

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRICK GOLDSTRIKE MINES,
INC.,

Petitioner

vs.

Supreme Court Case No.

District Court Case No. 18-A-785913

Electronically Filed
Sep 19 2019 04:29 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

EIGHTH JUDICIAL DISTRICT
COURT FOR THE STATE OF
NEVADA IN AND FOR THE COUNTY
OF CLARK, AND THE HONORABLE
ELIZABETH GONZALEZ, DISTRICT
JUDGE,

Respondents,

and

BULLION MONARCH MINING, INC.,

Real Party in Interest.

PETITIONER'S APPENDIX
VOLUME III

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EXHIBIT 10

EXHIBIT 10

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

vs.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant.

Case No. 03:09-CV-612-MMD-WGC

**MOTION FOR JURISDICTIONAL
DISCOVERY**

Plaintiff Bullion Monarch Mining, Inc., moves this Court for leave to conduct discovery into issues arising from defendant Barrick Goldstrike Mines, Inc.'s recent "Motion to Dismiss for Lack of Jurisdiction." (ECF No. 260.) Despite Barrick's statements in its answer eight years ago that it was a Colorado corporation doing business in Nevada, it now contends that it (like Bullion) was a resident of Utah in 2009 when the case began and, therefore, that this case must be dismissed for want of diversity jurisdiction. Specifically, Barrick alleges that its "nerve center" was in Utah, referring to the test adopted by the Su-

preme Court in *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). Barrick supports the motion with a detailed declaration of Rich Haddock discussing the “locations” of corporate leaders in 2009 and the places where various decisions were made [ECF No. 260-1].

Bullion is entitled to test the veracity of, and probe beneath the surface of, the factual representations and conclusions in the declaration and motion. And Bullion must be permitted to do so before responding to the merits of Barrick’s motion, without waiving any arguments regarding the legal merits, timeliness or equitable ramifications of that motion.

To its credit, Barrick’s counsel recognizes that discovery is appropriate regarding the jurisdictional issues. (Declaration of Joel Henriod, September 29, 2017, ¶ 4, Exhibit 1.) Barrick wishes to restrict that discovery, however, more than Bullion can abide.

Given the enormous time and expense the parties and the Court have dedicated to the case, Bullion should be permitted liberal discovery before the Court even considers dismissal. This motion is based on the memorandum of points and authorities below, the declarations of Joel D. Henriod (Exhibit 1) and Abraham G. Smith (Exhibit 2), the exhibits attached hereto, the record, and any other evidence the Court deems appropriate.

Dated this 29th day of September, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Joel D. Henriod

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Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

Barrick Goldstrike now realizes, according to its motion to dismiss, that its principal place of business was never in Nevada; rather, it was in Utah when this case commenced because its corporate “nerve center” was in Salt Lake City (ECF No. 260.) Goldstrike supports its motion with surprising assertions, many of which appear to be inconsistent with representations it has made over the last eight years or, at least, with the impressions it has fostered. The Court should permit Bullion to pursue thorough discovery into these issues.

I.

A CORPORATION’S “NERVE CENTER” FOR DIVERSITY JURISDICTION IS A FACT- SPECIFIC QUESTION WARRANTING DISCOVERY

As Goldstrike sets out in its motion, under the Supreme Court’s opinion in *Hertz Corp. v. Friend*, a corporation’s principal place of business is its “nerve center,” *i.e.*, “the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.” 559 U.S. 77, 80–81 (2010). Determining where such activities actually occur, however, is a fact-specific inquiry. While the Court noted that, in practice, the nerve center “should normally be the place where the corporation maintains its headquarters,” for a headquarters to qualify as the nerve center, it must be “the actual center of direction, control, and coordination . . . and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who had traveled there for the occasion).” *Id.* at 93.

The *Hertz* Court recognized that there will be “hard cases.” 559 U.S. at 95. For instance, “in this era of telecommuting, some corporations may divide their command and coordinating functions among officers who work at several different locations, perhaps communicating over the Internet.” *Id.* at 95–96. Further complicating the analysis, determining the principal place of business of a subsidiary (such as Goldstrike) is distinct from establishing that of the par-

ent. *Danjaq, S.A. v. Pathe Commc'ns Corp.*, 979 F.2d 772, 775 (9th Cir.1992);
Hoschar v. Appalachian Power Co., 739 F.3d 163, 173 (4th Cir. 2014).

As the determination of an entity's "nerve center" may be fact intensive—and because representations from even ethical parties tend to be self-serving and carefully crafted—"discovery should ordinarily be granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." *Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003); *Bank One v. Montle*, 964 F.2d 48, 52 (1st Cir. 1992) (counseling district courts to give the parties a hearing and conduct discovery prior to its ruling on the existence of subject matter jurisdiction, or lack thereof); *Zapata v. Flintco, Inc.*, No. 2:09-CV-03555 GEB, 2012 WL 260027, at *2 (E.D. Cal. Jan. 25, 2012) (permitting defendants to conduct limited discovery confined to the issue of the court's subject matter jurisdiction). That is the case here.

II.

SEVERAL CIRCUMSTANCES CALL FOR A BROAD AND THOROUGH INQUIRY

In light of the surprising nature Goldstrike's contention and the procedural posture of this case—on the eve of trial, after eight years of litigation—perfunctory discovery will not do. Bullion must be permitted to thoroughly investigate the whole truth underlying the careful statements in Mr. Haddock's declaration, as well as discover all relevant facts that may not have been included.

A. The Allegations Are Inconsistent with the Impression that Goldstrike Has Given for Eight Years

1. *Goldstrike Consistently Represented its Place of Business in Nevada*

Since Bullion sued Goldstrike in 2009, Goldstrike has consistently deflected inquiries into this Court's jurisdiction by representing that its place of

business was Nevada. Goldstrike admitted in its answer that it was incorporated in Colorado and did business in Nevada. (227 ECF No. 69, ¶2A; ECF No. 18, ¶2A; ECF No. 20, ¶2A.) When this Court inquired into its jurisdiction over this matter, Goldstrike again stated that it was incorporated in Colorado, did business in Nevada, and that it was not contesting jurisdiction. (ECF No. 7.)

2. *Goldstrike Disclosed only Nevada Witnesses*

Goldstrike's initial disclosures include none of the witnesses—supposedly “located in Utah”—in Mr. Haddock's declaration. (Ex. 2-A, Initial Disclosures, dated Jan. 7, 2010.) Rather, the Goldstrike-associated witnesses in the initial disclosure appear connected with Goldstrike's operations in Nevada. (Id.) In response to Bullion's interrogatories, moreover, Goldstrike disclosed several corporate witnesses with Nevada addresses. (ECF No. 244-1, 244-4, response to interrogatories 2 and 8.)

B. The Supporting Declaration of Richard Haddock Raises Serious Questions that Require Testing

The supporting declaration of Richard Haddock is at the same time detailed in some areas and curiously vague in others.

1. *Haddock Changes Stories about his Role*

Mr. Haddock's declaration departs significantly from his testimony in 2010. Back then, he said he was vice president and general counsel for a different entity, Barrick Gold Corporation, omitting any ties to Goldstrike. (Ex. 2-B, Haddock, May 10, 2010 depo. pp. 4 & 5.) It was on the basis of Haddock's representations that Barrick Gold Corporation filed a motion to dismiss for lack of personal jurisdiction in 2009, arguing that it was completely separate from Goldstrike and that it had no dealings in Nevada. (227 ECF No. 70, 71.)

Now, Mr. Haddock claims that he was based in Utah and that he has held various positions with Goldstrike since 1997 and that he was a corporate director for Goldstrike in 2009. (ECF 260-1, ¶¶ 3&8.)

1 **2. *Haddock Substitutes Utah-Based***
 2 ***Officers for Nevada Ones***

3 Mr. Haddock's declaration also raises questions about the identity of
 4 Goldstrike's accounting manager. In May 11, 2010, Russ Hofland testified that
 5 he was the accounting manager for Goldstrike and that he lived in Spring
 6 Creek, Nevada. (Ex. 2-C, Hofland depo. p. 4.) Now, Mr. Haddock asserts that
 7 Curtis Caldwell, allegedly in Utah, was the accounting manager for Goldstrike
 8 in 2009. (ECF No. 260-1, ¶10(h).)

9 **3. *Haddock is Curiously Vague about***
 10 ***the Leadership "Located" in Utah***

11 Mr. Haddock's declaration is devoid any statements about the residences
 12 of the purported officers, managers and directors listed therein—or from which
 13 state decisions affecting Goldstrike were directed. Instead, Mr. Haddock
 14 claims that all of the officers and directors were "located" in Utah. That vague
 15 term does little to alleviate the inconsistency with Goldstrike's disclosures in
 16 2009 and 2010, which listed no Utah residents, and none of whom appear in the
 17 list of witnesses in Mr. Haddock's declaration. (ECF No. 260-1, Exhibit 2-A,
 18 Exhibit 2-C.)

19 **III.**

20 **GOLDSTRIKE'S ASSERTIONS SHOULD BE TESTED**
 21 **WITH ALL OF THE TOOLS OF CIVIL DISCOVERY**

22 Although the parties completed most of the fact discovery with the excep-
 23 tion of certain issues for the accounting phase of trial, there has been *no* discov-
 24 ery on the basis of this Court's jurisdiction because Goldstrike previously ad-
 25 mitted the facts establishing jurisdiction. Goldstrike's motion to dismiss on the
 26 basis of jurisdiction seven years after the close of discovery represents an ex-
 27 traordinary circumstance and good cause to reopen discovery on the limited is-
 28 sue of the parties' citizenship for subject-matter jurisdiction. *See* FRCP

1 16(b)(4), LR 26-4.

2 That discovery may be limited in subject matter and time, but this Court
3 should not limit Bullion's use of the tools—interrogatories, requests for docu-
4 ments, requests for admissions, and depositions—it may use other than the lim-
5 its that already exist in the rules of civil procedure.

6 **A. There is a Strong Likelihood Discovery will Uncover**
7 **Information Contradicting Goldstrike's Representations**

8 There is a strong likelihood that discovery will reveal that Goldstrike's
9 principal place of business is not in Utah. For example, the fact that
10 Goldstrike's operations are based in Nevada suggests that "the actual center of
11 direction, control, and coordination" may be in Nevada. *See Hertz Corp. v.*
12 *Friend*, 559 U.S. 77, 93 (2010). Alternatively, that nerve center might be in
13 Canada, where the officers and directors of Goldstrike's ultimate parent corpo-
14 ration, Barrick Gold Corporation, exercise *de facto* control over Goldstrike's ac-
15 tivities. Only an adequate opportunity for discovery will tell.

16 **B. Ordinary Rules of Discovery Govern**
17 **Limited Jurisdictional Discovery**

18 Undersigned counsel, Joel Henriod, met and conferred with Goldstrike at-
19 torneys Fran Wikstrom and Michael Petrogeorge who expressed that Goldstrike
20 agrees that discovery is appropriate. Goldstrike would not agree, however, to
21 any discovery beyond one deposition and 10 interrogatories and requests for
22 production.

23 Goldstrike's effort to place *ex ante* limits on the number of written re-
24 quests or depositions is misplaced, especially given the prejudice caused by
25 Goldstrike's delay and the increased difficulty in locating information that is
26 now nearly a decade old.

1 **1. *Jurisdictional Discovery is Limited in***
2 ***Time, but Not in the Tools Used***

3 Addressing a similar issue much earlier in litigation, Judge Hicks placed
4 a *time* limit—106 days—on discovery into the defendant’s personal jurisdiction,
5 but he did not limit the *tools* available under the rules of civil procedure, such
6 as the number of interrogatories or depositions. *See Liberty Media Holdings,*
7 *LLC v. Letyagin*, 925 F. Supp. 2d 1114, 1120 (D. Nev. 2013). This is similar to
8 the situation of post-judgment discovery in aid of execution: “every mean[s]
9 available to them under the law” is permitted, including full discovery. *Castro*
10 *v. United States*, 104 F.R.D. 545, 552 (D.P.R. 1985).

11 **2. *Bullion Deserves All of the Tools of Civil Discovery***

12 The discovery regarding Goldstrike’s citizenship for diversity should be
13 governed by the ordinary rules of civil procedure, including Rules 26, 31, 33,
14 and 34. It includes, at a minimum, the depositions of Mr. Haddock and the in-
15 dividuals listed in his affidavit (whose physical whereabouts and telecommuting
16 habits in 2009 are squarely at issue); written discovery (including interroga-
17 tories, document requests, and requests for admission) regarding the corporate
18 governance, payroll records, and correspondence to establish who was running
19 the company, who was paying them, and where individuals were actually resid-
20 ing when they gave their directions and weighed in on decisions. The results of
21 this initial discovery may generate additional requests.

22 The parties concur that discovery should take place for 90 days from the
23 date of this Court’s order on this motion, determining what the parameters of
24 discovery will be, with a status check 60 days after the order. (*See* “Joint Mo-
25 tion to Stay Proceedings and State Discovery and Briefing Schedule,” filed con-
26 currently herewith.)

27 That timeline is reasonable, even shorter than the one Judge Hicks
28 granted in *Liberty Media*, but should not be further limited to a specific number

1 of written requests or depositions. The Court's power to hear this case turns on
 2 getting the right answer to the question of citizenship, and it is in neither the
 3 parties' nor the Court's interest to get that answer wrong merely because dis-
 4 covery was unduly limited.

5 CONCLUSION

6 This Court should allow Bullion any reasonable discovery to probe
 7 Goldstrike's contention that its place of business in 2009 was different from
 8 what it had asserted for the last eight years. If Goldstrike believes that a de-
 9 mand or request is inappropriate, then the burden should be on Goldstrike to
 10 contest it. Any other limitation would be simply unjust.

11 Dated this 29th day of September, 2017.

12 LEWIS ROCA ROTHGERBER CHRISTIE LLP

13 By: /s/ Joel D. Henriod

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Attorneys for Plaintiff

ORDER

ORDERED that the parties shall be permitted reasonable discovery into the issues raised in “Defendant Barrick Goldstrike Mines, Inc.’s Motion to Dismiss for Lack of Subject-Matter Jurisdiction.” (ECF No. 260.) Bullion shall have 90 days from the date of this Order to complete the jurisdictional discovery, with a status check set for 60 days from the date of this Order.

UNITED STATES DISTRICT JUDGE

Dated:_____

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5 and Local Rule 5-4, I certify that I served the foregoing “Motion for Jurisdictional Discovery” through the United States District Court’s CM/ECF system electronic mail.

Dated this 29th day of September, 2017.

/s/ Adam Crawford
An Employee of Lewis Roca Rothgerber Christie LLP

INDEX OF EXHIBITS

Exhibit No.	Document	Pages
1	Declaration of Joel D. Henriod in Support of Bullion's Motion for Leave to Conduct Discovery on Issues of Diversity Jurisdiction, dated September 29, 2017	2
2	Declaration of Abraham G. Smith in Support of Bullion's Motion for Leave to Conduct Discovery on Issues of Diversity Jurisdiction, dated September 29, 2017	2
A	Rule 26(a)(1) Initial Disclosures of Barrick Goldstrike Mines, Inc.," dated January 7, 2010	8
B	Richie Haddock Deposition Transcript, taken May 10, 2010	31
C	Russ Hofland's Deposition Transcript, taken May 11, 2010	28

EXHIBIT 1

Declaration of Joel D. Henriod

EXHIBIT 1

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Case No. 03:09-CV-612-MMD-(WGC)

Plaintiff,

vs.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant.

**DECLARATION OF JOEL D. HENRIOD
IN SUPPORT OF BULLION'S
MOTION FOR LEAVE TO
CONDUCT DISCOVERY**

Lewis Roca
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STATE OF NEVADA)
COUNTY OF CLARK }:ss.

I, Joel D. Henriod, under the penalty of perjury, state that the following assertions are true of my own personal knowledge:

1. I am a Clark County, Nevada resident and a Nevada-licensed attorney at Lewis Roca Rothgerber Christie LLP.

2. In accordance with LR I-3(f)(2), on September 19, 2017, I had a substantive and meaningful discussion with Mr. Fran Wikstrom and Mr.

1 Michael Petrogeorge, attorneys for defendant Barrick Goldstrike Mines, Inc.,
2 regarding jurisdictional discovery in this matter.

3 3. We discussed Bullion's need for discovery to respond to
4 Goldstrike's motion to dismiss, and we discussed the uncertainty and potential
5 scope of that discovery.

6 4. Mr. Wikstrom concurred that Goldstrike's motion dismiss
7 constitutes good cause under Rule 16(b)(4) to allow discovery regarding
8 jurisdiction. Goldstrike would agree, however, only to a limited scope and to
9 no more than one (1) deposition under Federal Rule of Civil Procedure 30(b)(6),
10 ten (10) interrogatories, and ten (10) requests for the production of documents.
11 On the other hand, Bullion believes that it is entitled to greater flexibility than
12 those restrictions would allow.

13 5. Everyone acknowledged that discovery might need to proceed in
14 rounds because information gathered in written discovery or a deposition could
15 possibly necessitate additional written requests and depositions. We could not
16 agree, however, whether in that situation the burden should rest with Bullion
17 to request additional discovery or with Goldstrike to resist it.

18 6. I advised that Bullion would file this motion for reasonable
19 discovery so that the Court can set the appropriate parameters.

20 Dated this 29th day of September, 2017.

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/s/ Joel D. Henriod.
JOEL D. HENRIOD

EXHIBIT 2

**Declaration of Abraham G.
Smith**

EXHIBIT 2

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Case No. 03:09-CV-612-MMD-WGC

Plaintiff,

vs.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant.

**DECLARATION OF ABRAHAM G. SMITH
IN SUPPORT OF BULLION'S
MOTION FOR LEAVE TO
CONDUCT DISCOVERY ON ISSUES OF
DIVERSITY JURISDICTION**

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STATE OF NEVADA)
COUNTY OF CLARK):ss.
)

I, Abraham G. Smith, under the penalty of perjury, state that the following assertions are true of my own personal knowledge:

1. I am a Clark County, Nevada resident and a Nevada-licensed attorney at Lewis Roca Rothgerber Christie LLP. I am over the age of 18 and represent plaintiff Bullion Monarch Mining, Inc. in this matter. I have

1 personal knowledge of and am prepared to testify to the statements contained
2 in this declaration.

3 2. Attached as **Exhibit A** is a true and correct copy of “Rule 26(a)(1)
4 Initial Disclosures of Barrick Goldstrike Mines, Inc.,” dated January 7, 2010.

5 3. Attached as **Exhibit B** is a true and correct copy of the transcript
6 of Richie Haddock’s deposition, taken May 10, 2010.

7 4. Attached as **Exhibit C** is a true and correct copy of the transcript
8 of Russ Hofland’s deposition, taken May 11, 2010.

9 Executed this 29th day of September, 2017.

10
11 /s/ Abraham G. Smith
12 ABRAHAM G. SMITH
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EXHIBIT 2-A

Barrick's Initial Disclosures

EXHIBIT 2-A

RECEIVED

JAN 11 2010

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17
18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE DISTRICT OF NEVADA

20 BULLION MONARCH MINING, INC.,

21 Plaintiff,

22 vs.

23 BARRICK GOLDSTRIKE MINES, INC.,

24 Defendant.

Case No. 03:09-cv-612-ECR-VPC
(Sub File of 3:08-cv-227-ECR-VPC)

**RULE 26(a)(1) INITIAL
DISCLOSURES OF BARRICK
GOLDSTRIKE MINES INC.**

25 Defendant Barrick Goldstrike Mines Inc. ("Goldstrike") hereby provides its initial
26 disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure.

27 **INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION USED TO**
28 **SUPPORT GOLDSTRIKE'S CLAIMS AND DEFENSES**

The following individuals are likely to have discoverable information used to support
Goldstrike's claims and defenses:

1. Tom Erwin, former attorney to High Desert Mineral Resources and various
Barrick entities, may have discoverable information about High Desert's acquisition of various

1 interests in property and transactions related thereto and should be contacted solely through
2 Goldstrike's counsel at Parsons Behle & Latimer, 201 S. Main Street, Suite 1800, Salt Lake City,
3 Utah, telephone 801-532-1234;

4 2. Paul Schlauch, former attorney to High Desert Mineral Resources, may have
5 discoverable information about High Desert's acquisition of various interests in property and
6 transactions related thereto and should be contacted solely through Barrick's counsel at Parsons
7 Behle & Latimer, 201 S. Main Street, Suite 1800, Salt Lake City, Utah, telephone 801-532-1234;

8 3. Frank Erisman, former attorney to High Desert Mineral Resources, may have
9 discoverable information about High Desert's acquisition of various interests in property and
10 transactions related thereto and should be contacted solely through Goldstrike's counsel at
11 Parsons Behle & Latimer, 201 S. Main Street, Suite 1800, Salt Lake City, Utah, telephone 801-
12 532-1234;

13 4. Clayton Parr, former attorney to various Barrick entities, may have discoverable
14 information about the merger of High Desert Mineral Resources with HD Acquisition
15 Corporation (aka Barrick HD Inc.) and should be contacted solely through Goldstrike's counsel at
16 Parsons Behle & Latimer, 201 S. Main Street, Suite 1800, Salt Lake City, Utah, telephone 801-
17 532-1234;

18 5. Daniel Jensen, former attorney to various Barrick entities, may have discoverable
19 information about the merger of High Desert Mineral Resources with HD Acquisition
20 Corporation (aka Barrick HD Inc.) and should be contacted solely through Goldstrike's counsel at
21 Parsons Behle & Latimer, 201 S. Main Street, Suite 1800, Salt Lake City, Utah, telephone 801-
22 532-1234;

23 6. Patrick Garver, Executive Vice President and General Counsel of Barrick Gold
24 Corporation, may have discoverable information about mergers involving Barrick entities, the
25 acquisition of property and mining interests in the area of interest, and the 1999 Asset Exchange
26 between Newmont and Goldstrike and should be contacted solely through Goldstrike's counsel at
27

1 Parsons Behle & Latimer, 201 S. Main Street, Suite 1800, Salt Lake City, Utah, telephone 801-
2 532-1234;

3 7. Greg Fauquier, former Vice President of Operations for Barrick Gold Corporation,
4 may have discoverable information about the merger of High Desert Mineral Resources with HD
5 Acquisition Corporation (aka Barrick HD Inc.), Barrick's involvement in the joint venture
6 originally created by Newmont and High Desert, the acquisition of property and mining interests
7 in the area of interest, and the 1999 Asset Exchange between Newmont and Goldstrike and
8 should be contacted solely through Goldstrike's counsel at Parsons Behle & Latimer, 201 S. Main
9 Street, Suite 1800, Salt Lake City, Utah, telephone 801-532-1234;

10 8. Sybil Veenman, Assistant General Counsel and Corporate Secretary for Barrick
11 Gold Corporation, may have discoverable information about the merger of High Desert Mineral
12 Resources with HD Acquisition Corporation (aka Barrick HD Inc.) and should be contacted
13 solely through Goldstrike's counsel at Parsons Behle & Latimer, 201 S. Main Street, Suite 1800,
14 Salt Lake City, Utah, telephone 801-532-1234;

15 9. Brad Doores, Assistant General Counsel for Barrick Gold Corporation, may have
16 discoverable information about Barrick's involvement in the joint venture originally created by
17 Newmont and High Desert, mergers involving Barrick entities, the acquisition of property and
18 mining interests, and the 1999 Asset Exchange between Newmont and Goldstrike and should be
19 contacted solely through Goldstrike's counsel at Parsons Behle & Latimer, 201 S. Main Street,
20 Suite 1800, Salt Lake City, Utah, telephone 801-532-1234;

21 10. Keith Bettles, former Chief Geologist for Barrick Gold Exploration Inc., may have
22 discoverable information about Barrick's involvement in the joint venture originally created by
23 Newmont and High Desert and should be contacted solely through Goldstrike's counsel at
24 Parsons Behle & Latimer, 201 S. Main Street, Suite 1800, Salt Lake City, Utah, telephone 801-
25 532-1234;

26 11. Calvin Pon, Tax Director for Barrick Gold Corporation, may have discoverable
27 information about mergers involving Barrick entities and the acquisition of property and mining
28

1 interests in the area of interest and should be contacted solely through Goldstrike's counsel at
2 Parsons Behle & Latimer, 201 S. Main Street, Suite 1800, Salt Lake City, Utah, telephone 801-
3 532-1234;

4 12. David Welles, former attorney and Tax Director for Barrick Gold Corporation,
5 may have discoverable information about mergers involving Barrick entities and should be
6 contacted solely through Goldstrike's counsel at Parsons Behle & Latimer, 201 S. Main Street,
7 Suite 1800, Salt Lake City, Utah, telephone 801-532-1234;

8 13. Tracy Miller, Manager, Open Pit Division, for Barrick Goldstrike Mines Inc., may
9 have discoverable information about the 1999 Asset Exchange between Newmont and Goldstrike
10 and should be contacted solely through Goldstrike's counsel at Parsons Behle & Latimer, 201 S.
11 Main Street, Suite 1800, Salt Lake City, Utah, telephone 801-532-1234;

12 14. Stephen Hull, attorney to various Barrick entities, may have discoverable
13 information about the 1999 Asset Exchange between Newmont and Goldstrike and should be
14 contacted solely through Goldstrike's counsel at Parsons Behle & Latimer, 201 S. Main Street,
15 Suite 1800, Salt Lake City, Utah, telephone 801-532-1234;

16 15. Randy Parcel, former attorney to Westmont Mining, whose current contact
17 information is unknown, may have discoverable information about transactions between the
18 Bullion Monarch Venture (and its members) and High Desert;

19 16. Graham Clark, Jr., former in-house counsel to Newmont, whose current business
20 address is believed to be c/o Renaud Cook Drury Mesaros, One North Central, Suite 900,
21 Phoenix, Arizona 85004, telephone 602-307-9900, may have discoverable information about the
22 joint venture between Newmont and High Desert and related events and activities;

23 17. Joy Hansen, former in-house counsel to Newmont, whose current contact
24 information is unknown, may have discoverable information about the joint venture between
25 Newmont and High Desert and related events and activities;

26 18. Patricia Lee Halavais, whose current contact information is unknown, may have
27 discoverable information about High Desert Mineral Resources' acquisition of various interests in
28

1 property and transactions related thereto and possible communications with representatives of
2 Bullion Monarch Company; and

3 19. All individuals disclosed by Plaintiff Bullion Monarch Mining, Inc., in this matter,
4 and all individuals disclosed by the parties in the matter of *Bullion Monarch Mining, Inc. v.*
5 *Newmont USA Ltd.*, 3:08-cv-227-ECR-VPC, pending in the United States District Court for the
6 District of Nevada.

7 **CATEGORIES OF DOCUMENTS OR ELECTRONICALLY STORED INFORMATION**
8 **GOLDSTRIKE MAY USE TO SUPPORT ITS CLAIMS AND DEFENSES**

9 The following is a description, by category, of documents and electronically stored
10 information in the possession, custody, and control of Goldstrike that Goldstrike may use to
11 support its claims and defenses:

12 1. Agreement of May 10, 1979, and documents and correspondence related to the
13 same;

14 2. Agreement between High Desert Mineral Resources, Inc., and Bullion-Monarch
15 Joint Venture, August 7, 1990, and documents and correspondence related to the same;

16 3. Agreement between Newmont Gold Company and High Desert Mineral Resources
17 of Nevada, Inc., December 23, 1991 ("Newmont Gold and High Desert Venture Agreement"),
18 and documents and correspondence related to same, including, without limitation, all
19 amendments and modifications to that agreement;

20 4. Merger Agreement Among HD Acquisition Corporation, Barrick Gold
21 Corporation, High Desert Mineral Resources of Nevada, Inc., and Ronald and P. Lee Halavais,
22 November 30, 1995, and documents and correspondence related to the same;

23 5. Documents related to the merger of Barrick HD Inc. into Barrick Goldstrike Mines
24 Inc.;

25 6. Asset Exchange Agreement between Barrick Goldstrike Mines Inc. and Newmont
26 Gold Company, May 3, 1999, and documents and correspondence related to the same;

1 7. Documents and correspondence related to the transfer of assets and interests
2 between Bullion Monarch Company and Bullion Monarch Mining, Inc.;

3 8. Title documents and deeds for various properties and mining claims;

4 9. Correspondence among and between Bullion Monarch Company/Bullion Monarch
5 Mining, Inc., High Desert Mineral Resources, Inc., Newmont USA Limited, Barrick HD Inc.,
6 Barrick Goldstrike Mines Inc., and other entities, including their predecessors, successors,
7 representatives, agents, and principals, possibly relevant to the claims and defenses asserted in
8 this action; and

9 10. Documents related to the quiet title litigation brought by Bullion Monarch
10 Company in May 1993.

11 Goldstrike believes that all of these documents were either (1) produced to counsel for
12 Bullion Monarch Mining, Inc., pursuant to the subpoena issued to Barrick Gold of North
13 America, Inc., in May 2009, (2) produced to counsel for Bullion Monarch Mining, Inc., by other
14 parties in the course of discovery in the matter of *Bullion Monarch Mining, Inc. v. Newmont USA*
15 *Ltd.*, 3:08-cv-227-ECR-VPC, pending in the United States District Court for the District of
16 Nevada, or (3) already in the possession and control of Bullion Monarch Mining, Inc., or its legal
17 counsel. Insofar as Goldstrike determines that there are additional documents in its possession
18 and control that are relevant to Goldstrike claims and defenses, but that have not been previously
19 produced (1) to Bullion Monarch by Goldstrike and/or Newmont, and/or (2) to Goldstrike and/or
20 Newmont by Bullion Monarch, Goldstrike will supplement its disclosures as required under Rule
21 26 of the Federal Rules of Civil Procedure.

22 **COMPUTATION OF EACH CATEGORY OF DAMAGES CLAIMED BY GOLDSTRIKE**

23 Goldstrike does not claim any damages in this lawsuit, but reserves the right to recover
24 attorneys' fees and costs incurred in this litigation to the extent permitted by law.

25 **INSURANCE AGREEMENTS UNDER WHICH AN INSURANCE COMPANY MAY BE** 26 **LIABLE TO SATISFY ALL OR PART OF A POSSIBLE JUDGMENT**

27 None.

1 Defendant Goldstrike reserves the right to supplement these initial disclosures pursuant to
2 Rule 26(e) of the Federal Rules of Civil Procedure.

3
4 Dated: January 7, 2010

PARSONS BEHLE & LATIMER

5
6 By: 

Michael R. Kealy
Francis M. Wikstrom
Michael P. Petrogeorge
Brandon J. Mark
*Attorneys for Defendant Barrick
Goldstrike Mines Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January 2010, a true and correct copy of the foregoing RULE 26(a)(1) INITIAL DISCLOSURES OF BARRICK GOLDSTRIKE MINES INC. was served by U.S. Mail, postage prepaid, to the following:

Clayton P. Brust, Esq.
Robinson, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503

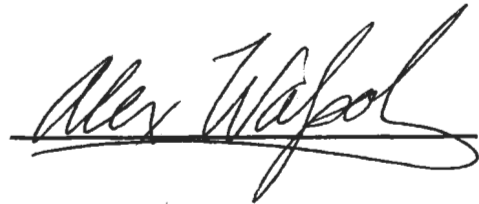
A handwritten signature in black ink, appearing to read "Alex Wapal", is written over a horizontal line.

EXHIBIT 2-B

Richie Haddock Deposition Transcript

EXHIBIT 2-B

CONDENSED TRANSCRIPT

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

BULLION MONARCH MINING,
INC.,

Plaintiff,

vs.

BARRICK GOLDSTRIKE
MINES, INC., et al.,

Defendants.

)
) 30(b)(6) Deposition of
) Barrick Goldstrike Mines,
) Inc., through:

) Richie Haddock
)
)

) Case No.
) CV-N-08-00227-ECR-VPC
)

May 10, 2010 * 10:00 a.m.

Location: Parson, Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

Reporter: Diana Kent, RPR, CRR
Notary Public in and for the State of Utah



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PA_0392

Richie Haddock * May 10, 2010

SHEET 1

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

BULLION MONARCH MINING, INC.,)	30(b)(6) Deposition of
)	Barrick Goldstrike Mines,
Plaintiff,)	Inc., through:
)	Richie Haddock
vs.)	
BARRICK GOLDSTRIKE MINES, INC., et al.,)	Case No.
Defendants.)	CV-N-08-00227-ECR-VPC

May 10, 2010 * 10:00 a.m.

Location: Parson, Behle & Latimer
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7	NUMBER	DESCRIPTION	PAGE
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9		Answers and Objections to Plaintiff's	
10		Interrogatories	
11	2	Certificate of Name Change	21
12	3	5-29-97 letter from Gordon Peake to	22
13		Eureka County Recorder, with attached	
14		Certificate of Name Change and check	
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16	4B	7-10-90 letter from Sean and Lee	43
17		Halava's to Westmont Gold, Inc	

2

A P P E A R A N C E S

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4

P R O C E E D I N G S

Richie Haddock,
called as a witness, being first duly sworn,
was examined and testified as follows:

E X A M I N A T I O N

BY MR. BELAUSTEGUI:

Q. Would you state your full name for the
record, please.

A. **Richie Darren Haddock.**

Q. And have you ever had your deposition
taken before?

A. **I have.**

Q. And how many times, approximately?

A. **I think just once.**

Q. Okay. Have you had an opportunity to
review what a deposition is for, as far as discovery
goes in this lawsuit, with your attorney?

A. **Yes.**

Q. What is your position with Barrick Mining
Company?

A. **Vice-president and General Counsel of
North America for Barrick Gold Corporation.**

Q. Where is your office located?

Richie Haddock * May 10, 2010

<p style="text-align: right;">5</p> <p>1 A. Here in Salt Lake City.</p> <p>2 Q. How long have you held that position?</p> <p>3 A. V.P. and General Counsel since September</p> <p>4 of 2008.</p> <p>5 Q. And before that, did you have another</p> <p>6 position with Barrick?</p> <p>7 A. Yes. I was the Vice-President of</p> <p>8 Environment from 2005 until 2008.</p> <p>9 Q. And was your office here in Salt Lake?</p> <p>10 A. It was.</p> <p>11 Q. How did your duties change in 2008?</p> <p>12 A. In 2008 I went from being environment,</p> <p>13 which is an operational role, to being the V.P. and</p> <p>14 general and managing legal affairs for the company.</p> <p>15 Q. Okay. Before 2005, were you with Barrick?</p> <p>16 A. I was.</p> <p>17 Q. What was your position?</p> <p>18 A. I was Regional Counsel, North America.</p> <p>19 Q. Where was your office?</p> <p>20 A. Here in Salt Lake City.</p> <p>21 Q. How long did you hold that position?</p> <p>22 A. I held that position from mid to late 2003</p> <p>23 until the end of 2005.</p> <p>24 Q. If you would just continue back, if you</p> <p>25 were with Barrick before that.</p>	<p style="text-align: right;">7</p> <p>1 A. I was in-house counsel with Santa Fe</p> <p>2 Pacifico Corporation.</p> <p>3 Q. For how long?</p> <p>4 A. Five years.</p> <p>5 Q. Where was your office?</p> <p>6 A. In Reno.</p> <p>7 Q. And what were your duties for Santa Fe?</p> <p>8 A. My role was -- I was assistant general</p> <p>9 counsel and I was responsible for the, again,</p> <p>10 primarily operational matters for that company's mines</p> <p>11 in the United States.</p> <p>12 Q. Did you monitor litigation for Santa Fe?</p> <p>13 A. I did.</p> <p>14 Q. Did you handle any yourself?</p> <p>15 A. No.</p> <p>16 Q. Prior to that, what was your occupation?</p> <p>17 A. I was an attorney. I was with the law</p> <p>18 firm of Holme, Roberts & Owen.</p> <p>19 Q. Where?</p> <p>20 A. In Salt Lake City.</p> <p>21 Q. For how long?</p> <p>22 A. I was with Holme Roberts for eight years.</p> <p>23 Q. And did you specialize in any particular</p> <p>24 field or area of law?</p> <p>25 A. No. Well, I was both a member of the</p>
<p style="text-align: right;">6</p> <p>1 A. Yeah. Prior to that I was Senior Counsel,</p> <p>2 U.S. Operations with Barrick. Began in late 2007 --</p> <p>3 I'm sorry. 1997. Off a decade.</p> <p>4 Q. That's when you started with Barrick?</p> <p>5 A. It is.</p> <p>6 Q. Was that in Salt Lake?</p> <p>7 A. It was.</p> <p>8 Q. And what were your duties, basically, in</p> <p>9 that position?</p> <p>10 A. My duties were to manage the legal</p> <p>11 matters, primarily operational matters of Barrick's</p> <p>12 mines and closure properties in the United States.</p> <p>13 Q. And what type of matters would come onto</p> <p>14 your desk or into your office as far as legal matters</p> <p>15 in operations?</p> <p>16 A. A lot of environmental matters, water</p> <p>17 rights matters, utility and energy matters, contract</p> <p>18 matters, labor matters.</p> <p>19 Q. How about litigation?</p> <p>20 A. Some litigation management, yes.</p> <p>21 Q. You would monitor litigation, or handle it</p> <p>22 yourself?</p> <p>23 A. I would monitor it. I did not handle it</p> <p>24 myself.</p> <p>25 Q. What did you do before 1997?</p>	<p style="text-align: right;">8</p> <p>1 litigation department and the natural resources</p> <p>2 department.</p> <p>3 Q. So what year would you have started with</p> <p>4 HRO?</p> <p>5 A. In 1985.</p> <p>6 Q. And prior to that what did you do?</p> <p>7 A. I was in law school.</p> <p>8 Q. Where did you go to law school?</p> <p>9 A. University of Utah.</p> <p>10 Q. Did you go to undergrad there, too?</p> <p>11 A. I did not.</p> <p>12 Q. Where did you go to undergrad?</p> <p>13 A. Brigham Young University.</p> <p>14 Q. And where did you grow up?</p> <p>15 A. California.</p> <p>16 Q. When you were with HRO here in Salt Lake</p> <p>17 City, did you have occasion to represent Barrick</p> <p>18 Mining Company?</p> <p>19 A. I did not.</p> <p>20 Q. High Desert or High Desert Mineral</p> <p>21 Resources in --</p> <p>22 A. No.</p> <p>23 Q. -- Newmont?</p> <p>24 A. Yes.</p> <p>25 Q. Do you remember what you did for Newmont?</p>

Richie Haddock * May 10, 2010

<p>SHEET 2</p> <p>9</p> <p>1 A. I don't remember specifically what I did 2 for Newmont. I mean, I know they were mining law 3 matters; one or two small acquisitions; review of 4 access and title issues on mining claims; perhaps some 5 small environmental matters. I did not do a lot of 6 work for Newmont. 7 Q. Did you do work for other mining 8 companies? 9 A. I did. 10 Q. Do you remember any of those? 11 A. Yes. 12 Q. Which ones do you remember? 13 A. I did work for Tennaco, Arch Minerals, 14 Arch Coal, Camico American, Kennecott Utah Copper. 15 Did some for Union Carbide. 16 Q. Okay. In any of this work that you did, 17 would you review and/or draft agreements relative to 18 owning, leasing, operating, exploring patent mining 19 claims? 20 A. Yes. 21 Q. Are you familiar with the term "area of 22 interest"? 23 A. I am. 24 Q. What does that term mean to you? 25 A. It depends on the agreement that I review</p>	<p>11</p> <p>1 your legal opinion. I'm asking just for your personal 2 opinion. If somebody says the agreement has an area 3 of interest provision, do you have an understanding as 4 to what you think that means? 5 A. Yes. 6 Q. What is that? 7 A. In my mind it means there's contractual 8 area that's defined in which parties may have certain 9 rights or obligations with respect to acquisitions, 10 additional properties, and things like that. 11 Q. Okay. You said contractual rights. Did 12 you use that word intentionally? 13 A. Yes. 14 Q. Contractual rights? 15 A. Yes. 16 Q. You think that it's just between the 17 parties for the contract? 18 A. That's who it's between, yes. 19 Q. Well, can it be binding on successors and 20 assigns to the agreement? 21 MR. PETROGEORGE: I'm going to object 22 again that this is asking for his legal opinion on 23 areas of interest provisions generally. That's not 24 what he is here for today. 25 MR. BELAUSTEGUI: That's fine.</p>
<p>10</p> <p>1 and what it says it means. 2 Q. Okay. It can vary in what they provide. 3 But generally do you have an understanding if someone 4 says the agreement has an area of interest provision? 5 A. I do. 6 MR. PETROGEORGE: I'm going to object to 7 the extent you are trying to seek legal opinions from 8 him. I don't think he is here, first of all, as an 9 expert today. Also, it is my understanding he is here 10 primarily as the verifier of the company's 11 Interrogatories and as the designated witness on First 12 Affirmative Defense only. 13 MR. BELAUSTEGUI: Well, his answers -- we 14 will get to the answers if you want to wait until I 15 get to those. However, he did answer Interrogatories 16 saying that Barrick is not liable under a 1979 17 agreement. This lawsuit is over that very issue and 18 an area of interest provision in that issue. 19 MR. PETROGEORGE: He verified answers for 20 the company. That does not mean that he formed the 21 answers or formed the conclusions in the answers. 22 MR. BELAUSTEGUI: Well, signing those for 23 the company, he has some responsibility as to the 24 content of the answers. But we can pass on that. 25 Q. (By Mr. Belaustegui) I'm not asking for</p>	<p>12</p> <p>1 Q. (By Mr. Belaustegui) Now, you did sign 2 the Answers to the Interrogatories in this case? 3 A. I did. 4 Q. You understand that? 5 A. Yes. 6 Q. Can you tell me generally, other than 7 signing the answers to the Interrogatories, what has 8 been your involvement in this litigation? 9 A. I have been kind of responsible for the 10 management and monitoring of the litigation. 11 Q. What does that include, in more detail? 12 A. It would include reviewing pleadings, 13 meeting with counsel and internal people to prepare 14 our defense in the case. 15 Q. Are you the main person at Barrick 16 responsible for monitoring the litigation? 17 A. I am. 18 Q. Did you have any role in preparing or 19 putting together the documents that were provided to 20 us pursuant to our document request? 21 A. I was not directly involved in compiling 22 the documents, no. 23 Q. Who did that? 24 A. Outside counsel would have done that. 25 Q. Outside counsel would have access to</p>

Richie Haddock * May 10, 2010

13

1 documents held by Barrick?

2 **A. Yes.**

3 Q. Are they kept here at the law office?

4 **A. No.**

5 Q. Where is the office located where the
6 documents would be kept?

7 **A. Our office is at 136 East South Temple,
8 which is where the bulk of our records are. And we
9 have off-site storage.**

10 Q. Okay. How far is that from here?

11 **A. Three or four blocks.**

12 Q. All right. Do you know if these records
13 were kept at that office or the off-site storage?

14 MR. PETROGEORGE: I'm going to object as
15 vague insofar as there are multiple sources of records
16 that have been produced and it's not clear which
17 records you are referring to.

18 Q. So you did not participate in putting
19 those records together?

20 **A. I did not.**

21 Q. Or reviewing the Request for Production of
22 Records?

23 **A. I did see the Request for Production of
24 Records.**

25 Q. But you didn't participate in putting the

14

1 records together?

2 **A. No, I did not.**

3 Q. Now, in the Answers to Interrogatories
4 there are references to certain page numbers in the
5 records produced. Did you review those to see if
6 those were accurate before you signed the Answers to
7 Interrogatories?

8 **A. I did not.**

9 Q. Were you relying on counsel?

10 **A. I relied on internal people and counsel
11 who prepared those responses.**

12 Q. Do you know if any records that were
13 requested were withheld?

14 MR. PETROGEORGE: Other than on the basis
15 of privilege?

16 MR. BELAUSTEGUI: For any reason.

17 **A. I do not know.**

18 Q. (By Mr. Belaustegui) Okay. Do you know
19 who would know?

20 **A. I would rely on litigation counsel for
21 that.**

22 Q. But insofar as anybody in your company
23 goes?

24 **A. Nobody would have withheld anything from
25 our litigation counsel.**

15

1 Q. Okay. So if anything was withheld, that
2 would have been done by Counsel?

3 **A. Yes.**

4 Q. Okay. And you don't know if anything was
5 withheld or not?

6 **A. I do not recall specifically if anything
7 has been withheld.**

8 Q. Before this litigation came into your
9 office, did you have any role as far as Barrick or
10 Barrick HD or any other Barrick entity being involved
11 with High Desert Resources of Nevada, Inc.?

12 **A. I did not.**

13 Q. You were not around for Barrick in 1995,
14 for example?

15 **A. I was not.**

16 Q. Do you know who was -- let me ask you
17 this: If you had been around in your current
18 capacity, would you have been involved as far as what
19 your duties are today?

20 MR. PETROGEORGE: Objection. Speculation.

21 **A. Probably yes.**

22 Q. Okay. Do you know who was involved for
23 Barrick back at that time; who would have been
24 reviewing or participating in preparing transactional
25 documents or things of that nature?

16

1 **A. I believe at that point in time we did not
2 have in-house counsel in the U.S. And I believe at
3 that time it was primarily Steve Hull at this law
4 firm.**

5 Q. Hull?

6 **A. Yes.**

7 Q. And he is still here?

8 **A. Yes.**

9 MR. PETROGEORGE: You are going to meet
10 with him this afternoon.

11 MR. BELAUSTEGUI: He is --

12 MR. PETROGEORGE: He is the primary
13 designee.

14 Q. (By Mr. Belaustegui) Again, you have met
15 and talked to him as far as preparing Answers to
16 Interrogatories that you signed?

17 **A. Yes.**

18 Q. How many people does Barrick keep here in
19 the Salt Lake City office, just approximately?

20 MR. PETROGEORGE: And when we talk about
21 Barrick, there are multiple Barrick entities so I want
22 to make sure that we are clear.

23 Q. All of them.

24 **A. All of them?**

25 Q. Right.

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<p>SHEET 3</p> <p>17</p> <p>1 A. There are about ninety people here in Salt 2 Lake City. 3 Q. And how many in the Elko area; do you 4 know? 5 A. Including all the people that work at the 6 mines and everything? 7 Q. Yes. 8 A. There's about 3000, I believe. 9 Q. In Nevada, or in the Elko area? 10 A. In the Elko area in general. Northern 11 Nevada. 12 Q. Is the office here in Salt Lake City the 13 administrative office for Barrick North America, its 14 North American operation? 15 A. Yes. It's the headquarters of Barrick 16 North America. 17 Q. And are there any other offices in the 18 U.S. similar to the Salt Lake office? 19 A. No. 20 Q. How about in Canada? 21 A. In Canada the corporate headquarters is in 22 Toronto. 23 Q. Okay. 24 (EXHIBIT 1 WAS MARKED.) 25 Q. The first exhibit that has been marked as</p>	<p>19</p> <p>1 operations in Elko; primarily Tracy Miller was who I 2 asked them to meet with on production numbers and 3 reserve numbers. 4 Q. Okay. 5 A. I asked them to meet with Cy Wilsey, who 6 is our regional land manager, to obtain the necessary 7 documents. 8 Q. How do you spell his name? 9 A. C-Y W-I-L-S-E-Y. 10 Q. And he is in Elko? 11 A. He is in Salt Lake City. 12 Q. I'm sorry. What did he do? 13 A. He is our regional land manager. 14 Q. Okay. And you relied on him to do what? 15 A. Help them compile any documents necessary 16 in response to the Request for Production. 17 Q. Okay. Are those the only people you can 18 think of? 19 A. I know there were other people, but those 20 are the two management level people I asked Counsel to 21 meet with. 22 Q. Okay. If you would look at page 4, 23 please. Interrogatory number 1, do you see that? 24 A. Yes. 25 Q. That question asked, "Is Barrick the</p>
<p>18</p> <p>1 Exhibit 1 to the deposition is a document entitled 2 Barrick Goldstrike Mines, Inc., Answers and Objections 3 to Plaintiff's Interrogatories, set one. Do you have 4 that document in front of you, Mr. Haddock? 5 A. Yes. 6 Q. Is that the document you signed? 7 A. Yes. 8 Q. Are you aware that those answers were 9 supplemented at a later date? 10 A. I am aware. 11 Q. Do you know if you signed the supplement? 12 A. I did not. 13 Q. Is there a reason for that? 14 A. I wasn't asked to sign the supplement. 15 Q. Did you prepare any of these answers 16 yourself, or did you rely on Counsel to review 17 documents -- 18 A. I relied on Counsel to review documents 19 and meet with internal people to prepare the answers. 20 Q. Internal people? 21 A. Yes. 22 Q. At Barrick? 23 A. Yes. 24 Q. Who would those people be? 25 A. There were a number of people in</p>	<p>20</p> <p>1 successor in interest to High Desert Mineral Resources 2 of Nevada, Inc.," and then A, B, and C. Do you see 3 that? 4 A. Yes. 5 Q. That question. 6 A. Yes. 7 Q. Now, referring to your answer on page 5, 8 if you'd look at that, please, starting at line 4. It 9 says, "On November 30, 1995, Barrick HD, Inc. (Barrick 10 HD) became the corporate successor of High Desert 11 Mineral Resources of Nevada, Inc. (High Desert) as the 12 result of a merger transaction." Do you think that is 13 true and accurate? 14 A. Yes. 15 Q. In fact, didn't High Desert Mineral 16 Resources of Nevada, Inc. just change its name to 17 Barrick HD as a result of that transaction? 18 A. I don't recall. 19 Q. If you were to see documents that would 20 indicate that, in other words that that was just a 21 name change, would that change your opinion to the 22 point where you could change your answer? 23 MR. PETROGEORGE: I'll object to the 24 extent it mischaracterizes the documents. 25 MR. BRUST: You want to see the document?</p>

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21

1 Is that what you are saying?

2 MR. PETROGEORGE: It was a complicated
3 merger transaction and involved more than a name
4 change. It was a full merger, so I'm objecting to the
5 extent you are trying to characterize the transaction
6 as merely a name change.

7 Q. (By Mr. Belaustegui) I don't want to
8 characterize the transaction as merely a name change.
9 It was a complicated transaction. However, Barrick
10 HD, which was the surviving corporation, I will show
11 you was High Desert Mineral Resources of Nevada, Inc.,
12 which simply changed its name and that came out of the
13 transaction as Barrick HD. Do you understand that?

14 **A. I don't know anything about the facts of
15 this transaction other than what the documents say.**

16 Q. Well, the documents are not the Answers to
17 the Interrogatories. Those are your Answers.

18 **A. Those are my answers based upon review of
19 the documents by Counsel and their advice to me.**

20 MR. BELAUSTEGUI: Clay, do you want to
21 help me get those stacks.

22 (EXHIBIT 2 WAS MARKED.)

23 Q. Do you see what's marked as Exhibit 2 to
24 your deposition?

25 **A. Yes.**

22

1 Q. Have you ever seen that before?

2 **A. No.**

3 Q. For the record, Exhibit 2 is a document
4 furnished by Barrick as document number BG190. It
5 indicates a filing with the Secretary of State of
6 Nevada, a Certificate of Name Change indicating that
7 High Desert Mineral Resources of Nevada, Inc. changed
8 its name to Barrick HD, Inc. This is also recorded at
9 book 308 page 246, as indicated on Exhibit 2.

10 Have you ever seen this document before?

11 **A. I don't recall having ever seen it before.**

12 Q. And do you have an opinion as to whether
13 this document accurately reflects what occurred with
14 High Desert Mineral Resources of Nevada, Inc. as far
15 as changing its name to Barrick HD, Inc.?

16 **A. Are you asking about my legal impressions?**

17 Q. Yes.

18 **A. Then I'm not going to answer.**

19 MR. PETROGEORGE: Object to asking for a
20 legal opinion.

21 Q. That doesn't change your answer to the
22 Interrogatory.

23 **A. It does not.**

24 (EXHIBIT 3 WAS MARKED.)

25 MR. PETROGEORGE: Tom, I don't think

23

1 there's any dispute that Barrick HD changed its name

2 -- or High Desert Mineral Resources of Nevada, Inc.

3 changed its name to Barrick HD as part of the merger

4 transaction. My only objection was to the extent that

5 there was a suggestion that that was all that

6 occurred. So you're welcome to go through these, but

7 we will stipulate there was a name change involved as

8 part of the --

9 MR. BELAUSTEGUI: But that's not listed in

10 your Answer to Interrogatories. That's what I'm

11 trying to get at.

12 MR. PETROGEORGE: It says that it was a

13 result of a merger transaction, the merger transaction

14 that led to that. The Interrogatory response also

15 refers you specifically to a number of documents

16 relating to the merger transaction under Rule 33(e).

17 MR. BELAUSTEGUI: I know. But it says

18 Barrick HD, Inc. became the corporate successor of

19 High Desert Mineral Resources, Inc. That tells me

20 those were two different companies and that Barrick

21 HD, Inc. -- and this is the way you reference how this

22 transaction was structured at different places. That

23 Barrick HD became the corporate successor as a result

24 of a merger with High Desert Mineral Resources of

25 Nevada, Inc.

24

1 MR. PETROGEORGE: I don't think that's

2 inaccurate.

3 MR. BELAUSTEGUI: I'm trying to establish

4 it was just a name change.

5 MR. PETROGEORGE: That's the part I object

6 to. The problem I have is it's not just a name

7 change. It was part of -- it included a name change,

8 but it was much broader than that.

9 MR. BELAUSTEGUI: Okay. Do you want to

10 stipulate as to which corporation survived the merger

11 as Barrick HD, Inc.?

12 MR. PETROGEORGE: There was a merger

13 between High Desert Mineral Resources, Inc. and an

14 acquisition company that was formed. The surviving

15 company was High Desert, which immediately, at the

16 same time as everything else happened, changed its

17 name to Barrick HD. I will stipulate to those facts.

18 MR. BELAUSTEGUI: Okay. You will

19 stipulate to that?

20 MR. PETROGEORGE: Yes.

21 Q. (By Mr. Belaustegui) Did you hear that,

22 Mr. Haddock?

23 **A. Yes.**

24 Q. Okay. Continuing on line 6 of page 5 of

25 your answers to interrogatory, Exhibit 1. It says,

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SHEET 4

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1 "On May 3, 1999, Goldstrike became the corporate
2 successor of Barrick HD as the result of a different
3 merger transaction."

4 And I have referenced your answer and,
5 Counsel, I found very, very few documents relating to
6 this merger.

7 MR. PETROGEORGE: It is part and parcel of
8 the 1999 asset exchange. It all occurred at the same
9 time. I know we have produced documents relating to
10 this merger.

11 MR. BELAUSTEGUI: Okay.

12 MR. PETROGEORGE: Including the merger,
13 the actual articles of merger and other documents.

14 MR. BELAUSTEGUI: Okay.

15 Q. (By Mr. Belaustegui) Now, Mr. Haddock, is
16 it your understanding, then, that that merger of May
17 3, 1999, involved at least two companies, Goldstrike,
18 Barrick Goldstrike, and Barrick HD, and that the
19 surviving company was Barrick Goldstrike?

20 **A. That's my understanding.**

21 Q. Okay. Do you know if any of the assets or
22 liabilities of Barrick HD were not taken on by
23 Goldstrike?

24 **A. I don't know.**

25 Q. You don't know that one way or the other?

26

1 **A. No, I do not.**

2 Q. Are you aware of any documents which
3 excluded Barrick Goldstrike from taking on any of the
4 assets or liabilities of Barrick HD in that
5 transaction?

6 **A. I am not.**

7 Q. You are not?

8 **A. No.**

9 Q. Okay. Now I'd refer you to page 11,
10 please, of your Answer. And this is a continuation of
11 your Answer to Interrogatory Number 3 that started on
12 page 10. Do you understand that?

13 **A. Yes.**

14 Q. Referring your attention beginning at line
15 9, or excuse me line 8 of your Answer on that page 11.
16 You say, "Goldstrike asserts that while Barrick HD
17 became the owner of a 30 percent undivided interest--"

18 MR. PETROGEORGE: 38 percent.

19 MR. BELAUSTEGUI: I'm sorry?

20 MR. PETROGEORGE: You said 30 percent.
21 It's 38 percent.

22 Q. (By Mr. Belaustegui) "A 38 percent
23 undivided interest in certain mining claims and/or fee
24 lands as a result of its merger with High Desert on or
25 about November 30, 1995, and while Goldstrike became

27

1 the owner of those same interests as a result of its
2 merger with Barrick HD on or about May 3, 1999,
3 Goldstrike did not acquire any claims or properties
4 directly from High Desert." Ending my reference
5 there.

6 You seem to be saying there, however, that
7 Goldstrike acquired its interests from Barrick HD,
8 which acquired its interest from High Desert.
9 However, as we just stipulated, High Desert and
10 Barrick HD are the same company with just a different
11 name. Would that change your answer?

12 **A. No.**

13 Q. Why not?

14 **A. Because I believe, to the extent I
15 understand the documents, it accurately reflects the
16 series of transactions by which Goldstrike became an
17 owner of certain interests.**

18 Q. Right, I know. But I must not have asked
19 my question clearly. This answer says Goldstrike
20 acquired its interest from Barrick HD.

21 MR. PETROGEORGE: It says Goldstrike
22 merged with Barrick HD and thereby acquired its
23 interest.

24 MR. BELAUSTEGUI: Right.

25 Q. (By Mr. Belaustegui) And then it says

28

1 Barrick HD became an owner of a 30 percent undivided
2 interest as a result of its merger with High Desert.
3 Okay? There was no merger between the Barrick HD and
4 High Desert. There was just a name change of High
5 Desert, which we stipulated to.

6 **A. I heard the stipulation.**

7 Q. Okay.

8 **A. And you have mischaracterized it, but --**

9 Q. How did I do that?

10 **A. You again shorthanded it to just a name
11 change.**

12 Q. I'm not talking about the whole
13 transaction. If you want to do that, we will go
14 through that as far as the tax attorney opinions and
15 everything that was incorporated in the merger. But
16 I'm talking about one part of that merger transaction.
17 I'm talking about the part where High Desert enters
18 the merger transaction and High Desert comes out with
19 a new name but still owns the asset. Do you dispute
20 that that occurred?

21 **A. I don't dispute that that occurred. We
22 have described it. We have provided the documents.
23 I'm not going to try to recharacterize the documents
24 for you here. I was not involved in either
25 transaction. The documents say what they say. My**

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1 responsibility, and frankly my knowledge here, ends
2 with the fact that we have produced the documents.

3 Q. Okay. Well, the documents don't
4 correspond and are not consistent with your answer.

5 MR. PETROGEORGE: And I object to that
6 statement.

7 Q. Well, I'll try to explain. This answer,
8 beginning on line 8, says that Barrick HD became the
9 owner of a 30 percent undivided interest in certain
10 mining claims as a result of a merger with High
11 Desert. Now, that implies to me that there were two
12 companies.

13 MR. PETROGEORGE: There were two
14 companies.

15 MR. BELAUSTEGUI: High Desert and Barrick
16 HD.

17 MR. PETROGEORGE: High Desert and the
18 acquisition company.

19 MR. BELAUSTEGUI: This doesn't say "the
20 acquisition company." This says "Barrick HD."

21 MR. PETROGEORGE: High Desert and the
22 acquisition company, they merge and they become
23 Barrick HD and it all happens at the same time, Tom.

24 MR. BELAUSTEGUI: I understand that. This
25 doesn't say "the acquisition."

30

1 MR. PETROGEORGE: You are arguing
2 semantics here. The effect is the name.

3 MR. BELAUSTEGUI: They are very important
4 semantics.

5 MR. PETROGEORGE: There was no Barrick
6 entity that held any interests that belonged to High
7 Desert until the merger occurred. Barrick HD survives
8 out of all of that as the Barrick entity holding the
9 assets as a result of the merger. That's the answer.

10 MR. BELAUSTEGUI: Okay.

11 MR. PETROGEORGE: And that's what it says.

12 MR. BELAUSTEGUI: Was there a corporation
13 named Barrick HD, separate from High Desert?

14 MR. PETROGEORGE: As part of the merger
15 transaction, Barrick HD emerges, yes.

16 MR. BELAUSTEGUI: There was a separate
17 corporation?

18 MR. PETROGEORGE: There was an acquisition
19 company and High Desert.

20 MR. BRUST: What was the name of the
21 acquisition company? That may help.

22 MR. PETROGEORGE: It's in the documents.

23 MR. BELAUSTEGUI: Acquisition HD.

24 MR. PETROGEORGE: Something like that.

25 MR. BELAUSTEGUI: There was a corporation

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1 called Acquisition HD which Barrick formed for this
2 transaction.

3 MR. PETROGEORGE: To merge with High
4 Desert.

5 MR. BELAUSTEGUI: Was there a separate
6 corporation called Barrick HD?

7 MR. PETROGEORGE: No, there was not.

8 MR. BELAUSTEGUI: So how could Barrick HD
9 merge with High Desert if there was no separate
10 Barrick HD? That's my question for the witness.

11 MR. PETROGEORGE: Tom, if you would like
12 us to amend that to say "acquisition," it's the same
13 -- the legal effect of what this says is the same, and
14 you are arguing semantics.

15 MR. BELAUSTEGUI: No, it's not, Counsel.
16 Because you are trying to say that Goldstrike did not
17 acquire anything from High Desert because Goldstrike
18 got its interest from Barrick HD. You are trying to
19 say they are separate parties, and they are not.

20 MR. PETROGEORGE: Goldstrike and Barrick
21 HD are separate parties.

22 MR. BELAUSTEGUI: No. High Desert and
23 Barrick HD are not separate parties. You try to make
24 them separate, and you try to say that Goldstrike
25 acquired its interest from Barrick HD, and Barrick HD

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1 acquired its interest from High Desert. You try to
2 put a party in the middle. That's what this answer
3 says, Counsel. I would like you to change it.

4 MR. PETROGEORGE: We are not intending to
5 misrepresent the documents here.

6 MR. BELAUSTEGUI: Okay.

7 MR. PETROGEORGE: I think you are arguing
8 semantics, but the transaction is the same. But we
9 will take a look at amending this answer, if
10 necessary.

11 MR. BELAUSTEGUI: Let me see if I
12 understand what happened, versus what this answer says
13 happened. As I understand, in a very complicated
14 transaction High Desert went into the merger
15 transaction as a corporation with the name High Desert
16 Mineral Resources of Nevada, Inc.

17 MR. PETROGEORGE: Correct.

18 MR. BELAUSTEGUI: And it owned assets as
19 described.

20 MR. PETROGEORGE: Yes.

21 MR. BELAUSTEGUI: In the Answer.

22 MR. PETROGEORGE: Correct.

23 MR. BELAUSTEGUI: High Desert came out of
24 the merger transaction with a new name, owning the
25 same assets.

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<p>SHEET 5</p> <p>33</p> <p>1 MR. PETROGEORGE: The surviving company of 2 the merger came out of the merger with a new name, 3 owning certain assets, yes. 4 MR. BELAUSTEGUI: And that surviving 5 company went into the merger as High Desert Mineral 6 Resources of Nevada, Inc. 7 MR. PETROGEORGE: The acquisition company 8 merged into High Desert Mineral Resources of Nevada, 9 Inc. and the name was changed. That's what the 10 document says. 11 MR. BELAUSTEGUI: And High Desert was the 12 surviving company. 13 MR. PETROGEORGE: Correct. 14 MR. BELAUSTEGUI: With the new name 15 Barrick HD, Inc. 16 MR. PETROGEORGE: Correct. 17 MR. BELAUSTEGUI: Okay. And that new 18 company name, Barrick HD, Inc., owned the same assets 19 as High Desert. 20 MR. PETROGEORGE: It owned the assets that 21 High Desert had left at the time of the merger, yes. 22 MR. BELAUSTEGUI: Which included the 38 23 percent in the venture with Newmont. 24 MR. PETROGEORGE: Correct. 25 MR. BELAUSTEGUI: And the 38 percent</p>	<p>35</p> <p>1 not acquire any claims or properties directly from 2 High Desert while High Desert was still called High 3 Desert. But it did when the name had been changed to 4 Barrick HD. 5 MR. PETROGEORGE: Go ahead. 6 Q. Is that correct? 7 A. Can you repeat that question for me? 8 (The record was read as follows: 9 "Question: So on line 11 here where you 10 say - and Counsel, I'm not trying to misstate 11 what you have explained - but it says Goldstrike 12 did not acquire any claims or properties 13 directly from High Desert. As I understand what 14 happened, that would be Goldstrike did not 15 acquire any claims or properties directly from 16 High Desert while High Desert was still called 17 High Desert. But it did when the name had been 18 changed to Barrick HD.") 19 A. That's true. 20 Q. (By Mr. Belaustegui) Okay. Then you 21 continue on and you say, "The specific mining claims 22 and fee lands which Goldstrike acquired a 38 percent 23 undivided interest in as a result of Goldstrike's 24 merger with Barrick HD are identified on," and then 25 there are various page numbers listed in the documents</p>
<p>34</p> <p>1 ownership in the mining claims listed in the merger 2 documents. 3 MR. PETROGEORGE: Corrected. 4 MR. BELAUSTEGUI: Okay. Do you want to go 5 under oath? 6 MR. PETROGEORGE: No. Go ahead. 7 Q. (By Mr. Belaustegui) And then later, in 8 1999, Barrick Goldstrike merged with Barrick HD and 9 took over the assets of Barrick HD. Is that your 10 understanding, Mr. Haddock? 11 A. My understanding is that Barrick HD merged 12 into Barrick Goldstrike, yes. 13 Q. Okay. Now, Barrick, I think it's Barrick 14 Gold, the parent company in Canada, would have 15 actually owned the shares of Barrick HD, if I 16 understand that merger correctly. 17 A. I don't know the answer to that. 18 Q. Okay. 19 A. I don't recall who owned the shares of 20 Barrick HD. 21 Q. Okay. So on line 11 here where you say - 22 and Counsel, I'm not trying to misstate what you have 23 explained - but it says Goldstrike did not acquire any 24 claims or properties directly from High Desert. As I 25 understand what happened, that would be Goldstrike did</p>	<p>36</p> <p>1 Barrick has produced. As far as you know, are those 2 accurate? 3 A. As far as I know. 4 Q. Okay. 5 A. I haven't specifically independently 6 verified those descriptions. 7 Q. Okay. Now, if you'll start following me, 8 please, on line 17 of that Answer, you say, "Goldstrike 9 further asserts that it is not obligated to pay a 10 production royalty to Bullion based on mineral 11 production from any of the unpatented mining claims or 12 fee lands which it acquired through the merger with 13 Barrick HD, or on any other mining claims or fee lands 14 identified in response to Interrogatory Number 2, 15 because Goldstrike is not bound by paragraph 11 or any 16 other provision of the 1979 Agreement. Goldstrike 17 specifically asserts that it is not bound by the 1979 18 Agreement, or any provision therein, because, among 19 other things," and then you see number one, "Neither 20 Goldstrike, Barrick HD, nor High Desert are parties to 21 the 1979 Agreement, or successors of any party to the 22 1979 Agreement." And I've stopped there to ask some 23 questions. 24 Now, again, that answer number 1 there, 25 beginning on line 23 where you say, "Neither</p>

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1 Goldstrike, Barrick HD, nor High Desert are parties,"
2 that indicates to me that Barrick HD and High Desert
3 are different parties. And as we have already
4 discussed here a number of times, it's my understanding
5 Barrick HD and High Desert are the same corporation
6 with a different name.

7 MR. PETROGEORGE: Right.

8 Q. So is my understanding correct?

9 **A. I don't know if your understanding is**
10 **correct because I really don't know what your**
11 **understanding is.**

12 Q. Barrick HD and High Desert are different
13 names for the same company. So when your answer says,
14 "Neither Goldstrike, Barrick HD, nor High Desert are
15 parties," that tells me you are talking about three
16 different entities. And I think there are only two
17 entities there, one being Goldstrike, the other being
18 Barrick HD/High Desert, a company that has had two
19 different names.

20 **A. You are entitled to your legal position.**

21 Q. You think Barrick HD and High Desert are
22 different parties?

23 **A. Are you asking for my legal impression?**

24 Q. Yes.

25 **A. I'm not going to answer any of my legal**

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1 **impressions, sir. I'm in-house counsel.**

2 MR. PETROGEORGE: He is here as a fact
3 witness, not here as a lawyer.

4 MR. BELAUSTEGUI: Okay. But I'm trying to
5 understand this answer, Counsel.

6 MR. PETROGEORGE: His answer is he
7 believes -- go ahead, I'll let him answer.

8 MR. BRUST: That's a fact question, too:
9 Are they two different companies.

10 Q. (By Mr. Belaustegui) It's a fact question
11 whether there are three or two corporations. You are
12 saying neither Goldstrike, Barrick HD, nor High Desert
13 ever assumed the 1979 agreement. And we have already
14 covered this a minute ago. You said Barrick HD and
15 High Desert are the same company just with a different
16 name. I'm just trying to reaffirm that here. Are you
17 now saying no, they are different companies?

18 **A. How many questions were in there? I'm**
19 **sorry. I'm confused. If you can ask me a simple**
20 **question, I'll try to give you an answer.**

21 Q. Let's go back. Is the company that is
22 formerly known as Barrick HD the same company/
23 corporation known as High Desert Mineral Resources of
24 Nevada, Inc.?

25 **A. I'm going to give you the same answer I**

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1 **gave when you asked me the question before.**

2 Q. Okay.

3 **A. Which is that you have the documents. The**
4 **legal effect of the documents is what it is. I don't**
5 **know anything different than what the documents**
6 **provide.**

7 Q. Okay. Well, Counsel stipulated that it's
8 the same corporation. And correct me if I'm wrong,
9 and let's go over this again then. I don't want this
10 mixed up here.

11 MR. PETROGEORGE: Tom, we have stipulated
12 to the fact that High Desert emerged from the merger
13 and Barrick HD was a name change. The point of this
14 answer is whether there's two or three, none of them
15 were ever parties. If you want to ask him about that,
16 go ahead. You are arguing over semantics. You have a
17 stipulation and you are belaboring a point that has
18 already been stipulated to.

19 MR. BELAUSTEGUI: Counsel, this is an
20 important point. I don't want you coming back later
21 and saying, "Our Answer to the Interrogatory says
22 three different entities." I want it real clear that
23 we are talking about Goldstrike, and that Barrick HD
24 and High Desert are the same company.

25 MR. PETROGEORGE: Barrick HD and High

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1 Desert are the same company.

2 MR. BELAUSTEGUI: Okay.

3 MR. PETROGEORGE: I will stipulate to that
4 fact.

5 MR. BELAUSTEGUI: Okay.

6 MR. PETROGEORGE: That's what the
7 documents say. There were three companies involved
8 insofar as there was an acquisition entity involved.

9 MR. BELAUSTEGUI: The three companies did
10 not include a company named Barrick HD.

11 MR. PETROGEORGE: That is correct.

12 MR. BELAUSTEGUI: Okay. Barrick HD is the
13 one listed, though, not some other corporation. And
14 that's why I want to clear it up, Counsel. That's
15 easy to understand, and it's not unreasonable. You
16 give me documents saying that Barrick HD and High
17 Desert are the same company, yet in your Answers to
18 Interrogatories you refer to them as if they were
19 separate companies. And I'm just trying to clear that
20 up.

21 MR. PETROGEORGE: Tom, the purpose of this
22 reference, first of all, is so that it's clear that
23 during the time period when the company was called
24 Barrick HD, Barrick HD never became a party to that
25 agreement.

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SHEET 6

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1 MR. BELAUSTEGUI: Okay.
 2 MR. PETROGEORGE: That's why there's three
 3 companies listed.
 4 MR. BELAUSTEGUI: Okay. So it could have
 5 said, "Neither Barrick --"
 6 MR. PETROGEORGE: I'm not going to argue
 7 the semantics with you.
 8 MR. BELAUSTEGUI: "Neither Goldstrike nor
 9 High Desert, which was later called Barrick HD, are
 10 parties to the --"
 11 MR. PETROGEORGE: I'm not going to argue
 12 how we chose to word the Answers. If you would like
 13 to ask him a question about this particular question,
 14 please be my guest. Otherwise you are belaboring a
 15 point that is already mooted out.
 16 Q. (By Mr. Belaustegui) Do you agree with
 17 the stipulation your attorney put on the record that
 18 Barrick HD is a name change of a corporation
 19 previously called High Desert Resources of Nevada,
 20 Inc.?
 21 MR. PETROGEORGE: Asked and answered.
 22 Go ahead.
 23 **A. I agree with the stipulation that Counsel**
 24 **gave as it is reflected on the record.**
 25 Q. Okay. Now, answer number 2 here, you say

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1 beginning on line 25 of page 11, "Neither Goldstrike,
 2 Barrick HD, nor High Desert ever assumed the 1979
 3 Agreement or any of the obligations created therein."
 4 Do you see that?
 5 **A. Yes.**
 6 Q. Is that a true and correct answer, as far
 7 as you know?
 8 **A. Yes.**
 9 Q. Have you reviewed all of the documents by
 10 which High Desert Mineral Resources of Nevada, Inc.
 11 acquired the property that it later conveyed to the 60
 12 percent interest to Newmont and conveyed to the joint
 13 venture, its interest to the joint venture between
 14 High Desert and Newmont?
 15 **A. I have not reviewed all the documents in**
 16 **this case and I don't know whether I have reviewed**
 17 **that one or not.**
 18 Q. Okay. Do you know if you reviewed any
 19 document whereby High Desert, when the company was
 20 known -- I'm going to stop for a minute. I want to
 21 clear up something. I'm just going to call it High
 22 Desert, but there was a High Desert Mineral Resources
 23 Inc., which was a Canadian company, I believe, and
 24 there was also a company called High Desert Mineral
 25 Resources of Nevada, Inc. When I refer to High

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1 Desert, I'm referring to the Nevada company, High
 2 Desert Mineral Resources of Nevada, Inc. Just so
 3 there is no confusion.
 4 MR. PETROGEORGE: Okay.
 5 Q. Do you know of any documents by which High
 6 Desert disclaimed any responsibility in writing for
 7 any obligations under the 1979 Agreement?
 8 MR. PETROGEORGE: Does he personally,
 9 sitting here today, know that?
 10 MR. BELAUSTEGUI: Yes.
 11 **A. I don't recall.**
 12 Q. (By Mr. Belaustegui) Okay. In other
 13 words, you can't point me to one today?
 14 **A. I cannot.**
 15 Q. Okay. Do you know of any letters that
 16 were written by High Desert to any party disclaiming
 17 any obligation for obligations under the 1979
 18 Agreement?
 19 **A. I don't recall.**
 20 **(EXHIBIT 4A and 4B WERE MARKED.)**
 21 Q. Mr. Haddock, referring your attention to
 22 Exhibit 4A to your deposition, which for the record is
 23 entitled Option Agreement between Bullion Monarch
 24 Joint Venture as parties, and it says High Desert
 25 Mineral Resources, Inc., effective date is April 26,

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1 1990. It was furnished as document BG 11178. Have
 2 you ever seen this document before?
 3 **A. I don't recall.**
 4 Q. Okay.
 5 **A. As you know, there's a lot of documents in**
 6 **this case.**
 7 Q. Well, we think this is an important one.
 8 I'd refer your attention, please, to page 4. Do you
 9 see where it says paragraph 3.3 Title to Property?
 10 **A. Yes.**
 11 Q. Then it says, "A, Mining Claims. As to
 12 the mining claims included in the property," and then
 13 I would refer you over to page 6 which is a
 14 continuation of that paragraph. Are you on page 6?
 15 If you took the clip off the side, it would probably
 16 be easier to read.
 17 Paragraph 6, "Existing Encumbrances:
 18 Optionor's title to the Property or portions of the
 19 Property is subject to the following." And if you go
 20 down to (d) it says, "The royalty and other
 21 obligations provided for in the May 10, 1979
 22 Agreement, described on the last page of Exhibit A
 23 hereto." Do you know if this is an option agreement
 24 by which High Desert Mineral Resources of Nevada, Inc.
 25 acquired its title?

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MR. PETROGEORGE: Does he personally know?

MR. BELAUSTEGUI: Yes. As the party who answered the --

A. To the extent you are asking me what my legal conclusion of the effects of this document is, I'm not answering.

Q. (By Mr. Belaustegui) That's all right.

A. To the extent of what this refers to, I'd have to spend more time. It says what it says.

Q. Okay. Now, referring you to page 7, which again is a continuation of representations of the option or regarding title to the property, it refers to 7B. Excuse me. The B is part of 3.3, Title to Property, which is A, and then B, Underlying Agreements.

It refers down -- first it says, "The Lease and Option, described in paragraph 1(b) of Exhibit A, and the May 10, 1979 Agreement, described in paragraph 3 of Exhibit A (collectively, the 'Underlying Agreements') which are in full force and effect." Do you see that?

A. I see that.

Q. Do you remember reviewing that before you answered this Interrogatory?

MR. PETROGEORGE: Objection. Tom, he

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been specifically designated on the '90 and '95 transactions.

MR. BELAUSTEGUI: And the reason, to make it clear, why I'm asking, is in view of that designation, Mr. Haddock did sign those Answers to Interrogatories?

MR. PETROGEORGE: I understand why you're asking the question. I just wanted to make clear that he signed them based on information he received from other people, which would include information from the other designees. Factual information.

Q. (By Mr. Belaustegui) Okay. Now, if you would continue to your Answers to Interrogatories, please. Leaving 2 at the bottom of page 11, going on to page 12. If you'd look at the top of page 12, item number 3. You say in your Answers, "The royalty obligations purportedly created by paragraph 11 of the 1979 Agreement are personal covenants and do not create covenants running with the land, and cannot therefore be enforced against subsequent owners of land." And my question is this: Other than -- not referring to the 1979 agreement, do you have any other documentation that would reflect light on what the intent of the parties to the 1979 Agreement were as far as whether that covenant ran with the land?

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stated repeatedly that he did not review documents before signing the Interrogatory responses; he relied on Counsel. I also had conversations with your partner, prior to this deposition, advising him that the 30(b)(6) designees, including Steve Hull, would be more appropriate to ask specific questions about a number of these interrogatories and told him that Rich's knowledge would be limited because he relied on those people and those documents.

MR. BELAUSTEGUI: Okay. So Steve Hull would be the party to --

MR. PETROGEORGE: Steve Hull would be the better witness to ask.

MR. BRUST: Can we take a break for two minutes.

MR. BELAUSTEGUI: Let's take a break.

(Break taken from 10:53 to 10:59 a.m.)

Q. (By Mr. Belaustegui) Just to clarify, as far as Exhibit 4A and 4B goes, you have not reviewed those before?

A. I don't recall reviewing them before.

Q. And Steve Hull would be the better person to ask about those documents?

A. Yes.

MR. PETROGEORGE: He is the one that's

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MR. PETROGEORGE: Is he personally aware of any?

MR. BELAUSTEGUI: Yes, as a party.

A. I'm not aware of documents that show the intent of the parties in 1979.

Q. (By Mr. Belaustegui) Have you talked to any people or has it been reported to you that anybody has given statements to the effect that the intent of the original parties was that that not run with the land?

A. To the extent I've talked to anybody, it would be Counsel and it's privileged.

Q. Okay. Would that be counsel here in this office?

A. Yes. I don't have other counsel on the case, just for clarity there.

MR. BRUST: My question would be, Tom, was it counsel for any of the original parties?

MR. PETROGEORGE: It was Parsons, Behle.

MR. BELAUSTEGUI: Just counsel for Barrick in this office?

THE WITNESS: Yes.

Q. (By Mr. Belaustegui) Have you ever talked to the attorney who appeared on Barrick's behalf in Reno a couple months ago, maybe four or five months

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1 ago?
 2 MR. PETROGEORGE: Are you talking about
 3 Mike Keely?
 4 MR. BELAUSTEGUI: Correct. And asserted
 5 objections into questions I was asking Tom Irwin,
 6 former attorney for High Desert.
 7 MR. PETROGEORGE: Has he ever talked to
 8 him about this matter?
 9 MR. BELAUSTEGUI: Yes.
 10 **A. No.**
 11 Q. (By Mr. Belaustegui) You said attorney in
 12 this office. I just wanted to make sure you were not
 13 including him.
 14 **A. I am not including Mike Keely, no.**
 15 Q. Okay. In Answer to Interrogatory Number 4
 16 on page 12 you say, "Goldstrike incorporates by
 17 reference its objections (general and specific) and
 18 answers to Interrogatory Number 3, above, as if
 19 expressly and fully set forth herein. Additionally,
 20 Goldstrike asserts that many of the unpatented mining
 21 claims which it acquired from Newmont on or after May
 22 13, 1999 were invalid because they purported to be
 23 located entirely on private lands already held by
 24 Goldstrike and/or are inferior or invalid because they
 25 were located over the top of patented mining claims."

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1 My question is this: Do you know how many of the
 2 mining claims you identify in Interrogatory Number 3
 3 would fall into that answer there?
 4 **A. I don't know the number.**
 5 Q. Okay. And do you know which ones? Is
 6 there a list anywhere that says, "These particular
 7 claims are invalid because they were located on
 8 patented or fee land"?
 9 **A. There may be. The issue of claim validity**
 10 **at the Newmont/Barrick boundary was kind of an ongoing**
 11 **issue. There may be old documents that reflect that.**
 12 **I don't know.**
 13 Q. Okay. And I'm asking, just because you
 14 did put this in here, if you saw something recently
 15 that had a list on it.
 16 **A. I have not seen anything recently.**
 17 Q. Okay. Page 13, Interrogatory Number 6 at
 18 the top, please. The interrogatory asked you this:
 19 "Please state the name of the party you believe is
 20 responsible to pay the royalty obligation to Plaintiff
 21 for production from mineral property described in
 22 paragraph 11 of the 1979 Agreement at issue in this
 23 matter, including all facts, documents, and witnesses
 24 that support your belief." And then you, in your
 25 answer, incorporate previous answers and general

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1 objections.
 2 And then you say that Goldstrike objects
 3 because that interrogatory "incorrectly assumes that
 4 the 1979 Agreement is a viable and enforceable
 5 agreement binding upon any party, and that Bullion
 6 actually has standing to enforce the agreement against
 7 any party." Let me ask, as far as that statement
 8 goes, do you see that going from line 7 to line 10 --
 9 **A. Yes.**
 10 Q. -- on page 13.
 11 **A. Yes.**
 12 Q. Do you know that Newmont is, in fact,
 13 paying a royalty to Bullion Monarch pursuant to at
 14 least portions of the 1979 Agreement?
 15 **A. I don't know what Newmont is doing.**
 16 Q. You do not know that?
 17 **A. I have no idea what Newmont is doing.**
 18 Q. Well, Barrick was in a joint venture with
 19 Newmont at one time on what's called generally the
 20 Leeville mine or the East Carlin mine.
 21 **A. Yes.**
 22 Q. And you were not aware that Newmont is, in
 23 fact, paying a royalty to Bullion Monarch for
 24 production from that mine?
 25 **A. I'm not.**

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1 Q. Okay. And then you say Bullion actually
 2 has -- you dispute that Bullion has standing to
 3 enforce the agreement. Can you tell me why you put
 4 that in your answer?
 5 **A. I can tell you that that is one of our**
 6 **legal theories in the case. And with reliance on**
 7 **Counsel on that defense, we put the answer in the**
 8 **Interrogatory.**
 9 Q. Can you tell me any more about that, or is
 10 that attorney/client --
 11 MR. PETROGEORGE: I'm going to object to
 12 the extent it requires him to disclose privileged
 13 communications with counsel.
 14 MR. BELAUSTEGUI: Okay.
 15 MR. PETROGEORGE: And I'll speak up. I'm
 16 sorry.
 17 Q. (By Mr. Belaustegui) Referring your
 18 attention on page 13 down to line 23, you state in
 19 your answers, "At this time Goldstrike does not
 20 believe that anyone owes Bullion any type of royalty
 21 under the 1979 Agreement, and that the 1979 Agreement
 22 can be enforced by Bullion against any party." And
 23 again, I would ask you, you already answered you are
 24 not aware that Newmont is paying a royalty to Bullion
 25 under the 1979 Agreement.

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A. I'm not.

Q. Okay. You say in the next line, "First, Goldstrike asserts that it has seen no evidence to establish that Bullion is an actual successor to any party of the 1979 Agreement, or that Bullion has been properly assigned any rights under the 1979 Agreement." End of my reference there. And my question is this: Barrick, as part of the production in this case, produced a big part, if not all, of the interpleader action filed by Newmont in Elko County around 2002 to 2005. And there's a stipulation and order entered in that case saying that the new Bullion was deemed to be the owner of all of the rights of the old Bullion. Have you ever seen that stipulation and order?

A. No.

Q. Okay. Even though it was produced as part of Barrick's file in this case?

A. That's correct.

Q. Okay. On page 14, line 5. "Third, Goldstrike is not currently aware of any particular person or entity that is specifically bound by or obligated under the 1979 Agreement." You already stated you are not aware that Newmont is paying any royalties. Other than that, you are not aware of any

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1 party, then, taking a position that it is obligated to
2 Bullion under the '79 agreement?

A. I'm not aware of any party, no.

Q. Now, as the -- in your current position with Barrick as the holder of that position or office, Vice-President, General Counsel, I believe, did you undertake to review any of the documents that Barrick has relative to this litigation that would indicate High Desert's position relative to the 1979 Agreement before or at the time High Desert acquired the subject property under the '79 agreement?

MR. PETROGEORGE: I'm going to object on a couple bases. First, he testified he hasn't reviewed any of the documents that have been produced in the case. Secondly, to the extent he has reviewed documents relating to this litigation, I believe he would have done so in his capacity as corporate counsel for purposes of advising his client, and I'm going to instruct him not to answer that question.

MR. BELAUSTEGUI: Okay. Well, the reason I ask it is because of these answers where you say Goldstrike is not currently aware of any person or entity being bound. I was just asking you if you had reviewed any documents that gave support for that answer. Same objection?

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MR. PETROGEORGE: Again, he testified he relied on the work of others to review those documents. He already testified he did not personally review documents.

Q. (By Mr. Belaustegui) Okay. Let me ask you this: Did you ever review the joint venture agreement that High Desert was in with Newmont prior to the merger agreement of 1995?

A. No.

Q. You have never reviewed that?

A. No.

Q. Okay. When you were with HRO in 1990 or 1991, were you involved in the transaction whereby High Desert acquired the property, we call it the subject property or the Leeville mine, under the 1979 Agreement?

A. No.

MR. PETROGEORGE: Objection. Misstates facts in evidence.

MR. BELAUSTEGUI: What facts are evident?

MR. PETROGEORGE: To the extent your question assumed that the acquisition was done, quote, unquote, under the 1979 Agreement, I'm going to object.

MR. BELAUSTEGUI: No. It was a 1991

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1 agreement.

MR. PETROGEORGE: You said '79 Agreement and so that's why I'm objecting.

MR. BELAUSTEGUI: The property described under the 1979 Agreement, High Desert acquired that property in 1990 and entered into a joint venture in 1991. I believe HRO were involved in those transactions and I'm just asking Counsel if he was involved.

MR. PETROGEORGE: And he can answer the question. I just wanted to note for the record that we dispute that the acquisition was done under the 1979 Agreement. He is welcome to answer.

MR. BELAUSTEGUI: I don't want -- my question didn't ask if the acquisition was done under the 1979 Agreement. There's property referenced in the 1979 Agreement. In Exhibit A1. There is also an area of interest referenced in Exhibit A2.

MR. PETROGEORGE: Correct.

Q. (By Mr. Belaustegui) My question is, the property described in Exhibit A1 was acquired, it's our position, by High Desert in 1990. Did you have anything to do with that acquisition by High Desert?

A. I don't think so.

Q. In 1991, High Desert entered into a joint

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1 venture with Newmont relative to that property. Did
2 you have anything to do with that transaction?

3 **A. No.**

4 Q. Do you know if -- do you have an opinion
5 as to whether or not Bullion Monarch has any
6 obligations today under the 1979 Agreement?

7 MR. PETROGEORGE: Objection to the extent
8 it is calling for a legal conclusion. I'm not going
9 to let him give his legal opinions.

10 MR. BELAUSTEGUI: You are going to
11 instruct him not to answer?

12 MR. PETROGEORGE: Correct.

13 Q. (By Mr. Belaustegui) Okay. I may have
14 already asked this, or maybe I should know the answer.
15 But what were you doing in 1999 relative to Barrick?
16 What position did you hold when Barrick did the asset
17 exchange with Newmont?

18 **A. I was Senior Counsel, U.S. Operations.**

19 Q. And did you have any involvement in that
20 transaction?

21 **A. My only involvement in that transaction
22 was really with respect to the cooperative operating
23 agreement. I was not managing the transaction.**

24 Q. Who was, as far as you remember?

25 **A. I don't know. I don't remember.**

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1 Q. Okay. You didn't have anything to do with
2 drafting or reviewing the exchange agreement?

3 **A. I did not.**

4 Q. Is there a witness that has been
5 designated --

6 MR. PETROGEORGE: Steve Hull.

7 Q. Okay. Do you know when Barrick HD --
8 forget that.

9 If you would look at page 18, please, of
10 your Answers to Interrogatories. Starting on line
11 number 8, you are setting forth some objections to
12 this Interrogatory and it says, "Goldstrike likewise
13 objects to Interrogatory Number 8 insofar as it seeks
14 information about mining operations, production and/or
15 gross smelter returns, if any, on mining claims or fee
16 lands which Barrick HD may have acquired prior to
17 November 30, 1995, when it became the corporate
18 successor of High Desert. This is the earliest
19 possible date on which Barrick HD could have
20 potentially become bound to the 1979 Agreement."

21 And again that seems to tell me that
22 Barrick HD is a separate entity than High Desert, and
23 I take it that our stipulation has cleared that up,
24 correct?

25 MR. PETROGEORGE: Correct. And just for

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1 the record, I don't believe Barrick HD existed prior
2 to that time.

3 MR. BELAUSTEGUI: So Barrick HD was not a
4 corporation that could have acquired mining claims.

5 MR. PETROGEORGE: Correct. There was no
6 entity known as Barrick HD that I'm aware of - and
7 Rich, you correct me if I'm wrong - but that existed
8 prior to that merger and name change.

9 MR. BELAUSTEGUI: Okay. Thank you.

10 Q. (By Mr. Belaustegui) Are you familiar
11 with the operations that are described in page 18,
12 beginning down at line 25, Part A?

13 MR. PETROGEORGE: Talking about the actual
14 mining operations?

15 MR. BELAUSTEGUI: Yes. It says Goldstrike
16 operates an open pit mine in the alleged AOI commonly
17 referred to as the Betze Post mine.

18 **A. Yes.**

19 Q. You say, "The Betze Post mine has been in
20 operation since 1987. The majority of the production
21 from the Betze Post mine since May 3, 1999 has come
22 from mining claims or properties which Goldstrike
23 acquired or patented prior to May 3, 1999." Do you
24 know which mining claims were acquired in the exchange
25 with Newmont on May 3, 1999 and are under production

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1 at the Betze Post mine?

2 **A. No.**

3 Q. Okay. Does anybody?

4 **A. Yes.**

5 Q. Who would know that?

6 **A. I would say that's a combination of
7 knowledge between Steve Hull and Tracy Miller.**

8 MR. PETROGEORGE: Both of whom are
9 designated as 30(b)(6).

10 Q. All right. Continuing on page 19, line 2,
11 over to the right side it says, "A smaller amount of
12 production from the Betze Post open pit mine has come
13 from some of the properties which Goldstrike acquired
14 from Newmont on May 3, 1999, as part of the asset
15 exchange." Do you know if there are separate records
16 that keep track of the production from that portion of
17 the Betze Post mine versus the portion which Barrick
18 maintains the data on prior to May 3, 1999?

19 **A. Yes.**

20 Q. Was that done intentionally, do you know,
21 or is it just that Barrick keeps track of where every
22 little bit of production comes from?

23 **A. In the Betze Post mine, especially, we are
24 very careful about keeping track of where production
25 comes from because different property lines have**

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1 different issues associated with them, and especially
2 Bullion, in the life of that mine, it was a jointly
3 operated open pit. And the question is, is it
4 Newmont's gold or is it Barrick's gold? So in
5 general, yes, we do know which parcel of land or which
6 mining claim that production comes from.

7 Q. Okay. Then it continues on and says, "The
8 production from these properties is tracked by
9 Goldstrike, and is commonly referred to as the
10 'Barrick fee' open pit production." So these
11 properties, in that sentence, would be the different
12 properties, the post 1999, the pre 1999 and maybe
13 different other parts of the Betze Post?

14 A. Which would -- are we talking line 5?

15 Q. Start on line 4.

16 A. Okay.

17 Q. Clear over on the right side. "The
18 production --"

19 A. I think that's referring to the property
20 that Goldstrike acquired from Newmont, when we say
21 "these." That's my understanding.

22 Q. Okay. And it says, "Commonly referred to
23 as the 'Barrick fee' open pit production." Barrick
24 Fee, does that mean that Barrick owns it in fee?

25 A. Yes.

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1 surprised if they say that.

2 THE WITNESS: Me, too.

3 Q. (By Mr. Belaustegui) On page 19, going
4 down to paragraph 2 on line 16, how do I say the name
5 of the mine? "Michael"?

6 A. "Meek-el."

7 Q. And it looks to me like the same thing
8 happened. It says, "A smaller amount of production
9 from the Mickle underground mine has come from some of
10 the mining claims or properties which Goldstrike
11 acquired from Newmont on May 3, 1999," and Barrick has
12 been in operation now since 1996. So my questions
13 would be the same: Are you tracking production from
14 post 1999 acquisition in the Mickle mine?

15 A. Yes.

16 Q. Separate from the pre 1999 areas?

17 A. We track it from various parcels, yes.

18 Q. Is that just a standard operating
19 procedure for Barrick that you know where the
20 production is coming from --

21 A. Yes.

22 Q. -- on a particular mine --

23 A. Yes.

24 Q. -- as part of your operation?

25 A. Yes.

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1 Q. Is that part of the patented ground, then?

2 A. No.

3 Q. It just means there are no other
4 interests?

5 A. It just means it was acquired separately
6 from the mining claims. I don't know. I mean, it's
7 fee -- it's fee property.

8 Q. It is fee property. It's not unpatented
9 mining claims that you --

10 A. It is fee property.

11 Q. That Barrick acquired from Newmont as part
12 of that Betze Post?

13 A. I think -- well, I should probably say
14 that, again, is a question that is best to Tracy and
15 to Steve. When I say "fee," I'm thinking that that
16 primarily would have come from the northern part of
17 the pit, which laid back onto what we used to call the
18 Newmont strip, which was fee property.

19 MR. PETROGEORGE: There's also Russ
20 Hofland has also been designated on this issue.

21 MR. BRUST: Counsel, I assume that if any
22 of these people come in and say, "You should be
23 talking to Richie about that," we will be able to get
24 Richie back in here?

25 MR. PETROGEORGE: Yes. And I'd be

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1 Q. It's not something, in other words, that
2 you are doing because you acquired this particular
3 property post 1999 versus pre 1999?

4 A. No.

5 Q. If you would go on to page 20, please.

6 Starting on line 5 you say, "To the best
7 of Goldstrike's current knowledge, belief, and
8 understanding, there has been no underground
9 production on any of the other properties acquired
10 from Newmont in the 1999 asset exchange, from any of
11 the claims or properties acquired from Newmont in July
12 2004, or from the claims or property acquired from
13 ELLCO and Newmont in August, 2005." Do you know -- my
14 question is this: Do you know what claims or
15 properties were acquired from Newmont in July, 2004?

16 A. Generally, yes.

17 Q. What do you commonly refer to that
18 property as?

19 A. Mill 4.

20 Q. Mill 4? Is it a mill site claim?

21 A. No. There are some mill -- there were
22 some mill site claims in there but we called the
23 property block in general Mill 4.

24 Q. And that included mill site and load
25 mining claims, or can you remember?

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<p>SHEET 9</p> <p>65</p> <p>1 A. I don't remember. I think it did include 2 both. 3 Q. Okay. But you commonly referred to it as 4 a mill 4 property? 5 A. Yes. 6 Q. Can you tell me generally where that 7 property is located? 8 A. Yes. 9 Q. Relative to some of the other properties I 10 might -- 11 A. It was located to the south of what we 12 would call the Newmont strip which was the Rodeo Creek 13 area, or actually it's located to the east, I'm sorry. 14 And it is located south of our north block tailings 15 and south of the Mickle mine, east of the Mickle mine, 16 also, and north of what we would call our AA block 17 which was the original area where the Goldstrike 18 autoclaves, tailings, heap leach pad were. 19 Q. Do you know if that Mill 4 property is 20 within the area of interest described in the 1979 21 Agreement? 22 A. I'd have to go back and compare. 23 Q. Okay. Now, and then you say on line 8, 24 "or from the claims or properties acquired from ELLCO 25 and Newmont in August 2005." Can you tell me</p>	<p>67</p> <p>1 A. It is five, maybe six miles southeast of 2 Goldstrike. 3 Q. Do you know if that is an area of 4 interest? 5 A. I don't. 6 Q. Is that still being pursued, that project? 7 A. I don't know what's going on on Simon 8 Creek. 9 Q. Does Barrick have an interest in that? 10 MR. PETROGEORGE: Which Barrick? 11 Q. Barrick Goldstrike. 12 A. I don't know. 13 Q. And the Gold Venture Project, what is 14 that? 15 A. I believe that's also an exploration 16 project on kind of that -- also on that east side 17 somewhere. I think east of Leeville on the east side 18 of the Tuscaroras, I believe. 19 Q. And then, I'm looking at on page 22, lines 20 23 through 24, you talk transactions in 1994 to 1996. 21 You say transactions related to a project commonly 22 known as the Coal Venture Project, the Little High 23 Desert Project, and the Simon Creek Project. 24 A. Yes. 25 Q. And so you don't know exactly where those</p>
<p>66</p> <p>1 generally what those properties were? 2 A. I'm trying to remember which block that 3 was. Off the top of my head, I'm not remembering 4 specifically where those were located. I'd have to 5 look at a map again. 6 Q. Who is ELLCO? 7 A. That's Elko Land and Livestock Company, 8 which is a Newmont subsidiary. 9 Q. Do you know when that company became a 10 Newmont subsidiary? 11 A. I have no idea. 12 Q. Do you know where the Simon Creek project 13 is? 14 A. In a very, very general sense. 15 Q. Where? 16 A. Near Simon Creek. That's about all I 17 know. 18 Q. Okay. 19 A. In the hills around Simon Creek. 20 Q. In Nevada? 21 A. Yes. 22 Q. You don't know where Simon Creek is? 23 A. I know where Simon Creek is. 24 Q. Where is it relative to some other Nevada 25 property?</p>	<p>68</p> <p>1 are located? 2 A. I couldn't put them on a map. My 3 understanding of all of those projects is that they 4 are generally to the east of Leeville on the east side 5 of the Tuscarora Mountains, and they are all just 6 exploration projects. 7 Q. Do you know how far east? 8 A. I don't. 9 Q. Do you know if they are directly east or 10 is there some distance there? 11 A. I believe Little High Desert is fairly 12 close to the Leeville property. But again, I don't 13 know whether they are contiguous, or the exact land 14 position over there. 15 Q. Okay. Is that -- is the gold venture 16 project a project that Barrick entered into originally 17 with the Halavaises and their company called High 18 Desert Mineral Resources of Nevada, Inc., but then it 19 was -- then the party was later -- the Halavais entity 20 was later changed to Gold Venture and then Newmont was 21 given an option to participate in that? 22 A. I'd have to go back and look in land files 23 to understand that kind of detail. 24 Q. Are you aware of the transaction or the 25 joint venture I'm talking about?</p>

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A. In just a very general sense.

MR. PETROGEORGE: Tom, I think Steve Hull will be able to answer those questions better.

MR. BELAUSTEGUI: That covers a section and a half just to the east or southeast of Leeville. I'm just saying on the record that's my understanding.

MR. PETROGEORGE: Okay.

THE WITNESS: And I would agree, Steve Hull understands those transactions. I don't.

MR. PETROGEORGE: I won't make any representations about where it is because I'm not sure. But Steve will be able to answer questions about that.

Q. (By Mr. Belaustegui) Now, at the time Barrick acquired the -- at the time of the merger with High Desert, shortly before that merger was consummated, a 2 percent interest was transferred out. Are you aware of that, by High Desert?

A. Only by virtue again of --

Q. Of somebody telling you?

A. Of somebody explaining it to me, yes.

Q. Because you say on page 23 at the top, that went out to SLH Company, which was a company for Sean and Lee Halavais. But you don't have any personal knowledge of that?

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A. I don't have any personal knowledge of that. I'm relying on the description of others for that.

Q. In your Answers to Interrogatories in different places you say that you cannot furnish information about properties acquired by High Desert from 1990 forward because either you didn't have the records or that is information that is unavailable to you. Without going into detail, and I'd be glad to do that if you want me to, but I have the merger documents in 1995 that list mining claims owned by High Desert. Do you want to see that list?

A. No.

Q. Because my question is going to be do you dispute that High Desert owned those mining claims at the time of that merger? Do you have any evidence or documentation to --

A. I personally have no knowledge about what they owned or didn't own in 1995.

Q. Okay. Who would be the best able to answer questions about the merger documents?

MR. PETROGEORGE: Steve Hull has been designated for the 1995 merger transaction. Whether he will know what High Desert held other than what is in those documents, I'm not sure he will be able to,

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either.

MR. BELAUSTEGUI: And I have several questions about the merger agreement, but one of them is do you have any evidence to indicate they did not own those mining claims in --

MR. PETROGEORGE: And he may be very well able to answer those questions.

Q. (By Mr. Belaustegui) Okay. Do you have any plans to not be available in the next few days?

And my thinking is this, Counsel: If we start asking questions of other witnesses based on Answers to the Interrogatories, and the witnesses say, "I didn't answer those, didn't sign those," I would like to be able to come back and find out who was responsible for putting that information together.

MR. PETROGEORGE: I'm certainly willing to let you reserve that right. I can tell you who we worked with on these Answers and you should be able to get what you need from those people. Either it was those people, or teams that those people work with.

MR. BELAUSTEGUI: Sounds like Steve Hull has most of the other information.

MR. PETROGEORGE: With the exception of the operations pieces of it, which are Tracy Miller and Russ Hofland, in terms of production and royalty

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calculations and those sorts of issues Steve Hull is the primary guy.

MR. BELAUSTEGUI: Can we take a two minute break, please?

MR. PETROGEORGE: Sure.

(Break taken from 11:36 to 11:39 a.m.)

MR. BELAUSTEGUI: No further question.

MR. PETROGEORGE: I have no questions. We will read and sign.

(The proceeding concluded at 11:39 a.m.)

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Notary Public
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EXHIBIT 2-C

Russ Hofland Deposition Transcript

EXHIBIT 2-C

CONDENSED TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,)	Deposition of:
Plaintiff,)	<u>RUSS HOFLAND</u>
vs.)	Case No.
BARRICK GOLDSTRIKE MINES INC., et al,)	CV-N-08-00227-ECR-VPC
Defendants.)	

May 11, 2010 * 1:34 p.m.

Location: Parsons, Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah

Reporter: Dawn M. Perry, CSR
Notary Public in and for the State of Utah



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PA_0424

Russ Hofland * May 11, 2010

<p>SHEET 1</p> <p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA</p> <p>BULLION MONARCH MINING, INC.,) Plaintiff,) vs.) BARRICK GOLDSTRIKE MINES INC., et al.) Defendants.)</p> <p>May 11, 2010 * 1:34 p.m.</p> <p>Location: Parsons, Behle & Latimer 201 South Main Street, Suite 1800 Salt Lake City, Utah</p> <p>Reporter: Dawn M. Perry, CSR Notary Public in and for the State of Utah</p>	<p>3</p> <p>1 INDEX</p> <p>2 RUSS HOFLAND PAGE</p> <p>3 Examination by Mr. Belaustegui 4</p> <p>4 Examination by Mr. Brust 59</p> <p>5 Examination by Mr. Petrogeorge 69</p> <p>6 Further Examination by Mr. Brust 70</p> <p>7</p> <p>8 * * *</p> <p>9 EXHIBITS</p> <p>10</p> <p>11 NO. DESCRIPTION PAGE</p> <p>12 20 Map 66</p> <p>13</p> <p>14</p> <p>15 * * *</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>2</p> <p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 Thomas Belaustegui</p> <p>4 Clayton P. Brust</p> <p>5 Attorneys at Law</p> <p>6 Robison, Belaustegui, Sharp & Low</p> <p>7 71 Washington Street</p> <p>8 Reno, Nevada 89503</p> <p>9 (775) 329-3151</p> <p>10 (775) 329-7941 (fax)</p> <p>11 FOR THE DEFENDANT, BARRICK GOLDSTRIKE MINES, INC.:</p> <p>12 Michael P. Petrogeorge</p> <p>13 Attorney at Law</p> <p>14 Parsons, Behle & Latimer</p> <p>15 201 South Main Street</p> <p>16 Suite 1800</p> <p>17 Salt Lake City, Utah 84111</p> <p>18 (801) 536-6899</p> <p>19 (801) 536-6111 (fax)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>4</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 RUSS HOFLAND,</p> <p>4 called as a witness, being duly sworn,</p> <p>5 was examined and testified as follows:</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MR. BELAUSTEGUI:</p> <p>9 Q. Would you state your full name for the</p> <p>10 record, please?</p> <p>11 A. Russ Hofland, H-o-f-l-a-n-d.</p> <p>12 Q. L-e-n-d?</p> <p>13 A. A-n-d.</p> <p>14 Q. Okay. And where are you from?</p> <p>15 A. Spring Creek, Nevada.</p> <p>16 Q. And what is your current occupation?</p> <p>17 A. I'm an accounting supervisor for Barrick.</p> <p>18 Q. Account supervisor. And what are your</p> <p>19 duties?</p> <p>20 Sir, I'm hard of hearing. I'm just going</p> <p>21 to have to ask you to speak up a bit. I have my</p> <p>22 hearing aids in but I still --</p> <p>23 A. Right now I'm responsible for all of the</p> <p>24 capital, the property tax and net proceed taxes as</p> <p>25 well as royalty payments.</p>

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5

1 Q. For which company?
 2 **A. For the Nevada sites. For all of the**
 3 **Nevada sites that Barrick has.**
 4 Q. Okay. And where is your office?
 5 **A. In Elko at the Shared Business Center.**
 6 Q. And how long have you held that position?
 7 **A. A little over a year.**
 8 Q. And what did you do before that?
 9 **A. I was -- the previous year I was on a**
 10 **project that was rolling out new budgeting and**
 11 **planning models.**
 12 Q. And what models?
 13 **A. Budgeting and planning.**
 14 Q. How long were you doing that?
 15 **A. A little over a year again.**
 16 Q. That was for Barrick?
 17 **A. Yes.**
 18 Q. And before that what did you do?
 19 **A. Before that I was back in this same role**
 20 **as an accounting supervisor.**
 21 Q. And how long were you there?
 22 **A. As an accounting supervisor, for about two**
 23 **years.**
 24 Q. Was that for Barrick?
 25 **A. Yes.**

6

1 Q. In Elko?
 2 **A. Yes.**
 3 Q. And before that what did you do?
 4 **A. I was a senior accountant at Barrick**
 5 **Goldstrike.**
 6 Q. And where was your office?
 7 **A. At the Goldstrike mine.**
 8 Q. Okay. And before that what did you do?
 9 **A. I started there in 2001, so before that I**
 10 **was in agricultural lending.**
 11 Q. Where?
 12 **A. For three years in Elko.**
 13 Q. What was the company name?
 14 **A. Farm Credit Services.**
 15 Q. What was your position there?
 16 **A. Branch manager.**
 17 Q. And how long did you hold that job?
 18 **A. For three years. I came there in '98.**
 19 Q. I'm sorry. And before that what did you
 20 do?
 21 **A. I was vice president of Stockman Bank in**
 22 **Billings, Montana.**
 23 Q. How long did you hold that job?
 24 **A. Three years.**
 25 Q. Before that what did you do?

7

1 **A. The eight years before that I was a loan**
 2 **officer and senior loan officer for Farm Credit**
 3 **Services in Montana.**
 4 Q. Where did you live?
 5 **A. In -- four years in Sidney, Montana, two**
 6 **years in Billings, Montana, and two years in Laurel,**
 7 **Montana.**
 8 Q. What year would that have been, then? How
 9 far back does that take us?
 10 **A. To '87.**
 11 Q. Okay. What's your educational background?
 12 **A. I have a bachelor's degree in agricultural**
 13 **business.**
 14 Q. From where?
 15 **A. Montana State University.**
 16 Q. What year did you graduate?
 17 **A. I graduated in March of 1987.**
 18 Q. '87 or '97?
 19 **A. '87.**
 20 Q. Then you went to work for that ag lending
 21 business right after that?
 22 **A. Correct. And I also have an MBA from**
 23 **University of Nevada, Reno.**
 24 Q. Where did you grow up? Montana?
 25 **A. Yes.**

8

1 Q. When did you get the MBA from Nevada?
 2 **A. 2003.**
 3 Q. And were you living in Reno or from Elko?
 4 **A. From Elko.**
 5 Q. Okay. What kind of special training, if
 6 any, do you have or need to hold the job you have
 7 now, your current position?
 8 **A. No special training. I'm not a CPA. I**
 9 **don't hold any special certifications or anything**
 10 **like that.**
 11 Q. Okay. Well, who trained you to do what
 12 you do?
 13 **A. My current supervisor, Mike Estes.**
 14 Q. Okay. And can you explain to me, please,
 15 what you do on a daily basis as far as fulfilling the
 16 duties of your job?
 17 **A. I supervise three people.**
 18 Q. Okay.
 19 **A. And we are responsible for all of the**
 20 **capital reporting.**
 21 Q. What do you mean by "capital reporting"?
 22 **A. Any capital assets that are purchased by**
 23 **the mines, trucks, loaders, shovels, et cetera.**
 24 Q. All right.
 25 **A. We also handle all of the AFE requests.**

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SHEET 2

9

1 **An AFE is an Authorization For Expenditure. So if**
 2 **the mine sites want to buy capital items, they have**
 3 **to submit AFEs to get approved for the purchases.**

4 Q. And does your office approve those or do
 5 you submit those somewhere else?

6 **A. We submit those up the chain.**

7 Q. Okay. So you track capital expenses?

8 **A. Yeah.**

9 Q. Is that for the whole state?

10 **A. It's for the entire North American Region.**

11 Q. Any requests for capital expenses comes
 12 through your office?

13 **A. Correct.**

14 Q. Is that for North America?

15 **A. Yes.**

16 Q. And then what else do you do?

17 **A. All of the tax reporting, so property tax**
 18 **and net proceeds taxes to the State of Nevada.**

19 Q. Okay.

20 **A. And then we also do the royalty payments.**

21 Q. Okay. Now, property taxes, that's just --
 22 those are taxes levied by a county on fee land owned
 23 by Barrick, is that correct? Is that what you are
 24 talking about?

25 **A. That, as well as the personal property.**

10

1 Q. Personal property tax also. Okay.

2 And net proceeds, would you explain that
 3 to me, please?

4 **A. It's a ad valorem tax on the mineral.**
 5 **It -- it's -- works somewhat like an income tax but**
 6 **there are specific rules on depreciation and things**
 7 **like that that you can deduct. And it's a five**
 8 **percent tax on the net income, if you will.**

9 Q. Okay. And you say it's a tax on the mill.

10 **A. On the mineral.**

11 Q. Oh, on the mineral, I'm sorry. The
 12 mineral produced?

13 **A. Correct.**

14 Q. It's like an income tax on production, is
 15 that correct?

16 **A. Yes.**

17 Q. What rate is the tax?

18 **A. Five percent.**

19 Q. And that goes to the State?

20 **A. Correct.**

21 Q. And you pay that monthly? Quarterly?

22 **A. Annually.**

23 Q. Annually?

24 **A. Yes.**

25 Q. Okay. Do you report that annually or just

11

1 report it quarterly and pay it annually?

2 **A. Right now we are reporting it quarterly**
 3 **and paying it annually.**

4 Q. All right. Now, what's involved as far as
 5 reporting the net proceeds tax? What numbers do you
 6 have to have?

7 **A. The gross income, your -- let me back up**
 8 **just a minute.**

9 Q. Okay.

10 **A. It's -- it's kind of got me out of my**
 11 **element here from the standpoint I wasn't prepared**
 12 **for this.**

13 **It's when the -- it's when the mineral is**
 14 **severed from the land so instead of on sold ounces,**
 15 **it's on shipped out of state for reduction.**

16 Q. That's what the taxes are?

17 **A. Correct. So it's that gross, however many**
 18 **ounces you shipped out of state times the spot price**
 19 **at the time you shipped it.**

20 Q. What if it's not shipped out of state? Is
 21 the tax not due yet?

22 **A. It's -- that's correct, it's not due.**

23 Q. Only when it's shipped out of state?

24 **A. Correct. Shipped out of state or sold.**

25 Q. Or sold.

12

1 **A. Yeah.**

2 Q. Normally sold out of state?

3 **A. Yes.**

4 Q. Okay. And that's five percent. And you
 5 use the spot price and you weigh the ounces that are
 6 being shipped?

7 **A. Correct.**

8 Q. And you get that from somebody else, I
 9 take it? You don't go weigh the gold, somebody else
 10 gives you that?

11 **A. That's correct.**

12 Q. You calculate the five percent?

13 **A. Correct. There are deductions that are**
 14 **applied against that gross, though.**

15 Q. Okay. It's net proceeds?

16 **A. It's net proceeds, right.**

17 Q. Just generally, what are the deductions?

18 **A. Your mining expenses, milling expenses.**
 19 **Most of our administrative and overhead expenses.**
 20 **And then depreciation.**

21 Q. And do you calculate those or track those
 22 or does somebody give you those numbers?

23 **A. We track those. We take those out of our**
 24 **general ledger. We complete the filings.**

25 Q. Is that all computerized? At the end of

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13

1 the month can you pull up a number that tells you
2 what the mining expenses were that month or for the
3 previous month?

4 **A. Yes.**

5 Q. Same with milling?

6 **A. Yes.**

7 Q. Now, the milling expense, would that
8 include the labor or would the mining expense? Or
9 would both?

10 **A. Both.**

11 Q. Okay. And then the administration
12 overhead, do you have a category for that too?

13 **A. Yes.**

14 Q. And depreciation?

15 **A. Yes.**

16 Q. You calculate that?

17 **A. We do calculate it because the State
18 requires a different depreciation schedule. In other
19 words, by statute it tells you how long you have to
20 depreciate different types of assets, which are
21 different than our book depreciation.**

22 Q. And that's for equipment mainly?

23 **A. Correct.**

24 Q. And then -- so you deduct that from the
25 number that you got by weighing the ounces shipped

14

1 times the spot price?

2 **A. Correct.**

3 Q. And then you get a net number?

4 **A. Correct.**

5 Q. And you pay five percent of that?

6 **A. Correct.**

7 Q. Okay. And you do that for all of Nevada?

8 **A. Correct.**

9 Q. So all of these deductions would just be
10 for Nevada assets, is that correct?

11 **A. Correct.**

12 Q. You can't take in, of course, North
13 America or assets in other states?

14 **A. Correct.**

15 Q. But you did mention that you do something
16 for North America. What is that?

17 **A. We -- we do the capital reporting for all
18 of North America.**

19 Q. Okay. That's capital expenses?

20 **A. Yes.**

21 Q. Okay. And who do you report that to?

22 **A. We send it to the regional office here in
23 Salt Lake as well as up to corporate.**

24 Q. To Toronto?

25 **A. Yes.**

15

1 Q. And you track that through the Elko
2 office?

3 **A. Yes.**

4 Q. For the -- all of North America?

5 **A. Yes.**

6 Q. Including Canada, I take it?

7 **A. Yes.**

8 Q. All right. So the Canadian operation
9 sends all that information down to you?

10 **A. Correct.**

11 Q. Do capital expense requests for Canada
12 operations come through the Elko office?

13 **A. Yes.**

14 Q. And then you send those up the chain for
15 approval?

16 **A. Correct.**

17 Q. Okay. So you do -- your office and the
18 staff under you do a number of things, some just for
19 state of Nevada, so that you can pay -- report and
20 pay the net proceeds tax and some for North America?

21 **A. Correct.**

22 Q. Now, on the royalty calculation, can you
23 explain that to me, please? And that's probably the
24 main reason you were designated to be here today, if
25 I'm not mistaken.

16

1 MR. PETROGEORGE: Correct.

2 THE WITNESS: We basically have two types
3 of royalties. Specifically to Goldstrike? Is that
4 what your question is?

5 MR. PETROGEORGE: He is designated as a
6 witness for Goldstrike but if you want --

7 Q. (BY MR. BELAUSTEGUI) Yeah, for
8 Goldstrike, do you mean the company or the mine?

9 **A. Both.**

10 Q. Okay. Are they done differently?

11 **A. Different mines have -- may have different
12 types of royalties.**

13 Q. Okay.

14 **A. So if I can stick with just Goldstrike.**

15 Q. The mine?

16 **A. Yeah.**

17 Q. Okay.

18 **A. Yeah. So we have basically two different
19 types of royalties we pay for Goldstrike. One is an
20 NSR and that's smelter return.**

21 Q. Okay.

22 **A. And the other one is an NPI, Net Profits
23 Interest.**

24 Q. Okay.

25 **A. The NSR is relatively simple. Again, it's**

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SHEET 3

17

1 the total amount of material that was shipped by that
2 claim.

3 Q. Okay. Total -- you use total -- well,
4 doesn't that depend on what somebody tells you the --
5 how to calculate the NSR?

6 A. The agreement dictates how to calculate
7 the NSR.

8 Q. Right. And somebody then tells you what
9 the agreement says. Or do you read the agreement and
10 make your own decision on what calculation to use?

11 A. The -- the models that are used, the Excel
12 models to calculate that, that you need to complete
13 that will do that, were in place when I came to work
14 there but I have read the agreements to be sure that
15 that's being -- you know, what's being done is what
16 the agreement says should be done.

17 Q. Okay. So you have access to the
18 agreements?

19 A. Yes.

20 Q. As well, it's your understanding that the
21 models or the programs you use have the calculations
22 in there --

23 A. Yes.

24 Q. -- is that correct?

25 A. Correct.

18

1 Q. Now, but the main point I wanted to get to
2 there was that the agreements provide how to
3 calculate the net smelter return.

4 A. Correct.

5 Q. That's not a standard calculation, is it?
6 I mean, the agreements can vary a little bit.

7 A. Yes.

8 Q. And the NPI?

9 A. Yes. It's a Net Profit Interest. It,
10 again, has a methodology for calculating the gross
11 income. And then you're allowed certain deductions.
12 Again, your basic mining, milling overhead expenses,
13 as well as certain capital charges are deducted.

14 Q. Okay. And, again, would that be defined
15 in the agreement?

16 A. Yes.

17 Q. That grants a royalty to another party?

18 A. Correct.

19 Q. And you have access to that agreement?

20 A. Yes.

21 Q. All right. Now -- and, again, is the
22 model in place or was the model in place when you
23 took over that responsibility?

24 A. Yes.

25 Q. Have you checked again with the agreement

19

1 to see that the correct calculations are being made?

2 A. Yes.

3 Q. Now -- okay. We are talking about
4 Goldstrike. You say there are other mines too. Do
5 you have to do the same thing? Are there any other
6 mines that you're responsible for that have royalty
7 payments due?

8 MR. PETROGEORGE: And just -- he can
9 answer the question. I just want a clarification.

10 Are you asking are there any other mines that
11 Goldstrike, the company, is involved in or any --

12 MR. BELAUSTEGUI: Yeah, I guess --

13 MR. PETROGEORGE: You can explore it both
14 ways.

15 Q. (BY MR. BELAUSTEGUI) What I'm getting at
16 here, are you -- you handle -- yeah, because
17 Goldstrike is a little different. Goldstrike has
18 almost each mining operation in a separate company,
19 as I understand. Or at least an area.

20 Am I wrong?

21 MR. PETROGEORGE: Goldstrike operates two
22 mines.

23 MR. BELAUSTEGUI: Okay.

24 Q. But, I mean, Barrick Gold, I should say,
25 the parent company uses a lot of times subsidiary

20

1 companies to own a particular mine and operate the
2 mine. Is that correct?

3 A. That's correct.

4 Q. Okay. So Goldstrike Corporation operates
5 what mines, the Goldstrike and what else?

6 A. If I'm understanding your question
7 correctly --

8 Q. Yes.

9 A. -- Goldstrike operates the Goldstrike
10 property.

11 Q. And that's it?

12 A. That's it.

13 MR. PETROGEORGE: Which -- are you asking
14 him which mines are part of that property?

15 MR. BELAUSTEGUI: Well, actually, I
16 wasn't. And I was asking -- well, the Goldstrike is
17 called a mine.

18 Q. I mean, there is a Goldstrike mine.

19 A. Right.

20 Q. Is there a Goldstrike pit or whatever?

21 A. Yes. Yes.

22 Q. When I say I am going to go up to the
23 Goldstrike pit, people out there know what you are
24 talking about?

25 A. Correct.

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21

1 Q. And that's owned and operated by Barrick
2 Goldstrike?
3 **A. Correct.**
4 Q. Does Barrick Goldstrike own or operate any
5 other mineral operations other than the Goldstrike
6 pit?
7 **A. Yes. There is the -- we have an**
8 **underground mine at -- on the Goldstrike property as**
9 **well.**
10 Q. Okay. What's that called?
11 **A. Depending on who you talk to, it's**
12 **referred to as -- sometimes as the Mickle mine.**
13 Q. The Mickle, M-i-e-k-l-e?
14 **A. Correct.**
15 Q. Okay.
16 **A. I'll back up just a minute.**
17 **You got the Goldstrike pit.**
18 Q. Right.
19 **A. Then we built the Mickle mine, underground**
20 **mine, which is on the same property, still operated**
21 **by Barrick Goldstrike.**
22 Q. Is the tunnel down in the pit or is it --
23 **A. There is now a portal from the -- yes.**
24 Q. Okay. Portal is in the pit. Okay.
25 **A. But there is -- let me run through the**

22

1 history real quick as I know.
2 Q. Sure.
3 **A. You have the pit. And then we built the**
4 **Mickle mine. It was a shaft. It was not a portal,**
5 **it was a shaft from the surface.**
6 Q. We -- Goldstrike?
7 **A. Goldstrike.**
8 Q. Okay.
9 **A. Then Goldstrike built the Rodeo mine,**
10 **which was another shaft from the surface.**
11 Q. Between Mickle and the pit?
12 **A. Correct.**
13 Q. All right.
14 **A. Those two mines are connected by a drift.**
15 Q. A drift, okay.
16 **A. Then subsequently we ran a portal out of**
17 **the pit that connects into Rodeo. That's why,**
18 **really, we don't refer to the Mickle mine or the**
19 **Rodeo mine or the open pit mine, we re -- we have --**
20 **Goldstrike, as a property, it has an underground and**
21 **it has a surface operation.**
22 Q. Okay. One of the undergrounds started out
23 as the Mickle mine?
24 **A. Correct.**
25 Q. And the Rodeo started out as the Rodeo

23

1 drift?
2 **A. Correct.**
3 Q. Or a shaft?
4 **A. It was a shaft as well so we had the**
5 **Mickle shaft and the Rodeo shaft.**
6 Q. Okay. Now, the calculations that you do
7 as far as royalty being made, are those for the
8 Goldstrike pit or the Mickle portion of it or the
9 Rodeo portion?
10 **A. Yes to all three. They all are a part of**
11 **the --**
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<p>SHEET 4</p> <p>25</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>27</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>26</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>28</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>MR. BELAUSTEGUI: Okay. Q. And you do do that, I take it? A. Yes. Q. Let's approach this a different way. Suppose I'm -- another question. Barrick Bullfrog is</p>

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29

1 a wholly-owned subsidiary of Barrick Goldstrike? Is
2 that your understanding?

3 **A. No.**

4 Q. Or Barrick Gold?

5 **A. Barrick Gold.**

6 Q. Okay. And LAC Minerals, did you say there
7 was just wholly -- or one related entity or two?

8 **A. Two.**

9 Q. Is LAC Minerals?

10 **A. Yes.**

11 Q. Okay. So that's owned by Barrick Gold
12 too?

13 **A. That's my understanding, yes.**

14 Q. Could you tell me, if you know, why
15 Barrick Gold, which owns Barrick Goldstrike and LAC
16 Minerals and Barrick Bullfrog would want to keep
17 these royalties separate?

18 **A. My understanding --**

19 MR. PETROGEORGE: Calls for speculation.
20 Go ahead.

21 THE WITNESS: Oh.

22 MR. PETROGEORGE: Go ahead.

23 THE WITNESS: Okay. My understanding was
24 LAC Minerals was purchased by Barrick.

25 Q. (BY MR. BELAUSTEGUI) Okay.

31

1 **A. Correct.**

2 Q. Please explain to me how you track the
3 royalty due to Franco-Nevada.

4 **A. Okay. All of those royalties have a
5 commingling agreement that governs the calculations.**

6 Q. They have the same commingling agreement?

7 **A. No.**

8 Q. That would be too easy, right?

9 **A. Right. Exactly.**

10 Q. Okay.

11 **A. So --**

12 Q. I'm going to have to stop you there.

13 What if you're commingling ore from two
14 sources that have different commingling provisions?

15 **A. The commingling models we use, the
16 commingling -- the methodology is that the basic
17 methodology is the same within all the agreements.
18 So we only keep one commingling model.**

19 Q. Okay. So even though the language might
20 be slightly different in commingling agreements, the
21 bottom line is pretty much the same?

22 **A. Exactly.**

23 Q. Okay. So what do you -- so I'm there and
24 you are going to explain to me what you do.

25 **A. Correct.**

30

1 **A. So we purchased the company that had a
2 royalty. We continue to track it and pay it even
3 though it's an intercompany.**

4 Q. Okay. But do you know why?

5 **A. No.**

6 Q. And the same with Barrick Bullfrog, do you
7 know why, if it's a wholly-owned subsidiary why the
8 royalty is tracked?

9 **A. No.**

10 Q. Just seems like extra work to me. I don't
11 know.

12 **A. I -- I don't either. I don't know if
13 there is tax implications. I do not know the history
14 of that.**

15 Q. Okay. Now -- so LAC, Bullfrog are
16 separate. So -- and Royal Gold and Franco-Nevada.
17 Suppose I'm an agent of Franco-Nevada and I come to
18 your office and I say, "Please explain to me how
19 you're tracking production."

20 Do they own it in the Goldstrike pit?

21 **A. Uh-huh (affirmative).**

22 Q. Do they own it -- the royalty in
23 everything, all the production out there?

24 **A. No.**

25 Q. Okay. Just certain portions?

32

1 **So the mining by individual claim blocks
2 is tracked. We do know exactly how much material was
3 taken off of each claim block.**

4 Q. How precise do you get? You say claim
5 block. I mean, SJ claims or --

6 **A. Correct.**

7 Q. -- or do you get down to a particular
8 mining claim?

9 **A. No.**

10 Q. How --

11 **A. I do not. The engineers probably do.**

12 Q. Okay.

13 **A. But I do not. So the information that's
14 fed to me from the engineers is by claim group.**

15 Q. And the royalty, then, I take it, that's
16 due to these royalty holders is on claim groups.

17 **A. Correct.**

18 Q. Is that correct?

19 **A. That's correct.**

20 Q. Okay. All right. So you get a number for
21 material removed from the SJ Group, for example?

22 **A. Correct.**

23 Q. And then what else do you get? Do you get
24 the production?

25 **A. Exactly. So, again, we've got huge**

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1 stockpiles out there. We mine much faster than we
2 are able to process so ore is commingled in these
3 different stockpiles from different claims.

4 Q. Okay.

5 A. So the commingling model tracks your
6 percentage -- or an individual claim group's
7 percentage of the total.

8 Q. Okay.

9 A. That is then applied against the ounces
10 produced and shipped to determine the royalty.

11 Q. Okay. Do you know what steps are taken to
12 track production from a certain claim group as far as
13 on the ground?

14 A. No, I'm not an expert in that. I --

15 Q. Okay. I guess the lady that's coming
16 is --

17 MR. PETROGEORGE: Tracy Miller is the one
18 who is -- the on-the-ground mining person.

19 Q. (BY MR. BELAUSTEGUI) So you get the
20 numbers, then. Production?

21 A. Correct.

22 Q. And do the numbers that you get have the
23 calculation already for each claim group?

24 A. It's broke out for me by claim group, yes.

25 Q. Somebody has already --

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1 A. Pardon me. The gold production, no. I
2 get a total. The mining is broke out by claim group.

3 Q. You mean the production of ore?

4 A. The ore production, how much was mined, is
5 by claim group, yes.

6 Q. And that's put in the stockpile?

7 A. Correct.

8 Q. Then what tests are done from then on that
9 you get the production from each claim group? Who
10 does that?

11 Well, let me ask you this.

12 A. Okay.

13 Q. Before you commingle that ore in the
14 stockpile it seems to me there has to be some tests
15 done on the grade, recoverability, the volume, the
16 weight or whatever before you put it all together.

17 A. Absolutely. That's correct.

18 Q. So that's all done?

19 A. Yes.

20 Q. So it's put together. Then eventually
21 it's run through a mill or do you use a leech pad
22 or --

23 A. No, we -- we use an autoclave and a
24 roaster. We have two separate process facilities.

25 Q. Okay. So it's run through the process.

35

1 That's stockpile, correct?

2 A. Portions of the stockpiles. The
3 stockpiles are --

4 Q. It's fed on a continuous basis.

5 A. Right.

6 Q. How do you know what you are feeding, if
7 you know?

8 A. I don't know per stockpile.

9 Q. Who does?

10 A. That's the purpose of the commingling.
11 You've taken ore from this claim group and this claim
12 group and you put it in 27 different stockpiles that
13 are long-term, multiyear stockpiles.

14 Q. Okay. So you've got a stockpile here, you
15 know who put 20 percent in and who put -- or where
16 20 percent came from, where 80 percent came from.
17 And someone -- does somebody tell you which stockpile
18 is being run or that just shows up on a number that
19 you get?

20 A. I do not know which particular stockpile
21 is being fed. The model -- I know the total amount
22 that was fed and I know the percentage of each claim
23 holder's share of all of the stockpiles.

24 Q. So --

25 A. Not all of the individual stockpiles, all

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1 of the stockpiles.

2 Q. Not -- I'm not following you. You know
3 the percentage for each stockpile?

4 A. No.

5 Q. Where it came from?

6 A. No.

7 Q. There are just a bunch of stockpiles out
8 there and you know the totals?

9 A. Correct.

10 Q. All right. So as this stuff is fed
11 through the milling process, how do you know what's
12 coming out? Who it belongs to? You just take the
13 percentages that go in from the --

14 A. That's correct.

15 Q. How accurate is that on a daily basis? In
16 other words, seems to me you could have a big pile
17 over here, a stockpile that came mainly from a pit
18 over -- you know, from one area and then another one
19 over here that's maybe 50/50 but you are feeding all
20 that together.

21 A. Correct.

22 Q. So it seems to me like it would be a
23 long-term thing you could track but not a short-term
24 thing that you could track if those stockpiles are
25 really big.

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1 **A. That's correct.**

2 Q. Is that a fair statement?

3 **A. That is a very fair statement.**

4 Q. Okay.

5 **A. The stockpiles are based on the -- the**
6 **grade, the other constituents, carbonates, sulfides,**
7 **things like that is the -- why you place it into**
8 **different stockpiles, not by where it was mined.**

9 Q. All right. So if I'm there for Franco --
10 MR. BRUST: Go ahead. I was just going to
11 ask a question.

12 Q. (BY MR. BELAUSTEGUI) Okay. If I'm there
13 for Franco, you can show me probably what's been
14 mined off the mining claims I have a royalty interest
15 in.

16 **A. Correct.**

17 Q. And you can say it's in one of those
18 stockpiles out there.

19 **A. Correct.**

20 Q. And eventually it will be processed?

21 **A. Correct.**

22 Q. And eventually we'll track it all the way
23 through and you'll get your royalty check?

24 **A. Correct.**

25 Q. Now, if -- do you provide any paperwork to

38

1 the royalty holders, any kind of documentation that
2 they can look at to verify they are getting the
3 proper royalty on production from the claims in which
4 they have a royalty interest?

5 **A. Monthly they receive copies of the**
6 **commingling models and --**

7 Q. Okay.

8 **A. -- then they come out on their audits and**
9 **they meet with the engineers and go through the block**
10 **models and whatever other questions they have with**
11 **them. And they will sit with me and go through**
12 **the -- they may want to look at shipment invoices,**
13 **they may want to -- whatever they want to look at.**
14 **But we provide that for them during an audit, yes.**

15 Q. How often do they audit?

16 **A. I'm going to say annually. There is no**
17 **schedule.**

18 Q. Okay. But if one of the royalty holders
19 wants to come out and check on things, you
20 accommodate that?

21 **A. Yes.**

22 Q. And do what you've explained to me that
23 you do, you'll show them the model or the -- how you
24 are tracking everything off of their -- off the
25 property in which they have a royalty?

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1 **A. Correct.**

2 Q. And you also send them monthly statements
3 of some sort or accountings that give them some of
4 that information?

5 **A. Correct.**

6 Q. Okay. And they get a check every month?

7 **A. The NSRs are paid monthly. The NPI is**
8 **paid quarterly.**

9 Q. All right. And that check that's sent out
10 will correspond to accountings that accompany the
11 check?

12 **A. Correct.**

13 Q. And that may be for ore that was mined
14 some time ago, actually. Is that a fair statement?

15 **A. Yes.**

16 Q. Okay. Now, it's my understanding from
17 this lawsuit that Barrick Goldstrike acquired certain
18 interests in mining properties around the Goldstrike
19 pit or maybe the Mickle or Rodeo in 1999 from --

20 MR. PETROGEORGE: Just for -- so we are
21 consistent on the terms. My understanding when we
22 say -- when I say Mickle --

23 MR. BELAUSTEGUI: Okay.

24 MR. PETROGEORGE: -- and I think -- you
25 correct me if I'm wrong, Russ -- but at the mine when

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1 they talk about the Mickle underground mine, it's the
2 combined Mickle/Rodeo mine.

3 MR. BELAUSTEGUI: Okay.

4 MR. PETROGEORGE: So there is the
5 underground, which is called Meikle, and there is the
6 pit that's called Betze-Post or Goldstrike pit.

7 MR. BELAUSTEGUI: Okay.

8 MR. PETROGEORGE: And maybe that will just
9 help keep clear the terms for the two mines.

10 MR. BELAUSTEGUI: Okay.

11 Q. If I'm referring to the Betze-Post, then
12 I'm referring to the pit --

13 **A. Okay.**

14 Q. -- the Goldstrike pit.

15 And if I'm referring to the Mickle, that's
16 the Rodeo and the Mickle.

17 **A. Okay.**

18 Q. And is that -- I mean, if somebody says to
19 you the Betze-Post do you get in your head the pit?

20 **A. Right.**

21 Q. It's my understanding from what we've
22 learned in this lawsuit that Barrick acquired certain
23 properties from Newmont in 1999 --

24 **A. (Witness nods head.)**

25 Q. -- that include -- those properties

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1 include a portion of what's being mined at the
2 Betze-Post and the Mickle.

3 Do you know anything about that?

4 **A. That's my understanding as well. 1999 was**
5 **prior to me coming to work there but that's correct**
6 **and that's how I track it in our comminglings, yes.**

7 Q. What do you mean, that's how you track it?
8 What do you mean?

9 **A. We also track what we call Barrick fee**
10 **ground, which is ground we are not paying a royalty**
11 **on at this time.**

12 Q. Okay.

13 **A. And that is part of the commingling**
14 **tracking that's done.**

15 Q. Okay. Is it your understanding that's
16 been done since 1999?

17 **A. Yes.**

18 Q. Was it done prior to 1999?

19 **A. I do not know.**

20 Q. Is it done just on those properties,
21 whether they be on patented mining claims or fee
22 land, that Barrick acquired from Newmont in 1999? To
23 your knowledge.

24 **A. To my knowledge, that would be correct.**

25 Q. Do you know why that is?

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1 **A. So that you can get to the total. You**
2 **would have to include those other lands that are not**
3 **part of those royalty claim blocks so that you ensure**
4 **you don't pay a royalty on something you shouldn't.**

5 Q. Okay, but I thought you tracked
6 independently the mining claim blocks on which there
7 is a royalty.

8 **A. The mining is but, again, when you get to**
9 **what's been processed, you don't know which claim**
10 **that came off of so it has to feed into the model,**
11 **because you are working against the total.**

12 Q. Okay. But what you are saying, then, is
13 that the properties that you call the Barrick fee --
14 do they make up the balance of the property that
15 Barrick Goldstrike is mining after you take away the
16 property in which there is a royalty interest?

17 **A. Yes.**

18 Q. Okay. So that's the total property, then,
19 that Barrick's mining?

20 **A. Yes.**

21 Q. Why wouldn't you have tracked that prior
22 to 1999?

23 **A. They may have, I don't know. I wasn't --**
24 **I didn't come until 2001. I've not gone back and**
25 **looked at comminglings prior to that.**

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1 Q. Okay. But if what you explained to me is
2 the reason, it seems they would have had to track it
3 from day one if they don't owe them a royalty on a
4 certain portion of the operation and they do owe a
5 royalty on the other part.

6 **A. And I would agree with you but prior to**
7 **1999 we also had a joint venture agreement with**
8 **Newmont and I don't know how that was tracked. I**
9 **just am not familiar with that.**

10 Q. Okay.

11 **A. I would assume they did but I don't know.**

12 Q. And is it your understanding that the --
13 what's now called the Barrick fee land was a part of
14 the Newmont and Barrick joint venture? Which was
15 dissolved in 1999? Do you know that?

16 MR. PETROGEORGE: I want to make sure we
17 are clear on the terms. He used the term joint
18 venture. I think it was actually a joint operating
19 agreement.

20 MR. BELAUSTEGUI: Okay.

21 MR. PETROGEORGE: It might be a legal
22 joint venture.

23 MR. BELAUSTEGUI: Okay. So that's
24 different.

25 THE WITNESS: You are exactly right.

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1 MR. PETROGEORGE: And I -- Steve testified
2 a little bit about this before, that there was this
3 sort of intermingled land at the pit that was owned
4 in part by Newmont and in part by Barrick --

5 MR. BELAUSTEGUI: Right.

6 MR. PETROGEORGE: -- so there was a joint
7 operating agreement where Barrick would mine those
8 lands and then they would pay Newmont for the Newmont
9 portion of it.

10 MR. BELAUSTEGUI: Okay. But it didn't
11 have anything to do with the High Desert joint
12 venture.

13 MR. PETROGEORGE: No, but it is a lot of
14 the properties that went into that being sold to
15 Barrick in '99.

16 MR. BELAUSTEGUI: That were being operated
17 under the joint operating agreement.

18 MR. PETROGEORGE: Right, but it's not the
19 Newmont/High Desert/Barrick venture down --

20 MR. BELAUSTEGUI: Okay. Well, then, the
21 Barrick fee that Barrick got in 1999, what was that
22 before 1999? What was that called?

23 MR. PETROGEORGE: That's what he's talking
24 about, is that land was owned by Newmont and so it
25 would have been tracked under the joint operating

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1 agreement.

2 MR. BELAUSTEGUI: Oh, okay.

3 Q. So that was tracked and Newmont was given
4 accountings and payment, is that correct, as far as
5 you understand?

6 **A. As far as I understand, yes.**

7 Q. So in 1999 that went to Barrick and so
8 Barrick started tracking that just for its own
9 benefit --

10 **A. (Witness nods head.)**

11 Q. -- so that when the ore is coming it knows
12 how much is coming off the Barrick fee versus the
13 other parts.

14 **A. Exactly.**

15 Q. Has anyone ever told you, since 1999, to
16 track -- to be sure to track the Barrick fee because
17 there may be a production royalty due to some other
18 party on that?

19 **A. No.**

20 Q. Have you heard anything about that?

21 **A. No.**

22 Q. Okay. Now, other than tracking for
23 purposes of the commingling agreements, is there any
24 other reason that you know that the Barrick fee is --
25 the Barrick fee land production is tracked?

46

1 **A. No.**

2 Q. And how far back do you keep those
3 numbers?

4 **A. The commingling?**

5 Q. Well, no -- yeah, the production off of
6 each of the different groups. Like, the Barrick fee,
7 the SJ Group.

8 **A. I was able to go back to 2000 from
9 computer records. Prior to that there's, I'm sure,
10 paper records but I don't know.**

11 Q. Okay. Does Barrick have a records
12 retention policy, to your knowledge?

13 **A. Not to my knowledge.**

14 Q. You were told to keep everything or to
15 keep only certain things?

16 **A. I don't know. I...**

17 Q. Well, you say you went back, you were able
18 to go back to 2002?

19 **A. To 2000, I believe.**

20 Q. Okay. What do you mean, "went back"?

21 **A. In the computer, it was -- it was on the
22 server back to that long.**

23 Q. Okay. And then you said you are sure
24 there are records somewhere, paper records of --

25 **A. I would think there are, yeah.**

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1 Q. Okay. When these people come from
2 different royalty holders and do their audits, have
3 they ever found any discrepancies or mistakes, in
4 your experience?

5 **A. No material mistakes. There were some
6 questions one time on a few ounces of silver but to
7 my knowledge there were -- there has never been any
8 material mistakes. I mean, I don't believe so --**

9 Q. Okay.

10 **A. -- I guess was my short answer.**

11 Q. Is it your understanding that what you
12 call the Barrick fee has been mined continually since
13 1999?

14 **A. It's -- ore or ore and waste? It's been
15 mined. I don't --**

16 Q. No, for ore.

17 **A. I don't -- I don't believe that there has
18 been ore taken off of the Barrick fee ground every
19 year since 1999 at all.**

20 Q. Is ore currently being taken off the
21 Barrick fee?

22 **A. Yes.**

23 Q. Okay. Do you know -- do you have any
24 information about the amount of reserves under the
25 Barrick fee or the estimate on production, how long

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1 it will continue?

2 **A. There -- we provided you the reserves on
3 Barrick fee and so --**

4 Q. I saw it. I forgot.

5 **A. Yeah, I don't have it with me. It's --
6 but I do know the reserves are broken out that way.**

7 Q. When you say "we provided that," did you
8 help in the production of documents for this lawsuit,
9 to your knowledge?

10 **A. I -- yes.**

11 Q. You received a request to put certain
12 records together and you did that?

13 **A. Yes.**

14 Q. And you submitted them to counsel for
15 Barrick?

16 **A. Yes.**

17 Q. Okay.

18 MR. BRUST: Those are designated highly
19 confidential.

20 MR. PETROGEORGE: I am pretty sure that
21 those are restricted confidential and I know we
22 produced reserve models at least year end 2008. I'm
23 not sure if year end 2009 has been done yet.

24 MR. BRUST: That was something that
25 Newmont wanted to keep restricted confidential. I

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<p>SHEET 7</p> <p>49</p> <p>1 just want to make sure when we come across it. 2 MR. PETROGEORGE: I know we marked those 3 documents that needed to be marked, whether it was 4 confidential or restricted. I am pretty sure it was 5 restricted. 6 MR. BELAUSTEGUI: I'm trying to remember, 7 it seems to me there were 40-some thousand pages that 8 were production records. 9 MR. PETROGEORGE: Okay. 10 MR. BELAUSTEGUI: Do you know if your 11 answers to interrogatories narrowed that down to this 12 Barrick fee? 13 MR. PETROGEORGE: Can we just go off the 14 record for a second? 15 MR. BRUST: Yeah. 16 (A break was taken from 2:20 p.m. to 17 2:21 p.m.) 18 Q. (BY MR. BELAUSTEGUI) Now, you testified 19 that you put together certain records that you 20 produced to your attorney for production to us. And 21 from my review I saw 40,000-some pages of records 22 that looked like production records. And I guess the 23 BAR records are the Barrick fee. And so my question 24 would be, what are the other records? 25 MR. PETROGEORGE: Well, and the BAR -- I</p>	<p>51</p> <p>1 A. He has worked there I think since 1998. 2 Q. And they trained you? 3 A. Yes. 4 Q. Do you know where they got their training? 5 A. No. 6 Q. Okay. From what I understand, what you do 7 depends a lot on numbers that you get from other 8 departments, maybe from the lab, maybe from whoever. 9 Is that a fair statement? 10 A. Absolutely. 11 Q. And you get the numbers and then you 12 pretty much do the calculations. 13 A. Correct. 14 Q. And do you issue the checks or do you do 15 requests for checks? 16 A. Requests for checks. 17 Q. And then do you send the checks out or 18 does an accounting office do that? 19 A. I think that most of them are now ACHs 20 rather than physical checks. 21 Q. All right. 22 23 24 25</p>
<p>50</p> <p>1 don't want to say the BAR is only related to Barrick 2 fee. A lot of the records have -- we provided 3 production and reserve data, which includes the 4 Barrick fee. 5 A number of the documents, if you look at 6 them, will have information on all the claim blocks 7 and Barrick fee is included. I won't say that there 8 is a specific grouping of documents that target only 9 on Barrick fee but that the Barrick fee information 10 is a part of those documents. 11 MR. BELAUSTEGUI: Okay. 12 MR. PETROGEORGE: Does that make sense? 13 MR. BELAUSTEGUI: Yes. 14 Q. Now, who, again, trained you to do these 15 different calculations and things like that? Estes? 16 A. Mike Estes and Curtis Cadwell. 17 Q. Okay. And do you know how long they've 18 worked at Barrick? 19 A. Mike Estes for -- I think since 1996. 20 Q. Okay. And the other gentleman, how do you 21 spell his name? 22 A. Cadwell, C-a-d-w-e-l-l. 23 Q. Okay. 24 A. First name is Curtis. 25 Q. Okay.</p>	<p>52</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	53	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	55
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<div>SHEET 8</div> <div>57</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div>	<div>59</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div>
<div>58</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div>	<div>60</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div>

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<div>SHEET 9</div> <div>65</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div>	<div>67</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div>
<div>66</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div>	<div>68</div> <div>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div>

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15 Q. Okay. And you mentioned -- I think you
16 said something about the fact that the Barrick
17 Bullfrog is on the underground properties?
18 **A. Yes.**
19 Q. Is that on all of the underground
20 properties or a portion of the underground
21 properties?
22 **A. All of the underground properties.**
23 Q. Including the portions of the underground
24 property that are Barrick fee?
25 **A. Yes.**

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1 Q. And when you talk about Barrick fee, the
2 Barrick fee properties, do you know whether there are
3 properties included in the Barrick fee block other
4 than those that were obtained by Newmont -- from
5 Newmont in 1995?
6 **A. I don't believe so.**
7 Q. So, as far as you are aware, all of the
8 properties that are tracked as Barrick fee are
9 properties that were acquired from Newmont in 1999?
10 **A. Yes.**
11 MR. PETROGEORGE: No further questions.
12 MR. BRUST: I just have two followups.
13 MR. PETROGEORGE: Okay.
14 FURTHER EXAMINATION
15 BY MR. BRUST:
16 Q. Do you know when Barrick bought Barrick
17 Bullfrog?
18 **A. No, I don't.**
19 Q. What about when Barrick bought LAC
20 Minerals?
21 **A. No, I don't.**
22 Q. They were there before you got there?
23 **A. I believe so, yes.**
24 MR. BRUST: I don't have any others.
25 MR. BELAUSTEGUI: Nothing further.

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1 MR. PETROGEORGE: We will read and sign.
2 (Deposition concluded at 2:55 p.m.)
3 * * *

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1 REPORTER'S CERTIFICATE
2 STATE OF UTAH)
3 COUNTY OF SALT LAKE) ss.
4
5 I, Dawn M. Perry, Certified Shorthand
6 Reporter and Notary Public in and for the State of
7 Utah, do hereby certify:
8 That prior to being examined, the witness,
9 RUSS HOFLAND, was by me duly sworn to tell the truth,
10 the whole truth, and nothing but the truth;
11 That said deposition was taken down by me
12 in stenotype on May 11, 2010, at the place therein
13 named, and was thereafter transcribed and that a true
14 and correct transcription of said testimony is set
15 forth in the preceding pages;
16 I further certify that, in accordance with
17 Rule 30(e), a request having been made to review the
18 transcript, a reading copy was sent to Michael P.
19 Petrogeorge, Attorney at Law, for the witness to read
20 and sign before a notary public and then return to me
21 for filing with Thomas Belaustegui, Attorney at Law.
22 I further certify that I am not kin or
23 otherwise associated with any of the parties to said
24 cause of action and that I am not interested in the
25 outcome thereof.
26 WITNESS MY HAND AND OFFICIAL SEAL this
27 17th day of May, 2010.
28
29 Dawn M. Perry, CSR
30 Notary Public
31 Residing in Salt Lake County,
32 Utah

Russ Hofland * May 11, 2010

SHEET 10

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1 Case: BULLION MONARCH MINING, INC. vs. BARRICK
 2 GOLDSTRIKE MINES INC., et al
 3 Case No.: CV-N-08-00227-ECR-VPC
 4 Reporter: Dawn M. Perry, CSR
 5 Date taken: May 11, 2010

WITNESS CERTIFICATE

6 I, RUSS HOFLAND, HEREBY DECLARE:
 7 That I am the witness in the foregoing
 8 transcript; that I have read the transcript and know
 9 the contents thereof; that with these corrections I
 10 have noted this transcript truly and accurately
 11 reflects my testimony.

PAGE-LINE	CHANGE/CORRECTION	REASON
9		
10		
11		
12		
13		
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15		

16 No corrections were made.

17 I, RUSS HOFLAND, HEREBY DECLARE UNDER THE
 18 PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES
 19 OF AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE
 20 FOREGOING IS TRUE AND CORRECT.

21 RUSS HOFLAND
 22
 23
 24
 25

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wholly-owned - years

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EXHIBIT 11

EXHIBIT 11

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11
 12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE DISTRICT OF NEVADA

14 BULLION MONARCH MINING INC.,
 15
 Plaintiff,
 16
 vs.
 17 BARRICK GOLDSTRIKE MINES INC.,
 18
 Defendant.
 19

Case No. 03:09-cv-612- MMD-WGC
 (Sub File of 3:08-cv-227- MMD-WGC)

**RESPONSE TO PLAINTIFF'S
 MOTION FOR
 JURISDICTIONAL DISCOVERY**

20 Defendant Barrick Goldstrike Mines Inc. ("Goldstrike") hereby responds to Plaintiff
 21 Bullion Monarch Mining, Inc.'s ("Bullion") Motion for Jurisdictional Discovery [ECF #263].

22 **INTRODUCTION**

23 Goldstrike does not object to Bullion taking jurisdictional discovery before it responds to
 24 Goldstrike's pending Motion to Dismiss for Lack of Subject-Matter Jurisdiction. [ECF #260]. But
 25 such discovery should not be open-ended and unlimited as proposed by Bullion.

26 Goldstrike suggested an initial phase of discovery involving a 30(b)(6) deposition in which
 27 Goldstrike would produce one or more witnesses to respond to jurisdictional topics articulated by
 28 Bullion, plus ten (10) interrogatories and ten (10) requests for production. This should be more than

sufficient to allow Bullion to discover facts relating to the location of Goldstrike's corporate headquarters or "nerve center" in 2009, and to allow Bullion to appropriately respond to Goldstrike's jurisdictional motion. If, after Bullion completes this initial discovery, it believes that further discovery were warranted, the parties could confer about additional discovery and, if necessary, bring the matter before the Court. But the burden should be on Bullion to establish that additional discovery is proportional and appropriate.

ARGUMENT

I. Full discovery under the Federal Rules of Civil Procedure is not required or appropriate with respect to the Jurisdictional Motion.

Bullion asks this Court to permit open-ended jurisdictional discovery subject only to the presumptive limitations set forth in the Federal Rules of Civil Procedure for substantive discovery for an entire case (up to 10 depositions, 25 interrogatories, 25 requests for production, and 25 requests for admission). (Mot. for Jurisdictional Discovery at 8-9 [ECF #263]; Fed. R. Civ. P. 30, 33, 34, 35). Bullion has already completed fact discovery pursuant to the rules, and should not be allowed another round of full-blown discovery on the limited issues raised by the jurisdictional motion. This Court has broad discretion to limit discovery otherwise permissible under the rules, and should impose more tailored and focused discovery limits here. *See* Fed. R. Civ. P. 26(b)(2) ("The frequency or extent of use of the discovery methods otherwise permitted under these rules . . . shall be limited by the court if it determines that . . . the burden or expense of the proposed discovery outweighs its likely benefit . . .").

The starting point of Bullion's deposition discovery should be a 30(b)(6) deposition in which Goldstrike would produce one or more witnesses to testify about the factual issue raised by the jurisdictional motion. Bullion can identify specific topics on which it would like testimony from Goldstrike, and Goldstrike can then identify the witnesses authorized and prepared to speak on its behalf with respect to those topics. *See* Fed. R. Civ. P. 30(b)(6).

It is likewise reasonable to limit Bullion to 10 interrogatories and 10 document requests. This should be more than sufficient to allow Bullion to discover the information in Goldstrike's

1 possession and control that may be relevant to the sole issue: Where was the location of Goldstrike's
2 corporate headquarters or "nerve center" in 2009.

3 If Bullion believes after the completion of this initial phase of discovery that additional
4 discovery is necessary, Goldstrike will confer in good faith and, if it appears that additional
5 discovery is reasonably required, Goldstrike will agree to it. If the parties cannot agree, the Court
6 can decide whether Bullion has established that such additional discovery is necessary and
7 warranted for purposes of the jurisdictional motion.

8 **II. Bullion has not established the limits proposed by Goldstrike to be unreasonable or**
9 **that additional discovery is required.**

10 Bullion fails to explain to the Court why the discovery already offered by Goldstrike is not
11 sufficient to test the validity of Goldstrike's jurisdictional claims. In support of its request for full-
12 blown discovery under the presumptive limits set forth in the Federal Rules of Civil Procedure,
13 Bullion argues instead that that Goldstrike misled Bullion and provided inconsistent evidence
14 regarding the location of its corporate headquarters. These allegations are unfounded.

15 **A. Goldstrike's prior pleadings were not misleading on the jurisdictional issue.**

16 Bullion claims that Goldstrike "consistently deflected inquiries into this Court's jurisdiction
17 by representing that its place of business was Nevada." (Mot. for Jurisdictional Discovery at 4-5
18 [ECF #263]). In support, Bullion cites Goldstrike's Answer to Amended Complaint filed October
19 19, 2009 [ECF #3], and to a joint Case Management Report filed December 1, 2009 [ECF #7]. But
20 neither of these filings addressed the jurisdictional issue presently before the court.

21 In its Answer, Goldstrike admitted that it is incorporated in Colorado and does business in
22 Nevada. (*See* Am. Compl. at ¶ 2A [ECF #2]; Answer to Am. Compl. at ¶ 2A [ECF #3]). These facts
23 were, and remain, true. But they do not resolve the question of where Goldstrike's corporate
24 headquarters or "nerve center" was located in 2009. The Case Management Report, jointly filed by
25 Bullion and Goldstrike, likewise states that Goldstrike "is a Colorado corporation and has been
26 doing business in Nevada at all times relevant hereto" and that "[j]urisdiction is not contested."
27 (*See* Case Management Report at 2, § 3 [ECF #7]). This statement was true when made given the
28 "place of operations test" then-applied by the Ninth Circuit, which focused on the "the state

1 containing a substantial predominance of corporate operations.” *Davis v. HSBC Bank Nevada,*
 2 *N.A.*, 557 F.3d 1026, 1028 (9th Cir. 2009) (internal quotations omitted). The analysis no longer
 3 applied after the Supreme Court issued its ruling in *Hertz Corp. v. Friend*, 559 US 77 (2010),
 4 rejecting the Ninth Circuit test and requiring the location of Goldstrike’s “nerve center” or corporate
 5 headquarters to control. 559 US at 92-93. Nowhere in any of its prior pleadings did Goldstrike
 6 concede or suggest that its “nerve center” or corporate headquarters was in Nevada (or anywhere
 7 other than Utah) in 2009.

8 **B. Rich Haddock’s testimony has not been inconsistent.**

9 Bullion cites the declaration Rich Haddock submitted in support of the jurisdictional
 10 motion, suggesting that it is “curiously vague” and conflicts with his prior deposition testimony.
 11 (Mot. for Jurisdictional Discovery at 5-6 [ECF #263]). As set forth below, neither of these
 12 suggestions is correct. But more importantly, they do not support an argument for broader
 13 discovery. Bullion can easily test the facts underlying Mr. Haddock’s declaration through a 30(b)(6)
 14 deposition and a limited set of written discovery.

15 Contrary to Bullion’s claims, Mr. Haddock never “changed his story” from his deposition
 16 to his declaration. Mr. Haddock testified during his 2010 deposition that he was, in 2010, “Vice
 17 President and General Counsel of North America for Barrick Gold Corporation.” (May 10, 2010,
 18 Deposition of Richie Haddock (“Haddock Dep.”) at 4:21-24, Ex. 2B to Mot. for Jurisdictional
 19 Discovery [ECF #263-4]). He also testified that the Salt Lake City office was “the administrative
 20 office for Barrick North America, its North American operations,” which included Goldstrike. (*Id.*
 21 at 17:12-16). This testimony is entirely consistent with his declaration in which he states that he
 22 has “held various positions with Barrick Gold and Goldstrike;” that “[a]ll of these positions have
 23 included involvement in the operations and management of Goldstrike;” and that “Goldstrike’s
 24 management in Salt Lake City controlled and supervised all of the major corporate functions for
 25 Goldstrike in 2009.” (Haddock Decl. at ¶¶ 3, 10 [ECF #260-1]).

26 Bullion oddly asserts that Mr. Haddock “omit[ed] any ties to Goldstrike” in his 2010
 27 deposition. The assertion is odd because Mr. Haddock was testifying as a 30(b)(6) witness on behalf
 28 of Goldstrike and the deposition consists almost entirely of testimony about Goldstrike and focuses

1 on answers to interrogatories that Mr. Haddock signed on behalf of Goldstrike. (Haddock Dep.
2 *passim* [ECF #263-4]).

3 Bullion also asserts that “[i]t was on the basis of Haddock’s representations that Barrick
4 Gold Corporation filed a motion to dismiss for lack of personal jurisdiction in 2009” (Mot.
5 for Jurisdictional Discovery at 5 [ECF #263]). But the documents Bullion cited (227 ECF No. 70,
6 71) do not support the assertion. Mr. Haddock made no representations whatsoever. The declaration
7 in support of Barrick Gold Corporation’s motion to dismiss was submitted by Sybil Veenman,
8 Barrick Gold’s Senior Vice President, Assistant General Counsel and Secretary. More importantly,
9 the Veenman declaration relates solely to the lack of Barrick Gold Corporation operations and
10 holdings in Nevada; it does not speak to and is not inconsistent with Goldstrike’s position that its
11 “nerve center” or corporate headquarters was in Salt Lake City in 2009.

12 **C. The Haddock declaration did not “substitute” Utah officers for Nevada**

13 Contrary to Bullion’s claims, Mr. Haddock’s declaration does not conflict with the
14 deposition testimony provided by Russ Hofland. (Mot. for Jurisdictional Discovery at 6 [ECF
15 #263]). In 2010, Mr. Hofland testified that he was an “accounting supervisor” based in Elko,
16 Nevada. (May 11, 2010, Deposition of Russ Hofland at 4:16-17, Exhibit 2C to Mot. for
17 Jurisdictional Discovery [ECF #263-5]). Mr. Hofland was not an “officer” of Goldstrike. Mr.
18 Haddock’s declaration says nothing about Mr. Hofland, stating only that Curtis Caldwell was
19 Goldstrike’s “Controller” in 2009, overseeing Goldstrike’s accounting functions. (Haddock Decl.
20 at ¶10(h) [ECF #260-1]).

21 **D. Rich Haddock’s declaration is not “curiously vague.”**

22 Bullion claims that Mr. Haddock’s declaration is “curiously vague” because it fails to state
23 where Goldstrike’s corporate officers personally resided in 2009. (Mot. for Jurisdictional Discovery
24 at 6 [ECF #263]). Such facts are irrelevant. What matters is where Goldstrike’s corporate decisions
25 were made. The declaration states clearly that all “Goldstrike’s principal corporate officers—
26 including the officers with primary control over Goldstrike’s corporate policies and direction—
27 were located in Salt Lake City” at its offices located at 136 East South Temple, Suite 1800.
28 (Haddock Decl. at ¶¶5, 6 [ECF #260-1]). There is nothing curious or vague about these statements,

1 and Bullion can inquire further about them through limited written discovery or a 30(b)(6)
2 deposition.

3 **E. Goldstrike's initial disclosures are irrelevant.**

4 Finally, Bullion notes that none of the Utah-based executives referenced in Mr. Haddock's
5 declaration are identified in its initial disclosures. (Mot. for Jurisdictional Discovery at 5 [ECF
6 #263]). But the location of Goldstrike's corporate headquarters or "nerve center" was not at issue
7 when the disclosures were made. Thus, Goldstrike had no reason to identify its Utah-based officers
8 in its prior disclosures.

9 **CONCLUSION**

10 For the reasons set forth above, Bullion's motion for jurisdictional discovery should be
11 granted, but such discovery should be limited to an initial phase consisting of a 30(b)(6) deposition,
12 ten (10) interrogatories, and ten (10) requests for production. If Bullion completes such discovery
13 and believes that more is required the parties can confer in good faith and, if necessary, bring the
14 matter before the Court.

15
16 Dated: October 13, 2017

17 PARSONS BEHLE & LATIMER

18 /s/ Michael P. Petrogeorge

19 Francis Wikstrom, Esq.

20 Michael Kealy, Esq.

21 Michael P. Petrogeorge, Esq.

22 Brandon J. Mark, Esq.

23 *Attorneys for Defendant*

24 *Barrick Goldstrike Mines Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2017, a true and correct copy of the foregoing **RESPONSE TO PLAINTIFF'S MOTION FOR JURISDICTIONAL DISCOVERY**, was served on the following electronically via the ECF system:

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EXHIBIT 12

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

vs.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant.

Case No. 03:09-CV-612-MMD-WGC

**REPLY BRIEF ON MOTION FOR
JURISDICTIONAL DISCOVERY**

Bullion does not intend to abuse the right to take jurisdictional discovery. And Goldstrike says it intends to be reasonable as discovery progresses, which Bullion appreciates. (*See* ECF No. 265, at 3:3–5.)

The question is: who has the burden to come to the Court in the event of disagreement? Given Goldstrike’s decision—so late in the litigation—to dust off the question of jurisdiction and heave it at Bullion, the burden of resisting discovery within the federal rules’ presumptive limits should fall to Goldstrike.

In addition, the limits Goldstrike proposes would defeat the jurisdictional

inquiry in *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). Bullion needs to be able to depose not just Goldstrike’s handpicked 30(b)(6) witness but also others relevant to the question of Goldstrike’s nerve center—including, at least briefly, all of the people that Goldstrike says are “officers” in Salt Lake, as well as individuals in other locations that are more likely Goldstrike’s true nerve center. If there are individuals making decisions from another location—or the decisions designated as officers were not really controlling Goldstrike—that information is relevant. In any event, written discovery requests must not be capped below 20 for each category, especially if this Court restricts the use of subparts.

1. *Multistate Corporations Must Not Manipulate the Jurisdictional Inquiry*

Hertz Corp. itself recognized the complexity in identifying a corporation’s “nerve center” where “command and coordinating functions” are divided “among officers who work at several different locations.” *Hertz Corp. v. Friend*, 559 U.S. 77, 95–96 (2010). If permitted, the company’s lawyers could easily skew the results by substituting their own ideas about which office serves as the company’s headquarters or who directs and controls the company. *Id.* at 93 (observing that the nerve center is “not simply an office where the corporation holds its board meetings”).

2. *A Single 30(b)(6) Deposition is Open to Manipulation*

The unique concern about manipulation makes Goldstrike’s proposal of a single 30(b)(6) deposition inadequate.

A company can select anyone, including individuals with a limited role or even outsiders, to respond to a 30(b)(6) deposition. In Rich Haddock’s deposition, which Goldstrike so vigorously defends, Goldstrike seemed to do just that: Bullion saw nothing amiss in Goldstrike’s designating someone who appeared to have a position only with Barrick Gold Corporation, because Rule 30(b)(6) allows that.

1 When the question is who really directed and controlled Goldstrike, how-
2 ever, Bullion should not be limited to *Goldstrike's* idea about who can answer
3 that question—its handpicked 30(b)(6) witness. Bullion needs to depose others
4 who might have held the reins, irrespective of their nominal role with the com-
5 pany.

6 **3. There are Significant Omissions in the Record**

7 In addition, the passage of time makes it necessary for Bullion to have
8 greater freedom than might be warranted were this case being filed for the first
9 time today. There is no dispute that *Hertz Corp.* changed the Ninth Circuit's
10 test for diversity jurisdiction. But more than seven years passed without any
11 indication in the record that *Hertz Corp.*'s "nerve center" test made any differ-
12 ence.

13 Goldstrike never signaled that the individuals in Haddock's new declara-
14 tion were the ones exercising direction and control over the company. To the
15 contrary, Goldstrike referred questions about the direction and control of the
16 company on a variety of topics—its contracts, its acquisitions, its relationship to
17 corporate predecessors—to individuals with Barrick Gold Corporation. (ECF
18 No. 263-3, Ex. 2-A, at 1–5.) Goldstrike now represents that these individuals
19 were not, in fact, "officers" tasked with Goldstrike's direction and control. The
20 new individuals identified as "officers" were never disclosed as having discover-
21 able information under FRCP 26(a)(1)(A)(i). That revelation is, if not technical-
22 ly inconsistent, shocking.

23 **4. Time and Subject-Matter Limits are Sufficient**

24 Under the circumstances, a limited discovery period of 90 days is suffi-
25 cient protection for Goldstrike. *Cf. Liberty Media Holdings, LLC v. Letyagin*,
26 925 F. Supp. 2d 1114, 1120 (D. Nev. 2013) (allowing 106 days of unrestricted ju-
27 risdictional discovery). As discussed, a single 30(b)(6) deposition would elimi-
28

1 nate testimony from the very individuals who might contradict Goldstrike's
 2 handpicked witness. Given the omissions in the record, it would be inequitable
 3 to tether Bullion to an arbitrary number of interrogatories and document re-
 4 quests. And it is perplexing that Goldstrike resists *any* requests for admission,
 5 as those could substantially narrow the issues and save the parties and this
 6 Court time investigating undisputed points.

7 At a minimum, any limit on the number of discovery requests in the ini-
 8 tial phase should allow the reasonable use of subparts. Bullion will treat
 9 Goldstrike with courtesy in the process, but stitching together a layered corpo-
 10 rate structure nearly a decade later may necessitate minimally layered re-
 11 quests.

12 Dated this 20th day of October, 2017.

13 LEWIS ROCA ROTHGERBER CHRISTIE LLP

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5 and Local Rule 5-4, I certify that I served the foregoing “Reply Brief on Motion for Jurisdictional Discovery” through the United States District Court’s CM/ECF system electronic mail.

Dated this 20th day of October, 2017.

/s/ Adam Crawford
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT 13

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

29 BULLION MONARCH MINING INC.,

30 Plaintiff,

31 vs.

32 BARRICK GOLDSTRIKE MINES INC.,

33 Defendant.

Case No. 03:09-cv-612- MMD-WGC
(Sub File of 3:08-cv-227- MMD-WGC)

**MOTION TO DISMISS FOR
LACK OF SUBJECT-MATTER
JURISDICTION**

MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and LR 8-1, Defendant Barrick Goldstrike Mines Inc. ("Goldstrike") moves this Court for an order dismissing this action because this Court lacks jurisdiction over the matter. This case is in federal court based on alleged diversity jurisdiction under 28 U.S.C. § 1332. However, because Plaintiff Bullion Monarch Mining, Inc. ("Bullion") and Goldstrike were citizens of the same state (Utah) when this case was initiated against Goldstrike in 2009, this Court does not have subject-matter jurisdiction over the case. Under the circumstances, the Court must dismiss the claims without prejudice. Accordingly, Goldstrike requests that the Court enter an order dismissing the suit.

Dated: September 8th, 2017

PARSONS BEHLE & LATIMER

By: /s/ Brandon J. Mark

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Barrick Goldstrike Mines Inc.

1 **MEMORANDUM IN SUPPORT OF MOTION**

2 **INTRODUCTION**

3 Subject-matter jurisdiction can never be waived, and the parties and Court have a
4 continuing duty to ensure that the Court has jurisdiction over the matter at all stages of litigation.
5 Federal courts are courts of limited jurisdiction as defined by the United States Constitution and
6 the congressional delegation of authority within those constitutional limits.
7

8 This case must be dismissed for lack of subject-matter jurisdiction because Plaintiff
9 Bullion and Defendant Goldstrike were both citizens of Utah when Bullion sued Goldstrike in
10 2009. The issue has eluded the parties and Court until now because at the time Bullion filed its
11 Amended Complaint adding Goldstrike—and the Court and parties initially assessed
12 jurisdictional issues—the Ninth Circuit Court of Appeals was applying the wrong standard to
13 determine a corporation’s “principal place of business” under the diversity jurisdiction statute.
14 Under the Ninth Circuit’s prior, incorrect standard, which focused on the location of a
15 corporation’s operations, Goldstrike’s principal place of business was thought to be Nevada. But
16 the United States Supreme Court’s subsequent ruling in *Hertz Corporation v. Friend*, 559 U.S. 77
17 (2010), confirmed that a corporation’s principal place of business is actually the location of the
18 company’s headquarters and “nerve center.” Applying the correct standard, Goldstrike’s principal
19 place of business in 2009 was Utah. Because Bullion was also a citizen of Utah at the time, there
20 was no diversity of citizenship.
21

22 Regrettably, the jurisdictional defect was not recognized until Goldstrike began to
23 consider the jurisdictional statement in anticipation of drafting a joint Pretrial Order. The Court’s
24 local rules require the parties’ joint Pretrial Order to include a “statement of the basis for this
25 court’s jurisdiction with specific legal citations.” LR 16-3(b)(2). Thus, when this Court recently
26 ordered the parties to submit their joint pretrial order, Goldstrike looked at the jurisdiction issues
27
28

1 with fresh eyes. After reviewing the deficient jurisdictional allegations in Bullion's Second
2 Amended Complaint, recognizing the Supreme Court's ruling in *Hertz Corporation* altered the
3 original Ninth Circuit analysis, and investigating the facts relating to Goldstrike's nerve center in
4 2009, it became evident that the Court lacked jurisdiction over the case. Because the Court never
5 properly had jurisdiction over the case—and does not now have jurisdiction—the Court's only
6 option is to dismiss the action.
7

8 STATEMENT OF FACTS

9 **In 2009, Bullion amended its Complaint in the Newmont Litigation to add Goldstrike as a**
10 **defendant.**

11 In 2008, Bullion filed the original Complaint against only Newmont USA Limited
12 ("Newmont"). (*Bullion Monarch Mining, Inc. v. Newmont USA Limited*, Case No. 3:08-cv-
13 00227-ECR-VPC, ECF 1 (references to filings in the Newmont litigation are "227 ECF ##").)
14 Bullion asserted the Court had subject-matter jurisdiction over the lawsuit due to the diversity of
15 citizenship between Bullion, a Utah citizen (both state of incorporation and principal place of
16 business), and Newmont, a citizen of Colorado (state of incorporation) and Nevada (principal
17 place of business).
18

19 In 2009, Bullion and Newmont stipulated to the addition of Goldstrike as a defendant in
20 the case. In the Amended Complaint adding Goldstrike as a party, Bullion alleged that "Barrick
21 Goldstrike Mines, Inc. . . . is a Colorado corporation and has been doing business in Nevada at all
22 times relevant hereto." (Am. Compl. ¶ 2A, 227 ECF 48.) None of Bullion's allegations addressed
23 Goldstrike's principal place of business.
24

25 **At the time, the Ninth Circuit used a "place of operations" test to determine corporate**
26 **citizenship.**

27 At the time Bullion filed its Amended Complaint in the Newmont litigation adding
28 Goldstrike as a party, the Ninth Circuit Court of Appeals erroneously applied a two-part test to

1 determine the principal place of business of a corporation for diversity jurisdiction purposes. The
2 Ninth Circuit first looked at “the place of operations test,” which “is the state containing a
3 substantial predominance of corporate operations.” *Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d
4 1026, 1028 (9th Cir. 2009) (internal marks omitted). Only “[i]f no state contain[ed] a substantial
5 predominance of corporate operations” did the Ninth Circuit “apply the ‘nerve center’ test, which
6 locates the corporation’s principal place of business in the state where the majority of its
7 executive and administrative functions are performed.” *Id.* (internal marks omitted).

9 Under the Ninth Circuit’s then-existing but incorrect test, it appeared that Goldstrike’s
10 principal place of business was Nevada because Nevada was where the majority of its mining and
11 processing operations were carried out. Nevertheless, in its Answer, Goldstrike’s first affirmative
12 defense was that “[t]his Court lacks subject matter jurisdiction over this matter because Bullion
13 and [Goldstrike] are, upon information and belief, both citizens of the same state.” (Answer 11
14 (227 ECF 69).)

16 Shortly after Goldstrike was added to the Newmont lawsuit, the parties agreed to sever
17 Bullion’s claims against Goldstrike into a separate matter with a different case number. Since
18 2009, this matter has proceeded solely between Bullion and Goldstrike based on alleged diversity
19 jurisdiction.

21 **In 2010, the Supreme Court held that the “nerve center” test determined corporate citizenship.**

22 In 2010, the United States Supreme Court ruled that the Ninth Circuit had been using the
23 wrong test to determine a corporation’s principal place of business. *Hertz Corp. v. Friend*, 559
24 U.S. 77 (2010). Rather than focus on where a corporation’s operations were located, as in the
25 Ninth Circuit’s previous test, the Supreme Court held in *Hertz Corporation* that a corporation’s
26 principal place of business is the state where it has its corporate “nerve center” or headquarters—
27 that is, where high-level corporate decisions are made.

1 **Goldstrike's nerve center in 2009 was in Utah.**

2 Under the proper test articulated in *Hertz Corporation*, Goldstrike was a citizen of Utah in
3 2009 because that is where all of the executive-level decisions for Goldstrike were made at that
4 time. In 2009, Goldstrike's principal corporate officers—including the officers with primary
5 control over Goldstrike's corporate policies and direction—were located in Salt Lake City.
6 (Declaration of Rich Haddock, September 5, 2017, ¶ 6, Exhibit A hereto.) Specifically, Gregory
7 Lang, Goldstrike's President and CEO, Blake Measom, its Chief Financial Officer, Mike Feehan,
8 its Vice-President of Operations ("Operations Director"), and Paul Judd, its Tax Director, were all
9 located in Salt Lake City. (*Id.*) None of Goldstrike's corporate officers were located in Nevada.
10 (*Id.*)

12 Additionally, in 2009, a majority of Goldstrike's board of directors were located in Salt
13 Lake City. None of Goldstrike's directors were located in Nevada. (*Id.* ¶ 8.)

14 While day-to-day mining operations were directed by an onsite General Manager in
15 Nevada in 2009, all corporate policies and strategic decisions were made at Goldstrike's
16 headquarters in Salt Lake City. (*Id.* ¶ 7.) Goldstrike's officers in Salt Lake City made corporate
17 decisions regarding budgeting, land and property acquisitions, long-term strategy and planning,
18 and all other executive-level decisions. (*Id.* ¶ 9.)

20 Specifically, Goldstrike's management in Salt Lake City controlled and supervised all of
21 the major corporate functions in 2009, including (a) production and processing projections and
22 targets for Goldstrike's mines, as well as unit-cost targets; (b) detailed capital reviews; (c) tax
23 policy; (d) coordination of mine operations and mine management; (e) technical issues relating to
24 mine plans, production, processing, geology, and maintenance; (f) human resources, including
25 decisions regarding salaries and adjustments, short- and long-term bonuses, bonus structure,
26 health insurance, pensions, and other employee benefits; (g) legal issues, including contracting,
27
28

1 litigation, and environmental issues; (h) accounting and control functions; (i) federal land
2 permitting issues; (j) equipment inventories and allocation of equipment; (k) land issues, such as
3 ensuring the payment of property taxes and the maintenance of mining claims, leases, and other
4 real property interests; (l) environmental policies, including environmental targets and goals for
5 Goldstrike's environmental management system; (m) security policies and objectives;
6 (n) information technology issues; (o) supply-chain management and purchasing functions;
7 (p) business and process improvement initiatives; (q) communications and corporate social
8 responsibility functions; and (r) payroll. (*Id.* ¶ 10.)

10 Goldstrike's corporate officers in Salt Lake City also decided how to allocate capital
11 among various Goldstrike projects. (*Id.* ¶ 11.) For example, in 2009, management in Salt Lake
12 City made the decision to fast-track a pilot project to test a new processing method. That led to a
13 demonstration plant a few years later and then, in 2014, to the opening of the world's first total
14 carbonaceous matter (TCM) plant at Goldstrike, a \$620 million dollar project. (*Id.*)

16 In 2009, Goldstrike's management in Salt Lake City also conducted a comprehensive
17 review of the mining operations plans for Goldstrike to ensure the mining plans achieved strategic
18 objectives, which included decisions regarding mining rates, gold production, and review of
19 capital spending. The review included a detailed analysis of total expenditures, as well as the
20 evaluation of specific line items. Goldstrike's Salt Lake City management modified the plans to
21 ensure they aligned with corporate goals and objectives. (*Id.* ¶ 12.)

23 Similarly, in 2009, Goldstrike's Salt Lake City management made all decisions regarding
24 when and how to buy energy, Goldstrike's second largest expense. These included whether to
25 build Goldstrike's own power plant, and exit the Nevada utility service, or to buy electricity from
26 the grid. (*Id.* ¶ 13.)

1 In 2009, management in Salt Lake City also controlled key personnel decisions.
 2 Goldstrike's onsite General Manager was selected and supervised by Goldstrike's officers from
 3 Salt Lake City. Goldstrike's management in Salt Lake City approved all of the other managers at
 4 the Goldstrike mine site who answered to the General Manager, which included eight
 5 department/division managers. (*Id.* ¶ 14.)

7 Taken together, the evidence indisputably establishes that in 2009, Goldstrike's
 8 management in Salt Lake City made the corporate-level decisions and that none of those
 9 decisions were made by personnel in Nevada. As a result, in 2009, Goldstrike's headquarters and
 10 nerve center were in Salt Lake City, Utah. (*Id.* ¶¶ 5, 15.)

11 ARGUMENT

12 **1. The diversity jurisdiction statute requires complete diversity of citizenship between** 13 **all plaintiffs and all defendants.**

14 There exists a “bedrock principle that federal courts have no jurisdiction without statutory
 15 authorization.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005). Bullion
 16 asserts that the Court has jurisdiction based on the parties’ diversity of citizenship under 28
 17 U.S.C. § 1332(a)(1). This provision “require[s] complete diversity of citizenship”—that is,
 18 “diversity jurisdiction does not exist unless *each* defendant is a citizen of a different State from
 19 *each* plaintiff.” *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978) (emphasis in
 20 original).

22 **1.1 When an amended complaint adds parties, courts assess the citizenship of the** 23 **newly added parties at the time of the amendment. Complete diversity must** 24 **remain following the addition of the parties by amendment.**

25 Although typically “[d]iversity jurisdiction depends on the state of things when the initial
 26 complaint is filed,” there is an exception for “newly added defendants.” *Drevaleva v. Alameda*
 27 *Health Sys.*, No. 16-CV-07414-LB, 2017 WL 2462395, at *5 & n.31 (N.D. Cal. June 7, 2017)
 28 (internal marks omitted). “With respect to [the defendants] that the plaintiff has added in [an]

1 amended complaint, diversity jurisdiction depends on the facts as they stood when the *amended*
 2 complaint was filed.” *Id.* (emphasis in original); *China Basin Properties, Ltd. v. Allendale Mut.*
 3 *Ins. Co.*, 818 F. Supp. 1301, 1303 (N.D. Cal. 1992) (“In the case of an amended complaint which
 4 joins new parties, however, the diversity must exist at the time of the amendment.” (citing *Lewis*
 5 *v. Lewis*, 358 F.2d 495, 502 (9th Cir. 1966)).

6
 7 In this case, Bullion filed its Amended Complaint adding Goldstrike in June 2009. (227
 8 ECF 48.) In August 2009, the Court granted Bullion’s motion to sever its claims against
 9 Goldstrike into this separate litigation, resulting in a suit solely between Bullion and Goldstrike.
 10 (227 ECF 118.). Thus, diversity jurisdiction depends on the facts as they stood in 2009.

11 **1.2 Bullion bears the burden of establishing the Court’s jurisdiction with competent**
 12 **evidence.**

13 “The burden of persuasion for establishing diversity jurisdiction . . . remains on the party
 14 asserting it.” *Hertz Corp. v. Friend*, 559 U.S. 77, 96 (2010). “If the court determines at any time
 15 that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P.
 16 12(h)(3).

17
 18 Even though Bullion’s original Amended Complaint (and all subsequent complaints)
 19 failed to properly plead diversity jurisdiction because it lacked allegations about Goldstrike’s
 20 principal place of business, here Goldstrike raises a “factual attack” on jurisdiction because it
 21 “contests the truth of the plaintiff’s factual allegations” by “introducing evidence outside the
 22 pleadings.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (internal marks omitted).
 23 “When the defendant raises a factual attack, the plaintiff must support [its] jurisdictional
 24 allegations with ‘competent proof,’” *id.* (quoting *Hertz Corp.*, 559 U.S. at 96–97), “under the
 25 same evidentiary standard that governs in the summary judgment context,” *Leite*, 749 F.3d at
 26 1121. Bullion therefore “bears the burden of proving by a preponderance of the evidence that
 27 each of the requirements for subject-matter jurisdiction has been met.” *Id.*
 28

1 **1.3 Under the diversity jurisdiction statute, a corporation is a citizen of the state**
 2 **where it has its principal place of business, which is the location of the**
 3 **corporation’s headquarters or “nerve center.”**

4 For diversity of citizenship purposes, a corporation is a citizen of the state where it is
 5 incorporated, as well as a citizen “of the State . . . where it has its principal place of business.” 28
 6 U.S.C. § 1332(c)(1). In 2010, in *Hertz Corporation v. Friend*, the Supreme Court articulated “a
 7 single, more uniform interpretation” of the phrase “principal place of business.” 559 U.S. at 92. In
 8 so doing, the Court considered and rejected the Ninth Circuit’s previous approach based on where
 9 a corporation has its operations. *Id.* at 91–92, 94. Rather, the Court held that the “nerve center”
 10 test applied. *Id.* at 92-93; *Harris v. Rand*, 682 F.3d 846, 851 (9th Cir. 2012).

11 Under the properly applied nerve center test, a corporation’s “principal place of business”
 12 is “the place where the corporation’s high level officers direct, control, and coordinate the
 13 corporation’s activities.” *Hertz Corp.*, 559 U.S. at 80. “A corporation’s ‘nerve center,’ usually its
 14 main headquarters, is a single place.” *Id.* at 93.

16 **2. In 2009, Goldstrike’s headquarters and nerve center were in Salt Lake City, which**
 17 **made Goldstrike a citizen of Utah, not Nevada.**

18 Under the properly applied nerve center test, it is beyond dispute that Goldstrike’s
 19 principal place of business in 2009 was Salt Lake City, Utah. As set forth above and in the
 20 supporting declaration of Rich Haddock, Goldstrike’s management in Salt Lake City made all of
 21 the executive-level decisions in 2009. Goldstrike’s President and Chief Executive Officer, its
 22 Chief Financial Officer, its Operations Director, its Tax Director, and the heads of its legal and
 23 accounting departments, among others, were located in Salt Lake City in 2009, as were the
 24 majority of Goldstrike’s corporate board members. None of its board members or corporate
 25 officers were located in Nevada.

26 This Court’s ruling in *Dawson v. Richmond American Homes of Nevada, Inc.*, No. 2:12-
 27 CV-01563-MMD, 2013 WL 1405338 (D. Nev. Apr. 5, 2013), illustrates well how the nerve
 28

center test should be applied in this case. In *Dawson*, the plaintiff argued that the defendant, Richmond, had its principal place of business in Nevada in part because it was the “the site of Richmond’s homebuilding operations.” *Id.* at *2. But even though Nevada was the principal location of Richmond’s operations, this Court found that Colorado was Richmond’s principal place of business because most of its officers and directors were located in Denver, “[s]ignificant corporate decisions [were] ‘subject to review and approval’ in Denver,” and “the company’s ‘primary administrative operations’ and use of ‘marketing and promotional material’ [occurred] in Denver.” *Id.* This Court concluded that despite Richmond’s president managing day-to-day operations from Nevada, Denver was the defendant’s nerve center because it was “the place where Richmond’s ‘officers direct, control, and coordinate the corporation’s activities.’” *Id.* at *2 (quoting *Hertz Corp.*, 559 U.S. at 92-93). This Court correctly concluded that the place where Richmond’s corporate decisions were made, not the place of its operations, determined its principal place of business. The same analysis applies even more strongly to Goldstrike because Goldstrike’s president managed its operations from Salt Lake City.

2.1 Goldstrike’s officers and directors were located in Salt Lake City.

The location of a corporation’s officers and directors is a significant factor in determining a corporation’s nerve center. As the Supreme Court noted in *Hertz Corporation*, a corporation’s nerve center is “the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.” 559 U.S. at 80 (internal marks omitted).

In 2009, none of Goldstrike’s officers or directors were located in Nevada. (Haddock Decl. ¶¶ 6, 8.) See *Corral v. Homeeq Serv. Corp.*, No. 2:10-CV-00465, 2010 WL 3927660, at *4 (D. Nev. Oct. 6, 2010) (deciding that defendant corporation did not have its principal place of business in Nevada because none of its officers were located there). Rather, in 2009, Goldstrike’s key officers and most of its directors were located in Salt Lake City, including Goldstrike’s

1 President/CEO, CFO, Operations Director, Technical Director, and Tax Director. (Haddock Decl.
 2 ¶ 6.) *See Broughton v. Smith's Food & Drug Ctrs., Inc.*, No. 2:14-CV-01849-GMN-NJ, 2015 WL
 3 1137751, at *2 (D. Nev. Mar. 13, 2015) (concluding that defendant's principal place of business
 4 was Utah because "[d]efendant's corporate officers work at the corporate headquarters in Salt
 5 Lake City, Utah"); *Aspiras v. Adams & Assocs., Inc.*, 2017 WL 2992456 (C.D. Cal. July 14,
 6 2017) (determining principal place of defendant's business was Nevada based in part on where
 7 key corporate officers were located).

9 2.2 Goldstrike's major corporate functions were managed and directed from Utah.

10 In 2009, all of Goldstrike's major corporate decisions and functions were managed and
 11 directed from its Salt Lake City headquarters, including control over budgeting and finance,
 12 technical and operational direction of mining plans and mining operations, the allocation of
 13 capital, equipment, labor, and other resources, direction of ore processing, decisions regarding
 14 key operational managers and all human resource functions, and management of legal, land,
 15 permitting, tax, accounting, and environmental issues. Salt Lake City-based management made
 16 the executive-level decisions for every aspect of Goldstrike's operations.

18 Numerous district courts in this circuit, including this Court, have recognized that the
 19 place where a corporation carries out critical administrative functions is likely the corporation's
 20 nerve center. For example, in *Dawson*, this Court recognized that the location of the defendant's
 21 "primary administrative operations" weighed in favor of that being the corporation's
 22 headquarters. 2013 WL 1405338, at *2. Likewise, in *Peich v. Flatiron West, Inc.*, Case No. 5:16-
 23 cv-00540, 2016 WL 6634851, at *1 (C.D. Cal. Sept. 9, 2016), the court looked at where the
 24 corporation's "executive officers administer[ed] the corporation's payroll, human resources,
 25 accounting, financing, and legal functions" to determine its headquarters.
 26
 27
 28

1 That Goldstrike carried out all of its major corporate functions in Salt Lake City only
 2 serves to confirm that the “place of actual direction, control, and coordination” was Utah in 2009.
 3 *Hertz Corp.*, 559 U.S. at 97.

4
 5 **2.3 Because Goldstrike was a citizen of Utah in 2009, as was Bullion, this Court
 lacks subject-matter jurisdiction over this matter.**

6 Because Goldstrike’s principal place of business in 2009 was Utah, Bullion destroyed
 7 complete diversity when it amended its Complaint to add Goldstrike as a defendant and no
 8 diversity jurisdiction existed when the action against Goldstrike was later severed. As a result, the
 9 Court must dismiss the action for lack of jurisdiction. Fed. R. Civ. P. 12(h)(3).

10
 11 **CONCLUSION**

12 For the reasons set forth above, this Court should dismiss the action without prejudice.

13 Dated: September 8, 2017

14 PARSONS BEHLE & LATIMER

15 s/Brandon J. Mark

16 Francis Wikstrom, Esq.

17 Michael Kealy, Esq.

18 Michael P. Petrogeorge, Esq.

19 Brandon J. Mark, Esq.

20 *Attorneys for Defendant*

21 *Barrick Goldstrike Mines Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September 2017, a true and correct copy of the foregoing MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION, was served on the following electronically via the ECF system:

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Attorneys for Barrick Goldstrike Mines Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

vs.

BARRICK GOLDSTRIKE MINES INC.,

Defendant.

Case No. 03:09-cv-612-MMD-WGC
(Sub File of 3:08-cv-227-MMD-WGC)

**DECLARATION OF RICH
HADDOCK IN SUPPORT OF
MOTION TO DISMISS FOR
LACK OF SUBJECT-MATTER
JURISDICTION**

I, Rich Haddock, declare as follows:

1. I am over eighteen years of age and have personal knowledge of the facts stated in this declaration. If called upon to do so, I could testify as to the matters set forth herein.

2. I am currently Senior Vice President and General Counsel for Barrick Gold Corporation ("Barrick Gold"), the ultimate parent corporation of Defendant Barrick Goldstrike Mines Inc. ("Goldstrike").

1 3. Since 1997, I have held various positions with Barrick Gold and Goldstrike. All of
2 these positions have included involvement in the operations and management of Goldstrike.

3 4. Goldstrike is a Colorado corporation formed in 1973.

4 5. In 2009, Goldstrike's corporate headquarters were in Salt Lake City, Utah,
5 specifically at 136 East South Temple, Suite 1800.

6 6. In 2009, Goldstrike's principal corporate officers—including the officers with
7 primary control over Goldstrike's corporate policies and direction—were located in Salt Lake
8 City. Specifically, Gregory Lang, Goldstrike's President and Chief Executive Officer, Blake
9 Measom, its Chief Financial Officer, Mike Feehan, its Vice President over Operations
10 ("Operations Director"), and Paul Judd, its Tax Director, were all located in Salt Lake City. None
11 of Goldstrike's corporate officers were located in Nevada.

12 7. While day-to-day mining operations were directed by an onsite General Manager
13 in Nevada in 2009, corporate policy and strategic decisions were made at Goldstrike's
14 headquarters in Salt Lake City, Utah.

15 8. In 2009, a majority of Barrick Goldstrike's board of directors were located in Salt
16 Lake City. At that time, I was a corporate director of Goldstrike, and I was located in Salt Lake
17 City. None of Goldstrike's directors were located in Nevada.

18 9. In 2009, Goldstrike's officers in Salt Lake City, Utah, made corporate decisions
19 regarding budgeting, land and property acquisitions, long-term strategy and planning, and all
20 other executive-level decisions.

21 10. Goldstrike's management in Salt Lake City controlled and supervised all of the
22 major corporate functions for Goldstrike in 2009. For example:

23 a. Management in Salt Lake City set production and processing projections
24 and targets for Goldstrike's mines, as well as unit-cost targets.

25 b. Detailed capital reviews were conducted by Goldstrike's management in
26 Salt Lake City, including by Blake Measom, John Cash, the Manager of Mine Engineering, and
27 others.
28

1 c. Decisions regarding tax policy, an important part of Goldstrike's business,
2 were directed and controlled from its Salt Lake City office by its Tax Director, Paul Judd.

3 d. Mike Feehan, Goldstrike's Operations Director, initiated weekly mine
4 management meetings from Salt Lake City and coordinated mine operation issues from that
5 office.

6 e. Technical decisions regarding Goldstrike's mine plans and production,
7 processing, geology, and maintenance were reviewed and revised by management in Salt Lake
8 City, including by John Cash and the other technical leads.

9 f. Goldstrike's human resource functions were handled in Salt Lake City,
10 including decisions regarding salaries and adjustments, short and long-term bonuses, bonus
11 structure, health insurance, pensions, and other employee benefits. Bonuses were approved by
12 management in Salt Lake City.

13 g. Goldstrike's legal issues, including contracting, litigation, and
14 environmental issues, were handled by my department from Salt Lake City. Indeed, when I first
15 became involved in this suit, I was located in the Salt Lake City office.

16 h. Goldstrike's Salt Lake City-based Controller, Curtis Caldwell, managed
17 Goldstrike's accounting functions.

18 i. Goldstrike's federal land permitting issues were handled in Salt Lake City.

19 j. Goldstrike's management in Salt Lake City performed evaluations of
20 equipment inventories and made decisions regarding the allocation of equipment.

21 k. Goldstrike's landman, Cy Wilsey, handled all land issues, such as ensuring
22 the payment of property taxes and the maintenance of mining claims, leases, and other real
23 property interests, from Salt Lake City.

24 l. Goldstrike's management in Salt Lake City decided environmental
25 policies, including environmental targets and goals for Goldstrike's environmental management
26 system.

1 m. Goldstrike's management in Salt Lake City established and communicated
2 security policies and objectives.

3 n. Information technology issues were prescribed and managed by
4 Goldstrike's management from Salt Lake City.

5 o. Supply chain and purchasing functions were performed in Salt Lake City.

6 p. Business and process improvement initiatives started with Goldstrike's
7 management in Salt Lake City.

8 p. Goldstrike's communications and corporate social responsibility functions
9 were directed by Goldstrike's management Salt Lake City.

10 q. The Salt Lake City headquarters performed payroll functions for
11 Goldstrike.

12 11. Other major corporate decisions, such as allocating capital among various
13 Goldstrike projects, were made by Goldstrike's corporate officers in Salt Lake City, Utah. For
14 example, in 2009, management in Salt Lake City made the decision to fast-track a pilot project to
15 test a new processing method. That led to a demonstration plant a few years later and then, in
16 2014, to the opening of the world's first total carbonaceous matter (TCM) plant at Goldstrike, a
17 \$620 million dollar project.

18 12. In 2009, Goldstrike's Salt Lake City-based management reviewed and modified
19 the mining operations plans for Goldstrike, as management does every year, to ensure the mining
20 plans achieved strategic objectives. Such reviews included decisions regarding mining rates, gold
21 production, and review of capital spending (including total expenditures and evaluation of
22 specific line items).

23 13. Energy costs are the second largest operating cost for Goldstrike. In 2009, all
24 decisions regarding when and how to buy energy, including whether to build Goldstrike's own
25 power plant, and exit the Nevada utility service, or to buy electricity from the grid, were made by
26 management in Salt Lake City. The manager of Goldstrike's power plant reported to Goldstrike's
27 Operations Director, Mike Feehan, in Salt Lake City.

1 14. In 2009, management in Salt Lake City also controlled key personnel decisions.
2 Goldstrike's onsite General Manager was selected and supervised by Goldstrike's officers from
3 Salt Lake City. All of the other managers at the Goldstrike mine site who answered to the General
4 Manager, which included eight (8) department/division managers, were approved by Goldstrike's
5 management in Salt Lake City.

6 15. In short, in 2009, corporate-level decisions for Goldstrike were made by
7 management residing in Salt Lake City, and none of those decisions were made by personnel in
8 Nevada.

9
10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed on this 5th day of September, 2017.

12
13 
14 Rich Haddock

CERTIFICATE OF SERVICE

I hereby certify that on this __8th day of September 2017, a true and correct copy of the foregoing DECLARATION OF RICH HADDOCK IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION, was served on the following electronically via the ECF system:

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EXHIBIT 14

EXHIBIT 14

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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF NEVADA

14 BULLION MONARCH MINING INC.,
15
16 Plaintiff,
17
18 vs.
19 BARRICK GOLDSTRIKE MINES INC.,
20
21 Defendant.
22
23
24
25
26
27
28

Case No. 03:09-cv-612- MMD-WGC
(Sub File of 3:08-cv-227- MMD-WGC)

**BARRICK GOLDSTRIKE MINES
INC.'S RENEWED MOTION TO
DISMISS FOR LACK OF
SUBJECT-MATTER
JURISDICTION**

MEMORANDUM IN SUPPORT OF MOTION

INTRODUCTION

Subject-matter jurisdiction can never be waived, and the parties and Court have a continuing duty to ensure that the Court has jurisdiction over the matter at all stages of litigation. Federal courts are courts of limited jurisdiction as defined by the United States Constitution and the congressional delegation of authority within those constitutional limits.

This case must be dismissed for lack of subject-matter jurisdiction because Plaintiff Bullion and Defendant Goldstrike were both citizens of Utah when Bullion sued Goldstrike in 2009. The issue initially eluded the parties and Court because at the time Bullion filed its Amended Complaint adding Goldstrike—and the Court and parties initially assessed jurisdictional issues—the Ninth Circuit Court of Appeals was applying the wrong standard to determine a corporation’s “principal place of business” under the diversity jurisdiction statute. Under the Ninth Circuit’s prior, incorrect standard, which focused on the location of a corporation’s operations, Goldstrike’s principal place of business was thought to be Nevada. But the United States Supreme Court’s subsequent ruling in *Hertz Corporation v. Friend*, 559 U.S. 77 (2010), confirmed that a corporation’s principal place of business is actually the location of the company’s headquarters and “nerve center.” Applying the correct standard, Goldstrike’s principal place of business in 2009 was Utah. Because Bullion was also a citizen of Utah at the time, there was no diversity of citizenship and thus no diversity jurisdiction.

Regrettably, the jurisdictional defect was not recognized until Goldstrike began to consider the jurisdictional statement in anticipation of drafting a joint Pretrial Order. The Court’s local rules require the parties’ joint Pretrial Order to include a “statement of the basis for this court’s jurisdiction with specific legal citations.” LR 16-3(b)(2). Thus, when this Court ordered the parties to submit their joint Pretrial Order in 2017, Goldstrike looked at the jurisdiction issues with fresh eyes. After reviewing the deficient jurisdictional allegations in Bullion’s Second Amended Complaint, recognizing the Supreme Court’s ruling in *Hertz Corporation* altered the original Ninth Circuit analysis, and investigating the facts relating to Goldstrike’s nerve center in 2009, it became evident that the Court lacked jurisdiction over the case. Because the Court never properly had

jurisdiction over the case—and does not now have jurisdiction—the Court’s only option is to dismiss the action.

STATEMENT OF FACTS

In 2009, Bullion amended its Complaint in the Newmont Litigation to add Goldstrike as a defendant.

In 2008, Bullion filed the original Complaint against only Newmont USA Limited (“Newmont”). (*Bullion Monarch Mining, Inc. v. Newmont USA Limited*, Case No. 3:08-cv-00227-ECR-VPC, ECF 1 (references to filings in the Newmont litigation are “227 ECF ##”).) Bullion asserted the Court had subject-matter jurisdiction over the lawsuit due to the diversity of citizenship between Bullion, a Utah citizen (both state of incorporation and principal place of business), and Newmont, a citizen of Colorado (state of incorporation) and Nevada (principal place of business).

In 2009, Bullion and Newmont stipulated to the addition of Goldstrike as a defendant in the case. In the Amended Complaint adding Goldstrike as a party, Bullion alleged that “Barrick Goldstrike Mines, Inc. . . . is a Colorado corporation and has been doing business in Nevada at all times relevant hereto.” (Am. Compl. at ¶ 2A, 227 ECF 48.) None of Bullion’s allegations addressed Goldstrike’s principal place of business.

At the time, the Ninth Circuit used a “place of operations” test to determine corporate citizenship.

At the time Bullion filed its Amended Complaint in the Newmont litigation adding Goldstrike as a party, the Ninth Circuit Court of Appeals erroneously applied a two-part test to determine the principal place of business of a corporation for diversity jurisdiction purposes. The Ninth Circuit first looked at “the place of operations test,” which “is the state containing a substantial predominance of corporate operations.” *Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d 1026, 1028 (9th Cir. 2009) (internal marks omitted). Only “[i]f no state contain[ed] a substantial predominance of corporate operations” did the Ninth Circuit “apply the ‘nerve center’ test, which locates the corporation’s principal place of business in the state where the majority of its executive and administrative functions are performed.” *Id.* (internal marks omitted).

1 Under the Ninth Circuit’s then-applied but incorrect test, it appeared that Goldstrike’s
 2 principal place of business was Nevada because that was where the majority of its mining and
 3 processing operations were carried out. Nevertheless, in its Answer, Goldstrike’s first affirmative
 4 defense was that “[t]his Court lacks subject matter jurisdiction over this matter because Bullion and
 5 [Goldstrike] are, upon information and belief, both citizens of the same state.” (Answer at 11 (227
 6 ECF 69).)

7 Shortly after Goldstrike was added to the Newmont lawsuit, the parties agreed to sever
 8 Bullion’s claims against Goldstrike into a separate matter with a different case number. Since 2009,
 9 this matter has proceeded solely between Bullion and Goldstrike based on alleged diversity
 10 jurisdiction.

11 **In 2010, the Supreme Court held that the “nerve center” test determined corporate**
 12 **citizenship.**

13 In 2010, the United States Supreme Court ruled that the Ninth Circuit had been using the
 14 wrong test to determine a corporation’s principal place of business. *Hertz Corp. v. Friend*, 559 U.S.
 15 77 (2010). Rather than focus on where a corporation’s operations were located, as in the Ninth
 16 Circuit’s erroneously applied test, the Supreme Court held in *Hertz Corporation* that a corporation’s
 17 principal place of business is the state where it has its corporate “nerve center” or headquarters—
 18 that is, where high-level corporate decisions are made. 559 U.S. at 92–93.

19 **Goldstrike’s nerve center in 2009 was in Utah.**

20 Under the proper test articulated in *Hertz Corporation*, Goldstrike was a citizen of Utah in
 21 2009 because that is where the executive-level and corporate decisions for Goldstrike were made
 22 at that time.

23 In 2009, the Barrick group of companies² operated under a regional business unit model,
 24 with the headquarters of each region overseeing and managing all of the corporate entities located
 25 within that region. (See Amended and Supplemental Declaration of Rich Haddock (“Haddock
 26

27 ² Barrick Gold Corporation is the ultimate parent company for all Barrick related entities, but there are many separate
 28 legal entities under its umbrella, each with its own identity, structure, officers, and directors. (Haddock Supp. Decl. at
 n. 1.)

1 Supp. Decl.”) ¶ 5, attached hereto as Exhibit A; 30(b)(6) Deposition of Blake Measom (“Measom
 2 Dep.”) at 10:22-12:11, excerpts attached hereto as Exhibit B; 30(b)(6) Deposition of Andy Bolland
 3 (“Bolland Dep.”) at 11:20-25 & 13:20-14:5, excerpts attached hereto as Exhibit C.) At that time,
 4 Barrick Gold of North America, Inc. (“BGNA”) managed the North American region, and BGNA’s
 5 Salt Lake City, Utah headquarters served as the corporate headquarters for all operating entities in
 6 the North America region, including Goldstrike and all other entities operating in the United States
 7 and Canada (and later the Dominican Republic). (*See* Measom Dep. at 10:22-11:14; Haddock Supp.
 8 Decl. ¶ 5; *see also* Deposition of John Mansanti (“Mansanti Dep.”) at 33:6-11, excerpts attached
 9 hereto as Exhibit D (“[W]e answered to Barrick North America at Goldstrike”).) BGNA functioned
 10 autonomously, “manag[ing] the North America business unit which comprised of all of the mine
 11 sites, closure properties and other legal entities that were within the North America region.”
 12 (Measom Dep. at 10:22-11:14; *see also* 30(b)(6) Deposition of Gordon Merriam (“Merriam Dep.”)
 13 at 57:2-18, excerpts attached hereto as Exhibit E (BGNA had “autonomy to run their mines in their
 14 particular region”).) As best described by Goldstrike’s CFO, Blake Measom, the leadership team
 15 in Salt Lake City, Utah, had a mandate to run the North America region and to make all corporate
 16 decisions relating to the entities and operations therein. (Measom Dep. at 11:24-12:11.)

17 Under this regional business model, the management team overseeing North America were
 18 technically employed by BGNA but served as the officers, executives, and senior management team
 19 of Goldstrike, working for and on behalf of Goldstrike with respect to Goldstrike’s business.³ (*See*
 20 Bolland Dep. at 58:12-58:21 & 61:2-18; Merriam Dep. at 52:3-53:11; Deposition of Tony Astorga
 21 (“Astorga Dep”) at 121:18-123:8, excerpts attached hereto as Exhibit F; *see also* Mansanti Dep. at
 22 63:6-10 (Salt Lake City executive team responsible for and oversaw Goldstrike).) As such, all costs
 23 incurred by BGNA in managing and overseeing Goldstrike were allocated to Goldstrike. (Measom
 24 Dep. at 45:6-46:3 & 46:16-23).

25 In 2009, a majority of Goldstrike’s Board of Directors were located in Salt Lake City.
 26 (Haddock Supp. Decl. at ¶ 9; Barrick Goldstrike Mines Inc.’s Answers & Objections to Bullion
 27

28 ³ These officers, executives, and senior managers also served as the leadership team for all of the other entities in the region. (*See, e.g.*, Measom Dep. at 48:11-15 (Cortez also headquartered in Salt Lake City in 2009).)

Monarch Mining, Inc.’s Jurisdictional Interrogatories (the “Interrogatory Answers”) at 5, attached hereto as Exhibit G.) None of Goldstrike’s Directors were located in Nevada. (Haddock Supp. Decl. ¶ 9; Interrogatory Answers at 5.) Likewise, Goldstrike’s principal corporate officers—including officers with primary control over Goldstrike’s corporate policies and direction—were located in Salt Lake City. (See Haddock Supp. Decl. ¶ 7; Interrogatory Answers at 7; Goldstrike Resolution of the Board of Directors dated March 31, 2009 (BAR-J0002219), attached hereto as Exhibit H.) Specifically, Gregory Lang, Goldstrike’s President and CEO, Blake Measom, its Chief Financial Officer, Mike Feehan, its Vice-President, and Paul Judd, its Tax Director, were all located in Salt Lake City. (Haddock Supp. Decl. ¶ 7; Measom Dep. at 9:22-25; Bolland Dep. at 34:8-12; Merriam Dep. at 16:11-22 & 51:16-22; Interrogatory Answers at 7.) None of Goldstrike’s corporate officers were located in Nevada.⁴ (See Haddock Supp. Decl. ¶ 7; Interrogatory Answers at 7.)

The officers and other corporate executives in Salt Lake City communicated with the employees at the Goldstrike mine site on a regular and consistent basis.⁵ (See Measom Dep. at 16:5-12 (communicated with employees of the Goldstrike mine site “at a minimum monthly; but probably . . . three to four times per month, actually, and weekly in a lot of cases”); Bolland Dep. at 59:17-21 (executives in Salt Lake City interacted with Goldstrike mine site employees “[a]lmost daily”); Mansanti Dep. at 16:12-18:3 (Mike Feehan, Director of Operations in Salt Lake City, held weekly telephone conferences with Mansanti and the other general managers at the mine sites in Nevada to discuss “progress relative to the prior week” as well as “safety performance, environmental performance, production” and “sometimes personnel issues”); *id.* at 54:16-55:4 (Mansanti, as general manager of the Goldstrike mine site, traveled to Salt Lake City two or three

⁴ Some of Goldstrike’s officers and a minority of its directors were located in Toronto, the global corporate headquarters of Barrick Gold Corporation. (Interrogatory Answers at 5, 7.) In 2009, however, Toronto’s role was the management of its global portfolio of assets. (Measom Dep. at 23:20-24:6.) It did not serve as the executive or corporate headquarters of Goldstrike; that function was delegated to and performed by BGNA in Salt Lake City. (Measom Dep. at 10:25-11:14 & 44:8-11; Bolland Dep. at 59:7-10; Merriam Dep. at 51:12-15.)

⁵ The executive team in Salt Lake City also communicated regularly with employees in BGNA’s Shared Business Center (the “SBC”) located in Elko, Nevada. (See Astroga Dep. at 33:2-24 (contracts team servicing Goldstrike would communicate with Salt Lake “[s]everal times throughout the day”).) The SBC provided contract, accounts payable, finance, human resources, IT, and other administrative services to Goldstrike and the other mines in the North America region. (See *id.* at 14:25-15:17 & 121:12-17.) The executive direction for the SBC came from Salt Lake City. (*Id.* at 15:10-12.)

1 times a year for budget meetings, strategic planning sessions, and safety meetings.) The executives
2 in Salt Lake City visited the Goldstrike mine site on a regular basis to understand “what was going
3 on in the operations,” to “talk to people there about safety and their attention to that,” and to make
4 sure the executives had the information necessary to “make or help support decisions relative to the
5 operations of Goldstrike.” (Measom Dep. at 17:13-18:19; *see also* Bolland Dep. at 15:18-17:11;
6 Merriam Dep. at 36:13-20 & 28:6-20.) Greg Lang, Goldstrike’s President and CEO in Salt Lake
7 City, and its highest ranking officer, visited the mine “every week” and was “pretty hands-on.”
8 (Mansanti Dep. at 15:24-16:5 & 62:9-15.)

9 While day-to-day mining operations were conducted in Nevada and directed by an onsite
10 General Manager located in Nevada in 2009, corporate policies and strategic decisions were made
11 at Goldstrike’s headquarters in Salt Lake City. (Haddock Supp. Decl. ¶ 8; *see also* Measom Dep.
12 at 44:8-11 (in 2009, Goldstrike’s corporate headquarters was in “Salt Lake for sure”); Bolland Dep.
13 at 59:7-16 (in 2009, the executive-level functions of Goldstrike were located in Salt Lake City);
14 Merriam Dep. at 51:12-15 (Salt Lake City was the location of Goldstrike’s corporate headquarters
15 in 2009).) The executives in Salt Lake City made corporate decisions regarding budgeting, land
16 and property acquisitions, long-term strategy and planning, and all other executive-level decisions.
17 (Haddock Supp. Decl. ¶¶ 9-10). Indeed, when asked how much of his job was impacted by Salt
18 Lake, John Mansanti, the general manager of the Goldstrike mine site, testified “[a]ll of it.”
19 (Mansanti Dep. at 70:3-14.)

20 The supervision and oversight the Salt Lake City executive team exercised over
21 Goldstrike’s business in Nevada is highlighted by its role in the annual budgeting process. The
22 general manager and his direct reports at the mine site would prepare a draft budget for presentation
23 to the Salt Lake City executive team, who would then extensively review and require revisions to
24 the budget. (Mansanti Dep. at 22:9-25:22.) The Salt Lake City executive team had authority with
25 respect Goldstrike’s budget, and no Goldstrike final budget could be approved or implemented
26 without the approval of Greg Lang and his executive team in Salt Lake City. (*Id.*; *see also* Measom
27 Dep. at 22:7-12 & 45:8-46:3 (Salt Lake City would work with the Goldstrike mine personnel
28 directly in the creation of the budget, overseeing the process and requiring revisions “until we got

1 the—the budget that we felt like was our best foot forward in terms of what we wanted to
 2 accomplish in the region”); Bolland Dep. at 59:17-60:9 (Goldstrike’s general manager would not
 3 implement a mine plan over the objection of the executives located in Salt Lake).) Once a budget
 4 was completed, any variances had to be approved by the executive team in Salt Lake City.
 5 (Mansanti Dep. at 26:20-27:25 & 56:20-57:16.)

6 In 2009, management in Salt Lake City controlled and supervised all of Goldstrike’s major
 7 corporate functions, including (a) production and processing projections and targets for
 8 Goldstrike’s mines, as well as unit-cost targets; (b) detailed capital reviews; (c) tax policy;
 9 (d) coordination of mine operations and mine management; (e) technical issues relating to mine
 10 plans, production, processing, geology, and maintenance; (f) human resources, including decisions
 11 regarding salaries and adjustments, short- and long-term bonuses, bonus structure, health insurance,
 12 pensions, and other employee benefits; (g) legal issues, including contracting, litigation, and
 13 environmental issues; (h) accounting and control functions; (i) federal land permitting issues; (j)
 14 equipment inventories and allocation of equipment; (k) land issues, such as ensuring the payment
 15 of property taxes and the maintenance of mining claims, leases, and other real property interests;
 16 (l) environmental policies, including environmental targets and goals for Goldstrike’s
 17 environmental management system; (m) security policies and objectives; (n) information
 18 technology issues; (o) supply-chain management and purchasing functions; (p) business and
 19 process improvement initiatives; (q) communications and corporate social responsibility functions;
 20 and (r) payroll. (Haddock Supp. Decl. ¶ 10; *see also* Measom Dep. at 27:21-28:7, 29:19-23, 30:9-
 21 31:5, & 46:12-15 (Goldstrike had no CFO in Nevada; payroll was handled out of Salt Lake City
 22 and all financial services personnel reported to Measom or his direct reports in Salt Lake City);
 23 Bolland Dep. at 25:19-28:9 (allocation of equipment was coordinated and overseen from Salt Lake
 24 City); Mansanti Dep. 28:1-9 (coordination of tax policy occurred in Salt Lake, through Paul Judd);
 25 *id.* 29:8-16 (Salt Lake City coordinated senior hires and annual wage adjustments and approved
 26 bonuses and compensation plans); *id.* 30:20-23 (health insurance, pensions, and those types of
 27 benefits managed out of Salt Lake City); *id.* at 37:9-14 (Goldstrike’s legal support came from Salt
 28 Lake City); *id.* at 41:9-21 (Goldstrike’s IT was coordinated in Salt Lake City); *id.* at 60:25-61:5

(human resources in Salt Lake City had final approval over miner wages); Astorga Dep. at 26:25-27:6 & 125:6-15 (contracts team servicing Goldstrike out of the SBC in Elko worked “underneath the direction of [BGNA] out of Salt Lake City”; every contract entered for and on behalf of Goldstrike would have “been reported in some form or fashion to – the Salt Lake City office had some aspect of that report”); *id.* at 33:16-24 (legal support to Goldstrike’s contracting team came from Salt Lake City); *id.* at 118:10-119:9 (forms used by Goldstrike’s contracting team originated from Salt Lake City and any exceptions had to be approved by “the legal group located in Salt Lake City”; Elko contracts team “had no authorization to . . . implement any alternative terms and conditions”); *id.* at 123:16-124:3 (changes to Goldstrike’s contracting processes and procedures were made in consultation with Salt Lake City); Merriam Dep. at 7:4-25, 12:12-25 & 53:3-6 & 54:9-21 (Merriam, as Manager of Contracts and Procurement in Salt Lake City, “had responsibility [for] all the supply chain for North America,” which included “[p]urchasing, contracting, warehouse, logistics, and construction,” and had ultimate responsibility for “contracting and procurement functions relating to [Goldstrike]”).)

Goldstrike’s officers and executives in Salt Lake City also decided how to allocate capital among various Goldstrike projects. (Haddock Supp. Decl. ¶ 12.) For example, in 2009, management in Salt Lake City made the decision to fast-track a pilot project to test a new processing method. That led to a demonstration plant a few years later and then, in 2014, to the opening of the world’s first total carbonaceous matter (TCM) plant at Goldstrike, a \$620 million dollar project. (*Id.*)

In 2009, Goldstrike’s management in Salt Lake City conducted a comprehensive review of the mining operations plans for Goldstrike to ensure the mining plans achieved strategic objectives, which included decisions regarding mining rates, gold production, and review of capital spending. The review included a detailed analysis of total expenditures, as well as the evaluation of specific line items. Goldstrike’s Salt Lake City management modified the plans to ensure they aligned with corporate goals and objectives. (*Id.* ¶ 13.)

1 Similarly, in 2009, Goldstrike’s Salt Lake City management made all decisions regarding
 2 when and how to buy energy, Goldstrike’s second largest expense. These included whether to
 3 operate Goldstrike’s own power plant or to buy electricity from the grid. (*Id.* ¶ 14.)

4 In 2009, management in Salt Lake City controlled key personnel decisions. Goldstrike’s
 5 onsite General Manager was selected and supervised by Goldstrike’s officers in Salt Lake City. (*Id.*
 6 ¶ 15.) Goldstrike’s management in Salt Lake City approved all of the other managers at the
 7 Goldstrike mine site who answered to the General Manager, which included eight
 8 department/division managers. (*Id.*; *see also* Bolland Dep. at 30:23-31:4; Mansanti Dep. at 11:9-1,
 9 14:21-15:18.)

10 Taken together, the evidence indisputably establishes that in 2009, management in Salt Lake
 11 City made the corporate-level decisions for Goldstrike; none of those decisions were made by
 12 personnel in Nevada. As a result, in 2009, Goldstrike’s headquarters and nerve center was in Salt
 13 Lake City, Utah.

14 ARGUMENT

15 **I. THE DIVERSITY JURISDICTION STATUTE REQUIRES COMPLETE** 16 **DIVERSITY OF CITIZENSHIP BETWEEN ALL PLAINTIFFS AND ALL** 17 **DEFENDANTS.**

18 There exists a “bedrock principle that federal courts have no jurisdiction without statutory
 19 authorization.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005). Bullion
 20 asserts that the Court has jurisdiction based on the parties’ diversity of citizenship under 28 U.S.C.
 21 § 1332(a)(1). This provision “require[s] complete diversity of citizenship”—that is, “diversity
 22 jurisdiction does not exist unless *each* defendant is a citizen of a different State from *each* plaintiff.”
Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373 (1978) (emphasis in original).

23 **A. When an amended complaint adds parties, courts assess the citizenship of the** 24 **newly added parties at the time of the amendment. Complete diversity must** 25 **remain following the addition of parties by amendment.**

26 Although typically “[d]iversity jurisdiction depends on the state of things when the initial
 27 complaint is filed,” there is an exception for “newly added defendants.” *Drevaleva v. Alameda*
 28 *Health Sys.*, No. 16-CV-07414-LB, 2017 WL 2462395, at *5 & n.31 (N.D. Cal. June 7, 2017)
 (internal marks omitted). “With respect to [the defendants] that the plaintiff has added in [an]

1 amended complaint, diversity jurisdiction depends on the facts as they stood when the *amended*
 2 complaint was filed.” *Id.* (emphasis in original); *China Basin Properties, Ltd. v. Allendale Mut. Ins.*
 3 *Co.*, 818 F. Supp. 1301, 1303 (N.D. Cal. 1992) (“In the case of an amended complaint which joins
 4 new parties, however, the diversity must exist at the time of the amendment.” (citing *Lewis v. Lewis*,
 5 358 F.2d 495, 502 (9th Cir. 1966))).

6 In this case, Bullion filed its Amended Complaint adding Goldstrike in June 2009. (227
 7 ECF 48.) In August 2009, the Court granted Bullion’s motion to sever its claims against Goldstrike
 8 into this separate litigation, resulting in a suit solely between Bullion and Goldstrike. (227 ECF
 9 118.). Thus, diversity jurisdiction depends on the facts as they stood in 2009.

10
 11 **B. Bullion bears the burden of establishing the Court’s jurisdiction with competent evidence.**

12 “The burden of persuasion for establishing diversity jurisdiction . . . remains on the party
 13 asserting it.” *Hertz Corp. v. Friend*, 559 U.S. 77, 96 (2010). “If the court determines at any time
 14 that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

15 Even though Bullion’s original Amended Complaint (and all subsequent complaints) failed
 16 to properly plead diversity jurisdiction because it lacked allegations about Goldstrike’s principal
 17 place of business, here Goldstrike raises a “factual attack” on jurisdiction because it “contests the
 18 truth of the plaintiff’s factual allegations” by “introducing evidence outside the pleadings.” *Leite v.*
 19 *Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (internal marks omitted). “When the defendant
 20 raises a factual attack, the plaintiff must support [its] jurisdictional allegations with ‘competent
 21 proof,’” *id.* (quoting *Hertz Corp.*, 559 U.S. at 96–97), “under the same evidentiary standard that
 22 governs in the summary judgment context,” *Leite*, 749 F.3d at 1121. Bullion therefore “bears the
 23 burden of proving by a preponderance of the evidence that each of the requirements for subject-
 24 matter jurisdiction has been met.” *Id.*

25 **C. Under the diversity jurisdiction statute, a corporation is a citizen of the state**
 26 **where it has its principal place of business, which is the location of the**
 27 **corporation’s headquarters or “nerve center.”**

28 For diversity of citizenship purposes, a corporation is a citizen of the state where it is
 incorporated, as well as a citizen “of the State . . . where it has its principal place of business.” 28

1 U.S.C. § 1332(c)(1). In 2010, in *Hertz Corporation v. Friend*, the Supreme Court articulated “a
 2 single, more uniform interpretation” of the phrase “principal place of business.” 559 U.S. at 92. In
 3 so doing, the Court considered and rejected the Ninth Circuit’s previous approach based on where
 4 a corporation has its operations. *Id.* at 91–92, 94. Rather, the Court held that the “nerve center” test
 5 applied. *Id.* at 92–93; *Harris v. Rand*, 682 F.3d 846, 851 (9th Cir. 2012).

6 Under the properly applied nerve center test, a corporation’s “principal place of business”
 7 is “the place where the corporation’s high level officers direct, control, and coordinate the
 8 corporation’s activities.” *Hertz Corp.*, 559 U.S. at 80. “A corporation’s ‘nerve center,’ usually its
 9 main headquarters, is a single place.” *Id.* at 93.

10 **II. IN 2009, GOLDSTRIKE’S HEADQUARTERS AND NERVE CENTER WERE IN**
 11 **SALT LAKE CITY, WHICH MADE GOLDSTRIKE A CITIZEN OF UTAH, NOT**
 12 **NEVADA.**

13 Under the properly applied nerve center test, it is beyond dispute that Goldstrike’s principal
 14 place of business in 2009 was Salt Lake City, Utah. As set forth above and in the supporting
 15 amended and supplemental declaration of Rich Haddock, management in Salt Lake City made all
 16 of the executive-level decisions in 2009. Goldstrike’s President and CEO, its CFO, its Vice
 17 President, Tax Director, and the heads of its legal, contracting, and accounting departments, among
 18 others, were located in Salt Lake City in 2009, as were the majority of Goldstrike’s corporate
 19 directors and officers. None of Goldstrike’s board members or corporate officers were located in
 20 Nevada.

21 This Court’s ruling in *Dawson v. Richmond American Homes of Nevada, Inc.*, No. 2:12-
 22 CV-01563-MMD, 2013 WL 1405338 (D. Nev. Apr. 5, 2013), illustrates well how the nerve center
 23 test should be applied in this case. In *Dawson*, the plaintiff argued that the defendant, Richmond,
 24 had its principal place of business in Nevada in part because it was the “the site of Richmond’s
 25 homebuilding operations.” *Id.* at *2. But even though Nevada was the principal location of
 26 Richmond’s operations, this Court found that Colorado was Richmond’s principal place of business
 27 because most of its officers and directors were located in Denver, “[s]ignificant corporate decisions
 28 [were] ‘subject to review and approval’ in Denver,” and “the company’s ‘primary administrative
 operations’ and use of ‘marketing and promotional material’ [occurred] in Denver.” *Id.* This Court

1 concluded that despite Richmond's president managing day-to-day operations from Nevada,
 2 Denver was the defendant's nerve center because it was "the place where Richmond's 'officers
 3 direct, control, and coordinate the corporation's activities.'" *Id.* at *2 (*quoting Hertz Corp.*, 559
 4 U.S. at 92-93). This Court correctly concluded that the place where Richmond's corporate decisions
 5 were made, not the place of its operations, determined its principal place of business. The same
 6 analysis applies even more strongly to Goldstrike because Goldstrike's president managed its
 7 operations from Salt Lake City.

8 **A. Goldstrike's officers and directors were located in Salt Lake City.**

9 The location of a corporation's officers and directors is a significant factor in determining
 10 a corporation's nerve center. As the Supreme Court noted in *Hertz Corporation*, a corporation's
 11 nerve center is "the place where the corporation's high level officers direct, control, and coordinate
 12 the corporation's activities." 559 U.S. at 80 (internal marks omitted).

13 In 2009, none of Goldstrike's officers or directors were located in Nevada. *See Corral v.*
 14 *Homeeq Serv. Corp.*, No. 2:10-CV-00465, 2010 WL 3927660, at *4 (D. Nev. Oct. 6, 2010)
 15 (deciding that defendant corporation did not have its principal place of business in Nevada because
 16 none of its officers were located there). Rather, in 2009, Goldstrike's key officers and the majority
 17 of its directors were located in Salt Lake City, including Goldstrike's President/CEO, CFO,
 18 Operations Director, Technical Director, and Tax Director. *See Broughton v. Smith's Food & Drug*
 19 *Ctrs., Inc.*, No. 2:14-CV-01849-GMN-NJ, 2015 WL 1137751, at *2 (D. Nev. Mar. 13, 2015)
 20 (concluding that defendant's principal place of business was Utah because "[d]efendant's corporate
 21 officers work at the corporate headquarters in Salt Lake City, Utah"); *Aspiras v. Adams & Assocs.,*
 22 *Inc.*, 2017 WL 2992456 (C.D. Cal. July 14, 2017) (determining principal place of defendant's
 23 business was Nevada based in part on where key corporate officers were located).

24 **B. Goldstrike's major corporate functions were managed and directed from Utah.**

25 In 2009, Goldstrike's major corporate decisions and functions were managed and directed
 26 from its Salt Lake City headquarters, including control over budgeting and finance, technical and
 27 operational direction of mining plans and mining operations, the allocation of capital as between
 28 Goldstrike and other North American properties, equipment, labor, and other resources, direction

1 of ore processing, decisions regarding key operational managers and all human resource functions,
 2 and management of legal, land, permitting, tax, accounting, and environmental issues. Salt Lake
 3 City-based management made the executive-level decisions for every aspect of Goldstrike's
 4 operations.

5 Numerous district courts in this circuit, including this Court, have recognized that the place
 6 where a corporation carries out critical administrative functions is likely the corporation's nerve
 7 center. For example, in *Dawson*, this Court recognized that the location of the defendant's "primary
 8 administrative operations" weighed in favor of that being the corporation's headquarters. 2013 WL
 9 1405338, at *2. Likewise, in *Peich v. Flatiron West, Inc.*, Case No. 5:16-cv-00540, 2016 WL
 10 6634851, at *1 (C.D. Cal. Sept. 9, 2016), the court looked at where the corporation's "executive
 11 officers administer[ed] the corporation's payroll, human resources, accounting, financing, and legal
 12 functions" to determine its headquarters. That Goldstrike carried out all of its major corporate
 13 functions in Salt Lake City only serves to confirm that the "place of actual direction, control, and
 14 coordination" was Utah in 2009. *Hertz Corp.*, 559 U.S. at 97.

15
 16 **C. Because Goldstrike was a citizen of Utah in 2009, as was Bullion, this Court**
lacks subject-matter jurisdiction over this matter.

17 Because Goldstrike's principal place of business in 2009 was Utah, Bullion destroyed
 18 complete diversity when it amended its Complaint to add Goldstrike as a defendant and no diversity
 19 jurisdiction existed when the action against Goldstrike was later severed. As a result, the Court
 20 must dismiss the action for lack of jurisdiction. Fed. R. Civ. P. 12(h)(3).

21 **CONCLUSION**

22 For the reasons set forth above, this Court should dismiss the action without prejudice.

1 Dated: April 20, 2018.

2 PARSONS BEHLE & LATIMER

3 /s/ Brandon J. Mark

4 Francis Wikstrom, Esq.

5 Michael Kealy, Esq.

6 Michael P. Petrogeorge, Esq.

7 Brandon J. Mark, Esq.

8 *Attorneys for Defendant*

9 *Barrick Goldstrike Mines Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April 2018, a true and correct copy of the foregoing
**BARRICK GOLDSTRIKE MINES INC.'S RENEWED MOTION TO DISMISS FOR
LACK OF SUBJECT-MATTER JURISDICTION**, was served on the following electronically
via the ECF system:

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Exhibit A

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

29 BULLION MONARCH MINING, INC.,

30 Plaintiff,

31 vs.

32 BARRICK GOLDSTRIKE MINES INC.,

33 Defendant.

Case No. 03:09-cv-612-MMD-WGC
(Sub File of 3:08-cv-227-MMD-WGC)

**AMENDED AND
SUPPLEMENTAL
DECLARATION OF RICH
HADDOCK IN SUPPORT OF
BARRICK GOLDSTRIKE MINES
INC.S' RENEWED MOTION TO
DISMISS FOR LACK OF
SUBJECT-MATTER
JURISDICTION**

34 I, Rich Haddock, declare as follows:

35 1. I am over eighteen years of age and have personal knowledge of the facts stated in
36 this declaration. If called upon to do so, I could testify as to the matters set forth herein.

1 2. I am currently Senior Vice President and General Counsel for Barrick Gold
2 Corporation (“Barrick Gold”), the ultimate parent corporation of Defendant Barrick Goldstrike
3 Mines Inc. (“Goldstrike”).

4 3. Since 1997, I have held various positions with Barrick Gold and Goldstrike. All of
5 these positions have included involvement in the operations and management of Goldstrike.

6 4. Goldstrike is a Colorado corporation formed in 1973.

7 5. In 2009, the Barrick group of companies¹ operated under a regional business unit
8 model, with the headquarters of each region serving as the corporate headquarters for each of the
9 entities located within that region. Barrick Gold of North America, Inc. (“BGNA”) served as
10 headquarters for the North America region, which included Goldstrike and all other companies
11 operating in the United States and Canada (and later the Dominican Republic). BGNA served as
12 the operating company for the region, making executive-level decisions as to how each of the
13 businesses within the region operated and how capital and personnel were deployed. BGNA also
14 made decisions regarding production, created budgets, determined how reporting would be
15 handled, and had autonomy over almost every aspect of the business operations in North America,
16 including the business operations of Goldstrike. Under this regional business unit model, corporate
17 executives were employed by BGNA but served as the officers, directors, executives, and managers
18 of Goldstrike in overseeing and directing Goldstrike’s business.

19 6. In 2009, the headquarters of BGNA, and thus the headquarters of Goldstrike, was in
20 Salt Lake City, Utah, specifically at 136 East South Temple, Suite 1800.

21 7. In 2009, Goldstrike’s principal corporate officers—including the officers with
22 primary control over Goldstrike’s corporate policies and direction—were located in Salt Lake City.
23 Specifically, Gregory Lang, Goldstrike’s President and Chief Executive Officer, Blake Measom,
24 its Chief Financial Officer, Mike Feehan, its Vice President over Operations, and Paul Judd, its Tax
25

26
27 ¹ Barrick Gold Corporation is the ultimate parent company for all Barrick-related entities, but there are many separate
28 legal entities under its umbrella, each with its own corporate identity, structure, officers and directors.

1 Director, were all located in Salt Lake City. None of Goldstrike's corporate officers were located
2 in Nevada.

3 8. While day-to-day mining operations were conducted in and directed by an onsite
4 General Manager located in Nevada in 2009, corporate policy and strategic decisions were made at
5 Goldstrike's headquarters in Salt Lake City, Utah.

6 9. In 2009, a majority of Barrick Goldstrike's board of directors were located in Salt
7 Lake City. At that time, I was a corporate director of Goldstrike, and I was located in Salt Lake
8 City. None of Goldstrike's directors were located in Nevada.

9 10. In 2009, Goldstrike's officers in Salt Lake City, Utah, made corporate decisions
10 regarding budgeting, land and property acquisitions, long-term strategy and planning, and all other
11 executive-level decisions.

12 11. Goldstrike's management in Salt Lake City controlled and supervised all of the
13 major corporate functions for Goldstrike in 2009. For example:

14 a. Management in Salt Lake City set production and processing projections and
15 targets for Goldstrike's mines, as well as unit-cost targets.

16 b. Detailed capital reviews were conducted by Goldstrike's management in Salt
17 Lake City, including by Blake Measom, John Cash, the Manager of Mine Engineering, and others.

18 c. Decisions regarding tax policy, an important part of Goldstrike's business,
19 were directed and controlled from its Salt Lake City office by its Tax Director, Paul Judd.

20 d. Mike Feehan, Goldstrike's Operations Director, initiated weekly mine
21 management meetings from Salt Lake City and coordinated mine operation issues from that office.

22 e. Technical decisions regarding Goldstrike's mine plans and production,
23 processing, geology, and maintenance were reviewed and revised by management in Salt Lake
24 City, including by John Cash and the other technical leads.

25 f. Goldstrike's human resource functions were handled in Salt Lake City,
26 including decisions regarding salaries and adjustments, short and long-term bonuses, bonus
27

1 structure, health insurance, pensions, and other employee benefits. Bonuses were approved by
2 management in Salt Lake City.

3 g. Goldstrike's legal issues, including contracting, litigation, and
4 environmental issues, were handled by my department from Salt Lake City. Indeed, when I first
5 became involved in this suit, I was located in the Salt Lake City office.

6 h. Goldstrike's Salt Lake City-based Controller, Curtis Caldwell, managed
7 Goldstrike's accounting functions.

8 i. Goldstrike's federal land permitting issues were handled in Salt Lake City.

9 j. Goldstrike's management in Salt Lake City performed evaluations of
10 equipment inventories and made decisions regarding the allocation of equipment.

11 k. Goldstrike's landman, Cy Wilsey, handled all land issues, such as ensuring
12 the payment of property taxes and the maintenance of mining claims, leases, and other real property
13 interests, from Salt Lake City.

14 l. Goldstrike's management in Salt Lake City decided environmental policies,
15 including environmental targets and goals for Goldstrike's environmental management system.

16 m. Goldstrike's management in Salt Lake City established and communicated
17 security policies and objectives.

18 n. Information technology issues were prescribed and managed by Goldstrike's
19 management from Salt Lake City.

20 o. Supply chain and purchasing functions were performed in Salt Lake City.

21 p. Business and process improvement initiatives started with Goldstrike's
22 management in Salt Lake City.

23 p. Goldstrike's communications and corporate social responsibility functions
24 were directed by Goldstrike's management Salt Lake City.

25 q. The Salt Lake City headquarters performed payroll functions for Goldstrike.

26 12. Other major corporate decisions, such as allocating capital among various
27 Goldstrike projects, were made by Goldstrike's corporate officers in Salt Lake City, Utah. For
28

1 example, in 2009, management in Salt Lake City made the decision to fast-track a pilot project to
2 test a new processing method. That led to a demonstration plant a few years later and then, in 2014,
3 to the opening of the world's first total carbonaceous matter (TCM) plant at Goldstrike, a \$620
4 million dollar project.

5 13. In 2009, Goldstrike's Salt Lake City-based management reviewed and modified the
6 mining operations plans for Goldstrike, as management does every year, to ensure the mining plans
7 achieved strategic objectives. Such reviews included decisions regarding mining rates, gold
8 production, and review of capital spending (including total expenditures and evaluation of specific
9 line items).

10 14. Energy costs are the second largest operating cost for Goldstrike. In 2009, all
11 decisions regarding when and how to buy energy, including whether to operate Goldstrike's own
12 power plant (commissioned in 2005) or to buy electricity from the grid, were made by management
13 in Salt Lake City. The manager of Goldstrike's power plant reported to Goldstrike's Operations
14 Director, Mike Feehan, in Salt Lake City.

15 15. In 2009, management in Salt Lake City also controlled key personnel decisions.
16 Goldstrike's onsite General Manager was selected and supervised by Goldstrike's officers from
17 Salt Lake City. All of the other managers at the Goldstrike mine site who answered to the General
18 Manager, which included eight (8) department/division managers, were approved by Goldstrike's
19 management in Salt Lake City.

20 16. In short, in 2009, corporate-level decisions for Goldstrike were made by
21 management residing in Salt Lake City, and none of those decisions were made by personnel in
22 Nevada.

23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed on this 20th day of April 2018.

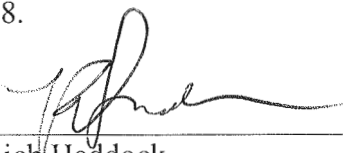
25 
26 _____
27 Rich Haddock

EXHIBIT B

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1 A. Just --

2 Q. -- BGNA.

3 A. -- just BGNA?

4 Q. Yeah.

5 A. No.

6 Q. Did you have any other positions with other
7 Barrick entities from -- well, let's just say -- 2009?

8 A. Yes.

9 Q. Okay. What were different entities you had
10 positions with?

11 A. I -- I would have to have an org chart for me to
12 tell you honestly or the -- the list. But I was -- I was
13 CFO and -- well, I was CFO on virtually all U.S.
14 entities, legal entities and I was a director on -- I
15 can't say it was all -- at least a majority of them.

16 Q. Were you a director of Barrick Gold Corp.?

17 A. No.

18 Q. Were you an officer of Barrick Gold Corp.?

19 A. No.

20 Q. Were you a director of Goldstrike?

21 A. Yes.

22 Q. And were you an officer of Goldstrike?

23 A. Yes.

24 Q. And were you the CFO of Goldstrike?

25 A. Yes.

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1 Q. And were those the -- other than as CFO position
2 with nearly all of the U.S. entities, did you have any
3 other positions with the other U.S. entities?

4 A. No.

5 Q. (Nods head.)

6 A. I don't recall anything that would have been
7 different.

8 Q. And I think you said your paycheck came from
9 Barrick Gold North America --

10 A. That's correct.

11 Q. -- correct?

12 All right. So you were an employee of
13 Barrick Gold North America, correct?

14 A. Correct.

15 Q. And then were you also an employee of
16 Goldstrike?

17 A. No.

18 Q. Do you remember -- well, let me back up. As an
19 employee of Barrick Gold North America, were your duties
20 to help oversee the other U.S. entities?

21 A. Help me understand what you mean by "oversee."

22 Q. Well, what were your duties? Maybe that's an
23 easier way to do it. You just tell me what your duties
24 were as CFO of BGNA.

25 A. Okay. BGNA was a management company which

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1 employed us -- the -- the employees of that entity which
2 was the regional headquarters for the North America
3 region within Barrick.

4 I was part of the leadership team in that
5 entity.

6 And we were given direction to manage the
7 North America business unit which comprised all of the
8 mine sites, closure properties and other legal entities
9 that were within that North America region.

10 And so it -- it essentially functioned as a
11 stand-alone entity.

12 And -- and we had the responsibility for
13 management of all of those properties under that
14 umbrella.

15 Q. Did BGNA do anything in addition to managing the
16 other entities?

17 MR. PETROGEORGE: Objection. Vague.

18 Q. (BY MR. BRUST:) Did BGNA --

19 A. Help me understand.

20 Q. -- operate mines directly itself?

21 A. No.

22 Q. And you said that you were given direction to
23 manage.

24 Who gave the direction to BGNA to manage?

25 A. Well, there's a global Barrick Gold Corporation.

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1 Barrick global made the decision to run its business as
2 operating companies in various regions. And so they set
3 up similar offices in other regions.

4 But the -- the -- the mandate to our
5 leadership team was, This is your business. You need to
6 run this as a business. You will make the decisions as
7 to how that business is operated, deployment of capital
8 within the business unit, within the region of that
9 business unit; you know, deployment of personnel within
10 that region. Production. How that's determined.
11 Creating budgets. Reporting. Virtually everything.

12 Q. So did you have a reporting relationship with
13 Barrick Gold Corp.?

14 A. No. My direct reporting relationship was to the
15 president of Barrick Gold North America.

16 Q. And that was Mr. Lang?

17 A. That was Greg Lang.

18 Q. Did you ever communicate with anybody in Toronto
19 from Barrick Gold Corp.?

20 A. Sure.

21 Q. What types of things would you communicate with
22 the people in Toronto about?

23 A. Frequently it was on best practice. So we did a
24 lot of best practice sharing across the regional units
25 and we would have Toronto people involved in that.

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1 Q. More than 50?

2 A. From best memory, I would say "yes."

3 Q. More than 75?

4 A. I don't know for sure.

5 Q. Okay. How often, if ever, did you communicate
6 with employees of Goldstrike in 2009?

7 A. Oh, I would say at a minimum monthly; but
8 probably, you know, with employees of Goldstrike, you
9 know, I mean that would include the general manager, the
10 other folks out there, it's probably -- it was probably
11 three to four times per month, actually, and weekly in a
12 lot of cases.

13 Q. And the -- do you remember who the general
14 manager was in 2009?

15 A. Yeah. Because we had a change there. And,
16 actually, the guy who works with me now was the general
17 manager at the beginning of the year. It was John
18 Mansanti.

19 Q. Okay.

20 A. That's why I know it changed during that year
21 because I know when he left, so...

22 Q. All right.

23 MR. PETROGEORGE: You might have to speak up
24 just a little bit.

25 THE WITNESS: All right.

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1 MR. PETROGEORGE: I think she's having
2 trouble.

3 Q. (BY MR. BRUST:) Where do you work now?

4 A. Crystal Peak Minerals.

5 Q. And did Mr. Mansanti just start there recently?

6 A. Yes, he did.

7 Q. Okay. And do you remember who the other general
8 manager who came in and replaced Mr. Mansanti was?

9 A. Yeah. We had an interim Nigel Bain who was
10 there already in another capacity at Goldstrike.

11 And then by the end of the year it was Randy
12 Buffington who took that role on a full-time basis.

13 Q. And who else would you have communicated with at
14 Goldstrike in 2009 besides the general manager?

15 A. Not -- not a lot of people. It could be the --
16 virtually anyone there. I mean I visited the site
17 occasionally. We did tours underground and into the open
18 pit and into the operations. So I mean...

19 Q. And then --

20 A. There's a lot of employees at Goldstrike. It
21 could have been just about anybody there.

22 Q. All right.

23 A. Depending on the need.

24 Q. So then you did tours of the mines --

25 A. Sure.

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1 Q. -- correct?

2 And what was the purpose of you doing tours
3 of the mines as CFO --

4 A. Um --

5 Q. -- of BGNA?

6 A. -- typically make sure I understood what was
7 going on in the operations, to visit the people there.

8 I made it a point anytime I was visiting the
9 sites to talk to people there about safety and their
10 attention to that. How things were going. It was an
11 opportunity to talk to the people who were actually doing
12 the work there and -- and make sure that in my role when
13 I was asked to make or help support decisions relative to
14 the operations of Goldstrike, that I had information to
15 do that.

16 Q. And you -- okay. And so you were out there
17 getting information from the people who were actually
18 working in the mine --

19 A. Sure.

20 Q. -- correct?

21 So let's get the exhibits stamped. Let me
22 see.

23 (Whereupon Exhibit 1 was marked
24 for identification.)

25 Q. (BY MR. BRUST:) I'll give you Exhibit Number 1.

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1 A. And so whatever the budget we had put into place
2 that had been approved for the year by the -- the team
3 and then was in line with the global allocation, he had
4 full -- full approval for that budget.

5 On capital spend there was a ceiling and I
6 don't remember the number.

7 Q. Who was on the team that did the approval of the
8 budget?

9 A. Same team. It was all of the senior leaders in
10 the -- at Barrick Gold of North America. So it was --
11 it -- it -- I -- I'd call it Greg Lang and his senior
12 leadership team.

13 Q. Was anybody from Toronto involved in setting the
14 budget for Barrick Gold North America?

15 A. No.

16 Toronto's role, again, and that was in -- in
17 global allegation of capital. So they may come back --
18 and did quite often come back to us and say, "We could
19 use this much more production globally to meet our global
20 targets; can you do it?"

21 And we could then go back and review and see
22 if we could offer that up.

23 But they didn't participate in the budget
24 setting and -- and -- and in that process. That was
25 something that we presented to them.

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1 Q. And when you presented it to them, what was the
2 purpose of presenting it to them?

3 A. Again, for them to be able to allocate globally
4 where -- whatever resources may be -- may have been
5 needed.

6 Q. Was there ever a time where you did not present
7 a budget to Barrick Gold Corp.?

8 A. No, not for a final budget.

9 Q. Was it -- were you supposed to present them --
10 (Simultaneous colloquy.)

11 A. Well, they have --

12 Q. -- yearly?

13 THE REPORTER: Wait.

14 THE WITNESS: -- they have it consolidated.
15 So as -- as the public company, they had to consolidate
16 that for reporting purposes, et cetera, to the public
17 market.

18 So -- so, no, we had to report it from that
19 standpoint so that they could consolidate.

20 Q. (BY MR. BRUST:) And, other than occasionally
21 asking whether Barrick Gold North America and the
22 companies that it oversaw could produce more gold or more
23 profit, was there ever any other changes that they
24 suggested or made to the budget?

25 A. Just similar things to that where it was

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1 balancing the global portfolio. I mean it really
2 wasn't -- we -- we had the -- the -- both the authority
3 and the obligation, it was our responsibility to prepare
4 and -- and submit that --

5 Q. Okay.

6 A. -- for consolidation.

7 Q. So then in Exhibit Number 1 --

8 A. Yep.

9 Q. -- in the -- I guess coming to signing of this
10 agreement and the development of this agreement, would
11 you have had any input in this other than to review
12 perhaps the amount of money that was going to be spent
13 pursuant to this budget -- sorry -- to this contract?

14 A. On -- on this contract specifically?

15 Q. Yeah.

16 A. Unlikely because it's very technical in nature
17 and, like I said, I'm not -- that's not my back- -- I'm
18 not technical. I -- I couldn't -- I couldn't provide
19 feedback on the technical details of the project.

20 Q. So would there have been any service contracts
21 that you would have been involved in in regard to the
22 terms of the contracts?

23 A. Yeah. We had -- they would have been typically
24 administrative with respect to buying and selling gas and
25 power around Western 102 which provided power resources

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1 Q. (BY MR. BRUST:) Other than the -- well, was the
2 buying of the fuel, the -- the fuel purchase contract you
3 talked about earlier, was that in 2009?

4 A. Not fuel.

5 Natural gas.

6 Q. "Natural gas."

7 Was that in 2009 --

8 A. Yep.

9 Q. -- that you remember? Okay.

10 And the parking lot was 2009?

11 A. No. I have no idea --

12 Q. Okay.

13 A. -- what year the parking lot was.

14 Q. Do you remember any others from 2009?

15 A. No, not specifically.

16 Q. Okay.

17 A. I can say "yes" on the fuel because I did it for
18 multiple years, so...

19 Q. Okay.

20 A. Natural gas.

21 Q. Was there a CFO of Goldstrike that you worked
22 with?

23 A. No.

24 Q. Who was the seniormost person whose duties were
25 primarily related to financial oversight at Goldstrike

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1 that you worked with?

2 A. We had a cost analyst at Goldstrike.

3 Q. Who was that?

4 A. That was the only -- I can't remember who it was
5 in 2009.

6 They were basically a senior accountant-level
7 role.

8 And that's the only role that we left at the
9 mine sites when we created basically a shared service
10 environment for provision of accounting and finance
11 services to all of the mines.

12 Q. Okay. When you say "...shared service...", are
13 you talking about the Shared Business Center?

14 A. No. I'm talking about the finance function for
15 all of the North America region which was Salt Lake and
16 the Shared Business Center.

17 Q. Okay. Who in the Shared Business Center do you
18 recall -- let me ask it this way.

19 Who was the head financial person at the
20 Shared Business Center in Elko?

21 A. There wasn't a head financial person in that
22 role. We -- because we had it split into components. So
23 we had a cost accounting manager. We had an accounts
24 payable manager. We had payroll as separate.

25 And -- and they didn't all report to the same

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1 person. They reported in to the Salt Lake group.

2 Q. All right. Do you remember who the cost account
3 manager was?

4 A. Yeah. It was Carl Detweiler.

5 Q. And do you remember who the accounts payable
6 person was?

7 A. I don't remember in 2009.

8 I -- I know who it was but I don't know when
9 she switched out of that -- (inaudible) --

10 THE REPORTER: I can't hear you.

11 THE WITNESS: I don't know who it was in
12 2009. I -- again, that would have to be --

13 (Simultaneous colloquy.)

14 Q. (BY MR. BRUST:) Okay. And what --

15 THE REPORTER: Wait a minute.

16 -- "that would have to be" --

17 THE WITNESS: I would have to look at the org
18 chart again.

19 Q. (BY MR. BRUST:) What about payroll?

20 A. Same. I don't remember who it was.

21 Q. All right.

22 A. Actually, the payroll, that was not in Elko.
23 That was in Salt Lake.

24 Q. So then the only financial services in 2009 in
25 Elko at the Shared Business Center would have been the

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1 account -- cost accounting manager and accounts payable?

2 A. No. That's not -- they're not the only ones.
3 Because we also had some of our general ledger accounting
4 done there for the mine sites that were there in -- we
5 did have the budgeting and forecasting role for all of
6 the mine sites was based in Elko.

7 Let's see. What else did we have over there?
8 Those are probably the key ones.

9 Q. Okay. And do you remember who was in charge of
10 the budgeting and forecasting for all the mine sites?

11 A. I do. Mike Estes.

12 Q. And what about the general ledger accounting?

13 A. There -- it was just various accountants. We
14 didn't have one in charge there.

15 Q. But they were all in-house?

16 A. Yes.

17 Q. Okay.

18 A. They would have reported in to -- in to
19 Salt Lake, in to my group in Salt Lake.

20 Q. Okay.

21 A. Well, all -- everybody on there reported
22 ultimately in to my group, so --

23 Q. So was there --

24 A. -- I had responsibility for all of that.

25 Q. -- was there somebody who oversaw all of the

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1 different departments at the Shared Business Center?

2 A. No.

3 Q. Who -- okay.

4 So they all individually reported to you?

5 A. To me or to my direct reports.

6 Q. And did everybody -- all -- everybody in these
7 departments at the Shared Business Center, did they work
8 for Barrick Gold North America?

9 A. Um, I believe the answer is "yes."

10 (Whereupon Exhibit 2 was marked

11 for identification.)

12 MR. BRUST: Okay. This is Exhibit 2.

13 Q. (BY MR. BRUST:) So does Exhibit 2 look familiar
14 to you?

15 A. Yeah.

16 Q. Can you tell me what Exhibit 2 is.

17 A. It looks like a pay advice to me.

18 Q. Okay.

19 MR. PETROGEORGE: Take a look through all the
20 pages.

21 MR. BRUST: Yeah.

22 Q. (BY MR. BRUST:) Go ahead and look through all
23 of them because it's for several different people.

24 A. All right.

25 (Brief pause.)

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1 the various entities that you were managing and
2 overseeing.

3 A. For the most part, yes.

4 Q. Okay.

5 A. There were a few departments that we didn't
6 allocate because they just really didn't specifically do
7 work at the mine sites.

8 Q. Where did you, as the CFO of Goldstrike,
9 considered -- consider BGMI's corporate headquarters to
10 be in 2009?

11 A. Salt Lake for sure.

12 Q. And was all of the payroll for Barrick
13 Goldstrike Mines, Inc. processed in the Salt Lake City
14 office?

15 A. Yes, it was.

16 Q. Once Barrick Goldstrike of North America -- or,
17 I'm sorry -- Barrick Gold of North America created a
18 budget for the region, would Toronto ever come in and
19 overrule that budget?

20 A. No.

21 As I said, they may come down and -- and ask
22 for more production for, you know, help in balancing a
23 cost profile or something like that.

24 But we had the discretion within our
25 portfolio of entities in North America to get that

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1 production or those changes from whichever one we felt
2 like it made the most sense as the management team to do
3 that.

4 Q. Did Toronto have any involvement whatsoever in
5 establishing the budget for Barrick Goldstrike Mines,
6 Inc.?

7 A. No.

8 Q. Did Barrick Gold of North America have any
9 involvement in establishing the budget for Barrick
10 Goldstrike Mines, Inc.?

11 A. Yes, absolutely.

12 Q. What involvement?

13 A. Again, oversight. We -- we worked with them
14 directly. We would work with them on setting the
15 targets, in giving them an idea of what our goal -- our
16 regional targets were.

17 And, you know, we had history to work with,
18 so we knew where they had been and kind of how their
19 operations were going and what they might be able to do.
20 So we would work with them on targets for that.

21 Asked them to then go and put their best foot
22 forward. And then we would again bring the region
23 together and look at where we -- where we consolidated,
24 where we rolled up as a region. And then we may go back
25 and do that, you know, iterations of that until we got

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1 the -- the budget that we felt like was our best foot
2 forward in terms of what we wanted to accomplish as a
3 region.

4 Q. In terms of involvement and control over setting
5 budget for Goldstrike, was BGNA's involvement in that
6 more significant than whatever role Toronto had in
7 setting BGNA's budget?

8 A. Much more.

9 MR. PETROGEORGE: No further questions.

10 MR. BRUST: Okay.

11 EXAMINATION

12 BY MR. BRUST:

13 Q. You talked about the cost allocations. And let
14 me make sure I understand what you were saying.

15 A. Okay.

16 Q. You're saying that if -- that -- that part of
17 the budgets of the companies in Nevada took into account
18 the cost of operating BGNA; is that correct?

19 A. Yes, I believe so. It was -- it was an
20 allocation of the BGNA costs.

21 So essentially, because we had responsibility
22 for operating those entities, those mine sites, it was an
23 allocation of those costs to those mine sites.

24 Q. So, for example, Cortez --

25 A. (Nods head.)

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1 operate come from Toronto?

2 A. No.

3 MR. BRUST: Okay.

4 That's all --

5 MR. PETROGEORGE: One --

6 MR. BRUST: -- I have.

7 MR. PETROGEORGE: -- one follow-up, just so
8 I'm clear.

9 EXAMINATION

10 BY MR. PETROGEORGE:

11 Q. Mr. Brust asked you about Cortez in -- as part
12 of those questions.

13 Where was the corporate headquarters of
14 Cortez in '09?

15 A. Salt Lake.

16 MR. PETROGEORGE: Okay. No further
17 questions.

18 MR. BRUST: Thank you.

19 THE WITNESS: Sure.

20 MR. PETROGEORGE: Okay.

21 (Brief discussion off the record.)

22 MR. PETROGEORGE: Yeah. We'll read and sign.

23 If you can send it to me, I'll coordinate
24 with Mr. Measom to get that done.

25 (At the request of Mr. Brust and

EXHIBIT C

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BULLION MONARCH MINING, INC.,)
)
Plaintiff,)
)
v.) Case No.
) 03:09-CV-612-MMD-WGC
BARRICK GOLDSTRIKE MINES, INC.,)
)
Defendant,)
)
)
)
-----)

DEPOSITION OF

ANDY BOLLAND

MARCH 21, 2018

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TX CSR NO. 8929
UTAH CSR NO. 10611481-7801

FILE NO.: AC02625

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1 A. It was so long ago, I don't remember. But I
2 imagine it would be Greg Lang who was the president back
3 then and probably to the general managers that were in
4 our business unit.

5 Q. Was that a PowerPoint presentation?

6 A. It was, yes.

7 Q. And you said "...who we are and what we did."

8 When you say "we," who are you talking about
9 in "we"?

10 A. The technical services group which consisted of
11 metallurgists, mining engineers, yeah. And some --
12 couple of maintenance people.

13 Q. And did you give that presentation to anybody in
14 Toronto?

15 A. I do not believe so.

16 Q. All right. And when you say that it was -- you
17 also gave it -- you gave it to Mr. Lang and then the
18 general managers in your business unit, what -- what do
19 you mean by your "...business unit"?

20 A. Well, Barrick Gold of North America was in
21 charge of the North American operations, so the business
22 unit entailed the different mines in the business unit
23 which were Goldstrike, Cortez, Bald Mountain, Ruby Hill,
24 Hemlo, Pueblo Viejo. I -- there -- there were about
25 nine, nine mines in there, in this unit.

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1 of Barrick Goldstrike?

2 A. The business of Barrick Goldstrike was to safely
3 produce gold.

4 Q. From?

5 A. From the deposit at the -- at -- you know --

6 Q. Out in Carlin?

7 A. Out in Car- -- well, yeah, in that area.

8 Q. Okay. And what was the business of Barrick Gold
9 North America in 2009?

10 MR. PETROGEORGE: I'm just gonna object. I
11 think this goes beyond the scope of what he's been
12 designated to testify to.

13 I'm going to give you a little leeway.

14 MR. BRUST: Okay.

15 MR. PETROGEORGE: But I'm not going to let
16 you go very far.

17 MR. BRUST: Okay.

18 THE WITNESS: Could you repeat the question?

19 Q. (BY MR. BRUST:) Yes.

20 What was the business of Barrick Gold North
21 America in 2009?

22 A. The business of Barrick Gold North America, as I
23 saw it, was to manage the eight or nine mines that
24 reported up through the Salt Lake City office.

25 Q. And when you say "...up through...", it was up

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1 through the Salt Lake office up to Barrick Gold in
2 Toronto, correct?

3 A. No. It was basically to the Barrick Gold of
4 North America office to Greg Lang who was the -- the
5 president.

6 Greg Lang reported to Peter Kinver.

7 THE REPORTER: "Peter" --

8 THE WITNESS: Kinver, I think, back then.

9 Q. (BY MR. BRUST:) And when you went to work for
10 Barrick Gold North America, I think you said were you
11 required to move to Salt Lake?

12 A. I did.

13 Q. Okay. Did you ever work out of the Shared
14 Business Center -- I think is what they call it -- in
15 Elko?

16 A. I never worked out of there, no.

17 Q. In 2009, were you aware of any employees from
18 Goldstrike who were working in Salt Lake City?

19 A. No.

20 Q. Was it your understanding in 2009 that all of
21 the employees of Goldstrike were working in Nevada?

22 A. Yes.

23 Q. Were there -- was it your understanding in 2009
24 that there were any Barrick Gold North America employees
25 working in Nevada?

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1 A. To my recollection, no.

2 Q. Do you -- and I'm entitled to estimates. You
3 don't have to give me an exact number.

4 A. No problem.

5 Q. But if you don't know, you're not required to
6 guess, okay?

7 But this next question is probably gonna
8 re- -- elicit an estimate. How many employees did
9 Goldstrike have in 2009?

10 A. I'm estimating 1,600.

11 THE REPORTER: -- "1,600"?

12 THE WITNESS: Yeah.

13 MR. BRUST: Okay.

14 Q. (BY MR. BRUST:) And how many did it have in
15 2004 when you left Goldstrike?

16 A. About the same. I don't think there was too
17 much difference.

18 Q. In 2009, did you -- were you required to go
19 visit any of the mines in Nevada?

20 A. Absolutely.

21 Q. Okay. And how often did you visit Goldstrike in
22 2009?

23 A. I would say at least once a quarter. So at
24 least four times.

25 Q. Okay. And what was the purpose of those visits?

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1 A. We provided technical support to the mine, so we
2 would bring a subject matter expert in to support the
3 operation and to look at various initiatives to improve
4 the operation.

5 Q. And did you -- were -- were you in communication
6 in 2009 with personnel from Goldstrike?

7 A. Absolutely.

8 Q. Who would you mostly be in communication with?

9 A. The general manager and the technical leads in
10 the mining and processing areas.

11 Q. Do you remember who the general manager was in
12 2009?

13 A. I believe it was John Mansanti.

14 Q. And did you communicate with Mr. Mansanti --
15 well, let me ask you this. How did you communicate with
16 Mr. Mansanti?

17 A. The normal ways would either be by phone --

18 Q. Uh-huh.

19 A. -- or email.

20 Q. And did you save any of those emails that you
21 had with Mr. Mansanti?

22 A. I don't think so.

23 Q. Okay. And then what about who were the tech
24 leads that you communicated with?

25 A. You know, I -- I don't recall. I think Steve

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1 Yopps was in the process area, but I -- I can't recall
2 who was in the -- in the mine.

3 Q. Approximately how many times a month would you
4 communicate with Mr. Mansanti in 2009?

5 A. I'd say four times a month.

6 Q. Okay. And then approximately how many times a
7 month would you communicate with Mr. Yopps in 2009?

8 A. Similar.

9 Q. Did you ever have communications with Barrick
10 Gold in Toronto in 2009?

11 A. I do not believe so.

12 Q. Let me see here. Where was Goldstrike's leach
13 pad in 2009?

14 A. Well, the leach pad was closed.

15 Are you talking about the heap leach pad?

16 Q. Yes.

17 A. The heap leach pad was just adjacent to the
18 autoclave facility.

19 Q. And what different Barrick entities were using
20 that leach pad in 2009?

21 A. I have no idea.

22 Q. Who was in charge of that in 2009?

23 A. In charge of what?

24 Q. The leach -- the leach pad -- the heap leach
25 pad.

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1 Q. All right. Do you know what the overall budget
2 was for Goldstrike in 2015 when you left?

3 A. No, I do not.

4 Q. Can you give me an estimate?

5 A. No, I cannot.

6 Q. Can you give me an estimate -- I think I already
7 know the answer -- but can you give me an estimate of
8 what percentage of changes were requested -- what
9 percentage -- let me think of how I need to word this --
10 what percentage of the overall budget was requested to be
11 changed by Mr. Mansanti in 2009, if any?

12 A. I have no recollection.

13 I don't think I would even have known back
14 then.

15 Q. And who would have known that?

16 A. Most likely the director of operations, the
17 accountants that looked after the -- the budget and
18 obviously ultimately Greg Lang.

19 Q. Mr. Mansanti also talked about if there were
20 going to be intercompany transfers of assets, that was
21 something that sometimes had to be approved by Salt Lake.
22 Like you're gonna take a hauler from one --

23 A. Sure.

24 Q. -- and move it over to another. Was there a
25 threshold for that in 2009 as in terms of maybe the value

1 of the asset or something like that?

2 A. To my recollection, it would all be discussed at
3 Salt Lake with the general managers for each of the
4 operations, they would review it.

5 The technical services group may put an
6 assessment on whether this is worth doing or not and what
7 the -- what the payback would be.

8 Q. Okay. So if the general manager of Cortez and
9 the general manager of Goldstrike decided they wanted
10 to -- Cortez needed a hauler and Goldstrike had an extra
11 one they could live without, those two would discuss it
12 and then you said that they would talk with somebody at
13 Salt Lake. Who would they talk with at Salt Lake?

14 A. You know, typically what would happen is that
15 recommendation would come from Salt Lake, it would be the
16 technical services group, the mine -- the -- the -- the
17 mine subject matter experts would look at both budgets,
18 look at what was available --

19 Q. Um-hum.

20 A. -- then they would make the recommendations
21 through the director of operations with the general
22 managers and then a decision would be made.

23 Q. Okay. And that was your department in 2009, the
24 technical services group?

25 A. Yeah.

1 Q. Okay. Do you recall any of those requests
2 coming from Goldstrike in 2009?

3 A. I don't recall specifically. I know that we
4 often looked at the movement of haul trucks and -- and it
5 was between Goldstrike and -- and Cortez.

6 It all depended where -- where the ore will
7 be.

8 Q. All right.

9 A. Where the value was for the -- the company.

10 Q. Use of the asset?

11 A. Yeah.

12 Q. Okay. Besides the -- the transfer of the haul
13 trucks, do you remember any other specific instances of a
14 request from Goldstrike to transfer an asset to another
15 company or receive an asset from another company in 2009?

16 MR. PETROGEORGE: I'm gonna object that you
17 misstated his testimony.

18 I think he said those -- those
19 recommendations came from Salt Lake, not from Goldstrike.

20 Q. (BY MR. BRUST:) Well, weren't there times where
21 somebody from Goldstrike, Mr. Mansanti, perhaps, would
22 say, "Hey, we need another haul truck"?

23 A. I don't recall that ever happening.

24 Q. Okay.

25 A. I think it typically would be the people that

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1 are looking at the -- the mine plans and -- and
2 looking -- which -- which would be the -- the mining
3 engineers and -- and the tech services group.

4 Q. The mining engineers in Salt Lake?

5 A. Yeah.

6 Q. Okay.

7 A. Along with the -- the tech services
8 superintendents at the sites. It would be a
9 collaborative decision.

10 Q. All right. But the -- the tech services in
11 Salt Lake, they didn't operate in a vacuum. They got
12 input from the different mine sites before they would
13 say, "We need to move a haul truck from Goldstrike to
14 Cortez," correct?

15 A. We would -- we would look at the life of mine
16 plans, the budgets --

17 Q. Um-hum.

18 A. -- with all of the sites and assess if there was
19 any -- any opportunities.

20 Q. And you would get the information about what was
21 happening at the mine sites from the people at the mine
22 sites?

23 A. Absolutely.

24 Q. Do you remember any requests for transfer of
25 assets being denied in 2009?

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1 Q. What about the open pit?

2 A. In 2009? Whew. Can't remember.

3 Q. What about the underground mine?

4 A. I -- I -- it's too far back.

5 Q. Okay.

6 A. Sorry.

7 Q. I'm going to go through the other three. Maybe
8 it will jog your memory.

9 Accounting?

10 A. Al Plank.

11 Q. "Plank"?

12 Okay. And then HR?

13 A. No idea.

14 Q. And what about environmental?

15 A. No idea. I would guess again. Sorry.

16 Q. Okay. Did any of -- well, let me ask it this
17 way. Did anybody besides Mansanti report to Salt Lake?

18 A. At Goldstrike?

19 Q. Yeah.

20 A. Not to my knowledge, no.

21 Q. Okay.

22 A. No. He was the -- the GM and that was -- yeah.

23 Q. And to whom did Mr. Mansanti report in
24 Salt Lake?

25 A. To my knowledge, it was -- it would be Mike

1 Feehan, the director of operations.

2 Q. And Mike Feehan was director of operations for
3 Barrick Gold North America, correct?

4 A. Correct.

5 Q. Was Mike Feehan also an employee of Goldstrike?

6 A. No. I -- I don't believe. He came from
7 Goldstrike, but he -- at that time it was here in the
8 office in Salt Lake.

9 Q. All right. In 2009, were you aware of any
10 procedures that were issued by Barrick Gold Corp. for the
11 various Barrick entities?

12 A. "...procedures..."

13 There would be occasional global procedures
14 that would come down, but I don't -- I don't remember
15 specifically in that year.

16 Q. What about -- and maybe I'm putting a little too
17 fine a point on it. But what about policies that came
18 down from Barrick Gold Corp.?

19 A. I can't recall.

20 Q. But Barrick Gold Corp. did -- you -- well, let
21 me back up. Even though you don't specifically remember
22 2009 --

23 A. Yeah.

24 Q. -- but over the year Barrick Gold Corp. in
25 Toronto would send out policies or procedures for the

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1 structure?

2 MR. PETROGEORGE: Rich Haddock.

3 MR. BRUST: Okay.

4 MR. PETROGEORGE: I'll note, however, it
5 wasn't part of your notice; but he can talk to it.

6 MR. BRUST: Well, business activities,
7 corporate decisions by managers, I take it it's in there.

8 MR. PETROGEORGE: It's not; but you can ask
9 him and we'll see where it goes.

10 MR. BRUST: Sure.

11 Q. (BY MR. BRUST:) Do you know of any decisions
12 that were made by the Board of Directors of Goldstrike in
13 2009?

14 MR. PETROGEORGE: Same objection. This isn't
15 his area of designation.

16 MR. BRUST: I'm just asking.

17 MR. PETROGEORGE: He's not testifying on
18 behalf of the company on something he hasn't been
19 designated on.

20 MR. BRUST: All right.

21 So Haddock can answer all of that?

22 MR. PETROGEORGE: To the extent it's part of
23 your request, yes.

24 MR. BRUST: It is.

25 MR. PETROGEORGE: We can debate that when

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1 MR. BRUST: Yes.

2 MR. PETROGEORGE: So you are done?

3 MR. BRUST: I am.

4 MR. PETROGEORGE: All right.

5 EXAMINATION

6 BY MR. PETROGEORGE:

7 Q. Mr. Bolland, I think you testified that the
8 directors and managers located in Salt Lake City were
9 employed by Barrick Gold of North America; is that
10 correct?

11 A. Sorry. Say that again, Mike.

12 Q. Were the directors and managers located in
13 Salt Lake City -- I think you said they were all employed
14 by Barrick Gold of North America --

15 A. Yes --

16 Q. -- right?

17 A. -- yes, absolutely.

18 Q. But as a director, you still had oversight and
19 responsibility over the Barrick Goldstrike Mines entity,
20 correct?

21 A. Yes, we did.

22 Q. And if you were working on something that
23 involves -- involved the Goldstrike Mine in Nevada, you
24 were working on that for and on behalf of Goldstrike --
25 Barrick Gold Mines, Inc., right?

1 A. Absolutely, yes.

2 Q. In fact, there were employees of BGNA that had
3 officer titles but were located -- officer titles for
4 BGMI and were located in Salt Lake, correct?

5 A. Yes. I think Blake, Greg, and Mike Feehan, Rich
6 Haddock.

7 Q. Where did you consider the executive loca- --
8 the executive-level functions of Barrick Goldstrike
9 Mines, Inc. to be located in 2009?

10 A. In Salt Lake City, for sure.

11 Q. And that's even though the BGMI payroll
12 employees were located in Nevada?

13 A. Yes.

14 Q. And even though the technical employer of the
15 Salt Lake executives was Barrick Gold North America?

16 A. Yes.

17 Q. How frequently would Barrick Gold Mines --
18 Barrick Goldstrike Mines' employees in Nevada interact
19 with the executive-level employees based in
20 Salt Lake City?

21 A. Almost daily.

22 Q. I want to talk a little bit more about the mine
23 plan that was discussed. Who had ultimate oversight and
24 responsibility for that mine plan?

25 A. Ultimate responsibility was with the general

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1 manager. He would -- the mine plan would generate a
2 budget that would be presented to Salt Lake City. If the
3 budget needed improvements, then Salt Lake City would
4 advise the general manager to go back and -- and look at
5 what opportunities there were with the mine plan.

6 Q. Would the GM of Goldstrike ever implement a mine
7 plan over the objection of the executives located in
8 Salt Lake?

9 A. No.

10 Q. I want to talk to you a little bit in comparing
11 the relationship that existed between Toronto and Barrick
12 Gold of North America as compared to the relationship
13 between Barrick Gold of North America and Barrick
14 Goldstrike Mines.

15 A. Sure.

16 Q. Did Toronto have as much oversight and control
17 over Barrick Gold North America as Barrick Gold North
18 America had over Barrick Goldstrike Mines?

19 A. No, definitely not.

20 Q. Okay. If someone -- and we can take a quick
21 look at Exhibit 4 just to bring this question a little
22 bit.

23 This was the email relating to the "Betze Pit
24 Expansion Project..." --

25 A. Yeah.

1 Q. -- and permitting issues related to that.

2 If someone employed by Barrick Gold of North
3 America -- I'll let you get there -- is attending a
4 meeting on something that is involving Goldstrike
5 permitting, would they be there as a representative of
6 Goldstrike Mines?

7 A. Absolutely.

8 Q. And did the Barrick Gold of North America
9 employees have authority to work for and on behalf of
10 Barrick Goldstrike Mines when dealing with Barrick
11 Goldstrike Mines' business?

12 A. Yes.

13 Q. Did you, as a Barrick Goldstrike of North
14 America employee, have authority to work for and on
15 behalf of Goldstrike -- Barrick Goldstrike Mines when
16 dealing with technical services that impacted the
17 Goldstrike Mine?

18 A. Absolutely, yes.

19 MR. PETROGEORGE: No further questions.

20 EXAMINATION

21 BY MR. BRUST:

22 Q. How many different companies did you have that
23 type of authority to act on behalf of?

24 A. All of the mines that reported up through
25 Barrick Gold of North America. So the nine mines that --

EXHIBIT D

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

vs.

Case No. 03:09-CV-612-MMD-WGC

BARRICK GOLDSTRIKE MINES, INC.,

Defendant.

DEPOSITION OF

JOHN MANSANTI

December 20, 2017

9:30 a.m.

1600 Broadway, Suite 1600
Denver, Colorado 80202

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Karen S. Fogle, RPR

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1 operating budget, what were your duties in that?

2 A. It was to safely produce the ounces that we
3 projected and meet the costs we forecast.

4 Q. What was your involvement in developing the
5 operating budget?

6 A. I was fairly involved. With my direct
7 reports we would put the budget together and present it
8 to the Salt Lake management team.

9 Q. Who were your direct reports?

10 A. Mike Feehan.

11 Q. That was the direct report up the chain;
12 correct?

13 A. My direct --

14 Q. Who reported to you?

15 A. Nigel Bain was underground; Tracy Miller,
16 surface; Steve Yopps was process; Tom Bassier was
17 safety; Andy Cole was environmental; Marie Byington was
18 HR. I might be missing somebody.

19 Q. So Nigel Bain -- what were his duties?

20 A. He managed the underground operations in
21 the Elko mine. They were functionally organized.

22 Q. Tracy Miller?

23 A. She managed the open pit.

24 Q. In the management of those two mines, what
25 were Nigel Bain's duties of the underground mine?

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1 other sites would coordinate those purchases that was
2 handled out of the SBC.

3 Q. (BY MR. BRUST) Who would be in charge of
4 that at the SBC?

5 A. I think -- my guess is accounting and
6 finance. SBC answered to Greg Lang.

7 Q. And he worked for Barrick Gold?

8 A. Yes. I don't know if that's the right
9 title but --

10 Q. So who was the person -- at SBC, who was in
11 charge of the regional finance?

12 A. Mike Estes.

13 Q. Was Mr. Estes a Goldstrike employee?

14 A. He was a Barrick employee, and he served
15 the sites.

16 Q. When you say Barrick employee, do you know
17 if he was a Barrick Gold employee or Barrick
18 Goldstrike?

19 A. He wasn't a Goldstrike employee. He was
20 employed by the region.

21 Q. Was it your understanding that
22 Mr. Freehan --

23 A. F-e-e-h-a-n. He was my boss, for
24 clarification.

25 Q. Michael Feehan?

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1 A. Correct.

2 Q. Was Mr. Feehan a Goldstrike employee?

3 MR. PETROGEORGE: Objection; foundation.

4 A. I don't remember the organization. I think
5 he was -- depending on how Goldstrike was organized, he
6 was my boss. I reported to him. I don't remember the
7 organization quite honestly.

8 Q. Where was he located?

9 A. He was located in Salt Lake.

10 Q. Did you report to anybody else in Salt
11 Lake?

12 A. Not at that time.

13 Q. What time? 2009?

14 A. That's correct. The time I was at
15 Goldstrike. Prior to that, I reported to Greg Lang.
16 When I came to Goldstrike, I reported to Mike Feehan.

17 Q. Greg Lang was also in Salt Lake?

18 A. And Mike Feehan reported to Greg Lang. For
19 clarification, the joint ventures reported to Greg
20 Lang. When I was at Turquoise and Cortez, I reported
21 to Greg. When I went to a Barrick operation -- it was
22 100 percent Barrick, it wasn't a joint venture -- I
23 reported to Mike Feehan.

24 Q. How did you communicate with Mr. Feehan
25 back then?

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1 A. Telephone, email, and then once in a while
2 he would come out -- Greg was out every week. Probably
3 had as much communication with Greg as Mike.

4 Q. When you were at Goldstrike?

5 A. Greg is pretty hands-on.

6 Q. Did you also communicate with Mr. Lang via
7 telephone?

8 A. Occasionally.

9 Q. Did you communicate with Mr. Lang via
10 email?

11 A. Once in a while.

12 Q. Was the majority of your communication with
13 Mr. Feehan by email or telephone?

14 A. Probably telephone. We would have weekly
15 telephone calls with all the operating properties and
16 other calls. So probably more by telephone than email.

17 Q. When were those meetings typically held?

18 A. I think Thursdays.

19 Q. Who would be on those Thursday meetings?

20 A. There would be me and then the line manager
21 at Cortez, the mine manager at Turquoise Ridge, and the
22 mine manager at Gold Mountain. There was a mine
23 manager at Eskay Creek, our Canadian operation. And
24 I'm probably missing a property in there or two.

25 Q. So the meetings -- we would have the mine

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1 managers on the conference, Mr. Feehan on the
2 conference?

3 A. Correct. It was his meeting.

4 Q. Anybody else from Mr. Feehan's level or
5 above?

6 A. Dependent upon the issues, but sometimes
7 Greg would sit in, if I remember. Rarely. There might
8 be somebody from tech services that would sit in from
9 time to time. But, generally, it was Mike and his
10 direct reports.

11 Q. Was there ever anybody from Canada, except
12 for the manager of Eskay Creek, on the calls?

13 A. From Toronto?

14 Q. Yes.

15 A. Not that I remember.

16 Q. What was typical -- if there was a
17 typical -- of those conferences?

18 A. It was pretty typical. Each site would
19 report progress relative to the prior week. So safety
20 performance, environmental performance, production.
21 And then after we would go through all that, there
22 would be some coordination. If there were key issues
23 coming up, depending on where you were in the budget
24 cycle or some kind of a safety initiative that involved
25 those sites, that was coordinated at that time. Key

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1 projects -- sometimes personnel issues, not discipline,
2 but like transfers, things of that nature, were
3 discussed.

4 Q. Did you ever have to do layoffs or anything
5 like that?

6 A. Yes.

7 Q. Is that something that you would first
8 coordinate with your HR -- with Ms. Byington -- and how
9 did that go?

10 A. Again, that was part of the budget. We
11 actually laid off part of the workforce at Auto Clave
12 because Cortez Hills was wrapping up at that time. We
13 coordinated with Cortez Hills. That plan was put
14 together and reviewed out of Salt Lake City. Craig
15 Beasley was the director of -- I don't know what his
16 title was, but he was regionally HR out of Salt Lake.

17 Q. I think I saw a press release about that.
18 Is that where you're trying to save as many Barrick
19 jobs as possible and moving them around?

20 A. I think we saved two-thirds of the people.
21 There is a group -- seniority that we ended up losing.
22 Some were able to find places at Goldstrike. The
23 others we found homes for at Cortez Hills.

24 Q. For something where transfers are
25 occurring, the people in Salt Lake would get involved,

1 their mine superintendent and maybe it would get
2 bumped --

3 A. Probably go to the process superintendent
4 then to the process manager. So Steve Yopps was the
5 other person. Processing -- Steve had both the Roaster
6 and the Auto Clave. He had a superintendent for each
7 of those areas. They had the general foreman and
8 metallurgical staff reporting to them.

9 Q. What was your involvement in creating the
10 budget for Goldstrike?

11 MR. PETROGEORGE: Objection; asked and
12 answered. Go ahead.

13 A. There was a budget cycle. Very involved.
14 We would work with, basically, budget time. We would
15 meet with the regional management team, which would be
16 personnel from Salt Lake, the regional business center,
17 and top management from the different properties. So
18 Turquoise, Cortez, Bald Mountain, Goldstrike, talked
19 about general assumptions and key issues around the
20 budget where we are going to be.

21 Based upon that, if there were pricing
22 changes or things of that nature, that would drive how
23 you would calculate your reserves, which would then
24 possibly change your mine plan. So we would use those
25 new gold prices or different values to begin the

1 budgeting process.

2 Q. (BY MR. BRUST) So for Goldstrike, would
3 you develop a budget with your team at Goldstrike and
4 then send it over to Utah or -- when did the people --

5 A. The process is we would develop the budgets
6 at the site and then send them to the regional business
7 center, which would consolidate the budgets.

8 Q. For clarity, regional business center is
9 Salt Lake City?

10 A. SBC. So the SBC would consolidate -- at
11 least Nevada. Canada probably came into that as well.
12 But they would consolidate all the site budgets, and
13 then we would have a meeting where we would present --
14 and, again, typically the mine managers -- the bigger
15 sites would delegate to our manager, the underground
16 manager, open pit manager, and process manager.

17 We would present our budget to the Salt
18 Lake team at that point, and based upon how everything
19 came together, we might have to go back, do something
20 different on the mine plan, do something different on
21 cost. Capital was a pretty important -- more important
22 issue than usual at that time. And so capital review
23 was very important. That drove operating assumptions
24 as well.

25 Q. How many times -- I know you were there for

1 a short time -- were you involved in presenting the
2 Goldstrike budget to the folks at Salt Lake?

3 A. Probably twice.

4 Q. And when you presented the budget to the
5 folks in Salt Lake --

6 A. Twice for Goldstrike.

7 Q. Did you ever have to go back and rework the
8 budget based on their questions or input?

9 A. Always had to. It was a guarantee.

10 Q. What was the nature of their input? Was it
11 that they wanted to see specific line items change, or
12 was it you need to trim it by 10 percent, or something
13 along those lines?

14 A. It varied. It was more how the region came
15 together looking at -- needed to spend less capital,
16 needing to produce more ounces. Ultimately, you are
17 always trying to lower costs. You could lump it in
18 these three areas.

19 Q. Did they ever give you specific
20 instructions regarding the budget?

21 MR. PETROGEORGE: Objection; vague.

22 A. What do you mean by "specific"?

23 Q. (BY MR. BRUST) Tell me the exact nature of
24 the instructions they gave you regarding the budget.

25 MR. PETROGEORGE: Objection; vague and

1 overbroad.

2 A. We would present the budget. And then
3 based upon that budget, there was generally some
4 comment about, can you make more ounces, typically, but
5 we weren't told you have to go buy it here. Probably
6 at that point the Salt Lake Technical Services Group
7 would get involved, especially in the open pit side.
8 Maybe relooking at laybacks, seeing if we could phase
9 things different. Their people would work in tandem
10 with our site personnel to optimize the plan.

11 Q. (BY MR. BRUST) Who from Salt Lake would do
12 that?

13 A. John Cash was primarily on the mining side,
14 Andy Boland on the process, and John Peckoral on the
15 process side. I'm trying to remember -- there's a
16 geologist on the geology mine side. I can't remember
17 his name.

18 Q. How did they communicate that? Would they
19 come out?

20 A. They'd come out to the site, or we would
21 meet at the shared business center, a combination of
22 both.

23 Q. Who at Goldstrike was in charge of
24 production and processing projections?

25 MR. PETROGEORGE: Objection; vague as to

1 Goldstrike. Are you referring to the mine site or
2 Goldstrike, generally?

3 MR. BRUST: Goldstrike, generally.

4 A. I was, initially. And Steve Yopps was
5 responsible for all process. As I discussed earlier,
6 it broke down from there.

7 Q. (BY MR. BRUST) What about for developing
8 targets for the Goldstrike mines?

9 A. Exploration or --

10 Q. I think more projections. What you are
11 going to do for the next year.

12 A. Again, the underground and the open pit
13 both had their engineering mine planning group and
14 geology groups as well, so based upon the geology and
15 the engineering reviews they would put together the
16 mine plat.

17 Q. Those are the people working under you in
18 Elko; correct?

19 A. That's correct.

20 Q. Do you know what unit cost targets are?

21 A. Can you expand -- yes, I do know what a
22 target is, but I don't understand the relevance.

23 Q. Who would develop the unit cost targets for
24 the next year?

25 A. Actually, I'm not sure if -- there would be

1 ton targets for the region that was put together and we
2 would -- again, because things did change, too,
3 dramatically from year to year, there was -- I guess
4 you would call it a cost target or cost goal that we
5 attempted to work towards. Sometimes grade decreased,
6 had to move more waste, things of that nature, so you
7 may not always hit that projection and you had to
8 readjust that during the budget cycle.

9 Q. Is that something you would review yearly
10 and put the projections out yearly for what the unit
11 cost target would be, or is that something that would
12 change month by month?

13 A. The budget was approved on an annualized
14 basis, and then we would budget -- execute and forecast
15 relative to that budget, and we would report variances
16 monthly.

17 Q. Report variances to Salt Lake?

18 A. Yes.

19 Q. In terms of developing what you thought the
20 costs would be, is that something you did locally?

21 A. Say, if you had a negative variance, you
22 worked towards correcting the variance. If you had a
23 positive variance, people just accepted that.

24 Q. The people who accepted it were whom?

25 A. People in Salt Lake.

1 Q. Did any coordination of the tax policy
2 occur in Elko or in Nevada?

3 MR. PETROGEORGE: Objection; foundation.

4 A. We had a tax person out of Salt Lake. Paul
5 Judd, I think, was the main guy. He would coordinate
6 through the shared business center. That was part of
7 the reason everything was rolled up to the shared
8 business center, and those guys would review and handle
9 the tax side of that.

10 Q. (BY MR. BRUST) Is it fair to say that
11 coordination of the mine operations were handled by you
12 at your two sites?

13 MR. PETROGEORGE: Vague as to coordination
14 of mine operations.

15 Q. (BY MR. BRUST) Who was responsible for
16 coordination of the mine operations?

17 MR. PETROGEORGE: Same objection.

18 Q. (BY MR. BRUST) Do you understand the
19 question?

20 A. I thought I answered that earlier.

21 Q. I'm clarifying.

22 A. I was responsible for the mine operations,
23 and then that was delegated to mine managers both
24 underground and surface who, in turn, delegated that to
25 superintendents down to general foreman.

1 Q. Who developed the mine plans for each mine?

2 A. Again, I think I've answered that. I'm
3 happy to repeat it. The mine plans were developed
4 within the engineering groups for each one of those
5 mining departments.

6 Q. That was in Goldstrike in Nevada; correct?

7 A. That's correct. They were site personnel.

8 Q. What about HR decisions such as salaries?
9 Where was that decided?

10 A. That was coordinated through Salt Lake,
11 especially senior hires. Wages were adjusted on an
12 annualized basis. That was coordinated through Salt
13 Lake. Bonus was approved. All that was submitted to
14 Salt Lake. And we put the plan together as far as the
15 other parts of compensation, but it was always approved
16 out of Salt Lake.

17 Q. Even the salaries for the front line
18 miners, is that something that Salt Lake would have to
19 approve?

20 A. They were wage miners and we had -- their
21 wages were fixed. There was a progression system where
22 based upon competencies people could move up in the
23 progression. And that was moving from one weight scale
24 to another weight scale based upon a review of
25 competencies. In addition, there was a monthly bonus.

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1 And the bonus was actually determined at the mine
2 manager -- the underground mine manager. So Mr. Bane
3 made those determinations with his team.

4 Q. Who did the competency reviews?

5 A. Competency was generally done at the
6 general foreman level.

7 Q. If a general foreman thought that Mr. Smith
8 was doing a good job, he could recommend a wage
9 increase for Mr. Smith?

10 A. That's not right.

11 Q. How did that work?

12 A. Mr. Smith would have to demonstrate some
13 level of sufficiency based upon some standardized
14 criteria for each level.

15 Q. Who developed the standardized criteria?

16 A. Mine management team.

17 Q. The mine management team would be the
18 people on-site; correct?

19 A. That's correct.

20 Q. I'm assuming health insurance and pensions,
21 those types of benefits, that's something that came out
22 of Salt Lake or was that local?

23 A. Marcia and -- it was out of Salt Lake.

24 Q. In regards to contracts, did you have
25 authority to sign contracts?

1 operations. Everything else was Nevada. The
2 reclamation properties, there were some old assets from
3 prior acquisitions, and Barrick fell into that, too.
4 Not abandoned but reclaimed site. I believe they
5 reported to Barrick North America.

6 Q. So Barrick North America and Barrick
7 Goldstrike are not the same company?

8 MR. PETROGEORGE: Objection; foundation.

9 A. To my knowledge, Barrick Goldstrike is a
10 subset of -- again, I don't know the legal, but we
11 answered to Barrick North America at Goldstrike. You
12 have Barrick South America. You have Barrick Africa
13 and Barrick Asia.

14 Q. (BY MR. BRUST) Did your check come from
15 Barrick North America or Goldstrike?

16 A. Good question. I think it was Goldstrike.

17 Q. Was payroll, in your understanding, for the
18 Goldstrike employees from Goldstrike in Nevada or was
19 it done through Barrick North America or another
20 company?

21 A. Originally that was at Goldstrike, and
22 later it became part of the shared business services
23 center.

24 Q. When it became part of the shared business
25 services center, did it go up to another company or was

1 repair and maintenance on the Roaster; is that right?

2 A. Yes.

3 Q. Do you remember discussing either Exhibit 3
4 or Exhibit 4 with Mr. Feehan?

5 A. I do not.

6 Q. What about discussing either Exhibit 3 or 4
7 with Mr. Merriam?

8 A. I do not.

9 Q. Did you have any type of a legal team in
10 Nevada for Goldstrike?

11 A. Mr. Haddock was in Salt Lake City.

12 Q. If you had any legal issues, it would go to
13 Mr. Haddock then?

14 A. That's correct.

15 Q. Do you know if Mr. Haddock was a Goldstrike
16 employee or Barrick Gold employee?

17 A. He reported to Greg Lang, so he probably
18 was a Barrick North America or whatever the structure
19 was there.

20 Q. Is it your understanding that Goldstrike --
21 that you were the highest ranking Goldstrike employee?

22 MR. PETROGEORGE: Objection; foundation.

23 Q. (BY MR. BRUST) Just asking your
24 understanding.

25 A. As far as the operations, yes, I was the

1 the Barrick North America would have to be involved in
2 that transfer?

3 A. I would say at a low level, nonproduction
4 level. If the GMs had enough discretion, we could work
5 that out. You would still go through the shared
6 business center to manage the transfer. I'm talking
7 hypothetically. I don't recall that happening but that
8 would have been the protocol.

9 Q. What about your IT? Who coordinated that
10 in Nevada?

11 A. Hans Geartler -- he was out of the shared
12 business center. We had our site IT folks. The IT was
13 based out of the shared business center and Salt Lake.

14 Q. So what types of things had to go to Salt
15 Lake, if you know?

16 A. Capital investments, new servers, if you're
17 changing platform. If you're moving from one type of
18 software -- all our planning was on one type of mining
19 software, so if we were going to move off of that,
20 that's a pretty significant decision. Those would have
21 been Salt Lake-based discussions.

22 Q. Is that because it's going to be across
23 several different entities under Salt Lake if you were
24 going to make that type of change?

25 A. What Barrick North America was attempting

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1 Lake component, depending upon how it was being
2 managed.

3 Q. So HR would be at three levels, site, SBC,
4 and Salt Lake?

5 A. Sure.

6 Q. Because you were the highest ranking
7 Goldstrike member, it would go to Salt Lake?

8 A. Yes.

9 Q. Do you know who Brian Cummings worked for?

10 A. I don't recall. Blake Measom.

11 Q. What company did Brian Cummings work for?

12 MR. PETROGEORGE: Objection; foundation.

13 A. It would have been Barrick North America.
14 I'm not sure if he directly reported to Blake, but he
15 was in Blake's group.

16 Q. (BY MR. BRUST) Did you ever have to travel
17 to Utah while you were the manager?

18 A. I did.

19 Q. How often?

20 A. Twice a year, three times a year.

21 Q. The times that you went to Utah, what was
22 it for?

23 A. Budget meetings, strategic planning
24 sessions. I think we had a safety meeting.

25 Q. Were those global meetings for all of the

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1 EXAMINATION

2 BY MR. PETROGEORGE:

3 Q. I want to clarify that the date of your
4 departure from Goldstrike was October 5, 2009; correct?

5 A. Yes.

6 Q. So you were the general manager for the
7 majority of that year?

8 A. Yes.

9 Q. Can you tell me a little bit more about the
10 Storm mine? Was that exclusively Goldstrike property
11 or a joint venture?

12 A. That was a joint venture.

13 Q. Who was the joint venture partner?

14 A. Good question. I don't remember. I can't
15 remember.

16 Q. Insofar as you were the GM of Goldstrike
17 because Goldstrike was one of the joint ventures,
18 that's why you had some input with that?

19 A. It was proximity.

20 Q. I want to talk to you a little bit more
21 about this issue -- when we were talking about Nigel
22 Bain's duties, you said -- we were talking about making
23 production and cost targets and you mentioned that
24 Nigel had authority to decide where to mine and make
25 some decisions as long as he was not deviating from

1 budget. When you talk about -- what sorts of things
2 would be a deviation from budget that would have to be
3 escalated up the chain to Salt Lake?

4 A. If we had an area that didn't have the
5 grade that we thought we did and we had to move to
6 another area, that would be fine. It was probably a
7 longer term trend -- we were seeing a general pattern
8 and we could tell that we were going to have to make a
9 major correction to the mine plant and would require
10 development because development would bring in capital,
11 at that point you would be getting Salt Lake involved
12 in that.

13 Q. So minor deviations he had authority over
14 but significant deviations had to go up the chain to
15 somebody else?

16 A. Yes.

17 Q. I think you testified that Nigel Bain had
18 the authority to hire and fire in coordination with HR.
19 His authority was specifically limited to the
20 underground mine personnel that worked under him;
21 correct?

22 A. That's correct.

23 Q. He didn't have any sort of authority
24 companywise?

25 A. No.

1 managing expectations.

2 Q. We talked a little bit about unit cost
3 targets. You talked about the budget was approved on
4 an annualized basis and then you would execute a
5 forecast relative to that budget. When the unit cost
6 target is set, it's set as part of that budgeting
7 process; correct?

8 A. Correct.

9 Q. And, ultimately, that had to go through
10 Salt Lake?

11 A. It did. In fact, Greg Lang would tell us,
12 you can't control the gold price, you can control your
13 production, your costs, and safety.

14 Q. I think we talked a little bit -- there was
15 some reference to life-of-mine plans. What role did
16 Salt Lake have in developing life-of-mine plans for
17 Goldstrike?

18 A. Both review and support. John Cash and
19 even Andy Boland, they were involved as we did the
20 planning.

21 Q. Could a life-of-mine plan be considered
22 finalized without Salt Lake's blessing?

23 A. Life-of-mine plan was tied to the budget.
24 No, that was generally approved through Salt Lake.

25 Q. You mentioned that for waged miners their

1 hourly rates were fixed. There was various scales they
2 could move up and down on. Who set the scales?

3 A. At the site those were -- you would post
4 but those had the final approval for wages and went
5 through Salt Lake HR.

6 Q. You mentioned -- for instance, you, again,
7 referred to Nigel. So if he had a miner that had met
8 certain performance or technical skills thresholds, you
9 could move them from one wage scale to another. Was
10 that something he had full discretion on or were there
11 certain parameters that would be set? For instance,
12 did he decide what the requirements for a certain level
13 were, or was that done by you or someone else and he
14 would decide if they'd met that parameter?

15 A. That was done lower. He just provided
16 oversight to make sure that somebody fishing with the
17 other guy didn't favorably be promoted.

18 Q. I will have you take a quick look at
19 Exhibit 2. Do you know if Exhibit 2 is specifically
20 referring to a sole source contract or is it more of a
21 general contract?

22 A. That could be for any contract.

23 Q. I think I asked you a question similar to
24 this but I want to make sure, do you know one way or
25 another whether folks like Greg Lang and Mike Feehan

1 from a title perspective had overlapping titles with
2 Barrick North America and Goldstrike?

3 A. I believe they did.

4 Q. If you look at Exhibits 3 and 4, there are
5 these contract level authorities. Were the contract
6 level authorities something that were set at Nevada or
7 set higher up?

8 A. That was set in Salt Lake.

9 Q. Again, going back to your testimony that
10 you were the highest ranking Goldstrike employee in
11 terms of operations, that didn't make you the highest
12 ranking employee for Goldstrike in total; correct?

13 A. That's correct.

14 Q. That would have been Greg Lang?

15 A. That's my recollection.

16 Q. And even Feehan was higher than you in the
17 chain?

18 A. Yup, and probably Blake Measom.

19 Q. You're referring to the day-to-day, on the
20 ground --

21 A. I'm talking like an operator.

22 Q. You mentioned on safety that various people
23 had responsibility for safety in Elko. What role did
24 Salt Lake have in establishing safety policies and
25 protocols?

1 A. They were very involved in safety
2 initiatives, safety programs, holding us to account.
3 We had a general regional business center that helped
4 us with any kind of announcements we had relative to
5 serious accidents or fatalities so very involved.

6 Q. Regardless of whether their titles were
7 Barrick Gold North America or Goldstrike, did you view
8 the Salt Lake City executive team responsible for and
9 overseeing Goldstrike?

10 A. Yes.

11 Q. Where did you consider the corporate
12 headquarters of Goldstrike to be in 2009?

13 MR. BRUST: Objection; calls for a legal
14 conclusion, but you can answer.

15 A. I answered to Salt Lake. Salt Lake
16 answered to Toronto.

17 Q. (BY MR. PETROGEORGE) On Exhibits 7 and 8,
18 you were asked about this Nevada common contracts
19 recipient of the email. Could that be referring to the
20 general contracts team at the SBC?

21 A. Could be.

22 Q. Could that have also included some of these
23 folks on Exhibit A that are specifically identified
24 like Karen Shaver and Marilyn Perkins? Do you know?

25 A. I can't speak to that.

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EXAMINATION

BY MR. PETROGEORGE:

Q. When you talked about moving capital within Goldstrike, I think you said even though you had discretion in terms of I will move from one thing over to here, it was a major shift, and you were going to communicate that with Salt Lake; correct?

A. Yes. And my guess is the shared business center would know that, that would affect forecasting, so those were communicated on multiple fronts.

Q. In terms of the -- sort of the total percentage of your job that was impacted by Salt Lake, can you estimate that for me?

A. All of it.

MR. PETROGEORGE: No further questions.

MR. BRUST: I don't have any other questions. Thank you.

(Deposition concluded at 11:33 a.m.)

EXHIBIT E

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,)
)
Plaintiff,)
)
v.) Case No.
) 03:09-CV-612-MMD-WGC
BARRICK GOLDSTRIKE MINES, INC.,)
)
Defendant,)
)
)
-----)

DEPOSITION OF

GORDON MERRIAM

MARCH 20, 2018

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TX CSR NO. 8929
UTAH CSR NO. 10611481-7801

FILE NO.: AC02624

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1 A. No, I'm not.

2 Q. When were -- when did you leave Barrick?

3 A. End of April 2015.

4 Q. And what position did you have with Barrick in
5 the end of April 2015?

6 A. The title was called manager contracting and
7 procurement.

8 Q. And which Barrick entity were you employed by?

9 A. BGNA.

10 Q. Is that Barrick Gold North America?

11 A. Correct, yes.

12 Q. And when did you start working for Barrick Gold
13 North America?

14 A. May of 2004.

15 Q. And the entire time you worked for BGNA, did you
16 work in Salt Lake City?

17 A. Yes, I did.

18 Q. And what did you start out doing for BGNA in May
19 of 2004?

20 A. That same position.

21 Q. Wow. Did you ever have any other positions for
22 BG- --

23 A. Not within --

24 Q. -- -NA?

25 A. -- Barrick, no.

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1 A. I do remember that one.

2 Q. And do you remember who was the general manager
3 of Barrick Goldstrike Mines in 2009?

4 A. Well, there was a few changes, but John --
5 (unintelligible) -- was there from --

6 THE REPORTER: "John" -- who?

7 THE WITNESS: Mansanti.

8 Q. (BY MR. BRUST:) Do you remember the name of the
9 other people who were general manager in 2009?

10 A. There was a couple of changes. I think Nigel
11 Bain followed him and then Randy Buffington.

12 Q. What were your duties as manager of contracts
13 and procurement?

14 A. I had responsibility to all the supply chain for
15 North America.

16 Q. What does that mean, "...supply chain for North
17 America"?

18 A. Purchasing, contracting, warehouse, logistics,
19 construction.

20 Q. Okay. So would you help with deciding which
21 vendors would provide services?

22 A. Yes.

23 MR. PETROGEORGE: Would you read back that
24 last question?

25 I missed it.

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1 Energy Services" that was to provide the erecting and
2 dismantling of a scaffold inside the CIL tank?

3 A. I'm familiar with the contractor, but I can't
4 remember whether it was -- would have come to me or not.

5 Q. And if a contract like that would come to you,
6 would you then be the one who executed the contract?

7 A. No.

8 Q. Who would execute the contract?

9 A. We had a delegation of authority and who had the
10 right to sign contracts or not.

11 Q. Who had the right to sign contracts for
12 Goldstrike?

13 A. The general manager and the director of
14 operations.

15 Q. And who was the director of operations at that
16 point?

17 A. I believe that was Mike Feehan.

18 THE REPORTER: Spell, please.

19 THE WITNESS: F-e-e-h-a-n.

20 Q. (BY MR. BRUST:) And where did Mike Feehan work
21 in 2009?

22 A. Salt Lake City.

23 Q. And so would there be -- was it, I guess, a
24 coexisting right to execute contracts or were there some
25 contracts that Mr. Mansanti could sign and other

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1 A. I'm familiar with them, but...

2 Q. So then by the time it gets to you, what stage
3 in the process is it?

4 And I'll try to be more clear on my question
5 which is you said that for the specifications and what's
6 actually needed, you're relying on the people who are
7 turning the wrenches and the people who are on the site,
8 correct?

9 A. Yes.

10 Q. Okay. And then at some point those
11 specifications are added to one of the either master
12 services agreement or a purchase agreement that's pretty
13 much a form by Barrick, right?

14 A. There's a number of steps in between there.

15 Q. Okay.

16 A. Again, depending on the scope of work --

17 Q. Um-hum --

18 A. -- the estimate amount of the expenditure --

19 Q. -- uh-huh.

20 A. -- it would detail what steps we take next.

21 Q. All right.

22 A. And those mechanics are hands on. Those are
23 actually the end users which could involve a team of
24 maintenance engineering and so forth that is developing
25 those.

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1 be the document coming through the mail carrier.

2 Q. So the "...face to face..." -- "Sometimes it..."
3 was "...face to face...email..." or "...mail carrier."

4 "Mail carrier," you mean the U.S. Postal
5 Service --

6 A. Or it could just be --

7 (Simultaneous colloquy.)

8 Q. -- or FedEx or something --

9 A. -- or it could be an internal employee coming
10 back and forth.

11 Q. Okay.

12 A. Could be any number of things.

13 Q. How often did you go out to Goldstrike in 2009?

14 A. I can say I went to all the mines or was there
15 probably 25 percent of the time.

16 But, again, there's five mines out there and
17 there's Canada and later the Dominican Republic.

18 Q. Okay. So 25 percent of the time you were away
19 from Salt Lake.

20 A. Probably, yeah.

21 Q. Okay. And then part of that time was in Canada.

22 A. Um-hum.

23 Q. Where in Canada?

24 A. Toronto; Marathon, Ontario --

25 Q. Was it --

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1 MR. PETROGEORGE: Is now a good time for a
2 break?

3 MR. BRUST: Now is a good time for a
4 break.

5 (Recess from 2:27 p.m. until 2:37 p.m.)

6 MR. BRUST: I don't have any other
7 questions.

8 MR. PETROGEORGE: Okay. I have some
9 follow-up.

10 EXAMINATION

11 BY MR. PETROGEORGE:

12 Q. All right. Mr. Merriam, where did you consider
13 the corporate headquarters of Goldstrike to be located in
14 2009?

15 A. Salt Lake City.

16 Q. Who was the president of Barrick Goldstrike in
17 2009?

18 A. Greg Lang.

19 THE REPORTER: "Greg" -- what?

20 THE WITNESS: Lang, L-a-n-g.

21 Q. (BY MR. PETROGEORGE:) Where was he located?

22 A. Salt Lake City.

23 Q. In 2009 what was the relationship between
24 Goldstrike and Barrick Gold North America as you
25 understood it?

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1 A. They were one of eight actively operating mine
2 sites.

3 Q. And what role did BGNA play with respect to
4 Goldstrike?

5 A. I think we oversaw 'em. We managed 'em.

6 Q. As the manager of contracting and procurement
7 for BGNA, who was your direct supervisor?

8 A. Blake Measom.

9 THE REPORTER: Who?

10 Q. (BY MR. PETROGEORGE:) And where --

11 THE WITNESS: Measom, M-e-a-s-o-m.

12 Q. (BY MR. PETROGEORGE:) And did you have any
13 other direct supervisors during your tenure at BGNA?

14 A. During my tenure, yes.

15 I had Mike Feehan as the director of
16 operations; later Andy Bolland who was the director of
17 operations.

18 Q. In 2009 who was your direct supervisor?

19 A. Blake Measom.

20 Q. Outside of the quarterly meetings that you
21 attended with the other counterparts in the other
22 regions, how often did you communicate with Toronto?

23 A. I'd say occasionally, phone, you know, my dotted
24 line would check in. He had five regions and he would
25 just check in, see what's going on.

1 Q. Was it more than weekly, less than weekly?

2 A. It was less than weekly.

3 Q. Okay. What level of oversight and authority did
4 you have with respect to contracting and procurement
5 functions relating to Barrick Goldstrike Mines?

6 A. Ultimately, I had all of it.

7 Q. While you were not an employee of Barrick
8 Goldstrike Mines, did you consider yourself an agent of
9 Barrick Goldstrike Mines with respect to the contracting
10 and procurement functions?

11 A. Yes.

12 Q. You referenced in the discussions with Mr. Brust
13 that there were supply chain employees, I think you
14 referred to them as buyers that were located at each of
15 the sites including Goldstrike; is that correct?

16 A. Yes.

17 Q. What responsibility, if any, did you have over
18 those employees?

19 A. Those employees would have been indirect to me,
20 but they would have had a -- a pretty solid line into
21 employees that worked for me.

22 Q. For instance, with respect to buyers in the
23 supply chain group at Goldstrike, who were -- who would
24 have -- who would they have had a pretty direct line that
25 worked for you?

1 A. Bill Seay, S-e-a-y.

2 Q. You mentioned that in the -- in the contracting
3 process you talked about that there were processes that
4 were taken along the way from specs development to
5 determining whether it was a sole-source or an RFP
6 procurement process to approving either the sole-source
7 or the bidder -- bidder -- selected bidder and then
8 creating and executing the contract.

9 Who had responsibility for developing or
10 making adjustments to that process for Goldstrike --
11 (Simultaneous colloquy.)

12 A. Ultimately --

13 Q. -- over --

14 A. -- it was -- it was me. I had responsibility
15 for that.

16 Q. And if there were going to be changes made to
17 those processes that were applied across the region and
18 particularly at Goldstrike, would those changes have been
19 something that you would have had direct involvement in
20 approving?

21 A. Yes.

22 Q. You mentioned that there were these consolidated
23 service agreements that would be entered where a service
24 provider was providing ongoing service to various sites.
25 I just want to make sure I understand in those

1 agreements, would each individual entity for each of
2 those sites be a party to those agreements?

3 A. In most cases, yes. There might be some
4 specifics if they didn't do that at a mine site.

5 For an example, if Bald Mountain didn't have
6 a processing plant, you wouldn't need some of those
7 suppliers to be incorporated in that agreement.

8 Q. Okay. And let's say, for instance, that there
9 was a -- an agreement relating to the processing
10 functions at Goldstrike and Cortez, you know, and the
11 other mines other than Bald Mountain, would each of those
12 entities be a party to that agreement?

13 A. Yes, they would.

14 Q. And so was one agreement to cover all of those
15 entities? You weren't entering into agreement without
16 those entities being a part of that agreement.

17 A. Correct.

18 Q. To the extent that John Mansanti and the -- as
19 the general manager at Goldstrike had been granted
20 authority to execute contracts on behalf of Goldstrike,
21 where would that delegation of authority have originated
22 from?

23 A. Salt Lake.

24 Q. And who decided if his level of authority should
25 be increased or decreased?

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1 A. That would have been Greg Lang and probably
2 Blake Measom.

3 MR. PETROGEORGE: Thank you.
4 Nothing further.

5 MR. BRUST: Okay. I just have a couple.

6 EXAMINATION

7 BY MR. BRUST:

8 Q. Was BGNA ever a party to those multi-party
9 contracts you were just talking about?

10 A. I don't believe so.

11 Q. Was BGNA ever a party to any of the contracts
12 that provided services to Goldstrike?

13 A. Help me understand that question.

14 Q. Was Barrick Gold North America ever a party to
15 the contract that provided services to Goldstrike?

16 A. Not that I'm aware of.

17 Q. What about that provided equipment to
18 Goldstrike?

19 A. Not that I'm aware of.

20 Q. Okay.

21 You talked about there being a pretty direct
22 line. What did you mean about when you said pretty
23 direct line earlier?

24 A. The activities performed were directed from
25 employees that worked for me for those individuals at the

1 sites. They were responsible for the activities. They
2 had, because they were in the budget --

3 Q. Um-hum.

4 A. -- of the mine sites around, they had that
5 relationship to a superintendent or a supervisor over
6 supply chain.

7 But there was both input even on promotions
8 and salary adjustments and so forth, there would have
9 been input from people that directly reported to me.

10 Q. So the people who reported to you would -- so --
11 so you made decisions about personnel matters at
12 Goldstrike?

13 A. No.

14 Q. Did you have input on decisions about personnel
15 matters at Goldstrike?

16 A. Only with regard to the big picture of maybe
17 what annual increases might be.

18 Q. "...of..." what? I'm sorry?

19 A. Annual increases might be or recommended.

20 Q. And when you said -- and when you said a direct
21 line earlier, are you talking about that they can just
22 pick up the phone and call them directly or is it a
23 supervisory reporting direct line?

24 A. I think on paper it was to the mine site. But
25 also with the practice, the policies, the procedures, the

EXHIBIT F

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BULLION MONARCH MINING, INC.,)
)
Plaintiff,)
)
v.) Case No.
) 03:09-CV-612-MMD-WGC
BARRICK GOLDSTRIKE MINES, INC.,)
)
Defendant,)
)
)
)
-----)

DEPOSITION OF
TONY ASTORGA
MARCH 20, 2018

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REPORTED BY: DEBY COUVILLON GREEN, CA CSR NO. 2791
TX CSR NO. 8929
UTAH CSR NO. 10611481-7801

FILE NO.: AC02624

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1 and in December of 2010 I was promoted to a contracts
2 manager position underneath Barrick Gold of North
3 America.

4 Q. And did you ever live in Salt Lake City during
5 the time you worked for Barrick Gold North America?

6 A. No, I did not.

7 Q. Did you have an office in Elko?

8 A. Yes, I did.

9 Q. Did you have an office in Salt Lake City?

10 A. Whenever I would visit, one would be made
11 available for me to work in.

12 Q. You didn't have your own office here --

13 A. No --

14 Q. -- correct?

15 A. -- no.

16 Q. So what were your duties as -- well, let me back
17 up. Where was your office in Elko, Nevada?

18 A. I believe the address was -- well, it's the
19 Shared Business Center in Elko, Nevada which operated
20 under the authority of Barrick Gold of North America.

21 THE REPORTER: What was the name of the
22 business center?

23 THE WITNESS: Shared Business Center.

24 People would refer to it as SBC.

25 Q. (BY MR. BRUST:) And what was your department at

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1 the Shared Business Center? Was it the Contracts
2 Department?

3 A. It was contracts, it was part of supply chain.

4 And, again, all underneath Barrick Gold of
5 North America.

6 Q. Okay. What else was at the Shared Business
7 Center besides contracts?

8 A. There was purchasing. There was accounts
9 payable. There was some lower divisions of finance.

10 However, the executive direction again was
11 here in Salt Lake City underneath Barrick Gold of North
12 America.

13 Q. Anything else at the Shared Business Center that
14 you can recall besides contracts, purchasing, accounts
15 payable and some lower-level finance?

16 A. Human Resources, some portion of the I.T. group,
17 various other project management-type things.

18 But they all reported underneath --

19 (Simultaneous colloquy.)

20 Q. No, I -- I know.

21 You've said that many times so far. You got
22 that tagged on to every answer.

23 That's good.

24 All right. So who else worked at contracts
25 at the Shared Business Center in Elko besides you?

1 per month.

2 Q. And would that be contract-related issues?

3 A. Yes.

4 Q. So when you first started with Barrick in
5 February of 2009 as a contracts supervisor, what were
6 your duties?

7 A. Basically supporting the policies underneath the
8 direction of Barrick Gold of North America. Facilitating
9 contracts process. And to work to support project
10 managers throughout the region.

11 In general the contracts process had four
12 stages.

13 The first stage is a request for contract.

14 The second stage is a request for proposal.

15 The third stage is an active agreement.

16 And the fourth stage is a closed agreement.

17 And, in general, the work activities and the
18 positions supported those four stages of the contract.

19 Q. Okay. So how would a request for contract work?
20 Who would that come from?

21 A. Generally it would come from a project manager
22 that was associated with one of the mine sites and
23 provides information in regards to the type of service
24 request that was needed, information in regards to
25 estimates associated with the expenditure, identify the

1 commercial -- I'm sorry -- identify the technical and the
2 safety representation associated with that project, and
3 different suggested contractors in order to perform the
4 work.

5 Q. And that would come from the project manager?
6 The project manager would suggest who might be used?

7 A. Depending upon the nature of the project, if
8 they had identified some suggested contractors or
9 supervisors -- or contracts -- contracting entities to
10 utilize, that information would be provided as part of
11 their request for contract process.

12 Q. And then was there also a request for proposal?

13 A. No. At times there was a -- a process to obtain
14 a sole-source justification authorization, single --
15 single or sole-source justification authorization.
16 And -- and at that time, depending upon the authorization
17 that was provided and the reasoning to support it, at
18 times the processing for a quotation would not continue.

19 Q. And who would issue the request for proposal if
20 they needed to be issued?

21 A. The request for proposal would be generated
22 through the contracts team and communicated to the
23 various contractors that would be in support of the
24 project.

25 Q. And when you say "...contracts team...", you

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1 mean either you or Miss Micheletti?

2 A. The contracts group or team underneath the
3 direction of Barrick Gold of North America out of
4 Salt Lake City, myself, Jody Micheletti, or different
5 contract administrators that were part of the team in the
6 Elko, Nevada office.

7 Q. Who from Salt Lake City issued requests for
8 proposal while you were working in 2009?

9 A. Gordon Merriam or Bill Seybert.

10 Q. And do you remember which contracts they issued
11 requests for proposal for?

12 A. Various needs and requirements. My focus was
13 primarily on the site services, consulting services.

14 We had different individuals that focused on
15 the purchasing and different individuals that focused on
16 the commodities.

17 Q. Do you remember any request for proposals that
18 came out of Salt Lake City in 2009?

19 A. Specific projects, I can't recall at this time.
20 But I can say that some requests for proposals were
21 generated from Salt Lake City in the period of 2009.

22 Q. How many?

23 A. As I didn't directly involve, I -- I can only
24 speculate.

25 Q. Okay. And approximately how many requests for

1 of North America.

2 Q. All right. And so if -- well, how often would
3 you communicate on a weekly basis with people from
4 Barrick Gold- -- I'm sorry -- Barrick North America in
5 Salt Lake City?

6 A. How frequent would I communicate --

7 Q. Yeah.

8 A. -- with them? Through phone or email?

9 Q. Any.

10 A. Several times throughout the day.

11 Q. And who did you communicate with in Salt Lake
12 City?

13 A. The majority of the communication with Salt Lake
14 City was through Gordon Merriam or Bill Seybert as part
15 of the supply chain team.

16 And, depending upon the nature of other
17 projects, it would be various individuals, including
18 legal support out of Salt Lake City.

19 Q. Was the legal support from Mr. Haddock?

20 A. The majority of the support was through Mr. Ted
21 Grandy, G-r-a-n-d-y.

22 Q. Was he a lawyer who worked for Barrick North
23 America?

24 A. Barrick Gold of North America, yes.

25 Q. Okay. Did you ever have conversations with

1 located in Salt Lake City at the -- under the Barrick
2 Gold of North America, Incorporated.

3 Q. What level of authority, if any, did you have to
4 sign or approve contracts on behalf of Barrick Goldstrike
5 Mines, Incorporated?

6 A. I could not sign any contracts on behalf of the
7 entity.

8 Q. What about with respect to the other entities?

9 A. No.

10 Q. What -- part of your job was to use contract
11 forms that had been put into place to facilitate the --
12 actually, strike that.

13 You used contracting forms as part of your
14 daily functions, correct?

15 A. That's correct.

16 Q. Including contract forms for master service
17 agreements, master purchasing agreements, master
18 consulting agreements, correct?

19 A. That's correct.

20 Q. Where did those contracting forms originate
21 from?

22 A. In Salt Lake City.

23 Q. And if you needed to make an exception to those
24 contract forms, how would that process have to be
25 undertaken?

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1 A. Any exceptions to our standard terms and
2 conditions would be reviewed in consultation with the
3 legal group located in Salt Lake City.

4 Q. And did you have any authority to approve
5 exceptions to the terms and conditions of those contract
6 forms?

7 A. Unless preauthorized by Barrick Gold of North
8 America and the legal support, I had no authorization
9 to -- to implement any alternative terms and conditions.

10 Q. All right. You indicated that Barrick Gold
11 Corporation had five main supply chain policies and that
12 those pol- -- policies related to sourcing, process and
13 procurement and contracts.

14 Who decided how those policies would be
15 adapted for and implemented throughout the North American
16 region?

17 A. I was working underneath the direction of my --
18 my -- my boss -- bosses in Barrick Gold of North America
19 located in Salt Lake City, Utah.

20 Q. And you indicated that there would be policies
21 on the websites that you could go and look for policies.

22 Were those the BGC policy -- the Barrick Gold
23 Corporation policies or were those the -- the policies as
24 they had been adopted by Barrick Gold of North America?

25 A. So the finalization of those policies required

1 contract. Depending whether or not the sourcing process
2 had proceeded to Stage II of the request for proposal,
3 sometimes that stage would be skipped depending upon the
4 authorization. And it would be routed for execution
5 prior to Stage III where we had an active agreement in
6 place that was signed and executed and authorized for the
7 services to begin.

8 Q. And at that stage it would either be the GMs or
9 the executives in Salt Lake that would sign those,
10 correct?

11 A. That's correct.

12 Q. The SBC in Elko was set up to provide
13 administrative services to the various mine sites in the
14 region; correct?

15 A. That's correct.

16 Q. Including contracting services, correct?

17 A. That's correct.

18 Q. You testified that you were not an employee of
19 Barrick Goldstrike Mines, Inc.

20 But is it accurate to say that you performed
21 a contracting or procurement service for and on behalf of
22 Barrick Goldstrike Mines, Inc.?

23 A. Yes. Underneath the direction of Barrick Gold
24 of North America.

25 Q. And as part of your job as a Barrick Gold of

1 North America employee, you were to provide contracting
2 and procurement services for and on behalf of Barrick
3 Goldstrike Mines, correct?

4 A. That's correct.

5 Q. If you issued an RFP for a project that had been
6 requested for Barrick Goldstrike Mines, Inc., what entity
7 would you be issuing that RFP for and on behalf of?

8 A. The RFP would be generated on behalf of the
9 requesting individuals.

10 The reporting structure would -- would vary.
11 But the ultimate agreement would be executed underneath
12 the legal entity that was identified. So in -- in -- in
13 the cases we needed to make sure that the execution of
14 the contract was either authorized by the general manager
15 associated with that entity or the -- the executives or
16 officers located in Salt Lake City, Utah or Barrick Gold
17 of North America.

18 Q. Let me ask -- let's take an example of these
19 roaster shutdown projects that we looked at earlier
20 today.

21 A. (Nods head.)

22 Q. That's a Goldstrike roaster project.

23 A. Um-hum.

24 Q. If -- if you're issuing an RFP and receiving
25 proposals in response to that RFP, are you doing that for

1 and on behalf of Goldstrike or are you doing that on
2 behalf of some other entity?

3 A. On behalf of Goldstrike.

4 Q. And when you're interacting with vendors and
5 suppliers for those projects, are you doing so for and on
6 behalf of Goldstrike or on behalf of some other entity?

7 A. On behalf of the entity depending upon the need
8 for the contract within the region.

9 Q. If you'd take a look at Exhibit 13. When you
10 sign a "Contract Summary" on behalf of the Contracts
11 Department and note that it's been "Completed by" you,
12 are you approving the contract in any way?

13 A. No.

14 Reviewing the -- the content.

15 But the approval is not my responsibility.

16 Q. If you look at Exhibit 15, you indicated that
17 the difference between Exhibit 15 and Exhibit 13 was that
18 the forms had changed.

19 A. Yes.

20 Q. There was an update of the forms and improvement
21 of the process?

22 A. Yes.

23 Q. Would you have consulted with anyone in
24 Salt Lake in making those changes in the process?

25 A. Yes.

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1 Q. Who would you have consulted with?

2 A. Gordon Merriam or Bill Seybert located in
3 Salt Lake City, Utah.

4 Q. Take a look at Exhibit 29. If you look at the
5 top of Exhibit 29, you're -- the email from Jorge
6 Armstrong to you and to others, it says,

7 "Tony,

8 "I had Mark Rantapaa and Tracy
9 Miller sign the Request for
10 Contract."

11 Do you see that?

12 A. I see that.

13 Q. Is a "Request for Contract" the same as a
14 contract approval or contract execution?

15 A. No.

16 Q. What is a "Request for Contract"?

17 A. A "Request for Contract" starts the process.

18 The full authorization for funding may not
19 yet be in place at that time.

20 And the final approval is associated with --
21 through the process would be obtained and authorized by
22 either the general manager or executives or individuals
23 as Barrick Gold of North America.

24 MR. PETROGEORGE: Let me just take a quick
25 break, step out for a second.

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1 MR. BRUST: Sure.

2 (Recess from 1:20 p.m. until 1:21 p.m.)

3 MR. PETROGEORGE: I have nothing further.

4 EXAMINATION

5 BY MR. BRUST:

6 Q. Of the approximately 100 agreements that went
7 through the Shared Business Center in 2009, how many of
8 them required Salt Lake City involvement?

9 A. In excess of a hundred in contracts during the
10 period of 2009, I don't recall the exact number --

11 Q. Um-hum.

12 A. -- but, depending upon the nature associated,
13 every contract at some point has -- had been reported in
14 some form or fashion to -- the Salt Lake City office had
15 some aspect of that report.

16 Q. When you say "reported," you mean you just sent
17 them a copy of it and said, "This is a new contract that
18 we have"?

19 A. Consultation with them in- -- individuals in
20 Salt Lake City depending upon the nature of the contract.

21 The exact number of how many consultations
22 occurred during the formation of every single contract, I
23 cannot be certain.

24 At some point every single contract that was
25 executed for any of the entities were reported to Barrick

EXHIBIT G

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Attorneys for Barrick Goldstrike Mines Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

v.

BARRICK GOLDSTRIKE MINES INC., *et al.*,

Defendants.

Case No. 3:09-CV-00612-MMD-WGC

**BARRICK GOLDSTRIKE MINES
INC.'S ANSWERS AND OBJECTIONS
TO BULLION MONARCH MINING,
INC.'S JURISDICTIONAL
INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure ("FRCP") and this Court's Order granting Plaintiff Bullion Monarch Mining, Inc.'s ("Bullion") Motion for Jurisdictional Discovery [ECF No. 267] (the "Jurisdictional Order"), defendant Barrick Goldstrike Mines Inc. ("Goldstrike") hereby objects to and answers Bullion's Jurisdictional Interrogatories served on Goldstrike via hand delivery on October 31, 2017 (the "Jurisdictional Interrogatories").

GENERAL OBJECTIONS

1. Goldstrike objects to the Jurisdictional Interrogatories to the extent the information sought was previously produced or provided to Bullion or its counsel through the Declaration of

1 Rich Haddock in Support of Motion to Dismiss for Lack of Subject-Matter Jurisdiction [ECF 260-
2 1] (“Haddock Declaration”) or through prior deposition testimony given by witnesses in this case.

3 2. Goldstrike bases its answers and objections to the Jurisdictional Interrogatories on
4 currently known and available information. Goldstrike will amend or supplement its responses to
5 the extent necessary and required by Rule 26 of the FRCP.

6 3. Goldstrike objects to the Jurisdictional Interrogatories to the extent the information
7 sought therein is contained in publicly available records that are equally available to both Goldstrike
8 and Bullion.

9 4. Goldstrike objects to the Jurisdictional Interrogatories insofar as they seek
10 information not relevant or proportional to the limited jurisdictional question presently before the
11 court—namely, whether Goldstrike’s corporate headquarters or “nerve center” under *Hertz*
12 *Corporation v. Friend*, 559 U.S. 77 (2010) (“Hertz”) was located in Salt Lake City in 2009.

13 5. Goldstrike objects to the Jurisdictional Interrogatories to the extent they are
14 overbroad, vague, ambiguous, compound, complex, unduly burdensome, or oppressive in the
15 amount, scope, or type of information requested.

16 6. Goldstrike objects to the Jurisdictional Interrogatories insofar as they seek to impose
17 burdens on Goldstrike inconsistent with or in addition to its discovery obligations as set forth in
18 Rules 26 and/or 33 of the FRCP and/or the limited scope of the Jurisdictional Order.

19 7. Goldstrike objects to the Jurisdictional Interrogatories as overbroad, unduly
20 burdensome and oppressive insofar as they seek to impose upon Goldstrike the obligation to
21 identify information that is at least 8 years old, is no longer reasonably known or available to
22 Goldstrike, or cannot be determined or ascertained through a reasonably diligent search and inquiry
23 on the part of Goldstrike. Goldstrike will not undertake any obligation to identify or disclose
24 information that is not reasonably and readily within its current knowledge, custody, possession or
25 control.

26 8. Goldstrike objects to the Jurisdictional Interrogatories to the extent they seek
27 disclosure of information that would violate rights of privacy and other statutorily or judicially
28 recognized protections and privileges, confidentiality agreements, or court orders restricting

1 dissemination of information, or result in disclosure of materials or information prepared in
2 anticipation of litigation or confidential settlement discussions.

3 9. Goldstrike objects to the Jurisdictional Interrogatories to the extent they seek
4 information and documents protected from discovery by the attorney client privilege, the work
5 product doctrine, the common interest privilege, the joint defense privilege or other applicable
6 privileges or protections. Goldstrike does not waive but rather intends to preserve and is preserving
7 the attorney client privilege, the work product protection, the common interest privilege, the joint
8 defense privilege and every other privilege or protection with respect to all information protected
9 by any such privileges or protections. Goldstrike will not knowingly identify information that is
10 subject to any applicable privileges or protections. If any privileged or protected information is
11 inadvertently disclosed by Goldstrike at anytime, Goldstrike requests that defendants immediately
12 return to Goldstrike's counsel all documents, copies and other media which refer to or reflect in
13 any way such inadvertently disclosed information.

14 10. Goldstrike objects to the "Definitions" and "Instructions" set forth on pages 2-6 of
15 the Jurisdictional Interrogatories insofar as they are vague, overbroad, unduly burdensome and
16 oppressive and seek to impose burdens on Goldstrike that are inconsistent with, or in addition to,
17 Goldstrike's obligations as set forth in Rules 26 and/or 33 of the FRCP and/or the limited scope of
18 the Jurisdictional Order.

19 11. Goldstrike objects to the definition of the terms "You", "Your" or "Yours" as set
20 forth in paragraph 1 of the Jurisdictional Interrogatories as vague, overbroad, unduly burdensome,
21 oppressive and inconsistent with its obligations under Rules 26 and 33 of the FRCP and the limited
22 scope of the Jurisdictional Order insofar as it seeks to define Goldstrike to include any parent,
23 sibling or other affiliated entities. For purposes of responding to the Jurisdictional Interrogatories,
24 Goldstrike interprets the terms "You", "Your" or "Yours" to refer only to Barrick Goldstrike Mines
25 Inc., the only defendant in this case.

26 12. Goldstrike objects to the definition of the term "identify" as set forth in paragraphs
27 8-11 on pages 3-4 of the Jurisdictional Interrogatories as overbroad, unduly burdensome and
28