UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PHILIP ROEDER; ANNA ROEDER; LISA LACKORE, individually and as mother and natural guardian of MELISSA LACKORE and COLE LACKORE, minors; SUZANNE SHAPE; GREGORY SHAPE; CLAUDIA HAYDEN and TIMOTHY HAYDEN; On Behalf of Themselves And All Others Similarly Situated,

Plaintiffs,

v.

ATLANTIC RICHFIELD COMPANY and BP AMERICA INC.

Defendants.

Case No. 3:11-CV-00105-RCJ-WGC

JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

On October 21, 2013, this matter came before the Court for hearing, pursuant to the Supplemental Preliminary Approval Order of this Court, on the application of the Settling Parties for approval of the settlement of this Litigation as set forth in the Agreed Motion for Final Approval of Settlement Classes and Class Settlement and Entry of Judgment, dated October 15, 2013 (the "Motion for Entry") [ECF No. ___]. Due and adequate notice having been given to the Settlement Classes as required by the Supplemental Preliminary Approval Order and the Court's order dated February 25, 2013, and the Court having considered all papers filed and proceedings had herein, and otherwise being fully informed in the premises and good cause appearing,

THEREFORE, THE COURT MAKES THE FOLLOWING FINDINGS AND CONCLUSIONS OF LAW AND IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. This Judgment adopts the definitions in the Amended Class Settlement Agreement attached to the Second Agreed Motion for Certification of Settlement Classes and Preliminary Approval of Class Settlement, dated July 10, 2013 (the "Second Agreed Motion") [ECF No. 108], and all capitalized terms used herein and not defined will have the same meanings ascribed to them in the Amended Class Settlement Agreement.

2. This Court has jurisdiction over the subject matter of this Litigation and over all parties to this Litigation, including all Members of the Settlement Classes.

Class Certification

3. Pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), the Court hereby finally certifies, for purposes of effectuating this settlement only,

a. a Property Damage Settlement Class consisting of (i) all Persons who, on or after February 14, 2011 and up to and including June 10, 2013, owned or own property within the geographic area depicted on Exhibit 1 to the Amended Class Settlement Agreement but do not own a Class Domestic Well on the date of final Court approval of the Class Settlement, and (ii) all Persons who, on the date of final Court approval of the Class Settlement, own real property within the geographic area depicted on Exhibit 1 to the Amended Class Settlement Agreement on which a Class Domestic Well is located. This class excludes the United States Department of the Interior – Bureau of Land Management, any other local, state or federal governmental agency or instrumentality, Defendants, Defendants' current employees, and Peri & Sons Farms, Inc. (d/b/a Desert Pearl Farms LLC); and

b. a Medical Monitoring Settlement Class consisting of all natural persons who, on or after February 14, 2011 and up to and including June 10, 2013, were or are legal residents of the area within the geographic area depicted on Exhibit 1 to the Amended Class Settlement Agreement, excluding, however, residents of parcels owned by the United States Department of the Interior – Bureau of Land Management, any other local, state or federal governmental agency or instrumentality, Defendants, Defendants' current employees, and Peri & Sons Farms, Inc. (d/b/a Desert Pearl Farms LLC).

These two classes are the Settlement Classes.

4. For purposes of effectuating this Settlement only, the Court adopts as final its preliminary findings and conclusions that each of the Settlement Classes satisfies the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3). This determination is based upon the reasons set forth below.

a. The Property Damage Settlement Class includes owners of 651 parcels of real property including approximately 296 privately-owned residential properties, up to 177 of which are served by Class Domestic Wells. There are nine (9) Class Domestic Wells located on nine vacant parcels with, at most, non-residential structures constructed on said parcels. Thus, a total of 186 Class Domestic Wells are believed to be located in the Settlement Class Area. The Medical Monitoring Settlement Class includes each legal resident of these 296 homes. Joinder is not practicable for this potential number of plaintiffs, and the numerosity requirement is therefore satisfied. *See, e.g., Clark K. v. Guinn*, No. 2:06-CV-1068-RCJ-RJJ, 2007 WL 1435428, at *25 (D. Nev. May 14, 2007).

b. With respect to the commonality requirement of Rule 23(a)(2), the Court must identify at least one question of law or fact common to each putative member of the Settlement Classes. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). The Court notes that such questions in this case include whether Defendants engaged in abnormally dangerous activities for which they are strictly liable and whether Defendants' historic mining and mineral processing activities failed to meet the relevant standards of care thereby making their actions negligent. Evidence of Defendants' conduct will be common to each class member, and the nature of Defendants' conduct "is capable of classwide resolution." *Wal-Mart*, 131 S. Ct. at 2551.

c. With respect to the typicality requirement of Rule 23(a)(3), the Court finds that the claims of the Plaintiffs/Class Representatives and the claims of absent Members of the Settlement Classes focus on the same aspects of the Defendants' activities and seek the same or similar relief. Although Plaintiffs/Class Representatives' claims may not be identical to the claims of absent class members in all aspects, their claims are "reasonably co-extensive

with those of absent class members." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

d. With respect to the adequacy requirement of Rule 23(a)(4), the Court finds that seven Plaintiffs/Class Representatives, Philip Roeder, Anna Roeder, Lisa Lackore, Claudia Hayden, Timothy Hayden, Suzanne Shape and Gregory Shape, owned or own residential property in the Settlement Class Area during the period beginning on February 14, 2011. This group of Plaintiffs/Class Representatives includes property owners with Class Domestic Wells and property owners who have been served by a community water system. Properties owned by one or more of these seven Plaintiffs/Class Representatives are located in each of the three Subareas in the Settlement Class Area. They will or have fairly and adequately protect(ed) the interests of the Property Damage Settlement Class. In addition, the Court finds that Philip Roeder, Anna Roeder, Lisa Lackore, Cole Lackore, Melissa Lackore, Claudia Hayden, and Gregory Shape are or were legal residents of the Settlement Class Area during the period beginning on February 14, 2011, and they will or have fairly and adequately protect(ed) the interests of the Medical Monitoring Settlement Class.

e. The Court also finds that Class Counsel satisfy the requirements outlined in Fed. R. Civ. P. 23(g)(1). In addition, the Court finds that Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class Members in negotiating the settlement.

f. The Court finds that the Settlement Classes meet the requirements of Fed. R. Civ. P. 23(b)(3). First, with respect to predominance, both of the Settlement Classes avoid the problems and conflicts noted by the Supreme Court in invalidating the class settlement in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 (1997). The Class Settlement does not include claims for existing personal injuries. The settlement proposed for each of the Settlement Classes is based solely on Plaintiffs' common claims of exposure. Therefore, the question of whether there was exposure predominates over individual differences as to the amount of exposure, which may vary from well to well, or among different areas in the Class Settlement Area, and individual differences as to potential impacts

of exposure which may vary based on property uses, medical histories and lifestyles. Second, with respect to superiority, the Court finds that the Settlement Classes are superior to other methods for the fair and efficient settlement of the claims against the Defendants. The claims concern properties located, and actions that occurred, in this district, and, therefore, all of the claims arise in this district. Because the Class Settlement excludes claims for personal injuries, the stakes are not as high and the individual claims are, relatively speaking, small. The lack of individual actions that have been filed concerning the matters at issue and the relatively small number of putative Members of the Settlement Classes who have submitted exclusion requests support this finding.

5. In summary, with respect to both of the Settlement Classes, this Court finds and concludes that the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) are satisfied in that: (a) the Members of the Settlement Classes are sufficiently numerous that joinder of all Settlement Class Members in this Litigation is impracticable; (b) there are questions of fact and law common to the Settlement Classes; (c) the claims of the Plaintiffs/Class Representatives Philip Roeder, Anna Roeder, Lisa Lackore, Cole Lackore, Melissa Lackore, Claudia Hayden, Timothy Hayden, Suzanne Shape, and Gregory Shape are typical of the claims of the Members of the Settlement Classes; (d) the Plaintiffs/Class Representatives and their counsel have fairly and adequately represented and protected the interests of all Members of the Settlement Classes; (e) there are questions of fact or law common to the claims of the Members of the Settlement Classes which predominate over individual questions; and (f) a class action is superior to other methods for the fair and efficient settlement of the claims against Defendants Atlantic Richfield Company and BP America Inc. that were or could have been asserted in this Litigation.

Notice to Class and Under 28 U.S.C. §1715

6. A notice of settlement of a class action was provided by first class U.S. Mail to those putative Members of the Settlement Classes who currently reside in the Settlement Class Area and to those putative Members of the Settlement Classes residing outside of the Settlement Class Area whose addresses could be identified with reasonable effort by the

Settling Parties and the Class Settlement Claims Administrator, Rust Consulting, Inc. A total of 664 individual notices were mailed on March 4, 2013 and on later dates as additional addresses of putative Settlement Class Members were identified.

7. A supplemental notice of settlement of a class action was provided by first class U.S. Mail to those putative Members of the Property Damage Settlement Class who own real property in the Settlement Class Area on which a Class Domestic Well is located. The supplemental notice explained the amended terms of the proposed Class Settlement applicable to putative Members of the Property Damage Settlement Class who own a Class Domestic Well and their rights and options. Because the amended terms did not apply to or change the settlement terms applicable to other putative Members of the Settlement Classes, the Court approved supplemental notice only to putative Members of the Property Damage Settlement Class who own real property in the Settlement Class Area on which a Class Domestic Well is located. A total of 186 individual notices were mailed on July 30, 2013.

8. A summary notice of settlement of a class action was published twice (on March 6, and 13, 2013) in the *Mason Valley News*, and once (on March 6, 2013) in the *Reno-Gazette Journal*, two newspapers distributed and having wide readership in the Settlement Class Area.

9. A supplemental summary notice of settlement of a class action directed to owners of Class Domestic Wells was published three times (on August 7 and 14 and September 4, 2013) in the *Mason Valley News* and once (on August 5, 2013) in the *Reno-Gazette Journal*. Because the amended terms do not apply to or change the settlement terms applicable to other putative Members of the Settlement Classes, the Court approved supplemental summary publication notice directed only to putative Members of the Property Damage Settlement Class who own real property in the Settlement Class Area on which a Class Domestic Well is located.

10. The notices and supplemental notices of settlement of a class action given to the putative Members of the Settlement Classes included individual notice to all putative Members of one or both Settlement Classes who could be identified with reasonable effort. These

notices provided the best notice practicable under the circumstances to all Persons entitled to such notice. These notices fully satisfy the requirements of the Federal Rules of Civil Procedure and the requirements of due process.

11. Defendants served notice as required by the Class Action Fairness Act, 28 U.S.C. §1715 ("CAFA"), on U.S. Attorney General Eric Holder on September 13, 2012. Defendants also served similar notices on September 13, 2012 on appropriate state officials for each of the sixteen states in which putative settlement class members reside. Supplemental notices were served on Attorney General Holder and appropriate state officials on November 16, 2012, March 1, 2013, June 3, 2013, and July 12, 2013. Ninety days or more have passed since the last of the CAFA notice and supplemental CAFA notices were served. No official has responded to the CAFA notice and supplemental CAFA notices or taken action to oppose the Class Settlement.

Approval of Settlement

12. Factors that the Ninth Circuit has held should be considered when a trial court evaluates a proposed class settlement for fairness, reasonableness and adequacy include:

> (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement.

In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). Another iteration of factors to be considered identifies the following:

> (1) likelihood of recovery or success; (2) amount and nature of discovery or evidence; (3) settlement terms and conditions; (4) recommendation and experience of counsel; (5) future expense and likely duration of litigation; (6) recommendation of neutral parties, if any; (7) number of objectors and nature of objections; and (8) the presence of good faith and the absence of collusion.

Riker v. Gibbons, No. 3:08-cv-00115-LRH-VPC, 2010 WL 4366012, at *2 (D. Nev. Oct. 28, 2010) (*citing* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11:43 (4th ed.

2002)). These factors are not exhaustive. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 946-47. "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice v. Civil Serv. Comm'n of the City and Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). It is the settlement as a whole, rather than its individual component parts, that the Court examines for overall fairness. *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003).

13. Consideration of these factors in light of the factual record of this Litigation demonstrates that the proposed settlement is fair, reasonable and adequate.

Serious Questions of Law and Fact Exist, Placing the Ultimate Outcome in Doubt.

14. This Litigation was commenced on February 14, 2011 when Plaintiffs/Class Representatives filed a complaint in this Court on behalf of themselves and a putative class seeking damages for alleged harm to their property and a putative class seeking medical monitoring. Plaintiffs/Class Representatives alleged that arsenic, uranium, and other hazardous substances had been and were being released to the environment from a facility formerly owned or operated by Defendants. Second Amended Class Action Complaint [ECF No. 75], at ¶¶ 22-23. Plaintiffs/Class Representatives further alleged that these hazardous substances entered the groundwater beneath the Mine Site, had migrated, and were present in groundwater beneath the putative class members' properties. [ECF No. 75 at ¶¶ 25, 29-31]. They also alleged that contaminants were entrained in dust that had blown onto the properties of the putative class members. [ECF No. 75 at ¶¶ 36-38]. The relief sought included various types of property damages and payment for medical monitoring. [ECF No. 75 at pp. 34-35]. At the time the settlement was reached, only Plaintiffs/Class Representatives' claims for trespass, nuisance, negligence, battery, and strict liability had been allowed to proceed to discovery. [ECF No. 75 at ¶¶ 69-134]. Plaintiffs/Class Representatives' claims for nuisance per se, negligence per se, unjust enrichment, fraudulent concealment, and negligent

misrepresentation had all been dismissed by the Court under Fed. R. Civ. P. 12(b)(6). Order [ECF No. 50], p. 16; Order [ECF No. 82].

15. Defendants Atlantic Richfield and BP America Inc. have denied any liability to Plaintiffs/Class Representatives and the putative classes, and they have denied that Plaintiffs/ Class Representatives and the putative classes suffered any injury. *See* Answer [ECF No. 76]. Defendants have vigorously pursued their legal and factual defenses. *See* Defendants' Partial Motion to Dismiss [ECF Nos. 28 and 48] and Defendants' Response in Opposition to "Plaintiffs' Motion for Limited Reconsideration" [ECF No. 59].

16. Rule 26(a)(1) disclosures and written discovery have occurred. At the time of settlement, the parties had scheduled depositions of Plaintiffs/Class Representatives and had begun production and review of voluminous documents from multiple sources and covering several decades that were identified in Defendants' disclosures and discovery responses.

17. Based upon their pretrial investigations and preparation, the parties identified certain evidence that has influenced their decision to enter into the proposed settlement. The Court agrees that this evidence would be significant at trial on issues of both liability and damages. This evidence indicates that Plaintiffs/Class Representatives and the Members of the Settlement Classes are not certain to recover any relief. Similarly, this evidence does not remove the risk of an adverse outcome for the Defendants. This evidence includes:

a. Defendant Atlantic Richfield worked with the Nevada Division of Environmental Protection (the "NDEP") and is now working with the United States Environmental Protection Agency (the "EPA") to respond to potential Releases from the Mine Site. Activities performed include, but are not limited to: implementation of a community bottled water supply program; periodic sampling and monitoring of groundwater and residential domestic water wells; surface and subsurface soil sampling; radiological surveys; implementation of significant interim removal actions; periodic air monitoring; evaluation of effectiveness of existing systems to prevent offsite migration of contaminated groundwater; and preparation of a human health risk assessment. These activities have been and are being overseen by either NDEP pursuant to its statutory authority under N.R.S. §§ 445A.300 to

445A.730 and N.A.C. §§ 445A.070 to 445A.348 and/or EPA pursuant to its statutory authority under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622.

b. Beginning in 2002, Defendant Atlantic Richfield has entered into multiple administrative orders on consent with NDEP and EPA for the Mine Site for performance of the investigation and response actions described. *See* Administrative Order on Consent for Yerington Mine Site with NDEP, dated October 25, 2002; Administrative Order on Consent and Settlement Agreement for Removal Action and Past Response Costs, U.S. EPA Region IX, CERCLA Docket No. 09-2009-0010, ¶¶ 17-23. In addition, CERCLA activities have occurred under a Unilateral Administrative Order for Initial Response Activities, U.S. EPA Region IX, CERCLA Docket No. 9-2005-0011, and an Administrative Order for Remedial Investigation and Feasibility Study, U.S. EPA Region IX, CERCLA Docket No. 9-2007-0005 ("RI/FS AO").

c. Defendants contend that Atlantic Richfield is in compliance with all requirements of these Administrative Orders, and Plaintiffs have found no evidence to the contrary.

d. While the Mine Site may be a source of some metals or other substances found in offsite groundwater, metals and/or other substances found in groundwater underlying portions of the Settlement Class Area also may reflect sources other than historic Mining and Mineral Processing conducted by Defendant Atlantic Richfield and its predecessors. Some measured levels of metals and other substances are present as natural background concentrations due to the highly mineralized nature of the local geology. In addition, some metals and other substances are due to operations conducted at the Mine Site by entities not parties to this Litigation that operated after Defendant Atlantic Richfield sold the property in 1982.

e. Putative class members living in the Penrose Estates and Grand Estates Subdivisions are supplied by the City of Yerington Water System and therefore have no ongoing exposure to any groundwater contamination regardless of its sources.

f. Since 2004, Defendant Atlantic Richfield has offered bottled water to all putative class members who depend upon private domestic wells for drinking water where the well water approaches or exceeds a Maximum Contaminant Level under the Federal Safe Drinking Water Act.

g. From January 2005 through March 2008, Defendant Atlantic Richfield conducted air monitoring at the Mine Site under the supervision of the EPA. Data collected include, but are not limited to: meteorological data such as wind speed and direction, precipitation and temperature; 24-hour average concentrations in high volume samplers for particulates, inorganic chemicals and radiochemicals; hourly average concentration samples for PM-10 (particulate matter less than 10 micrometers in diameter); and metal samples during dust events. Among other things, the data demonstrated that upwind and downwind PM-10 concentrations are similar to regional background concentrations and that both lead and PM-10 concentrations meet the National Ambient Air Quality Standards. *See* excerpt from February 25, 2011 Baseline Human Health Risk Assessment for the Inhalation Pathway (Revision 1), Yerington Mine Site, Lyon County, Nevada, RI/FS AO (Attachment 2 to the Agreed Motion [ECF No. 91]), p. ES-2.

h. The February 25, 2011 Baseline Human Health Risk Assessment for the Inhalation Pathway performed by a consultant to Defendant Atlantic Richfield and approved by the EPA concluded, among other things, that (i) "results of the chronic and acute [Human Health Risk Assessment] do not indicate a potential for increased health effects associated with metals and radiochemicals in dust from the [Mine Site]" and (ii) "inhalation of PM-10, regardless of the source (background or Site-related), is unlikely to result in adverse health conditions." *Id.*, p. ES-2.

i. Based upon the available evidence, Defendants contend that there is not a strong likelihood that any Member of the Medical Monitoring Settlement Class will require significant future medical care related to the events at issue in the Litigation. Plaintiffs have no evidence to the contrary.

j. In their discovery responses, Plaintiffs reported no changes in the uses they make of their properties in the Settlement Class Area due to dust or groundwater contamination.

k. Property values in the Settlement Class Area are depressed when compared with values in prior years when northwestern Nevada was experiencing substantial economic growth. The Lyon County, Nevada website reports Lyon County is the third most economically stressed county in the United States with populations of at least 25,000. The reported unemployment rate (December 2010) is 18.7%, the highest at that time in Nevada. The reported foreclosure rate is 1:66, the highest in Nevada. *See* Lyon County, Nevada http://www.lyon-county.org/index.aspx?NID=31

l. The Settling Parties do not agree whether the presence of metals and other substances in groundwater used for domestic supply is a factor that has influenced current property values in the Settlement Class Area. However, the Settling Parties do agree that extension of the City Water System and the availability of city water service for any future development will eliminate any uncertainty related to the quality and quantity of the domestic water supply, and can be reasonably expected to increase property values within the Settlement Class Area.

m. Plaintiffs did not seek to recover in the Litigation any past expenses for medical care, treatment or services which had been paid by Medicare, Medicaid, or any other governmental benefit program. Moreover, reimbursement for any past medical expenses was not at issue in the Litigation.

18. It is also clear to the Court that the parties could reasonably conclude that there are serious disputed questions of law and fact that could significantly impact the further litigation and trial of this case. These questions would have been the subject of extensive discovery and are hotly contested. Many of these issues are highly technical and will involve a battle of the experts. These issues include, among others: (1) how much of the metals or other substances found in groundwater is naturally occurring; (2) how much of the metals or other substances found in groundwater is attributable to nonparties, and whether that will reduce any

share of responsibility that could be allocated to Defendants; (3) whether Defendants violated any standards of care or regulations applicable at any time when contaminants were released from the Mine Site; and (4) how much of the alleged decrease in property values is due to the regional and national economy as opposed to the Mine Site.

19. Based on the disclosures, discovery and pretrial proceedings to date, and after further investigating Defendants' Mining and Mineral Processing and Response Actions, the Environmental Conditions, and possible damages suffered by the Settlement Classes, the Plaintiffs/Class Representatives and their counsel have concluded that a jury could reach a conclusion at trial adverse to the Plaintiffs/Class Representatives and the Members of the Settlement Classes.

20. Although Defendants deny all allegations of wrongdoing, fault, liability or damage to Plaintiffs/Class Representatives and any and all Members of either Settlement Class, they acknowledge that there is a risk that a jury could reach a conclusion at trial adverse to Defendants.

21. In this Court's view, after reviewing the entire matter, there are several apparently undisputed facts as well as serious disputed questions of law and fact that place the outcome of this Litigation, if tried rather than settled, in substantial doubt. This Court concurs with the parties and their counsel that there is risk for each side of an adverse outcome at trial.

Proposed Settlement Was Fairly and Honestly Negotiated.

22. The proposed settlement is the result of genuine arms-length negotiations between the parties. The negotiations were conducted over several months and included meetings, conference calls and exchanges of written proposals by the parties through their counsel.

23. As a result, the Plaintiffs/Class Representatives, Defendants, and each of their counsel have concluded that the interests of the Plaintiffs/Class Representatives and the Settlement Classes, on one hand, and the Defendants, on the other hand, would best be served by a settlement of this Litigation.

24. The parties have vigorously advocated their respective positions throughout the pendency of this Litigation.

Value of Immediate Recovery Outweighs Mere Possibility of Future Relief After Protracted and Expensive Litigation

25. Trial would likely have been an expensive, complex and time-consuming process that promised to feature a battle of various experts including but not limited to hydrologists, geochemists, air and groundwater modelers, toxicologists, risk assessors, medical doctors, real estate appraisers, historians, and standard of care experts. In addition, the Plaintiffs planned to file the motion for class certification in the fall of 2012. Briefing of that motion would have been extensive, and evidence for the motion would ultimately have been presented to the Court at a February 2013 hearing. Motions under Fed. R. Evid. 702 may have been submitted in connection with the motion seeking class certification. Subsequently, the parties planned to file dispositive motions, motions under F.R.E. 702 and motions in limine before trial. The outcome of this Court's rulings on all of these motions is uncertain and could significantly affect the course of the Litigation. Further, regardless of the outcome at trial, an appeal would likely have followed, thereby imposing additional costs on the parties and further delaying final resolution of this Litigation.

26. Plaintiffs/Class Representatives, Defendants, and counsel for all parties recognize and acknowledge the expense, difficulties and lengthy duration of continued proceedings necessary to prosecute this Litigation through trial and appeals.

27. Plaintiffs/Class Representatives, Defendants, and counsel for all parties also recognize and acknowledge that there is risk in any litigation and the outcome is uncertain, especially in a complex action such as this Litigation.

28. The proposed settlement provides substantial relief to the Settlement Classes. In particular, the proposed extension of the City Water System provides relief for the Members of both Settlement Classes that could not have been obtained at trial. Thomas O. Jackson, Ph.D., a real estate valuation expert, has opined that the extension of the City Water System will protect and enhance property values in the Settlement Class Area. The proposed

extension also protects the Members of the Medical Monitoring Settlement Class from any ongoing exposure to contaminated groundwater and assures them of a safe, reliable supply of domestic water.

29. The proposed settlement also provides payments to Members of the Property Damage Settlement Class for their property damage claims. Dr. Jackson has opined that this aspect of the settlement is fair, adequate and reasonable, particularly in light of the evidence indicating that property values in the Settlement Class Area have been affected by multiple factors, including but not limited to regional and national weakness in the housing markets, and the difficulty of isolating and quantifying any adverse property value impact from a specific environmental condition in the area.

30. The proposed settlement addresses the concerns raised by putative Members of the Property Damage Settlement Class who own real property in the Settlement Class Area on which a Class Domestic Well is located. Under the proposed settlement, each Member of the Property Damage Settlement Class who owns a Class Domestic Well on the date of final Court approval of the settlement may elect to either abandon that well and have Defendants pay for abandonment in compliance with the requirements of the Nevada Division of Water Resources (the "NDWR") or participate in the Settlement Water Right Application Process to seek an individual NDWR permit for outdoor use of that well as authorized by state law.

31. The proposed settlement provides money to each Member of the Medical Monitoring Settlement Class to obtain, if they so choose, medical monitoring from a doctor of his/her choice. However, there are no express requirements regarding the manner in which an individual Medical Monitoring Settlement Class Member utilizes such a payment. Allan Kanner, one of plaintiffs' counsel with substantial experience litigating medical monitoring claims, has evaluated this aspect of the proposed settlement and opined that it is appropriate and reasonable. Pursuant to 42 U.S.C. §1395y(b)(2), commonly known as the Medicare Secondary Payer statute, the Settling Parties have considered Medicare's interests in connection with this settlement. Moreover, they have taken actions to avoid shifting of the burden for payment for medical care, treatment or services for which Members of the Medical

Monitoring Settlement Class will be compensated under the Class Settlement to Medicare or Medicaid. The proof of claim and release form advises the Members of the Medical Monitoring Settlement Class that, if they choose to spend the settlement payment for medical monitoring services, they may not also seek payment of the cost of such services under Medicare or Medicaid. In addition, Class Counsel have represented that they have advised or will so advise the members of the Medical Monitoring Settlement Class.

Parties Judge That Settlement Is Fair, Adequate and Reasonable.

32. It is undisputed that the Plaintiffs/Class Representatives and the Defendants believe that the proposed settlement is fair, adequate and reasonable.

33. It is undisputed that counsel for the parties support and recommend approval of the settlement. Counsel for the Plaintiffs/Class Representatives have been previously found by this Court to be both knowledgeable and experienced in litigation of class actions and environmental contamination claims such as those at issue in this Litigation. Counsel for Defendants have litigated cases involving claims similar to those asserted in this Litigation in other cases in this Court and in courts in other jurisdictions. They are also found by the Court to be both knowledgeable and experienced in litigation of class actions and environmental contamination cases.

Reactions from Putative Members of the Settlement Classes.

34. Based on the small number of objections filed with the Court, most of the Members of the Settlement Classes do not object to the proposed settlement.

35. Similarly, based on the small number of exclusion requests, it appears that Members of the Settlement Classes do not seek to pursue their own litigation but are willing to accept the benefits of the proposed settlement.

Conclusion

36. Under these circumstances, the Court finds and concludes that the settlement set forth in the Amended Class Settlement Agreement attached to the Second Agreed Motion is, in all respects, a fair, reasonable and adequate settlement of the claims that were or could have been asserted in this Litigation against Atlantic Richfield Company and BP America Inc.

Accordingly, the settlement set forth in the Amended Class Settlement Agreement attached to the Second Agreed Motion is finally approved, effective immediately, and its terms and provisions ordered to be implemented forthwith, with each participating party to perform all relevant terms and provisions of the Amended Class Settlement Agreement.

Judgment

37. Judgment will enter pursuant to Fed. R. Civ. P. 41(a)(2), 54 and 58 consistent and commensurate with the Amended Class Settlement Agreement and the Second Agreed Motion.

38. The following persons or entities, who at any time on or after February 14, 2011 and up to and including June 10, 2013 claim to have owned real property in the Settlement Class Area but do not own a Class Domestic Well on the date of final Court approval of the Class Settlement, are excluded at their express written request, submitted or postmarked on or before May 3, 2013, from the Property Damage Settlement Class, the Class Settlement, and the Judgment:

Name	Lyon County Parcel No(s).	Status	Settlement Class Area
Burgess, Joseph M. & Coleen T.	003-073-10	Current Owner	Penrose
Cassano, Charles F. & Mulderick, Hazel M.	014-261-33	Current Owner	Tier 2
Crookes, Frank & Linda D.	003-042-02	Current Owner	Penrose
Hughes, George	014-291-10	Former Owner	Tier 2
Hunt, Todd C. & Kaylene	003-012-14	Current Owner	Penrose
Kinne, Charles A. Jr. & Sylvie	003-072-02	Current Owner	Penrose
Landers, Jim G. & Carolyn D.	014-271-29	Former Owner	Tier 2
Lemos, Travis J.	003-031-07	Current Owner	Penrose
Mathews, Ralph C. & Mathews, Dale M., Trustees of Mathews, Myrtle Alberta Trust	014-271-48	Current Owner	Tier 2

Name	Lyon County Parcel No(s).	Status	Settlement Class Area
Maxwell, Stanley W. & Myrna R., Trustees	003-063-02	Current Owner	Penrose
Peacher, Roger & Patricia	014-261-24 014-261-27	Current Owner	Tier 2 Tier 2
Pollard, Kendall L.	014-411-25	Current Owner	Tier 1
Sceirine Enterprises LLC	014-241-14	Current Owner	Tier 2
Sceirine Enterprises LLC & Sceirine Ranches LLC	014-241-08	Current Owner	Tier 2
Smith, Wesley A. & Beverly A., Trustees	003-033-02	Current Owner	Penrose
West, Donald A. & Virginia L., Trustees	003-012-18	Former Owner	Penrose

They are not included in the terms "Members of the Property Damage Settlement Class" or "Members of the Settlement Classes" for purposes of the referenced parcels which are excluded from the Class Settlement.

39. The following persons or entities, who on the date of final Court approval of the Class Settlement claim to own real property in the Settlement Class Area on which a Class Domestic Well is located, are excluded at their express written request, submitted or postmarked on or before September 30, 2013, from the Property Damage Settlement Class, the Class Settlement, and the Judgment:

Name	Lyon County Parcel No(s).	Status	Settlement Class Area
Cassano, Charles F. & Mulderick, Hazel M.	014-261-32	Current Owner	Tier 2
Harper, George R. & Patricia C.	014-271-64	Current Owner	Tier 2
Holcomb, Ronald J. & Shauna L.	014-261-29	Current Owner	Tier 2
Hoverson, Hover C. & Hylton-Hoverson, Donna M., Trustees	014-271-25	Current Owner	Tier 2

Name	Lyon County Parcel No(s).	Status	Settlement Class Area
Humildad, Robert F. & Lysa N.	014-261-31	Current Owner	Tier 2
Johnston, Hal B. & Wallin, Diana R.	014-251-03	Current Owner	Tier 2
Kassebaum, Darold & Rita	014-281-05	Current Owner	Tier 2
Kattnig, Thomas J. & Barbara J., Trustees	014-261-02	Current Owner	Tier 2
Lacey, Jonathan Allen	014-261-30	Current Owner	Tier 2
Lemos, Rodney J., et al.	014-261-01	Current Owner	Tier 2
Marston, George Helme Marston Jr. & Elsie Lee, Trustees	014-411-08	Current Owner	Tier 1
Mathews, Ralph C. & Mathews, Dale M., Trustees of Mathews, Myrtle Alberta Trust	014-271-49	Current Owner	Tier 2
Pitts, Ernest C. & Judith C., Trustees	014-281-06	Current Owner	Tier 2
Pitts, Ernst C. & Judy C.	004-153-11	Current Owner	Tier 1
Shirk, Neil	014-271-52	Current Owner	Tier 2
Taylor, Donald R. & Catherine	004-091-01	Current Owner	Tier 2
Wood, Aloha & Marty Dale	014-261-05 014-271-21	Current Owner	Tier 2 Tier 2

They are not included in the terms "Members of the Property Damage Settlement Class" or "Members of the Settlement Classes" for purposes of the referenced parcels which are excluded from the Class Settlement.

40. The following persons, who at any time on or after February 14, 2011 and up to and including June 10, 2013 claim to have been legal residents of the Settlement Class Area, are excluded at their express written request, submitted or postmarked on or before May 3, 2013, from the Medical Monitoring Settlement Class, the Class Settlement, and the Judgment:

Name
Cassano, Charles F.
Harper, George R.
Harper, Patricia C.
Holcomb, Ronald J.
Holcomb, Shauna L.
Hylton-Hoverson, Donna M.
Humildad, Lysa N.
Humildad, Robert F.
Hunt, Kaylene
Hunt, Todd C.
Johnston, Hal B.
Kassebaum, Darold
Kassebaum, Rita
Kattnig, Barbara
Kattnig, Thomas J.
Lacey, Jonathan Allen
Landers, Carolyn D.
Landers, Jim G.
Lemos, Danny
Lemos, Guy F.
Lemos, Jodi L.
Lemos, Mackenzie G.
Lemos, Travis J.
Marston, Elsie Lee
Marston, George Helme Jr.
Mathews, Dale M.

Name
Mathews, Ralph C.
Maxwell, Myrna R.
Maxwell, Stanley W.
Moore, Ronald
Moore, Vickie
Mulderick, Hazel M.
Pitts, Ernst C.
Pitts, Judith
Pollard, Kendall L.
Shirk, Neil
Taylor, Catherine E.
Taylor, Donald R.
Wallin, Diana R.
West, Donald A.
West, Virginia L.
Wood, Aloha
Wood, Marty Dale

They are not included in the terms "Members of the Medical Monitoring Settlement Classes" or "Members of the Settlement Classes."

41. The five written objections submitted in May 2013 by or on behalf of putative Property Damage Settlement Class Members who own real property in the Settlement Class Area on which a Class Domestic Well is located appear to have been resolved by the Amended Class Settlement Agreement because none of the objectors have resubmitted them and they are therefore denied. No other objections have been timely submitted.

42. The Court was advised that putative Property Damage Settlement Class Members eligible to have their houses connected to the City of Yerington water system raised questions during the supplemental notice period regarding the terms of the City Release Form

that they are required to sign for that connection. The Court is further advised that the Settling Parties and the City of Yerington have responded to those questions by preparing an Amended City Release Form which was provided to the Court on September 12, 2013 as Appendix 2 to the Joint Request to Supplement the Record with Amendments to the City Release Form in Proposed Amended Class Settlement Agreement [ECF No. 111]. The Court hereby approves the Amended City Release Form and directs that all City Release Forms previously signed by settlement class members be deemed amended to conform to the text of the Amended City Release Form. Those settlement class members who previously signed the original form need not re-sign the amended form, though they will be permitted to do so if they request.

43. This Court dismisses with prejudice all claims and causes of action that were or could have been alleged on behalf of Plaintiffs/Class Representatives and all Members of one or both of the Settlement Classes against Defendants in this Litigation in their entirety and on the merits.

44. Except for the award of litigation costs and attorney fees pursuant to Class Counsel's motion that is addressed in a separate order, all parties will bear their own attorney fees and costs.

45. Upon the Effective Date, each of the Plaintiffs/Class Representatives, each of the Members of one or both of the Settlement Classes, and each of the other Releasing Parties will be deemed to have, and by operation of this Judgment and Order will have, fully, finally and forever released, relinquished and discharged each and all of the Released Parties from all claims and causes of action alleged or that could have been alleged in this Litigation (excluding only claims for personal injury), any and all Released Claims, and all claims, known or unknown, based upon or arising out of the institution, prosecution, assertion, settlement or resolution of this Litigation or the Released Claims.

46. All Plaintiffs/Class Representatives and all Members of one or both of the Settlement Classes are forever barred and permanently enjoined from asserting against any Released Party, directly or indirectly, individually or in a representative capacity, all claims and causes of action alleged or that could have been alleged in the Litigation (excluding only

claims for personal injury), any and all Released Claims, and all claims, known or unknown, based upon or arising out of the institution, prosecution, assertion, settlement or resolution of this Litigation or the Released Claims. Expressly included in the foregoing bar and injunction are the respective heirs, executors, administrators, personal representatives, successors and assigns of the Plaintiffs/Class Representatives and every Member of one or both of the Settlement Classes.

47. Upon the Effective Date, each of the Plaintiffs/Class Representatives, each of the Members of one or both of the Settlement Classes, and each of the Releasing Parties will be deemed to have, and by operation of this Judgment and Order will have, covenanted and agreed that he, she, or it will forever refrain from instituting, maintaining, collecting on or proceeding against any Released Party on any claim, demand, cause of action or liability of any nature whatsoever, whether or not now known, suspected or claimed, which it ever had, now has or may hereafter have against any Released Party relating to any Released Claims.

48. The Agreed Motion, the Class Settlement Agreement, the Second Agreed Motion, the Amended Class Settlement Agreement, the settlement contained therein, or any act performed, statement made or document executed pursuant to or in furtherance of the Agreed Motion, the Class Settlement Agreement, the Second Agreed Motion, the Amended Class Settlement Agreement, or the settlement contained therein (i) is not, may not be deemed to be, and may not be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, any fault, wrongdoing or liability of any Released Party or any other Person, or the truth of any future claim which has been or could have been asserted in this Litigation, and (ii) is not, may not be deemed to be, and may not be used as an admission of, or evidence of, any fault or omission of any Released Party or any other Person in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Without prejudice to the matters preserved under the Court's retained jurisdiction (¶ 50 below), the Released Parties may file the Agreed Motion, the Second Agreed Motion and/or the Judgment in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, claim-splitting, release, good faith settlement, judgment bar or reduction,

setoff, or any other theory of claim or issue preclusion or similar defense or counterclaim in any action, proceeding, or claim that may be brought against them by any Plaintiff/Class Representative, Member of one or both Settlement Classes, or Releasing Party.

49. The Court directs the entry of this Judgment finally adjudicating all the claims and all the parties' rights and liabilities.

50. Without affecting the finality of this Judgment and Order in any way, this Court hereby retains continuing jurisdiction over the implementation and enforcement of the terms of the settlement contained in the Second Agreed Motion and the Amended Class Settlement Agreement and over all parties to this Litigation for purposes of implementing, construing, enforcing and administering the settlement contained in the Second Agreed Motion, the Amended Class Settlement Agreement, and this Judgment and Order.

51. In the event that the settlement does not become effective in accordance with the terms of the Second Agreed Motion and the Amended Class Settlement Agreement, then this Judgment and Order will be rendered null and void to the extent provided by and in accordance with the Second Agreed Motion and the Amended Class Settlement Agreement and will be vacated. In such an event, all orders entered and releases delivered in connection herewith will be null and void to the extent provided by and in accordance with the Second Agreed Motion and the Amended Class Settlement Agreement.

IT IS SO ORDERED.

Dated: October 21, 2013.

BY THE COURT

Robert C. Jones
United States District Court Judge