

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

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IN RE: GOLD KING MINE RELEASE  
IN SAN JUAN COUNTY, COLORADO  
ON AUGUST 5, 2015

*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*

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No. 1:18-md-02824-WJ

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**CONSENT DECREE**

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## **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

Parties expect SGC to perform any response actions itself. KGC asserts that it does not have any property interest in the SGC Property or elsewhere in the Site.

K. The United States, the State, and Settling 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 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, 1367, and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). Solely for the purposes of this Consent Decree, Settling Defendants waive all objections and defenses that any of them may have to subject matter or personal jurisdiction of this Court or to venue in this District. Settling Defendants will not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and the State, and upon Settling Defendants and their respective successors and assigns. Except as provided in Paragraph 38, 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 Settling Defendants under this Consent Decree.

## **IV. 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:

“Affiliate” will mean any entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the subject entity or entities;

“AO” will mean the Administrative Order Directing Compliance with Request for Access issued by EPA to SGC on September 3, 2020, including all appendices thereto;

“AOC” will mean the Administrative Settlement Agreement and Order on Consent for Remedial Investigation between the EPA and SGC, filed May 11, 2017, with respect to the Mayflower Impoundments Area, and all subsequent amendments or modifications thereto;

“BLM” will mean the U.S. Department of the Interior’s Bureau of Land Management and any successor departments, agencies, or instrumentalities;

“CERCLA” will mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675;

“Consent Decree” will mean this Consent Decree;

“Continuation of Existing Migration” will mean, with respect to a Settling Defendant or a Settling Defendant Affiliate, the movement or release of contamination in connection with the Site that is not caused by the future actions of such Settling Defendant or a Settling Defendant Affiliate, and with respect to a Settling Federal Agency, the movement or release of contamination in connection with the Site that is not caused by the future actions of such Settling Federal Agency, and in each case occurring after Settling Defendants’ signature of the Consent

Decree;

“CWA” will mean the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. §§ 1251-1387, as amended by the Oil Pollution Act of 1990;

“CWQCD” will mean the Water Quality Control Division of the Colorado Department of Public Health and the Environment;

“CWQCD Consent Decree” will mean the Consent Decree approved and entered on May 8, 1996, by the District Court for the City and County of Denver, State of Colorado between SGC and the CWQCD in Sunnyside Gold Corporation v. Colorado Water Quality Control Division, Colorado Department of Public Health and the Environment, No. 94 CV 5459, and its four amendments approved and entered April 14, 1997, January 4, 1999, October 13, 2000, and December 6, 2002, including all appendices thereto;

“Day” will mean 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;

“DOI” will mean the U.S. Department of the Interior and any successor departments, agencies, or instrumentalities;

“DOJ” will mean the U.S. Department of Justice and any successor departments, agencies, or instrumentalities;

“Echo Bay Exploration Inc.” will mean Echo Bay Exploration, Inc., a Delaware corporation and an Affiliate of SGC;

“Echo Bay Inc.” will mean Echo Bay Inc., a Delaware corporation and the direct corporate owner of SGC;

“Echo Bay Management Corporation” will mean Echo Bay Management Corporation, a

Delaware corporation and an Affiliate of SGC;

“Effective Date” will mean 60 Days from the date that this District Court enters the Consent Decree, unless an appeal of the entry of judgment is filed during the 60-day period; if an appeal is taken, the Effective Date will mean the date on which the District Court’s judgment is affirmed;

“EPA” will mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities;

“EPA Hazardous Substance Superfund” will mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507;

“Federal Natural Resource Trustees” will mean, among others, DOI and the U.S. Forest Service;

“Interest” will mean the London Interbank Offered Rate on the Effective Date plus 4%;

“KGC” will mean Kinross Gold Corporation, an Ontario, Canada corporation, including its capacity as the surviving entity from its 2006 amalgamation with Echo Bay Mines, Ltd.;

“KGUSA” will mean Kinross Gold U.S.A., Inc., a Nevada corporation;

“Mayflower Impoundments Area” will have the same meaning as the “Mayflower Tailings” as defined in the AOC;

“MDL Court” will mean the New Mexico federal district court presiding over the MDL Litigation;

“MDL Litigation” will mean the Multidistrict Litigation matters centralized in the District of New Mexico for pretrial proceedings, pursuant to the Transfer Order by the

United States Judicial Panel on Multidistrict Litigation, *In Re: Gold King Mine Release in San Juan County, Colorado, on August 5, 2015*, MDL No. 2824. MDL Litigation includes those matters with individual docket numbers 16-cv-465-WJ-LF; 16-cv-931-WJ-LF; 18-cv-319-WJ; 18-cv-744-WJ;

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

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

“Parties” will mean the United States, the State, and the Settling Defendants;

“RCRA” will mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act);

“Section” will mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” will mean the Sunnyside Gold Corporation (“SGC”) and the Kinross Gold Corporation (“KGC”);

“Settling Defendants’ Related Parties” will mean: (i) Settling Defendants’ successors and assigns, and estates, but only to the extent that the liability of such person or entity is based on the liability of Settling Defendants; (ii) Settling 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; and (iii) the following Affiliates of Settling Defendants: Echo Bay Inc., KGUSA, White Pine Gold Corporation, Echo Bay Management Corporation, and Echo Bay Exploration Inc. and their successors and assigns but only to the extent the liability of these

entities, and their successors and assigns, relates to the Site or their capacity as an Affiliate of Settling Defendants;

“Settling Federal Agencies” will mean EPA, DOI, and the United States Department of Agriculture, on behalf of the United States Forest Service, and their successor departments, agencies, or instrumentalities;

“SGC” will mean Sunnyside Gold Corporation, a Delaware corporation;

“SGC MDL Counterclaims” will mean collectively any and all counterclaims, crossclaims, or other claims by SGC against the United States included in any pleading in the MDL Litigation including claims for Due Process violations, common law contribution, and those brought under CERCLA sections 107(a) for cost recovery, 113(g)(2) for future costs, 113(f)(3)(B) for contribution, and any claim under section 113(f)(1) for contribution;

“SGC Property” will mean real property currently owned by SGC within the Site, excluding the house and lot owned by SGC located at 1751 Mineral Street, Silverton, CO 81433;

“Site” will mean 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. The definition for this Site will be construed to include all areas of the Site ever defined or described by EPA for purposes of or in relation to the National Priorities List, 40 C.F.R. Part 300, including any further expansion of such Site as may in the future be determined by EPA;

“Special Account” will mean the site-specific special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3);

“State” will mean the State of Colorado and each of its departments, agencies, and

instrumentalities, including the CWQCD;

“State Natural Resource Trustees” will mean the Colorado Attorney General and the executive directors of Colorado’s Department of Public Health and the Environment and Department of Natural Resources;

“Transfer” will mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise. “Transferred,” “Transferring” and “Transferee” will have the corresponding meaning;

“UAO” will mean the Unilateral Administrative Order for Remedial Investigation issued by EPA to SGC on March 15, 2018, including all appendices thereto, with respect to Operable Unit 3 within the Site, as modified by its First Modification issued April 16, 2018, and the June 7, 2019 modifications of the Statement of Work, Work Plan, and Field Sampling Plan;

“United States” will mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, DOI, BLM, USDA, and USFS;

“USA MDL Crossclaims” will mean collectively all crossclaims or other claims by the United States against SGC, KGC, or KGUSA included in any pleading in the MDL Litigation, including common law contribution and those claims brought under CERCLA sections 107(a) for cost recovery, 113(g)(2) for future costs, and any claim under section 113(f)(1) for contribution;

“USDA” will mean the United States Department of Agriculture, and its successor departments, agencies, or instrumentalities;

“USFS” will mean the USDA Forest Service and its successor departments, agencies, or instrumentalities; and

“White Pine Gold Corporation” will mean White Pine Gold Corporation, a Delaware corporation and an Affiliate of SGC.

## **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants and Settling Federal Agencies each to make a cash payment to resolve finally their alleged civil liability, and the liability of Settling Defendants’ Related Parties, with regard to the Site under CERCLA, CWA, and RCRA as provided in the Covenants by Plaintiffs in Section VIII, subject to the Reservations of Rights by United States and the State in Section X, and as provided in the Covenants by Settling Defendants in Section IX and the Effect of Settlement/Contribution Protection in Section XI.

## **VI. PAYMENTS**

5. Payments by Settling Defendants to the United States. Within 30 days after the Effective Date, SGC will make payment in the amount of \$40,950,000. If SGC does not make full payment within the time specified, KGC will make the full payment, including Interest pursuant to Paragraph 10, within five Days of such due date. Settling Defendants will make payment at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (“FLU”) of the U.S. Attorney's Office for the District of Colorado. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which will be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Name: Crowley Fleck PLLP c/o Brian Holland  
Address: 65 East Broadway Street, Suite 400, Butte MT 59701  
Phone: (406) 221-2428  
Email: [bholland@crowleyfleck.com](mailto:bholland@crowleyfleck.com)

Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ in accordance with Section XIV (Notices and Submissions).

6. Deposit of Payment. The total amount to be paid pursuant to Paragraph 5 will be deposited by EPA in the Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred to appropriate federal accounts.

7. Notice of Payment. At the time of any payment required under Paragraph 5, Settling Defendants will send notice that payment has been made to DOJ, EPA, USDA, and DOI in accordance with Section XIV (Notices and Submissions). Such notice will reference the CDCS Number, Site ID Number A8M5, and DJ Number 90-11-3-1176.

8. Payment by Settling Defendants to the State. Within 30 days after the Effective Date, SGC will pay to the State \$4,050,000 either: by official bank check made payable to Colorado Department of Public Health and Environment and shall reference Bonita Peak Mining District – KGC / SGC; or by other means agreed to by the Settling Defendants and the State. If SGC does not make full payment within the time specified, KGC will make the full payment, including Interest pursuant to Paragraph 10, within five Days of such due date. If paying by bank check, Settling Defendants will send the bank check to:

Colorado Department of Public Health and Environment  
HMWMD, Attn: Jessica Hubbard, B2  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

9. Payments by Settling Federal Agencies.

a. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, will make payment in the amount of \$45,000,000

to appropriate federal accounts.

b. Interest. In the event that any payment required by Paragraph 9.a is not made within 120 days after the Effective Date, the United States, on behalf of Settling Federal Agencies, will pay Interest on the unpaid balance, with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.

c. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree will be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

## **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

10. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraphs 5 or 8 by the required due date, Interest will accrue on the unpaid amount starting from the Effective Date through the date of payment. Settling Defendants are jointly and severally liable for Interest due under any provision of this Consent Decree.

11. Stipulated Penalty.

a. If any amounts due to the United States under Paragraph 5 or due to the State under Paragraph 8 are not paid by the required date, Settling Defendants will be in violation of this Consent Decree and will pay, as a stipulated penalty, in addition to the Interest required by Paragraph 10 (Interest on Late Payments), \$1,000 per each Day that such payment is late. Settling Defendants are jointly and severally liable for any stipulated penalty due under any provision of this Consent Decree, except that SGC alone is liable for penalties under Paragraph

11.b.

b. If SGC does not comply with Paragraph 36 (Agreements Regarding Access and Non-Interference), SGC shall be in violation of this Consent Decree and shall pay to the United States, as a stipulated penalty, \$1,000 per violation per day of such noncompliance.

c. Stipulated penalties are due and payable within 30 Days after the date of the demand for payment of the penalties by the United States or the State. All payments to the United States under this Paragraph will be identified as “Stipulated Penalties” and will be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the FLU of the U.S. Attorney’s Office for the District of Colorado, noting the DJ number 90-11-3-11676. All payments to the State under this Paragraph will be identified as “Stipulated Penalties” and will be made in accordance with payment instructions set forth in Paragraph 8 above.

d. At the time of payment, Settling Defendants will send notice that payment has been made to DOJ as provided in Paragraph 7 (Notice of Payment).

e. Penalties will accrue as provided in this Paragraph 11 regardless of whether the United States or the State has notified Settling Defendants of the violation or made a demand for payment, but penalties need only be paid upon demand. All penalties will begin to accrue on the Day after payment or performance is due and will continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing in this Consent Decree will prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

12. If the United States or the State brings an action to enforce this Consent Decree and is the prevailing party, Settling Defendants will reimburse the United States or the State, as

applicable, for all costs of such action, including but not limited to costs of attorney time.

13. The obligations of Settling Defendants to pay amounts owed to the United States and the State under this Consent Decree are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendants will be responsible for such payments. This Paragraph shall not apply to penalties under Paragraph 11.b.

14. Payments made under this Section will be in addition to any other remedies or sanctions available to the United States by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

15. Notwithstanding any other provision of this Section, the United States or the State may, in their unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties will not excuse Settling Defendants from payment as required by Paragraph 5 (Payments by Settling Defendants to the United States) or Paragraph 8 (Payments by Settling Defendants to the State) or from performance of any other requirements of this Consent Decree.

#### **VIII. COVENANTS BY PLAINTIFFS**

16. Covenants for Settling Defendants by United States. Except as specifically provided in Paragraph 27 (General Reservations of the United States' and the State's Rights), the United States covenants: (a) not to sue or to take administrative action against Settling Defendants pursuant to Sections 106, 107(a), and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and 9613, with regard to the Site; (b) not to sue or to take administrative action against Settling Defendants pursuant to Section 3008 and 7003 of RCRA, 42 U.S.C. §§ 6928 and 6973, in connection with the Site; (c) not to sue or to take administrative action against SGC relative to

the AO, AOC, or UAO and to terminate the AO, AOC, and UAO and release SGC from all liabilities with respect thereto; and (d) not to sue or to take administrative action against Settling Defendants pursuant to Section 309 and 311 of the CWA, 33 U.S.C. §§ 1319 and 1321, in connection with the Site.

17. The United States further covenants to: (a) make the necessary stipulated dismissal filing in the MDL Litigation within 40 Days of the Effective Date, conditioned upon the satisfactory performance by Settling Defendants of their obligations to make payments pursuant to Paragraph 5 (Payments by Settling Defendants to the United States) and Paragraph 8 (Payments by Settling Defendants to the State) under this Consent Decree; (b) request the MDL Court issue an order dismissing with prejudice the USA MDL Crossclaims; provided, however, that if the MDL Court does not issue such order of dismissal, then the United States covenants to consult with counsel for SGC and KGC for purposes of determining how to effectuate dismissal of the USA MDL Crossclaims, and until such dismissal not to take any action in furtherance of the USA MDL Crossclaims; and (c) forego future discovery regarding the USA MDL Crossclaims in the MDL Litigation.

18. Covenants for Settling Defendants by the State. Except as specifically provided in Paragraph 27 (General Reservations of the United States' and the State's Rights), the State covenants: (a) not to sue or to take administrative action against Settling Defendants pursuant to Sections 107(a) of CERCLA, 42 U.S.C. § 9607(a), or Title 25, Article 16, Part 1 of the Colorado Revised Statutes, with regard to the Site; (b) not to sue or to take administrative action against Settling Defendants pursuant to Title 25, Article 15, Part 3 of the Colorado Revised Statutes or Title 30, Article 20, Part 1 of the Colorado Revised Statutes, in connection with the Site; and (c) not to sue or to take administrative action against Settling Defendants pursuant to Section 309 of

the CWA, 33 U.S.C. § 1319, or Title 25, Article 8, Part 6 of the Colorado Revised Statutes, or the CWQCD Consent Decree, in connection with the Site.

19. All covenants in Paragraphs 16, 17, and 18 will take effect upon the Effective Date. All covenants in Paragraphs 16, 17, and 18 are conditioned upon the satisfactory performance by Settling Defendants of their obligations to make payments pursuant to Paragraph 5 (Payments by Settling Defendants to the United States) or Paragraph 8 (Payments by Settling Defendants to the State) under this Consent Decree. Except as provided in this Paragraph 19, all of the foregoing covenants extend only to Settling Defendants and do not extend to any other person. The covenants not to sue in Paragraphs 16 and 18 (and the reservations thereto), however, will also apply to Settling Defendants' Related Parties provided however, that, subject to Paragraph 32, should any of Settling Defendants' Related Parties assert claim(s) against the United States for any "matters addressed" under this Consent Decree, the covenants in Paragraphs 16 and 18 will, as to that party, be null and void.

20. Covenants for DOI, EPA, and USDA. Except as specifically provided in Section X (Reservation of Rights by Parties), EPA, DOI, and USDA covenant not to take administrative action against another Settling Federal Agency, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. The State covenants not to sue or take administrative action against Settling Federal Agencies, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and Title 25, Article 16, Part 1 of the Colorado Revised Statutes, with regard to the Site. These covenants will take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. These covenants extend only to Settling Federal Agencies and do not extend to any other person.

**IX. COVENANTS AND WAIVERS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES**

21. Covenants by Settling Defendants. Except as specifically provided in Paragraph 29 (General Reservations of Settling Defendants' Rights) and Paragraph 30, Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, in connection with the Site and this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Colorado Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or
- c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), under Section 311, 504 and 505 of the CWA, 33 U.S.C. §§ 1321, 1364 and 1365, or state law relating to the Site.

22. SGC also covenants to: (a) make the necessary stipulated dismissal filing in the MDL Litigation within 40 Days of the Effective Date; (b) request the MDL Court issue an order dismissing with prejudice the SGC MDL Counterclaims; provided, however, that if the MDL Court does not issue such order of dismissal, then SGC covenants to consult with counsel for United States for purposes of determining how to effectuate dismissal of the SGC MDL Counterclaims, and until such dismissal not to take any action in furtherance of the SGC MDL Counterclaims; and (c) forego future discovery regarding the SGC MDL Counterclaims in the MDL Litigation.

23. Covenant by Settling Federal Agencies. Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under National Contingency Plan.

24. Except as provided in Paragraph 26 (Waiver of Claims by Settling Defendants) and Paragraph 35 (res judicata and other defenses), the covenants in this Section shall not apply in the event the United States or the State bring a cause of action or issue an order pursuant to any of the reservations in Section X (Reservations of Rights by Parties), other than in Paragraph 27.a (liability for failure to meet a requirement of the Consent Decree) or 27.b (criminal liability), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

25. Nothing in this Consent Decree will be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

26. Waiver of Claims by Settling Defendants. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim,

or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any defense, claim, or cause of action that a Settling Defendant may have against any person other than the United States, if any such person was a party to a contract with SGC or an Affiliate of SGC and refuses or fails upon request of SGC to agree that such person will not assert a claim or cause of action relating to the Site against SGC or any Affiliate of SGC, or such person asserts such a claim or cause of action against SGC or any Affiliate of SGC.

## **X. RESERVATIONS OF RIGHTS BY PARTIES**

27. General Reservations of the United States' and the State's Rights. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants and Settling Defendants' Related Parties, and EPA, the Federal Natural Resource Trustees, and the State Natural Resource Trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all matters not expressly included within Paragraphs 16 (Covenants for Settling Defendants by United States) , 18 (Covenants for Settling Defendants by the State), and 20 (Covenants for DOI, EPA, and USDA). Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants and Settling Defendants' Related Parties, and EPA, the Federal Natural Resource Trustees, and the State Natural Resource Trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies with respect to:

- a. liability for failure of Settling Defendants or Settling Federal Agencies to meet a requirement of this Consent Decree;
- b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability based on the ownership or operation of the Site by Settling Defendants or Settling Federal Agencies when such ownership or operation commences after signature of this Consent Decree by Settling Defendants or Settling Federal Agencies. The Continuation of Existing Migration would not result in liability;

e. liability based on Settling Defendants' or Settling Federal Agencies' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, commencing after signature of this Consent Decree by Settling Defendants. The Continuation of Existing Migration would not result in liability; and

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant not associated with the Site.

28. Notwithstanding any other provision of this Consent Decree, the United States specifically reserves the ability and right to assert defenses in the MDL Litigation.

29. General Reservations of Settling Defendants' Rights. The Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights against the United States and the State with respect to all matters not expressly included within Paragraphs 21 and 22 (Covenants by Settling Defendants). Notwithstanding any other provision of this Consent Decree, the Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights against the United States and the State with respect to liability for failure of the United States or the State to meet a requirement of this Consent Decree.

30. Notwithstanding any other provision of this Consent Decree, the Settling

Defendants specifically reserve the ability and right to assert defenses in the MDL Litigation.

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

31. Except as provided in Paragraph 26 (Waiver of Claims by Settling Defendants), and Paragraphs 16, 18, 19, and 32 as applicable to Settling 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 IX (Covenants and Waivers by Settling Defendants and Settling Federal Agencies), 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 person not a Party. Nothing in this Consent Decree diminishes the right of the United States and the State, 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).

32. 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 Settling Defendant, Settling Defendants' Related Party, and each Settling Federal Agency, as of the Effective Date, resolved liability to the United States 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 as to all Parties and Settling Defendants' Related Parties include all response actions taken or to be taken and all response costs incurred or to be incurred,

at or in connection with the Site, by the United States, the State or any other person, provided, however, that if the United States or the State exercises rights under the reservations in Section X (Reservations of Rights by Parties), other than in Paragraph 27.a (liability for failure to meet a requirement of the Consent Decree) or 27.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation. The contribution protection set forth in this Paragraph is intended to provide the broadest protection afforded by CERCLA or state law for “matters addressed” in this Consent Decree.

33. The Parties further agree, and by entering this Consent Decree this Court finds, that this action 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 Settling Defendant, each Settling Defendants’ Related Party, and each Settling Federal Agency has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

34. Each Settling Defendant will, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA, DOJ, DOI, USDA, and the State in writing no later than 60 Days prior to the initiation of such suit or claim. This 60-Day notice will not apply to any suit or claim concerning third party contractual indemnification matters, unless otherwise provided by law. Each Settling Defendant also will, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA, DOJ, DOI, USDA, and the State in writing within 10 Days after service of the complaint or claim upon it. In addition, the Settling Defendant will notify EPA, DOJ, DOI, USDA, and the State within 10 Days after service or receipt of any Motion for Summary Judgment, and within 10 Days after receipt of any

order from a court setting a case for trial, for matters related to this Consent Decree.

35. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants, Settling Defendants' Related Parties, and, with respect to a State action, Settling Federal Agencies will not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph 35 affects (a) the enforceability of the covenants by the United States set forth in Section VIII (Covenants by Plaintiffs) or (b) the Settling Defendants' reserved rights set forth in Paragraph 29 (General Reservation of Settling Defendants' Rights) and Paragraph 30.

## **XII. PROPERTY PROVISIONS**

36. Agreements Regarding Access and Non-Interference. Until a Transfer of SGC Property (whether a Transfer of all SGC Property or less than all), SGC will, with respect to SGC Property not yet Transferred:

a. Provide the United States, the State, potentially responsible parties who have entered or may enter into an agreement with the United States for performance of response actions at the Site (hereinafter "Performing Parties"), and their representatives, contractors, and subcontractors with access at all reasonable times to SGC Property to conduct any activity relating to response actions at the Site including the following activities:

1. Verifying any data or information submitted to the United States;
2. Conducting field inspections and investigations regarding

contamination at or near the Site;

3. Sampling and monitoring water, soil, and mine waste material from waste rock dumps, tailings impoundments, and mine workings or other areas as necessary to evaluate releases of hazardous substances, and as needed to design, construct, operate, and maintain an on-site waste repository and ancillary features, including, but not limited to, access roads;
  4. Assessing the need for, planning, implementing, or monitoring response actions (which includes implementing the Interim Record of Decision including construction, operation, and maintenance of an on-site mine waste repository and necessary access roads, and transportation of mine waste to the repository);
  5. Conducting actions related to the investigation of surface or subsurface contamination;
  6. Assessing SGC's and any Performing Party's compliance with the Consent Decree;
  7. Determining whether the SGC Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under the Consent Decree; and
  8. Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the SGC Property.
- b. SGC will refrain from using the SGC Property in any manner that EPA,

DOI, USDA, or the State determines, after notice to SGC, will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site.

c. Upon the Effective Date, this Consent Decree will supersede the AO.

37. Institutional Controls. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the SGC Property, SGC will cooperate with EPA's efforts to secure and ensure compliance with such institutional controls, provided that such duty to cooperate shall consist of commercially reasonable efforts.

38. Notice to Successors-in-Title.

a. SGC will, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the SGC Property in the appropriate land records. The notice must:

- i. include a proper legal description of the SGC Property; and
- ii. provide notice to all successors-in-title that the SGC Property is part of, or related to, the Site.

b. SGC will record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

c. SGC will, prior to entering into a contract to Transfer SGC Property, or 40 days prior to Transferring SGC Property, whichever is earlier, notify EPA and the State of the name and address of the proposed Transferee.

d. In the event of any Transfer of SGC Property, SGC shall, with respect to the SGC Property being Transferred, require the Transferee to agree to comply with, and be bound by, the provisions of Section XII applicable to SGC and the penalty provisions in Paragraph 11.b. Upon completion of such Transfer, SGC shall be relieved of all its obligations under Section XII and Paragraph 11.b with respect to such Transferred SGC Property. SGC will continue to comply with its obligations under Section XII with respect to any SGC Property not Transferred.

39. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

40. SGC Property Necessary For Response Actions. If EPA determines in a decision document prepared in accordance with the NCP that title to SGC Property is needed to conduct a remedial action at the Site, EPA will make a request, and SGC will convey by quit claim deed title, without warranty and at no cost to the United States such SGC Property as requested by the United States to such person or entity the United States designates. All closing and recording costs associated with such conveyance will be the responsibility of the United States. SGC agrees to cooperate with the United States in clearing impediments to clean title, if any, provided that such duty to cooperate shall consist of commercially reasonable efforts.

41. Possible Transfer of SGC Property. SGC seeks to Transfer the SGC Property (along with Property Provision obligations under this Section) to a third party Transferee. In the event SGC finds a prospective Transferee, the United States and the State will use federal and state enforcement tools, as and if appropriate, that may be available to assist in the Transfer by

SGC of such SGC Property.

### **XIII. RETENTION OF RECORDS**

42. Until 10 years after the Effective Date, each Settling Defendant will preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") now in its possession or control or that come into its possession or control, that relate in any manner to its alleged liability under CERCLA with respect to the Site, as well as all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements will apply regardless of any corporate retention policy to the contrary. The requirements of this Paragraph 42 will not prevent any Settling Defendant from dissolving.

43. At the conclusion of the record retention period, or at such time as a Settling Defendant may choose to dissolve, Settling Defendants will notify EPA, DOJ, DOI, USDA, and the State at least 90 Days prior to the destruction of any such Records, and, upon request by EPA, DOJ, DOI, USDA or the State, and except as provided in Paragraph 44 (Privileged and Protected Claims), Settling Defendants will deliver any such Records to EPA, DOI, USDA, or the State.

44. Privileged and Protected Claims.

a. Settling Defendants may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 44.b, and except as provided in Paragraph 44.c;

b. If Settling Defendants assert a claim of privilege or protection, they will provide the United States or the State with the following information regarding such Record: its title; its date; the author; the addressee or recipient; a description of the Record's contents; and

the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendants will provide the Record to the United States or the State in redacted form to mask the privileged or protected information only. Settling Defendants will retain all Records that they claim to be privileged or protected until the United States or the State has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendants' favor; and

c. Settling Defendants may make no claim of privilege or protection regarding:

1. any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or
2. the portion of any Record that Settling Defendants are required to create or generate pursuant to this Consent Decree.

45. Business Confidential Claims. Settling Defendants may assert that all or part of a Record submitted to the United States or the State under this Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendants will segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendants assert a business confidentiality claim. Records that Settling Defendants claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the Records are

not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

46. Each Settling Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States and that it has fully complied with any and all EPA, DOI, or USDA requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927.

47. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations; provided, however, that nothing in this Paragraph 47 affects (a) the enforceability of the covenants by the United States and the State set forth in Paragraphs 16 (Covenants for Settling Defendants by United States) and 18 (Covenants for Settling Defendants by the State), (b) the Settling Defendants reserved rights set forth in Paragraph 29 (General Reservations of Settling Defendants' Rights) and Paragraph 30, or (c) the provisions in Section XII (Property Provisions).

#### **XIV. NOTICES AND SUBMISSIONS**

48. 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 DOJ by email:** eescdcopy.enrd@usdoj.gov  
Re: DJ# 90-11-3-11676

**As to DOJ by mail:** EES Case Management Unit  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-11676

**and:** Chief  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Defense Section  
P.O. 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-11676

**As to EPA:** William Lindsey  
Senior Assistant Regional Counsel  
CERCLA Enforcement Section  
Office of Regional Counsel (8ORC-C)  
USA EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129  
Lindsey.William@epa.gov

Douglas Naftz  
Senior Assistant Regional Counsel  
CERCLA Enforcement Section  
Office of Regional Counsel (8ORC-C)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Naftz.Douglas@epa.gov

**As to USDA:** Kirk Minckler  
Office of the General Counsel  
U.S. Department of Agriculture  
1617 Cole Boulevard, Suite 385E  
Lakewood, CO 80401-3305  
kirk.minckler@usda.gov

**As to DOI:** Nathalie Doherty  
Attorney-Advisor  
U.S. Department of the Interior  
Office of the Solicitor  
601 SW 2nd Avenue, Suite 1950  
Portland, OR 97204  
Nathalie.Doherty@sol.doi.gov

**As to the State:** Jason King  
Senior Assistant Attorney General  
Colorado Department of Law  
1300 Broadway, 7<sup>th</sup> Floor  
Denver, CO 80203  
Jason.King@coag.gov

**As to Sunnyside Gold Corporation:** Christopher C. Stoneback  
Crowley Fleck PLLP  
490 North 31st Street, Suite 500  
Billings MT, 59101-1288  
cstoneback@crowleyfleck.com

**As to Kinross Gold Corporation:** Craig Galli  
Holland & Hart LLP  
222 S. Main Street, Suite 2200  
Salt Lake City, UT 84101  
cgalli@hollandhart.com

*with a copy to:*

General Counsel  
Kinross Gold Corporation  
25 York St., 17th Floor  
Toronto, Ontario M5J 2V5  
Canada

## **XV. RETENTION OF JURISDICTION**

49. This Court will retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

## **XVI. INTEGRATION**

50. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

## **XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

51. This Consent Decree will be lodged with the Court for a period of at least 30 Days for public notice and comment. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

52. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

## **XVIII. SIGNATORIES/SERVICE**

53. Each undersigned representative of a Settling Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, or his designee and the Assistant Attorney General, Colorado Department of Law, Natural Resources and Environment Section 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.

54. Each Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States or the State

has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

55. Each Settling Defendant will identify, on the attached signature pages, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

#### **XIX. FINAL JUDGMENT**

56. Upon entry of this Consent Decree by the Court, this Consent Decree will constitute the final judgment between and among the United States, the State, and the Settling Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58. SO ORDERED THIS 28th DAY OF April, 2022.

  
\_\_\_\_\_  
**WILLIAM P. JOHNSON**  
**CHIEF UNITED STATES DISTRICT JUDGE**

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015, No. 1:18-md-02824-WJ, relating to the Bonita Peak Mining District Site.

FOR THE UNITED STATES OF AMERICA:

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Dated: \_\_\_\_\_

NICHOLAS  
MORALES

 Digitally signed by NICHOLAS  
MORALES  
Date: 2022.01.20 14:55:35 -05'00'

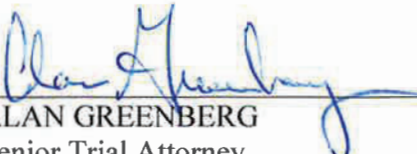
---

NICHOLAS MORALES  
Trial Attorney  
RUBEN GOMEZ  
Senior Attorney  
KATHERINE MATTHEWS  
Senior Counsel  
Environment and Natural Resources Division  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Phone: (202) 616-8860 (Morales)  
Phone: (202) 514-4797 (Gomez)  
E-mail: nicholas.morales@usdoj.gov  
E-mail: ruben.gomez@usdoj.gov


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015, No. 1:18-md-02824-WJ, relating to the Bonita Peak Mining District Site.

FOR THE UNITED STATES OF AMERICA:

Dated: Jan. 19, 2022

  
ALAN GREENBERG  
Senior Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Defense Section  
999 18th Street, Suite 370  
Denver, CO 80202  
alan.greenberg@usdoj.gov  
(303) 844-1366

Dated: January 19, 2022

  
TSUKI HOSHIJIMA  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Defense Section  
P.O. Box 7611  
Washington, D.C. 20004-7611  
(202) 514-3468  
tsuki.hoshijima@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015, No. 1:18-md-02824-WJ, relating to the Bonita Peak Mining District Site.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated: \_\_\_\_\_

KENNETH  
SCHEFSKI

Digitally signed by KENNETH  
SCHEFSKI  
Date: 2021.12.08 09:16:59 -07'00'

---

KENNETH C. SCHEFSKI  
Regional Counsel  
U.S. Environmental Protection Agency  
Region 8  
1595 Wynkoop St.  
Denver, CO 80202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015, No. 1:18-md-02824-WJ, relating to the Bonita Peak Mining District Site.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated: \_\_\_\_\_

LAWRENCE  
STARFIELD

Digitally signed by LAWRENCE  
STARFIELD  
Date: 2021.12.08 14:47:20  
-05'00'

\_\_\_\_\_  
LAWRENCE E. STARFIELD  
Acting Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015, No. 1:18-md-02824-WJ, relating to the Bonita Peak Mining District Site.

FOR THE U.S. DEPARTMENT OF THE INTERIOR:

**AARON  
MOODY**

Digitally signed by AARON  
MOODY  
Date: 2021.12.22 12:58:41  
-05'00'

\_\_\_\_\_  
Dated

\_\_\_\_\_  
AARON MOODY  
Associate Solicitor  
U.S. Department of the Interior  
Office of the Solicitor  
Division of Land Resources  
1849 C Street, N.W., MS6412  
Washington, DC 20240

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015, No. 1:18-md-02824-WJ, relating to the Bonita Peak Mining District Site.

FOR THE USDA FOREST SERVICE:

Dated: January 12, 2022

*For* **SANDRA WATTS** Digitally signed by SANDRA WATTS  
Date: 2022.01.12 11:26:56 -0700  
CHRISTOPHER B. FRENCH  
Deputy Chief, National Forest System  
USDA Forest Service  
1400 Independence Ave. SW  
Washington, DC 20250

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015, No. 1:18-md-02824-WJ, relating to the Bonita Peak Mining District Site.

FOR THE STATE OF COLORADO:

Dated: 11/22/2021

  
\_\_\_\_\_  
JILL HUNSAKER RYAN

Executive Director  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246

Approved as to form:

  
\_\_\_\_\_

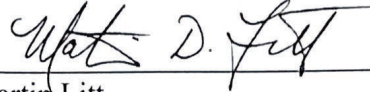
JASON E. KING\*  
Senior Assistant Attorney General  
Colorado Department of Law  
1300 Broadway, 7<sup>th</sup> Floor  
Denver, CO 80203  
jason.king@coag.gov

\*Counsel for the State of Colorado

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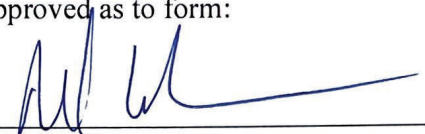
FOR SUNNYSIDE GOLD CORPORATION:

Dated: 11/4/2021



Martin Litt  
President & General Counsel  
Sunnyside Gold Corporation

Approved as to form:



Neil G. Westesen  
Counsel for Sunnyside Gold Corporation  
Crowley Fleck, PLLP  
P.O. Box 797  
Helena, MT 59624-0797  
Phone: (406)449-4165  
Email: nwestesen@crowleyfleck.com

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FOR KINROSS GOLD CORPORATION:

Dated: 11/4/21



Nathan Longenecker  
Senior Vice-President, Legal, and General Counsel  
Kinross Gold Corporation

Approved as to form:



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