

**MEMORANDUM OF AGREEMENT
BETWEEN HOMESTAKE MINING COMPANY OF CALIFORNIA AND THE NEW
MEXICO ENVIRONMENT DEPARTMENT**

**Agreement Regarding Provision of Access to
Drinking Water System**

Memorandum of Agreement (“MOA”) between the Homestake Mining Company of California (“Homestake”) and the New Mexico Environment Department (“NMED”).

The Parties to this MOA enter into agreement according to the following provisions as set forth in this document and its attachments:

INTRODUCTION

1. Homestake is the owner and operator of the Grants Uranium Mill (“Mill”) located approximately four miles north of Milan, New Mexico.
2. Homestake operated the Mill under a license from the State of New Mexico in accordance with the State’s status as an NRC agreement state until June 1, 1986. Through a Ground Water Discharge Plan, the State required Homestake to undertake long-term restoration of the aquifers from which property owners in nearby subdivisions obtain water from wells.
3. In September 1983, EPA placed the Mill site on the Superfund National Priorities List at the request of the State. In November 1983, EPA entered into a Consent Decree with Homestake that provided for extension of and connections to the Village of Milan public water system for the property owners living in the subdivisions at that time.
4. On June 1, 1986, the NRC began regulating activities at the Mill site under a source and byproduct material license issued in accordance with 10 CFR Part 40.
5. On December 14, 1993, the NRC and EPA signed a Memorandum of Understanding (“MOU”) delineating agency responsibilities in regulating activities at the Mill site. The MOU provides that the NRC will act as lead regulatory agency for the byproduct material disposal area reclamation and closure activities and EPA will monitor such activities and provide comments to the NRC to attain applicable or relevant and appropriate requirements under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §9601, outside the byproduct material disposal site.

6. The MOU provides that both agencies will be responsible for assuring compliance with its specific regulatory requirements. The MOU also provides that the Mill site will be considered for deletion from the National Priorities List only after completion of the closure of the disposal area and other remedial measures are taken in full compliance with 10 CFR Part 40 and EPA and the State of New Mexico determine whether all required response actions with respect to the Mill site have been successfully implemented.

7. NMED, EPA, and NRC, collectively “the Regulatory Agencies” have determined that NMED is the lead agency for the actions to be conducted pursuant to this Memorandum of Agreement. EPA technical staff have committed to NMED to provide technical assistance, such as to review and comment upon work plans, reports, test results, and other documents, as requested by NMED.

8. EPA requested that the Agency for Toxic Substances and Disease Registry (“ATSDR”), an agency within the federal Center for Disease Control, complete and distribute a Health Consultation to property owners in the Area of Concern (“AOC”) identified by NMED. Once ATSDR issues a report, NMED will retain the report in its site repository for public review.

9. Pursuant to the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1 through 74-6-17, in 1983 NMED issued three ground water discharge permits, one of which expired in 1989 or 1990, to Homestake for ground water remediation activities at the Mill site. The two remaining ground water discharge permits are currently active.

10. As part of this Agreement, NMED has designated an Area of Concern (“AOC”) around the Mill site, as depicted on map Attachment A to this agreement.

11. This Agreement is entered into expressly for the purpose of establishing Homestake’s voluntary commitment to provide access to safe drinking water for current Property Owners listed in Attachment B, except for the provision of potable water to Elizabeth Marie Estates, Block 1, Lot 4, that will be addressed by the Parties in a separate document no later than November 2, 2009.

12. On or about August 2005, NMED and Homestake mutually agreed to undertake a water sampling program in the vicinity of the Mill site of some private domestic wells.

13. The Regulatory Agencies approached Homestake in May 2006 to express their concern that several private residential wells within the AOC used as primary drinking water sources contain contaminants that exceed federal maximum contaminant levels (MCLs) and should not be used for drinking water purposes. Three of these residential wells have contaminant concentrations that exceed background levels accepted by the regulatory agencies and are primary drinking water sources for these properties. Of the three wells not currently

connected to the Village of Milan water system, two have an exceedance of Secondary MCLs and one well has an exceedance of a Primary MCL. All Parties agree that it is not certain that the exceedance of the Primary MCL is related to Homestake's historical operations. NMED requested that Homestake voluntarily connect certain of the properties listed in Attachment B to the Village of Milan water system.

14. Since the initial meetings, NMED has defined the AOC, and the Parties have determined the properties listed in Attachment B, and negotiated the terms and conditions contained in this MOA.

I. AUTHORITY

15. NMED is an executive agency of the State of New Mexico created pursuant to the Department of Environment Act, NMSA 1978, §9-7A-4 (1991). NMED has authority to regulate water quality and enter into agreements pursuant to the New Mexico Water Quality Act NMSA 1978, §§74-6-1 through 74-6-17.

16. Homestake is a California corporation authorized to do business in New Mexico.

II. DEFINITIONS

17. Unless otherwise expressly provided herein, a term used in this Agreement shall have the following meaning:

A. "Advisory" means NMED's "Health Advisory for Private Wells in the San Mateo Creek Basin."

B. "AOC" means the Area of Concern designated by NMED in Attachment A to this Agreement.

C. "EPA" means the U.S. Environmental Protection Agency.

D. "Homestake" means Homestake Mining Company of California.

E. "Milan" means the Village of Milan.

F. "Mill site" means the Homestake Grants Uranium mill site.

G. "MOA" and "Agreement" mean this Agreement, including any attachments and modifications.

H. "NMED" means the New Mexico Environment Department.

- I. "NRC" means the U.S. Nuclear Regulatory Commission.
- J. "OSE" means the New Mexico Office of the State Engineer.
- K. "Parties" means collectively Homestake and NMED.
- L. "Primary MCL" means a constituent standard for which federal and state standards have been established for drinking water.
- M. "Secondary MCL" means a constituent for which an aesthetic federal and state standard has been established.
- N. "Water service connection" means all actions necessary to physically connect existing main water lines of the Milan water system to a residence.
- O. "Main water lines" means the drinking and fire suppression water distribution infrastructure of the Village of Milan water distribution system that is installed in a public right-of-way.

III. DRINKING WATER PROJECTS

18. Water Service Connections.

A. In accordance with the terms of the MOA, Homestake will voluntarily provide water service connections from the Milan main water lines in accordance with Milan engineering specification and requirements to eligible current property owners ("Property Owners") within the AOC listed in Attachment B. In accordance with the terms of the MOA, Homestake also will reimburse certain eligible Property Owners listed in Attachment B for charges already incurred for water service connections to the Milan main water line system from January 1, 2004 to the effective date of the MOA.

B. Homestake shall have 60 days from the execution date of this MOA to notify certain Property Owners listed in Attachment B of their opportunity to be connected to the existing Village of Milan water system. The Property Owners shall have 120 days from such notification to agree to the water service connection terms set forth in this MOA. NMED and Homestake agree that neither Party can require a Property Owner to agree to connect to the Milan water system and the purpose of this MOA is to provide the Property Owners listed in Attachment B with the opportunity to do so.

C. Homestake will enter into an agreement with the Village of Milan to finance the completion of the water service connections for participating Property Owners. Homestake will commence discussions with the Village of Milan to accomplish connections

within 30 days of the execution of the MOA and will use its best efforts to put the financing portion of the project into place within 160 days of the execution of the MOA. Homestake shall notify NMED if these activities extend beyond the original time periods specified in this Agreement.

D. Homestake will use its best efforts to reimburse certain Property Owners who paid their own costs to connect to the Village of Milan water system listed in Attachment B within 60 days of the execution of this MOA. Homestake shall notify NMED if these activities extend beyond the original 60 days.

19. **Advisory.** NMED shall issue a health advisory for private wells (“Advisory”) to all property owners in the AOC and publish the advisory in two newspapers of general circulation in Cibola and McKinley Counties. NMED shall use its best efforts to obtain a signature from Property Owners listed in Attachment B acknowledging that they have received a copy of the Advisory. NMED shall request that the OSE issue the Advisory to every person who applies for a well permit within the area referenced in the drinking water advisory. NMED also shall record the Advisory with the Cibola County clerk’s office.

20. **Abandonment of Existing Wells.** Homestake will plug and abandon water wells in accordance with 19.27.4 NMAC for property owners within the boundaries of the AOC who request in writing that their well(s) be plugged. Pursuant to this Paragraph, Homestake will notify all property owners within the boundaries of the AOC in writing of the offer to plug their wells. Homestake also will publish a public notice of this offer in two newspapers of general circulation in Cibola and McKinley Counties. Property Owners shall have 120 days from the published public notice to notify Homestake as set forth in the public notice of the Property Owner’s intent to have their well(s) plugged. Homestake will arrange for such well plugging on a reasonable schedule and in accordance with obtaining the necessary permits and approvals from the OSE.

IV. REPORTS

21. Within thirty (30) days of the execution of an agreement between Homestake and the Village of Milan for Homestake’s financing of water service connections, Homestake shall submit a written report to NMED of such agreement. Thereafter, Homestake shall provide NMED semi-annual reports on the progress by the Village of Milan on completing such water service connections and Homestake’s completion of agreements to reimburse certain Property Owners listed in Attachment B who are eligible for reimbursement for connecting to the Village of Milan water system. Homestake also will notify NMED of any wells that have been plugged pursuant to this MOA. Homestake will notify NMED that the activities described in this MOA have been completed and Homestake’s reporting requirements hereunder shall be concluded.

V. RELEASE

22. The Parties have negotiated this Agreement for the sole purpose of relieving Homestake of any future obligation to provide access to drinking water services to property owners in the AOC under the New Mexico Water Quality Act, except for the property referenced in paragraph 11. Homestake agrees not to install any wells on Elizabeth Marie Estates, Block 1, Lot 4, prior to November 2, 2009, or as otherwise agreed to in writing by the Parties and attached as an amendment to this Agreement. This Agreement does not relieve Homestake of any liability or responsibility that may exist under federal or state law for further ground water remediation or any other obligation. Furthermore, if NMED becomes aware of data that indicate adverse ground water impacts from Mill site contamination within the San Andres aquifer or outside of the AOC, NMED reserves the right to seek additional action by Homestake to provide safe drinking water to property owners within such areas that are identified.

23. The Agreement shall neither constitute nor be construed as an admission or acknowledgment of liability by Homestake. Nothing in this Agreement shall be construed to create any rights in or grant any cause of action to any person not a signatory to this Agreement. The preceding sentence shall not be construed to waive or nullify any rights that a person not a signatory to this Agreement may have under any law or regulation. The Parties expressly reserve all rights, defenses, claims, demands, and causes of action that they may have against each other with respect to any matter, transaction, or occurrence relating to the Mill site and AOC that is not addressed in this Agreement. Homestake expressly reserves all rights and defenses that it may have to any claim, demand, or cause of action related to the Mill site and AOC that is not addressed in this Agreement. Nothing in this Agreement shall be construed as a waiver of privilege by any Party.

24. Nothing herein shall prevent the Parties from taking an action to address conditions at the Mill site or in the AOC that constitute an emergency or that present an immediate threat to public health or the environment.

VI. COMPLIANCE WITH APPLICABLE LAWS

25. This Agreement shall not affect, change, amend, or relieve any obligation that Homestake may have pursuant to a plan, permit, Consent Decree, or other agreement with NMED, EPA, or NRC. Homestake shall undertake the projects described in this Agreement in accordance with applicable federal, state, and local laws and regulations. This Agreement is not a permit and nothing in this Agreement shall relieve Homestake of its responsibility to comply with all federal, state and local laws, regulations, and permits.

VII. DISPUTE RESOLUTION

26. **Informal resolution.** Should any Party determine that there has been a violation or deficiency in the actions of the other Party under this Agreement, including attachments to this Agreement, that Party shall notify the other Party in writing of the violation or deficiency and propose a plan to correct the violation or deficiency. If the other Party fails to respond within thirty (30) days of receipt of the complaint, the complaining Party may seek enforcement of this Agreement pursuant to Paragraph 29.

27. The Parties agree that the laws of New Mexico shall govern the construction and interpretation of this Agreement. The Parties agree that any dispute regarding this Agreement that could not be resolved through the informal resolution process described in Paragraph 28 shall be resolved in the district court for Santa Fe County. The Parties agree that the district court for Santa Fe County shall have exclusive jurisdiction over the Parties for the purpose of interpreting and enforcing this Agreement, and waive any right to challenge such jurisdiction in any forum.

VIII. COSTS

28. Homestake shall be responsible for its own costs of performance under this Agreement. Nothing in this Agreement shall be used or interpreted to prevent NMED from seeking cost recovery from Homestake pursuant to statutory authority or other agreements. NMED on its own behalf or on behalf of the State of New Mexico, shall not assume liability for Homestake's performance of any obligation under this Agreement.

IX. DELAY OR OMISSION

29. No delay or omission in the exercise of any right or duty under this Agreement shall impair such right or duty nor shall it be construed as a waiver of or acquiescence to a breach or default of this Agreement. No Party shall construe the conduct, delay, or omissions of another as altering in any way its own agreements as set forth in this Agreement. Any waiver, allowance, or approval of any claimed breach or default under this Agreement must be in writing and no Party shall raise unwritten waiver or estoppel as affirmative defenses to such claimed breach or default.

X. BINDING EFFECT

30. This Agreement shall be binding on the Parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

XI. INTEGRATION AND MODIFICATION

31. This Agreement merges all prior written and oral communications between the Parties concerning the subject matter of this Agreement, and contains the entire Agreement between them. This Agreement shall not be modified without the express written consent of all Parties.

XII. RESERVATION OF RIGHTS AND DEFENSES

32. Other than provided herein, this Agreement shall not be construed to prohibit or limit in any way NMED from requiring Homestake to comply with any state or federal law applicable to the Mill site and AOC, or from seeking any relief authorized by state or federal law applicable to the Mill site and AOC. This Agreement shall not be construed to prohibit or limit in any way Homestake from raising any defense, other than provided herein, to an action by NMED seeking relief for alleged violations or enforcement of legal obligations.

XIII. DISCLOSURE TO SUCCESSORS-IN-INTEREST

33. Homestake shall disclose this Agreement to any successor-in-interest and shall advise such successor-in-interest that the Agreement is binding on the successor-in-interest until the Agreement expires or is terminated by written agreement of the Parties or Homestake's successor-in-interest.

XIV. EFFECTIVE DATE

34. This Agreement shall become effective upon full execution by the duly authorized representatives of the Parties.

XV. TERMINATION OF AGREEMENT

35. This Agreement shall remain an enforceable document until NMED determines in response to a written letter by Homestake that Homestake has complied with all provisions of this Agreement.

XVI. HEADINGS

36. Section and paragraph headings in this Agreement are provided solely as a matter of convenience to the reader and shall not be construed to alter the meaning of any provision of this Agreement.

XVII. SEVERABILITY

37. If any provision or authority of this Agreement is held by a court of competent jurisdiction to be invalid, if that provision or authority is severable from the remainder of this Agreement, the remainder of this Agreement shall remain in force and shall not be affected by the court's order and ruling. If the application of this Agreement to any party or circumstance is held by a court of competent jurisdiction to be invalid, the application of this Agreement to the other party or circumstances shall remain in force and shall not be affected thereby.

XVIII. NOTICE

38. Whenever this Agreement requires a Party to provide notice or submit a document to another Party, the notice or document shall be sent to the following persons in electronic format (.pdf) unless the size or other characteristic of the notice or document requires submission of a hard copy. A Party shall notify all other parties of changes to this list:

For Homestake

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XIX. AUTHORITY OF SIGNATORIES

39. The persons executing this Agreement represent that they have the authority to bind their respective parties to the Agreement, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind their respective parties to the Agreement.

XX. SIGNATURE AND COUNTERPART

40. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

HOMESTAKE MINING COMPANY



Date: 01/12/09

NEW MEXICO ENVIRONMENT DEPARTMENT



RON CUREY, SECRETARY

Date: 1/12/09