

Case No. 79652

In the Supreme Court of Nevada

BARRICK GOLDSTRIKE MINES, INC.,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT of the
State of Nevada, in and for the County of
Clark; and the Honorable ELIZABETH
GOFF GONZALEZ, District Judge,

Respondents,

and

BULLION MONARCH MINING, INC.,

Real Party in Interest.

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District Court
Case No. A785913

**BULLION'S APPENDIX TO ANSWER
VOLUME 3
PAGES 501-750**

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Parsons Behle & Latimer and that on the 8th day of March 2019, I filed a true and correct copy of the foregoing **DEFENDANT GOLDSTRIKE'S REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS** with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to all registered users as follows:

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6

6

No. 18-17246

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BULLION MONARCH MINING, INC.,

Plaintiff-Appellant,

v.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant-Appellee.

APPEAL
from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding
D.C. No. 3:09-CV-612-MMD-WGC

APPELLANT’S REQUEST FOR JUDICIAL NOTICE

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APPELLANT’S REQUEST FOR JUDICIAL NOTICE

Appellant Bullion Monarch Mining, Inc. asks this Court to take judicial notice of three pleadings in *North American Electric Reliability Corporation v. Barrick Goldstrike Mines, Inc.*, Case No. 3:11-cv-794-LRH-WGC:

- ECF 1: North American Electric Reliability Corporation’s Complaint, filed Oct. 31, 2011
- ECF 5: Barrick Goldstrike Mines, Inc.’s Answer & Counterclaim, filed Nov. 22, 2011
- ECF 17: Barrick Goldstrike Mines, Inc.’s Amended Answer, Counterclaim & Third-Party Complaint, filed Jan. 19, 2012

See FRAP 27; Cir. R. 27-1; Adv. Comm. Note 7 to Cir. R. 27-1.

This Court can take judicial notice of public records such as filings in another case. *United States ex rel. Bennett v. Biotronik, Inc.*, 876 F.3d 1011, 1014 n.5 (9th Cir. 2017) (citing *Jacques v. U.S. R.R. Ret. Bd.*, 736 F.2d 34, 40 (2d Cir. 1984); *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (cited in *CollegeSource, Inc. v. AcademyOne, Inc.*, 709 F. App’x 440, 442 (9th Cir. 2017)); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980). See generally FRE 201(b),

(d) (allowing judicial notice—“at any stage of the proceeding”—of facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”). “may take judicial notice at any stage of the proceeding.” FRE 201(d). Doing so is appropriate when the documents “provide relevant and material details” regarding the issues before the Court. *Rosales-Martinez v. Palmer*, 753 F.3d 890, 894 (9th Cir. 2014).

Judicial notice of Barrick’s answers in this related case is appropriate. Their accuracy cannot reasonably be questioned. And they contain relevant details that will assist this Court evaluate the question of Barrick’s citizenship, the central issue in this appeal.

Dated this 9th day of December, 2019.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NORTH AMERICAN ELECTRIC RELIABILITY)	Case No.
CORPORATION,)	
Plaintiff,)	COMPLAINT
vs.)	
BARRICK GOLDSTRIKE MINES, INC.,)	
a Colorado Corporation,)	
Defendant.)	

Plaintiff North American Electric Reliability Corporation (“NERC”), by and through its attorneys, Jolley Urga Wirth Woodbury & Standish, as for its Complaint against Defendant, alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff NERC is a not-for-profit corporation organized and existing under the laws of the state of New Jersey.
2. Defendant Barrick Goldstrike Mines, Inc. (“Barrick”) is a corporation organized and existing under the laws of the state of Colorado.
3. Subject matter jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1331 based on the federal questions arising from the statutes, codes, and the other matters alleged herein.

1 4. Subject matter jurisdiction is also conferred upon this Court pursuant to 28
2 U.S.C. § 1332(a), as the parties are citizens of different states and the amount in controversy
3 exceeds the sum of \$75,000, exclusive of interest and costs.

4 5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a)(1), as
5 Barrick resides and conducts substantial business in this judicial district.
6

7 **GENERAL ALLEGATIONS**

8 6. Electrical energy is distributed throughout the United States by way of the
9 bulk power system. The bulk power system generally consists of electric power generation
10 facilities and a high-voltage transmission system, which, together, create and transport
11 electricity around the United States.

12 7. The Federal Energy Regulatory Commission ("FERC") is the United States
13 federal agency that regulates the interstate transmission of electricity throughout the United
14 States.
15

16 8. By virtue of the U.S. Energy Policy Act of 2005 (the "Act"), Congress
17 mandated the establishment of an Electricity Reliability Organization that would have the
18 authority to develop and enforce standards for the reliable operation of the bulk power
19 system throughout North America.
20

21 9. In or about July 2006, pursuant to the authority granted under the Act, FERC
22 certified NERC as the Electricity Reliability Organization required under the Act.

23 10. Pursuant to its designation by FERC and the authority granted under the Act,
24 NERC is charged with the responsibility of maintaining and improving the reliability of the
25 bulk power system in the United States. NERC also exercises authority in Canada and parts
26 of Mexico pursuant to arrangements entered into under the laws of those jurisdictions. To
27 accomplish its objectives, NERC is charged with the responsibility of developing and
28

1 enforcing reliability standards in addition to monitoring the bulk power system.

2 11. Pursuant to the Act, NERC is required to allocate the costs of its operations
3 to the end-users of the electric power provided through the bulk power system.

4 12. Many end-users of electric power, such as a family or individual living in a
5 home, or small businesses, purchase power exclusively from the local power companies and
6 consequently pay their required allocations through their power bill each month to the local
7 power company.¹

8 13. However, some end-users do not purchase power exclusively from the local
9 power company and, consequently, do not pay their allocation for their use of the bulk
10 power system through such entities.

11 14. The required allocation to a particular end-user is based on the net energy for
12 load, or in other words, the amount of energy used by that particular end-user in proportion
13 to the energy supplied by the bulk power system.²

14 15. Before assessing the costs of its operation to end-users, NERC prepares and
15 submits a budget to FERC. All of NERC's allocations and assessments of costs to end-users
16 are based on budget filings approved by FERC.

17 16. Barrick is an end-user of electric power supplied through the bulk power
18 system. Barrick utilizes power produced by facilities it owns and it purchases power from
19 the marketplace. Upon belief, Barrick does not purchase power from its local power
20 company. Consequently, Barrick does not pay its allocation or assessment through a local
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25 ¹ The local power companies act in these cases as the "load serving entity" as this term is used by
FERC and NERC.

26 ² NERC defines Net Energy For Load or NEL as "net generation of an electric system plus energy
27 received from others less energy delivered to others through interchange. It includes system losses but
28 excludes energy required for the storage of energy at energy storage facilities." NERC Rules of
Procedure, Section 202.

1 power company.

2 17. Upon information and belief, Barrick owns and operates a natural gas - fired
3 electric power plant in Storey County, Nevada to supply a portion of its electric service
4 needs to its mining operations in Eureka and Elko counties. Barrick also maintains electrical
5 generating facilities at its mining operations for emergency purposes.
6

7 18. Barrick's operations are located within the territory of Sierra Pacific Power
8 Company (dba NV Energy) ("Sierra Pacific"), but Barrick does not pay its allocation or
9 assessment for its net energy load and use of the bulk power system through Sierra Pacific.

10 19. Since 2008, NERC's budget filings submitted to and approved by FERC
11 have included allocations and assessments to Barrick.
12

13 20. Because Barrick is an end-user of electric power supplied through the bulk
14 power system, FERC has jurisdiction over Barrick pursuant to 16 USCS § 824o(b) ("The
15 Commission shall have jurisdiction, within the United States, over the ERO certified by the
16 Commission under subsection (c), any regional entities, and all users, owners and operators
17 of the bulk-power system, including but not limited to the entities described in section
18 201(f) [16 USCS 824(f)], for purposes of approving reliability standards established under
19 this section and enforcing compliance with this section. All users, owners and operators of
20 the bulk-power system shall comply with reliability standards that take effect under this
21 section.").

22
23 21. In addition to FERC having direct jurisdiction over Barrick, Barrick is also
24 expressly required by federal law to pay assessments approved by FERC. Section 18 CFR
25 39.4(e) states, "All entities within the Commission's jurisdiction as set forth in section
26 215(b) of the Federal Power Act [16 USCS § 824o(b)] shall pay any Electric Reliability
27 Organization assessment of dues, fees and charges as approved by the Commission, in a
28

1 timely manner reasonably as designated by the Electric Reliability Organization.”

2 22. Based on the foregoing, Barrick is subject to FERC’s jurisdiction, and is
3 required under the Act to pay any assessments imposed by NERC, which is the Electric
4 Reliability Organization certified by FERC under the Act.

5 23. NERC discharges some of its responsibilities with the assistance of various
6 regional entities that have certain delegated powers and authority. Barrick’s operations are
7 located within the region of one such regional entity, the Western Electricity Coordinating
8 Council (“WECC”).

9 24. By virtue of its delegated powers and authority and under the direction of
10 NERC, WECC has sent multiple invoices to Barrick totaling \$181,369.89.

11 25. Barrick has refused and continues to refuse to pay the invoices for its net
12 energy for load assessment.

13 26. Furthermore, Barrick refuses, and continues to refuse, to acknowledge its
14 responsibility and liability for payment of the net energy for load assessments.

15 27. As a direct, natural and foreseeable consequence of Barrick’s conduct as set
16 forth herein, NERC has been required to bring this action, and has been damaged thereby,
17 and is entitled to reasonable attorneys fees, costs, and all other amounts supported or
18 awardable by statute, regulation, rule and/or other applicable law.

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22 **FIRST CLAIM FOR RELIEF**

23 28. NERC repeats and realleges the allegations set forth in each and every
24 preceding paragraph as though fully set forth at length herein.

25 29. Pursuant to 28 USC § 2201, an actual controversy has arisen and now exists
26 between NERC and Barrick relating to their respective rights and duties and regarding
27 Barrick’s obligations under the Act. NERC seeks a declaration that the Act, statutes,
28

1 regulations, rules, budget filings, orders, and/or acts or conduct of FERC, NERC and/or
2 WECC pursuant to any of the foregoing are valid and enforceable, both on their face and as
3 construed to and applied toward Barrick.

4 30. NERC seeks a declaration that Barrick is subject to the jurisdiction of FERC
5 and the Act and that Barrick is responsible for and obligated to pay all past, current and
6 future assessments to Barrick of NERC's costs on the basis of net energy load. Such a
7 declaration is necessary and appropriate at this time under the circumstances as Barrick
8 disputes the matters as set forth herein and an actual controversy has arisen and now exists
9 between NERC and Barrick.
10

11 31. As a direct, natural and foreseeable consequence of Barrick's conduct as set
12 forth herein, NERC has been required to bring this action, and has been damaged thereby,
13 and is entitled to reasonable attorneys fees, costs, and all other amounts supported or
14 awardable by statute, regulation, rule and/or other applicable law.
15

16 **SECOND CLAIM FOR RELIEF**

17 32. NERC repeats and realleges the allegations set forth in each and every
18 preceding paragraph as though fully set forth at length herein.

19 33. Barrick is indebted and owes the amount of \$181,369.89.

20 34. Barrick owes the amounts due generally and pursuant to the Act, including
21 but not limited to 16 USCS § 824o(b).
22

23 35. As a direct, natural and foreseeable consequence of Barrick's conduct as set
24 forth herein, NERC has been required to bring this action, and has been damaged thereby,
25 and is entitled to reasonable attorneys fees, costs, and all other amounts supported or
26 awardable by statute, regulation, rule and/or other applicable law.
27
28

THIRD CLAIM FOR RELIEF

36. NERC repeats and realleges the allegations set forth in each and every preceding paragraph as though fully set forth at length herein.

37. Barrick is an end user of the bulk power system and has refused to pay the assessments that have been allocated to it under the Act.

38. Barrick has refused to recognize the authority of FERC under the Act and the resulting invoices to Barrick for the assessments based on net energy for load. Barrick's continued failure to pay the assessments is unjust and, in equity and good conscience, should not be permitted.

39. The reasonable value and benefit, based on net energy for load, for which Barrick should be held responsible, is \$181,369.89.

40. As a direct, natural and foreseeable consequence of Barrick's conduct as set forth herein, NERC has been required to bring this action, and has been damaged thereby, and is entitled to reasonable attorneys fees, costs, and all other amounts supported or awardable by statute, regulation, rule and/or other applicable law.

Wherefore, NERC prays for judgment as follows:

1. For declaratory relief as prayed for herein;
2. For damages in the amount set forth herein plus pre and post judgment interest on all amounts awarded;
3. For attorney's fees and costs incurred herein; and,

///

///

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///

4. For such other and further relief as the Court deems just and proper.

DATED this 31st day of October, 2011.

JOLLEY URG A WIRTH WOODBURY
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION,

Plaintiff and Counterclaim
Defendant,

vs.

BARRICK GOLDSTRIKE MINES INC., a
Colorado Corporation,

Defendant and Counterclaimant,

and

WESTERN ELECTRIC
COORDINATING COUNCIL, a Utah
Corporation, and NORTHEAST POWER
COORDINATING COUNSEL, a New
York Corporation

Third-Party Defendants.

Case No. 3:11-cv-00794-LRH-WGC

ANSWER & COUNTERCLAIM

1 Defendant Barrick Goldstrike Mines Inc. ("Barrick") answers the Complaint of North
2 American Electric Reliability Corporation ("NERC") as follows.

3 **JURISDICTION AND VENUE**

- 4 1. Barrick admits the allegations in paragraph 1 of the Complaint.
5 2. Barrick admits the allegations in paragraph 2 of the Complaint.
6 3. Barrick admits the allegations in paragraph 3 of the Complaint.
7 4. Barrick admits the allegations in paragraph 4 of the Complaint.
8 5. Barrick admits the allegations in paragraph 5 of the Complaint.

9 **GENERAL ALLEGATIONS**

10 6. Barrick admits that electric energy is transmitted throughout the United States by
11 way of the bulk power system, but denies the remaining allegations in paragraph 6.

12 7. Barrick admits the allegations in paragraph 7 of the Complaint.

13 8. Barrick admits that the Act purports to bestow upon an Electric Reliability
14 Organization the authority to develop and enforce standards for the reliable operation of the bulk
15 power system throughout North America, but denies the remaining allegations in paragraph 8.

16 9. Barrick admits that in or about July 2006 FERC purportedly certified NERC as the
17 Electricity Reliability Organization but denies that FERC had authority to do so under the
18 Constitution of the United States.

19 10. Barrick admits that the Act purports to allow FERC to grant certain responsibilities
20 and authority to NERC, but denies that FERC had authority to do so under the Constitution of the
21 United States.

22 11. Barrick denies that NERC has the constitutional or statutory authority to allocate
23 costs of its operations to consumers of electric power provided through the bulk power system.

24 12. Barrick lacks knowledge or information sufficient to form a belief about the truth
25 and on that basis denies the allegations of paragraph 12.

26 13. Barrick lacks knowledge or information sufficient to form a belief about the truth
27 and on that basis denies the allegations of paragraph 13.

1 14. Barrick lacks knowledge or information sufficient to form a belief about the truth
2 and on that basis denies the allegations of paragraph 14.

3 15. Barrick lacks knowledge or information sufficient to form a belief about the truth
4 and on that basis denies the allegations of paragraph 15.

5 16. Barrick admits that it is a consumer of electric power that is supplied through
6 distribution facilities owned by Sierra Pacific Power Company that are attached to the bulk power
7 system. Barrick admits that it purchases most of its electric power from a federal power marketer
8 and that it produces some electric power for its own use. Barrick admits that it does not directly
9 purchase electric power from Sierra Pacific. Barrick lacks knowledge or information sufficient to
10 form a belief about whether any allocation or assessments are included in the price Barrick pays
11 to purchase and receive electric power. Except for those allegations specifically admitted,
12 Barrick denies the remaining allegations in paragraph 16.

13 17. Barrick admits the allegations in paragraph 17 of the Complaint.

14 18. Barrick admits that its operations are within the territory served by Sierra Pacific,
15 but lacks knowledge or information sufficient to form a belief about the truth of the balance of the
16 allegation and on that basis denies the same.

17 19. Barrick lacks knowledge or information sufficient to form a belief about the truth
18 and on that basis denies the allegations of paragraph 19.

19 20. Barrick denies that FERC has jurisdiction over it as a consumer of electric power.

20 21. Barrick denies the allegations in paragraph 21 of the Complaint.

21 22. Barrick denies the allegations in paragraph 22 of the Complaint.

22 23. Barrick admits that NERC discharges its purported responsibilities by delegating
23 those responsibilities to regional entities and admits that its operations are within the region
24 purportedly governed by the Western Electric Coordinating Council ("WECC"). Except for those
25 allegations specifically admitted, Barrick denies the remaining allegations in paragraph 23.

1 24. Barrick admits that WECC has sent invoices to Barrick that purported to assess
2 Barrick as a "Load Serving Entity" (as opposed to an "end-user" (consumer) as alleged in the
3 complaint) but denies that WECC had the constitutional power or statutory authority to do so.

4 25. Barrick admits that it refused to pay the invoices sent to it by WECC because it is
5 not a Load Serving Entity. Except for those allegations specifically admitted, Barrick denies the
6 remaining allegations in paragraph 25.

7 26. Barrick admits that it is willing to pay all constitutionally assessed fees or
8 allocations but denies that WECC has the authority to charge them directly to consumers of
9 electric power. Barrick lacks knowledge or information sufficient to form a belief whether the
10 amounts invoiced by WECC were properly calculated. Except for those allegations specifically
11 admitted, Barrick denies the remaining allegations in paragraph 26.

12 27. Barrick denies the allegations in paragraph 27 of the Complaint.

13 **FIRST CLAIM FOR RELIEF**

14 28. Barrick incorporates by reference its responses to the preceding paragraphs.

15 29. Barrick admits that an actual controversy exists, but denies the balance of the
16 allegations contained in paragraph 29 of the Complaint.

17 30. Barrick denies the allegations in paragraph 30 of the Complaint.

18 31. Barrick denies the allegations in paragraph 31 of the Complaint.

19 **SECOND CLAIM FOR RELIEF**

20 32. Barrick incorporates by reference its responses to the preceding paragraphs.

21 33. Barrick denies the allegations in paragraph 33 of the Complaint.

22 34. Barrick denies the allegations in paragraph 34 of the Complaint.

23 35. Barrick denies the allegations in paragraph 35 of the Complaint.

24 **THIRD CLAIM FOR RELIEF**

25 36. Barrick incorporates by reference its responses to the preceding paragraphs.

26 37. Barrick admits that it is a consumer of electric power supplied to Barrick by way
27 of distribution facilities owned by Sierra Pacific that are attached to the bulk power system and
28

1 admits that it has refused to pay improper assessments but denies the balance of the allegations in
2 paragraph 37.

3 38. Barrick denies the allegations in paragraph 38 of the Complaint.

4 39. Barrick denies the allegations in paragraph 39 of the Complaint.

5 40. Barrick denies the allegations in paragraph 40 of the Complaint.

6 **FIRST AFFIRMATIVE DEFENSE**

7 The Complaint fails to state a claim upon which relief can be granted because the Energy
8 Policy Act, pursuant to which NERC purports to exercise authority over Barrick, contravenes the
9 Constitution's separation of powers which vests executive power in the President and further
10 contravenes the appointments clause.

11 **SECOND AFFIRMATIVE DEFENSE**

12 The Complaint fails to state a claim upon which relief can be granted because NERC and
13 FERC have no statutory authority over consumers of electric power.

14 **THIRD AFFIRMATIVE DEFENSE**

15 The Complaint fails to state a claim upon which relief can be granted because to the extent
16 the Act authorizes NERC and FERC to exercise authority over consumers of electric power, the
17 Act violates the Commerce Clause and the Tenth Amendment to the Constitution.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 The Complaint fails to join a required party under Federal Rule of Civil Procedure 19.
20 Western Electricity Coordinating Council "must be joined as a party" because the "court cannot
21 accord complete relief" in its absence.

22
23 WHEREFORE, Barrick prays that the Complaint be dismissed with prejudice and on the
24 merits, that NERC take nothing thereby, that Barrick be awarded its costs of suit herein, including
25 reasonable attorney fees to the extent allowed by law, and that Barrick be awarded such other and
26 further relief as the Court deems just and proper.

1 **COUNTERCLAIM**

2 Defendant and Counterclaimant Barrick counterclaims against Plaintiff and Counterclaim
3 Defendant NERC and Third-Party Defendants Western Electricity Coordinating Council
4 (“WECC”) and Northeast Power Coordinating Council (“NPCC”), as follows:

5 **PARTIES**

6 1. Defendant and Counterclaimant Barrick is a corporation operating and existing
7 under the laws of Colorado.

8 2. Plaintiff and Counterclaim Defendant NERC is a New Jersey nonprofit
9 corporation with its principal place of business in Princeton, New Jersey.

10 3. Third-Party Defendant WECC is a Utah nonprofit corporation with its principal
11 place of business in Salt Lake City, Utah.

12 4. Third Party Defendant NPCC is a New York nonprofit corporation with its
13 principal place of business in New York, New York.

14 **JURISDICTION AND VENUE**

15 5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
16 § 1331 based on the federal questions presented under the Constitution, the Energy Policy Act,
17 and the rules and regulations promulgated thereunder.

18 6. This Court also has subject matter jurisdiction over the parties under 28 U.S.C.
19 § 1332(a), as the parties are citizens of different states and the amount in controversy exceeds the
20 sum of \$75,000, exclusive of interest and costs.

21 7. Venue is proper under 28 U.S.C. § 1391(a)(2), because a substantial part of the
22 events or omissions giving rise to Barrick’s claims arose in Nevada Federal District Court.

23 **GENERAL ALLEGATIONS**

24 8. In 2005, Congress passed the Energy Policy Act of 2005 (the “Act”). Public Law
25 No. 109-58, Title XII, Subtitle A (“PL 109-58”).

26 9. In the Act, Congress instructed the Federal Electric Regulatory Commission
27 (“FERC”) to certify an Electric Reliability Organization (“ERO”), which would “establish and
28

1 enforce reliability standards for the bulk-power system, subject to [FERC] review.” PL 109-58,
2 Title § 215(a)(2), codified at 16 U.S.C. § 824o(a)(2).

3 10. FERC’s jurisdiction with respect to electric energy is limited to the transmission of
4 electric energy in interstate commerce and the sale of such energy at wholesale in interstate
5 commerce.

6 11. The bulk power system does not include facilities used in the local distribution of
7 electric energy.

8 12. The Energy Policy Act also authorizes the ERO to impose penalties on users,
9 owners, and operators of the bulk-power system after notice and an opportunity for a hearing.
10 Although the ERO-imposed penalty is subject to FERC review on FERC’s “own motion or upon
11 application by the user, owner or operator that is the subject of the penalty,” the penalty takes
12 effect automatically thirty-one days after the ERO provides notice and the record to FERC unless
13 FERC imposes a stay. PL 109-58, § 215(e)(2), codified at 16 U.S.C. § 824o(e)(2).

14 13. Congress also authorized the ERO to further delegate its authority to a “regional
15 entity.” Under the Act, the regional entity also possesses the authority to enforce reliability
16 standards, subject to potential review by the ERO and FERC. PL 109-58, § 215(e)(4), codified at
17 16 U.S.C. § 824o(e)(4).

18 14. On February 17, 2006, FERC enacted a final rule implementing the requirements
19 of the Act (“2006 Rule”). *See* 18 C.F.R. Part 39.

20 15. In its 2006 Rule, FERC established a registration system, under which the users,
21 owners, and operators of the bulk-power system are required to “register” with the ERO and the
22 regional entity for each region in which it uses, owns, or operates bulk-power system facilities.
23 18 C.F.R. § 39.2(c), (d).

24 16. NERC was the only organization to apply to FERC to become the ERO.

25 17. NERC is governed by an independent board of trustees and officers appointed by
26 the board of trustees. None of the officers or board members is appointed by the President (with
27 or without the advice and consent of the Senate), a constitutional “Head of Department,” or other
28

1 constitutional authority, and none may be removed at will from office by the President or person
2 who is subject to removal by the President. On information and belief, some of the NERC board
3 members are citizens of foreign nations.

4 18. FERC issued an order certifying NERC as the ERO on July 20, 2006.

5 19. Thereafter, NERC entered into a delegation agreement with WECC as a "regional
6 entity" under the Act.

7 20. WECC is governed by an independent board of trustees and officers appointed by
8 its board of trustees. None of the officers or board members of WECC is appointed by the
9 President (with or without the advice and consent of the Senate), a constitutional "Head of
10 Department," or other constitutional authority, and none may be removed at will from office by
11 the President or person who is subject to removal by the President. On information and belief,
12 some of the WECC board members are citizens of foreign nations.

13 21. None of the officers or board members of WECC is appointed by FERC or NERC
14 and none may be removed by FERC or NERC.

15 22. Under the delegation agreement and the Act, WECC purports to enforce reliability
16 standards and impose fees on users, owners, and operators of the bulk-power system in the
17 western United States, including Nevada, and parts of Canada and Mexico.

18 23. Under NERC regulations, promulgated under FERC rules and approved by FERC,
19 a "Load Serving Entity" is one category of "user, owner, or operator of the bulk-power system"
20 that is generally required to be registered with NERC and/or WECC.

21 24. WECC has sent Barrick invoices totaling \$181,369.89 on the purported grounds
22 that Barrick is a "Load Serving Entity" subject to registration and payment of fees under the Act
23 and regulations promulgated thereunder. Since this litigation commenced, WECC has invoiced
24 Barrick for an additional \$63,715 as a "Load Serving Entity."

25 25. On several occasions WECC and NERC have demanded that Barrick register
26 under a number of different NERC-established categories of users, owners, or operators of the
27 bulk-power system and have threatened to involuntarily register Barrick if it refused to do so.
28

1 26. On November 15, 2011, FERC approved WECC's further delegation of executive
2 authority to the Northeast Power Coordinating Council ("NPCC"), a New York corporation that
3 serves as a "regional entity" under a delegation agreement with NERC that was entered into
4 pursuant to the Act. Effective January 1, 2012, NPCC purportedly will take over WECC's
5 responsibility to enforce reliability standards in the western region, including Nevada where
6 Barrick is located.

7 27. On information and belief, NPCC is governed by an independent board of trustees
8 and officers appointed by its board of trustees. None of the officers or board members of NPCC
9 is appointed by the President (with or without the advice and consent of the Senate), a
10 constitutional "Head of Department," or other constitutional authority, and none may be removed
11 at will from office by the President or person who is subject to removal by the President. On
12 information and belief, some of the NPCC board members are citizens of Canada.

13 28. None of the officers or board members of NPCC is appointed by FERC, NERC, or
14 WECC and none may be removed by FERC, NERC, or WECC.

15 **CLAIM FOR RELIEF**

16 29. Barrick incorporates by reference the claims made in the preceding paragraphs.

17 30. NERC, WECC, and NPCC operate as "part of government" for constitutional
18 purposes and they exercise significant authority pursuant to the laws of the United States. The
19 governing officials of NERC, WECC, and NPCC operate as officers of the United States for
20 constitutional purposes.

21 31. NERC, WECC, and NPCC operate in contravention of the Constitution, which
22 vests all executive power in the President and forbids dilution of that power through multiple
23 layers of unaccountable bureaucracy.

24 32. NERC, WECC, and NPCC operate in contravention of the Constitution because
25 their board members and officers are not appointed by the President (with or without the advice
26 and consent of the Senate), a constitutional "Head of Department," or other constitutional
27 authority.

33. To the extent NERC, WECC, and NPCC, under color of federal authority, seek to regulate or to impose fees directly on a consumer of electric power, they exceed the statutory authority given them under the Energy Policy Act.

34. To the extent Congress authorized NERC, WECC, and NPCC to regulate or impose fees directly on a consumer of electric power, Congress exceeded its power under the Commerce Clause and violated the Tenth Amendment to the Constitution.

35. Barrick is entitled to a declaration that the Congress's delegation of executive power to NERC, WECC, and NPCC under the Act is unconstitutional and of no effect.

36. Barrick is entitled to a preliminary and permanent injunction prohibiting NERC, WECC, and NPCC from registering Barrick under the Act or under any rules or regulations enacted pursuant to the Act.

37. Barrick is entitled to a preliminary and permanent injunction prohibiting NERC, WECC, and NPCC from enforcing any reliability standards against it and from collecting any fees from it as a consumer of electricity.

PRAYER

WHEREFORE, Barrick prays for judgment as follows:

1. For judgment declaring that the delegation of government power by Congress to NERC, WECC, and NPCC pursuant to the Energy Policy Act violates the Constitution and is therefore null and void;

2. For judgment declaring that NERC, WECC, and NPCC have no statutory authority over consumers of electric energy, or, in the alternative, for judgment declaring that if NERC, WECC, and NPCC possess statutory authority over consumers of electric energy, Congress has exceeded its enumerated powers under the Constitution and has thereby violated the Tenth Amendment to the Constitution;

3. For a preliminary and permanent injunction prohibiting NERC, WECC, and NPCC from registering Barrick under the Energy Policy Act, from enforcing any of the reliability

standards against Barrick, and from collecting any fees from Barrick as a consumer of electric energy;

4. For attorney's fees and costs; and

5. For such other and further relief as the Court deems just and proper.

Dated: November 22, 2011.

/s/ Michael R. Kealy

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Attorneys for Barrick Goldstrike Mines Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2011, I electronically filed the foregoing **ANSWER & COUNTERCLAIM** with the Clerk of Court using the CM/ECF system, which sent electronic notification of such filing to the following:

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/s/ Michael R. Kealy

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Attorneys for Barrick Goldstrike Mines Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NORTH AMERICAN ELECTRIC
RELIABILITY CORPORATION,

Plaintiff and Counterclaim
Defendant,

vs.

BARRICK GOLDSTRIKE MINES INC., a
Colorado Corporation,

Defendant, Counterclaimant and
Third-Party Plaintiff,

and

WESTERN ELECTRIC
COORDINATING COUNCIL, a Utah
Corporation, and NORTHEAST POWER
COORDINATING COUNSEL, a New
York Corporation

Third-Party Defendants.

Case No. 3:11-cv-00794-LRH-WGC

**AMENDED ANSWER, COUNTERCLAIM
AND THIRD-PARTY COMPLAINT**

ANSWER

Defendant Barrick Goldstrike Mines Inc. (“Barrick”) answers the Complaint of North American Electric Reliability Corporation (“NERC”) as follows.

JURISDICTION AND VENUE

1. Barrick admits the allegations in paragraph 1 of the Complaint.
2. Barrick admits the allegations in paragraph 2 of the Complaint.
3. Barrick admits the allegations in paragraph 3 of the Complaint.
4. Barrick admits the allegations in paragraph 4 of the Complaint.
5. Barrick admits the allegations in paragraph 5 of the Complaint.

GENERAL ALLEGATIONS

6. Barrick admits that electric energy is transmitted throughout the United States by way of the bulk power system, but denies the remaining allegations in paragraph 6.

7. Barrick admits the allegations in paragraph 7 of the Complaint.

8. Barrick admits that the Act purports to bestow upon an Electric Reliability Organization the authority to develop and enforce standards for the reliable operation of the bulk power system throughout North America, but denies the remaining allegations in paragraph 8.

9. Barrick admits that in or about July 2006 FERC purportedly certified NERC as the Electricity Reliability Organization but denies that FERC had authority to do so under the Constitution of the United States.

10. Barrick admits that the Act purports to allow FERC to grant certain responsibilities and authority to NERC, but denies that FERC had authority to do so under the Constitution of the United States.

11. Barrick denies that NERC has the constitutional or statutory authority to allocate costs of its operations to consumers of electric power provided through the bulk power system.

12. Barrick lacks knowledge or information sufficient to form a belief about the truth and on that basis denies the allegations of paragraph 12.

13. Barrick lacks knowledge or information sufficient to form a belief about the truth and on that basis denies the allegations of paragraph 13.

1 14. Barrick lacks knowledge or information sufficient to form a belief about the truth
2 and on that basis denies the allegations of paragraph 14.

3 15. Barrick lacks knowledge or information sufficient to form a belief about the truth
4 and on that basis denies the allegations of paragraph 15.

5 16. Barrick admits that it is a consumer of electric power that is supplied through
6 distribution facilities owned by Sierra Pacific Power Company that are attached to the bulk power
7 system. Barrick admits that it purchases most of its electric power from a federal power marketer
8 and that it produces some electric power for its own use. Barrick admits that it does not directly
9 purchase electric power from Sierra Pacific. Barrick lacks knowledge or information sufficient to
10 form a belief about whether any allocation or assessments are included in the price Barrick pays
11 to purchase and receive electric power. Except for those allegations specifically admitted,
12 Barrick denies the remaining allegations in paragraph 16.

13 17. Barrick admits the allegations in paragraph 17 of the Complaint.

14 18. Barrick admits that its operations are within the territory served by Sierra Pacific,
15 but lacks knowledge or information sufficient to form a belief about the truth of the balance of the
16 allegation and on that basis denies the same.

17 19. Barrick lacks knowledge or information sufficient to form a belief about the truth
18 and on that basis denies the allegations of paragraph 19.

19 20. Barrick denies that FERC has jurisdiction over it as a consumer of electric power.

20 21. Barrick denies the allegations in paragraph 21 of the Complaint.

21 22. Barrick denies the allegations in paragraph 22 of the Complaint.

22 23. Barrick admits that NERC discharges its purported responsibilities by delegating
23 those responsibilities to regional entities and admits that its operations are within the region
24 purportedly governed by the Western Electric Coordinating Council ("WECC"). Except for those
25 allegations specifically admitted, Barrick denies the remaining allegations in paragraph 23.

24. Barrick admits that WECC has sent invoices to Barrick that purported to assess Barrick as a “Load Serving Entity” (as opposed to an “end-user” (consumer) as alleged in the complaint) but denies that WECC had the constitutional power or statutory authority to do so.

25. Barrick admits that it refused to pay the invoices sent to it by WECC because it is not a Load Serving Entity. Except for those allegations specifically admitted, Barrick denies the remaining allegations in paragraph 25.

26. Barrick admits that it is willing to pay all constitutionally assessed fees or allocations but denies that WECC has the authority to charge them directly to consumers of electric power. Barrick lacks knowledge or information sufficient to form a belief whether the amounts invoiced by WECC were properly calculated. Except for those allegations specifically admitted, Barrick denies the remaining allegations in paragraph 26.

27. Barrick denies the allegations in paragraph 27 of the Complaint.

FIRST CLAIM FOR RELIEF

28. Barrick incorporates by reference its responses to the preceding paragraphs.

29. Barrick admits that an actual controversy exists, but denies the balance of the allegations contained in paragraph 29 of the Complaint.

30. Barrick denies the allegations in paragraph 30 of the Complaint.

31. Barrick denies the allegations in paragraph 31 of the Complaint.

SECOND CLAIM FOR RELIEF

32. Barrick incorporates by reference its responses to the preceding paragraphs.

33. Barrick denies the allegations in paragraph 33 of the Complaint.

34. Barrick denies the allegations in paragraph 34 of the Complaint.

35. Barrick denies the allegations in paragraph 35 of the Complaint.

THIRD CLAIM FOR RELIEF

36. Barrick incorporates by reference its responses to the preceding paragraphs.

37. Barrick admits that it is a consumer of electric power supplied to Barrick by way of distribution facilities owned by Sierra Pacific that are attached to the bulk power system and

1 admits that it has refused to pay improper assessments but denies the balance of the allegations in
2 paragraph 37.

3 38. Barrick denies the allegations in paragraph 38 of the Complaint.

4 39. Barrick denies the allegations in paragraph 39 of the Complaint.

5 40. Barrick denies the allegations in paragraph 40 of the Complaint.

6 **FIRST AFFIRMATIVE DEFENSE**

7 The Complaint fails to state a claim upon which relief can be granted because the Energy
8 Policy Act, pursuant to which NERC purports to exercise authority over Barrick, contravenes the
9 Constitution's separation of powers which vests executive power in the President and further
10 contravenes the appointments clause.

11 **SECOND AFFIRMATIVE DEFENSE**

12 The Complaint fails to state a claim upon which relief can be granted because NERC and
13 FERC have no statutory authority over consumers of electric power.

14 **THIRD AFFIRMATIVE DEFENSE**

15 The Complaint fails to state a claim upon which relief can be granted because to the extent
16 the Act authorizes NERC and FERC to exercise authority over consumers of electric power, the
17 Act violates the Commerce Clause and the Tenth Amendment to the Constitution.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 The Complaint fails to join a required party under Federal Rule of Civil Procedure 19.
20 Western Electricity Coordinating Council "must be joined as a party" because the "court cannot
21 accord complete relief" in its absence.

22
23 WHEREFORE, Barrick prays that the Complaint be dismissed with prejudice and on the
24 merits, that NERC take nothing thereby, that Barrick be awarded its costs of suit herein, including
25 reasonable attorney fees to the extent allowed by law, and that Barrick be awarded such other and
26 further relief as the Court deems just and proper.

COUNTERCLAIM AND THIRD PARTY COMPLAINT

Counterclaimant and Third-Party Plaintiff Barrick counterclaims against Plaintiff and Counterclaim Defendant NERC, and complains against Third-Party Defendants Western Electricity Coordinating Council (“WECC”) and Northeast Power Coordinating Council (“NPCC”), as follows:

PARTIES

1. Barrick is a corporation operating and existing under the laws of Colorado.
2. Plaintiff and Counterclaim Defendant NERC is a New Jersey nonprofit corporation with its principal place of business in Princeton, New Jersey.
3. Third-Party Defendant WECC is a Utah nonprofit corporation with its principal place of business in Salt Lake City, Utah.
4. Third-Party Defendant NPCC is a New York nonprofit corporation with its principal place of business in New York, New York.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 based on the federal questions presented under the Constitution, the Energy Policy Act, and the rules and regulations promulgated thereunder.
6. This Court also has subject matter jurisdiction over the parties under 28 U.S.C. § 1332(a), as the parties are citizens of different states and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
7. Venue is proper under 28 U.S.C. § 1391(a)(2), because a substantial part of the events or omissions giving rise to Barrick’s claims arose in Nevada Federal District Court.

GENERAL ALLEGATIONS

8. In 2005, Congress passed the Energy Policy Act of 2005 (the “Act”). Public Law No. 109-58, Title XII, Subtitle A (“PL 109-58”).
9. In the Act, Congress instructed the Federal Electric Regulatory Commission (“FERC”) to certify an Electric Reliability Organization (“ERO”), which would “establish and

1 enforce reliability standards for the bulk-power system, subject to [FERC] review.” PL 109-58,
2 Title § 215(a)(2), codified at 16 U.S.C. § 824o(a)(2).

3 10. FERC’s jurisdiction with respect to electric energy is limited to the transmission of
4 electric energy in interstate commerce and the sale of such energy at wholesale in interstate
5 commerce.

6 11. The bulk power system does not include facilities used in the local distribution of
7 electric energy.

8 12. The Energy Policy Act also authorizes the ERO to impose penalties on users,
9 owners, and operators of the bulk-power system after notice and an opportunity for a hearing.
10 Although the ERO-imposed penalty is subject to FERC review on FERC’s “own motion or upon
11 application by the user, owner or operator that is the subject of the penalty,” the penalty takes
12 effect automatically thirty-one days after the ERO provides notice and the record to FERC unless
13 FERC imposes a stay. PL 109-58, § 215(e)(2), codified at 16 U.S.C. § 824o(e)(2).

14 13. Congress also authorized the ERO to further delegate its authority to a “regional
15 entity.” Under the Act, the regional entity also possesses the authority to enforce reliability
16 standards, subject to potential review by the ERO and FERC. PL 109-58, § 215(e)(4), codified at
17 16 U.S.C. § 824o(e)(4).

18 14. On February 17, 2006, FERC enacted a final rule implementing the requirements
19 of the Act (“2006 Rule”). *See* 18 C.F.R. Part 39.

20 15. In its 2006 Rule, FERC established a registration system, under which the users,
21 owners, and operators of the bulk-power system are required to “register” with the ERO and the
22 regional entity for each region in which it uses, owns, or operates bulk-power system facilities.
23 18 C.F.R. § 39.2(c), (d).

24 16. NERC was the only organization to apply to FERC to become the ERO.

25 17. NERC is governed by an independent board of trustees and officers appointed by
26 the board of trustees. None of the officers or board members is appointed by the President (with
27 or without the advice and consent of the Senate), a constitutional “Head of Department,” or other
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1 constitutional authority, and none may be removed at will from office by the President or person
2 who is subject to removal by the President. On information and belief, some of the NERC board
3 members are citizens of foreign nations.

4 18. FERC issued an order certifying NERC as the ERO on July 20, 2006.

5 19. Thereafter, NERC entered into a delegation agreement with WECC as a “regional
6 entity” under the Act.

7 20. WECC is governed by an independent board of trustees and officers appointed by
8 its board of trustees. None of the officers or board members of WECC is appointed by the
9 President (with or without the advice and consent of the Senate), a constitutional “Head of
10 Department,” or other constitutional authority, and none may be removed at will from office by
11 the President or person who is subject to removal by the President. On information and belief,
12 some of the WECC board members are citizens of foreign nations.

13 21. None of the officers or board members of WECC is appointed by FERC or NERC
14 and none may be removed by FERC or NERC.

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16 standards and impose fees on users, owners, and operators of the bulk-power system in the
17 western United States, including Nevada, and parts of Canada and Mexico.

18 23. Under NERC regulations, promulgated under FERC rules and approved by FERC,
19 a “Load Serving Entity” is one category of “user, owner, or operator of the bulk-power system”
20 that is generally required to be registered with NERC and/or WECC.

21 24. WECC has sent Barrick invoices totaling \$181,369.89 on the purported grounds
22 that Barrick is a “Load Serving Entity” subject to registration and payment of fees under the Act
23 and regulations promulgated thereunder. Since this litigation commenced, WECC has invoiced
24 Barrick for an additional \$63,715 as a “Load Serving Entity.”

25 25. On several occasions WECC and NERC have demanded that Barrick register
26 under a number of different NERC-established categories of users, owners, or operators of the
27 bulk-power system and have threatened to involuntarily register Barrick if it refused to do so.
28

standards against Barrick, and from collecting any fees from Barrick as a consumer of electric energy;

4. For attorney's fees and costs; and
5. For such other and further relief as the Court deems just and proper.

Dated: January 19, 2012.

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Attorneys for Barrick Goldstrike Mines Inc.

CERTIFICATE OF SERVICE

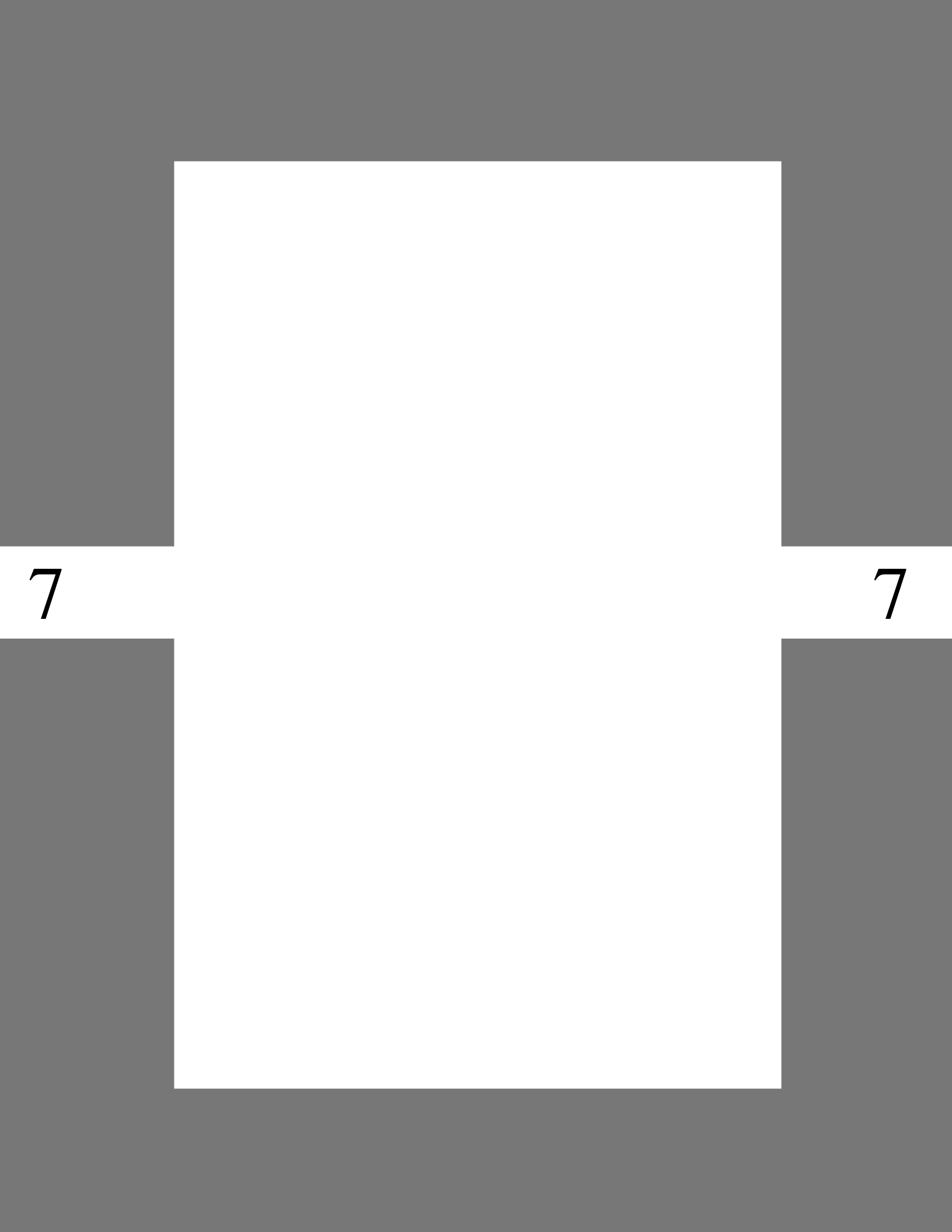
I hereby certify that on January 19, 2012, I electronically filed the foregoing **AMENDED ANSWER, COUNTERCLAIM AND THIRD-PARTY COMPLAINT** with the Clerk of Court using the CM/ECF system, which sent electronic notification of such filing to the following:

L. Christopher Rose
JOLLEY URGAL WIRTH WOODBURY & STANDISH
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, NV 89169

/s/ Alan S. Mouritsen

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No. 18-17246

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BULLION MONARCH MINING, INC.,

Plaintiff-Appellant,

v.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant-Appellee.

APPEAL
from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding
D.C. No. 3:09-CV-612-MMD-WGC

APPELLANT'S OPENING BRIEF
(Filed Provisionally Under Seal)

DANIEL F. POLSENBERG (SBN 2376)
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CORPORATE DISCLOSURE STATEMENT

Bullion Monarch Mining, Inc., is a wholly owned subsidiary of EMX Royalty, Inc., which is publicly traded on the NYSE under the symbol EMX. No publicly traded company owns more than 10% of the parent's stock.

Dated this 9th day of December, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: s/ Abraham G. Smith

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JURISDICTION

This Court has jurisdiction of this appeal under 28 U.S.C. § 1291. Plaintiff Bullion Monarch Mining, Inc. had invoked the district court's diversity jurisdiction under 28 U.S.C. § 1332, but on November 1, 2018, the district court entered an order and judgment dismissing Bullion's complaint for lack of subject-matter jurisdiction. (ER 1, 2.) Bullion timely appealed on November 20, 2018. (ER 11.) FRAP 4(a)(1)(A).

STATEMENT OF THE ISSUES

1. Does the “nerve center” test for federal diversity jurisdiction, as described in *Hertz Corp. v. Friend*, 559 U.S. 77 (2010) look solely to the acts of the corporation's named officers and directors, even others are acting as the corporation's *de facto* officers under state law?

2. If a corporation's named officers and directors have roles in multiple companies, does it matter in what role they act, or do activities of a corporation's officers and directors always count as the corporation's acts even if those acts are expressly taken in those individuals' roles with a different company?

3. Is a corporation's “nerve center” necessarily located in a state where the nominal president and a minority of other officers re-

side, rather than the where a plurality of the officers conduct business and where the annual shareholder meeting was held?

STATEMENT OF THE CASE

A. Factual Background

The 1979 Agreement Gives Bullion a 99-Year Royalty

In 1979, Bullion Monarch Company¹ gave several valuable mineral rights to a venture operated by Barrick Goldstrike Mines, Inc.'s predecessor. (ER 1097–1118.) *See also Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc. (Bullion II)*, 345 P.3d 1040, 1041 (Nev. 2015). The mine operator got the right to develop Bullion's claims, as well as any others the operator acquired in a surrounding eight-mile-by-eight-mile area of interest. (ER 1107–09.) *See also Bullion II*, 345 P.3d at 1041. That area of interest covers much of what is known as the Carlin Trend, one of the richest gold and silver deposits in the world. *Id.*

For the venture to be profitable, Bullion agreed to stay out of the area of interest for 99 years, through 2078. (ER 1107–09, ¶ 11.) In exchange, Bullion was to receive a royalty on production both from its

¹ Bullion Monarch Company is the corporate predecessor to Bullion Monarch Mining, Inc. (See ER 924.) We refer to both as "Bullion."

original claims and from those acquired during that 99-year period in the area of interest. (ER 1102–03, 1107–09, ¶¶ 4, 11.)

Barrick Produces Minerals but Does Not Pay Bullion

Barrick confirmed that it or its predecessors had acquired properties in the area of interest and that this land was productive. (See ER 903–07.) Barrick eventually parlayed its interest in all of the original subject property for additional area-of-interest properties from Newmont Gold Co., which then took the original subject property. (ER 1259–60, ¶¶ 47–49.) Barrick has produced millions of ounces of gold and other precious metals from the area of interest. (See ER 903–07.) Yet Barrick has paid Bullion no royalties. (ER 1403–04.)

B. Procedural Background

Bullion Sues Barrick

After learning that Barrick was responsible for Bullion’s royalty payments, Bullion sued in Nevada’s federal district court. (ER 1087.)²

² Bullion originally sued Newmont USA Limited based on Newmont’s assurance that it was responsible for Bullion’s royalty payments under the 1979 Agreement. (See ER 1060–72.) On June 2, 2009, however, Newmont disclosed a hitherto-secret agreement with Barrick making *Barrick* responsible for those payments. (See ER 1036–39, 1056–58, 1168–71, 1456.) By stipulation, the parties separated the claims against Barrick into a sub-case of the originally filed case against

Barrick Does Not Claim Common Citizenship with Bullion

As Bullion alleged, the court had jurisdiction over Bullion’s state-law claims because Barrick owed far in excess of \$75,000 and Bullion and Barrick were citizens of different states—Bullion in Utah and Barrick in Colorado and Nevada. (ER 1396, 1401, ¶¶ 2A, 10.) *See* 28 U.S.C. § 1332.³ Apart from a boilerplate affirmative defense,⁴ Barrick did not challenge diversity jurisdiction and in fact admitted that it was incorporated in Colorado and did business in Nevada. (ER 1381, 1383, ¶¶ 2A, 10; ER 1391; ER 1443, 1445, ¶¶ 2A, 10; *see also* ER 1438 (parties’ joint statement in the case-management report that “[j]urisdiction is not contested”).) Barrick never suggested that it was headquartered in Utah; it referred questions about the direction and control of the

Newmont. (ER 928–29, 1456.) The claims against Newmont were ultimately dismissed on laches grounds, but the claims against Barrick moved forward. (ER 926.)

³ Corporations such as Bullion and Barrick can be citizens of up to two states: where they incorporated and where they maintain their “principal place of business.” 28 U.S.C. § 1332(c)(1).

⁴ Barrick alleged that the parties were “both citizens of the same state.” (ER 1391.) Barrick never suggested that it was a citizen of Utah. If anything, it appears that Barrick might have referred to Bullion’s representation that it (like Barrick) was “doing business in the State of Nevada at all times relevant hereto.” (ER 1381, ¶ 1; ER 1396, ¶ 1.) By 2009, though, there is no dispute that Bullion did not have its principal place of business in Nevada. (ER 4:2–4.)

company on a variety of topics—its contracts, its acquisitions, its relationship to corporate predecessors—to individuals with Barrick Gold Corporation in Canada. (ER 571–75.)

In 2010, the U.S. Supreme Court decided *Hertz Corp. v. Friend*, which set a new standard: a corporation’s “principal place of business” for determining citizenship is the corporation’s “nerve center”—the center of direction, control, and coordination. 559 U.S. 77, 97 (2010).

Barrick offered no hint that *Hertz* changed the analysis of its principal place of business. Indeed, in other litigation around this time,⁵ Barrick continued to insist not only that it was “a corporation operating and existing under the laws of Colorado,” but that a federal court would have diversity jurisdiction over Barrick’s third-party complaint against “a Utah nonprofit corporation with its principal place of business in Salt Lake City, Utah” because “the parties are citizens of different states.” (*N. Am. Elec. Reliability Corp. v. Barrick Goldstrike Mines Inc.*, Case No. 3:11-cv-794-LRH-WGC, ECF 5, at 6:6–20, ¶¶ 1, 6, filed Nov. 22, 2011; ECF 17, at 6:6–20, ¶¶ 1, 6, filed Jan. 19, 2012.)⁶ Had Barrick

⁵ Barrick confirms that its corporate structure did not change from 2009 to 2014. (ER 353 n.2.)

⁶ Bullion has concurrently asked this Court to take judicial notice of

maintained its principal place of business in Utah, its claim to diversity would have been false.

Barrick Seeks a Dismissal on the Merits under the Rule Against Perpetuities

Far from resisting the district court's jurisdiction, Barrick invoked it to have Bullion's complaint dismissed on the merits based on Nevada's rule against perpetuities—a judgment that would have been void had the court lacked jurisdiction. (ER 1349, 1350, 1377.)

This Court certified the rule-against-perpetuities question to the Nevada Supreme Court, which confirmed that the rule does not apply to an area-of-interest provision in a commercial mining agreement. *Bullion II*, 345 P.3d 1040. This Court accordingly reversed, reinstating Bullion's complaint. *Bullion Monarch Mining, Inc. v. Barrick*

these publicly filed records. *See United States ex rel. Bennett v. Bio-tronik, Inc.*, 876 F.3d 1011, 1014 n.5 (9th Cir. 2017) (citing *Jacques v. U.S. R.R. Ret. Bd.*, 736 F.2d 34, 40 (2d Cir. 1984); *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (cited in *CollegeSource, Inc. v. AcademyOne, Inc.*, 709 F. App'x 440, 442 (9th Cir. 2017)); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980). *See also In re Lisse*, 905 F.3d 495, 497 (7th Cir. 2018) (Easterbrook, J., in chambers) (allowing parties to make a request for judicial notice in the briefs).

Goldstrike Mines, Inc. (Bullion III), 600 F. App'x 559, 560 (9th Cir. 2015).

After Barrick Loses its Bid for Summary Judgment, Barrick Questions its Diversity from Bullion

Back before the district court—now six years after Bullion filed its complaint and five years after the *Hertz* decision—Barrick tried again to get summary judgment on the merits, both on the preclusive effect of an earlier judgment for Barrick's co-defendant on laches (ER 171) and on the interpretation of the 1979 Agreement (ER 1238). Bullion also requested partial summary judgment under the 1979 Agreement. (ER 1207.) The district court denied all the motions and set the case for trial. (ER 923.)

As the parties were preparing the pretrial memorandum, Barrick for the first time alleged that it, like Bullion, was actually a citizen of Utah in 2009, destroying diversity. (ER 395:20–21, 640.) Barrick argued that the *Hertz* test put Barrick's nerve center in Salt Lake but that Barrick's attorneys unearthed this fact only after an "investigat[ion]" during the process of preparing that memorandum. (ER 642–43.) Barrick supported its motion with previously undisclosed documents and witnesses purporting to show a Utah connection. (ER 654.) These new

individuals identified as “officers” were never disclosed as having discoverable information under FRCP 26(a)(1)(A)(i). The witnesses that Barrick had disclosed during discovery, by contrast, were primarily associated with Nevada. (ER 571, 664, 755, 759–63, 771–76.) Rich Haddock, who previously identified himself as nonparty Barrick Gold Corporation’s general counsel, now revealed that he held various positions with Barrick in Utah, including a seat on Barrick’s board of directors in 2009. (ER 582–83, 655, ¶¶ 3, 8.)

Jurisdictional Discovery

Given the complexity of the issue, the district court permitted jurisdictional discovery, which revealed that Barrick’s general manager in Nevada, John G. Mansanti, was at the top of what Barrick called “senior management” (ER 1599, 1606–08, 1755), overseeing Barrick’s 1600 employees and 400–500 subcontractors, and its \$670 million operating budget. (ER 1604, 1605.) He had “ultimate[]” authority over a wide range of issues affecting Barrick’s direction. (ER 1644–50, 1661–62, 1692–1701, 1703–05.) Barrick’s ultimate parent also used a “regional” model that concentrated its North American operations in a “Shared Business Center” in Elko, Nevada. (ER 1635–36.) Barrick registered to

do business not in Utah, but in Nevada, where it also designated its headquarters for tax, employment, and other governmental filings. (ER 1803, 1807–08, 1819.)

Barrick’s evidence to support Utah citizenship was cloudy. Barrick’s ultimate parent used a “regional model” (ER 397:23), in which the same slate of employees from a regional affiliate, Barrick Gold of North America Inc. (BGNA), would serve as officers for a slew of North American entities, and several of those employees were in Salt Lake City. (*E.g.*, ER 1510.) Some of Barrick’s named officers—including its president, Gregory Lang; vice president of operations, Mike Feehan; chief financial officer, Blake Measom; and tax direct, Paul Judd—worked in Utah, but a majority of Barrick’s other officers did not; a plurality was based in Toronto, Canada. (ER 1529–33.) Seven other non-officers in Utah reported directly to Mr. Lang; Mansanti, who was not listed as a direct report to Mr. Lang, had ten direct reports of his own in Nevada. (ER 522–25, ER 1529–33.) A slim 3-2 majority of the board was split between Salt Lake and Toronto, but by Barrick’s own admission it held no board meetings in 2009. (1817–18, 1825–29, 1872.) By all indica-

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tions, Barrick held its annual shareholder meeting in Canada. (ER 1550–53, 1837.)

Although Barrick’s Rule 30(b)(6) designees obediently identified Salt Lake as the corporate headquarters (ER 6:13; ER 357:3–6), they knew little about Barrick or its organization within “over a hundred” entities of the Barrick family. (ER 1509, 1512, 1513–14, 1663, 1794, 1814–15, 1816.) Barrick was also unable to produce much of the evidence related to its “nerve center” because it had been destroyed. (ER 1619–21, 1880–82.) What documents Barrick did produce were almost entirely marked confidential, requiring them to be sealed when Bullion sought to introduce them into the record. (*See* ER 2 n.2.)

For evidence of direction, control, and coordination, Barrick generally pointed not to actions taken in Barrick’s name, but actions taken expressly by BGNA, the regional management company. (*See, e.g.*, ER 357 n.13 (referring, “[f]or a representative example” of “Salt Lake’s control, direction and coordination of [Barrick] Goldstrike’s activities,” to ER 18–229 (including memoranda, PowerPoint presentations, policies, and other documents prepared for BGNA on BGNA letterhead)).) According to Barrick, BGNA made all of the corporate decisions for Bar-

rick, and BGNA was headquartered in Salt Lake. (ER 400:9–16.) These BGNA employees testified that they had occasional to regular contact with Nevada, but no one testified that they did so specifically in their capacity as an officer of Barrick, rather than in their leadership position at BGNA. (*E.g.*, ER 424–25 (testifying to activities “of the senior leaders . . . at Barrick Gold of North America”); *compare* ER 356 n.8 (claiming that Mr. Measom “[a]s *Goldstrike’s* CFO” (emphasis added) communicated with employees in Nevada).)

What limited guidance passed through Salt Lake was that dictated by the ultimate parent, Barrick Gold Corporation, in Toronto. (ER 1511, 1643–44, 1645, 1688 (Barrick’s policies would be “distributed *through* the regions” (emphasis added)).) Toronto set production and other targets for the region. (ER 1622, 1624–25.) Toronto directed policy for sourcing, procurement, and contracts. (ER 1644.) Budget outlays, capital contribution, and allocation of resources among the Barrick family of companies were matters that Toronto ultimately controlled. (ER 1515–16, 1518, 1626–28, 1795 (Toronto might “ask for more production” or “help in balancing a cost profile”).) A “life-of-mine review and support” also had to go to Toronto, because it would impact re-

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serves, which are “material from a public reporting standpoint.” (ER 1628.) Astorga testified that BGNA worked “under the directions of Barrick Gold’s policies.” (ER 1643–44; *see also* ER 1623.)

It was Toronto that mandated Barrick’s use of BGNA for management and Toronto that had to sign off on Barrick’s budget. The fact that BGNA employees *also* had to sign off on Mansanti’s proposal is irrelevant because that was not ultimate control; it was a precursor to getting approval from Toronto. (ER 1515–16.)

Toronto also controlled critical issues affecting Barrick’s overall direction. Toronto directed, for example, that Barrick handle its crisis management locally; BGNA leadership in Salt Lake had no role in that delegation. (ER 1851–52.)

The District Court Dismisses Bullion’s Complaint

Without conducting an evidentiary hearing, the federal district granted Barrick’s motion and dismissed Bullion’s complaint. (ER 2.) The Court relied primarily on the number of officers and directors living in Utah. (ER 6.) Although at any one time, just three of Barrick’s five-member board of directors were from Salt Lake, the Court treated the midyear replacement of one Salt Lake-based director for another as two

directors—for “four out of six” directors in Salt Lake. (ER 6:7–9.) And although Barrick disclosed ten officers—four in Salt Lake, one in Alexandria, Virginia, and five in Toronto—the district court said that “five out of ten” were in Salt Lake. (ER 6:2–3.) Then, because Barrick relisted some officers as “direct reports” to Greg Lang, the district court double-counted them for “eight out of ten” direct reports in Salt Lake. (ER 6:9–10.) According to the district court’s calculations, this placed a “majority of [Barrick’s] corporate officers and executives” in Salt Lake. (ER 6.)

The district court held that applying the “*de facto* executive” doctrine would violate *Hertz*, so the court rejected it. (ER 7:12.) And while the district court did not disagree that Barrick’s officers based in Salt Lake were acting in their capacities as employees of BGNA, the court did not think that affected the nerve-center analysis because “the Salt Lake City-based executives were formally listed as [Barrick’s] corporate officers.” (ER 8.)

Bullion appeals.

SUMMARY OF THE ARGUMENT

The district court's order locating Barrick's "nerve center" for corporate citizenship in Salt Lake City, Utah is a mishmash of formalistic and informal approaches.

In some respects, the district court applied a rigid formalism inconsistent with *Hertz's* own warnings against "jurisdictional manipulation." 559 U.S. at 97. The district court refused to apply the *de facto* officer doctrine on grounds that it would undercut an analysis based solely on named officers. And on that score, while miscalculating the totals, the court considered dispositive the location of a bare majority of directors and other executives who theoretically had "ultimate authority," despite the absence of board meetings or other evidence of direction and control to override that exercised by Barrick's general manager in Nevada.

In other respects, however, the district court was far more casual, even haphazard. For example, the court overstated the number of officers and directors in Salt Lake and so ignored that only a minority of Barrick's officers worked there; the plurality were in Toronto. The district court also did not care whether the acts attributed to Barrick's ex-

ecutives were in fact taken by the same individuals in their roles with a separate company, an affiliate based in Salt Lake but controlled by Barrick's ultimate parent from Toronto. Worse, once "Salt Lake" became shorthand for "Barrick," the court credited the acts of individuals who had *no* role with Barrick—just the regional entity. At the same time, the district court waved away as technicalities other activities—such as the location of Barrick's shareholder meeting to approve the company's direction—that took place outside of Salt Lake.

Neither extreme furthers *Hertz's* goals to post clear jurisdictional rules and to keep parties from manipulating those rules. *Hertz's* "nerve center" test is neither so baroque nor so blurry that it locates a company's principal place of business in a state that Barrick itself did not even consider until the eve of trial. A clear jurisdictional rule—the kind that won't kick an unwitting plaintiff out of federal court nearly a decade after filing—at least requires a management company that oversees hundreds of entities to step into the proper role when directing, coordinating, or controlling the acts of a particular corporation.

We can debate whether that control emanated from Nevada, where its *de facto* (and now, official) president directed the company, or

from Toronto, where Barrick’s ultimate parent directed certain aspects of Barrick’s policy and where the annual meetings are held. Even so, that does not make this one of *Hertz’s* hard cases, for in either case, “the parties are diverse, and this Court may continue to exercise diversity jurisdiction over this case.” (ER 4:2–4.)

This Court should reverse.

ARGUMENT

In 2010, the U.S. Supreme Court held that, for diversity purposes, a corporation is a citizen of the state where it maintain its “nerve center.” *Hertz Corp. v. Friend*, 559 U.S. 77 (2010). Nearly a decade later, Barrick asserts that its nerve center was in Utah—Bullion’s state of incorporation—when Bullion filed its complaint, and that its evidence is “indisputabl[e].” (ER 403:10–12.) What Barrick really means, though, is that a *different* company had its nerve center in Utah, and *that* company—as directed by Barrick’s ultimate parent in Toronto—exercised some degree of control over Barrick. Properly applying the “nerve center” test, Barrick itself has no nerve center in Utah, leaving Barrick diverse from Bullion.

I.

STANDARD OF REVIEW

Diversity jurisdiction plays by the usual rules of appellate review: Factual findings are reviewed for clear error and legal conclusion are reviewed *de novo*. *3123 SMB LLC v. Horn*, 880 F.3d 461, 465 (9th Cir. 2018) (citing *Co-Efficient Energy Sys. v. CSL Indus., Inc.*, 812 F.2d 556, 557 (9th Cir. 1987)). When we apply those rules to questions of diversity, we see two important principles:

First, whether facts as found by the district court establish diversity is always a legal conclusion that this Court reviews afresh. *Id.* (citing *Co-Efficient Energy Sys.*, 812 F.2d at 557).

Second, if some evidence supports jurisdiction, the court need not root around for jurisdictional doubt. If the district court forgoes an evidentiary hearing, it has not found any facts, so the plaintiff's burden is "relatively slight"—only a *prima facie* showing that jurisdiction exists. *MAG IAS Holdings, Inc. v. Schmückle*, 854 F.3d 894, 899 (6th Cir. 2017) (citing *Air Prods. & Controls, Inc. v. Safetech Int'l, Inc.*, 503 F.3d 544, 49 (6th Cir. 2007)) (applying these concepts in the personal-jurisdiction context); *Worthington Fed. Bank v. Everest Nat'l Ins. Co.*, 110 F. Supp.

3d 1211, 1216–17 (N.D. Ala. 2015) (discussing the burden for establishing diversity).⁷ In other words, in questions of jurisdiction just as with any other issue on summary judgment, the plaintiff must present evidence that creates a genuine issue of material fact. *Trentacosta v. Frontier Pac. Aircraft Indus., Inc.*, 813 F.2d 1553, 1559 (9th Cir. 1987). Any evidence of the defendant’s diverse citizenship counts. *Messinger v. United Canso Oil & Gas Ltd.*, 80 F.R.D. 730, 737 n.18 (D. Conn. 1978) (citing *Steinbock-Sinclair v. Amoco Int’l Oil Co.*, 401 F. Supp. 19, 24 (N.D. Ill. 1975); *Ostow & Jacobs, Inc. v. Morgan-Jones, Inc.*, 189 F. Supp. 697, 699 (S.D.N.Y. 1960); *Edwards v. Ainsworth*, 377 F. Supp. 200 (S.D. Iowa 1974)).⁸ The defendant cannot lob that burden back to

⁷ Hearings are how a district court finds facts, when it is allowed. And unless jurisdiction is intertwined with the merits, the court can find jurisdictional facts based on the preponderance of evidence. *Leite v. Crane Co.*, 749 F.3d 1117, 1121–22 (9th Cir. 2014). But the court in that circumstance must actually hear the evidence. *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 614–15 (9th Cir. 2016) (“If the defendant thinks the court lacks jurisdiction, his proper course is to request an evidentiary hearing on the issue.” (quoting *Crawford v. United States*, 796 F.2d 924, 928 (7th Cir. 1986))). If it instead relies on the parties’ motions and affidavits, the standard is that for summary judgment. See *Leite*, 749 F.3d at 1121–22 (citing FRCP 56(c), *Norse v. City of Santa Cruz*, 629 F.3d 966, 973 (9th Cir. 2010) (en banc), and *Trentacosta*, 813 F.2d at 1559).

⁸ At the time, the *Messinger* court was seeking facts to apply the now-abrogated locus-of-operation test, but the broader burden-shifting prin-

the plaintiff merely by sowing uncertainty—“obstruct[ing] the court’s access to facts” or “intentionally shroud[ing] in semi-secrecy” a different alleged principal place of business. *Id.*

Other principles of factfinding works similarly. Thus, parties can agree to the facts that determine jurisdiction, including a party’s principal place of business for diversity:

For example, if in a suit under the diversity jurisdiction, 28 U.S.C. § 1332, the parties agree that the plaintiff is domiciled in Illinois and that the defendant is incorporated in Delaware and has its principal place of business in Texas, a district court need not, indeed must not, look behind that agreement unless the judge suspects that the allegations are collusive.

Tilden v. Comm’r of Internal Revenue, 846 F.3d 882, 887 (7th Cir. 2017) (Easterbrook, J.) (citing 28 U.S.C. § 1359).

Here, *de novo* review applies. The district court skipped an evidentiary hearing that would have allowed the court to make factual findings; instead, the court relied on Barrick’s affidavits, the documen-

ciples in *Messinger* arose from cases in other circuits, including the Seventh, which used the “nerve center” test ultimately adopted in *Hertz*. See *Messinger*, 80 F.R.D. at 737 n.18 (citing *Steinbock-Sinclair v. Amoco Int’l Oil Co.*, 401 F. Supp. 19, 24 (N.D. Ill. 1975)); *Hertz Corp.*, 559 U.S. 77, 81 (2010) (expressly adopting the Seventh Circuit’s “nerve center” test in *Wisconsin Knife Works v. Nat’l Metal Crafters*, 781 F.2d 1280, 1282 (7th Cir. 1986), which in turn relied on *Sabo v. Standard Oil Co. of Ind.*, 295 F.2d 893 (7th Cir. 1961) announcing such a test).

tary evidence, and deposition transcripts. Regardless, apart from the court's computation errors⁹ and deference to the Barrick 30(b)(6) witnesses' conclusions about where Barrick was headquartered, the parties generally agree on most of the facts about who worked where and who was in charge of what. Even taking the facts as the district court found them, this Court still reviews *de novo* the district court's legal conclusions on such things as the availability of the *de facto* officer doctrine, the significance of direction provided by employees of a middle-layer management company (including employees that were not officers of Barrick), and the sufficiency of dormant authority. In short, the district court's conclusion that Barrick's nerve center is in Salt Lake merits plenary review.

II.

THE "NERVE CENTER" TEST

A corporation's "nerve center" for citizenship is the single place "where the corporation's high level officers direct, control, and coordinate the corporation's activities." *Hertz Corp.*, 559 U.S. at 80.

⁹ The Court held that "the majority" of Barrick's corporate officers lived and worked out of Salt Lake, when in fact a *minority* did. (ER 6.)

But who is a “high level officer”? And what constitutes direction, control, and coordination? Those questions peer behind the labels and official assertions of authority, so a list of officers and directors and the answers of a corporate deponent are not the end of the matter.

**A. Title Isn’t Everything: One Who Exercises the
Authority of a Corporate Officer is a *De Facto* Officer**

“High level officers” are not limited to those whom the corporation officially designates as officers. “While an individual’s title is relevant to the question of whether he or she was an officer, courts must look to the facts of each situation and determine whether the defendant ‘exercise[d] the executive responsibilities traditionally associated with corporate officers.’” *S.E.C. v. Brown*, 740 F. Supp. 2d 148, 161 (D.D.C. 2010) (quoting *United States v. Jensen*, 537 F. Supp. 2d 1069, 1081 (N.D. Cal. 2008), *vacated on other grounds*, *United States v. Reyes*, 577 F.3d 1069 (9th Cir. 2009)).

“[C]lothing [a person] with the indicia of a corporate officer” by giving them apparent authority to act turns that person into a de facto officer under ordinary agency principles. *Kuehn v. Kuehn*, 642 P.2d 524, 525–26 (Colo. App. 1981); *accord In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 48 (Del. 2006) (applying the *de facto* officer doctrine

to someone “who is actually discharging the duties of that office” “but for some legal reason lacks de jure legal title to that office”). Those agency principles apply in Nevada. *Dixon v. Thatcher*, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987) (“Apparent authority is ‘that authority which a principal holds his agent out as possessing or permits him to exercise or to represent himself as possessing, under such circumstances as to estop the principal from denying its existence.’”) (quoting *Myers v. Jones*, 657 P.2d 1163, 1164 (Nev. 1983)).

**B. “Ultimate Authority” Isn’t Enough:
Direction, Control, and Coordination
Emanates from the Place where those
Functions are Actually Exercised**

Similarly, for purposes of the “nerve center” test, the place of direction, control, and coordination is the place of their actual exercise at the moment the complaint is filed. It is not where the those functions *will later* be exercised or where, ultimately, a higher authority *could theoretically* exercise those functions.

**1. *An Officer’s Unexercised Right to
Exert Control Does Not Matter***

An officer’s theoretical “ultimate authority” to overrule others is not a nerve-center activity if that authority lies dormant while the com-

pany is actually directed by others elsewhere. *Collins v. Virtela Tech. Servs., Inc.*, C 12-613 CW, 2012 WL 4466551, at *6–8 (N.D. Cal. Sept. 26, 2012). In *Soto v. New Braunfels Regional Rehabilitation Hospital, Inc.*, for example, the court rejected as the corporate nerve center the location of the hospital’s vice presidents and directors, as “there is no evidence they exercised this authority and actually directed activities of the hospital during the relevant time period.” SA-15-CA-838-FB, 2016 WL 8856916, at *6–7 (W.D. Tex. July 21, 2016). Instead, what matters “is who was actually exercising the authority to direct or control [the hospital] during the relevant time period.” *Id.*

2. Control by a Separate Company is Irrelevant

Even if the corporation is controlled by another company, the controlling company’s nerve center is irrelevant. *Johnson v. SmithKline Beecham Corp.*, 724 F.3d 337, 352 (3d Cir. 2013). In *Johnson*, the court evaluated GlaxoSmithKline’s sprawling corporate structure, highlighting how placing a company with “widespread and complex operations” under the ownership of a holding company—which “confin[es] its role to owning stock and supervising management”—can promote the subsidiary operating company’s autonomy. *Id.* at 343. While the plaintiffs

sought to tie the holding company's nerve center to the subsidiary's (which was an LLC, not a corporation), the court rejected that argument: *Hertz* forbids mixing the actions of one company to create the nerve center for another. *Id.* at 352.

3. *The Officers' Residence is Not a Default*

It is error to assume that a company's principal place of business "is in the state where its officers reside" unless those officers actually exercise the direction, control, and coordination functions in that state. *3123 SMB LLC v. Horn*, 880 F.3d 461, 468–69 (9th Cir. 2018). In a recent decision, this Court rejected the officers' residence as a default nerve center for a newly formed holding company that had conducted no business. *Id.* It did not matter that the officers *anticipated* directing the corporation's activities from that state. *Id.* Instead, the nerve center was where the corporation took its single act—the place of incorporation. *Id.* at 467, 469.

III.

BARRICK'S NERVE CENTER WAS IN NEVADA

Consistent with its representations in contracts (*see, e.g.*, ER 1555–79), governmental communications (ER 1581–93), and internal

documents (ER 1595–97), Barrick’s “nerve center” activities took place in Nevada. Two individuals, while not designated as officers, effectively exercised the functions of officers in Nevada. And whatever theoretical authority Barrick’s named officers may have had, in 2009 that authority lay nearly dormant while the real activity of directing and coordinating Barrick’s core functions took place in Nevada.

A. Astorga and Mansanti were De Facto Officers of Barrick

Barrick’s general manager, John G. Mansanti,¹⁰ and the Regional Contracts Supervisor for Barrick Gold North America, Inc., Tony Astorga, acted as de facto principal officers of Barrick in 2009 under ordinary agency principles.

1. *Mansanti, as General Manager, Exercised the Actual Authority of Barrick’s President in 2009*

Bullion acknowledges that control over day-to-day operations is not necessarily the same as corporate direction and control. But here Barrick had vested its general manager in Nevada with far more than day-to-day discretion. He had the authority typically associated with a

¹⁰ Mansanti was in this role during the relevant period when Bullion filed its amended complaint. (ER 1087, 1532.) Randy Buffington replaced Mansanti in November 2009, a few months later. (ER 1532.)

corporation's president—including signature authority for major contracts, coordination and development of strategy for mine operations, and inventory, maintenance, and security functions. Whatever theoretical authority Barrick's Utah-based "officers" had to direct such functions, that authority lay dormant for much of 2009.

Mansanti, as general manager, exercised the actual authority of Barrick's president in 2009. He was in charge of all Barrick divisions, listed at the top of Barrick's organizational chart. (ER 1599, 1606–08.)¹¹

Mansanti oversaw all of Barrick's 1600 employees and 400–500 subcontractors and steered the corporation's \$670 million operating budget. (ER 1604, 1605.)

He had actual authority to enter into contracts for Barrick in 2009, nearly all done without consultation with Salt Lake. (ER 1649–50, 1660.) He had signature authority (ER 1692), and he purported to sign these contracts as an *officer* of Barrick. (*E.g.*, 1644–50, 1661–62, 1694–96.) It was Mansanti's authority that was "ultimately" required for significant contracts. (ER 1698, 1700–05.) If Mansanti faced any

¹¹ A similar chart confirms that the position of "general manager" is the top position on chart of "senior management." (See ER 1755.)

limits on his authority, those limits came not from Barrick's executives in Salt Lake, but from Barrick's ultimate parent, Barrick Gold Corporation, in Toronto. (ER 1709 (giving the general manager of Barrick authority to approve up to \$2,000,000 for budgeted expenses).) While Barrick Gold Corporation reserved some authority for its own CEO, COO, and other executive officers, it mentions no such authority for the named officers of Barrick. (ER 1709; *cf. also* ER 1742 (sole-source procurement authority).)

Mansanti was the point of contact for compliance testing with the Nevada Division of Environmental Protection (ER 1757) and supervised Andrew Cole, also in Nevada, who was Barrick's environmental manager. (ER 1614.)

Mansanti was also in charge of human resources, including hiring and firing decisions. (ER 1611.)

Mansanti charted Barrick's course in communicating with business partners without consultation with or interference from Salt Lake. (ER 1761.)

Mansanti directed and coordinated all of these activities from Nevada. Although Barrick assigned the label "general manager," typically

a corporation would call the person exercising those functions its president or CEO. Regardless of title, Mansanti actually exercised those pervasive executive functions.

2. *Astorga was a De Facto Officer of Barrick*

Astorga, likewise, held himself out as a Barrick representative (ER 1646; *see also* ER 1763) and acted in Nevada as an apparent agent of Barrick—with the authority of an officer—to third parties. Astorga acted on important matters without evidence of communication with Salt Lake (*e.g.*, ER 1647, 1648). (*See generally* ER 1785, 1787.) Although Astorga was a BGNA employee, his apparent agency for Barrick makes BGNA's nerve center irrelevant: to the world, the control that he exercised over Barrick's affairs was nerve-center activity for *Barrick*.

B. In 2009, the Direction, Coordination, and Control of Barrick Emanated from Nevada

Overall, Barrick's activities were directed, coordinated, and controlled in 2009 in Nevada. The vast majority of requests for proposal came from Nevada. (ER 1640–41.) Strategic decisions about how to run the mine were made at the mine site, not in a regional office in Salt Lake. (ER 1609–1611.) Mine plans were developed on site. (ER 1614,

1796–97 (“ultimate oversight and responsibility for [the] mine plan” “was with the general manager”).) Equipment inventories, maintenance, and security functions were directed and coordinated from Nevada. (ER 1616–17, 1618.) In contrast with Barrick’s board of directors, which never met in 2009, several significant meetings happened in Elko. (*E.g.*, ER 1801.) And like other governmental agencies, taxing authorities dealt with Elko, not Salt Lake. (ER 1807–08 (direct communication from Andrew Cole in Elko to government entities regarding important compliance issues).)

IV.

BARRICK’S NERVE CENTER WAS NOT IN UTAH

A. Barrick’s Own Named Officers and Directors Do Not Clearly Indicate a Nerve Center in Utah

For the reasons above, Bullion does not think that it makes sense simply to default to the state with the majority of named officers and directors claiming residency. But even that formalistic nose-counting approach does not leave Utah as the unequivocal nerve center.

1. *The Majority of Barrick's Officers Lived Outside Utah; a Plurality was in Toronto*

Barrick's officers were not centralized in Utah. A majority of them lived outside Utah, and a plurality was in Toronto. (ER 1817–18, 1825.) Barrick argues that the “principal” officers were in Utah, but that mixes a formal approach with an informal one; once you start to weigh the relative importance of an officer's role, you cannot ignore the authority actually exercised by Barrick's *de facto* officers in Nevada. In any event, it is hardly clear that the officers outside of Utah were somehow “less than.” It was Barrick's assistant secretary, Faith Teo in Toronto, for example, that in her capacity as assistant secretary of Barrick Exploration Inc. (Barrick's 100% shareholder), exercised the total authority of that parent to ratify Barrick's actions in 2009. (ER 1550–53.)

More important, by Barrick's own admission its officers were not dedicated to Barrick. (ER 398:4–24 & n.3.) Rather, Barrick Gold Corporation's top-down structure directed a series of overlapping executive roles, such that the named officers of any given entity were—both officially and in fact—acting not in their capacities as officers of the individual entity but as employees of the North America regional entity, BGNA. (*Id.*)

2. *The Split-Location Board Did Little in 2009*

The residences of the board of directors (three in Salt Lake, two in Toronto) is irrelevant because the board held no meetings in 2009. (*See* ER 1872.) The board adopted a few resolutions but do not indicate where—if anywhere—those resolutions took place. (*See* ER 1550–52, 1831–36.) In any event, the board exercised little control or direction through its resolutions. The most significant of them authorizes Barrick to open a JPMorgan Chase bank account and names eight signatories—just two of whom are officers. (ER 1833–34.)

Barrick and the court assumed that these resolutions should be treated as having been executed in Salt Lake, but this Court instead prescribes the default rule that “absent evidence to the contrary, a corporation holds its annual meetings at its registered office,” and “such meetings need not actually take place in order to establish the corporation’s principal place of business there.” *3123 SMB LLC*, 880 F.3d at 470. That office, as prescribed by Barrick’s bylaws, is in Canada. (ER 1837.)

B. BGNA's Nerve Center is not Barrick's Nerve Center

Barrick cannot manipulate the jurisdictional analysis by treating as its own the nerve center of a legally distinct management company, BGNA, even if that company is the one that controlled and directed Barrick's activities. *Cf. Johnson*, 724 F.3d at 354. If Barrick's nominal executives act in their roles at BGNA—even to direct Barrick's activities—those are not “nerve center” activities for Barrick. This Court is not required to blur corporate lines to pretend otherwise.

1. *A Corporation's Officers Act for the Corporation Only When They Say They Do*

3123 SMB LLC v. Horn addressed the unusual situation of finding a nerve center for a holding company, whose job is to own things rather than conduct an active business. 880 F.3d 461. In that circumstance, the court has to look to the few acts—or even a single act—done in the corporation's name. *Id.*

An active company, though, does not cause the same trouble. The officers and directors of an active business can be expected to participate regularly in steering and coordinating those activities. And they can be expected to do so in the corporation's name.

The district court here leaned on the hypothetical in *Hertz*: “if the bulk of a company’s business activities visible to the public take place in New Jersey, while its top officers direct those activities just across the river in New York, the ‘principal place of business’ is New York.” *Hertz*, 559 U.S. at 96. (*See* ER 8.)

But consider a twist: A New Jersey company is acquired by a Pennsylvania parent, who then directs a different subsidiary in New York to manage the New Jersey subsidiary. If employees of the New York subsidiary serve as the officers and directors in the New Jersey company and actually direct the company *in those roles*, it makes sense to say that the “officers direct those activities . . . in New York,” making New York the principal place of business. But if those same employees instead offer direction to the New Jersey subsidiary *in their roles as employees of the Pennsylvania subsidiary*, it no longer makes sense to call New York the principal place of business. Sure, those employees could have directed the New Jersey subsidiary directly, as it were, simply by donning their hats as officers and directors. But their election to stay in their Pennsylvania-employee roles is crucial; it leaves the

actual direction and control of the New Jersey subsidiary to those who are acting on its behalf—the managers there.

Officers and directors who take just limited formal acts in their executive roles may be the “nerve center” for a holding company, as in *3123 SMB LLC*. But when the corporation does more, it requires more direction and control. The corporation is steered by those who act on its behalf, not those who could so act but choose instead to remain in the role of an outsider.

**2. *When Barrick’s Nominal Officers Acted in
BGNA’s Name, those Activities Did
Not Form Barrick’s Nerve Center***

The district court was satisfied that (1) Barrick’s nominal president and other key executives worked in Salt Lake, and (2) those same people issued some direction to Barrick’s general manager, regardless of whether they were acting at the time on behalf of BGNA or Barrick.

That was error.

It is telling that two of the four “Barrick” 30(b)(6) witnesses (Merriam and Bolland) were not even associated with—employed by or an officer or director of—Barrick. (ER 1687, 1793.) The other two counted their association as primarily with BGNA, not Barrick. (ER 1509,

1814–15.) They could not testify about Barrick’s chain of ownership to Barrick Gold Corporation. (ER 1512, 1663, 1794, 1815.) They did not know Barrick’s relationship to BGNA (or where BGNA fits in Barrick’s corporate family). (ER 1513–14, 1663, 1816.) And unlike Mansanti, who actually focused on directing Barrick, Barrick’s nominal officers recalled little about Barrick because “we had literally over a hundred entities that we were managing.” (ER 1514.)

By Barrick’s own admission, the “control” that supposedly came from Salt Lake was from BGNA, not Barrick. (See ER 401–03.) Barrick points to their deposition excerpts rather than documents because those “Barrick” officers in Salt Lake consistently acted in their capacity as representatives of BGNA, all but ignoring their executive roles *within* Barrick. That is also why Barrick goes so far as to rely on control by BGNA employees who had *no* position with Barrick—it thinks that third-party direction can count as Barrick’s nerve center. But it is not just a nicety that BGNA is separately incorporated and that the officers located in Salt Lake were “technically employed by BGNA.” (ER 398:17-19.) It shows that direction from Salt Lake was direction not from Barrick’s own nerve center, but from a different company. (See,

e.g., ER 1626 (“Mr. Feehan spoke for *Barrick North America*”); ER 1517 (agreeing that when he says “making sure that [a contract] was in line with our policy,” he is “talking about BGNA”); ER 1519 (it was BGNA that had “involvement in establishing the budget” for Barrick); ER 1687 (Merriam, neither an officer nor employee of Barrick, purported to control “all” of its contracting and procurement from BGNA); ER 1642 (legal support would come not from Barrick’s named general counsel, Rich Haddock, but from “a lawyer who worked for Barrick [Gold of] North America”); ER 1612–13 (input from “Salt Lake” on Mansanti’s budget came from three BGNA employees who did *not* hold an officer or director position within Barrick).)

Even if *BGNA*’s nerve center was in Salt Lake—as Barrick tried at length to prove—that does not get Barrick any closer to placing its *own* nerve center there. *See Johnson*, 724 F.3d at 352.

3. *Relevant Nerve-Center Activity from BGNA Came from Nevada*

It is not even clear, moreover, that BGNA’s “nerve center” activities with respect to Barrick were concentrated in Utah as opposed to Nevada. The Shared Business Center for all of Barrick’s North American entities was in Elko. (ER 1635–36.) It was that center that coordi-

nated or directed Barrick's contracts, purchasing, accounts payable, and various human-resources and information-technology functions. (ER 1635–39.) In over a hundred contracts that went through the Shared Business Center in 2009, Astorga could say how many involved consultation from Salt Lake. (ER 1651; *see also* ER 1652 (stating that consultation would be memorialized in e-mail, but no such e-mails were produced in discovery).) It is irrelevant if those in the Shared Business Center had reporting obligations to Salt Lake; if they were the ones actually exercising control over Barrick's activities, their chain-of-command within BGNA does not erase that control for Barrick. (*Compare* ER 1664–86 (acknowledging that he knew little about Barrick's contracts and conceding that often contracts would be signed without his knowledge).)

**C. Control from Barrick Gold Corporation
Superseded any Control from BGNA**

If this Court is inclined to consider where BGNA may have exercised control over Barrick, it should not stop there. BGNA was just a middleman, a paper layer whose real authority was paper thin. Ultimate control from Barrick Gold Corporation in Canada deprived Barrick's nominal officers and directors of actual authority to direct policy.

1. The Sole Shareholder Exercised Control from Canada

Initially, Barrick's sole shareholder, Barrick Gold Exploration Inc. (Exploration), not BGNA, had control over Barrick's activities. In 2009, Exploration "approved, ratified and made the acts and lawful deeds of the Corporation," "all actions taken by the directors of the Corporation on behalf of and in the name of the Corporation," and "each and all of the acts of the officers of the Corporation." (ER 1553.)

It appears, moreover, that Exploration's exercise of control took place in Canada. Barrick's bylaws state that "[t]he principal office of the corporation shall be Room 400, 736 8th Avenue, S.W., Calgary, Alberta, Canada T2P1H4" (Art. I) and that all shareholders' meetings "shall be held at the principal office of the corporation" unless otherwise determined by the board (Art. II(3)). (ER 1837.) The officer for Exploration that exercised that authority, Faith Teo, was based in Canada, and there is no indication that she held the shareholder meeting in Utah. (ER 1530, 1553.)

2. *Lang and Measom Did Not Meaningfully Exercise “Final” Authority in 2009*

There is no evidence that the direction of Barrick changed based on final authority exercised by its nominal president, Greg Lang, and its CFO, Blake Measom. Indeed, Salt Lake “*communicated* with” Mansanti and other Barrick employees (ER 399–400 (emphasis added)), but the record does not reflect when in 2009 they *controlled* or overrode the decisionmakers in Nevada on issues affecting the core direction of the company. (*Cf., e.g.*, ER 1796–97 (contending that Mansanti would not “implement a mine plan over the objection of the executives located in Salt Lake,” yet acknowledging that Mansanti had “ultimate oversight and responsibility for [the] mine plan” and never identifying an instance when Salt Lake *exercised* its power to object).)

3. *Guidance from Salt Lake was Directed from Toronto*

Even ignoring Salt Lake’s association with BGNA, what limited guidance passed through Salt Lake was that dictated by Barrick Gold Corporation in Toronto. (ER 1511, 1643–44, 1645, 1688 (Barrick’s policies would be “distributed *through* the regions” (emphasis added)).) Toronto set production and other targets for the region. (ER 1622, 1624–

25.) Toronto directed policy for sourcing, procurement, and contracts. (ER 1644.) Budget outlays, capital contribution, and allocation of resources among the Barrick family of companies were matters that Toronto ultimately controlled. (ER 1515–16, 1518, 1626–28, 1795, 1823 (Toronto might “ask for more production” or “help in balancing a cost profile”).) A “life-of-mine review and support” also had to go to Toronto, because it would impact reserves, which are “material from a public reporting standpoint.” (ER 1628.) Astorga testified that BGNA worked “under the directions of Barrick Gold’s policies.” (ER 1643–44; *see also* ER 1623.)

It was Toronto that mandated Barrick’s use of BGNA for management and Toronto that had to sign off on Barrick’s budget. The fact that Salt Lake *also* had to sign off on Mansanti’s proposal is irrelevant because that was not ultimate control; it was a precursor to getting approval from Toronto. (ER 1515–16.)

Toronto also controlled critical issues affecting Barrick’s overall direction. Toronto directed, for example, that Barrick handle its crisis management locally; Salt Lake had no role in that delegation. (ER 1851–52.) Toronto, in that sense at least, served as Barrick’s headquar-

ters. Barrick for all purposes—internal and external—was located in Nevada. (*See* ER 1865–67.) The only entity with a separate “corporate office” was Barrick Gold Corporation, in Toronto. (*See* ER 1755–59.)

**D. Barrick Did Not Register in Utah because it
Did Not Maintain its Headquarters There**

Barrick’s 30(b)(6) designees fumbled the question about Barrick’s relationship to its ultimate parent, Barrick Gold Corporation, and where BGNA fit within Barrick Gold Corporations’s corporate structure. (ER 1512, 1513–14, 1663, 1815–16.)

More surprising was Barrick’s inability to explain why it was not registered to do business, much less maintain a headquarters, in Utah. (ER 1819.) Barrick could represent only that it was authorized as foreign corporation in Nevada. (ER 1819.) On the critical question of where Barrick was authorized to maintain its business, Barrick’s 30(b)(6) designee deferred to Barrick Gold Corporation in Toronto, which was responsible for Barrick’s corporate filings. (ER 1820, 1821.)

This is not to say that Barrick is breaking the law for failing to register in Utah. Indeed, if it were a *mistake* that Barrick overlooked its statutory obligation to inform Utah’s secretary of state that it maintained its headquarters and “nerve center” in Utah, that would not mat-

ter for jurisdiction. But it is not a mistake. A corporation's failure to apply for authorization to do business in a state is at least some evidence that the corporation has not established its nerve center in that state. *See In re W. Coast Interventional Pain Med., Inc.*, 435 B.R. 569, 575 (Bankr. N.D. Ind. 2010) (applying the "nerve center" test in the analogous context of "principal place of business" for venue). And here, the decision not to register in Utah is consistent with how Barrick presented itself to the world and how it operated internally: Barrick in 2009 did not maintain its principal place of business in Utah.

Barrick acknowledges that it has now abandoned the regional model (ER 353 n.2). Barrick Gold Corporation formally transferred BGNA's Salt Lake functions to Nevada. (Marianne Kobak McKown, *Barrick Opens Office in Henderson* (Sept. 27, 2015), https://elkodaily.com/mining/barrick-opens-office-in-henderson/article_f1310d4d-1ee1-58a1-a5f3-9fbed8e581fe.html, ER 371–75.) The general manager of Barrick is now expressly its president. (See Nev. Sec'y of State Filing (listing William MacNevin as "President" in Elko), ER 377; Marianne Kobak McKown, *Goldstrike Focused on Being Best in Class*, Elko Daily Free Press (Jun. 11, 2016),

https://elkodaily.com/mining/goldstrike-focused-on-being-best-in-class/article_dbecffd6-a6f2-5ddb-9312-dda696dfa750.html (identifying MacNevin as Barrick’s “new general manager”), ER 383–92.) But while Barrick calls this a shift, it seems rather that Barrick has simply made express what had previously been implicit: Barrick’s nerve center is in Nevada.

CONCLUSION

As Barrick knew for more than seven years, its “nerve center” was not in BGNA’s Salt Lake offices. That is why it represented that it was diverse from a corporation in Utah. That is why it never registered to do business in Utah. That is why Barrick’s nominal officers consistently acted in BGNA’s name, not Barrick’s, while its Nevada executives represented to the world—both government agencies and private contractors—that they acted as officers of Barrick. That is why did not occur to Barrick—either in the years that used the “regional model” or after it abandoned that model and transferred BGNA’s Salt Lake functions to Nevada, making explicit that Barrick’s general manager is also its president—that its “nerve center” had ever been in that city.

Barrick was right.

To say that Barrick had been wrong that whole time—and right only when it unearthed its long-lost Salt Lake nerve center—would not just bless jurisdictional manipulation; it would require it.

This Court should reverse the judgment.

Dated this 9th day of December, 2019.

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CERTIFICATE OF COMPLIANCE

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s) 18-17246

I am the attorney or self-represented party.

This brief contains 8,530 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

☒ [X] complies with the word limit of Cir. R. 32-1.

☐ [] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

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☐ [] a party or parties are filing a single brief in response to a longer joint brief.

☐ [] complies with the length limit designated by court order dated _____.

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Signature s/Abraham G Smith **Date** December 9, 2019
(use "s/[typed name]" to sign electronically-filed documents)

CERTIFICATE OF SERVICE

I certify that on December 9, 2019, I electronically filed the foregoing APPELLANT'S OPENING BRIEF with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I e-mailed a copy of this brief on all participants who are registered CM/ECF users.

Dated this 9th day of December, 2019.

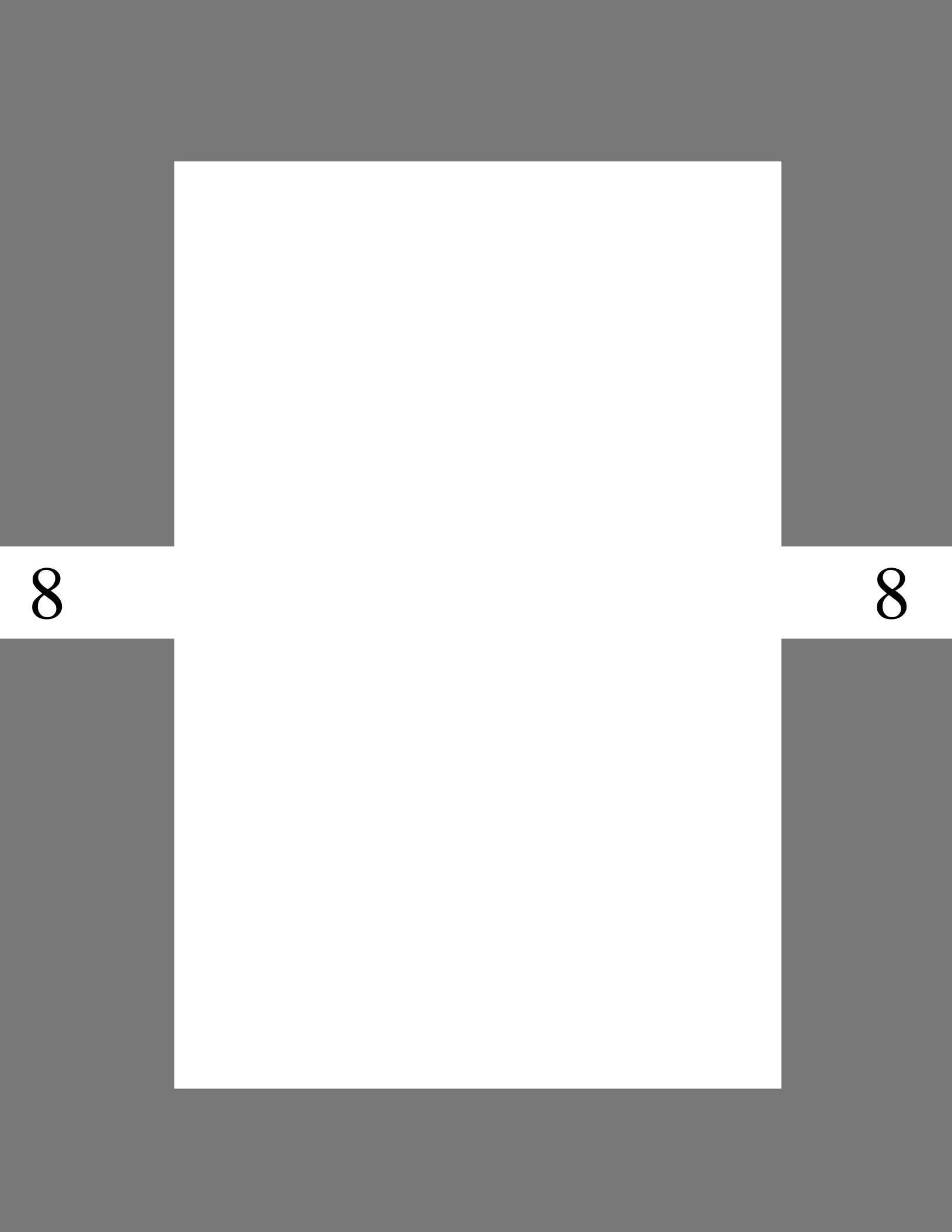
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Attorney for Appellant

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No. 18-17246

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BULLION MONARCH MINING, INC.,

Plaintiff-Appellant,

v.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant-Appellee.

APPEAL
from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding
D.C. No. 3:09-CV-612-MMD-WGC

**APPELLANT'S EXCERPTS OF RECORD
VOLUME 8 OF 9 (UNDER SEAL)**

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DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

vs.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant.

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

[FILED UNDER SEAL]

**APPENDIX OF EXHIBITS TO:
“OPPOSITION TO RENEWED
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1 Dated this 11th day of May, 2018.

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Deposition of Blake Measom
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,)

Plaintiff,)

v.)

BARRICK GOLDSTRIKE MINES, INC.,)

Defendant,)

CERTIFIED COPY

Case No.

03:09-CV-612-MMD-WGC

DEPOSITION OF

BLAKE MEASOM

MARCH 21, 2018

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
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REPORTED BY: DEBY COUVILLON GREEN, CA CSR NO. 2791
TX CSR NO. 8929
UTAH CSR NO. 10611481-7801

FILE NO.: AC02625

Blake Measom
March 21, 2018

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 BULLION MONARCH MINING, INC.,)

4 Plaintiff,)

5 v.)

Case No.

) 03:09-CV-612-MMD-WGC

6 BARRICK GOLDSTRIKE MINES, INC.,)

7 Defendant,)

8

9 Oral deposition of BLAKE MEASOM, taken on

10 behalf of the Plaintiff Bullion Monarch Mining, Inc.,

11 and duly sworn, was taken in the above-styled case on

12 March 21, 2018 from 12:08 P.M. to 1:14 P.M. before Deby

13 Couvillon Green, CSR in and for the State of Texas and in

14 and for the State of California, and in and for the State

15 of Utah, Registered Professional Reporter, reported by

16 machine shorthand, at Parsons Behle & Latimer,

17 201 South Main Street, Suite 1800, Salt Lake City,

18 Utah, 84111 pursuant to the Federal Rules of Civil

19 Procedure and the provisions stated in the record

20 or attached hereto.

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Blake Measom
March 21, 2018

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I N D E X

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INSTRUCTIONS NOT TO ANSWER:

(None)

INFORMATION REQUESTED:

(None)

Blake Measom
March 21, 2018

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1 A. Okay.

2 Q. You're not required to speculate or guess.

3 A. Right.

4 Q. And so a way that I usually differentiate that,
5 a good example is you could probably estimate how long
6 this table is because you're sitting here and you're
7 looking at it and you have some personal knowledge of it.

8 A. Okay.

9 Q. But it would just be a guess if I asked you to
10 tell me how wide the desk in my office in Reno, Nevada
11 is, okay?

12 A. I wouldn't even make that guess.

13 Q. All right. All right.

14 So you left in about 2015.

15 What Barrick entity were you working for in
16 2015 when you left?

17 A. Barrick Gold of North America, Inc.

18 Q. Okay. And was that the only Barrick entity that
19 you worked for while you were working for the Barrick --
20 for Barrick?

21 A. It's the only one that was my actual employer,
22 yes.

23 It was their payroll company the --
24 (inaudible) --

25 THE REPORTER: -- "the" --

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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 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 But that was, you know, communication
2 facilitation between my counterparts in the other regions
3 and myself typically with some of that. So it was to
4 kind of promote consistency, if you will, and that way I
5 would communicate it with the treasury group in Toronto
6 because they had the global mandate for the deployment of
7 capital within the company and so I -- I could obviously
8 see everything within North America and we made decisions
9 based on that.

10 But if there were decisions that had to be
11 made to move capital from one regional business unit to
12 another, then we would have communicated with them on
13 that type of thing.

14 Q. And so do you know whether -- well, do you know
15 who owned -- or who -- yeah -- in 2009 who owned Barrick
16 Gold North America?

17 MR. PETROGEORGE: I'm gonna note an objection
18 for the record that I don't believe this is part of the
19 30(b)(6) notice.

20 But go ahead and answer, if you know.

21 THE WITNESS: I'd have to look at an org
22 chart. I -- I don't know for sure which entity directly
23 owned Barrick Gold of North America.

24 I don't know if it was directly owned by BGC.
25 There may have been an intermediary in there.

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1 MR. BRUST: Okay.

2 Q. (BY MR. BRUST:) But there were no shareholders
3 other than another entity?

4 A. Are -- are you asking me was it a public
5 company?

6 Q. Correct.

7 A. It was not.

8 Q. Okay.

9 A. Barrick Gold --

10 (Simultaneous colloquy.)

11 Q. And --

12 A. -- of North America was not --

13 THE REPORTER: Say again.

14 THE WITNESS: Barrick Gold of North America
15 was not a public company.

16 Q. (BY MR. BRUST:) That's my fault for talking
17 over you.

18 A. That's all right.

19 Q. Sorry.

20 A. That's okay.

21 Q. What about Goldstrike? Was Goldstrike owned by
22 a Barrick company?

23 A. Yes.

24 Q. Which Barrick company owned Goldstrike in --

25 (Simultaneous colloquy.)

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1 A. I --

2 Q. -- two thousand --

3 A. -- I'd have to look at an org chart to tell you.
4 I mean we had literally over a hundred entities that we
5 were managing and -- and I'd have to go look at it.

6 Q. There were a hundred --

7 THE REPORTER: And what year did you ask?

8 MR. BRUST: 2009.

9 Q. (BY MR. BRUST:) And when you said you had a
10 hundred entities that you were managing, are you talking
11 about a hundred entities that Barrick Gold North America
12 was managing in 2009?

13 A. Let -- can -- can -- let me just back up.

14 Q. Sure.

15 A. I can't tell you it was exactly 100.

16 Q. Fair enough.

17 A. We had many. Let me leave it at that.

18 Q. Okay.

19 A. And it's --

20 (Simultaneous colloquy.)

21 Q. More than --

22 A. -- more --

23 Q. Sorry.

24 A. -- more than I can just remember off the top of
25 my head.

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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 to three of the mines within North America and I was
2 actively involved in that and -- and in those contracts
3 and negotiations.

4 A few other administrative ones like we had a
5 parking lot for where -- where the buses picked up
6 employees to take them out to the mine sites in Elko, I
7 was involved in the discussions and -- and crafting that
8 contract. So something like that.

9 Q. All right.

10 A. There were some.

11 Q. So why -- what would your involvement have been
12 in the parking lot contract?

13 A. Just reviewing the terms and making sure that,
14 again, it was in line with our policy and that it then
15 got the proper approvals under our policies.

16 Q. And when you say "...in line with..." your
17 "...policy...", you're saying -- you're talking about
18 BGNA, correct?

19 A. Correct.

20 Q. And in line with what parts of the policy?

21 A. Things like delegations of authority. Did they
22 have the authority -- who had the authority to make -- to
23 approve the commitment of capital or resources and -- and
24 did we follow that?

25 I didn't typically look at our standard terms

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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 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 BULLION MONARCH MINING, INC.,)

4 Plaintiff,)

5 v.)

6 BARRICK GOLDSTRIKE MINES, INC.,)

7 Defendant,)

) Case No.

) 03:09-CV-612-MMD-WGC

8
9
10 REPORTER'S CERTIFICATE

11 I, Deby Couvillon Green, Certified Shorthand
 12 Reporter for the State of Texas CSR No. 8929 and for the
 13 State of California CSR No. 2791, and for the State of
 14 Utah CSR No. 10611481-7801, Registered Professional
 15 Reporter and Registered Merit Reporter, do hereby
 16 certify:

17 That the foregoing proceedings were taken
 18 before me at the time and place therein set forth, at
 19 which time the witness was put under oath by me;

20 That the testimony of the witness, the
 21 questions propounded, and all objections and statements
 22 made at the time of the examination were recorded
 23 stenographically by me and were thereafter transcribed;

24 That a review of the transcript by the
 25 deponent was requested;

Blake Measom
March 21, 2018

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1 That the foregoing is a true and correct
2 transcript of my shorthand notes so taken.

3 I further certify I am not a relative or
4 employee of any attorney of the parties, nor financially
5 interested in the action.

6 I declare under penalty of perjury under the
7 laws of Texas that the foregoing is true and correct.

8 Dated this 28th day of March, 2018.

9
10 *Deby Couvillon Green*



11 DEBY COUVILLON GREEN, Texas CSR No. 8929
12 Expiration Date: 12-31-2019
13 California CSR No. 2791
14 Expiration Date: 8-31-2018
15 Utah CSR No. 10611481-7801
16 Expiration Date: 5-31-2020
17 Atkinson-Baker Court Reporters, Inc.
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FILE NO.: AC02625

**Barrick's Interrogatory Responses
FILED UNDER SEAL**

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10 *Attorneys for Barrick Goldstrike Mines Inc.*

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF NEVADA
14

15 BULLION MONARCH MINING, INC.,

16 Plaintiff,

17 v.

18 BARRICK GOLDSTRIKE MINES INC., *et*
19 *al.*,

20 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**

21 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure ("FRCP") and this
22 Court's Order granting Plaintiff Bullion Monarch Mining, Inc.'s ("Bullion") Motion for
23 Jurisdictional Discovery [ECF No. 267] (the "Jurisdictional Order"), defendant Barrick Goldstrike
24 Mines Inc. ("Goldstrike") hereby objects to and answers Bullion's Jurisdictional Interrogatories
25 served on Goldstrike via hand delivery on October 31, 2017 (the "Jurisdictional Interrogatories").

26 **GENERAL OBJECTIONS**

27 1. Goldstrike objects to the Jurisdictional Interrogatories to the extent the information
28 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

1 inconsistent with Goldstrike's obligations under Rules 26 and 33 of the FRCP and/or the limited
2 scope of the Jurisdictional Order.

3 13. Goldstrike does not in any manner waive or intend to waive, but rather intends to
4 preserve and is preserving, (1) all objections as to competency, relevancy, materiality, and
5 admissibility, (2) all objections to the use of any of the answers herein in any proceeding, motion,
6 hearing, or trial in this or any other action, and (3) all objections to any further discovery or request
7 involving or related to any of the Jurisdictional Interrogatories. The supplying of any information
8 in response to the Jurisdictional Interrogatories does not constitute a waiver of any stated objections
9 or an admission by Goldstrike that such information is relevant, admissible or material to the limited
10 jurisdictional question currently before the court, and Goldstrike reserves the right to object to any
11 further inquiry with respect to any subject matter at any time.

12 14. Goldstrike incorporates each of the foregoing General Objections into each and
13 every answer below as if specifically and fully set forth and restated therein. A republication or
14 restatement, in whole or in part, of any one or more of the foregoing general objections in response
15 to a specific Jurisdictional Interrogatory is not intended to waive and does not waive an objection
16 not otherwise stated.

17 **SPECIFIC OBJECTIONS AND ANSWERS**

18 **JURISDICTIONAL INTERROGATORY NO. 1:** Please identify each and every member
19 of the Board of Directors for Goldstrike, including:

20 (a) their names;

21 (b) the address of each and every (i) residence and (ii) domicile of the members;

22 and

23 (c) any other officer, manager, or board-member position held by each of the

24 members in any parent, sibling, subsidiary, affiliate or related entity of Goldstrike;

25 from January 1, 2009, to December 31, 2009?

26 **ANSWER TO JURISDICTIONAL INTERROGATORY NO. 1:** Goldstrike incorporates
27 by reference each of the general objections set forth above as if fully set forth and restated herein.

28 Goldstrike specifically objects to Jurisdictional Interrogatory No. 1 as follows:

1 1. Overbroad, unduly burdensome, disproportionate, and irrelevant to the limited
2 question of whether Goldstrike's corporate headquarters or "nerve center" under *Hertz* was in Salt
3 Lake City in 2009 insofar as it requests information about "any parent, sibling, subsidiary, affiliate
4 or related entity of Goldstrike." The only entity whose citizenship is at issue in this case is
5 Goldstrike.

6 2. Overbroad, unduly burdensome, disproportionate and irrelevant insofar as it seeks
7 the address of every residence any Board member of Goldstrike may have had in 2009. Goldstrike
8 will provide the address of the Board member's primary residence in 2009.

9 Subject to and without waiving any of the foregoing general or specific objections,
10 Goldstrike answers Jurisdictional Interrogatory No. 1 as follows:

11 **Name:** Richie Haddock (effective May 25, 2009)
12 **Office Address:** 136 E. South Temple, Suite 1800, Salt Lake City, UT
13 **Residential Address:** 1359 E. Barton Creek Circle, Bountiful, UT

14 **Name:** Steve Hull (until May 25, 2009)
15 **Office Address:** 201 S. Main Street, Suite 1800, Salt Lake City, UT
16 **Residential Address:** 3212 E. Millcreek Dell, Salt Lake City, UT

17 **Name:** Peter Kinver
18 **Office Address:** 161 Bay Street, Suite 3700, Toronto, Ontario
19 **Residential Address:** 193 The Bridle Path, Toronto, Ontario

20 **Name:** Gregory Lang
21 **Office Address:** 136 E. South Temple, Suite 1800, Salt Lake City, UT
22 **Residential Address:** 44 Lone Hollow, Sandy, UT

23 **Name:** Blake Measom
24 **Office Address:** 136 E. South Temple, Suite 1800, Salt Lake City, UT
25 **Residential Address:** 9583 Swallowtail Circle, South Jordan, UT

26 **Name:** Jamie Sokalsky
27 **Office Address:** 161 Bay Street, Suite 3700, Toronto, Ontario
28 **Residential Address:** 497 Windermere Avenue, Toronto, Ontario

29 **JURISDICTIONAL INTERROGATORY NO. 2:** Please identify each and every member
30 Officer, Manager, and General Manager of Goldstrike, including:

- 31 (a) their names;
- 32 (b) the address of each and every (i) residence and (ii) domicile of the officers
33 and managers;
- 34 (c) the duties held by each Officer and Manager;

1 (d) the decisions made by each Officer and Manager; and
2 ([e]) identifying any other officer, manager or board member position held by
3 each Officer, Manager, or General Manager in any parent, sibling, subsidiary, affiliate, or
4 related entity of Goldstrike;
5 from January 1, 2009, to December 31, 2009.

6 ANSWER TO JURISDICTIONAL INTERROGATORY NO. 2: Goldstrike incorporates
7 by reference each of the general objections set forth above as if fully set forth and restated herein.

8 Goldstrike specifically objects to Jurisdictional Interrogatory No. 2 as follows:

9 1. Vague with respect to the undefined terms "Managers" and "General Manager". For
10 purposes of responding to Jurisdictional Interrogatory No. 2 Goldstrike construes the term "General
11 Manager" to refer to the General Manager at Goldstrike's mine site (consisting of the Mickle
12 underground and Betze Post open pit mines and related facilities) located outside Elko, Nevada (the
13 "Goldstrike Mine"). Goldstrike construes the term "Manager" to refer to (i) those managers and
14 superintendents that reported directly to the General Manager at the Goldstrike Mine, and (ii)
15 Goldstrike's President and the executive level directors, managers and/or vice presidents reporting
16 directly to Goldstrike's President.

17 2. Overbroad, unduly burdensome, disproportionate and irrelevant to the question of
18 whether Goldstrike's corporate headquarters or "nerve center" under *Hertz* was located in Salt Lake
19 City in 2009 insofar as it requests information about "any parent, sibling, subsidiary, affiliate or
20 related entity of Goldstrike." The only entity whose citizenship is at issue in this case is Goldstrike.

21 3. Overbroad, disproportionate and irrelevant to the question of whether Goldstrike's
22 corporate headquarters or "nerve center" under *Hertz* was located in Salt Lake City in 2009 insofar
23 as it requests the address of every residence and domicile for the identified "Officers", "Managers",
24 and "General Manager". The only address that is even potentially relevant to the jurisdictional
25 analysis is the address of the employee's office and, perhaps, his or her primary residence.

26 4. Overbroad, unduly burdensome and disproportionate insofar as it asks Goldstrike to
27 articulate all of the duties of each "Officer", "General Manager", and "Manager" in 2009. Given
28 the length of time that has lapsed, it is difficult if not impossible for Goldstrike to provide a

1 complete listing of all of the duties each "Officer", "General Manager", and "Manager" may have
2 had back in 2009. Additionally, the only "duties" that are relevant relate to corporate control
3 functions. It would be unreasonably burdensome and disproportionate to require Goldstrike to
4 identify all duties.

5 5. Overbroad, unduly burdensome, and disproportionate insofar as it asks Goldstrike
6 to identify all of the "decisions" made by each "Officer", "General Manager", and "Manager" in
7 2009. The individuals at issue were high-level executives and made decisions relative to their
8 particular areas of expertise and positions on a constant basis. It would be impossible for Goldstrike
9 to identify each and every decision made, especially given the length of time that has lapsed. This
10 request essentially asks Goldstrike to re-create the day-to-day professional activities of dozens of
11 employees over a year period more than eight years ago. The request is facially overbroad.

12 Subject to and without waiving any of the foregoing general or specific objections,
13 Goldstrike answers Jurisdictional Interrogatory No. 2 as follows:

14 The "Officers" of Goldstrike in 2009 were:

15 **Name:** Greg Lang

Title: President

16 **Office Address:** 136 E. South Temple, Salt Lake City, UT

Residential Address: 44 Lone Hollow, Sandy, UT

17 **Name:** Blake Measom

Title: Chief Financial Officer

18 **Office Address:** 136 E. South Temple, Salt Lake City, UT

19 **Residential Address:** 9583 Shallowtail Circle, South Jordan, UT

20 **Name:** Richard Ball

Title: Vice President and Controller

21 **Office Address:** 161 Bay Street, Suite 3700, Toronto, Ontario

22 **Residential Address:** 193 Brooke Avenue, Toronto, Ontario

23 **Name:** Michael Brown

Title: Vice President

24 **Office Address:** 101 Constitution Avenue, Suite 675 E., Washington, D.C.

Residential Address: 9102 Peartree Landing, Alexandria, VA

25 **Name:** Michael Feehan

Title: Vice President

26 **Office Address:** 136 E. South Temple, Suite 1800, Salt Lake City, UT

27 **Residential Address:** 4606 Belmour Way, Holladay, UT

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Name: Patrick Garver
Title: Vice President
Office Address: 161 Bay Street, Suite 3700, Toronto, Ontario
Residential Address: 81 Dunvegan Road, Toronto, Ontario

Name: James Marvor
Title: Vice President and Treasurer
Office Address: 161 Bay Street, Suite 3700, Toronto, Ontario
Residential Address: 22 Ballacaine Drive, Toronto, Ontario

Name: Sybil Veenman
Title: Secretary
Office Address: 161 Bay Street, Suite 3700, Toronto, Ontario
Residential Address: 53 Glenrose Avenue, Toronto, Ontario

Name: Faith Teo
Title: Asst. Secretary
Office Address: 161 Bay Street, Suite 3700, Toronto, Ontario
Residential Address: 104-11 Everson Drive, Toronto, Ontario

Name: Paul Judd
Title: Tax Director
Office Address: 136 E. South Temple, Suite 1800, Salt Lake City, UT
Residential Address: 2486 S. Orchard Place, Bountiful, UT

In 2009, the direct reports of Goldstrike's President, Gregory Lang, were as follows:

Name: Craig Beasley
Title: Director Organizational Effectiveness (OE)
Office Address: 136 E. South Temple, Suite 1800, Salt Lake City, UT
Residential Address: 3459 Celebration Drive, West Valley City, UT
General description of responsibility: Executive level responsibility for all general administrative functions at Goldstrike, including but not limited to human resources, employee benefits, and human resource information systems.

Name: Andy Bolland
Title: Director Technical Services
Office Address: 136 E. South Temple, Suite 1800, Salt Lake City, UT
Residential Address: 2231 DeBeers Drive, Sandy, UT
General description of responsibility: Executive level responsibility for all aspects of Goldstrike's technical services, including but not limited to mine engineering, metallurgy and asset management.

Name: Michael Brown
Title: Vice President
Office Address: 101 Constitution Avenue, Suite 675 E., Washington, D.C.
Residential Address: 9102 Peartree Landing, Alexandria, VA
General description of responsibility: A registered lobbyist with executive level responsibility over all aspects of Goldstrike's government relations efforts.

Name: Mike Feehan
Title: Director Operations
Office Address: 136 E. South Temple, Suite 1800, Salt Lake City, UT
Residential Address: 4606 Belmour Way, Holladay, UT

General description of responsibility: Executive level responsibility over all mine operations, including but not limited to the Goldstrike Mine and the Western 102 power plant project; the General Manager at the Goldstrike Mine reported to Mr. Feehan.

Name: Fredrick "Bill" Ferdinand

Title: Director HSES

Office Address: 136 E. South Temple, Suite 1800, Salt Lake City, UT

Residential Address: 3107 W. Swiss Pass Circle, South Jordan, UT

General description of responsibility: Executive level responsibility over health, safety and environmental, including but not limited to occupational health and safety, site closures, and Nevada permitting.

Name: Rich Haddock

Title: Vice President and General Counsel

Office Address: 136 E. South Temple, Suite 1800, Salt Lake City, UT

Residential Address: 1359 E. Barton Creek Circle, Bountiful, UT

General description of responsibility: Executive level responsibility over all legal and land acquisition matters affecting Goldstrike.

Name: Blake Measom

Title: Chief Financial Officer

Office Address: 136 E. South Temple, Suite 1800, Salt Lake City, UT

Residential Address: 9583 Shallowtail Circle, South Jordan, UT

General description of responsibility: Executive level responsibility over Goldstrike's financial functions, including but not limited to financial planning, budgeting and analysis, compliance, and corporate tax; also had executive level responsibility for contracting and procurement and information systems.

Name: Jill Moffat

Title: Executive Assistant

Office Address: 136 E. South Temple, Suite 1800, Salt Lake City, UT

Residential Address: 4857 S. Taylors Hill Drive, Taylorsville, UT

General description of responsibility: Secretarial and administrative services for President Greg Lang and the legal department.

Name: Louis Schack

Title: Manager Communications and Community Affairs

Office Address: 136 E. South Temple, Suite 1800, Salt Lake City, UT

Residential Address: 1846 Sawyer Way, Elko, NV

General description of responsibility: Executive level responsibility for Goldstrike's overall communications strategy and community/public relations functions.

Name: Richard Williams

Title: Manager Business Development

Office Address: 136 E. South Temple, Suite 1800, Salt Lake City, UT

Residential Address: 3591 Wicklow Place, Salt Lake City, UT

General description of responsibility: Executive level responsibility for all aspects of business development.

In 2009, the General Manager at the Goldstrike Mine outside of Elko, Nevada, and his direct reports were as follows:

Name: John Mansanti
Title: General Manager (until October 2009)
Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803
Residential Address: Unknown at this time
General description of responsibility: Supervised all operations at the Goldstrike Mine subject to oversight by and based on the directives of corporate management in Salt Lake City.

Name: Randy Buffington
Title: General Manager (from November 2009)
Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803
Mailing Address: PO Box 209, Eureka, NV 89316
General description of responsibility: Supervised all operations at the Goldstrike Mine subject to oversight by and based on the directives of corporate management in Salt Lake City.

Name: JoAnn Anttila
Title: Administrative Assistant
Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803
Mailing Address: PO Box 8153, Spring Creek, NV 89815
General description of responsibility: Secretarial and other executive level administrative work for the General Manager at the Goldstrike Mine.

Name: Nigel Bain
Title: Manager Underground (also Interim General Manager from October-November 2009)
Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803
Residential Address: 2077 Meadow Ridge Drive, Elko, NV 89801
General description of responsibility: Supervised and managed all operations at the Mickle underground mine at the Goldstrike Mine subject to oversight by and based on the directives of the General Manager and corporate management in Salt Lake City; supervised all operations at the Goldstrike Mine during the period he served as Interim General Manager subject to oversight by and based on the directives of corporate management in Salt Lake City.

Name: Thomas Bassier
Title: Manager Safety & Health
Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803
Residential Address: 1239 Mountain View Drive, Elko, NV 89801
General description of responsibility: Oversaw and managed all aspects of health and safety at the Goldstrike Mine subject to oversight by and based on the directives of the General Manager and corporate management in Salt Lake City.

Name: Wanda (Marie) Byington
Title: Manager/Superintendent Human Resources
Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803
Mailing Address: PO Box 2545, Elko, NV 89803

General description of responsibility: Oversaw and managed all aspects of human resources at the Goldstrike Mine subject to oversight by and based on the directives of the General Manager and corporate management in Salt Lake City.

Name: Andrew Cole

Title: Manager Environmental

Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803

Residential Address: 1867 Laxalt Way, Elko, NV 89801

General description of responsibility: Oversaw and managed all environmental matters at the Goldstrike Mine subject to oversight by and based on the directives of the General Manager and corporate management in Salt Lake City.

Name: Joseph Donnelly

Title: Manager Business Improvement

Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803

Residential Address: 468 Country Club Plaza, Spring Creek, NV 89815

General description of responsibility: Oversaw and managed all business improvement functions at the Goldstrike Mine subject to oversight by and based on the directives of the General Manager and corporate management in Salt Lake City.

Name: Tracy Miller

Title: Manager Open Pit

Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803

Residential Address: 3182 Crooked Court, Elko, NV 89801

General description of responsibility: Oversaw and managed all aspects of the Betze open pit mine at the Goldstrike Mine subject to oversight by and based on the directives of the General Manager and corporate management in Salt Lake City.

Name: Alfred Plank

Title: Manager Administration

Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803

Residential Address: 442 Lipparelli Lane #3, Spring Creek, NV 89815

General description of responsibility: Oversaw and managed all of the administrative functions, including facilities functions, at the Goldstrike Mine subject to oversight by and based on the directives of the General Manager and corporate management in Salt Lake City.

Name: Steven Yopps

Title: Manager Process

Office Address: Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV 89803

Residential Address: 280 Poplar Drive, Elko, Nevada 89801

General description of responsibility: Oversaw and managed all aspects of the ore processing functions at the Goldstrike Mine subject to oversight by and based on the directives of the General Manager and management in Salt Lake City.

JURISDICTIONAL INTERROGATORY NO. 3: Please identify all corporate decisions made on behalf of Goldstrike which were made by any Officer, Manager or General Manager, or

1 voted on by a Director, while that Officer, Manager, General Manager, or Director was located in
2 the State of Nevada, including identifying:

- 3 (a) the decision by (i) date and (ii) subject;
4 (b) who made the decision or voted on the decision by (i) name and (ii) title; and
5 (c) the specific location of the person at the time he or she made or voted on the
6 decision.

7 ANSWER TO JURISDICTIONAL INTERROGATORY NO. 3: Goldstrike incorporates
8 by reference each of the general objections set forth above as if fully set forth and restated herein.

9 Goldstrike specifically objects to Jurisdictional Interrogatory No. 3 as follows:

10 1. Vague with respect to the undefined term "corporate decisions". For purposes of
11 responding to Jurisdictional Interrogatory No. 3 Goldstrike construes the term "corporate decision"
12 to refer to executive level policy decisions made by Goldstrike's President and his direct reports
13 located primarily in Salt Lake City.

14 2. Vague with respect to the idea that a single location or time can be identified for a
15 corporate decision. Often corporate decisions are the culmination of years of work, investigation,
16 analysis, communications, and correspondence, each of which contributes to some degree to a
17 decision. Most decisions are also subject to continued scrutiny, re-analysis, and further adjustment,
18 so it is rarely accurate to refer to a "corporate decision" as a singular event made at a certain time
19 and at a certain place.

20 3. Vague with respect to the undefined terms "Manager" and "General Manager". For
21 purposes of responding to Jurisdictional Interrogatory No. 3 Goldstrike construes the term "General
22 Manager" to refer to the General Manager at the Goldstrike Mine. Goldstrike construes the term
23 "Manager" to refer to (i) those managers and superintendents that reported directly to the General
24 Manager at the Goldstrike Mine, and (ii) Goldstrike's President and the executive level directors,
25 managers or and vice presidents reporting directly to Goldstrike's President.

26 4. Overbroad, unduly burdensome, disproportionate and irrelevant to the question of
27 whether Goldstrike's corporate headquarters or "nerve center" under *Hertz* was located in Salt Lake
28

1 City in 2009 insofar as the term “corporate decisions” could be construed to encompass not only
2 executive level decision making but day-to-day operating decisions.

3 5. Overbroad, unduly burdensome, and disproportionate insofar as it would require
4 Goldstrike to identify “corporate decisions” made eight years ago or more by people who may or
5 not still be employed by Goldstrike, regardless of whether such decisions were memorialized in a
6 writing or whether any such writing remains in Goldstrike’s possession and control.

7 6. Overbroad, unduly burdensome, disproportionate and irrelevant to the question of
8 whether Goldstrike’s corporate headquarters or “nerve center” under *Hertz* was located in Salt Lake
9 City in 2009 insofar as it asks Goldstrike to identify the specific location where any particular
10 decision was made. An executive level decision maker with his or her primary office in Salt Lake
11 City could make decisions while visiting a mine site or other location or while traveling on business
12 anywhere around the world and the specific location where individual decisions may have been
13 made is not relevant to the limited jurisdictional inquiry presently before the court.

14 Subject to and without waiving any of the foregoing general or specific objections,
15 Goldstrike answers Jurisdictional Interrogatory No. 3 as follows:

16 The North America Regional Business Unit (“RBU”), 136 E. South Temple, Suite 1800,
17 Salt Lake City, UT was responsible for all executive level corporate decision making at Goldstrike.
18 Goldstrike’s President, Greg Lang, and his direct reports, set corporate policy and made executive
19 level corporate decisions relating to strategy and sustainability of mining operations, including
20 decisions relating to exploration, production and mine/plant closure. Goldstrike’s management in
21 Salt Lake made corporate decisions regarding, among other things, budgeting, land and property
22 acquisitions, and long-term strategy and planning. Management in Salt Lake controlled, supervised
23 and made decisions relating to all the major corporate functions at Goldstrike, including but not
24 limited to decisions relating to production and processing projections and targets, capital reviews,
25 tax policy, mine operations, human resources, legal, accounting, federal land permitting, and
26 equipment. Management in Salt Lake City also oversaw the payment of property taxes and the
27 maintenance of mining claims, leases and other real property interests, set environmental policies,
28 established and communicated health, safety and security policies, oversaw the information

1 technology structure and operation for Goldstrike, managed supply chain and purchasing, and set
2 policy regarding the company's communications and corporate social responsibility policies.
3 Management in Salt Lake also made decisions relating to major project initiatives affecting
4 Goldstrike's future business and operations. *See also* Haddock Declaration.

5 The General Manager and his direct reports at the Goldstrike Mine had responsibility to
6 oversee and implement daily mining operations to ensure that the mines met the mining, production
7 and processing goals established by management in Salt Lake and that the strategies, policies,
8 initiatives and guidelines established by management in Salt Lake were implemented and pursued.
9 The General Manager and his direct reports at the Goldstrike Mine had the authority to make day-
10 to-day decisions regarding how to meet the established goals, strategies, policies, initiatives and
11 guidelines and to adjust daily operations as necessary to meet those targets. However, the General
12 Manager and employees at the Goldstrike Mine reported to management in Salt Lake and consulted
13 with and followed the directives of management in Salt Lake on business critical decisions that
14 could affect the overall operation and success of the mines or their ability to meet the established
15 goals and targets.

16 Goldstrike further refers Bullion to the documents that will be produced in response to
17 Bullion Monarch Mining, Inc.'s Jurisdictional Requests for Production of Document (the
18 "Jurisdictional Document Requests"), which includes documents further demonstrating the
19 executive level decisions making that occurred in Goldstrike's corporate headquarters or "nerve
20 center" in Salt Lake City in 2009.

21 JURISDICTIONAL INTERROGATORY NO. 4: Please identify all employees of
22 Goldstrike who directed, controlled, or coordinated Goldstrike's activities, and were employed at
23 any point in time during the period of January 1, 2009, to December 31, 2009, including their place
24 of employment and position within Goldstrike.

25 ANSWER TO JURISDICTIONAL INTERROGATORY NO. 4: Goldstrike incorporates
26 by reference each of the general objections set forth above as if fully set forth and restated herein.

27 Goldstrike specifically objects to Jurisdictional Interrogatory No. 4 as follows:
28

1 1. Vague and overbroad with respect to the undefined terms “directed, controlled, or
2 coordinated”. Goldstrike construes the term “directed” to mean that the employee had managerial
3 or supervisory authority and guided other employees on how to perform their duties. Goldstrike
4 construes the term “controlled” to mean that the employee had executive level authority to
5 determine policy. Goldstrike construes the term “coordinated” to mean that the employee worked
6 with and oversaw the operations of others in order to ensure that necessary tasks were being
7 performed.

8 2. Vague with respect to the undefined term “activities.” The ordinary definition of
9 term would render this request facially overbroad as it would sweep within its scope potentially all
10 company actions. It would also be disproportionate because information about general company
11 “activities” is not relevant to the jurisdictional issues—the location of a corporation’s “activities”
12 is the test rejected by *Hertz*.

13 3. Overbroad, unduly burdensome, disproportionate, and irrelevant to the question of
14 whether Goldstrike’s corporate headquarters or “nerve center” under *Hertz* was located in Salt Lake
15 City in 2009 insofar as it effectively seeks the identification of every person employed by
16 Goldstrike at any time in 2009, at every level, regardless of their level of decision-making authority.

17 Subject to and without waiving any of the foregoing general or specific objections,
18 Goldstrike answers Jurisdictional Interrogatory No. 4 as follows:

19 Pursuant to Rule 33(d) of the FRCP, Goldstrike refers Bullion to the organization charts
20 and employee lists that will be produced in response to the Jurisdictional Document Requests.

21 JURISDICTIONAL INTERROGATORY NO. 5: Please identify all of Goldstrike’s
22 employees identified above in Jurisdictional Interrogatory No. 4 who also held positions with any
23 other parent, sibling, subsidiary, affiliate, or related entity of Goldstrike, including the name of the
24 other entity with whom they were employed, and the positions held within each company.

25 ANSWER TO JURISDICTIONAL INTERROGATORY NO. 5: Goldstrike incorporates
26 by reference each of the general objections set forth above as if fully set forth and restated herein.

27 Goldstrike specifically objects to Jurisdictional Interrogatory No. 5 as disproportionate and
28 irrelevant to the question of whether Goldstrike’s corporate headquarters or “nerve center” under

1 Hertz was located in Salt Lake City in 2009. Goldstrike is a standalone corporate entity, and
2 whether Goldstrike's employees held overlapping titles in parent, sibling or other affiliated entities
3 is irrelevant to the limited jurisdictional issue currently before this Court.

4 Subject to and without waiving any of the foregoing general or specific objections,
5 Goldstrike answers Jurisdictional Interrogatory No. 5 as follows:

6 Goldstrike's President, Greg Lang, and almost all of his direct reports worked out of the
7 Barrick Gold of North America regional office in Salt Lake, had regional-level titles, and had
8 executive-level responsibility for Goldstrike as well as the other companies operating in North
9 America, including but not limited to Bald Mountain Mine, Cortez Mine, Turquoise Ridge Mine,
10 Round Mountain Mine, Ruby Hill Mine and Golden Sunlight Mine.

11 Pursuant to Rule 33(d) of the FRCP, Goldstrike also refers Bullion to the organizational
12 charts and employee lists that will be produced in response to the Jurisdictional Document
13 Requests.

14 JURISDICTIONAL INTERROGATORY NO. 6: Please identify all documents describing
15 or otherwise depicting the employee hierarchy and officer hierarchy that existed during the time
16 period of January 1, 2009, to December 31, 2009.

17 ANSWER TO JURISDICTIONAL INTERROGATORY NO. 6: Goldstrike incorporates
18 by reference each of the general objections set forth above as if fully set forth and restated herein.

19 Goldstrike specifically objects to Jurisdictional Interrogatory No. 6 as follows:

20 1. Overbroad and unduly burdensome insofar as it is not limited to any particular
21 business or entity. Goldstrike will construe Jurisdictional Interrogatory No. 6 as referring solely to
22 Barrick Goldstrike Mines Inc., the only defendant in the case.

23 2. Overbroad, unduly burdensome, and disproportionate with respect to the term "all
24 documents". It is impossible for Goldstrike to identify every possible document that might in any
25 way set forth, directly or indirectly, the employee or officer hierarchy of Goldstrike in 2009.

26 Subject to and without waiving any of the foregoing general or specific objections,
27 Goldstrike answers Interrogatory No. 6 as follows:
28

Pursuant to Rule 33(d) of the FRCP, Goldstrike refers Bullion to the organizational charts and employee lists that will be produced in response to the Jurisdictional Document Requests.

JURISDICTIONAL INTERROGATORY NO. 7: Please identify the locations of Goldstrike's offices, including satellite offices, its principal places of business, and headquarters, and Goldstrike's business activities carried out in each location.

ANSWER TO JURISDICTIONAL INTERROGATORY NO. 7: Goldstrike incorporates by reference each of the general objections set forth above as if fully set forth and restated herein.

Goldstrike specifically objects to Jurisdictional Interrogatory No. 7 as follows:

1. Overbroad and unduly burdensome insofar as it is not limited as to time. Goldstrike will construe Jurisdictional Interrogatory No. 7 as being limited to 2009.

2. Vague with respect to the undefined terms "offices", "satellite offices", and "activities". The locations of "offices" and "satellite offices" is not relevant to the jurisdictional issues—only the location of the company's "nerve center" (or headquarters) is relevant to the question presently before this Court.

3. Overbroad, unduly burdensome, disproportionate, and irrelevant to the question of whether Goldstrike's corporate headquarters or "nerve center" under *Hertz* was located in Salt Lake City in 2009 insofar as it requires an explanation of every single activity that might have been conducted by any Goldstrike employee or executive, at any Goldstrike location, at any given point in time. It is impossible for Goldstrike to do so, especially after so much time has lapsed.

Subject to and without waiving any of the foregoing general or specific objections, Goldstrike answers Jurisdictional Interrogatory No. 7 as follows:

1. The RBU, 136 E. South Temple, Suite 1800, Salt Lake City, UT. The regional business unit structure reflected how Barrick managed its business and classified its operations for planning and measuring performance. Each region had ultimate responsibility over various aspects of its business, such as corporate policy, strategy and sustainability of mining operations, exploration, production and mine/plant closures. Under this structure, the RBU served as the corporate headquarters or "nerve center" for Goldstrike in 2009, and it is where Goldstrike's President, Greg Lang, most of Goldstrike's officers and the President's direct reports maintained

1 their offices. Management in the RBU made executive level corporate decisions regarding
2 budgeting, land and property acquisitions, long-term strategy and planning, and various other
3 executive-level decisions. Management in Salt Lake City controlled and supervised all of the major
4 corporate functions for Goldstrike in 2009, including but not limited to, production and processing
5 projections and targets, capital reviews, tax policy, mine operations (i.e., processing, geology,
6 maintenance, and developing mine plans and production targets), human resources (i.e., payroll,
7 salaries and adjustments, short and long-term bonuses, bonus structures, health insurance, pensions,
8 and other employee benefits, etc.); legal (contracting, litigation, environmental, etc.); accounting,
9 federal land permitting, equipment (inventories and allocation), property taxes, maintaining mining
10 claims, leases, water rights, and other real property interests, environmental policy, health and
11 safety policies and procedures, security policies and objectives, information technology, supply
12 chain and purchasing, and communications and corporate social responsibility. Management in the
13 RBU also led major project initiatives affecting Goldstrike's future business and operations. *See*
14 *also* Haddock Declaration.

15 2. The Goldstrike Mine, 27 miles N. of Carlin, P.O. Box 29, Carlin, NV. This site
16 includes site-level administrative and other offices, open pit and underground mine operations,
17 refinery, tailings pond, leach pads, and various other mine related operational facilities. Activities
18 included mining, assaying, processing, surveying, refining, storing, and shipping pursuant to
19 corporate decisions and directives established by corporate management in Salt Lake City and
20 implemented by site-level management at the Goldstrike Mine.

21 3. Special Business Center ("SBC"), 905 W. Main Street, Elko, NV. Administrative
22 human resource, accounting and other general business functions were provided to the Goldstrike
23 Mine from the SBC, as directed and ultimately established by corporate management in Salt Lake.

24 4. Goldstrike's registered office in Colorado located at 1675 Broadway, Suite 1200,
25 Denver, CO 80202. Accepted legal service of process on behalf of Goldstrike and served as its legal
26 mailing address in Colorado in 2009.

27 JURISDICTIONAL INTERROGATORY NO. 8: Please describe all of the operations of
28 Goldstrike that occurred in Nevada, from January 1, 2009, to December 31, 2009, including those

1 referenced as “day-to-day mining operations” in the Motion to Dismiss for Lack of Subject-Matter
2 Jurisdiction (ECF No. 260), and Mr. Haddock’s Declaration in Support of Motion to Dismiss for
3 Lack of Subject-Matter Jurisdiction (ECF No. 260-1), and the employees who oversaw those
4 operations by their name, title, and authority with which they oversaw those operations.

5 ANSWER TO JURISDICTIONAL INTERROGATORY NO. 8: Goldstrike incorporates
6 by reference each of the general objections set forth above as if fully set forth and restated herein.

7 Goldstrike specifically objects to Jurisdictional Interrogatory No. 8 as follows:

8 1. Overbroad, unduly burdensome, disproportionate and irrelevant to the question of
9 whether Goldstrike’s corporate headquarters or “nerve center” under *Hertz* was located in Salt Lake
10 City in 2009 insofar as it seeks information on “all of the operations” of Goldstrike that occurred
11 in Nevada during 2009. All the operations of Goldstrike are not at issue or relevant to the limited
12 jurisdictional issue currently before this court. The only operations relevant to the analysis are the
13 operations of Goldstrike’s corporate headquarters and “nerve center”, all of which were centered
14 in Salt Lake City in 2009.

15 2. Overbroad and unduly burdensome because it requests information pertaining to the
16 prior legal test—the “place of operations” test—expressly rejected by *Hertz*. The locations of “day-
17 to-day operations” of Goldstrike (or any company, for that matter) are not relevant to the *Hertz*
18 “nerve center” test.

19 3. Vague with respect to the undefined term “authority”.

20 4. Overbroad and unduly burdensome insofar as it seeks the name, title and “authority”
21 of every employee who oversaw or was responsible for any aspect of Goldstrike’s operations in
22 Nevada. As written, Jurisdictional Interrogatory No. 8 would require Goldstrike to set forth a list
23 of every employee that worked at Goldstrike in 2009, even though the only employees that are
24 relevant to the jurisdictional inquiry currently before the court are the corporate officers and high-
25 level executives, the majority of whom worked out of Goldstrike’s corporate headquarters or “nerve
26 center” located in Salt Lake City.

27 Subject to and without waiving any of the foregoing general or specific objections,
28 Goldstrike answers Jurisdictional Interrogatory No. 8 as follows:

1 In 2009, Goldstrike operated the Goldstrike Mine, an open pit and underground mine
2 located near Elko, Nevada. Activities that occurred at that site in 2009 consisted of all activities
3 relating to open pit and underground mining operations including, but not limited to, mining ore,
4 assaying, processing, refining, storing, shipping, etc. The day-to-day activities at the Goldstrike
5 Mine were managed and overseen by the mine's General Manager and his direct reports. *See*
6 Answer to Jurisdictional Interrogatory No. 2, above. However, the General Manager reported to
7 Mike Feehan, the Director of Operations in Salt Lake City, who in turn reported to Goldstrike's
8 President, Greg Lang, in Salt Lake City.

9 In 2009, the SBC was located in Elko, Nevada. The SBC provided general administrative
10 support services to the Goldstrike Mine, including but not limited to human resources and
11 accounting support. However, the services provided from the SBC were ultimately managed and
12 overseen by executives located in Goldstrike's corporate headquarters in Salt Lake City, including
13 but not limited to Bill Taylor, Manager Human Resources, and Curtis Caldwell, Regional
14 Controller. Mr. Taylor reported to Craig Beasley, Director OE in Salt Lake City, and Mr. Caldwell
15 reported to Blake Measom, CFO in Salt Lake City. Mr. Beasley and Mr. Measom both reported
16 Goldstrike's President, Greg Lang, in Salt Lake City.

17 JURISDICTIONAL INTERROGATORY NO. 9: Please identify all lawsuits in which
18 Goldstrike or Barrick Gold Corp. was named or attempted to intervene as party from January 1,
19 2008, to December 31, 2011.

20 ANSWER TO JURISDICTIONAL INTERROGATORY NO. 9: Goldstrike incorporates
21 by reference each of the general objections set forth above as if fully set forth and restated herein.

22 Goldstrike specifically objects to Jurisdictional Interrogatory No. 9 as follows:

23 1. Overbroad, disproportionate and irrelevant insofar as it seeks information on
24 lawsuits involving Barrick Gold Corporation ("BGC"). BGC, Goldstrike's ultimate parent,¹ is not
25 a party to this lawsuit and any lawsuits BGC may have been involved in have no bearing on the
26

27 _____
28 ¹ In 2009, Goldstrike was a wholly owned subsidiary of Barrick Gold Exploration, Inc., which was in turn a wholly
owned subsidiary of BGC.

1 limited jurisdictional question before this court—namely, whether Goldstrike’s corporate
2 headquarters or “nerve center” under *Hertz* was located in Salt Lake City in 2009.

3 2. Overbroad, unduly burdensome, disproportionate and irrelevant to the question of
4 whether Goldstrike’s corporate headquarters or “nerve center” under *Hertz* was located in Salt Lake
5 City in 2009 insofar as it seeks information on lawsuits Goldstrike may have been involved in from
6 January 1, 2008, to December 31, 2011. The only time period relevant to the limited jurisdictional
7 question currently before this court is 2009.

8 3. Overbroad and unduly burdensome insofar as it asks Goldstrike to recall each and
9 every lawsuit that it had any involvement or potential involvement in, regardless of the jurisdiction
10 and subject matter of the lawsuit. Goldstrike will provide information only on those lawsuits
11 pending in 2009 that (i) Goldstrike was involved with in the Federal court or in the State courts of
12 Colorado (its state of incorporation), Salt Lake City (the location of its corporate headquarters or
13 “nerve center” in 2009), or Nevada (the location of the Goldstrike Mine), and (ii) can be identified
14 through a reasonably diligent public docket search or currently recalled by the personnel in the
15 legal department.

16 4. Unduly burdensome and oppressive insofar as the requested information is publicly
17 available to Bullion through reasonable public docket searches.

18 Subject to and without waiving any of the foregoing general or specific objections,
19 Goldstrike answers Jurisdictional Interrogatory No. 9 as follows:

20 In 2009, Goldstrike was involved in the following litigation matters then-pending in the
21 Federal courts and/or state courts of Nevada, Utah or Colorado:

Case Name	Case No. (Jurisdiction)	Goldstrike Role
<i>In re Pacific Gas and Electric Company</i>	3:01-BK-30923 (Bankr. N.D. Cal.)	Creditor
<i>Ranspot, et al v. Barrick Goldstrike Mines Inc., et al.</i>	CV-N-89-629-BRT (D. Nev.)	Defendant
<i>Bullion Monarch Mining, Inc. v. Newmont USA Ltd.</i>	3:08-CV-00227-ECR-VPC (D. Nev.)	Defendant in severed sub-case

<i>Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines Inc.</i>	3:08-CV-612-ECF-VPC (D. Nev.) 11-15479 (9 th Cir.) 61059 (Nev. Supreme Ct.)	Defendant Appellee Respondent
<i>Western Shoshone NC, et al v. BNSF Railroad Co., et al.</i>	08-15179 (9 th Cir.) 3:06-CV-00015-LRH-VPC (D. Nev.)	Appellee Defendant
<i>Barrick Goldstrike Mines Inc. v. Carol M. Browner, et al.</i>	99-5298 (D.C. Cir.) 1:99-CV-00958-TPJ (D. D.C.)	Appellant Plaintiff
<i>Barrick Goldstrike Mines Inc. v. AU Mining, Inc., et al.</i>	07-CV-55 (Colo. Dist. Ct.)	Plaintiff
<i>John T. Kent v. Barrick Goldstrike Mines Inc., et al.</i>	CV-09-01334 (Nev. Dist. Ct.)	Defendant

JURISDICTIONAL INTERROGATORY NO. 10: Please identify every communication to and from Officers, Managers, General Managers, and Directors of Goldstrike which pertain to each of the decisions identified and relied upon by Goldstrike in its Motion, including those communications made between Officers, Managers, General Managers, and Directors of Goldstrike and Barrick Gold Corp., and including those communications made for reporting purposes from the on-site managers of Goldstrike.

ANSWER TO JURISDICTIONAL INTERROGATORY NO. 10: Goldstrike incorporates by reference each of the general objections set forth above as if fully set forth and restated herein.

Goldstrike specifically objects to Jurisdictional Interrogatory No. 10 as follows:

1. Overbroad, unduly burdensome, disproportionate and irrelevant to the question of whether Goldstrike's corporate headquarters or "nerve center" under *Hertz* was located in Salt Lake City in 2009 insofar as it seeks the identification of communications involving BGC. BGC, the ultimate parent company of Goldstrike,² is not a party to this action and its communications with

² See *supra* note 1.

1 Goldstrike have no relevance in determining whether Salt Lake City was the corporate headquarters
2 or "nerve center" of Goldstrike in 2009.

3 2. Vague with respect to the undefined terms "Managers" and "General Manager". For
4 purposes of responding to Jurisdictional Interrogatory No. 10 Goldstrike construes the term
5 "General Manager" to refer to the General Manager at the Goldstrike Mine. Goldstrike construes
6 the term "Manager" to refer to (i) those managers and superintendents that reported directly to the
7 General Manager at the Goldstrike Mine, and (ii) Goldstrike's President and the executive level
8 directors, managers or and vice presidents reporting directly to Goldstrike's President.

9 3. Overbroad, unduly burdensome, disproportionate, and irrelevant to the question of
10 whether Goldstrike's corporate headquarters or "nerve center" was located in Salt Lake City in
11 2009 insofar as it would require Goldstrike to identify every single communication that occurred,
12 whether verbal or written, by any employee, executive, officer or director of Goldstrike, at any time
13 in 2009, regardless of subject matter. Jurisdictional Interrogatory No. 10 is particularly burdensome
14 insofar as it would require Goldstrike's personnel to recall and identify verbal communications that
15 occurred eight or more years ago regardless of whether those communications have been
16 memorialized in writing and regardless of subject matter, and to also recall the content of written
17 communications that occurred over 8 years ago but that are no longer available to Goldstrike.
18 Goldstrike will not attempt to identify or recall every single communication that occurred between
19 its various employees, executives, officers, or directors in 2009.

20 Subject to and without waiving any of the foregoing general or specific objections,
21 Goldstrike answers Jurisdictional Interrogatory No. 10 as follows: *See* documents that will be
22 produced in response to the Jurisdictional Document Requests.

23 Dated: November 30, 2017

PARSONS BEHLE & LATIMER

24 By: 

25 Michael R. Kealy

26 Francis M. Wikstrom

27 Michael P. Petrogeorge

28 Brandon J. Mark

Attorneys for Barrick Goldstrike Mines Inc.

VERIFICATION

STATE OF UTAH)
 : ss
 COUNTY OF SALT LAKE)

I, Peter Webster, General Counsel U.S. for Barrick Gold of North America, Inc., as designated in-house counsel for Barrick Goldstrike Mines, Inc., have read the foregoing **BARRICK GOLDSTRIKE MINES INC.'S ANSWERS AND OBJECTIONS TO BULLION MONARCH MINING, INC.'S JURISDICTIONAL INTERROGATORIES**, and am familiar with the objections, answers and responses set forth therein. I am executing this Verification solely in my professional capacity as designated in-house counsel for Barrick Goldstrike Mines Inc., and am duly authorized in that capacity to affirm on behalf of Barrick Goldstrike Mines Inc., under the penalties of perjury, and to the best of my current knowledge, information and belief, that Barrick Goldstrike Mines Inc.'s foregoing answers to plaintiff Bullion Monarch Mining, Inc.'s first set of interrogatories are true and correct.

Dated this 29th day of November, 2017.



Peter Webster
 General Counsel for Barrick Gold of North America, Inc., as designated in-house legal counsel for Barrick Goldstrike Mines Inc.

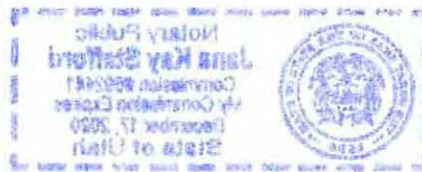
SUBSCRIBED and SWORN to before this 29th day of November, 2017.




NOTARY PUBLIC

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2017, a true and correct copy of the foregoing **BARRICK GOLDSTRIKE MINES INC.'S ANSWERS AND OBJECTIONS TO BULLION MONARCH MINING, INC.'S JURISDICTIONAL INTERROGATORIES**, was served on the following via electronic mail:

Daniel F. Polsenberg
Joel D. Henroid
Lewis & Roca LLC
3993 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169
dpolsenberg@llrlaw.com
jhenriod@llrlaw.com

Thomas L. Belaustegui
Clayton P. Brust
Robinson, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503
cbrust@rbslahys.com

/s/ Michael P. Petrogeorge

**Resolutions of the Board of Directors
FILED UNDER SEAL**

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000646

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BARRICK GOLDSTRIKE MINES INC.**RESOLUTIONS OF THE BOARD OF DIRECTORS**

The undersigned, being all the directors of BARRICK GOLDSTRIKE MINES INC., a Colorado corporation (the "Corporation"), hereby unanimously consent in writing to the adoption of the following resolution:

Appointment Of Officer

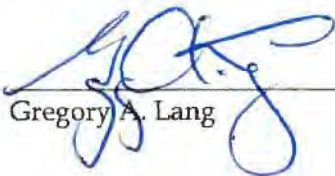
RESOLVED THAT Faith Teo is hereby appointed Assistant Secretary of the Corporation effective as of April 1, 2009, to hold office at the pleasure of the board.

Confirmation Of Officers

RESOLVED THAT, after giving effect to the above-noted change in officers, the officers of the Corporation effective as of April 1, 2009 are:

<u>Name</u>	<u>Title</u>
Gregory A. Lang	President
Blake L. Measom	Chief Financial Officer
Richard D. Ball	Vice President and Controller
James W. Mavor	Vice President and Treasurer
Patrick J. Garver	Vice President
Michael J. Brown	Vice President
Michael T. Feehan	Vice President
Sybil E. Veenman	Secretary
Paul Judd	Tax Director
Faith Teo	Assistant Secretary

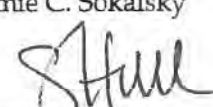
DATED the 31st day of March, 2009.



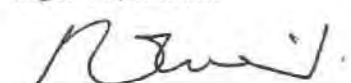
Gregory A. Lang



Blake L. Measom

Jamie C. Sokalsky


Stephen J. Hull



Peter J. Kinver

BARRICK GOLDSTRIKE MINES INC.
RESOLUTIONS OF THE BOARD OF DIRECTORS

The undersigned, being all the directors of BARRICK GOLDSTRIKE MINES INC., a Colorado corporation (the "Corporation"), hereby unanimously consent in writing to the adoption of the following resolution:

Appointment Of Officer

RESOLVED THAT Faith Teo is hereby appointed Assistant Secretary of the Corporation effective as of April 1, 2009, to hold office at the pleasure of the board.

Confirmation Of Officers

RESOLVED THAT, after giving effect to the above-noted change in officers, the officers of the Corporation effective as of April 1, 2009 are:

<u>Name</u>	<u>Title</u>
Gregory A. Lang	President
Blake L. Measom	Chief Financial Officer
Richard D. Ball	Vice President and Controller
James W. Mavor	Vice President and Treasurer
Patrick J. Garver	Vice President
Michael J. Brown	Vice President
Michael T. Feehan	Vice President
Sybil E. Veenman	Secretary
Paul Judd	Tax Director
Faith Teo	Assistant Secretary

DATED the 31st day of March, 2009.

Gregory A. Lang

Blake L. Measom

Jamie C. Sokalsky

Peter J. Kinver

Stephen J. Hull

BARRICK GOLDSTRIKE MINES INC.**RESOLUTIONS OF THE BOARD OF DIRECTORS**

The undersigned, being all the directors of BARRICK GOLDSTRIKE MINES INC., a Colorado corporation (the "Corporation"), hereby unanimously consent in writing to the adoption of the following resolution:

Appointment Of Officer

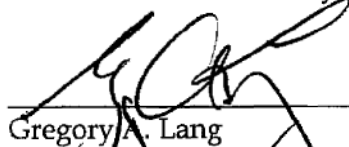
RESOLVED THAT Faith Teo is hereby appointed Assistant Secretary of the Corporation effective as of April 1, 2009, to hold office at the pleasure of the board.

Confirmation Of Officers

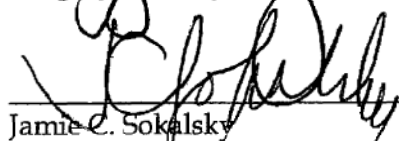
RESOLVED THAT, after giving effect to the above-noted change in officers, the officers of the Corporation effective as of April 1, 2009 are:

<u>Name</u>	<u>Title</u>
Gregory A. Lang	President
Blake L. Measom	Chief Financial Officer
Richard D. Ball	Vice President and Controller
James W. Mavor	Vice President and Treasurer
Patrick J. Garver	Vice President
Michael J. Brown	Vice President
Michael T. Feehan	Vice President
Sybil E. Veenman	Secretary
Paul Judd	Tax Director
Faith Teo	Assistant Secretary

DATED the 31st day of March, 2009.



Gregory A. Lang




Jamie C. Sokalsky

Stephen J. Hull



Blake L. Measom



Peter J. Kinver

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BARRICK GOLDSTRIKE MINES INC.**ANNUAL RESOLUTION OF THE SOLE SHAREHOLDER**

The undersigned, being the sole shareholder of BARRICK GOLDSTRIKE MINES INC. (the "Corporation"), a Colorado corporation, hereby consents in writing to the adoption of the following resolution:

Election Of Directors

RESOLVED that the following persons are hereby elected as the directors of the Corporation until the next annual meeting of the shareholders of the Corporation or until they otherwise cease to hold office as directors of the Corporation:


Peter J. Kinver
Jamie C. Sokalsky
Gregory A. Lang
Blake L. Measom
Rich D. Haddock

Ratification

RESOLVED that all actions taken by the directors of the Corporation on behalf of and in the name of the Corporation, as shown by its records in the Minute Book of the Corporation, and each and all of the acts of the officers of the Corporation in carrying out and promoting the purpose, objects and interests of the Corporation since the last shareholders' meeting are hereby approved, ratified and made the acts and lawful deeds of the Corporation.

DATED the 25th day of May, 2009.

BARRICK GOLD EXPLORATION INC.

By: 

Faith Teo
Assistant Secretary

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Services Agreement
FILED UNDER SEAL

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SERVICES AGREEMENT

MCA2304510

This SERVICES AGREEMENT (this "**Agreement**") is entered into as of March 9, 2009 (the "**Effective Date**"), by and between Barrick Goldstrike Mines Inc., a Colorado corporation with an address at 27 Miles North of Carlin, Carlin, Nevada 89822 ("**Owner**"), and Boart Longyear Drilling Services, a Utah corporation with an address at 3707 Manzanita Lane, Elko, Nevada 89801 ("**Contractor**") (Owner and Contractor are also collectively referred to herein as "**Parties**" and individually as a "**Party**"), with reference to the following.

A. Owner desires that Contractor will provide the Services described in Schedule "A" to be performed at Owner's site located at 27 Miles North of Carlin, Carlin, Nevada 89822 (the "**Site**"). Contractor agrees to provide the Services to Owner, in accordance with the terms and conditions of this Agreement.

B. The Parties desire to enter into this Agreement regarding the performance of the Services by Contractor for Owner. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 25 below.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and conditions contained herein, the Parties agree as follows.

1. Services.

(a) Contractor agrees to perform the Services on the terms and conditions set forth herein. Owner may request changes in the Services it has ordered at any time prior to completion. All requested changes shall be documented in a writing signed by an authorized representative of Owner before the change is executed. Contractor bears all risk of performing any changed Services without obtaining prior written approval of Owner. If any such change causes a material increase or decrease in the cost of or the time required for the performance of this Agreement, Owner and Contractor will negotiate in good faith an equitable adjustment to the Fees or the Performance Schedule or both. Any claim by Contractor for adjustment under this Section 1(a) shall be made in writing within thirty (30) days after receipt of written notice of the change, and any claim not made within such thirty (30) day period shall be deemed waived. Notwithstanding a claim for adjustment by Contractor, Contractor shall diligently proceed with the performance of the Services as modified.

(b) Contractor will complete and deliver the Services to Owner according to the performance schedule attached hereto as Schedule "B" (the "**Performance Schedule**"). Time is of the essence of Contractor's performance of this Agreement.

(c) Owner shall have the right to inspect the Services to ensure that such Services conform to Contractor's warranties herein and applicable standards set forth on Schedule "A" (the "**Standards**"), but no such inspection by Owner shall relieve Contractor of

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its obligations under this Agreement. If any of the Services provided by Contractor do not conform to the Standards, such failure to conform shall constitute a breach of this Agreement and Owner shall have the rights and remedies provided in Section 3 of this Agreement, together with all other rights and remedies available to Owner by law, equity, or otherwise.

(d) Owner hereby grants to Contractor, including Contractor's Personnel, a limited, revocable license to enter the Site for the purposes of the performing the Services (the "License"). For the duration of the Term, Contractor and Contractor's Personnel are hereby authorized to enter the Site at such times as are reasonably necessary to perform the Services. The License grants to Contractor and Contractor's Personnel the right to enter only those portions of the Site as are reasonably necessary to the performance of the Services. Contractor and Contractor's Personnel shall perform the Services in a manner that will not interfere with any activities conducted by Owner or the activities of any other person at the Site.

(e) All Work Product developed or made by Contractor or its Personnel during the term of this Agreement in the course of the performance of the Services are works made for hire and shall belong to the Owner.

2. Fees; Payment.

(a) The Fees to be paid to Contractor for the Services rendered and materials and equipment provided in connection with the Services are set forth in Schedule "C" and shall not exceed Contractor's usual and customary charges in the locality where the Services are to be performed. Unless this Agreement specifies otherwise in Schedule "C", the Fees are inclusive of any and all costs of Contractor's operation, including, without limitation, costs attributable to payroll, employee benefits, fringe benefits, overhead and profits, and costs associated with licenses, bonds, permits, supplies, machinery, safety devices, protective clothing, transportation and any taxes associated with goods and services acquired by Contractor for use in performing the Services to be provided under this Agreement.

(b) Contractor will invoice Owner for the Services in accordance with the schedule described in this Agreement, or if no schedule is described, within thirty (30) days after completion of the Services. Contractor will send its invoice to Owner at the address set forth on Schedule "F" attached hereto.

(c) Owner will make payment of all undisputed amounts due to Contractor (less applicable retainage against the final invoice and any other amounts withheld as allowed under this Agreement) within thirty (30) days from receipt of the relevant invoice. No payment shall be made until Contractor has provided verification to Owner that all parties providing services or materials in connection with the Services have been paid in full and all outstanding mechanic's or materialmen's liens or any similar liens or claims have been fully released.

(d) During the Term and for a period of three (3) years following the termination of this Agreement, Contractor shall maintain complete and accurate books and records with respect to the Services rendered, the materials and equipment provided in connection with the Services, and the invoices submitted to Owner for payment under this

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Agreement. Owner may audit such books and records of Contractor as is reasonably necessary to determine the accuracy of any Invoice rendered by Contractor until three (3) years after the date of the Invoice. Such audits shall not be performed more often than annually, and shall not be performed in a manner which substantially impedes Contractor's business. Owner shall require any accountants conducting such audits to execute a confidentiality agreement imposing upon such accountants the same obligations of confidentiality towards Contractor that such accountants have towards Owner.

3. Warranties.

(a) Contractor represents, warrants and covenants that: (a) the Services will be performed in accordance with good, safe and workmanlike practices and generally accepted standards of professional care, skill, diligence and competence normally provided by a professional in the performance of work similar to the Services; (b) the Services will meet the Standards, will be accurate and completed according to the Performance Schedule, and will otherwise conform to the requirements of this Agreement; and (c) the Services do not and will not infringe, misappropriate or violate the trademarks, service marks, copyrights, patents, patent rights, trade secrets and other intellectual property rights of a third party. Additional warranties and representations, if any, are set forth on Schedule "D".

(b) If Contractor is providing any materials or equipment, including any equipment or materials to be made part of or incorporated into any machine, equipment, facility, plant, building or other structure, Contractor warrants that the materials and equipment shall be of a grade and quality to meet all specifications of their required use; new (unless otherwise specifically provided for herein); free from liens, encumbrances, or any other defects in title; merchantable and fit for the purposes intended; free from defects in material and workmanship; and shall be in conformity with all specifications identified in this Agreement or any samples, drawings and descriptions furnished by Contractor. With respect to any warranties Contractor has received from third party suppliers of such equipment or materials, Contractor shall assign to Owner any such warranties and provide Owner with copies of warranty contracts, provided that assignment of warranties to Owner shall not relieve Contractor from the warranties given by it hereunder. Contractor shall not take any action to modify, release, waive or otherwise discharge any such warranties without the prior written consent of Owner. If Owner requests, Contractor shall enforce such warranties on behalf of and for the benefit of Owner, regardless of whether the warranty has been assigned to Owner. Owner shall nevertheless have the right (but not the obligation) to enforce any such warranty itself, and in the case of any warranty not yet assigned to Owner, the Owner shall have the right of subrogation to all of Contractor's rights with respect thereto.

(c) Without waiving or limiting any other right or remedy available to Owner, if Contractor is in breach of any of its representations, warranties, obligations or covenants contained in this Agreement or otherwise, Owner may, at its option and upon written notice to Contractor (a) terminate this Agreement and receive a refund of all amounts paid for Services not completed; (b) require Contractor to timely correct the Services or Work Product, in which event Contractor shall, at no additional cost to Owner, correct the Services or Work Product; or (c) terminate, in whole or in part, the Services and procure, upon such terms as Owner reasonably

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deems appropriate, services that are the same as or similar to the Services that were to have been provided by Contractor but that have been found to be unacceptable, in which event Contractor shall pay upon demand all additional costs incurred by Owner in procuring such similar services. Such costs may be withheld from Fees owed to Contractor and shall be subject to reasonable audit or review by Contractor with the limited purpose of verification of the particular claim.

4. Term; Termination.

(a) This Agreement shall commence on the Effective Date March 9, 2009 and will remain in force until June 30, 2009 unless terminated in accordance with its terms (the "Term").

(b) Owner may immediately terminate this Agreement by written notice to Contractor if Contractor or its Personnel fail to comply with any applicable local, state and federal laws, regulations, rules and orders of any governmental authority or any policies, guidelines or practices of Owner, the non-compliance with which presents, in the reasonable opinion of Owner, a material threat to human safety or health or the environment.

(c) Owner may terminate this Agreement for any reason by giving Contractor thirty (30) days written notice of termination.

(d) Owner may terminate this Agreement if Contractor has breached any material provision hereof (other than those subject to immediate termination as described in Section 4(b) above) and such breach continues for a period of thirty (30) days after written notice thereof has been given.

(e) Contractor may terminate this Agreement if (i) Owner fails to make payment to Contractor when due in accordance with the terms of this Agreement and such failure continues for a period of fifteen (15) days after written notice thereof has been given to Owner, or (ii) Owner has breached any material provision of this Agreement and such breach continues for a period of thirty (30) days after written notice thereof has been given to Owner.

(f) If this Agreement terminates, then the Services shall automatically terminate on the same date; provided that Owner may specify in the notice of termination that certain Services are to be completed, in which event this Agreement shall continue to apply to such Services until such are completed. Contractor shall not be entitled to payment for Services performed after the effective date of any notice of termination unless approved by Owner or otherwise provided in this Agreement or the notice of termination. No Party shall be relieved of any of its obligations arising under this Agreement prior to the termination. Termination will be without prejudice to any rights and remedies available to a Party, including injunctive relief. The Parties' rights and obligations contained in Sections 3 (Warranties), 5 (Indemnification), 6 (Insurance), and 15 (Confidentiality), and any other provisions of this Agreement that by their terms are intended to survive, shall continue to be effective following termination of this Agreement.

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5. Indemnification.

(a) Contractor acknowledges that entry onto the Site is at Contractor's own risk. Contractor will ensure that its Personnel are aware that they enter onto the Site at their own risk. Contractor shall have control of and be liable for all risk of loss or damage to all equipment, machinery or other property belonging to Contractor and its Personnel that is brought onto the Site.

(b) Contractor assumes all liability for and will indemnify and hold harmless Owner and its Affiliates, together with their Personnel (the "Indemnified Parties"), from and against any and all Liabilities arising out of, resulting from or in connection with (i) the performance of the Services; (ii) a breach of this Agreement by Contractor or its Personnel; (iii) the personal or bodily injury or death of any person, including without limitation any third party, caused by Contractor or any of its Personnel; (iv) damage to or loss of property caused by Contractor or its Personnel; (v) any Environmental Liability caused by Contractor or its Personnel; or (vi) any Claim that the Services or any materials or equipment supplied by Contractor or its Personnel infringe on any patent, trade secret, copyright or other property right of a third party. Any release or discharge, whether or not intentional, of any hazardous substances or any other pollutant or contaminant as defined by any Applicable Laws arising out of, or connected in any way with the performance of the Services shall be promptly investigated and remediated by Contractor at its sole expense to the satisfaction of Owner and relevant governmental officials.

(c) Contractor's indemnification obligations will not be affected by any insurance Contractor is required to maintain pursuant to the terms of this Agreement. Every exemption, limitation, defense, immunity, indemnity or other benefit contained in this Agreement or otherwise to which Owner is entitled will be held by Owner for the benefit of, and will extend to protect, Owner and its Affiliates and its Personnel.

(d) If an Indemnified Party receives notice of any event which triggers or may trigger any of the indemnity obligations under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt notice of such event; provided, however, that the Indemnified Party's failure to give such notice shall not constitute a waiver by the Indemnified Party of any of the indemnity obligations under this Agreement.

(e) At the request of any Indemnified Party, the Indemnifying Party shall defend the Indemnified Party against any Liabilities for which the Indemnifying Party is required to indemnify and hold harmless the Indemnified Parties pursuant to the indemnity provisions set forth in this Agreement. Subject to the Indemnified Party's approval, which shall not be unreasonably withheld, the Indemnifying Party shall retain legal counsel for the purpose of defending any Indemnified Party in such suit or action. The Indemnified Party shall have the right to retain legal counsel, at its expense, to participate in the defense of any such suit or action. No such suit or action shall be settled, discontinued, nor shall judgment be permitted to be entered without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld.

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(f) Limitation of Liability. Neither Party shall be responsible to the other for lost revenues, lost profits, cost of capital, claims of customers, or other special, indirect, consequential or punitive damages.

6. Insurance. Contractor shall, at its own expense and prior to performing any Services, procure and maintain in force and effect throughout the Term insurance coverage as provided in Schedule "E".

7. Compliance with Laws.

(a) In supplying Services, Contractor will comply with and ensure that Contractor's Personnel comply with (a) all Applicable Laws, (b) all reasonable directions and orders given by representatives of Owner, and (c) all policies, guidelines, rules and procedures of Owner as may be amended from time to time, including, without limitation, safety, health and environmental requirements, and all other policies, guidelines, rules and procedures provided to Contractor by Owner, which are incorporated herein by this reference.

(b) Contractor shall take all precautions necessary to avoid risk of injury to persons or damage to property, and Contractor specifically assumes the responsibility of providing a safe workplace for its Personnel.

8. Independent Contractor. Contractor is an independent contractor. Owner shall not be responsible for or have control or charge over any of the acts or omissions of Contractor or Contractor's Personnel. As between Contractor and Owner, Contractor shall assume full responsibility for all supervision, direction, control, and payment of Contractor's Personnel. Contractor will have no authority contractually to bind or obligate Owner or to incur any debt or obligation on behalf of Owner.

9. Notices. All notices, reports, requests, acknowledgments, confirmations, permissions, instructions, consents, acceptances, and other communications required or permitted under this Agreement will be in writing and must reference this Agreement. They will be deemed delivered (i) when delivered in person to the Party's Representative identified in Schedule "F", (ii) when sent by facsimile with delivery confirmed, provided that delivery is confirmed during Party's regular business hours, or if delivered after Party's regular business hours on the next regular business day, (iii) when receipt is acknowledged if sent by e-mail, provided that receipt is acknowledged during Party's regular business hours, or if delivered after Party's regular business hours on the next regular business day or (iv) upon verified receipt if sent by a recognized commercial express courier with written verification of receipt or certified mail return receipt requested. All communications will be sent to the receiving Party at the address set forth on Schedule "F" or to such address that the receiving Party may designate pursuant to this Section.

10. Dispute Resolution. Any dispute, controversy or claims arising out of or relating to this Agreement or the breach, termination, interpretation or invalidity thereof or any Purchase Order (a "Dispute") shall be resolved as follows:

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(a) The Parties shall endeavor for a period of two (2) weeks to resolve the Dispute by negotiation. This period may be extended by agreement of the Parties.

(b) If negotiations are unsuccessful, the Parties shall, at the request of either Party, attempt to mediate the Dispute before a mutually acceptable mediator. The mediation shall be completed within three (3) weeks of the request for mediation unless the Parties extend the period in writing.

(c) In the event the Dispute is not successfully mediated, the Parties agree to submit the Dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be administered by the American Arbitration Association. Unless otherwise agreed by the Parties, there shall be one (1) arbitrator who shall be a person with an expertise or background in the subject matter of the Dispute. If the Parties are unable to select an arbitrator within thirty (30) days of the notice of arbitration, the arbitrator shall be selected by the American Arbitration Association. The place of arbitration shall be Elko, Nevada, or another location mutually agreed upon by the Parties. The arbitrator shall render a decision in writing not more than six (6) months after the appointment of the arbitrator. The arbitrator's decision shall be final and binding on the Parties and not subject to appeal or review. The prevailing Party shall be entitled to an award of costs and attorneys' fees unless the arbitrator determines that each Party should bear its own costs and share the common costs of arbitration.

11. Multi-Party Disputes. In the event that a Dispute between the Parties arises out of or is related to a dispute between one of the Parties and a third party relating to the Site where the Agreement will be performed or the subject matter of the Agreement ("Related Party Dispute") and there are common issues of law or fact so that there is a possibility of conflicting rulings if the Dispute and the Related Party Dispute are decided in more than one proceeding, the Parties agree as follows:

(a) At the request of any Party, the Dispute and the Related Party Dispute(s) shall be consolidated and determined by a single arbitrator in a single arbitration proceeding pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be administered by the American Arbitration Association.

(b) Any Party seeking consolidation shall give written notice of a request for consolidation to all parties sought to be consolidated (the "Participants") within fifteen (15) days of the notice of arbitration.

(c) If the all Participants are not able to agree upon the selection of an arbitrator to hear the consolidated matter within thirty (30) days after the request for consolidation, the arbitrator shall be selected by the American Arbitration Association. The place of the arbitration shall be Elko, Nevada, or another location mutually agreed upon by all participants.

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(d) The arbitrator shall render a written decision not more than six (6) months after appointment of the arbitrator. The arbitrator's decision shall be final and binding on the Parties and not subject to appeal or review.

(e) The provisions of this Section shall not apply unless the Related Party Dispute arises under a contract containing a multi-party dispute resolution clause similar in effect to this Section.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of the Parties hereto.

13. Cumulative Rights. The warranties, assurances, covenants and remedies provided for in this Agreement are not the exclusive rights and remedies of the Parties, but are in addition to any other rights and remedies available to them under this Agreement, by any other instrument, at law, in equity or otherwise, which may be exercised singularly or concurrently.

14. Attorneys' Fees. In any action at law or in equity to enforce any decision issued by an arbitrator pursuant to Sections 10 or 11 of this Agreement or to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which that Party may be entitled.

15. Confidentiality. Without the written consent of Owner, Contractor shall not, either during the Term or for a period of five (5) years thereafter, disclose any confidential information it has obtained as a result of this Agreement or the Services performed under this Agreement to any person, except to such of Contractor's Personnel as may reasonably be necessary to enable Contractor to exercise its rights and perform its obligations under this Agreement, provided that Contractor takes reasonable steps to ensure that its Personnel to whom disclosure is made agree to be bound by this confidentiality provision. Contractor agrees that a breach of these confidentiality provisions by its Personnel shall be deemed a breach hereunder by Contractor. Notwithstanding the foregoing, Contractor may disclose any confidential information to the extent that disclosure is compelled in connection with legal or government proceedings or requests, or if the Contractor is required to report or disclose such confidential information by law or pursuant to the rules or regulations of any regulatory authority having jurisdiction over the Contractor or of any stock exchange on which the Contractor's securities are listed; provided, however, that should such disclosure be compelled or reporting required, the Contractor shall give notice to the Owner, as promptly as is reasonably practicable, before any such disclosure or reporting in order to permit the Owner to contest such disclosure or reporting. Contractor shall not be liable for disclosure of information which the Contractor can prove (i) was already known by the Contractor prior to receipt from the Owner; is now, or subsequently becomes, publicly known through no violation of this Agreement; is independently developed by the Contractor after the effective date of this Agreement; is rightfully obtained from a source that is not subject to an obligation of confidentiality; or was approved in writing by the Owner for disclosure to a third party by the Contractor. Upon termination or expiration of this Agreement, Contractor shall return to Owner or destroy all tangible embodiments of confidential information of Owner within thirty (30) days of Owner's written request.

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16. Force Majeure. Neither Party shall be liable for its failure to perform any of its obligations hereunder during any period in which performance is delayed by fire, flood, earthquake or other natural disaster, war, embargo, riot or the intervention of any government authority, provided that the Party suffering such delay immediately notifies the other Party in writing of the delay. If the performance of Contractor is delayed for force majeure for a cumulative period of fourteen (14) days or more, Owner, notwithstanding any other provision of this Agreement to the contrary, may terminate this Agreement by notice to Contractor. In the event Owner does not terminate this Agreement due to a force majeure, then (i) the time for performance or cure will be extended for a period equal to the duration of the force majeure, and (ii) Contractor shall provide Owner with Contractor's plan to proceed under the terms of this Agreement notwithstanding the force majeure.

17. Governing Law; Venue. The laws of the State of Nevada shall govern this Agreement and the transactions contemplated by this Agreement, without giving effect to the choice of law rules thereof. Each Party irrevocably and unconditionally submits to non-exclusive jurisdiction of the state and federal courts in the State of Nevada and the appropriate courts of appeal from such courts for enforcing any decision issued by an arbitrator pursuant to Sections 10 or 11 of this Agreement or for any other matter concerning this Agreement or the transactions contemplated hereby.

18. Assignment. Contractor may not assign this Agreement without prior written consent of Owner.

19. Sub-Contracting. Except as otherwise provided for Schedule "A", Contractor shall not delegate, subcontract or outsource any of its duties and obligations arising under this Agreement without the prior written consent of Owner. No delegation, subcontract, or outsourcing by Contractor (permitted or otherwise) shall relieve Contractor of any duty or obligation arising under this Agreement.

20. Waiver. Any waiver of any kind by a Party of a breach of this Agreement must be in writing, shall be effective only to the extent set forth in such writing and shall not operate or be construed as a waiver of any subsequent breach. Any delay or omission in exercising any right, power or remedy pursuant to a breach or default by a Party shall not impair any right, power or remedy that either Party may have with respect to a future breach or default.

21. Entire Agreement. The entire agreement between the Parties with respect to the subject matter hereof is incorporated in this Agreement and it supersedes all prior discussions, negotiations, and agreements between the Parties relating to the subject matter hereof. This Agreement can be modified only by a written amendment duly signed by the Parties, and this Agreement shall not be supplemented or modified by any course of dealing or performance or trade usage.

22. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall

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not in any way be affected or impaired thereby. A provision of similar economic effect shall be substituted for any invalid, illegal or unenforceable provision.

23. Anti-Bribery Compliance

(a) No Improper Payments. Neither Contractor, nor any person acting on behalf of Contractor, has made or committed to make, nor shall they make or commit to make, any payment of money, or gift of anything of value, directly or indirectly, to any Government Official, for the purpose of securing or inducing the act, decision, influence, or omission of such Government Official to obtain, retain, or direct business, or secure any improper advantage, for any person in connection with this Agreement. The prohibition on indirect payments or commitments includes any situation where the person making the payment knows, believes, or is aware of the high probability that the person receiving the payment will pass the payment through, in whole or in part, to a Government Official in the circumstances set forth above.

(b) No Employment of Government Officials. Contractor represents and warrants that none of its officers, directors, shareholders, or employees is a Government Official.

(c) Expenses. Contractor covenants that it shall not pay or commit to pay any expense for the benefit of a Government Official without the prior written approval of Owner and that it will keep and maintain all documentation and receipts for any expenses of Government Officials that it has paid. All expense reimbursement requests will be deemed to include Contractor's certification that it has abided by all of the terms of this Section of the Agreement.

(d) Continuing Representations; Notice of Change of Circumstances. All of the representations, warranties and covenants contain in this Section shall be continuing for the life of this contract, and any change of circumstances rendering them inaccurate or incomplete which has not been notified to Owner as provided herein shall constitute a breach of this Agreement. Contractor agrees that if at any time there should be such a change in circumstances, Contractor will give Owner prior notice of such change and will cooperate as requested by Owner in providing information about such change.

24. Counterparts. This Agreement may be signed in counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. The Parties intend that fax signatures constitute original signatures and that a faxed agreement containing the signatures (original or faxed) of all the Parties is binding on the Parties.

25. Definitions. In addition to the definitions found elsewhere in this Agreement, the following definitions shall apply:

(a) **Affiliate** means any person, partnership, limited liability company, joint venture, corporation, or other form of enterprise, which, directly or indirectly, controls, is controlled by or is under common control with a Party; and the term "control" means the ownership by one person or entity of 50% or more of the assets or voting rights with respect to another person or entity.

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(b) **Applicable Laws** mean applicable local, state, and federal laws, regulations, rules and orders of any public authority, as the same may be amended from time to time, including without limitation, the following laws and implementing regulations: Mine Safety and Health Act, Occupational Safety and Health Act, Hazardous Materials Transportation Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, Clean Water Act, Toxic Substances Control Act, Clean Air Act, Emergency Planning and Community Right to Know Act, Safe Drinking Water Act, and Pollution Prevention Act.

(c) **Claim** means any and all claims, demands, suits, proceedings, attachments, levies, damages, losses, fines, penalties, costs of investigation, analytical costs, or other expenses (including without limitation attorneys' fees and other costs of defense).

(d) **Environmental Liability** shall mean any liability (including, without limitation, liability for study, testing or inventory costs, cleanup costs, response action or costs, removal actions or costs, remediation costs, containment costs, restoration costs, reclamation costs, corrective action costs, closure costs, natural resources damages, nuisance, business losses, penalties or fines) arising out of, based upon, or resulting from (i) the presence, release, threatened release, discharge or emission in to the environment of any hazardous materials or substances, solid wastes, or pollutants or (ii) the violation or threatened violation of any environmental laws or regulations.

(e) **Fees** means the prices for the Services as specified in Schedule "C" of this Agreement, and includes any adjustments that comply with the terms and conditions of this Agreement.

(f) **Government Official** means any official, agent or employee of the government, any political party or an official thereof, any candidate for political office, any official or employee of any public international organization, or any immediate relative (spouse, son, daughter, or parent) of any of the foregoing, including, without limiting the generality of the foregoing, any employee or official of any company which is majority-owned or controlled by the government, any employee or official of any company which is in the process of being privatized in whole or in part, and any person who is purporting to act in a private capacity, but who otherwise is a Government Official within the meaning of this definition.

(g) **Liabilities** mean all claims, causes of action, losses, damages (including natural resource damages), liens, encumbrances, taxes, fines, penalties (civil or criminal), costs of investigation and defense of a claim (whether or not such claim is ultimately defeated), good faith settlements of claims, costs of investigation, reporting, clean-up, corrective response, removal or remedial action relating to the generation, storage or release of hazardous substances or other pollutants or contaminants as defined by any Applicable Laws, liabilities (including strict liability), costs and expenses, including reasonable attorneys' fees, and any interest which may be imposed in connection with the foregoing.

Barrick Goldstrike Mines Inc.
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(h) **Personnel** means directors, officers, employees, agents, contractors and subcontractors.

(i) **Services** means the services as generally described in **Schedule "A"** of this Agreement, together with any materials and equipment provided, and specifically identified therein.

(j) **Work Product** means any work product, material, work of authorship, computer program, database, illustration, drawing, flow chart, schematic, text, invention, product, method, idea, improvement, information, data, or creation which is authored, invented, conceived, developed, compiled or created by Contractor in the performance of Services or delivered by Contractor to Owner in connection with the Services.

26. **Enumeration of Schedules.** The schedules enumerated in this Section and attached to this Agreement are incorporated in the Agreement by this reference and are to be construed as a part of the Agreement

<u>Schedule "A"</u>	Services and Standards
<u>Schedule "B"</u>	Performance Schedule
<u>Schedule "C"</u>	Fees
<u>Schedule "D"</u>	Additional Warranties
<u>Schedule "E"</u>	Insurance Coverage
<u>Schedule "F"</u>	Notices
<u>Schedule "G"</u>	Barrick Goldstrike Mine Contractor Environmental Compliance Guidance, dated April 2004, pages 1-8; Barrick Goldstrike's Contractor's Control Policy: Access and Control, No. 40-40, Rev. 3, dated January 2006, pages 1-11; Barrick Goldstrike's Contractor's Control Policy: Drug and Alcohol, No. 40-50, Rev. 3, dated January 2006, pages 1-6.
<u>Schedule "H"</u>	Barrick Goldstrike Cardinal Safety Rules, pages 1-1 Barrick Goldstrike's Contractor's Control Policy: Open Pit Division, pages 1-18;
<u>Schedule "I"</u>	Contractor Safety Checklist, pages 1-11
<u>Schedule "J"</u>	Contractor Control Policy, Pages 1-3
<u>Schedule "K"</u>	Fit for Duty

27. Barrick Goldstrike's Contractors Representatives:
 Technical Representative: Mike Sena
 Commercial Representative: Wade Garner-Sr. Buyer

In case of any conflict or discrepancy between any Schedule and this Agreement, this Agreement shall govern.

Barrick Goldstrike Mines Inc.
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IN WITNESS WHEREOF, the Parties' respective duly authorized officers have executed this Agreement as of the Effective Date.

CONTRACTOR:

OWNER:

Boart Longyear Drilling Services

Barrick Goldstrike Mines Inc.

Name: Steven A. Sangalli

Name: John Mansanti

Signature: Steve Sangalli

Signature: _____

Date: MARCH 9, 2009

Date: _____

Title: VP of Operations

Title: Mine Manager

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SCHEDULE "A"

(Services and Standards)

DESCRIPTION OF SERVICES: Contractor shall provide the following Services in accordance with the Standards set forth herein:

Contractor to provide labor, personnel, supervision, equipment, tools and materials for work to include, but not limited to; provide Truck-Mounted Sonic Drills to drill approximately 340 holes, 150' centers to the depth of 150-180 linear feet.

- Samples must be taken every 5' vertical feet intervals, separated in a separate container and labeled. The sample containers, labels and labeling outline will be supplied by BGMI.
- Samples will be transported by the Contractor to the Assay lab each day for analysis.
- Drill pattern and parameters to be provided by BGMI
- Drilling must not penetrate below the bottom of the stockpile.

Standards:

- Contractor shall provide qualified personnel and quality transports to the final designation.
- Contractor shall comply with all city, county, state, and federal laws governing transportation of goods on the open road.
- Contractor shall comply with all state, and federal and mine site specific safety rules and regulations and correct all deficiencies as noted by both Barrick entities and their Affiliates.
- Contractor shall be responsible for providing properly trained qualified loader operators, all necessary equipment and material to safely load material into transports.
- Contractor shall provide all necessary supplies, consumable and materials in order to be self-sufficient and maintain good work progress. All equipment and procedures must be capable of passing Mine Safety and Health Administration (MSHA) inspections upon entering Owner's property, and throughout the term of this Agreement.
- Contractor shall supply and be responsible for all lubrication for the equipment as needed.
- Contractor shall provide mechanics and maintain equipment in good state of repair and cleanliness.
- Provide the necessary labor and supervision (in the form of a fulltime Foreman on site and transportation of equipment and personnel to the site and return from the Contractor's operational office).
- A safety supervisor will be appointed by the Contractor who will ensure that the Work is conducted in a safe manner. The Contractor's safety supervisor will make regular inspections and will document those inspections accordingly. Inspections will be done not less than every two months. A copy of all inspections will be forwarded to the Company.

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- The Contractor will supply a formal "Job Safety Plan" outlining all responsibilities involved in the safe operation of the Contract. In addition, the Contractor will supply a complete "Standard Job Procedure" document detailing the safe operating procedure for its employees.
- The Contractor will conduct regular Job Safety Plan audits, and forward the results to the Company. (Please refer to all requirements to be compliant with the Barrick Contractor Control policy for performing service work on site.
- Contractor must provide all personnel with approved hard hats, safety glass, and safety shoes and all other Personal Protective Equipment required.
- Contractor shall abide by all project labor agreements and rules for subcontractors. Subcontractors must comply with all safety and insurance requirements from Barrick. All subcontractors must be Browz compliant or secure an override prior to the mobilization of the subcontractors. No Subcontractors will be allowed on the mine site without Barrick's prior written approval.
- Contractor shall provide and maintain insurance and all worker compensation insurance requirements.
- The Contractor shall assure that their equipment is maintained to operate at optimum levels. A schedule for providing preventive maintenance to all operation equipment shall be submitted to Owner's Representative.
- The Contractor is to provide a qualified mechanic to make any repairs needed to keep equipment operational.
- All personnel will be MSHA trained, and have site specific and hazard training for all mine sites.
- At a minimum the contractor shall submit a weekly rooster which lists their personnel who was on-site during that period.
- Contractor shall provide an electronic daily summary of work completed and a monthly summary for invoice purposes.

Mobilization to include, but not limited to:

- All transports of Contractor's equipment, plant, tools, consumable products, and other temporary materials necessary to carry out the Works from the point of origin to the Site, including freight, custom duties, and fees;
- All transports of Contractor's supplied permanent materials for inclusion into the Works from the point of origin to the Site;
- All crating, packing, and loading of materials, plant, tools, etc., at their point of origin;
- All uncrating and unpacking, set-up and commissioning of all materials, plant, etc., on Site;
- All transport costs, wages, and salaries of personnel being mobilized to Site;
- All Contractors' overheads and profit applicable to mobilization shall be included in this item.

Dembolization to include, but not limited to:

- All dismantling, crating, packing on Site and transport of Contractor's equipment, plant, tools, consumable products, and other temporary materials necessary from the Site to the

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- point of origin, including freight, custom duties, and fees;
- All transport costs, wages, and salaries of personnel being demobilized from the Site;
- All Contractors' overheads and profit applicable to demobilization shall be included in this item;
- All Site clean up, garbage disposal, etc., associated with the Work.

Sanitary Waste Management:

Contractor will be responsible for the provision and maintenance of required toilet and wash facilities for its work force. All costs for these services are to the Contractor's account

Vehicles:

The restricted use of vehicles on the site will be enforced. No private vehicles will be allowed on site, except for deliveries as authorized by Barrick security personnel. Only vehicles absolutely required will be allowed on the Project, with the company logo attached.

Fuel:

Company will provide contractor fuel for drilling rigs and equipment as needed to perform services identified.

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SCHEDULE "B"

(Performance Schedule)

This Agreement shall commence on the Effective Date March 9, 2009 and will remain in force until June 30, 2009 unless terminated in accordance with its terms (the "Term").

In performing services requested by Company, Contractor guarantees the completion of 56,100' of drilling on or before 12:00 AM on May 16th, 2009 subject to a penalty fee as referenced in Schedule C – Penalty Fee.

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SCHEDULE "C"

(Fees)

DESCRIPTION OF FEES: Fees for Services and related materials and equipment are as per attached rate schedule.

Contractor will mobilize rigs as required to perform services in accordance with the requirements established by Company Site Representatives.

Description:	Unit	\$/Unit
Drill 4" x 6" Sonic Continuous Core - Total Footage	FT	\$ -
Drill 4" x 6" Sonic Continuous Core - (0' to 100')	FT	\$ 33.00
Drill 4" x 6" Sonic Continuous Core - (101' to 150')	FT	\$ 30.00
Drill 4" x 6" Sonic Continuous Core - (151' to 175')	FT	\$ 27.00
Drill 4" x 6" Sonic Continuous Core - (175' +)	FT	\$ 25.00
Angle Drilling up to 30 degree from Vertical (add \$10.00/ft)	FT	\$ 10.00
Angle Drilling greater than 30 degrees from Vertical to a maximum 50 degrees (add \$25.00/ft)	FT	\$ 25.00
Movement of rigs from stock pile to stock pile, Per Hour	HR	\$ 520.00
Crew Per Diem/Subsistence @ \$150.00/Man/Day	EA	\$ 150.00
Mobilization, Each Rig, Lump Sum	LS	\$ 4,500.00
Modify rig rotation barriers to Goldstrike Specific Requirements	EA	NC
Demobilization, Each Rig, Lump Sum	LS	\$ 3,000.00
Extra Labor, Per Man, Extra Cost, Per Hour	HR	\$ 75.00
On Site Training, Per Man, Per Hour (8 hours for 26 men)	HR	\$ 65.00
Stand by Rate, Per Hour for site safety meetings, weather related delays, access issues, mine shut downs and for all activities not related to rig breakdown time that may occur.	HR	\$ 450.00

Company will provide contractor fuel for drilling rigs and equipment as needed to perform services identified.

Estimate Quantities*:

Description:	Unit	Quantity
Drill 4" x 6" Sonic Continuous Core - Total Footage	FT	56100
Drill 4" x 6" Sonic Continuous Core - (0' to 100')	FT	28100
Drill 4" x 6" Sonic Continuous Core - (101' to 150')	FT	14000
Drill 4" x 6" Sonic Continuous Core - (151' to 175')	FT	7000
Drill 4" x 6" Sonic Continuous Core - (175' +)	FT	7000

*Footage requirements may be subject to change as requested by Site Representatives.

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Penalty Fee:

In performing services requested by Company, Contractor guarantees the completion of 56,100' of drilling on or before 12:00 AM on May 16th, 2009 subject to the following penalty fee structure. Should contractor not accomplish the task of drilling 56,100', the project will be discounted by dividing the balance of footage or borings by the total in the original scope (which ever is less) and multiple that percentage by the total invoiced amount of the contract to determine the discount. Example; if 320 borings are completed by May 15th, then $(340-320)/340 = 5.9\% \times \$2,100,000 = \$123,530.00$

In the event that circumstances beyond the control of the contractor (i.e. mine shut down, access restrictions, unsafe weather conditions) prevents the contractor from completing the required number of holes within the time frame referenced herein, the Contractor shall immediately notify and document such instances to the Company representative. The penalty provision shall be adjusted by taking the time lost due to the circumstances identified (and mutually agreed upon) relative to the average time per boring (TBD) and reducing the total number of borings within the calculation. Example; if time lost was 24 hours/ 24 hours per bore (As determined) = 1.00, then total number of borings for penalty fee calculation would = $340-1 = 339$.

Reference – Original Estimate:

Description:	Unit	Quantity	\$/Unit	Total
Drill 4" x 6" Sonic Continuous Core - Total Footage	FT	56100	\$ -	\$ -
Drill 4" x 6" Sonic Continuous Core - (0' to 100')	FT	28100	\$ 33.00	\$ 927,300.00
Drill 4" x 6" Sonic Continuous Core - (101' to 150')	FT	14000	\$ 30.00	\$ 420,000.00
Drill 4" x 6" Sonic Continuous Core - (151' to 175')	FT	7000	\$ 27.00	\$ 189,000.00
Drill 4" x 6" Sonic Continuous Core - (175' +)	FT	7000	\$ 25.00	\$ 175,000.00
Angle Drilling up to 30 degree from Vertical (add \$10.00/ft)	FT	0	\$ 10.00	\$ -
Angle Drilling greater than 30 degrees from Vertical to a maximum 50 degrees (add \$25.00/ft)	FT	0	\$ 25.00	\$ -
Movement of rigs from stock pile to stock pile, Per Hour	HR	4	\$ 520.00	\$ 2,080.00
Crew Per Diem/Subsistence @ \$150.00/Man/Day	EA	1007	\$ 140.00	\$ 140,980.00
Mobilization, Each Rig, Lump Sum	LS	4	\$ 4,500.00	\$ 18,000.00
Modify rig rotation barriers to Goldstrike Specific Requirements	EA	4	NC	\$ -
Demobilization, Each Rig, Lump Sum	LS	4	\$ 3,000.00	\$ 12,000.00
Extra Labor, Per Man, Extra Cost, Per Hour	HR	0	\$ 75.00	\$ -
Fuel cost modifier. Base price at \$3.50/gal. For \$0.50/gal, add or deduct \$200.00 per rig shift	EC			\$ -
On Site Training, Per Man, Per Hour (8 hours for 26 men)	HR	208	\$ 65.00	\$ 13,520.00
Stand by Rate, Per Hour for site safety meetings, weather related delays, access issues, mine shut downs and for all activities not related to rig breakdown time that may occur.	HR	0	\$ 450.00	\$ -

Total Estimate Cost \$ 1,897,880.00

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LOSS OF TOOLS

Loss of tools due to driller's error shall be paid for by Boart. Loss of tools due to formation difficulties, or because of Client direction, will be paid for by the Client. Repair of equipment damaged as a direct result of insufficient roads will be paid for by the Client.

INDEPENDENT CONTRACTOR RELATIONSHIP AND CLIENT'S REPRESENTATIVE

In the performance of the work herein contemplated, Boart is an independent contractor, with the authority to control and direct the performance of the details of the work, the Client being only interested in the results obtained. The work shall meet the approval of the Client and be subject to the right of inspection and supervision herein provided. The Client shall not unreasonably withhold approval of all such work, when performed by Boart in accordance with the generally accepted practices and methods customary in the industry. Boart agrees to comply with all laws, rules, and regulations (federal, state, and local) which are now, or may in the future become applicable to Client, Client's business, equipment, and personnel engaged in operations covered by this Agreement, or accruing out of the performance of such operations covered by this Agreement; provided, however, as between the Client and Boart specific provisions herein contained respecting the risk and responsibility for such compliance shall be controlling.

The Client shall be privileged to designate a representative(s) who shall at all times have access to the premises for the purpose of observing tests or inspecting the work of Boart. Such representative(s) shall be empowered to act for the Client in all matters relating to the work herein undertaken, and Boart shall be entitled to rely on the orders and directions issued by such representative(s) as being those of the Client.

INVOICES

Boart will invoice at the end of each calendar week for the work done during such period. Terms will be NET due within 30 days of receipt of invoice.

LICENSES AND PERMITS

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Boart certifies that it has a license to do contract work in the state of Nevada. All other licenses, state reporting requirements, etc. shall be the responsibility of Boart. Client shall cooperate with and give technical assistance for Boart's compliance with all applicable regulations.

Client will furnish a competent representative to advise Boart as to the desired locations and depths of the various holes.

Boart shall maintain such insurance as will protect it from claims under workmen's compensation and from any other claims for damages for personal injury, including death, which may arise from operations under this Agreement, whether such operations are by Boart, any subcontractor or anyone directly or indirectly employed by either of them.

Prior to commencement of this work, Boart shall file with the Client complete certificates of insurance for Boart and each subcontractor. Boart and each subcontractor shall provide insurance coverage in satisfactory amounts.

The drilling operations shall be carried out in a good and workmanlike manner, and Boart will make every reasonable effort to execute the drilling in the best interest of the Client. Boart will take necessary precautions to prevent fuel and oil spillage which might create a pollution problem

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SCHEDULE "D"

(Additional Warranties)

Not Applicable

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SCHEDULE "E"**(Insurance Coverages)**

Without limiting any other obligation or liability of Contractor under this Agreement, Contractor shall procure and maintain insurance underwritten by a reputable insurer with a security rating from A.M. Best of not less than A-VII and on terms and conditions consistent with prudent risk management practice and acceptable to Owner, but in no event less than those specified below:

TYPE	MINIMUM COVER/EACH CLAIM/MISC.
Comprehensive General Liability (including, if applicable, coverage for explosion, collapse and underground)	\$5.0 million
Workers' Compensation	Per laws of states affected by License
Employers' Liability	\$1.0 million
Professional Liability, if applicable	\$1.0 million, for a period of three years after completion of services or termination of this License, whichever is later
Automobile Liability, if applicable	\$1.0 million
Tools and Equipment Insurance, if applicable	\$1.0 million
Other:	Not Applicable

The insurance maintained pursuant to the foregoing shall be on the following terms:

1. Contractor shall maintain the insurance coverage required by this Agreement in force and effect throughout the Term, and in the case of any coverage that is on a claims-made basis, for a period of two (2) years after termination, or three (3) years after termination in the case of any applicable professional liability.

2. If any of the insurance referred to above is subject to the application of any self-insured retention or deductible, the amount of the self-insured retention or deductible will be declared to Owner.

3. Before performing any of the Services, and each time the policies are

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renewed or varied, Contractor will provide to Owner a certificate of insurance as evidence of the insurance required under this Agreement. Certificates shall be furnished annually following termination of this Agreement until insurance is no longer required pursuant to the terms of this Agreement.

4. All insurance arranged by Contractor pursuant to the terms of this Agreement shall not be varied to the detriment of the Owner, cancelled or allowed to lapse until thirty (30) days' notice of the intention to so vary, cancel or lapse has been given to Owner.

5. The insurance maintained by Contractor pursuant to the terms of this Agreement will, unless prohibited by law, be endorsed to: (i) except in the case of Workers' Compensation, include Owner, its Affiliates and respective directors, officers, employees, agents and representatives as additional insureds, which shall be reflected in both the certificate of insurance and a separate endorsement; (ii) provide that it is primary to similar insurance, if any, that may be carried by Owner or its Affiliates; and (iii) waive all express or implied rights of subrogation against Owner and its Affiliates and its and their respective directors, officers, employees, agents and representatives, which waiver shall be set forth in both the certificate of insurance and a separate endorsement.

6. If Contractor awards any subcontract in order to satisfy its obligations under this Agreement, Contractor will ensure that the subcontractor carries and maintains insurance in form and amounts consistent with this Agreement, including, without limitation, an endorsement that Owner, its Affiliates respective directors, officers, employees, agents and representatives are additional insureds. Copies of the subcontractor's certificate of insurance and policy endorsements will be provided to Owner prior to the subcontractor undertaking any of such obligations.

SCHEDULE "F"

(NOTICES)

All notices required under the Agreement shall be sent as follows:

If to Owner:

(Physical Address)

Barrick Goldstrike Mines Inc.
3380 West Idaho Street
Elko, Nevada 89801
Attn: Contracts Department
Facsimile: (775) 748-1217
E-mail: NevadaContracts@Barrick.com

(Mailing Address)

Barrick Goldstrike Mines Inc.
P.O. Box 29
Elko, Nevada 89803
Attn: Contracts Department
Facsimile: (775) 748-1217
E-mail: NevadaContracts@Barrick.com

Please mail Invoices to:

Barrick Goldstrike Mines Inc.
P.O. Box 29
Elko, Nevada 89803
Attn: Accounts Payable

If to Contractor:

Boart Longyear Drilling Services
PO Box 5279
Elko, Nevada 89802
Attn: Ray Reece
(775) 753-8710
(775) 753-5278 Fax
reece@boartlongyear.com (310) 806-7359

NV Contractors License # 0021976
MSHA # Y12
NV Workers Comp # WC682120516
BROWZ ID # 26424622

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**Governmental Communications
FILED UNDER SEAL**

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Nevada State Office
P.O. Box 12000 (1340 Financial Blvd.)
Reno, Nevada 89520-0006
<http://www.blm.gov/nv/st/en.html>



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5-15-09

MAY 18 2009

In Reply Refer To:
3809 (NV923z)

DECISION

Principal:	:		
Barrick Goldstrike Mines, Inc.	:	BLM Bond Number:	NVB001119
P.O. Box 29	:	Bond Amount:	\$32,891,351
Elko, NV 89803	:		
	:		
Surety:	:		
Safeco Insurance Company of America	:	Surety Bond Number:	6581877
Safeco Plaza	:		
Seattle, WA 98185	:		

Surety Bond Accepted Obligation Under Bond Increased

The BLM Nevada State Office (NSO) currently holds BLM bond numbers NVB000889, NVB000890, and NVB001005 with Barrick Goldstrike Mines, Inc., as principal, in the combined total amount of \$75,977,169. The bonds provide surface reclamation coverage for operations conducted by the principal on Plan of Operations (POO) N-70708, the Betze Mine.

On May 5, 2009, the NSO received surety bond number 6581877 with Barrick Goldstrike Mines, Inc., as principal, and underwritten by Safeco Insurance Company of America, as surety, in the amount of \$32,891,351. The bond has been examined, found satisfactory, and is accepted effective May 5, 2009.

The bond, which has been assigned BLM bond number NVB001119, will be maintained by the NSO. Termination of the liability under the bond will be permitted only after the NSO is satisfied that there is no outstanding liability on the bond or satisfactory replacement bond coverage is furnished.

On May 6, 2009, the BLM Tuscarora Field Office increased the reclamation cost estimate on POO N-70708 to \$108,868,520. Effective the date of this Decision, \$108,868,520 is obligated to the BLM bond numbers associated with POO N-70708. The table on the next page shows the obligations for POO N-70708.

OFFICIAL RECORD COPY

BLM Bond Number	Financial Instrument	Amount
NVB000889	LC# 7414296	\$ 5,500,000
NVB000890	LC# 91888254	\$ 1,518,000
	LC# 91883963	\$ 12,417,811
	LC# 91899433	\$ 28,164,669
NVB001005	Corporate Guarantee	\$ 28,376,689
NVB001119	Surety# 6581877	\$ 32,891,351
Total Amount Obligated for POO N-70708		\$ 108,868,520

If you have any questions, please call Lacy Trapp at 775-861-6599, or send electronic mail to ltrapp@nv.blm.gov.

Elaine M. Lewis

Atanda Clark
FOR Chief, Branch of Minerals Adjudication

cc:

Barrick Gold of North America
Attn: Steve Krause
136 E. South Temple, Suite 1800
Salt Lake City, UT 84111

NV010 (KLaird)
NV920 (SMurrellwright)
BMRR

OFFICIAL RECORD COPY

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CONFIDENTIAL

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Line 1

08:12:42 a.m. 05-06-2009

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Elko District Office
3900 East Idaho Street
Elko, Nevada 89801
<http://www.nv.blm.gov>



In Reply Refer To:
3809(LLNVE02000)
N-70708

MAY 06 2009

CERTIFIED MAIL NO.: 7006 2150 0004 4671 4838
Return Receipt Requested

DECISION

Andy Cole
Barrick Goldstrike, Inc.
P. O. Box 29
Elko, NV 89803

Surface Management
Plan of Operations

PLAN OF OPERATIONS AMENDMENT APPROVAL
AND INCREASE IN RECLAMATION BOND

In 2007, Barrick Goldstrike Mines Inc proposed to construct and operate the Betze Pit Expansion Project (BPEP). The BPEP, which includes expansion of the Betze Pit, construction of the Clydesdale Waste Rock Facility (WRF) and haul road, and construction of the Goldstrike No. 3 Tailings Facility using 510 acres of public land and 967 acres of privately owned land. A number of changes were incorporated into the plan amendment during the completion of an Environmental Impact Statement (EIS) analyzing the impact of the proposed action. Those changes are listed in the Record of Decision (ROD) for the EIS. The ROD is attached.

This decision approves the proposed plan as analyzed in the EIS (Draft EIS completed August 22, 2008; Final EIS completed March 27, 2009). The BPEP will utilize many of the existing facilities at the Goldstrike Mine, including ore processing facilities and ancillary support facilities. The BPEP will extend mine life for an additional four years through 2015, with ore processing extended for an additional five years, approximately through 2031.

Conditions of Approval:

The approval of the BPEP is conditioned upon compliance with all aspects of the proposed plan including measures to minimize impacts to deer migration, landscaped reclamation of the Clydesdale Waste Rock Facility, and placement of 100 tons of limestone at the bottom of the Betze Pit at the end of mining to ensure prevention of the formation of acidic waters, among other measures documented in the ROD and established by the proposed action.

In addition, approval of the BPEP is conditioned up acceptance of an increased reclamation bond amount. Your estimated cost of reclamation for the revised project of \$5,152,773 has been

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reviewed and determined to be acceptable. Together with the 3-year reclamation bond update which increased the bond for the Goldstrike Mine (pre-BPEP) to \$103,715,747, the total reclamation bond for Goldstrike (NVN-070708) including the BPEP is \$108,868,520.

The reclamation bond cost estimate will be reviewed and updated at least every three years. Acceptable financial guarantee instruments are listed in 43 CFR §3809.555. The financial guarantee must be accepted, approved and obligated prior to implementation of the BPEP amendment. You must receive written notification from the BLM Nevada State Office accepting and obligating your financial guarantee before you may begin any surface disturbing operations under this approval.

43 CFR 3809 APPEAL STATEMENT:

If you do not agree and are adversely affected by this decision, in accordance with 43 CFR 3809.804, you may have the BLM State Director in Nevada review this decision. If you request a State Director review, the request must be received in the BLM Nevada State Office, 1340 Financial Blvd. 89502 or P.O. Box 12000, Reno, Nevada 89520-0006, no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to this office. The request must be in accordance with the provisions provided in 43 CFR 3809.805. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a stay is granted by the State Director.

If the Nevada State Director does not make a decision on whether to accept your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You then have 30 days in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass the State Director review, this decision may be appealed directly to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the BLM Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801 within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

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Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

If you have any questions, please contact Kirk Laird at (775) 753-0272.


for Mel M. Meier, Acting
Tuscarora Field Manager

Enclosures

cc:
TProcess, NDEP-BMRR
NSO (LLNV9230000)

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Form 1842-1
(September 2005)UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. **NOTICE OF APPEAL**..... A person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a notice of appeal in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
2. **WHERE TO FILE NOTICE OF APPEAL**.....
WITH COPY TO SOLICITOR...
3. **STATEMENT OF REASONS**..... Within 30 days after filing the Notice of Appeal, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the Notice of Appeal, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR.....
4. **ADVERSE PARTIES**..... Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the Notice of Appeal, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). If the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended, service will be made upon the Associated Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240. If the decision concerns the use and disposition of mineral resources, service will be made upon the Associated Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240.
5. **PROOF OF SERVICE**..... Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
6. **REQUEST FOR STAY**..... Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your notice of appeal (43 CFR 4.21 or 43 CFR 2804.1). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, subpart b for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

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(Form 1842-1, September 2005)

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United States Department of the Interior
Bureau of Land Management
Elko District Office
3900 East Idaho Street
Elko, NV 89801

RECORD OF DECISION
BARRICK GOLDSTRIKE MINES INC.
BETZE PIT EXPANSION PROJECT

3809/NVN-70708
BLM/NV/EK/PL-GI-08/22 + 1793
BLM/NV/EK/ES-GI-09/10 + 1793

Introduction

Barrick Goldstrike Mines Inc. (BGMI) a wholly owned subsidiary of Barrick Gold Corporation, owns and operates the Goldstrike Mine property, which is located in Elko and Eureka counties, Nevada in Township 36 North, Range 49 East and Township 36 North, Range 50 East. In 1989, BGMI submitted a Plan of Operations (Plan) pursuant to the Surface Management Regulations, Title 43 Code of Federal Regulations (CFR) Part 3809, to the Bureau of Land Management (BLM) for the Betze Project which is part of the Goldstrike Mine property. As provided by Section 102(c) of the National Environmental Policy Act of 1969 (NEPA), BLM prepared an environmental impact statement (EIS) with respect to BGMI's proposed Plan. The Final EIS and Record of Decision (ROD) for the Betze Project were issued on June 10, 1991. Most changes since 1991 have occurred on private land and, thus, have not required BLM review and approval.

In 2007, BGMI proposed to construct and operate the Betze Pit Expansion Project (BPEP), an amendment to the existing Plan. The BPEP, which includes expansion of the Betze Pit, construction of the Clydesdale Waste Rock Facility (WRF) and haul road, and construction of the Goldstrike No. 3 Tailings Facility, requires 510 acres of public land although the majority of the proposed action would occur on privately owned land (967 acres). The BPEP would utilize many of the existing facilities at the Goldstrike Mine, including ore processing facilities and ancillary support facilities. The BPEP would extend mine life for an additional four years through 2015, with ore processing extended for an additional five years, approximately through 2031. Total additional employment due to the BPEP is approximately four years for 1600 employees. The BLM determined a supplemental environmental impact statement (EIS) was required to analyze the proposal. Public scoping was initiated in March 2007.

The BLM issued the Draft EIS (BLM/NV/EK/PL-GI-08/22 + 1793) on August 22, 2008. BLM issued an abbreviated Final EIS (BLM/NV/EK/ES-GI-09/10 + 1793) on March 27, 2009, that includes comments, responses to comments, and revisions to the Draft EIS.

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Decision

Based on the analysis in the Betze Pit Expansion Project EIS, I have decided to approve the Proposed Action, as it is described in Section 2.3 of the Draft EIS, to the extent that the proposal involves or impacts public land as provided for by the 43 CFR 3809 regulations. This approval provides for use of the public land necessary for the following aspects of BPEP and includes changes to the Proposed Action that occurred during the preparation of the EIS:

- Expansion of the existing Betze Pit to include two additional laybacks to the north and west with associated in-pit and perimeter haul roads and buffer (129 acres of new disturbance of which 50 acres are public land).
- Construction of the Clydesdale WRF and associated access road (572 acres of new disturbance of which 414 acres are public land).
- Construction and operation of the Goldstrike No. 3 Tailings Facility (690 acres of which 46 acres are public land and 211 acres are previously disturbed).
- Deposition of tailings in the proposed Goldstrike No. 3 Tailings Facility so that the facility drains to the east, away from the impoundment.
- Extension of roaster facility operations for five years.
- Relocation of the transmission line to the west of the to-be-constructed Clydesdale Waste Rock Facility.
- Decrease of the expected Betze Pit Lake acreage from 985 (the 2000 Betze SEIS estimate) to 927 acres due to in-pit waste rock disposal as described in the Draft EIS.
- A revised total of 315 million tons of waste rock will be generated by the Betze Pit Expansion Project. The original estimate of 316 million tons was adjusted based on revised waste rock calculations.

Applicant Committed Environmental Protection Measures and Reclamation Plan

- Extension of the noxious weed management and reclamation plan.
- BGMI provided conceptual design documentation which proposes to construct the Clydesdale WRF in 100-foot lifts with 250-foot stepouts, allowing for an overall post-mining configuration of 2.5H:1V to 2.8H:1V slopes. BGMI will also reclaim the facility based on morphometric and hydrologic principles to resemble surrounding landforms to the extent practicable in order to minimize erosion and promote long-term stability.
- Reclamation of the eastern portion of the Clydesdale WRF and the western portion of the Bazza WRF along the wildlife migration corridor will be completed as soon as possible to minimize disturbance to the existing mule deer migration corridor.
- The haul road will be constructed with two strategically placed breaks/gaps to allow for wildlife movement while minimizing the potential for wildlife/vehicle collisions along the haul road.
- To provide a spatial buffer for Boulder, Bell, and Rodeo creeks, the Clydesdale WRF will be set back at least 100 feet from the uppermost edge of the creek banks.
- Limestone amendment to Betze Pit Lake - BGMI will place approximately 100 tons of limestone or other neutralizing material on the pit floor where the pit lake would first begin

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to appear or where ponding would occur to act as a neutralizing buffer for potential acidic runoff during the initial years of the groundwater recharge of the pit lake.

Monitoring

- BGMI committed to working with NDOW, BLM, and other interested parties to monitor deer movement in the South Tuscarora deer migration corridor for two seasons.
- Goldstrike Mine operations staff will be on site until 2045, rather than 2030. This change will result in a modification to the Long Term Monitoring trust fund (Exhibit D of the 1991 ROD for the Barrick Goldstrike Mine Expansion). With the modification, expenditures from the fund will begin in 2045 rather than 2030 and the reclamation bond will be increased to account for the additional monitoring costs between 2030 and 2045. The Long Term Monitoring trust fund was reviewed and the monies in the trust fund were found adequate for the purposes for which the fund was created given the delay in expenditures.
- Existing monitoring and mitigation requirements as described in Section 2.3.6 of the Draft EIS are adequate. These requirements include monitoring required by the Boulder Valley Monitoring Plan (surface and groundwater), compliance examinations required by the 43 CFR 3809 regulations, and monitoring and compliance examinations by state agencies including the Nevada Division of Environmental Protection.

Alternatives to the Proposed Action

No Action Alternative

The No Action Alternative would mean Barrick Goldstrike Mines, Inc. (BGMI) would not receive approval for additional mining operations on public land as proposed. Under such circumstances, BGMI could continue with approved operations (described in Section 2.2 of the Draft EIS) until completed. BGMI could also modify the proposed action and resubmit to the BLM, or modify the proposed action to exclude additional use of public land and thereby not be required to submit a proposal to the BLM for approval.

Bazza Waste Rock Facility Alternative

The Bazza WRF alternative would eliminate construction of the Clydesdale WRF in favor of expanding the Bazza WRF. The alternative would require handling of Carlin Formation material as waste rock rather than using the material in reclamation due to the safety and technical considerations related to stockpiling the unstable material. This alternative would also result in delayed reclamation of the Bazza WRF compared to the proposed action and increase the costs and resources required for mining. Other aspects of this alternative are the same as the proposed action.

Alternatives Considered but Eliminated from Detailed Analysis

The BLM considered four other alternatives but eliminated them from detailed analysis as discussed in Section 2.5 of the Draft EIS. The alternatives and the primary reasons for elimination are: 1) Modified Clydesdale Waste Rock Facility – reduced footprint resulting in a

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higher facility would cost more and make the facility impractical to reclaim in a hydrologically sound manner; 2) Offsite Waste Rock Facility – no site available within a reasonable distance of the mine; 3) Underground Mining – the ore grade is not high enough to support the additional cost of underground mining; 4) Reduced Tailings Facility – the environmental benefit of not using the small portion of public land necessary for the proposed action is outweighed by the benefit of the additional tailings capacity available through the proposed action.

Environmentally Preferred Alternative

The environmentally preferred alternative is the No Action Alternative because it would create the least impact to wildlife. However, the EIS identifies the Proposed Action as BLM's preferred alternative because the BLM believes the benefits to the local economy and the management considerations described below outweigh the limited impact to wildlife, particularly considering the mitigation measures that have been and will be implemented at the mine.

Management Considerations

In making my decision to approve the Proposed Action, I have carefully considered the following factors.

- The Proposed Action is the alternative that best fulfills the agency's statutory mission and responsibilities, considering economic, environmental, technical, and other factors.
- The Decision conforms to the Elko Resource Management Plan's objective for minerals: BLM will "Maintain public lands open for exploration, development, and production of mineral resources while mitigating conflicts with wildlife, wild horses, recreation and wilderness resources."
- Implementation of this Decision will not cause unnecessary or undue degradation of the public lands and is consistent with other legal requirements.
- The Decision allows for extension of mining and employment for up to 1,600 mine workers for four more years in an economy highly dependent on mining.
- The Decision will help maintain revenue for local government.
- The Decision will allow the existing Bazza WRF to be reclaimed 7 years earlier than would occur with the other alternatives. It will maximize the use of to-be-excavated Carlin material, a fine-grained plastic clayey silt, as an excellent growth medium and low permeability cover to accelerate reclamation of the Bazza Facility. Carlin material is not easily stockpiled in large volumes and otherwise would be disposed of in a waste rock facility.
- The reclamation design of the proposed Clydesdale WRF would be based upon landforms, watersheds, hill-slopes, and channels that mimic natural conditions in the region, thereby minimizing erosion and impacts to visual resources and wildlife habitat, while also promoting long-term stability.
- Mitigation measures have been incorporated into the design and reclamation plan for the Clydesdale WRF to minimize impacts to the existing mule deer migration corridor in the vicinity of the proposed facility. The deer migration corridor would be maintained at a width of at least 600 feet between the Clydesdale and Bazza waste rock facilities, and the proposed haul road would have breaks in the berms to allow wildlife passage. Surface

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