

**IN THE 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. 1:18-cv-00319-WJ*

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**CONSENT DECREE  
BETWEEN THE STATE OF UTAH AND SUNNYSIDE GOLD CORPORATION,  
KINROSS GOLD CORPORATION AND KINROSS GOLD U.S.A., INC.**

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This Consent Decree is made and entered into by and between the State of Utah (including each of its departments, agencies, and instrumentalities, including State of Utah Natural Resource Trustees) (“Utah”), 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”(individually referred to as a “Party” and together as the “Parties”).

## I. BACKGROUND

A. Utah has made claims under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.* (“CERCLA”) arising from the alleged release or threatened release of hazardous substances as alleged in Utah’s First Amended Complaint (as defined below) against the Mining Defendants in the following litigation: *State of Utah v. Environmental Restoration, LLC, et al.* (2:17-cv-00866-TS (D. Utah)). This case was transferred for Multi-District Litigation proceedings in *In re Gold King Mine Release in San Juan County, Colorado on August 5, 2015* (1:18-md-02824 (D.N.M.)) in the United States District Court for the District of New Mexico by an April 4, 2018 Transfer Order issued by the United States Panel on Multi-District Litigation as MDL Case No. 2824 (“Litigation”).

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

C. SGC has made counterclaims under CERCLA for cost recovery and contribution against Utah in the Litigation.

D. The Parties have entered into a Settlement Agreement dated March 4, 2021 regarding the Litigation (“Settlement Agreement”), and such Settlement Agreement provides that the Parties will enter into a consent decree with respect to each Parties’ claims under CERCLA. The Settlement Agreement also provides that the Court will retain jurisdiction to resolve any

disputes between the Parties, subject to the terms therein.

E. This Consent Decree is the consent decree provided for in the Settlement Agreement.

F. The Parties do not admit any liability to the other in the Litigation. The form of this Consent Decree is unique to the specific circumstances involved, and is not precedent for any other consent decree.

G. The Parties 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:**

**I. 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.

**II. PARTIES BOUND**

2. This Consent Decree is binding upon the Parties 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 the Parties under this Consent Decree.

**III. DEFINITIONS**

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA will

have the meaning assigned to them in CERCLA or in such regulations. All other words will be assigned their normal meaning. Whenever terms listed below are used in this Consent Decree, the following definitions will apply:

- A. "Consent Decree" means this Consent Decree;
- B. "Court" means the United States District Court for the District of New Mexico presiding over *In re Gold King Mine Release in San Juan County, Colorado on August 5, 2015* (1:18-md-02824 (D.N.M.));
- C. "Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period will run until the close of business of the next working day;
- D. "Effective Date" means 30 Days from the date that this Court enters the Consent Decree, unless an appeal of the entry of judgment is filed during the 30-Day period; if an appeal is taken, the Effective Date means the date on which the Court's judgment is affirmed;
- E. "EPA" means the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities;
- F. "First Amended Complaint" means the First Amended Complaint filed by Utah on January 4, 2018 in the Litigation;
- G. "Mining Defendants' Related Parties" means: (i) Mining Defendants' successors and assigns but only to the extent that the liability of such person or entity is based on the liability of Mining Defendants; (ii) Mining Defendants' former or current officers, directors and employees, but only to the extent that the liability of any such person is based on acts and/or omissions which occurred in the scope of the person's employment or capacity as an officer, director, and employee; (iii) affiliates of Mining

Defendants (“Mining Defendants’ Affiliates”); (iv) Mining Defendants’ Affiliates’ successors and assigns, but only to the extent that the liability of such person or entity is based on the liability of Mining Defendants’ Affiliates; and (v) Mining Defendants’ Affiliates’ former or current officers, directors and employees, but only to the extent that the liability of such person is based on acts and/or omissions which occurred in the scope of the person's employment or capacity as an officer, director, and employee;

H. “Paragraph” means a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter;

I. “Section” means a portion of this Consent Decree identified by a Roman numeral;

J. “Site” means for purposes of this Consent Decree the Bonita Peak Mining District Superfund Site in San Juan County, Colorado, EPA Docket ID No. EPA-HQ-OLEM-2016-0152, as published in the Federal Register on September 9, 2016, 81 Fed. Reg. 62397.

#### **IV. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is to effectuate the provisions of the Settlement Agreement with respect to the consent decree referenced therein, and for the Parties to resolve their alleged and respective civil CERCLA liability, and the CERCLA liability of Mining Defendants’ Related Parties, consistent with how such alleged liability is addressed in the Settlement Agreement, as provided in the covenants by Utah in Section VII, and as provided in the covenants by Mining Defendants in Section VIII, subject to the Reservation of Rights by the Parties in Section IX. With respect to such alleged liability, subject to the terms and conditions herein, this Consent Decree is intended to provide finality and the broadest protection afforded by law to the Parties and Mining Defendants’

Related Parties.

## V. PAYMENT

5. Payment by Mining Defendants. The Mining Defendants' payment to Utah shall be paid as provided in the Settlement Agreement. The amount for CERCLA claims is One Million Dollars (\$1,000,000.00).

## VI. COVENANTS BY UTAH

6. Covenants by Utah. Except as specifically provided in Paragraph 8 (General Reservation of Utah Rights), Utah covenants not to sue or to take administrative action against Mining Defendants or Mining Defendants' Related Parties for all civil claims under CERCLA that were, could now be, or could hereafter be asserted with regard to the events or circumstances described or alleged in the First Amended Complaint.

## VII. COVENANTS BY MINING DEFENDANTS

7. Covenants by Mining Defendants. Except as specifically provided in Paragraph 10 (General Reservation of Mining Defendants' Rights), Mining Defendants covenant not to sue and agree not to assert any claims or causes of action against Utah for all claims under CERCLA that were, could now be, or could hereafter be asserted with regard to the events or circumstances described or alleged in the First Amended Complaint, including but not limited to SGC's counterclaims against Utah in the Litigation.

## VIII. RESERVATIONS OF RIGHTS BY PARTIES

8. General Reservations of Utah's Rights. Utah reserves, and this Consent Decree is without prejudice to all rights against Mining Defendants and Mining Defendants' Related Parties with respect to all matters not expressly included within Paragraph 6 (Covenants by Utah). Notwithstanding any other provision of this Consent Decree, Utah reserves, and this Consent Decree is without prejudice to, all rights against Mining Defendants and Mining

Defendants' Related Parties, with respect to:

- a. liability for failure of Mining Defendants to meet a requirement of this Consent Decree;
- b. criminal liability; and
- c. claims and rights of Utah reserved under the Settlement Agreement;

9. Notwithstanding any other provision of this Consent Decree, Utah specifically reserves the ability and right to assert claims and defenses against any parties in the Litigation other than the Mining Defendants.

10. General Reservations of Mining Defendants' Rights. The Mining Defendants reserve, and this Consent Decree is without prejudice to, all rights against Utah with respect to all matters not expressly included within Paragraph 7 (Covenants by Mining Defendants).

Notwithstanding any other provision of this Consent Decree, the Mining Defendants reserve, and this Consent Decree is without prejudice to, all rights against Utah with respect to:

- a. liability for failure of Utah to meet a requirement of this Consent Decree; and
- b. claims and rights of the Mining Defendants reserved under the Settlement Agreement.

11. Notwithstanding any other provision of this Consent Decree, the Mining Defendants specifically reserve the ability and right to assert claims and defenses against any parties in the Litigation other than Utah.

#### **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

12. Except as provided in Paragraphs 4, 6, 13 and 14 as applicable to Mining Defendants' Related Parties, nothing in this Consent Decree will be construed to create any rights in, or grant any cause of action to, any person or entity not a Party to this Consent Decree. Except as provided in Section VII (Covenants by Utah) and Section VIII (Covenants by Mining



Defendants), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any party who is not a Party to this Consent Decree. Nothing in this Consent Decree diminishes the right of Utah, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2); provided, however, that nothing in this Paragraph 12 affects: (a) the enforceability of the covenants by Utah set forth in Paragraph 6 (Covenants by Utah), (b) Utah's reserved rights set forth in Paragraph 8 (General Reservations of Utah's Rights) and Paragraph 9, or (c) the Mining Defendants' reserved rights set forth in Paragraph 10 (General Reservation of Mining Defendants' Rights) and Paragraph 11.

13. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Mining Defendant and Mining Defendants' Related Party, as of the Effective Date, resolved liability to Utah within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are any liability of Mining Defendants and Mining Defendants' Related Parties arising from all claims under CERCLA that were, could now be, or could hereafter be asserted with regard to the events or circumstances described or alleged in the First Amended Complaint. The contribution protection set forth in this Paragraph is intended to provide the broadest protection afforded by CERCLA or state law or otherwise for "matters addressed" in this Consent Decree.

14. The Parties further agree, and by entering this Consent Decree this Court finds, that the Litigation is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Mining Defendant, and each Mining Defendants' Related Party, has, as of the Effective Date, resolved liability to Utah within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

#### **X. NOTICES**

15. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it will be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

##### **As to Utah by email:**

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**XI. RETENTION OF JURISDICTION**

16. This Court will retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree. This Court will also retain jurisdiction over the Settlement Agreement, subject to the terms therein.

**XII. INTEGRATION**

17. Subject to the Settlement Agreement, this Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the matters in this Consent Decree. Subject to the Settlement Agreement, the Parties acknowledge

that there are no representations, agreements, or understandings relating to the matters in this Consent Decree other than those expressly contained in this Consent Decree.

**XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

18. This Consent Decree will be lodged with the Court for a period of at least 30 Days for public notice and comment.

19. If for any reason this Court should decline to approve this Consent Decree in the form presented, the Parties agree to cooperate in an effort to revise this Consent Decree to address the reason(s) provided by the Court in declining to approve. If subsequent Court approval is not obtained despite such effort, the Parties agree to rely on the Settlement Agreement to govern their settlement, including any CERCLA-related provisions therein.

**XIV. SIGNATORIES**

20. Each undersigned representative of a Party certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

**XV. FINAL JUDGMENT**


21. Upon entry of this Consent Decree by the Court, this Consent Decree will constitute the final judgment between and among the Parties with respect to the matters in this Consent Decree. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.

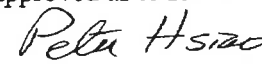
\_\_\_\_\_  
The Honorable \_\_\_\_\_  
United States District Judge

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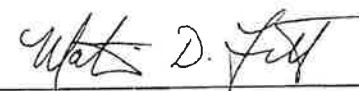
**STATE OF UTAH ex rel. Spencer E. Austin, Chief Criminal Deputy, OFFICE OF THE ATTORNEY GENERAL for the State of Utah**

By:   
Dated: 3-5-21


Approved as to form:

  
Peter Hsiao  
King & Spalding LLP  
Counsel for Utah

**SUNNYSIDE GOLD CORPORATION**

By:   
Dated: 3-8-21


Approved as to form:

  
Neil G. Westesen  
Crowley Fleck, PLLP  
Counsel for SGC

**KINROSS GOLD CORPORATION**

By:   
Dated: March 8, 2021

Approved as to form:

  
Bradford C. Berge  
Holland & Hart LLP  
Counsel for KGC and KGUSA

**KINROSS GOLD U.S.A., INC.**

By:           *Walt D. Felt*          

Dated: 3-8-21

Approved as to form:

          *Bradford C. Berge*          

Bradford C. Berge  
Holland & Hart LLP  
Counsel for KGC and KGUSA