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5 *Attorney for Plaintiff State of Washington*

6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF WASHINGTON**

8 STATE OF WASHINGTON,

NO.

9 Plaintiff,

COMPLAINT

10 v.

11 CROWN RESOURCES
CORPORATION and KINROSS
12 GOLD U.S.A., INC.,

13 Defendants.

14 **I. INTRODUCTION**

15 1.1 Plaintiff, the State of Washington, by and through its attorneys
16 Robert W. Ferguson, Attorney General, and Kelly T. Wood, Assistant Attorney
17 General, brings this action against Defendants named below for violations of the
18 Clean Water Act, 33 U.S.C. § 1251 *et seq.* and the Washington Water Pollution
19 Control Act, Chapter 90.48 RCW.
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21 1.2 Crown Resources Corporation and Kinross Gold U.S.A., Inc.,
22 collectively Defendants, are—and have been for years—in violation of the

1 federal Clean Water Act and the state Water Pollution Control Act at a gold mine
2 in Okanogan County, Washington (the Buckhorn Mine).

3 1.3 As set out below, Defendants have consistently disregarded the
4 obligations of its National Pollutant Discharge Elimination System (NPDES)
5 permit for the Buckhorn Mine, to the detriment of the surrounding waters and in
6 violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and
7 Chapter 90.48 RCW. These harms adversely affect Washington and its residents
8 by contaminating numerous waters in and around the Buckhorn Mine site. The
9 State of Washington brings this action to end years of noncompliance by
10 Defendants and to ensure the remediation of the waters degraded by Defendants
11 as they exported gold from Washington state.
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14 II. JURISDICTION

15 2.1 This action arises under the Clean Water Act, 33 U.S.C. § 1365. This
16 Court has subject matter jurisdiction over Clean Water Act claims under 33
17 U.S.C. § 1365(a). This Court also has subject matter jurisdiction under 28 U.S.C.
18 § 1331, as well as under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and
19 2202.
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21 2.2 This Court has subject matter jurisdiction over the State's Chapter
22 90.48 RCW claim under 28 U.S.C. § 1367(a).

1 2.3 The Clean Water Act authorizes citizen suits against “any person,”
2 including the United States or its agencies, alleged to be in violation of an effluent
3 standard or limitation. 33 U.S.C. §1365(a)(1). District courts have the authority
4 to “enforce such an effluent standard or limitation ... and to apply any appropriate
5 civil penalties” 33 U.S.C. §1365(a). The State of Washington is a “citizen”
6 authorized to sue under the Clean Water Act. *U.S. Dep’t of Energy v. Ohio*, 503
7 U.S. 607, 614, 616 & nn.5, 9 (1992) (“A State is a ‘citizen’ under the CWA.”).

9 2.4 Pursuant to the notice requirements in 33 U.S.C. § 1365(b)(1)(A),
10 the Washington State Attorney General’s Office on March 5, 2020, notified
11 Defendants of Washington’s intent to file suit to restrain or abate the violations
12 described in this Complaint (Notice Letter). A copy of the Notice Letter is
13 attached as Exhibit 1. Plaintiff notified the Managing Agent for Defendant Crown
14 Resources, the Registered Agents of both Defendants, the Administrator of the
15 United States Environmental Protection Agency (EPA), the Administrator of
16 EPA Region 10, and the Director of the Washington State Department of Ecology
17 (Ecology) of its intent to sue Defendants by mailing copies of the Notice Letter
18 to these officials on March 5, 2020.
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1 degradation of the state's waters. This action is brought pursuant to the Attorney
2 General's independent constitutional, statutory, and common law authority to
3 bring suit and obtain relief on behalf of the State based on impacts to the state's
4 proprietary interests. This challenge is also brought pursuant to the Attorney
5 General's authority to bring actions pursuant to Washington's interest, as *parens*
6 *patriae*, in the general health and well-being of its residents.

8 4.2 Defendant Crown Resources Corporation (Crown) is a Washington
9 for-profit corporation with a principal office address of 363 Fish Hatchery Road,
10 Republic in Washington.

11 4.3 Defendant Crown owns and operates a gold mine at Buckhorn
12 Mountain in Okanogan County, Washington.

13 4.4 Defendant Kinross Gold U.S.A., Inc. (Kinross) is a foreign for-profit
14 corporation registered to conduct business in Washington with a principal office
15 address of 5075 South Syracuse Street, Floor 8, Denver, Colorado. Defendant
16 Crown is a wholly owned subsidiary of Defendant Kinross Gold U.S.A., Inc.
17

18 V. STATUTORY BACKGROUND

19 5.1 The Federal Clean Water Act, 33 U.S.C. § 1251 et seq., prohibits
20 the discharge of pollutants by any person to waters of the United States, unless
21 in compliance with the provisions of the Act. 33 U.S.C. §1311(a). As a result,
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1 discharge of pollutants from a point source is unlawful unless the discharger first
2 obtains a National Pollutant Discharge Elimination System (NPDES) permit in
3 accordance with Section 402 of the Clean Water Act and the discharges fully
4 comply with the terms set out in the permit. 33 U.S.C. § 1342.
5

6 5.2 The Clean Water Act, Section 505(a), 33 U.S.C. § 1365(a), allows
7 any person to commence a civil action against another person who is alleged to
8 be in violation of an effluent standard or limitation under the Act. Effluent
9 standards or limitations are defined to include a permit or permit condition issued
10 under Section 402 of the Act. 33 U.S.C. § 1365(f).
11

12 5.3 The Washington Water Pollution Control Act, Chapter 90.48 RCW,
13 prohibits the unpermitted discharge of any materials into waters of the State that
14 cause or tend to cause pollution. RCW 90.48.080. All discharges must also
15 comply with Washington's Water Quality Standards (Chapter 173-201A WAC).
16 These standards, approved by EPA, are designed to protect designated uses of
17 state waters, including human health, aquatic life, and recreation and to protect
18 high quality waters from degradation. 33 U.S.C. § 1313; *see also* Chapter 173-
19 201A WAC; Chapter 173-200 WAC.
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1 **VI. FACTS**

2 **A. Defendants' Corporate Structure**

3 6.1 Defendant Crown is a wholly owned subsidiary of Defendant
4 Kinross. Together, Defendants own and operate the Buckhorn Mountain gold
5 mine in Okanogan County, Washington. Defendant Crown owns and operates the
6 Buckhorn Mine and Defendant Kinross has operational control over both
7 Defendant Crown and the Buckhorn Mine.

8 6.2 Defendant Kinross effectively controls Crown's environmental
9 compliance at the Buckhorn Mine and directs Crown's actions with regard to
10 such compliance. Defendant Kinross submits (and has submitted) letters, data,
11 and reports regarding operation of the Buckhorn Mine to regulatory agencies,
12 including Ecology, regarding compliance with applicable environmental
13 regulations. These include, but are not limited to, state and federal water pollution
14 control laws.
15

16 6.3 Upon information and belief, the Environmental Compliance
17 Manager for the Buckhorn Mine, Ms. Jacquelyn Nutt, is an employee of
18 Defendant Kinross, not of Defendant Crown. Ms. Nutt has signed various letters
19 and reports regarding Permit compliance at the Buckhorn Mine provided to
20 Ecology on behalf of Crown.
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1 6.4 Mr. Mark Ioli is a corporate officer of Crown. Upon information and
2 belief, Mr. Ioli is also the general manager of the Buckhorn Mine and is an
3 employee of Defendant Kinross.

4 6.5 Mr. Gregory Van Etter is a corporate officer of Crown. Based on
5 information and belief Mr. Van Etter is also a corporate officer and the current
6 President of Kinross.

7 6.6 Upon information and belief, Ms. Gina Myers is the site manager
8 and the former environmental compliance manager at the Buckhorn Mine and is
9 an employee of Defendant Kinross, not of Defendant Crown.

10 6.7 Upon information and belief, the profits from ore extraction from
11 the Buckhorn Mine, estimated at approximately 34 tons of gold, accrued to
12 Defendant Kinross, and not to Defendant Crown.

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15 **B. Buckhorn Mine**

16 6.8 The Buckhorn Mine is an approximately 50 acre underground gold
17 mine constructed in the Myers Creek Mining district, approximately 3.5 miles
18 east of the town of Chesaw in Okanogan County.

19 6.9 Construction on the Buckhorn Mine began in 2007, and active ore
20 extraction began in approximately early 2008. The Buckhorn Mine consists of a
21 series of underground tunnels excavated beneath Buckhorn Mountain. Many of
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1 these tunnels lie below the water table. During mining, aboveground features of
2 the Buckhorn Mine included access roads, maintenance shops, ore and
3 development rock stockpiles, detention ponds, and a mine water treatment plant
4 (MWTP). Some, but not all, of these aboveground features have been
5 decommissioned.
6

7 6.10 Ore extraction at the Buckhorn Mine lasted through approximately
8 2017. While in active operation, Defendants extracted approximately \$1.3 billion
9 worth of gold from the Buckhorn Mine. Crown ceased extractive activity and
10 began mine reclamation in 2017.

11 6.11 From construction through the present day, Defendants discharge
12 pollutants from the Buckhorn Mine to both ground and surface waters in and
13 around the Buckhorn Mine site. These pollutants include aluminum, ammonia,
14 arsenic, chloride, copper, iron, lead, nitrates, sulfate, total dissolved solids, and
15 zinc.
16

17 6.12 Discharges to groundwater travel anywhere from a few hundred to a
18 few thousand feet to ultimately discharge to surface waters at or near the
19 Buckhorn Mine site via hydraulic connectivity. Surface waters receiving
20 discharges include Gold Bowl, Nicholson, Marias, Ethel, Bolster, and Gold
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1 Creeks. These creeks flow into Myers Creek and Toroda Creek, both of which
2 flow into the Kettle River, a tributary of the Columbia River.

3 6.13 Each of the aforementioned surface waters is a Water of the United
4 States under the Clean Water Act and a Water of the State under the Washington
5 Water Pollution Control Act. Groundwaters at the site are Waters of the State
6 under the Washington Water Pollution Control Act.
7

8 **C. Defendants' Discharge Permit**

9 6.14 Prior to construction of the Buckhorn Mine, Ecology conducted an
10 environmental review of the Buckhorn Mine proposal, culminating in September
11 2006 with a Final Supplemental Environmental Impact Statement (FSEIS). The
12 FSEIS examined baseline water quality data collected for the Buckhorn Mine site
13 from 1992 to 1996 and from 2003 to 2006. In general, the FSEIS identified that
14 background water quality at the site exhibited little signs of impact from human
15 activity.
16

17 6.15 The FSEIS also identified the potential for impacts from the
18 Buckhorn Mine to surface and groundwaters in and around the Buckhorn Mine
19 site, including changes in water chemistry. The FSEIS specifically noted the
20 potential for acid generation and mobilization of metals due to storage of the
21 development rock/ore at the surface and the placement of development rock back
22

1 into the mine excavations. The FSEIS also indicated that the use of explosives at
2 the Buckhorn Mine could cause elevated levels of nitrates in surface and ground
3 waters.

4
5 6.16 Due to anticipated discharges from the operation of the Buckhorn
6 Mine, operation of the Buckhorn Mine required Crown to obtain an NPDES
7 permit for its discharges. Ecology issued the first permit for the Buckhorn Mine,
8 permit number WA0052434, in 2007. The Permit required Crown to capture and
9 treat all mine-contaminated water and authorized the discharge of treated mine
10 water and storm water subject to various operation, monitoring, and reporting
11 requirements in order to meet state Water Quality Standards and to preserve the
12 pre-mining quality of the surrounding waters. The monitoring requirements
13 included a network of monitoring wells, surface water monitoring stations, and
14 piezometers surrounding the Buckhorn Mine.
15

16 6.17 Ecology re-issued Crown's NPDES permit in February 2014, with
17 an effective date of March 1, 2014. Ecology again re-issued the permit with minor
18 revisions in April 29, 2014 and April 1, 2015 (collectively, the "Permit"). The
19 2014 Permit was administratively extended beyond the February 28, 2019
20 expiration date pending issuance of a renewed permit.
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1 6.18 Crown appealed its 2014 Permit in February 2014 to the Washington
2 Pollution Control Hearings Board (PCHB). The PCHB upheld the Permit. *Crown*
3 *Resources Corp. v. Ecology*, PCHB No. 14-018, 2015 WL 4719130 (July 30,
4 2015). Crown appealed the PCHB’s decision to Ferry County Superior Court,
5 which affirmed the PCHB and upheld the Permit as well. *Crown Resources Corp.*
6 *v. Ecology*, Ferry Superior Court, No. 15-2-00075-0 (March 13, 2017). Crown
7 appealed that decision to Division III of the Washington Court of Appeals, which
8 affirmed as well. *Crown Res., Corp. v. Ecology*, 10 Wn. App.2d 1040, 2019 WL
9 4942459 (Oct. 8, 2019)(unpublished). After the Court of Appeals denied Crown’s
10 reconsideration motion, Crown did not seek discretionary review of the Court of
11 Appeals decision at the Supreme Court. Throughout its appeal of the 2014 Permit,
12 Crown did not seek—or receive—a stay of the Permit pending appeal.

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15 6.19 Crown’s Permit, as modified in 2015, requires that Crown capture
16 and treat mine-impacted water at the Buckhorn Mine site, including stormwater,
17 wastewater, and contaminated groundwater in order to protect waters in and
18 around the Buckhorn Mine.

19 **D. Defendants’ Past and Ongoing Violations of Permit Conditions**

20 6.20 Defendants have continuously violated the conditions and
21 requirements of the Permit since its issuance in 2014, continuing Defendants’
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1 history of permit violations throughout their operation of this mine. These
2 violations also constitute violations of Sections 301(a) and 402 of the CWA,
3 33 U.S.C. §§ 1311(a), 1342, as well as Chapter 90.48 RCW. These violations are
4 set out in detail in Section II.a of the Notice Letter and listed in Attachment A
5 thereto, and are incorporated herein by reference. See Exhibit 1.

7 Effluent Limit Violations

8 6.21 Permit condition S1.A7 requires Crown to meet average monthly
9 numeric effluent limits in surface waters, groundwater, and seeps/springs for
10 chloride, nitrate and Nitrite, oil and grease, sulfate, total dissolved solids, total
11 suspended solids, specific conductance, ammonia, arsenic, copper, iron,
12 manganese, zinc and pH. See Tables 6, 7, 13 of Exhibit 1. Permit Condition S2
13 requires effluent limits be met at specified monitoring points of compliance. See
14 Table 13 Exhibit 1. The Permit contained interim limits for both surface and
15 groundwater points of compliance that were applicable from March 1, 2014 to
16 December 31, 2014. The final limits, applicable to the violations included in this
17 Complaint, became effective on January 1, 2015.

19 6.22 Crown violated Section 301(a) every day since March 5, 2015, by
20 discharging various pollutants from the Buckhorn Mine in excess of the limits set
21 out in the Permit. The specific dates on which Crown monitored compliance
22

1 points to calculate the monthly average values are listed in Attachment A to the
2 Notice Letter. See Exhibit 1. These violations are ongoing.

3 Failure to Maintain Capture Zone

4 6.23 Permit Condition S1.A.2.1 requires Crown to ensure that all water
5 impacted by the mining operation is captured, routed to a treatment plant, and
6 treated to meet effluent limits before discharge. The Permit defines this concept
7 as a “Capture Zone,” a three-dimensional area representing “the farthest extent
8 from the mine that mine-related contaminants in groundwater and surface water
9 are allowed.”
10

11 6.24 The monitoring results from the surrounding surface waters and
12 ground waters show that contaminants from the Buckhorn Mine have
13 consistently escaped the Capture Zone in violation of the Permit. Crown has
14 failed to maintain the Capture Zone every day since March 5, 2015, in violation
15 of the Permit and of the Clean Water Act. These violations are ongoing.
16

17 Trigger Exceedance Violations

18 6.25 Permit Condition S2 requires Crown to monitor specified points of
19 compliance for trigger level concentrations of manganese, sulfate and total
20 suspended solids. Crown must then report levels above the trigger level to
21 Ecology and submit a written plan if the results exceed a specified level.
22

1 6.26 For manganese, Condition S2, Table 14, establishes a trigger level
2 at MW-4 of 220 µg/L. Once this level is exceeded, Crown must: (1) report the
3 result to Ecology within 72 hours of receipt of the data; and (2) if the result
4 exceeds 220 µg/L in the following month, submit a written plan for evaluation to
5 Ecology within one week of the receipt of the data. Crown's monthly discharge
6 monitoring reports (DMRs) show it exceeded the manganese trigger each month
7 from June 2015 to November 2015, February and March 2016, April 2017, and
8 August 2017. Crown violated the Permit by failing to notify Ecology of these
9 exceedances within 72 hours. Crown also violated the Permit by failing to submit
10 a written plan for evaluation to Ecology within one week of receipt of the data
11 for July, August, September, October, and November 2015, and March 2016.

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14 6.27 For sulfate, Condition S2, Table 13, establishes a trigger level at
15 SW-4 of 72 mg/L. Once this level is exceeded, Crown must: (1) report the result
16 to Ecology within 72 hours of receipt of the data; and (2) if the result exceeds
17 72 mg/L in the following month, submit a written plan for evaluation to Ecology
18 within one week of the receipt of the data. Crown's DMRs show it exceeded the
19 sulfate trigger in May 2016. Crown violated the Permit by failing to notify
20 Ecology of these exceedances within 72 hours.
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1 6.28 For total suspended solids, Condition S2, Table 13, establishes a
2 trigger level at SW-4 and SW-5 of 20 mg/L. Once this level is exceeded, Crown
3 must: (1) report the result to Ecology within 72 hours of receipt of the data; and
4 (2) if the result exceeds 20 mg/L in the following month, submit a written plan
5 for evaluation to Ecology within one week of the receipt of the data. Crown's
6 DMRs show it exceeded the total suspended solids trigger at SW-4 and SW-5 in
7 May 2017. Crown violated the Permit by failing to notify Ecology of these
8 exceedances within 72 hours.
9

10 6.29 Permit Condition S3.D requires Crown to take immediate action to
11 stop noncompliance with the Permit which leads to violations and to correct the
12 underlying problem. Crown failed to take this action for each of the violations
13 contained in this Complaint, in the Notice Letter and in Attachment A thereto.
14

15 Reporting Violations

16 6.30 Permit Condition S3.D.a requires Crown to report to Ecology within
17 24 hours of discovery any failure of the groundwater Capture Zone.
18

19 6.31 The Discharge Monitoring Report data reported by Crown shows a
20 continuing failure of the Capture Zone for every day of the statute of limitations.
21 However, Crown did not report this failure to Ecology as required under the
22 Permit. This is a violation of the Permit for every day of the statute of limitations.

1 6.32 Permit Condition S3.D.b requires Crown to report any
2 noncompliance with the Permit that may endanger health or the environment to
3 Ecology within 24 hours of discovery.

4 6.33 Each of the violations described in this Complaint and in the Notice
5 Letter endangers health and/or the environment. Crown violated the reporting
6 requirement for each violation listed in this Complaint and in the Notice Letter.

7 6.34 Permit Condition S3.D.c requires Crown to submit a written report
8 to Ecology within five days of discovery of certain reportable events listed in
9 Conditions S3.D.a or S3.D.b in the Permit.

10 6.35 For each of the permit violations listed in this complaint and in the
11 Notice Letter, Crown failed to provide the required written report to Ecology
12 within five days. Each of these failures is a further violation of the Permit.
13

14 Notification and Planning Violations

15 6.36 Condition S6 of the Permit requires Crown to implement actions in
16 the Adaptive Management Plan for Water Quality and to update the Adaptive
17 Management Plan. The deadline for Crown to submit an approvable Adaptive
18 Management Plan was July 1, 2014.
19

20 6.37 Crown submitted an Adaptive Management Plan to Ecology that
21 was not approvable. To this day, Crown has not submitted an approvable
22

1 Adaptive Management Plan to Ecology. Crown has thus violated the Permit on
2 every day since July 1, 2014.

3 6.38 Permit Condition S16 requires Crown to submit a plan for operating
4 the MWTP during rehabilitation of the Buckhorn Mine and the post closure phase
5 to Ecology 90 days prior to mine closure.
6

7 6.39 Upon information and belief, mine closure occurred in
8 approximately May 2017.

9 6.40 Crown did not submit a plan for operation of the MWTP during
10 rehabilitation until November 10, 2017. Crown thus violated Condition S16
11 every day from 90 days prior to mine closure until November 10, 2017.
12

13 6.41 Permit Condition G4 requires Crown to notify Ecology of planned
14 physical alterations to the facility that will result in a significant change in or an
15 increase of pollutants discharged.

16 6.42 Upon information and belief, Crown dismantled the MWTP in 2017
17 and then did not install a new plant for six months. Crown failed to notify Ecology
18 of an increase in pollutants that would be discharged when Crown dismantled the
19 MWTP. Crown has thus been in violation of Condition G4 during this period.
20

21 6.43 Permit Condition G5 requires Crown to provide an engineering
22 report and plans to Ecology prior to modifying any wastewater control facilities.

1 Clean Water Act program. All actions within state waters must comply with the
2 Water Quality Standards.

3 7.8 Defendants' actions as set out above violate the Washington Water
4 Pollution Control Act's ban on the unpermitted discharge of matter causing or
5 tending to cause pollution. Defendants' discharges also violate applicable
6 Washington Water Quality Standards, and the terms and conditions of the permit
7 issued for the Mine.
8

9 **VIII. RELIEF REQUESTED**

10 WHEREFORE, the State respectfully requests that this Court:

- 11 A. Adjudge and decree that Defendants' conduct complained of herein
12 violates, and continues to violate, the Clean Water Act, 33 U.S.C. §
13 1251 *et seq.*, and the Washington Water Pollution Control Act,
14 Chapter 90.48 RCW;
- 15 B. Order Defendants to take all such actions necessary to comply with
16 the Clean Water Act, the Washington Water Pollution Control Act,
17 and the terms of their NPDES Permit;
- 18 C. Order Defendants to pay civil penalties pursuant to Sections 309(d)
19 and 505(a) of the Clean Water Act, 33 U.S.C. §§ 1319(d) and
20 1365(a), and 40 C.F.R. § 19;
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- D. Issuing temporary and/or permanent injunctive relief against Defendants, including ordering Defendants to cease all activities that violate the Clean Water Act, the Washington Water Pollution Control Act, and/or the terms and conditions of their NPDES permit.
- E. Award Plaintiff the costs of litigation, including reasonable attorneys' and expert witness fees;
- F. Such other relief as the Court may deem just and proper.

DATED this 7th day of May, 2020.

ROBERT W. FERGUSON
ATTORNEY GENERAL

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