

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

In re: Gold King Mine Release in San Juan
County, Colorado on August 5, 2015

No. 1:18-md-02824-WJ

This Document Relates to:

No. 1:16-cv-00465-WJ-LF

No. 1:16-cv-00931-WJ-LF

**CONSENT DECREE BETWEEN THE STATE OF NEW MEXICO, THE NAVAJO
NATION, SUNNYSIDE GOLD CORPORATION, KINROSS GOLD U.S.A., INC., AND
KINROSS GOLD CORPORATION**

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This Consent Decree is made and entered into by and between the State of New Mexico, and the New Mexico Environment Department (collectively “NM Plaintiffs”), and the New Mexico Office of the Natural Resources Trustee (“ONRT”) (NM Plaintiffs and ONRT collectively “New Mexico”), and the Navajo Nation (“Navajo Nation” as further defined below), on the one hand, and Sunnyside Gold Corporation (“SGC”), Kinross Gold Corporation (“KGC”), and Kinross Gold U.S.A., Inc. (“KGUSA”), on the other hand (collectively, the “Mining Defendants”).

I. BACKGROUND

A. NM Plaintiffs have made claims under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675 (“CERCLA”) against the Mining Defendants in the following litigation: *In re Gold King Mine Release in San Juan County, Colorado on August 5, 2015* (1:18-md-02824 (D.N.M.)) and *State of New Mexico v. USEPA, et al.* (1:16-cv-00465 (D.N.M.)) (“NM Litigation”) consolidated with 1:16-cv-00931 (D.N.M.), which litigation arose from the release that occurred on August 5, 2015 at the Gold King Mine (“Gold King Blowout” as further defined below).

B. Navajo Nation has similarly made claims under CERCLA against the Mining Defendants in the following litigation: *In re Gold King Mine Release in San Juan County, Colorado on August 5, 2015* (1:18-md-02824 (D.N.M.)) and *Navajo Nation v. USEPA, et al.* (1:16-cv-00931 (D.N.M.)) (“NN Litigation”) consolidated with 1:16-cv-00465 (D.N.M.), which litigation also arose from the Gold King Blowout (such litigation, together with the NM Litigation, the “Litigation”)

C. The above-described CERCLA claims by NM Plaintiffs and Navajo Nation are under Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a), and 9613(g)(2), in

connection with the release or threatened release of hazardous substances as alleged in the Litigation.

D. SGC has made counterclaims under CERCLA for cost recovery and contribution against NM Plaintiffs in the NM Litigation.

E. New Mexico and the Mining Defendants have entered into a Settlement Agreement dated January 7, 2021 with respect to the NM Litigation (“NM Settlement Agreement”), and such NM Settlement Agreement provides that New Mexico and the Mining Defendants will enter into a consent decree with respect to those CERCLA Response Cost and Natural Resource Damages claims resolved by the NM Settlement Agreement, and that the Navajo Nation will also be a party to such consent decree upon the request of the Mining Defendants. The NM Settlement Agreement also provides that the Court will retain jurisdiction to resolve any disputes between New Mexico and the Mining Defendants, subject to the terms therein.

F. Navajo Nation and the Mining Defendants have entered into a Settlement Agreement dated December 31, 2020 with respect to the NN Litigation (“NN Settlement Agreement”), and such NN Settlement Agreement provides that Navajo Nation and the Mining Defendants will enter into a consent decree with respect to CERCLA Response Costs, and that New Mexico will also be a party to such consent decree upon the request of the Mining Defendants. The NN Settlement Agreement also provides that the Court will retain jurisdiction to resolve any disputes between Navajo Nation and the Mining Defendants, subject to the terms therein.

G. This Consent Decree is the consent decree provided for in the NM Settlement Agreement and the NN Settlement Agreement.

H. The Mining Defendants do not admit any liability to New Mexico or Navajo

Nation arising out of the transactions or occurrences alleged in the NM Litigation and the NN Litigation. New Mexico does not admit any liability to the Mining Defendants in the NM Litigation. The form of this Consent Decree is unique to the specific circumstances involved, and is not precedent for any other consent decree.

I. New Mexico, Navajo Nation, and Mining Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that this Consent Decree in connection with settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). Solely for the purposes of this Consent Decree, Mining Defendants waive all objections and defenses that any of them may have to subject matter jurisdiction of, personal jurisdiction of, or venue in this Court.

III. PARTIES BOUND

2. This Consent Decree is binding upon New Mexico and Navajo Nation, and upon Mining Defendants and their respective successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, will in no way alter the status or responsibilities of Mining Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this



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