

This Consent Decree ("Decree") is made and entered into by and among the Plaintiff, the State of Utah, by and through the Utah Department of Environmental Quality ("State") acting for the State and acting as Trustee for natural resources for the State of Utah under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Plaintiff-Intervenor, Salt Lake County Water Conservancy District ("District") and the Defendant, Kennecott Utah Copper Corporation ("Kennecott").

WHEREAS, the Utah Department of Health, then the CERCLA Trustee, filed a complaint in this action seeking damages for injury to, destruction of, and loss of natural resources, in particular surface and ground water resources under sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, resulting from Kennecott's mining activities in the southwestern portion of the Salt Lake Valley; and

WHEREAS, the United States District Court for the District of Utah subsequently found the District uniquely situated to contribute to resolving the underlying factual and legal issues associated with the State's claim and permitted the District to intervene; and

WHEREAS, the State, Kennecott and the District have conducted studies to assess surface and ground water conditions in the southwestern portion of the Salt Lake Valley; and

WHEREAS, those studies have identified locations in affected areas in the southwestern portion of the Salt Lake Valley where ground water contains increased levels of total dissolved solids, including sulfates, and locations where ground water has low pH and increased metals concentrations; and,

WHEREAS, Kennecott has taken and is continuing to take actions to curtail certain of the sources and potential sources of surface and ground water contamination as part of an overall program to control and remedy contamination in the affected areas, and has spent over \$135 million since 1990 on measures to control or eliminate potential sources of ground water contamination; and,

WHEREAS, Kennecott has agreed to conduct and implement additional remedial studies and source control measures as provided for in this Decree; and,

WHEREAS, upon completion of the additional source control measures provided for in this Decree, Kennecott will have taken actions to control all of the identified sources of surface and ground water contamination associated with its mining operations; and

WHEREAS, the State, Kennecott and the District have undertaken studies to determine the cost of restoring the aquifer affected by Kennecott's activities by treating affected ground water to municipal water quality standards; and

WHEREAS, the State, Kennecott, and the District have undertaken extensive discussions and negotiations, and this Decree represents a fair and reasonable settlement of the public's interest in the injured natural resource with respect to the alleged liabilities of Kennecott in this action; and

WHEREAS, the State, Kennecott, and the District agree that settlement of the claims in this case is in the public interest and is made in good faith, and that entry of this Decree is an

appropriate means to resolve the matters covered herein and, allows for immediate assurance in protecting the natural resource in the affected areas, and, now

THEREFORE, without adjudication of any issue of fact and upon the consent of the State, Kennecott, and the District, it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

I. DEFINITIONS

This Decree incorporates the definitions set forth in Section 101 of CERCLA, 42 U.S.C. § 9601. In addition, for purposes of this Decree, the following terms shall have the following meanings:

A. "Affected Area" means the area in the southwestern portion of the Salt Lake Valley where surface and ground water have been injured by Kennecott's mining and leaching operations.

B. "Damage" means the amount of money sought by the State Trustee as compensation for injury, destruction, or loss of natural resources of the State or for which the State is trustee.

C. "Injury to, destruction of, and loss of surface and ground water" means contamination caused by Kennecott's mining and leaching operations resulting in 1) increased levels over baseline of total dissolved solids, including sulfates, 2) pH levels lower than baseline, 3)

metals concentrations exceeding baseline, or 4) solid phase contamination in the aquifer that can be redissolved in the future.

D. "Municipal quality water" means water with chemical concentrations at or below 250 mg/l sulfate and 500 mg/l total dissolved solids for the area west of the Welby canal or 250 mg/l sulfate and 800 mg/l total dissolved solids for the area east of the Welby canal and which otherwise meets primary drinking water standards for other contaminants.

E. "Conditions previously unknown to the State" as used in Section VII of this Decree means new factual information concerning injury to, destruction of, and loss of surface and ground water that was unknown at the date of entry of this Decree. This term does not include information, or analyses or reanalyses of information, possessed by or available to the State as of the date of entry of this Decree. Information in the possession of Kennecott which was not provided to the State or to which the State was not provided access is not considered information that was available to the State prior to the date of entry of this Decree.

F. "Trustee" means the Executive Director of the Utah State Department of Environmental Quality as the State-appointed Trustee for the State's natural resources as provided in section 107 of CERCLA, 42 U.S.C. § 9607. The Governor of the State of Utah initially appointed the Director of the Division of Environmental Health, Department of Health, as the State-appointed natural resources trustee under CERCLA. However, after the filing of this action, the State created a Department of Environmental Quality, which assumed

the previous authorities and responsibilities of the Department of Health pursuant to Utah Code Ann. § 19-1-205.

G. "Trust Fund" means the Natural Resource Damage Claim trust fund administered by the Trustee under this Consent Decree.

H. "1995 dollars" means a cost or expenditure that is escalated or extended to a later year than 1995 by means of the Engineering and News Record (ENR) "20 Cities" cost index.

I. "Supporting Document" means that document dated August 1, 1995, which more fully explains the assumptions and technical determinations used in reaching the settlement culminating in this Consent Decree. The Supporting Document is not part of this Consent Decree.

II. JURISDICTION

The Court has jurisdiction over this subject matter herein, and over the parties consenting thereto, pursuant to sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607, 9613, and 28 U.S.C. § 1331.

III. APPLICABILITY OF DECREE

The provisions of this Decree shall apply to and be binding on, and inure to the benefit of, the State and its agencies and departments, the District and its successors and assigns, and Kennecott and its successors and assigns. Each undersigned representative certifies that he or

she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Decree and to execute and legally bind the party hereto. Kennecott agrees not to contest the jurisdiction of the State to maintain this action.

IV. EFFECT OF SETTLEMENT/ENTRY OF JUDGMENT

This Decree was negotiated and executed by the parties hereto in good faith to avoid the continuance of expensive and protracted litigation, to avoid risks identified by the parties with proceeding with litigation, and is a fair and equitable settlement. The execution of this Decree is not an admission of liability, nor is it an admission of any of the factual allegations set out in the State's complaint or the District's complaint, nor is it an admission of or an agreement to any disputed facts or disputed theories of recovery contained in this Decree or in the Supporting Document or any underlying materials, nor is execution of this Decree an admission of violation of any law, rule, regulation, or policy by Kennecott or its officers, directors, employees, or agents, nor is it an admission by Kennecott that the Trustee may recover damages, under the provisions of CERCLA, for injury to, destruction of or loss of natural resources caused by sulfates or increases in total dissolved solids. Upon approval and entry of this Decree by the Court, the Decree shall constitute a final non-appealable judgment among the State, the District, and Kennecott. To the extent there is a conflict between the Supporting Document and Consent Decree, the Consent Decree controls.

V. COVENANT BY KENNECOTT AND PAYMENT TO THE TRUSTEE

In full and complete satisfaction of the State's claim against Kennecott in this action, and in further consideration of the release and covenant not to sue in Section VI, Kennecott covenants to perform the following:

A. Completion of Remedial Investigation/Feasibility Study ("RI/FS")

Kennecott agrees to conduct and complete the RI/FS in accordance with the work plan approved by the State and by the Environmental Protection Agency ("EPA") on March 8, 1995 or any amendments subsequently approved and agreed to by Kennecott, the State and EPA. Kennecott, the State and the District all reserve the right to contest any remedial decision by EPA which results from or follows the completion of the RI/FS.

B. Extraction From Metals Plume

Kennecott agrees to drill a well or wells into the low pH/heavy metals plume within 24 months of the entry of this Decree, at a location or locations agreed to by the Trustee, to equip that well or wells to pump at a rate of at least 1,000 gallons per minute, and to pump the water from the plume to the leach water handling system at the waste rock disposal areas for evaporation. This measure will result in removal of at least a rolling average of 400 acre feet of water on an annual basis over a five year period from the low pH plume which will remove contaminants from the aquifer and help to contain that plume. Kennecott shall continue operation of the extraction well unless it is determined by the Trustee, EPA, or other applicable authority that pumping is causing spread of the plume, or unless an alternative

action of equivalent benefit is undertaken to remove contaminants from the aquifer and help contain the plume.

C. Completion of Additional Source Control Measures

Kennecott agrees to complete additional source control measures within 24 months of the entry of this Decree, described as the completion of the eastside collection system and the Bingham Creek cutoff systems, in accordance with Kennecott's application for and in compliance with a Utah Groundwater Discharge Permit.

D. Natural Resource Damage Claim Trust Fund

Kennecott shall, within fifteen days following the date of entry of this Decree:

1. Pay the Trustee in cash the sum of nine million dollars (\$9,000,000) which the Trustee shall place in the Trust Fund to be administered by the Trustee and which shall be expended only to restore, replace, or acquire the equivalent of the surface or ground water resources for the benefit of the public in the Affected Area as provided by Section 107(f) of CERCLA, 42 U.S.C. § 9607(f). Allocation of the right to use surface or ground water resources by the public shall be by the Utah State Engineer pursuant to Utah water law.

2. Provide to the Trustee an irrevocable letter of credit in the amount of twenty-eight million dollars (\$28,000,000) substantially in a form acceptable to the Trustee which shall be held by the Trustee as part of the Trust Fund. For purposes of this paragraph 2, the Trustee has determined that the unit cost of producing municipal quality water from groundwater in the Affected Area is \$4000 per acre foot in 1995 dollars and that \$28 million is sufficient to

construct a facility that will provide 7000 acre feet per year of municipal quality water. The letter of credit shall be adjusted as follows:

a. Increased annually by 7 percent of the then current amount of the letter of credit.

b. If Kennecott provides and delivers municipal quality water through treatment of contaminated water to a system of a purveyor of municipal and industrial ("M&I") water in a manner acceptable to the Trustee, and

i) The water is accepted by a purveyor of M&I water (other than Kennecott) with the water right to put the water to beneficial use, and the purveyor is obligated to pay to Kennecott no more than the operation and maintenance costs the purveyor would have incurred absent the contamination up to \$49 per acre foot in 1995 dollars. Kennecott's agreement with the purveyor may contain such other non-financial terms and conditions as Kennecott and the purveyor may negotiate, and

ii) The Trustee determines that the extraction of contaminated water will proportionately prevent or reduce the spread of aquifer contamination. Such extraction shall be deemed to proportionately prevent or reduce the spread of aquifer contamination if it has the result of (a) ratably providing the same quantity of municipal water and (b) ratably capturing the same mass of sulfates as the methodology utilized by the State to determine the unit cost of producing treated water. In making the determination the Trustee shall consider the underlying basis for the Trust Fund as described in the

Supporting Document, consistency with CERCLA, and any other measures taken by Kennecott that have a containing effect, and

iii) The Trustee determines that the municipal quality water is a sustainable water supply (40 or more years) and,

iv) Kennecott demonstrates that its project does not increase materially the Trustee's unit cost to produce the remainder of the 7,000 acre feet per year of municipal quality water (an underlying assumption of this Decree is that at least 7,000 acre feet per year is available in the area, and the cost of acquiring water rights is not a factor to be considered by the Trustee in making this determination),

then the letter of credit shall be reduced ratably by an amount equal to the water provided based on the \$4000 per acre foot unit cost in 1995 dollars. A partial reduction shall be made at the time the treatment facilities are deemed by the Trustee to be complete and operational based on the portion of the \$4000 per acre foot unit cost in 1995 dollars that represents capital costs in accordance with the Supporting Document for this Decree. Further reductions for operation and maintenance shall be made based on established obligations to provide water or as water is provided up to a maximum of 7,000 acre feet per year.

c. If the Record of Decision ("ROD") issued by the EPA at the completion of the RI/FS mandates or EPA otherwise requires Kennecott to treat and provide water at a lesser quality (i.e., water of a quality with sulfates between 250 to 500 mg/l and total dissolved solids between 500 to 1000 mg/l), and the manner of providing water is acceptable to the

Trustee and the conditions of paragraph 2(b)(i-iv) are met, the letter of credit shall be reduced at one half the rate described in paragraph 2(b). There will be no reduction in the amount of the letter of credit for water provided with chemical concentrations greater than 500 mg/l sulfate and 1,000 mg/l total dissolved solids.

d. If Kennecott provides and delivers municipal quality water through extraction or collection of water to a purveyor of M&I water in a manner acceptable to the Trustee; and

i) The water is accepted by a purveyor of M&I water (other than Kennecott) with the water right to put the water to beneficial use, and the purveyor is obligated to pay Kennecott no more than the operation and maintenance costs the purveyor would have incurred absent the contamination up to \$49 per acre foot in 1995 dollars. Kennecott's agreement with the purveyor may contain such other non-financial terms and conditions as Kennecott and the purveyor may negotiate, and

ii) The Trustee determines that the extraction or collection of water, which may include intercepting upgradient recharge to the aquifer, will proportionately prevent or reduce the spread of aquifer contamination. Such extraction or collection shall be deemed to proportionately prevent or reduce the spread of aquifer contamination if it has the result of (a) ratably providing the same quantity of municipal water and (b) ratably capturing the same mass of sulfates as the methodology utilized by the State to determine the unit cost of producing treated water. In making the determination the Trustee shall consider the underlying basis for the Trust Fund as described in the Supporting

Document, consistency with CERCLA, and any other measures taken by Kennecott that have a containing effect, and,

iii) The Trustee determines that the municipal quality water supplied by extraction or collection is a sustainable water supply (40 or more years); and

iv) Kennecott demonstrates that its project to extract or collect water does not increase materially the Trustee's unit cost to produce the remainder of the 7,000 acre feet/year of municipal quality water (an underlying assumption of this Decree is that at least 7,000 acre feet per year is available in the area, and the cost of acquiring water rights is not a factor to be considered by the Trustee in making this determination), then the letter of credit shall be reduced by \$100 per acre foot in 1995 dollars (up to a maximum of 7,000 acre feet per year for 40 years) for each year the municipal quality water is provided.

e. If the ROD mandates or EPA otherwise requires Kennecott to replace water of a lesser quality (250 to 500 mg/l sulfate and 500 to 1000 mg/l total dissolved solids) by extraction or collection and the provision of water is in a manner acceptable to the Trustee and the conditions of paragraph 2(d)(i-iv) are met, then the letter of credit shall be reduced by \$50 per acre foot in 1995 dollars (up to a maximum of 7,000 acre feet per year for 40 years) for each year the water is provided. There will be no reduction in the amount of the letter of credit for water produced with concentrations greater than 500 mg/l sulfate or 1,000 mg/l total dissolved solids.

f. If Kennecott provides water in accordance with Section VD2 it will be eligible only for: i) reduction in the then current amount of the letter of credit, or ii) if the letter of credit has been converted to cash, reimbursement of funds resulting from conversion of the letter of credit. No other portion of the Trust Fund is subject to adjustment or credit.

Kennecott shall receive credit on the basis of quantity and quality of water provided and not on the basis of Kennecott's costs.

3. Kennecott may identify projects to seek credit or reimbursement as provided in Section VD2 above to the extent eligible funds are available in the Trust Fund.

4. The Trustee shall not expend funds secured by the letter of credit until the earlier of two years after the issuance of the ROD or July 1, 2000, unless the Trustee determines that there exists a direct and immediate threat to the public health or the environment which necessitates expenditures to restore, replace or acquire the equivalent of the resource. Two years after issuance of the ROD or July 1, 2000, whichever occurs first, the portion of the Trust Fund secured by the letter of credit and not allocated for Kennecott projects approved by the Trustee may, at the option of the Trustee, be converted to cash which shall be used by the Trustee to restore, replace, or acquire the equivalent of the natural resource for the benefit of the public in the Affected Area as provided under Section 107(f) of CERCLA. Kennecott shall have the right at any time to convert the letter of credit to cash which shall be used by the Trustee to restore, replace, or acquire the equivalent of the natural resource for the benefit of the public in the Affected Area as provided under Section 107(f) of CERCLA. Allocation of

the right to use surface or ground water resources by the public shall be by the Utah State Engineer pursuant to Utah water law.

5. Kennecott shall not receive or beneficially use any of the surface or ground water resources provided to the public, and which are developed for credit or developed by expenditures of the Trustee pursuant to Section VD of this Decree.

6. Decisions of the Trustee under this section subject to judicial review shall be reviewed using an arbitrary and capricious standard.

7. Interest earned on monies in the Trust Fund shall remain in and be used as part of the Trust Fund.

VI. RELEASE AND COVENANT NOT TO SUE

A. Except as specifically provided in Section VII of this Consent Decree, the State releases and covenants not to sue Kennecott regarding damages for injury to, destruction of, and loss of surface and ground water in the Affected Area under federal law, State law, or common law including the costs of assessing such injury, destruction or loss. The State reserves the right to seek injunctive relief under State law for further remedial action.

B. Kennecott hereby releases and covenants not to sue the State or any of its agencies or departments and the District for 1) any claims arising prior to the date of entry of this Decree relating to or arising from this action for damage to surface water and ground water in the Affected Area or 2) contribution or indemnification in relation to any claims arising prior to

the date of entry of this Decree asserted by any party against Kennecott for personal injury or damage to property including water rights in connection with or in any way related to surface water or ground water in the Affected Area.

C. The complaint filed by the District making claims against Kennecott and the State is dismissed with prejudice. The District hereby releases and covenants not to sue the State or any of its agencies or departments or Kennecott for claims arising prior to the date of entry of the Decree relating to or arising from this case.

VII. RESERVATION OF RIGHTS

A. Notwithstanding any other provision of this Decree, the State reserves the right to institute proceedings, and the District may seek to intervene in such proceedings without the objection of the State or Kennecott, against Kennecott seeking recovery of damages for claims:

1. Based on conditions previously unknown to the State that constitute materially greater injury to, destruction of, and loss of surface and ground water than the conditions which formed the basis for this Decree as described in the Supporting Document for this Decree, or

2. Arising from future actions or omissions of Kennecott not in compliance with permits or federal, State or local laws, which cause further or additional injury to, destruction of, and loss of surface and ground water.

B. Notwithstanding any other provision of this Decree, the State reserves the right to institute proceedings, and the District reserves the right to seek to intervene in such proceedings, against Kennecott for claims not within the scope of this settlement.

C. Notwithstanding any other provision of this Decree, Kennecott reserves the right to assert any defense to any action brought by the State under this reservation of rights, and to assert any defenses, cross-claims, counterclaims, or third-party claims against any party in connection with any action brought by the State under this reservation of rights.

VIII. SCOPE OF SETTLEMENT

A. This Decree resolves all claims of the State against Kennecott in this action. This Decree does not resolve any other claims, including claims of criminal liability.

B. The State does not by this Decree, and nothing in this Decree shall be construed to mean that the State has assumed any obligation or liability, including obligations and liabilities of Kennecott, if any, 1) to perform response or remedial actions under CERCLA for the Affected Area or elsewhere, or 2) for claims or causes of action by other persons for injury to surface water or ground water. The Trustee does not assume, by receiving payments under this Decree, any obligation or responsibility to use the Trust Fund created under this Decree to undertake any studies or any restoration or other response or remedial action. The expenditure of the Trust Fund is in the discretion of the Trustee within the constraints of

Section 107(f) of CERCLA, 42 U.S.C. § 9607(f) and as provided in Section VD of this Decree.

C. The Decree does not bind third parties who are not parties to this Decree, and the Decree does not resolve, or bar claims, if any, of third parties, including, but not limited to, claims by political subdivisions of the State for interference with the quantity or quality of their water rights; provided however that nothing in the Decree affects Kennecott's rights or defenses against third parties with respect to any such claims.

IX. COMPLIANCE WITH OTHER LAWS

This Decree shall not be construed in any way to relieve Kennecott from the obligation to comply with any federal, state or local law.

X. CONTRIBUTION PROTECTION

Except as limited by Section VI, Kennecott shall have all contribution rights and protections as are provided by Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

XI. VOIDABILITY

If for any reason the Court should decline to approve this Decree in the form presented, this Decree and the settlement embodied herein shall be void and the terms hereof may not be used as evidence in any litigation.

XII. COSTS

Each party hereto shall bear its own costs and attorneys' fees.

The State, the District, and Kennecott enter into this Consent Decree and submit it to the Court, that it may be approved and entered.

FOR THE STATE OF UTAH

By 
Dianne R. Nielson, Trustee
Executive Director
Department of Environmental Quality

FOR KENNECOTT UTAH COPPER CORPORATION

By 
Robert R. Dimock
President

FOR THE SALT LAKE COUNTY WATER
CONSERVANCY DISTRICT

By 
Gerald K. Maloney
President and Chairman of the Board

Approved as to form:

Fred G Nelson
Fred G Nelson for the State

Douglas J. Parry
Douglas J. Parry for the District

Dale F. Gardiner
Dale F. Gardiner for the District

James B. Lee
James B. Lee for Kennecott

The foregoing Consent Decree by and among the plaintiff, State of Utah, the intervenor,
Salt Lake County Water Conservancy District, and defendant Kennecott Utah Copper
Corporation, is hereby APPROVED AND ENTERED this 21st day of
August, 1995.

J. Thomas Greene
HONORABLE J. THOMAS GREENE
UNITED STATES DISTRICT COURT JUDGE

United States District Court
for the
District of Utah
August 22, 1995

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:86-cv-00902

True and correct copies of the attached were mailed by the clerk to the following:

Kenley W. Brunsdale, Esq.
6071 Aries Drive
Salt Lake City, UT 84118

Mr. Douglas J Parry, Esq.
PARRY, MURRAY, WARD & MOXLEY
60 East South Temple
1270 Eagle Gate Tower
Salt Lake City, UT 84111

Mr. Dale F Gardiner, Esq.
SALT LAKE COUNTY WATER CONSERVANCY DISTRICT
8215 S 1300 W
P.O. Box 70
Salt Lake City, UT 84084-0070

Mr. James B Lee, Esq.
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main St, Ste 1800
PO Box 45898
Salt Lake City, UT 84111-0898

Mr. Fred G Nelson, Esq.
UTAH ATTORNEY GENERAL OFFICE
50 South Main Street, #900
Salt Lake City, UT 84144