

1 negligent or wrongful act or omission of any employee of the United States while acting within
2 the scope of his office or employment under circumstances where the United States, if a
3 private person, would be liable to the claimant in accordance with the law of the place where
4 the act or omission occurred. However, any such claim shall not include a claim for any
5 damages caused, in whole or in part, by the act or omission of any person, including any
6 contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor
7 shall any such claim include a claim based on EPA's selection of response actions, or the
8 oversight or approval of the Site Operator's plans or activities. The foregoing applies only to
9 claims which are brought pursuant to any statute other than CERCLA and for which the
10 waiver of sovereign immunity is found in a statute other than CERCLA.

11 (3) The Site Operator, the IT Parties, Trust I, Trust II, and the
12 Trustee reserve any defenses to any order or claim brought by the United States or the State
13 agencies pursuant to the reservations contained in Paragraphs 74 and 75.D of this Consent
14 Decree.

15 81. Nothing in this Consent Decree shall be deemed to constitute preauthorization
16 of a claim by the Site Operator, the IT Parties, Trust I, Trust II, or the Trustee within the
17 meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

18 82. Subject to Section XXI of this Consent Decree (Covenants Not to Sue by the
19 United States and the State agencies), the United States and the State retain all authority and
20 reserve all rights to take any and all response actions authorized by law.

21 83. Intergovernmental Covenants.

22 A. Definitions. For purposes of this Paragraph 83, "Iron Mountain Mine"
23 shall mean that portion of the Iron Mountain Mine Superfund Site located in Shasta County,
24 California, approximately 9 miles northwest of the City of Redding, consisting of approxi-
25 mately 8,000 acres of land that includes the mining property on the topographic feature known
26 as Iron Mountain, several inactive underground and open pit mines, numerous waste piles,

1 abandoned mining and smelter facilities, abandoned transportation facilities (including without
2 limitation rail sidings at Matheson and Keswick, the tramway from the Richmond mine to
3 Matheson, and the former rail line from Keswick to the Iron Mountain mine), and mine
4 drainage treatment facilities.

5 For purposes of this Paragraph 83, Iron Mountain Mine shall not include the
6 downstream reaches of Boulder Creek, Slickrock Creek, Spring Creek, Spring Creek
7 Reservoir, the Spring Creek Debris Dam, or Keswick Reservoir. For purposes of this
8 Paragraph 83 and the Consent Decree, these downstream reaches and facilities together with
9 Iron Mountain Mine are known as the "Iron Mountain Mine Property." Also for purposes of
10 this Paragraph 83, Iron Mountain Mine shall not include locations where Waste Material from
11 the Iron Mountain Mine Property have spread or migrated by surface water, groundwater, air
12 dispersion, or other medium. For purposes of this Paragraph 83 and the Consent Decree, the
13 locations where Waste Material from the Iron Mountain Mine Property has come to be
14 located, together with the Iron Mountain Mine Property and the Land as defined in Paragraph
15 6.E, are known as the "Site."

16 B. United States' Covenant Not to Sue. In consideration of the settlement
17 and the two sovereigns' efforts towards abatement of the Waste Material released from Iron
18 Mountain Mine, the United States covenants not to file a civil suit or to take administrative
19 action against the State agencies pursuant to Sections 106, 107, and 113 of CERCLA,
20 42 U.S.C. §§ 9606, 9607, 9613, for any matter arising from or relating to the disposal,
21 release or threat of release at or from the Site, past or future, of Waste Material that originated
22 at or from Iron Mountain Mine, including but not limited to:

23 (1) any claims based on alleged ownership, operation, oversight of
24 operation, or participation or cooperation in operation of dams, reservoirs or power plants on
25 or near the Site, including, but not limited to, Shasta Dam, Reservoir, and power plant; Spring
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1 Creek Debris Dam, Reservoir, and power plant; Keswick Dam, Reservoir, and power plant;
2 and Trinity Dam and Reservoir;

3 (2) any claims against the State or the State agencies based on alleged
4 ownership of any beds of streams, rivers, reservoirs, or other water bodies, or interest in any
5 waters, in or at the Site;

6 (3) any claims based on alleged failure to discharge public trust
7 duties, to supervise appropriated water, to discharge other duties or to take other action; and

8 (4) except as provided in Section XXVIII of this Consent Decree,
9 any claims arising out of response activities at the Site, including but not limited to claims
10 based on any selection by the State agencies of response actions, oversight or support of
11 response activities, approval of plans for such activities, or implementation or operation and
12 maintenance of such activities.

13 The United States further covenants not to file a civil suit or to take administrative action
14 against the State agencies under RCRA as to any matter arising from or relating to the
15 disposal, release or threat of release at or from the Site, past or future, of Waste Material that
16 originated at or from Iron Mountain Mine, based on activities by the State agencies or
17 ownership by the State, as set forth in Subparagraphs (1)-(4) above, in a sovereign capacity.

18 C. State Agencies' Covenant Not to Sue. In consideration of the settlement
19 and the two sovereigns' efforts towards abatement of the Waste Material released from Iron
20 Mountain Mine, the State agencies covenant not to file a civil suit or to take administrative
21 action against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C.
22 §§ 9607, 9613, and Sections 25355.5, 25358.3 (a) and (e), 25359.3, 25359.4 and 25360 of the
23 California Health and Safety Code (California Hazardous Substances Account Act), for any
24 matter arising from or relating to the disposal, release or threat of release at or from the Site,
25 past or future, of Waste Material that originated at or from Iron Mountain Mine, including but
26 not limited to:

1 (1) any claims based on alleged ownership, operation, oversight of
2 operation, or participation or cooperation in operation of dams, reservoirs or power plants on
3 or near the Site, including, but not limited to, Shasta Dam, Reservoir, and power plant; Spring
4 Creek Debris Dam, Reservoir, and power plant; Keswick Dam, Reservoir, and power plant;
5 and Trinity Dam and Reservoir;

6 (2) any claims based on alleged ownership of any beds of streams,
7 rivers, reservoirs, or other water bodies, or interest in any waters, in or at the Site;

8 (3) any claims based on alleged failure to discharge duties or to take
9 other action; and

10 (4) except as provided in Section XXVIII of this Consent Decree,
11 any claims arising out of response activities at the Site, including but not limited to claims
12 based on any selection by the United States of response actions, oversight or support of
13 response activities, approval of plans for such activities, or implementation or operation and
14 maintenance of such activities.

15 The State agencies further covenant not to file a civil suit or to take administrative action
16 against the United States under Section 7002 of RCRA, 42 U.S.C. § 6972, and Chapter 6.5 of
17 Division 20 of the California Health and Safety Code (California Hazardous Waste Control
18 Law), Section 25100 et seq., as to any matter arising from or relating to the disposal, release
19 or threat of release at or from the Site, past or future, of Waste Material that originated at or
20 from Iron Mountain Mine, based on activities or ownership by the United States, as set forth
21 in Subparagraphs (1)-(4) above, in a sovereign capacity.

22 D. Reservation of Rights; Effective Date. The covenants not to sue or to
23 take administrative action set forth in Paragraph 83 of this Consent Decree apply only to
24 Waste Material originating at or from Iron Mountain Mine. The covenants in Paragraph 83 do
25 not apply to any matter other than those expressly specified in Paragraph 83. The United
26 States and the State agencies reserve, and this Consent Decree is without prejudice to, all
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1 rights with respect to all other matters. The covenants in Paragraph 83 shall take effect on the
2 Effective Date of this Consent Decree.

3 XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

4 84. Nothing in this Consent Decree shall be construed to create any rights in, or
5 grant any cause of action to, any person not a Party to this Consent Decree or not a Released
6 Party. Subject to Paragraph 85, the preceding sentence shall not be construed to waive or
7 nullify any rights that any person not a signatory to this Consent Decree may have under
8 applicable law. Each of the Parties expressly reserves any and all rights (including, but not
9 limited to, any right to contribution), defenses, claims, demands, and causes of action which
10 each Party may have with respect to any matter, transaction, or occurrence relating in any way
11 to the Site against any person not a Party hereto.

12 85. The United States and the State agencies acknowledge and agree, and by
13 entering this Consent Decree this Court finds, that the payments to be made by the Settling
14 Parties pursuant to this Consent Decree represent a good faith settlement and compromise of
15 disputed claims, that the Work to be performed under this Consent Decree and the SOW by
16 the Site Operator represents a valuable benefit to the United States and the State agencies, and
17 that the settlement represents a fair, reasonable, and equitable resolution of the matters
18 addressed in this Consent Decree. The Parties further agree, and by entering this Consent
19 Decree this Court finds, that the Released Parties, the Site Operator, the IT Parties, Trust I,
20 Trust II, and the Trustee are entitled, as of the Effective Date of this Consent Decree, to
21 protection from costs, damages, actions, or other claims (whether seeking contribution,
22 indemnification, or however denominated) for matters addressed in this Consent Decree, as
23 provided by (1) CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and (2) all other
24 applicable provisions of federal or state statutes or of common law that may limit or extinguish
25 their potential liability to persons not a party to this Consent Decree, including without
26 limitation Sections 877 and 877.6 of the California Code of Civil Procedure.

1 86. The "matters addressed" in this settlement are all response actions taken or to
2 be taken, all response costs incurred or to be incurred, and all *Natural Resource Damages*
3 incurred or to be incurred, by the United States, the State agencies, or any other person with
4 respect to the Site, and specifically include without limitation the Work to be performed by the
5 Site Operator, all claims, counterclaims, and cross-claims filed by and against the parties in
6 the above-captioned cases, and those matters governed by the covenants contained in Sections
7 XXI and XXII of this Consent Decree.

8 87. As to the Released Parties, the "matters addressed" in this settlement do not
9 include those matters as to which the United States and the State agencies have reserved their
10 rights under this Consent Decree, pursuant to Paragraphs 71 and 72.B, in the event that the
11 United States or the State agencies assert a claim against the Released Parties coming within
12 the scope of such reservations.

13 88. As to the Site Operator, the IT Parties, Trust I, Trust II, and the Trustee, the
14 "matters addressed" in this settlement do not include those matters as to which the United
15 States and the State agencies have reserved their rights under this Consent Decree pursuant to
16 Paragraphs 74 and 75.D (except for claims for the failure by the Site Operator to comply with
17 the terms of this Consent Decree), in the event that the United States or the State agencies
18 assert a claim against the Site Operator, the IT Parties, Trust I, Trust II, or the Trustee coming
19 within the scope of such reservations.

20 89. The Settling Parties agree that with respect to any suit or claim for contribution
21 brought by them for matters related to this Consent Decree they will notify the United States
22 and the State in writing no later than 60 days prior to the initiation of such suit or claim.

23 90. The Settling Parties also agree that with respect to any suit or claim for
24 contribution brought against them for matters related to this Consent Decree they will notify in
25 writing the United States and the State within 30 days of service of the complaint on them. In
26 addition, the Settling Parties shall notify the United States and the State within 10 days of
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1 service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any
2 order from a court setting a case for trial.

3 91. In any subsequent administrative or judicial proceeding initiated by the United
4 States or the State agencies provided for by Paragraphs 71.A-E or 72.B (1)-(9), the Settling
5 Parties shall not assert, and may not maintain, any defense or claim based upon the principles
6 of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses
7 based upon any contention that the claims raised by the United States or the State agencies in
8 the subsequent proceeding were or should have been brought in the instant case; provided,
9 however, that nothing in this Paragraph affects the enforceability of the covenants not to sue
10 set forth in Section XXI of this Consent Decree.

11 XXIV. ACCESS TO INFORMATION

12 92. The Settling Parties shall provide to the United States and the State plaintiffs,
13 upon request, copies of all documents within their possession or control, including all
14 documents reasonably obtainable from any of their contractors or agents (including from their
15 document repositories or custodians), relating to activities at the Site, including, but not
16 limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts,
17 reports, sample traffic routing, correspondence, or other documents related to the activities
18 conducted at the Site. The requirements of this Paragraph shall not apply to documents
19 previously exchanged between the Settling Parties and the United States or the State plaintiffs
20 prior to the Effective Date of this Consent Decree, unless any such documents are specifically
21 so requested within 90 days of the Effective Date of this Consent Decree.

22 93. The Site Operator shall provide documents and information relating to the Site
23 and implementation of the requirements of this Consent Decree and the SOW, as specified in
24 the SOW.

25 94. The Settling Parties and the Site Operator may assert business confidentiality
26 claims covering part or all of the documents or information submitted to Plaintiffs under this

1 Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of
2 CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information
3 determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R.
4 Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when
5 they are submitted to EPA and the State plaintiffs, or if EPA has provided 14 days' notice (or
6 such shorter notice period as is reasonable and necessary under the circumstances) to the
7 Settling Parties or the Site Operator that the documents or information are not confidential
8 under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such
9 documents or information without further notice to the Settling Parties or the Site Operator.
10 The Settling Parties and the Site Operator shall have all rights and remedies provided by law
11 to contest any decision by EPA regarding confidentiality.

12 95. The Settling Parties and the Site Operator may assert that certain documents,
13 records and other information are privileged under the attorney-client privilege or any other
14 privilege recognized by federal law or applicable state law. If the Settling Parties or the Site
15 Operator asserts such a privilege in lieu of providing documents, they shall provide the
16 Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date
17 of the document, record, or information; (3) the name and title of the author of the document,
18 record, or information; (4) the name and title of each addressee and recipient; (5) a description
19 of the contents of the document, record, or information; and (6) the privilege asserted by the
20 Settling Parties or the Site Operator. However, no documents, reports or other information
21 created or generated by the Site Operator pursuant to the specific requirements of this Consent
22 Decree or the SOW shall be withheld on the grounds that they are privileged.

23 96. No claim of privilege as against the Plaintiffs, other than business
24 confidentiality, shall be made by the Site Operator with respect to any data, including, but not
25 limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical,
26 engineering, or cost data (excepting cost data related to wages, overhead rates, or profit), or
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1 any other documents or information evidencing conditions at or around the Site. However,
2 nothing in this Paragraph shall be construed to effect a waiver of any such claim of privilege
3 as against any person not a party to this Consent Decree, and no submission of documents or
4 other information pursuant to this Section shall be construed as such a waiver.

5 XXV. RETENTION OF RECORDS

6 97. Until 10 years after the Effective Date of this Consent Decree, unless a shorter
7 document retention period applies under Paragraph 99, the Settling Parties shall preserve and
8 retain all records and documents now in their possession or control or that come into their
9 possession or control that relate in any manner to the performance of activities at the Site or
10 the liability of any person for response actions conducted and to be conducted at the Site,
11 regardless of any corporate retention policy to the contrary. This obligation does not apply to
12 documents previously exchanged between the Settling Parties and the United States or the State
13 plaintiffs prior to the Effective Date of this Consent Decree. Until 10 years after the Effective
14 Date of this Consent Decree, the Settling Parties shall also instruct their contractors and agents
15 to preserve all documents, records, and information of whatever kind, nature or description
16 relating to the performance of activities at the Site.

17 98. The Site Operator shall preserve and retain all records and documents as
18 specified in the SOW.

19 99. At the conclusion of the applicable document retention period specified above,
20 the Settling Parties shall notify the United States and the State plaintiffs at least 90 days prior
21 to the destruction of any such records or documents and, upon request by the United States or
22 the State plaintiffs, the Settling Parties shall deliver any such records or documents to the
23 United States or the State plaintiffs. At any time prior to the conclusion of the document
24 retention period, the Settling Parties may elect to notify the United States and the State
25 plaintiffs that they wish to transfer documents subject to the requirements of this Section.
26 Upon request by the United States or the State plaintiffs, within 90 days of such notification,
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1 the Settling Parties shall deliver any requested documents to the United States or the State
2 plaintiffs. Documents not requested upon notification by the Settling Parties, either prior to or
3 following the document retention period, may be disposed of by the Settling Parties.

4 100. The Settling Parties and the Site Operator may assert that certain documents,
5 records and other information are privileged under the attorney-client privilege or any other
6 privilege recognized by federal law or applicable state law. If the Settling Parties or the Site
7 Operator asserts such a privilege, they shall provide the Plaintiffs with the following: (1) the
8 title of the document, record, or information; (2) the date of the document, record, or
9 information; (3) the name and title of the author of the document, record, or information; (4)
10 the name and title of each addressee and recipient; (5) a description of the subject of the
11 document, record, or information; and (6) the privilege asserted by the Settling Parties or the
12 Site Operator. However, no documents, reports or other information created or generated by
13 the Site Operator pursuant to the requirements of the Consent Decree shall be withheld on the
14 grounds that they are privileged. Further, nothing in this Paragraph shall be construed to
15 effect a waiver of any such claim of privilege as against any person not a party to this Consent
16 Decree, and no delivery of documents to the Plaintiffs pursuant to this Section shall be
17 construed as such a waiver.

18 XXVI. NOTICES AND SUBMISSIONS

19 101. Whenever, under the terms of this Consent Decree, written notice is required to
20 be given or a report or other document is required to be sent by one Party to another, it shall
21 be directed to the individuals at the addresses specified below, unless those individuals or their
22 successors give notice of a change to the other Parties in writing. All notices and submissions
23 shall be considered effective upon receipt, unless otherwise provided. Written notice as
24 specified herein shall constitute complete satisfaction of any written notice requirement of the
25 Consent Decree with respect to the United States, EPA, the State, the Settling Parties, and the
26 Site Operator, respectively.

1 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 # 90-11-3-196A

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3
4 and

5 David B. Glazer
6 Environmental Enforcement Section
7 Environment and Natural Resources Division
8 U.S. Department of Justice
301 Howard Street, Suite 870
San Francisco, CA 94105

9 As to EPA:

10 Director, Superfund Division
11 United States Environmental Protection Agency
12 Region 9
75 Hawthorne Street
San Francisco, CA 94105

13 Rick Sugarek
14 EPA Project Coordinator
15 United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

16 As to the Natural Resource Trustees:

17 Manager
18 California/Nevada Operations
U.S. Fish and Wildlife Service
2800 Cottage Way Suite W-2606
Sacramento, CA 95825

19 Katherine Pease
20 Senior Counselor for Natural Resources
Office of General Counsel, NOAA
Suite 4470
21 501 W. Ocean Blvd.
22 Long Beach, CA 90802

23 Robert C. Hight, Director
24 Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

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Don Koch, Regional Manager
Northern California-North Coast Region
Department of Fish and Game
601 Locust Street
Redding, CA 96001
(530)225-2363

As to the State, the State plaintiffs,
and the State agencies:

Executive Officer
Regional Water Quality Control Board, Central
Valley Region
3443 Routier Road
Sacramento, CA 95827-3098

James Pedri, Assistant Executive Officer
Regional Water Quality Control Board, Central
Valley Region
415 Knollcrest Drive
Redding, CA 96002
(530) 224-4845

Director, Department of Toxic Substances Control
400 P Street, P.O. Box 806
Sacramento, CA 95814

James Tjosvold, Chief
Northern and Central California Cleanup
Operations Branch
Department of Toxic Substances Control
10150 Croydon Way, Suite 3
Sacramento, CA 95827-2106
(916) 255-3740

As to the Settling Parties:

Joseph C. Kelly
Vice President and General Counsel
Stauffer Management Company
1800 Concord Pike
P.O. Box 15438
Wilmington, DE 19850-5438
(302) 886-3745

As to the Site Operator:

Mario Maciel, President
IT Iron Mountain Operations, LLC
4005 Port Chicago Highway
Concord, CA 94520

James M. Redwine, Vice President
IT Iron Mountain Operations, LLC
2790 Mossie Boulevard
Monroeville, PA 15146