

Ellen M. Mahan
Deputy Section Chief
Steven O'Rourke (Appearing under LRCiv. 83.1(b)(1))
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Washington, D.C. 20044-7611
Telephone: (202) 514-2779; Facsimile: (202) 514-2583
E-Mail: steve.orourke@usdoj.gov
Attorneys for Plaintiff United States

Jonathan L. Jantzen, Attorney General
Office of Attorney General
Tohono O'odham Nation
P.O. Box 830, Sells, Arizona 85634
Phone: (520) 383-3410; Fax: (520) 383-2689
jonathan.jantzen@tonation-nsn.gov
Attorney for Plaintiff Tohono O'odham Nation

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
TUCSON DIVISION**

UNITED STATES OF AMERICA
AND TOHONO O'ODHAM NATION,

Plaintiffs,

v.

CYPRUS TOHONO CORPORATION,

Defendant.

CIVIL ACTION NO. 09-296

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Secretary of the United States Department of the Interior ("DOI"), filed a complaint in this action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation,

and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607. The United States' complaint alleges that the Settling Defendant is liable under CERCLA for damages for injury to, destruction of, or loss of natural resources resulting from release of hazardous substances at the Cyprus Tohono Mine Site on the Tohono O'odham Nation, near North Komelik, Arizona.

B. Pursuant to Executive Order 12,580 and the National Contingency Plan, 40 C.F.R. § 300.600(b)(2) and (3), the Secretary of the Interior, through the services and bureaus of DOI, has been delegated authority to act as the Federal Trustee for certain natural resources, including those impacted by the release of hazardous substance at or from the Site. DOI is performing its trustee role at this Site through: the United States Fish and Wildlife Service ("FWS"), whose trusteeship includes birds and endangered species, and the Bureau of Indian Affairs ("BIA"), which is trustee for resources on and within Indian lands, and which has interests in hard rock mining in Indian country. 25 U.S.C. §§ 396 (hard rock mining) § 415 (leasing and leaseholds); 25 C.F.R. Part 211 & 216.

C. The Tohono O'odham Nation (the "Nation") is a co-plaintiff on the complaint in this matter, and seeks damages for injury to natural resources pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. The Nation is acting in its capacity as a Trustee for Natural Resources which have been affected by the releases of hazardous substances. 40 C.F.R. § 300.610.

D. The Federal Trustees and the Nation (collectively, the “Trustees”) have formed a Trustee Council to coordinate activities relating to this matter.

E. On November 2, 2005, the parties entered into the Cooperative Agreement (defined herein), which provided for a cooperative assessment of injuries and damages, and provided that Defendant would, in certain circumstances, reimburse the Trustees’ costs of assessment. This Cooperative Agreement expired on August 1, 2007.

F. The United States EPA has not completed its response actions under CERCLA at the Site. In light of this, the Parties are not prepared to fully resolve the Plaintiffs’ potential claims for natural resource damages at the Site. However, this Consent Decree embodies a partial resolution of the Plaintiffs’ potential claims for damages at the Site relating to Past Lost Use of Groundwater Natural Resource Damages, and Past Non-Groundwater Natural Resource Damages, as set forth herein, while preserving Plaintiffs’ other potential claims, including claims for Future Non-Groundwater Natural Resource Damages and for Other Groundwater Natural Resource Damages.

G. By entry into this Consent Decree, the Settling Defendant does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaint.

H. The Parties to this Consent Decree recognize, and the Court by entering this Consent Decree finds, that this Consent Decree: (I) has been negotiated by the Parties in good faith; (ii) will avoid prolonged and complicated litigation among the Parties; (iii)

will expedite natural resource restoration actions to be performed by the Trustees; and (iv) is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b). The Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendant waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the Nation, and upon the Settling Defendant and its successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms

listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "Consent Decree" means this Consent Decree, and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

c. "Cooperative Agreement" means the agreement relating to the Site entitled "Cooperative Agreement between the Cyprus Tohono Mine Natural Resource Trustee Council and the Cyprus Tohono Corporation," dated November 2, 2005.

d. "Date of Lodging" means the day that this Consent Decree, having been signed by all Parties, is lodged with the Court pursuant to Paragraph 26.

e. "Day" means a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

f. "DOI" means the United States Department of the Interior and any successor departments or agencies of the United States.

g. “Effective Date” means the effective date of this Consent Decree as provided by Section VII of this Consent Decree (Effective Date and Retention of Jurisdiction).

h. “Federal Trustees” means FWS and BIA.

i. “Future Non-Groundwater Natural Resource Damages” means any damages recoverable by the United States or the Nation for injury to, destruction of, loss of, loss of use of, or impairment of Non-Groundwater Natural Resources, where the damages and the injury, destruction, or loss occurs or continues after the Date of Lodging, even if the release of hazardous substances did occur wholly before the Date of Lodging. With respect to such future damages and injury, destruction, or loss, the term “Future Non-Groundwater Natural Resource Damages” includes, but is not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment, where such costs are incurred after the Date of Lodging; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Non-Groundwater Natural Resources or of acquisition of equivalent resources where the injury or loss occurs or continues after the Date of Lodging, (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of Non-Groundwater Natural Resources where such injury, destruction, loss, loss of use, or impairment occurs or continues after the Date of Lodging; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

j. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. “Nation” means Plaintiff Tohono O'odham Nation, a federally recognized Indian tribe.

l. “Non-Groundwater Natural Resource” or “Non-Groundwater Natural Resources” means land, fish, wildlife, biota, air, water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the Nation, but excludes ground water.

m. “NRDAR Fund” means DOI’s Natural Resource Damage Assessment and Restoration Fund.

n. “Other Groundwater Natural Resource Damages” means damages, under Section 107(a) of CERCLA, for past or future injury to, destruction of, loss of or impairment of groundwater, including but not limited to restoration, rehabilitation, or replacement of injured groundwater, but excludes Past Lost Use of Groundwater Natural Resource Damages.

o. “Paragraph” means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

p. "Parties" means the United States, the Nation, and the Settling Defendant.

q. "Plaintiffs" means the United States and the Nation.

r. "Past Lost Use of Groundwater Natural Resource Damages" means damages for lost use, under Section 107(a)(1-4)(C) of CERCLA, that arise solely from injury to, destruction of, or loss of use, or impairment of groundwater at or near the Site, where the damages occurred wholly before the date that this Consent Decree is lodged with the Court, including the costs of assessing such past injury, destruction, or lost use of, or impairment of the groundwater. Past Lost Use of Groundwater Natural Resource Damages includes, but is not limited to, damages for injury to the North Komelik community and residential water distribution system.

s. "Past Non-Groundwater Natural Resource Damages" means damages, under Section 107(a)(1-4)(C) of CERCLA, that arise solely from injury to, destruction of, or loss of use of Natural Resources (other than groundwater) at the Site, where the damages occurred wholly before the Date of Lodging. Past Non-Groundwater Natural Resource Damages includes damages for injury to, destruction of, or loss of use of wildlife at the Site. With respect to such past damages that occurred wholly before the Date of Lodging, the term "Past Non-Groundwater Natural Resource Damages" includes, but is not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural resources or of acquisition of equivalent resources, if the injury or loss does not

continue after the Date of Lodging; (iii) the costs of planning such past restoration activities; (iv) compensation for past injury, destruction, loss, loss of use, or impairment of natural resources, where such injury, destruction, loss, loss of use, occurred wholly before the Date of Lodging; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 with respect to such past injuries and damages.

t. "Section" means a portion of this Consent Decree identified by a roman numeral.

u. "Settling Defendant" shall mean the Cyprus Tohono Corporation.

v. "Site" means the Cyprus Tohono Mine Superfund Site, located near North Komelik, Arizona, and generally depicted in the map attached as Appendix A. The term "Site" is limited to the lease boundaries except that the "Site" does include the areal extent of the Groundwater contamination even if it extends beyond the lease boundaries.

w. "Subparagraph" means a portion of this Consent Decree identified by a lower case letter or an arabic numeral in parentheses.

x. "Trustees" means the Federal Trustees and the Nation.

y. "United States" means the United States of America, including all of its departments, agencies, and instrumentalities.

V. STATEMENT OF PURPOSE

4. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to contribute to the restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of hazardous

substance releases at and from the Site; (ii) to resolve the Settling Defendant's liability for Past Non-Groundwater Natural Resource Damages and Past Lost Use of Groundwater Natural Resource Damages, as provided herein; (iii) to preserve the Plaintiffs' potential claims for other types of damages at the Site, including claims for Future Non-Groundwater Natural Resource Damages (including claims for damages even if the pollution event occurred prior to the Date of Lodging) and Other Groundwater Natural Resource Damages; and (iv) to avoid potentially costly and time-consuming litigation.

VI. PAYMENTS BY THE SETTLING DEFENDANT

5. Within 30 days after the Effective Date, the Settling Defendant shall pay a total of \$825,000 to the Plaintiffs, together with Interest on that amount accruing from the Date of Lodging, for Trustee-sponsored natural resource restoration projects. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-2-1240/1. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of Arizona following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. The total amount to be paid by Settling Defendant pursuant to this Paragraph shall be deposited in a segregated sub-account within the NRDAR Fund, to be managed by DOI for the joint benefit and use of the Trustees to pay for Trustee-sponsored natural resource restoration projects in

accordance with Section VII.

6. Notice of Payment. Upon making any payment under Paragraph 5, Settling Defendant shall send written notice that payment has been made to the United States, DOI, and the Nation, in accordance with Section XI, and shall also provide notice to:

Bruce Nessler
DOI Restoration Fund Manager
1849 "C" Street, N.W.
Mail Stop 4449
Washington, D.C. 20240.

7. Non-Compliance with Payment Obligations.

a. Interest. In the event any payment required by Paragraph 5 is not made when due, the Settling Defendant shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment.

b. Stipulated Damages. In addition to the Interest required to be paid under the preceding Subparagraph, if any payment required by Paragraph 5 is not made when due, the Settling Defendant shall also pay stipulated damages of \$5,000 per day through the date of full payment.

c. Payment of Interest and Stipulated Damages. Any Interest payments under Subparagraph 7.a shall be paid in the same manner as the overdue principal amount, and shall be directed to the same fund or account as the overdue principle amount. Fifty percent (50%) of any stipulated damages payments under Subparagraph 7.b shall be paid to the United States in accordance with payment instructions provided by the Financial Litigation Unit of the United States Attorney's Office for the District of

Arizona, and shall be deposited in the United States Treasury. The remaining fifty percent (50%) of any stipulated damages payments under Subparagraph 7.b shall be paid to the Nation, by check made payable to the Tohono O'odham Nation and mailed to the Attorney General, Office of Attorney General, Tohono O'odham Nation, P.O. Box 830, Sells, Arizona, 85634.

VII. TRUSTEE-SPONSORED NATURAL RESOURCE RESTORATION PROJECTS

8. Management and Application of Funds. All funds deposited in a segregated sub-account within the NRDAR Fund under Paragraph 5 shall be managed by DOI for the joint benefit and use of the federal Trustees and the Nation to pay for Trustee-sponsored natural resource restoration efforts, or to reimburse costs of damage assessment, in accordance with this Consent Decree. All such funds shall be applied toward the costs of restoration, rehabilitation, or replacement of injured natural resources, and/or acquisition of equivalent resources, including but not limited to any administrative costs and expenses necessary for, and incidental to, restoration, rehabilitation, replacement, and/or acquisition of equivalent resources planning, and any restoration, rehabilitation, replacement, and/or acquisition of equivalent resources undertaken, or to reimburse previously incurred costs of damage assessment.

9. Restoration Planning. The Trustees intend to prepare a separate Restoration Plan describing how the funds dedicated for Trustee-sponsored natural resource restoration efforts under this Section will be used. As provided by 43 C.F.R. § 11.93, the

Plan will identify how funds will be used for restoration, rehabilitation, replacement, or acquisition of equivalent resources. The Plan may also identify how funds will be used to address services lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed.

10. Decisions regarding any use or expenditure of funds under this Section shall be made by the Trustees. Settling Defendant shall not be entitled to dispute, in any other forum or proceeding, any decision relating to use of funds or restoration efforts under this Section.

VIII. COVENANT NOT TO SUE BY THE PLAINTIFFS

11. Except as specifically provided by Paragraph 12 (General Reservations) and Paragraph 13 (Special Reservations Regarding Natural Resource Damages), the United States and the Nation covenant not to sue the Settling Defendant for Past Lost Use of Groundwater Natural Resource Damages, which includes damages for injury to the North Komelik community and residential water distribution system, and for Past Non-Groundwater Natural Resource Damages, which includes damages for injury to, destruction of, or loss of use of wildlife at the Site, pursuant to Section 107(a)(1-4)(C) of CERCLA , 42 U.S.C. § 9607(a)(1-4)(C). This covenant not to sue shall take effect upon receipt of the Settling Defendant's payment pursuant to Paragraph 5 of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree.

IX. RESERVATION OF RIGHTS BY PLAINTIFFS

12. General Reservations. The United States and the Nation reserve, and this Consent Decree is without prejudice to, all rights against the Settling Defendant and with respect to all matters not expressly included within Paragraph 11 (Covenant Not to Sue by the Plaintiffs). Notwithstanding any other provisions of this Consent Decree, the United States and the Nation reserve all rights against the Settling Defendant with respect to:

- a. claims based on a failure by the Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for any other costs incurred or to be incurred by the United States or by the Nation that are not within the definition of Past Lost Use of Groundwater Natural Resource Damages or Past Non-Groundwater Natural Resource Damages, including liability for response costs, including liability under CERCLA Section 107(a)(1-4)(A), 42 U.S.C. § 9607(a)(1-4)(A), for costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe;
- c. liability for injunctive relief or administrative order enforcement under CERCLA Section 106, 42 U.S.C. § 9606;
- d. claims for Future Non-Groundwater Natural Resource Damages, including but not limited to claims for Future Non-Groundwater Natural Resource Damages where the injury or damages result from releases of hazardous substances that occurred prior to the Date of Lodging;

e. claims for Other Groundwater Natural Resource Damages, including but not limited to claims for Other Groundwater Resource Damages where the injury or damages result from releases of hazardous substances that occurred prior to the Date of Lodging;

f. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances outside of the Site;

g. liability arising from any disposal of hazardous substances at the Site by the Settling Defendant after the lodging of this Consent Decree; and

h. criminal liability.

13. Special Reservations. Notwithstanding any other provision of this Consent Decree, the United States and the Nation reserve the right to institute proceedings against the Settling Defendant in this action or in a new action seeking recovery of Past Non-Groundwater Natural Resource Damages, or recovery of Past Lost Use of Groundwater Natural Resource Damages based on conditions with respect to the Site, unknown to the Trustees as of the Date of Lodging, or information received by the Trustees after the Date of Lodging, which indicates that releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of Natural Resources of a type that was unknown to the Trustees as of the Date of Lodging. No condition shall be deemed as "unknown" if the condition is identified in, or could reasonably be determined from, documents and data in

the possession of any of the Trustees, including any information developed by one or more of the Plaintiffs based thereon, on or before the Date of Lodging.

X. COVENANTS BY THE SETTLING DEFENDANT

14. Covenants by the Settling Defendant. The Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States and the Nation, or their contractors or employees, with respect to Past Lost Use of Groundwater Natural Resource Damages, Past Non-Groundwater Natural Resource Damages, or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim against the United States or the Nation pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

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

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

16. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may

have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

17. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Lost Use of Groundwater Natural Resource Damages and Past Non-Groundwater Natural Resource Damages.

18. The Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against Settling Defendant for matters related to this Consent Decree, the Settling Defendant will notify the persons identified in Section XII (Notices and Submissions) in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Defendant shall notify the persons identified in Section XII (Notices and Submissions) within 5 days of service or receipt of any Motion for Summary Judgment, and within 5 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

19. In any subsequent administrative or judicial proceeding initiated by the United States or the Nation for injunctive relief, recovery of response costs or damages, or other relief relating to the Site, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention

that the claims raised by the United States or the Nation in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not To Sue by the United States and the Nation set forth in Section VIII. In addition, in any subsequent administrative or judicial proceeding initiated by the United States or the Nation for Future Non-Groundwater Natural Resource Damages or for Other Groundwater Natural Resource Damages, or for Past Natural Resource Damages under Paragraph 13 of this Consent Decree, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon any potentially applicable statute of limitations.

XII. NOTICES

20. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses set forth below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States and the Nation, and the Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Washington, D.C. 20044-7611
Re: DJ # 90-11-2-1240/1

As to DOI:

William Quinn
Office of the Field Solicitor
United States Department of Interior
Sandra Day O'Connor U.S. Courthouse, Suite 404
401 West Washington Street, SPC 44
Phoenix, Arizona 85003-2151

As to the Nation:

Attorney General
Office of Attorney General
Tohono O'odham Nation
P.O. Box 830, Sells, Arizona 85634
Phone: (520) 383-3410
Fax: (520) 383-2689
jonathan.jantzen@tonation-nsn.gov

As to Settling Defendant:

David Wallis
Gallagher & Kennedy
2575 E. Camelback Road, Suite 1100
Phoenix, Arizona 85016
Telephone: 602-530-8136
Fax: 602-530-8500
E-mail: dlw@gknet.com

L. Richard McMillian
Senior Vice President and General Counsel
Freeport-McMoRan Cooper & Gold Inc.
One North Central Avenue
Phoenix, AZ 85004
Telephone: 602-366-8114
Fax: 504-589-8788
E-mail: Rick_McMillian@FMI.com

XIII. EFFECTIVE DATE AND RETENTION OF JURISDICTION

21. This Consent Decree shall take effect upon entry by the Court.

22. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XIV. CONSENT DECREE MODIFICATIONS

23. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect until filed with the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

24. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

25. Economic hardship or changed financial circumstances of a Settling Defendant shall not serve as a basis for modifications of this Consent Decree.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

26. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to

withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Settling Defendant consents to the entry of this Consent Decree without further notice. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. SIGNATORIES/SERVICE

27. The undersigned representatives of the Settling Defendant, the United States, and the Nation each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

28. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States or Nation have notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

29. Each Settling Defendant shall identify, on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of

process by mail on behalf of the Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Each Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons. The parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XVII. FINAL JUDGMENT

30. This Consent Decree and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

31. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Nation and the Settling Defendant. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED

Date:

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Cyprus Tohono Corp., relating to the Cyprus Tohono Superfund Site.

FOR THE UNITED STATES OF AMERICA:

Respectfully submitted,

DIANE J. HUMETEWA
United States Attorney
District of Arizona

By:

Sue A. Klein
Assistant U.S. Attorney
Arizona State Bar No. 11253
Two Renaissance Square
40 North Central Ave., Ste. 1200
Phoenix, AZ 85004-4408
Telephone: (602) 514-7500

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

By:

STEVEN O'ROURKE
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Telephone: (202) 514-2779
Facsimile: (202) 514-2583

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Cyprus Tohono Corp., relating to the Cyprus Tohono Superfund Site.

FOR THE TOHONO O'ODHAM NATION:

Date: 4-15-09

Ned Norris, Jr.
Chairman
Tohono O'odham Nation
P.O. Box 837
Sells, Arizona 85634
Phone: (520) 383-2028
Fax: (520) 383-3379

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Cyprus Tohono Corp., relating to the Cyprus Tohono Superfund Site.

FOR DEFENDANT, CYPRUS TOHONO CORPORATION

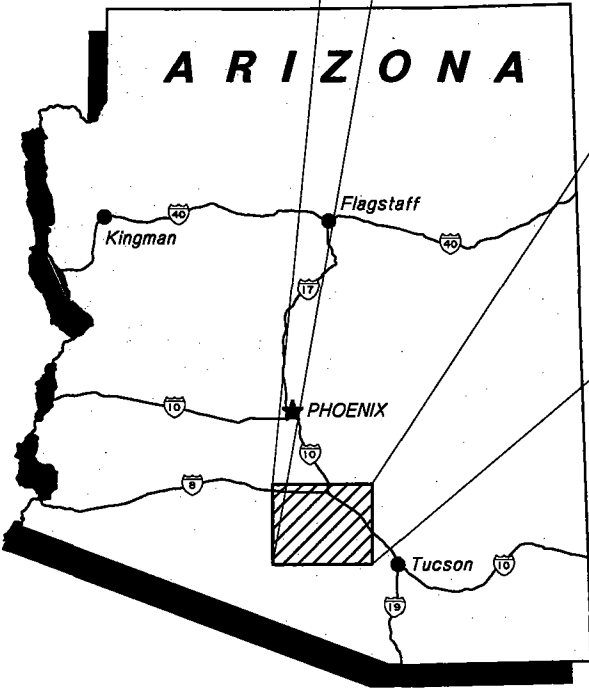
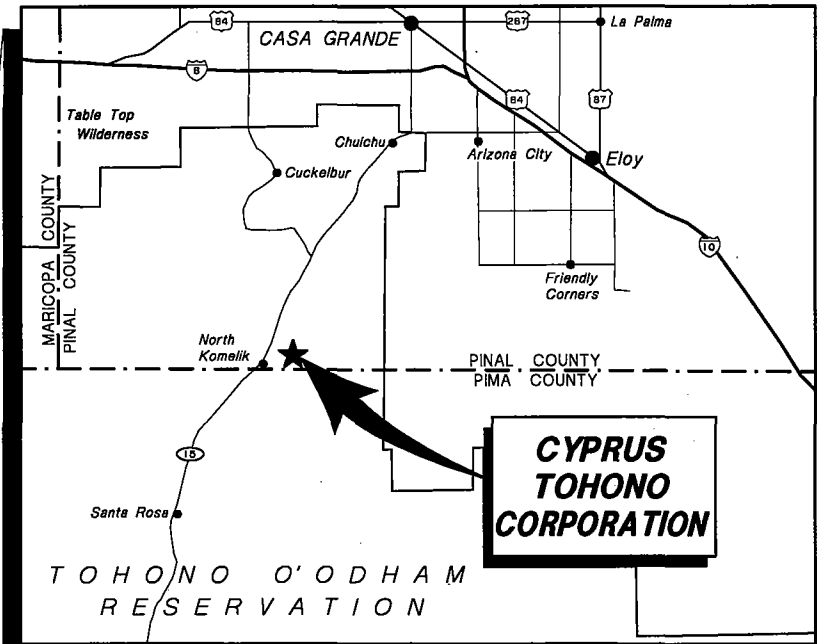
Date: _____

NAME L. Richards McMillan, II

TITLE Senior Vice President

APPENDIX A

Site Map

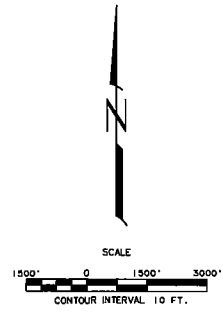
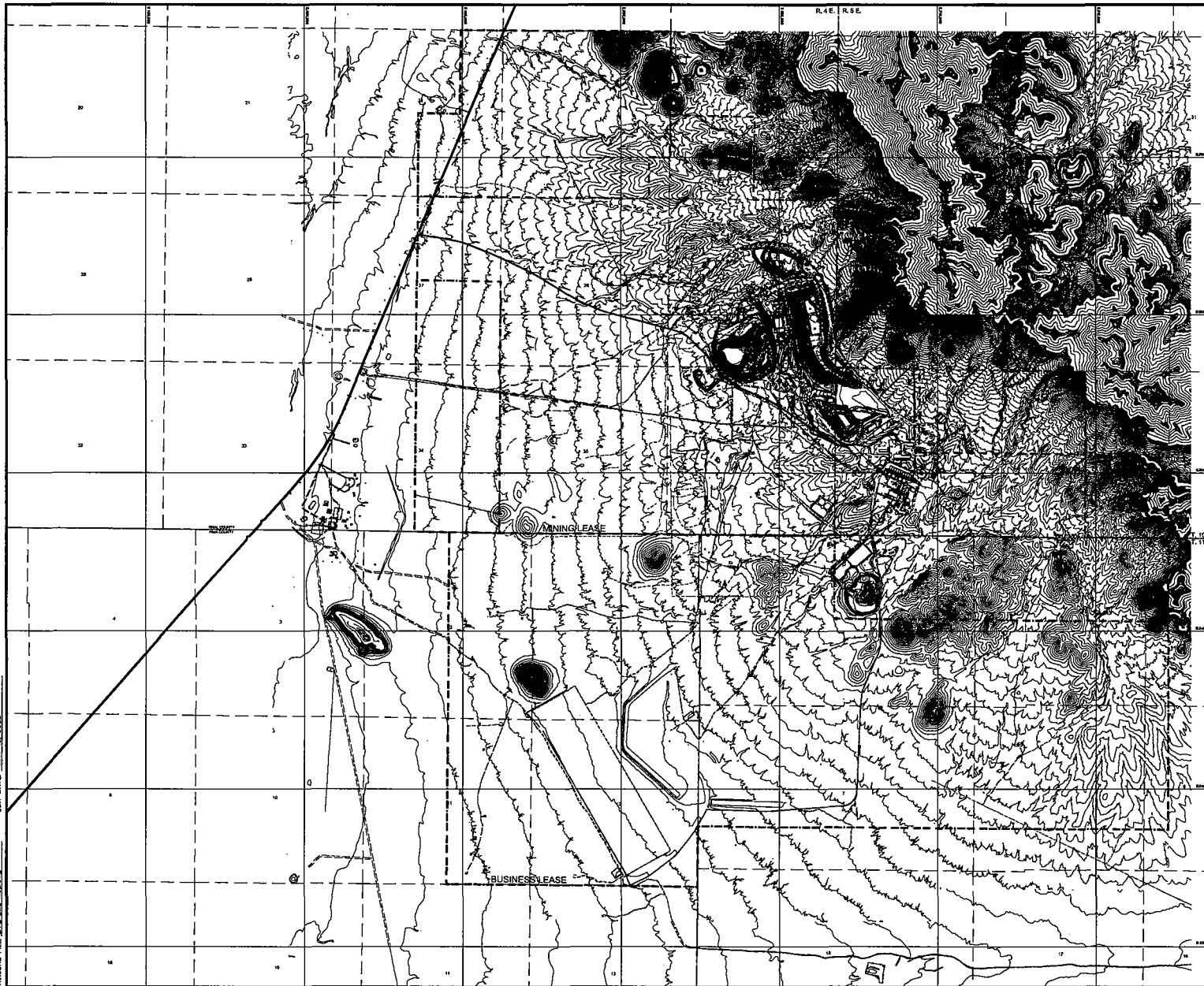


NOT TO SCALE

 **CYPRUS TOHONO CORPORATION**

GENERAL LOCATION MAP

ARCAD FILE: CTC_Site_Map.dwg EDIT DATE: MAY 15, 2009



LEGEND

- NORTHING & EASTING GRID LINE
- - - SECTION LINE
- TOWNSHIP, RANGE AND COUNTY LINE
- - - BUSINESS LEASE BOUNDARY
6,323.5 Acres
- - - MINING LEASE BOUNDARY
4,180 Acres
- ROAD
- BUILDING

NOTES:
 1. BASE MAP IN RA PROJECT AREA FROM SUN MAPPING, LLC. (JAN. 2008) FLIGHT NO. 580163 WITH 2 FOOT TOPOGRAPHY. BASE MAP FROM RA PROJECT AREA TO INSIDE OF BUSINESS LEASE BOUNDARY FROM ORTHOPHOTO (NOV. 2005) FLIGHT NO. 3094 WITH 2 FOOT TOPOGRAPHY AND BASE MAP OUTSIDE BUSINESS LEASE BOUNDARY FROM U.S.G.S. 7.5 MIN. QUADRANGLES AND DERIVED

REV.	DATE	DESIGN BY	DRAWN BY	REVIEWED AND CHECKED BY
0				

CTC **CYPRUS TOHONO CORPORATION**

PROJECT: **CYPRUS TOHONO CORPORATION**

DRAWING TITLE: **CTC SITE MAP**

Sheet **1** Of **1** Sheets
 SCALE: AS NOTED DRAWING NO. **7**