

**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. 16-cv-465-WJ/LF)

No. 16-cv-931-WJ/LF)

No. 18-cv-319-WJ)

No. 18-cv-744-WJ)

CONSENT DECREE

**TABLE OF
CONTENTS**

I.	BACKGROUND	1
II.	JURISDICTION	4
III.	PARTIES BOUND	4
IV.	DEFINITIONS.....	4
V.	STATEMENT OF PURPOSE	11
VI.	PAYMENTS	11
VII.	FAILURE TO COMPLY WITH CONSENT DECREE	13
VIII.	COVENANTS BY PLAINTIFFS.....	15
IX.	COVENANTS AND WAIVERS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES.....	18
X.	RESERVATIONS OF RIGHTS BY PARTIES	20
XI.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION	22
XII.	PROPERTY PROVISIONS.....	24
XIII.	RETENTION OF RECORDS.....	28
XIV.	NOTICES AND SUBMISSIONS.....	30
XV.	RETENTION OF JURISDICTION.....	32
XVI.	INTEGRATION	33
XVII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	33
XVIII.	SIGNATORIES/SERVICE.....	33
XIX.	FINAL JUDGMENT	34

I. BACKGROUND

A. The United States (as defined below) filed crossclaims (“USA MDL Crossclaims” as defined below) against the Sunnyside Gold Corporation (“SGC” as defined below) and the Kinross Gold Corporation (“KGC” as defined below) alleging claims under Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9607(a), and 9613(g)(2), and seeking reimbursement of, or contribution towards, response costs incurred or to be incurred for response actions taken or to be taken by the United States in connection with the release or threatened release of hazardous substances at the Bonita Peak Mining District Superfund Site located in San Juan County, Colorado (“Site” as defined below).

B. In accordance with section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), and section 300.520(a) of the National Contingency Plan, 40 C.F.R. Part 300.520(a), the United States notified the State of Colorado (“State” as defined below) on behalf of the United States Environmental Protection Agency (“EPA” as defined below) of negotiations with SGC and KGC as potentially responsible parties, and provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

C. The State submits to the jurisdiction of this Court solely for the purposes of this Consent Decree. By this Consent Decree, the State intends to resolve potential claims against SGC and KGC for reimbursement of response costs incurred or to be incurred for response actions taken or to be taken by the State in connection with the release or threatened release of hazardous substances at the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

D. SGC and KGC (the “Settling Defendants” as defined below) do not admit any liability to the United States arising out of the transactions or occurrences alleged in the USA

MDL Crossclaims or to the State regarding potential claims stated in the preceding paragraph. Settling Federal Agencies (as defined below) do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim or crossclaim asserted by Settling Defendants.

E. The EPA and SGC entered into an Administrative Settlement Agreement and Order on Consent for Remedial Investigation (“AOC” as defined below) filed May 11, 2017, with respect to the Mayflower Impoundments Area (as defined below), which is located within the Site.

F. On March 15, 2018, EPA issued a Unilateral Administrative Order for Remedial Investigation (“UAO” as defined below) to SGC with respect to Operable Unit 3 within the Site. On April 16, 2018, EPA issued a First Modification to the UAO. On June 7, 2019, EPA modified the Statement of Work, Work Plan, and Field Sampling Plan associated with the initial UAO. SGC ultimately declined to perform the work ordered in the modified UAO, advising EPA of its position in SGC’s Record of Position Memorandum (July 9, 2019).

G. On September 3, 2020, EPA issued an Administrative Order Directing Compliance with Request for Access (“AO” as defined below) to SGC with respect to EPA’s and the State’s access to the Mayflower Impoundments Area (as defined below).

H. On May 8, 1996, the District Court for the City and County of Denver, State of Colorado, approved and entered a Consent Decree between SGC and CWQCD (as defined below) in Sunnyside Gold Corporation v. Colorado Water Quality Control Division, Colorado Department of Public Health and the Environment, No. 94 CV 5459, (“CWQCD Consent Decree” as defined below), which resolved litigation related to the State’s Water Quality Control Act, C.R.S. § 25-8-101 *et seq.* Pursuant to the terms of the CWQCD Consent Decree, SGC

performed environmental reclamation actions on both SGC-owned and third-party property within the Site by July 3, 2003, the date the CWQCD filed its Notice of Termination of Court's Jurisdiction.

I. The United States, SGC, KGC, and Kinross Gold U.S.A., Inc. ("KGUSA" as defined below) are defendants in certain litigation that has been centralized through the multi-district litigation process in the United States District Court for the District of New Mexico ("MDL Litigation" as defined below). The United States, SGC, KGC, and KGUSA each deny that jurisdiction exists over them in the MDL Litigation. The United States has filed the USA MDL Crossclaims against SGC and KGC in the MDL Litigation, and SGC has filed counterclaims against the United States in the MDL Litigation ("SGC MDL Counterclaims" as defined below). The United States, SGC, KGC, and KGUSA have all denied liability in the MDL Litigation, including with respect to the USA MDL Crossclaims and SGC MDL Counterclaims. The form of this Consent Decree is unique to the specific circumstances involved, including the MDL Litigation, the USA MDL Crossclaims, the SGC MDL Counterclaims, and the CWQCD Consent Decree, and is not precedent for any other consent decree.

J. SGC intends to actively identify and work with third party prospective purchaser(s) to Transfer the SGC Property ("Transfer" and "SGC Property" as defined below). EPA and the State intend to support any Transfer by addressing a prospective purchaser's CERCLA liability concerns through the use of enforcement tools, as appropriate. EPA and the State are currently implementing response actions at the SGC Property. EPA and the State may perform additional response actions at the SGC Property in the future. SGC will not interfere with or impede EPA's or the State's performance of response actions at the Site, nor do the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.