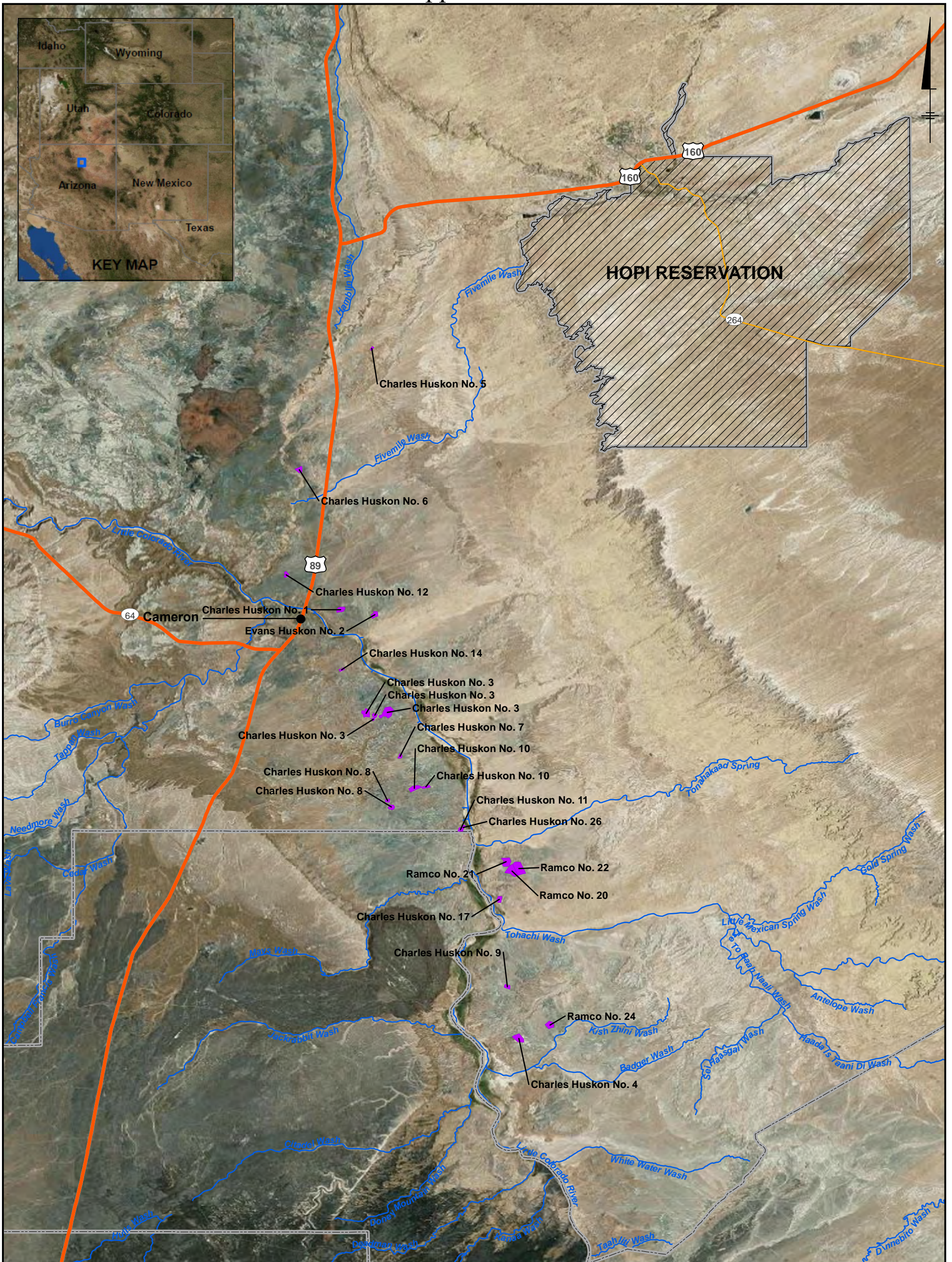
10/19/15
Dated



David R. DeVeau
Vice President
1001 Louisiana Street, Suite 1000
Houston, Texas 77002

(AOL)

Appendix A



Legend

- EPNG AUMs
- Stream / River
- Highway
- Major Road
- Navajo Nation Reservation Boundary

0 3.5 7
Miles

El Paso Natural Gas, L.L.C.
CAMERON AREA MINE SITES

**Cameron Area Mine Sites
Location Map**

FIGURE
1

This map was originally prepared by ARCADIS. Additional detail was added by U.S. EPA on October 20, 2015.