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SEE SIGNATURE PAGES FOR COMPLETE LIST*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THE UNITED STATES OF)
AMERICA, STATE OF IDAHO, and)
SHOSHONE-BANNOCK TRIBES,)
)
Plaintiffs,)
)
v.)
)
)
)
NU-WEST MINING INC. and)
NU-WEST INDUSTRIES, INC.,)
)
Defendants.)
_____)

CIVIL COMPLAINT

COMPLAINT

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The United States of America (“United States”), by authority of the Attorney General and through the undersigned attorneys, acting at the request of the United States Department of Agriculture, Forest Service (“USFS”); the State of Idaho (“State”); and the Shoshone-Bannock Tribes (the “Tribes”) (collectively “Plaintiffs”), allege as follows:

INTRODUCTION

1. This is a civil action brought against Nu-West Mining Inc. and Nu-West Industries, Inc. (collectively “Defendants”) pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9606 & 9607. The United States seeks injunctive relief pursuant to CERCLA Section 106 in response to releases of hazardous substances at the East Mill Dump Sub-Operable Unit of the North Maybe Mine Site (“Site”) in Caribou County, Idaho. 42 U.S.C. § 9606. The State and Tribes also, pursuant to CERCLA Section 107, seek recovery of response costs incurred in response to releases of hazardous substances at the Site and a judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs or damages pursuant to Sections 107 and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607, 9613(g)(2).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to Sections 106, 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this district because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district.

DEFENDANTS

4. Defendant Nu-West Mining Inc. is a Delaware Corporation with a principal place of business in Soda Springs, Idaho. Nu-West Mining Inc. is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Defendant Nu-West Industries, Inc. is a Delaware Corporation with a principal place of business in Soda Springs, Idaho. Nu-West Industries, Inc. is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

STATUTORY FRAMEWORK

6. Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), provides, in pertinent part, that “[w]henver . . . any hazardous substance is released or there is a substantial threat of such a release into the environment . . . the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance”

7. By Executive Order 12,580 of January 23, 1987, the President’s functions under 42 U.S.C. § 9604(a) have been delegated to the Secretary of the Department of Agriculture, who has re-delegated those functions in instances such as this to the Chief of the Forest Service, and to the Regional Forester for land under the jurisdiction, custody or control of the Forest Service. 7 C.F.R. 2.60(a)(39); Forest Service Manual 2164.04c, 2.1.

8. Section 106 of CERCLA, 42 U.S.C. § 9606, provides that:

when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

42 U.S.C. § 9606(a).

9. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part, that:

(1) the owner and operator of a vessel or a facility, [and]

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . . shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian Tribe not inconsistent with the national contingency plan

10. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), specifies that in any cost recovery action brought under Section 107 of CERCLA, 42 U.S.C. § 9607, “the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

RELEVANT FACTS

11. The North Maybe Mine Site (“Site”) is located approximately 16 miles east of Soda Springs in Caribou County, Idaho in the Caribou-Targhee National Forest. The Site is divided into two operable units (“OUs”): the East Mill OU and the West Ridge OU. The East Mill OU is further divided into three sub-operable units: the East Mill Dump Sub-Operable Unit, the Open Pits Sub-Operable Unit, and the Creeks Sub-Operable Unit.

12. Mining of phosphate ore at the Site began in 1965 and continued until 1993. The mine includes an open pit approximately 2.5 miles long and reclaimed haul roads, surrounded by 10 overburden piles, one of which is the East Mill Dump Sub-Operable Unit (“EMDSOU”), which is the subject of this Complaint.

13. As a result of mining activities that took place at the Site, the Site was contaminated with hazardous substances including, but not limited to, selenium, arsenic, and uranium.

14. The North Maybe Mine is located on Federal Leases IDI-04 and IDI-8289, held by Nu-West Mining Inc.

15. BLM issued Lease I-04 to Western Fertilizer Association in 1950. Lease I-04 was assigned to Central Farmers Fertilizer Company in 1959, El Paso Natural Gas Products Company (name changed to El Paso Products Company in 1966) (“El Paso”) and El Paso Products Service Company in 1964 and 1970, respectively, and Agricultural Products Corporation (“APC”) in 1972. APC merged into Beker Industries Corporation (“Beker”) in or around 1974.

16. In or around December 1978, Beker assigned a 50% interest in Lease I-04 to Western Cooperative Fertilizers (U.S.), Inc. (“WCFUS”), and at the same time WCFUS and Beker each assigned their 50% shares in Lease IDI-04 to the newly created Conda Partnership.

17. BLM issued Lease IDI-8289 to the Conda Partnership in 1983. Some overburden from mining on Lease I-04 was deposited on lands encompassed under Lease IDI -8289.

18. In 1987, Nu-West Industries, Inc. acquired Beker’s 50% interest in the Conda Partnership. In 1992, Nu-West Industries, Inc. acquired the stock of WCFUS, which thereafter changed its name to Nu-West Mining. The Conda Partnership assigned Lease I-04 and Lease I-

8289 to Nu-West Mining Inc. in 1995. Nu-West Mining Inc. currently holds Lease I-04 and I-8289, and special use permits associated with the North Maybe Mine.

19. In September 2009, Defendants filed suit against the United States in the United States District Court for the District of Idaho seeking to recover response costs under CERCLA Sections 107 and 113(g)(2), 42 U.S.C. §§ 9607, 9613(g)(2), incurred by them at multiple historic phosphate mine sites, including the North Maybe Mine Site.

20. In March 2013, the Court entered a Consent Decree between the United States and Defendants resolving their claims and counter-claims against each other in *Nu-West Mining Inc. v. United States of America*, Case No. 09-431-E-BLW (“2013 Consent Decree”), which, inter alia, allocates responsibility between Defendants and United States for future response costs associated with several Mine Sites, defined in the 2013 Consent Decree to include this Site.

21. Neither the litigation nor the Consent Decree addresses performance of the Work, the subject of this Complaint. Neither the State nor Tribes are party to that litigation or 2013 Consent Decree.

UNITED STATES’ ACTIVITIES AT THE SITE

19. Pursuant to Administrative Orders on Consent entered into with the USFS, Defendants have undertaken efforts to investigate the Site, since 1997.

20. In January 2013, an Administrative Order on Consent between USFS, State, Tribes and Defendants was entered to develop remedial investigation/focused feasibility studies (“RI/FFS”) for the North Maybe Mine Site, including the EMDSOU.

21. Following the completion of the RI/FFS in July 2021, the USFS released a proposed plan, and in September 2022, issued an Interim Record of Decision (“Interim ROD”) for the North Maybe Mine, East Mill Operable Unit, East Mill Dump Sub-Operable Unit.

22. The Interim ROD selected a remedy for the EMDSOU that consists of an engineered cover system, sediment control structures, monitored natural attenuation, and operation and maintenance activities.

GENERAL ALLEGATIONS

21. The EMDSOU is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been generated and disposed of at the Site, and have come to be located in the environment at the EMDSOU.

23. There have been releases and threatened releases of hazardous substances into the environment at and from the EMDSOU within the meaning of Sections 101(22), 106, and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), 9606 and 9607(a).

24. Defendants are the current operator and operated the EMDSOU at the time of the disposal of hazardous substances at the Site and have arranged for the disposal of hazardous substances at the EMDSOU.

25. Defendants are within the class of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

26. In response to a release or a threatened release of a hazardous substance at or from the EMDSOU, the State and Tribes have incurred costs of “response” as defined in Section

101(25) of CERCLA, 42 U.S.C. § 9601(25), and as used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and may incur further response costs in connection with the EMDSOU.

FIRST CLAIM FOR RELIEF:
BY UNITED STATES UNDER SECTION 106 OF CERCLA

27. The foregoing paragraphs are realleged and incorporated herein by reference.

28. The Defendants are liable under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to take such actions as the USFS determines are necessary to protect public health and welfare and the environment at the EMDSOU.

SECOND CLAIM FOR RELIEF:
BY STATE AND TRIBES UNDER SECTION 107 OF CERCLA

29. The foregoing paragraphs are realleged and incorporated herein by reference.

30. Defendants are jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for all costs incurred by the State and the Tribes in response to releases or threats of releases of hazardous substances at the EMDSOU.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Enter judgment against Defendants for all costs incurred by the State and the Tribes in response to releases or threats of releases of hazardous substances at the EMDSOU, including interest;

2. Enter an order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, requiring Defendants to perform USFS's selected response actions for the EMDSOU.

4. Enter a declaratory judgment of liability against Defendants pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding on any subsequent action or actions to recover further response costs or damages by the State and Tribes;

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5. Grant such other relief as the Court deems appropriate.

Respectfully submitted,

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