BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

FILED
JUL 2 6 2000
SECRETARY, BOARD OF
OIL, GAS & MINING

IN THE MATTER OF THE PETITION FILED BY THE DIVISION OF OIL, GAS AND MINING FOR AN ORDER REQUIRING IMMEDIATE RECLAMATION OF THE TINTIC PROJECT SITE BY NORTH LILY MINING COMPANY, JUAB COUNTY, UTAH	**STIPULATION AND CONSENT ORDER** Docket No. 2000-004 Cause No. M/023/007

This Stipulation and Consent Order is entered into between the State of Utah, Department of Natural Resources, Division of Oil, Gas and Mining ("Division") and the North Lily Mining Company, a Utah company, ("North Lily" or "Operator"), and is approved and adjudicated as a final order by the Utah Board of Oil, Gas and Mining ("Board") this 26 day of July, 2000.

FINDINGS AND CONCLUSIONS

1. The Division has made and determined the following Findings of Facts and Conclusions of Law. The Division is the Utah agency authorized to administer and enforce the Utah Mined Land Reclamation Act, Title 40 Chapter 8, Utah Code Annotated, the Utah Minerals Regulatory Program, R-647-1 through R-647-5, and other Utah statutes, rules and regulations regarding mining and mine reclamation.

2. North Lily is a Utah corporation which is the operator of the Tintic Mining Project, also known as the Silver City Heap Leach Facility, located in northeast 1/4, Section 35, Township 10 South, Range 3 West, SLBM, Juab County, ("Tintic Project" or "Facility"), pursuant to Division Notice of Intent No. M/023/007.

3. North Lily actively operated the Tintic Project until 1995, at which time active leaching at the Facility ceased.

4. By its *Notice of Agency Action*, Cause No. M/023/007, Docket No.2000-004, dated March 10, 2000, which is hereby incorporated by reference into this Stipulation and Consent Order, the Division alleged, *inter alia*, that the operator of record, North Lily had failed to comply with the Utah Mined Land Reclamation Act (Utah Code Annotated 40-8-12), the rules (R647-4-107), and the requirements of the Notice of Non-Compliance (NON) and the Finding of Non-Compliance (FON) issued by the Division with respect to the timely reclamation of the Facility.

5. The North Lily Mining Company denied the allegations in its *Response of North Lily Mining Company to Notice of Agency Action*, dated March 30, 2000.

AGREEMENT AND ORDER

After full and complete negotiation of all matters set forth in the Division's *Notice of Agency Action*, Cause No. M/023/007, and upon mutual exchange of covenants contained herein, the parties intending to be legally bound, the Division and North Lily agree to settle this contested case on the following terms:

1. Upon execution by the Division and by North Lily, and upon the approval of the Board, this Stipulation and Consent Order is a legally binding agreement between the Division

and North Lily, and it is a final order of the Board properly authorized and issued pursuant to Utah law and regulations. North Lily acknowledges the issuance and receipt of this order of the Board, and except as expressly set forth herein, waives all rights to appeal the Division's *Notice of Agency Action* or to appeal this Stipulation and Consent Order.

2. Except as provided otherwise in this Stipulation and Consent Order, North Lily is ordered to, and agrees to, diligently commence, perform, and complete all Reclamation Activities described in the approved Mining and Reclamation Plan to the Tintic Project on file with the Division, together with any amendments thereto ("Reclamation Plan"), which is incorporated by reference into this Stipulation and Consent Order, and complete those activities as scheduled and as described in Exhibit A, revised as of July 13, 2000, and titled "Reclamation and Closure Plan Schedule" a copy of which is attached to and made part of this Stipulation and Consent Order. To the extent the activities and schedule contemplated and described in Exhibit A differ from or are inconsistent with the activities and schedule described in the "Reclamation Plan", Exhibit A shall control. Exhibit A provides for periodic Assessment Review and Schedule Readjustment Meetings at which it is contemplated the parties may agree to changes and adjustments in the planned reclamation activities and the schedule for completing same. Except for post-closure monitoring of the facility and maintenance of facilities, features and equipment required for post-closure care and post-closure fluid management, all field reclamation activities shall be complete by close of business on December 31, 2000.

3. All reclamation work shall be performed by competent and experienced workers who are acceptable by the Division. Approval by the Division shall not be unreasonably withheld.

4. The Division and North Lily mutually agree that the Board should dismiss the Division's *Notice of Agency Action*, Cause No. M/023/007, with prejudice, and that any enforcement of the matters described in that *Notice of Agency Action* shall be limited to enforcement of this Stipulation and Consent Order. Upon execution of this Stipulation and Consent Order by the Board, *Notice of Agency Action*, Cause No. M/023/007 is ordered dismissed with prejudice. North Lily understands and agrees that this Stipulation and Consent Order does not settle any notice of violation, nor any other civil or criminal enforcement action, currently brought by the state of Utah against North Lily except the above-described Division's *Notice of Agency Action*, Cause No. M/023/007 dated March 10, 2000. The parties understand and agree that nothing in this Stipulation and Consent Order or the parties execution thereof shall constitute any agreement or admission by North Lily, or its officers, directors, or employees, with respect to the allegations set forth in the Division's *Notice of Agency Action*, Cause No. M/023/007 dated March 10, 2000, or constitute any waiver of or preclude the assertion by North Lily or its officers, directors, or employees of any defenses or claims they may have individually or collectively with respect to said allegations in any other proceedings.

5. In the event the Division or the Board finds that North Lily has breached this Order, the Division shall notify North Lily in writing of the alleged breach, and North Lily shall have ten (10) calendar days from the date of notice to cure the breach, or engage in informal negotiations with the Division to reach a mutually acceptable resolution of the alleged breach. The Board or the Division may, in it's sole discretion, informally grant North Lily further reasonable time to correct the breach. North Lily agrees that any breach of this Stipulation and Consent Order , which is not cured or otherwise resolved to the satisfaction of the Division

within the 10-day period, would, at a minimum, constitute a violation of a Board Order, and the Board or Division may enforce this Stipulation and Consent Order as follows:

(i) the Division or the Board may immediately seek all legal, equitable, or injunctive relief available to them under state or federal laws or regulations, including civil and criminal penalties, and the recovery of any and all reasonable costs, fees, and expenses, including attorney fees, incurred in seeking and obtaining relief from North Lily and from any surety guaranteeing North Lily's reclamation;

(ii) North Lily expressly waives any due process or other procedural rights it may have to receive any further prior notice of any Division or Board finding that North Lily has breached, or has allegedly breached, this Order, including but not limited to the thirty (30) day compliance notice described in Utah Code 40-6-11(3), and North Lily agrees that the Board and Division may file suit, seek bond forfeiture, or seek any other relief, without providing North Lily any further opportunity to cure such alleged breaches;

(iii) The Division may immediately seek forfeiture of North Lily's reclamation bond(s) without providing North Lily any notice or opportunity to challenge such forfeiture, and to apply those surety moneys to all costs and expenses of reclamation and post-closure monitoring and to return to North Lily any surety moneys not used for such purposes;

(iv) North Lily agrees that the Board or Division, and its agents and

representatives, may immediately enter the Facility, take over control of any existing reclamation work, and conduct all further reclamation and post-closure monitoring work itself, without any authorization from North Lily.

(v) If Division or Board find that one or more of the tasks described in Exhibit A have not been completed by the anticipated completion date, and that North Lily will not or cannot meet the final December 31, 2000 field work deadline, the Division may immediately declare an anticipatory breach of this Order and seek any and all remedies available to them, including those described above.

After North Lily has submitted its proposed post-closure fluid maintenance plan to the Division, North Lily may submit a request to the Division for partial bond release for reclamation work which was successfully completed.

For purposes of this Stipulation and Consent Order, "field" reclamation work means all reclamation work designed to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe, stable, ecological condition and use which will be consistent with local environmental conditions. The term "post-closure" monitoring, care, and fluid maintenance, means all work designed to monitor conditions at the Facility for an extended period of time to confirm that the field reclamation work has achieved the above-described "safe, stable, ecological condition", and all other statutory and regulatory requirements. If during the post-closure monitoring period the Division staff finds that safe, stable, ecological conditions have not been achieved, additional field reclamation work may be necessary to achieve those goals.

6. North Lily waives any and all rights or objections it may have to the form, content, manner of service and timeliness of the *Notice of Agency Action*, Cause No. M/023/007; to an informal or formal adjudication or judicial review of the *Notice of Agency Action* or its answer thereto; and to service of a copy of this Stipulation and Consent Order, which shall be effective when signed by representatives of the Division, North Lily, and the Board provided, however, that nothing in this Stipulation and Consent Order or the parties execution thereof shall constitute any agreement or admission by North Lily, or its officers, directors, or employees, with respect to the allegations set forth in the Division's *Notice of Agency Action*, Cause No. M/023/007 dated March 10, 2000, or constitute any waiver of or preclude assertion by North Lily or its officers, directors or employees of any defenses or claims they may have with respect to said allegations in any other proceedings.

7. The Board finds that the Division and the Board have satisfied all of the requirements of law and that the terms of this Stipulation and Consent Order are consistent with the protection of public health and safety, and it is in the public interest.

8. RECLAMATION REQUIREMENTS AND ACCESS

Except as otherwise provided in this Stipulation and Consent Order, Operator shall perform all reclamation activities in compliance with Utah statutes and regulations, including but not limited to, those administered by the Division.

In addition to the Board's and the Division's statutory authorities to enter and make inspections of the Facility for purposes of enforcing state laws and regulations, Operator expressly and unequivocally waives any and all rights it may have to exclude Division or Board representatives and agents from the Facility. Operator expressly agrees that it will, at all

reasonable times, provide Division representatives or Board members full and immediate access to the Facility for purposes of inspecting the reclamation work, and the failure of Operator to provide full and immediate access to the Facility at reasonable times shall constitute an immediate breach of this Stipulation and Consent Order. Operator's above-described waiver and access agreement shall remain in full force and effect until such time as the Board issues an order finding the reclamation work is complete.

9. EXISTING OBLIGATIONS UNAFFECTED

Except as specifically provided herein, nothing set forth in this Stipulation and Consent Order is intended, nor shall it be construed, to authorize any violation of any statute, regulation, order or permit issued or administered by the Division. Nothing set forth in this Stipulation and Consent Order is intended, nor shall be construed, to relieve or limit Operator's obligations to comply with any existing or subsequent federal or state statute, regulation, permit or order.

10. RESERVATION OF RIGHTS

With regard to matters not expressly addressed by this Stipulation and Consent Order, the Division specifically reserves all rights to institute equitable, administrative, civil and criminal actions against Operator for any past, present or future violation of any statute, regulation, permit or order, which the Division is authorized to enforce, and North Lily specifically reserves all claims and defenses it may have with respect to any such actions.

11. TRANSFER OF SITE

The parties expressly intend that the duties and obligations under this Stipulation and Consent Order shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Facility or any part thereof. Until such time as the Board

has issued an order finding that reclamation has been completed in accordance with the terms of this Stipulation and Consent Order, Operator shall serve a copy of this Stipulation and Consent Order upon any prospective transferee of the legal and equitable interest at least 30 days prior to contemplated transfer and shall simultaneously inform the Division in writing of such intent. If the transferee agrees to comply with the terms and conditions of this Stipulation and Consent Order, the duties and obligations of Operator under this Stipulation and Consent Order will not be modified, diminished, terminated or otherwise altered by the transfer or agreement.

12. CORRESPONDENCE WITH THE DIVISION

All correspondence with the Division concerning this Stipulation and Consent Order shall be sent first class mail and addressed to:

Wayne Hedberg
Division of Oil, Gas and Mining
P. O. Box 145801
Salt Lake City, Utah 84114-5801
Telephone No. (801) 538-5286

with copies to:

Kurt E. Seel, Esq.
Assistant Attorney General
Utah Attorney General's Office
P. O. Box 140857
Salt Lake City, Utah 84114-0857
Telephone No. (801) 366-0508

13. CORRESPONDENCE WITH OPERATOR

All correspondence with Operator concerning this Stipulation and Consent Order shall be sent first class mail and addressed to:

North Lily Mining Company
1800 Glenarm Place, Suite 210
Denver, Colorado 80202
ATTN: Steven Flechner, President

14. FORCE MAJEURE

In the event that Operator is prevented from complying in a timely manner with any time limit imposed in this Stipulation and Consent Order solely because of acts or events beyond the Operator's control and which Operator, by the exercise of all reasonable diligence, is unable to prevent, or mitigate ("Force Majeure"), then Operator may petition the Division for an extension of time. An increase in the cost of performing the obligations set forth in this Stipulation and Consent Order shall not constitute circumstances beyond Operator's control. Operator expressly agrees that its economic inability to comply with any of the obligations of this Stipulation and Consent Order shall not be grounds for any extension of time under this paragraph, unless solely caused by Force Majeure.

Operator shall only be entitled to the benefits of this paragraph if it notifies the Division within five (5) calendar days by telephone, and then within ten (10) calendar days in writing, of the date it becomes aware or reasonably should become aware of the event impeding performance. The written submission shall include all related documentation, as well as a notarized affidavit from a responsible corporate official specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by Operator to minimize the length of the delay. If the Division finds a Force Majeure event has occurred, the Division shall extend the time for performance of the obligations which are solely affected by the Force Majeure for such time as necessary to allow the Operator to complete those obligations. Operator's failure to comply with the requirements of this paragraph specifically in a timely fashion shall render the paragraph null and of no effect to a particular incident involved.

Operator shall have the burden of proof as to the justification for an extension and the length of such extension pursuant to this paragraph, both to the Division and in the event that

compliance with the terms and conditions of this Stipulation and Consent Order becomes an issue in a subsequent litigation. Such burden of proof shall be by clear and convincing evidence.

15. RELEASE, DEFENSE, AND HOLD HARMLESS AGREEMENT

Operator shall release, defend, indemnify, and hold harmless the Division and the Board, and the agents, employees and representatives of the Division and the Board, from any and all claims, suits, injuries and damages which arise from, or are alleged to arise from, the matters addressed in this Stipulation and Consent order, including but not limited to, the reclamation work to be performed by Operator, except to the extent such claims, suits, injuries, and damages result from or arise solely out of the negligence or willful misconduct of the Division, the Board, or the agents, employees and representatives of the Division or the Board.

16. ENTIRE AGREEMENT

This Stipulation and Consent Order shall constitute the entire integrated agreement of the parties. No prior contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding. Except as provided in paragraph 14 (Force Majeure), no changes, additions, modifications or amendments to this Stipulation and Consent Order shall be effective unless they are set out in writing and signed by the parties hereto. This Stipulation and Consent Order shall be interpreted pursuant to the laws of the State of Utah.

17. ATTORNEY'S FEES

The parties agree to bear their respective attorney's fees, expenses and other costs in the prosecution or defense of this matter arising prior to the execution and Board approval of this Stipulation and Consent Order.

18. DECISIONS UNDER CONSENT ORDER

Any future decision which the Division or Board may make under the provisions of thi Stipulation and Consent Order shall not be deemed to be a final action of the Board or Divisio and shall not be appealable to the Board or to any court. Any objection which Operator may have to said decisions will be preserved until the Division or the Board enforces this Stipulatic and Consent Order. At no time, however, may Operator challenge the content and validity of Stipulation and Consent Order, nor may Operator challenge the findings and conclusions agre to in this Stipulation and Consent Order.

19. IN WITNESS WHEREOF

The parties hereto have caused this Stipulation and Consent Order to be executed by th duly authorized representatives. The undersigned representatives of Operator certify under penalty of law that they are authorized to execute this Stipulation and Consent Order on behalf Operator; that Operator consents to the entry of this Stipulation and Consent Order and the foregoing findings as an order of the Board; and that Operator hereby waives its rights to appe the Notice of Agency Action, this Stipulation and Consent Order, and the foregoing findings, conclusions, terms and conditions.

OPERATOR
NORTH LILY MINING COMPANY, a Utah company.

Stephen E. Flechner, President

W. Gene Webb, Executive Vice-President

Date: 25 July 2000

DIVISION OF OIL, GAS AND MINING

Lowell P. Braxton, Director

Date: 7/25/00

THE BOARD OF OIL, GAS AND MINING

Thomas B. Faddies, Acting Chairman

Date: July 26, 2000

OPERATOR

NORTH LILY MINING COMPANY, a Utah company.

Stephen E. Flechner, President — 25 July 2000 Date

W. Gene Webb, Executive Vice-President — 25 July 2000 Date

STATE OF Colorado)
COUNTY OF Denver)

On the 25th day of July, 2000, personally appeared before me S. FLECHNER & G. WEBB who being by me duly sworn did say they ~~he/she~~, the said Flechner & Webb are ~~is~~ the President & Exec. Vice President of North Lily Mining Company and duly acknowledged that said instrument was signed on beha of said company by authority of its bylaws or a resolution of its board of directors and said Flechner & Webb duly acknowledged to me that said company executed the same.

Notary Public
Residing at: 1800 Gleason Place 900 7 R
Commission Expires 2-02-0

My Commission Expires: February 2-2004

DIVISION OF OIL, GAS AND MINING

Lowell P. Braxton, Director — 7/25/00 Date

STATE OF Utah)
COUNTY OF Salt Lake)

On the 25th day of July, 2000, personally appeared before me Lowell P. Braxton who being by me duly sworn did say the he/~~she~~, the said Lowell P. Braxton is the Director of the Division of Oil, Gas and Mining, Departm of Natural Resources, State of Utah, and he/~~she~~ duly acknowledged to me that he/~~she~~ executed the foregoing document by authority of law on behalf of the State of Utah.

NOTARY PUBLIC
VICTORIA A. BAILEY
1594 W. N. Temple #1210
Salt Lake City, UT 84116
My Commission Expires
February 29, 2004
STATE OF UTAH

Notary Public
Residing at: Salt Lake City, UT

My Commission Expires: February 29, 2004

Exhibit A - Stipulation and Consent Order
North Lily Mining Company - M/023/007

Reclamation and Closure Plan Schedule NORTH LILY MINING COMPANY Silver City, Utah Heap Leach Facility (Revised 7/13/00)			
	Component	Start Date	Anticipated Completion Date
1.	Restore Pad Perimeter Solution Collection System	May 8	May 9 (completed)
Assessment Review & Schedule Readjustment		**May 16**	**Completed**
2.	Design, Build & Start-up Enhanced Evaporation Systems	April 12	Aug 21
	2.1 System Design Schematic	April 12	Completed - 4/28
	2.2 Solution Channel Liner Repairs	July 31	Aug 15
	2.3 Reinstall ADS pipe underdrain in pad solution channel	Aug 15	August 29
	2.4 Site Clean-up	May 14	August 11
	2.5 Flow meter and weir or flume	May 12	July 28
	2.6 Install new pump	June 15	Completed (back-up only)
	2.7 Install and Start-up Pad Margin Evaporation System	May 12	Abandoned
	2.8 Relocate Evap. away from margin	May 22	Completed
	2.9 Install Overflow Pond Evap. if needed*	July 10	July 21
	2.10 Repair Pregnant Pond Liner	July 5*	July 21*
	2.11 Reestablish Pregnant Pond Leak Detection System	July 21*	July 28*
	2.12 Construct, Install In-pond Preg-pond Evaporation System	July 17*	July 28
	2.13 Estimate Post-Closure Draindown Rate	August 14	August 21
Assessment Review & Schedule Readjustment		**June 13**	**Completed**
3.	Design Post-closure Fluid Management System		
	3.1 Conceptual Design	April 15	July 28
	3.2 Final Design	August 10	September 15

4.	Characterize, Identify, and Quantify Stockpile Topsoil & Topsoil Substitute, Finalize Seed Mix 4.1 Nutrient characterization of stockpiled topsoil and estimate stockpile volume 4.2 Determine topsoil thickness requirements 4.3 Identify source of topsoil substitute and perform nutrient characterization 4.4 Finalize seed mix	July 17 July 17 July 17 July 17 July 17	September 6 August 31 September 6 September 6 September 6
Assessment Review & Schedule Readjustment		**July 13**	***Completed***
5.	Assess Adequacy of Natural Revegetation in Former Land Application Area		**OGM staff to schedule/perform**
Assessment Review & Schedule Readjustment Date		**August 15**	
6.	Regrade Heap Leach Pad	Sept. 11	Sept. 15
Assessment Review & Schedule Readjustment Date		Sept. 12	
7.	Apply Topsoil	Sept. 15	October 15
Assessment Review & Schedule Readjustment Date		Oct. 11	
8.	Inventory and Dispose of Salvageable, Recyclable, and Unusable Materials 9.1 Inventory 9.2 Disposal	 July 10 July 30	 Aug. 30 November 30
9.	Apply Seed and Soil Amendments	October 15	November 15
Assessment Review & Schedule Readjustment Date		**Nov. 15**	
10.	Decommission and Reclaim Barren and Overflow Ponds (if not necessary for post-closure fluid management system)	September 1	December 31
11.	Construct Post-Closure Fluid Management System	November 1	December 31
On-site Review		**December 5** (on/before)	
12.	All reclamation/closure work to be completed except for facilities/features required for post closure monitoring (or post closure fluid management system).		December 31

* Dependant upon results of previous components and/or agency approvals

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct coy of the foregoing STIPULATION AND CONSENT ORDER for Docket No. 2000-004, Cause No. M/023/007 to be mailed with postage prepaid, this 28 day of July, 2000, to the following:

CERTIFIED MAIL
Z 230 748 182
H. Michael Keller
Van Cott, Bagley, Cornwall & McCarthy
Attorneys for North Lily Mining Company
50 South Main Street, Suite 1600
P.O. Box 45340
Salt Lake City, Utah 84145

Thomas A. Mitchell/ Kurt E. Seel
Assistant Attorney General
160 East 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0857

Mary Ann Wright
Associate Director of Mining
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84144-5801
(Hand Delivered)

Stephen E. Flechner, President & CEO
North Lily Mining Company
1800 Glenarm Place, Suite 210
Denver, Colorado 80202

Gene Webb
North Lily Mining Company
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Denver, Colorado 80202

Don A. Ostler, Director
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288 North 1460 West
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Tiffini Moss

Tiffini Moss, Executive Secretary
Division of Oil, Gas and Mining