

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

U.S. COURTS  
98 OCT 19 PM 1:10

REC'D. FILED *JS*  
CAMERON S. BURKE,  
CLERK, IDAHO

THE STATE OF IDAHO, et al.

Plaintiffs,

v.

THE M.A. HANNA COMPANY, et al.,

Defendants.

CONSOLIDATED CASE  
Civil Case Nos. 83-4179 ✓  
and 93-0235-E-HLR

ORDER FOR AMENDMENT  
OF CONSENT DECREE

ORIGINAL

WHEREAS, the United States of America, Alumet Corporation, Noranda Mining Inc., Noranda Exploration, Inc., Blackbird Mining Company Limited Partnership, The M.A. Hanna Company and Rojet Enterprises, Inc., formerly known as Hanna Services Company, are parties <sup>to this</sup> ~~to this~~ action ("the parties");

WHEREAS, in April 1995, the parties signed a Consent Decree which was approved by this Court on September 1, 1995.

WHEREAS, in October 1997, the parties entered into a Settlement Agreement resolving certain claims made against the United States by the other parties.

WHEREAS, Paragraphs IV.A and IV.B of the Settlement Agreement describe the procedure for resolving disputes which may arise under the Settlement Agreement. The dispute resolution procedure contemplates judicial resolution of any dispute which cannot be resolved informally.

WHEREAS, the parties have filed a Stipulation to an amendment of

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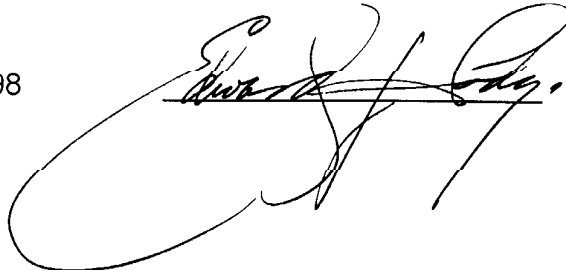
the Consent Decree to provide that the District Court has jurisdiction to review disputes arising under the Settlement Agreement in the manner set forth in the Settlement Agreement.

Based on the foregoing Stipulation and for good cause shown, it is hereby

ORDERED that the Consent Decree is amended to include the following new paragraph:

"63.a. In the event of a dispute between the United States and any Settling Defendant(s) arising under the Settlement Agreement entered into by those parties in October 1997, the District Court shall have jurisdiction to resolve any such dispute. The party seeking resolution by the District Court of any such dispute shall file a motion with the District Court describing the nature of the dispute and a proposal for its resolution. All other parties to the dispute shall have 14 days after receipt to respond to the motion. No further briefing regarding the dispute shall be filed with the District Court except for good cause shown and by leave of the District Court."

Dated: October 19<sup>th</sup>, 1998

A large, stylized handwritten signature in black ink, appearing to read "Edward J. Galy", is written over a horizontal line.

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

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CAMERON S. BURKE,  
CLERK IDAHO

THE STATE OF IDAHO, et al.

Plaintiffs,

v.

THE M.A. HANNA COMPANY, et al.,

Defendants.

CONSOLIDATED CASE  
Civil Case Nos. 83-4179  
and 93-0235-E-HLR

**ORDER TO AMEND CONSENT  
DECREE CONCERNING  
TRUST/HATCHERY ACCOUNT**

WHEREAS, the parties signed a Consent Decree, which was approved by this Court on September 1, 1995.

WHEREAS, the parties have stipulated through their respective counsel that, with the approval of the Court, Paragraphs VII(13), and (14) of the Consent Decree and Paragraph V of the Consent Decree entered by this Court on September 1, 1995, be amended to transfer funds from the Hatchery Operation Trust Account into a Court Hatchery Operation Registry Account, and for good cause shown, it is hereby:

ORDERED, that Paragraph VII(13) is amended to recognize that Settling Defendants have satisfied their obligation to deposit \$2,500,000 and further to provide for the transfer of all funds present in the Hatchery Operation Trust Account (\$2,500,000 plus interest, less taxes) into a Court Hatchery Operation Registry Account for administration consistent with the procedures provided for in Paragraphs VI(D) (12)(a)-(c) of the Consent Decree. The funds in the Hatchery Operation Registry Account are to be segregated from those funds

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deposited by the Settling Defendants into the Registry Account on September 29, 1995, for Government Damage Assessment Costs and Trustee Oversight Costs. All references in the Consent Decree to the "Hatchery Operation Trust Account" will be substituted with the term "Hatchery Operation Registry Account;"

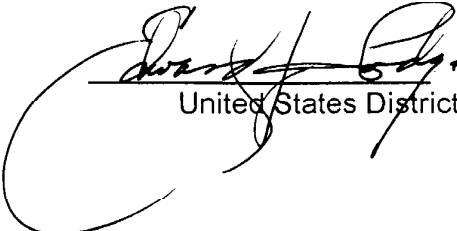
ORDERED, that the Settling Defendants shall be held harmless for any tax liability which may arise as a result of the transfer of the funds to and establishment of the Hatchery Operation Registry Account, and if such liability should arise, it shall be paid out of the funds in the Hatchery Operation Trust or Registry Account;

ORDERED, that Paragraph VII(14) shall be amended to reflect that the Trustees and Settling Defendants have agreed to forego any design costing or adjustment to the Hatchery Operation Trust Account; and

ORDERED that Paragraph VII(15) shall be amended to provide that if Trustees notify Settling Defendants that they are required to implement the Hatchery Operation Component of the BRCP, (a) 30 days after providing such notice to Settling Defendants the United States Department of Justice, on behalf of NOAA and the Forest Service, and the Office of the Attorney General on behalf of the State, will jointly apply to the United States District Court for dispersal of funds from the Hatchery Operation Registry Account to the Settling Defendants and the Trustees as provided in Paragraph VII(15) of the Consent Decree, and (b) upon receipt of such sums from the Registry Account, upon agreement of the Parties on the design and location of the fish trap and acclimation ponds, and upon receipt of such approvals as are required by the BRCP, Settling Defendants shall implement the Hatchery Operation Component of the BRCP and shall bear the cost of such

implementation.

Dated: October 19<sup>th</sup>, 1998

  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

U.S. COURTS

98 OCT 14 PM 2:4

THE STATE OF IDAHO, et al.

Plaintiffs,

v.

THE M.A. HANNA COMPANY, et al.,

Defendants.

CONSOLIDATED CASE  
Civil Case Nos. 83-4179  
and 93-0235-E-HLR

**STIPULATION  
TO AMEND CONSENT DECREE  
CONCERNING TRUST/HATCHERY  
ACCOUNT**

**ORIGINAL**

1. It is hereby stipulated by and between the parties through their respective counsel that, with the approval of the Court, Paragraphs VII(13), and (14) of the Consent Decree and Paragraph V of the Consent Decree entered by this Court on September 1, 1995, be amended as follows:

a. Paragraph VII(13) is amended to recognize that Settling Defendants have satisfied their obligation to deposit \$2,500,000 and further to provide for the transfer of all funds present in the Hatchery Operation Trust Account (\$2,500,000 plus interest, less taxes) into a Court Hatchery Operation Registry Account for administration consistent with the procedures provided for in Paragraphs VI(D) (12)(a)-(c) of the Consent Decree. The funds in the Hatchery Operation Registry Account are to be segregated from those funds deposited by the Settling Defendants into the Registry Account on September 29, 1995, for Government Damage Assessment Costs and Trustee Oversight Costs. All references in the Consent Decree to the "Hatchery Operation Trust Account" will be substituted with the term "Hatchery Operation Registry Account."

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b. The Trustees and the Settling Defendants agree that the Settling Defendants shall be held harmless for any tax liability which may arise as a result of the transfer of the funds to and establishment of the Hatchery Operation Registry Account, and if such liability should arise, it shall be paid out of the funds in the Hatchery Operation Trust or Registry Account.

c. Paragraph VII(14) shall be amended to reflect that the Trustees and Settling Defendants have agreed to forego any design costing or adjustment to the Hatchery Operation Trust Account.

d. Paragraph VII(15) shall be amended to provide that if Trustees notify Settling Defendants that they are required to implement the Hatchery Operation Component of the BRCP, (a) 30 days after providing such notice to Settling Defendants the United States Department of Justice, on behalf of NOAA and the Forest Service, and the Office of the Attorney General on behalf of the State, will jointly apply to the United States District Court for dispersal of funds from the Hatchery Operation Registry Account to the Settling Defendants and the Trustees as provided in Paragraph VII(15) of the Consent Decree, and (b) upon receipt of such sums from the Registry Account, upon agreement of the Parties on the design and location of the fish trap and acclimation ponds, and upon receipt of such approvals as are required by the BRCP, Settling Defendants shall implement the Hatchery Operation Component of the BRCP and shall bear the cost of such implementation.

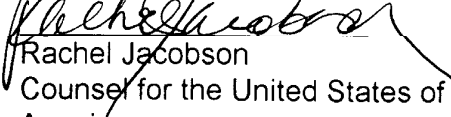
4. The undersigned represent that they have been authorized by the original signatories to the Consent Decree or their successors to execute this Stipulation to Amend Consent Decree.

5. The Trustees represent that because this proposed amendment to the Consent Decree does not substantially modify the material terms of the agreement reached in the original Consent Decree, public notice and comment pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2) and 28 C.F.R. § 50.7, are not necessary.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of May, 1998.


Dated: May 13, 1998

LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division

By:   
Rachel Jacobson  
Counsel for the United States of  
America

Dated: May 29, 1998

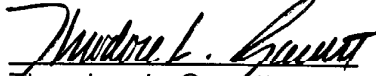
ALAN G. LANCE  
Attorney General

By:   
C. Nicholas Crema  
Counsel for State of Idaho  
and Governor Philip E. Batt



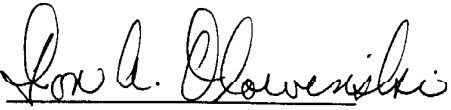
Dated: May \_\_, 1998

COVINGTON & BURLING

By:   
Theodore L. Garrett  
Counsel for Alumet Corporation

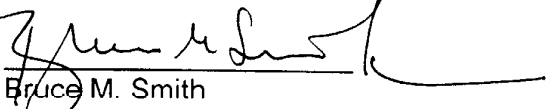
<sup>16 JUNE</sup>  
Dated: ~~May~~ \_\_, 1998

HAWLEY TROXELL ENNIS & HAWLEY,  
LLP

By:   
Don A. Olowinski  
Counsel for The M.A. Hanna  
Company and Rojet Enterprises,  
Inc.

Dated: May \_\_, 1998

ROSHOLT, ROBERTSON & TUCKER

By:   
Bruce M. Smith  
Counsel for Noranda Mining Inc.,  
Noranda Exploration, Inc. and  
Blackbird Mining Company

CERTIFICATE OF SERVICE

I hereby certify that on this <sup>7<sup>th</sup></sup> 4 day of October, 1998, I caused to be served a true and correct copy of the foregoing STIPULATION TO AMEND CONSENT DECREE CONCERNING TRUST / HATCHERY ACCOUNT by U.S. Mail, postage prepaid, to the following named persons:

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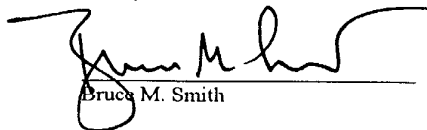
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Bruce M. Smith