

For Plaintiff United States

John N. Moscato  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
1961 Stout Street, 8<sup>th</sup> Floor  
Denver, CO 80249  
(303) 844-1380

For Defendant, Chief Consolidated Mining Company

Sherman Young, Esq.  
Ivie & Young  
226 West 2230 North  
Provo, Utah 84603  
(801) 375-3000

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. 2:04CV00891 BSJ

v.

CHIEF CONSOLIDATED MINING COMPANY,

Defendant.

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STIPULATION MODIFYING CONSENT DECREE

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Pursuant to Paragraphs 1 and 75 of the Consent Decree which recognize the Court's continuing jurisdiction to enforce and interpret the Consent Decree entered by this Court on

January 27, 2005, (the “Decree”), Plaintiff, the United States of America and Defendant, Chief Consolidated Mining Company, the “Parties,” pursuant to Article XVII of the Decree entitled “Modification,” hereby enter into this stipulation (“Stipulation”) set forth below.

1. After discussions between Plaintiff and Defendant as to the manner and means through which the Parties’ respective claims and interests might be reconciled, a Complaint (Docket No. 1) and the Decree (Docket No. 9) were filed simultaneously in this matter on September 21, 2004,

2. Thereafter, the Court held a hearing on the proposed Decree on January 24, 2005.

3. After the hearing and the taking of evidence by the Court, the Decree was approved by the Court and filed with the clerk of the Court on January 27, 2005.

4. The Consent Decree was modified by order of the Court on March 23, 2006 (Docket No. 18).

5. Subsequent to the entry of the Decree, with Defendant’s full and complete cooperation, Plaintiff initiated the environmental response actions contemplated by the Decree.

6. During this time and over the course of these endeavors, due to changing circumstances, the Parties have agreed to amend the Decree as follows:

(a) In return for the Defendant’s full payment of those amounts set forth in Paragraph 6 (e), below, Defendant’s obligations under Paragraphs 13 (regarding payment of costs), 14 through 21 (transfer of property), 22 and 23 (future earnings), 29 (notice of repository operation) and 30 (notice of construction of second open cell) of the Decree shall be fully and finally satisfied and discharged;

(b) The Defendant shall grant to the Town of Eureka an Easement for the storage of certain remediation materials as set forth in Paragraph 7 below;

(c) The Defendant's obligations under Paragraphs 27 (borrow materials), 33 (storage space), 34 (provision of water), 40 through 42 (filing of easements for response action structure sites), 62 and 63 (retention of documents) of the Decree shall be extended until, and terminated on, December 31, 2013, or until such later date on which the Parties may agree;

(d) Defendant's obligations under the Decree other than those specifically enumerated in this Paragraph 6 (a), (b), and (c), supra, shall remain in full force and effect; and

(e) In accordance with the Parties' understanding and agreement, and in consideration of mutual promises, obligations, and benefits provided for herein, Defendant hereby agrees to, and shall, pay to Plaintiff One Million, One Hundred and Twenty-Five thousand dollars (\$1,125,000.00) in five annual payments of Two Hundred Twenty-Five Thousand dollars (\$225,000.00) each, with the first payment to be made on or before November 30, 2010, and with the remaining four payments to be made on or before November 30<sup>th</sup> of each year thereafter.

(i.) The Parties agree that no Interest, at the rate provided in Paragraph 4.k. of the Decree, shall accrue on the payments provided for in this Paragraph unless and until the Defendant fails to make any annual payment when it is due.

(ii.) Upon completion of the payments specified in this Paragraph 6, Plaintiff shall cooperate with Defendant to the extent reasonable and necessary to clear title to Defendant's real property in Juab and Utah Counties of any and all liens, charges, encumbrances,

or servitudes attached in favor of Plaintiff recorded in connection with the complaint or Consent Decree entered in this matter.

(iii.) All payments made by Defendant pursuant to this Stipulation and the Order shall be made by Electronic Funds Transfer in conformance with, and as set forth in, Paragraph 24 of the Decree.

7. Pursuant to the Parties' understanding and agreement, Defendant Chief Consolidated Mining Company shall grant the Town of Eureka an easement (hereinafter the "Easement") for a period of twenty-five (25) years from the date the Easement is recorded, over and across the property identified by the hatch marks in Exhibit 1, attached hereto and incorporated herein by this reference, for the purpose of storing, accessing, and removing top soil, road base material, and limestone upon and from Defendant's property.

(a) Plaintiff agrees to prepare the metes and bounds description for the property under Easement, which shall be submitted to Defendant for incorporation into the Easement. Defendant shall execute and record the Easement as provided in Paragraph 7.b.

(b) Within fourteen (14) business days after Plaintiff provides the Defendant with a metes and bounds description of the property described in Exhibit 1, the Defendant shall file an Easement in the form of Exhibit 2, attached hereto and incorporated herein by this reference, in the official records of the Utah County Recorder.

(c) The Parties agree that Defendant shall have access to the property subject to the Easement, providing Defendant's access does not conflict with or interfere with EPA's

Superfund response activities, including those activities undertaken by the Town of Eureka as part of EPA's Superfund response activities.

(d) The Town of Eureka shall have the Easement for the storage of road base material and/or top soil for as long as the Town needs to store top soil and/or road base material, but in no event longer than twenty-five (25) years, or upon such later date as the Parties may agree.

(e) Nothing in the Easement shall abrogate any of Plaintiff's rights under the Decree.

8. Plaintiff's access to Defendant's limestone quarry and to the E. Homansville borrow area to obtain top soil, limestone, road base, borrow and other such materials that Plaintiff may require for the environmental response activities as provided for under the Decree shall continue until December 31, 2010. Should Plaintiff's need to access Defendant's quarry terminate before December 31, 2010, Plaintiff will take all reasonable steps to promptly withdraw from the quarry and terminate Plaintiff's Utah Division of Oil Gas and Mining large area mining permit for the quarry.

9. Consistent with Defendant's obligations under Paragraphs 32 and 40 through 43 of the Decree, if at any time Plaintiff provides metes and bounds descriptions or other surveys addressing the location and extent of Response Action Structures on property owned by the Defendant, the Defendant will cooperate with the Plaintiff by filing amended environmental covenants that include such metes and bounds or other surveys. The goal of such amended environmental covenants would be to limit and more specifically define the area of property

subject to use limitations and other restrictions that are currently included in the existing covenants.

10. Plaintiff and Defendant further agree that Defendant's obligations under Decree Paragraphs 27 (borrow materials), 33 (storage space), 34 (provision of water), 40 through 42 (filing of easements for response action structure sites), 62 and 63 (retention of documents) shall be extended until, and shall terminate on, December 31, 2013.

11. The Parties shall not contest the Court's continuing jurisdiction over this matter, the Stipulation, or the Consent Decree for the purpose of interpreting or enforcing the Stipulation or Consent Decree.

12. This Stipulation and the Exhibits hereto constitute the final and complete expression of the Parties agreement with respect to the amendment to the Decree. The Parties acknowledge that there are no other representations, agreements, or understandings relating to the amendment of the Decree other than those expressly provided for herein.

13. Except as modified herein, all other obligations and provisions of the Decree shall remain unchanged and are incorporated herein by this reference, and the Parties shall remain bound thereby. This Stipulation and the modification, or termination of obligations under the Decree, are expressly conditioned on satisfactory compliance with the requirements of this Stipulation.

Respectfully submitted,

DATED this 3<sup>rd</sup> day of February 2010

  
JOHN N. MOSCATO, Attorney for the  
United States of America

DATED this 19 day of ~~October~~, 2009

*November*

~~SHERMAN C. YOUNG~~, Attorney for  
Chief Consolidate Mining Company

DATED this 30 day of October, 2009

~~CHIEF CONSOLIDATED MINING  
COMPANY~~

By: Gordon Blankstein  
Its: Chief Executive Officer

DATED this 5<sup>th</sup> day of ~~October~~, 2009

*January, 2010*

~~UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY~~

By: Matthew Cohn  
Supervising Attorney

DATED this 5<sup>th</sup> day of ~~October~~, 2009

*January 2010*

~~UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY~~

By: Kelcey Land, Acting Director  
Technical Enforcement Program