

February 29, 2024

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

In the Matter of	)	
	)	Docket No. 040-8903-LA
Homestake Mining Company of California	)	
	)	License No. SUA-1471
(Denial of License Amendment Request)	)	

**JOINT MOTION TO APPROVE PROPOSED SETTLEMENT AGREEMENT AND  
TERMINATE PROCEEDING**

**I. Introduction**

In accordance with 10 C.F.R. § 2.338, the U.S. Nuclear Regulatory Commission (“NRC”) staff (the “Staff”) and Homestake Mining Company of California (“Homestake” or “HMC”) (collectively, the “Parties”) jointly file this motion requesting that the Atomic Safety and Licensing Board (the “Board”) approve the attached proposed settlement agreement (Attachment A) and issue the attached consent order (Attachment B) terminating the proceeding. The proposed settlement agreement fairly and reasonably resolves all of the issues in this proceeding, and the Parties agree that the public interest does not require the adjudication of the issues for the reasons more fully discussed below.

**II. Background**

This proceeding concerns Homestake’s request to amend its materials license (License No. SUA-1471) to change the location of the background radon and gamma monitor at Homestake’s Grants Reclamation Project (the “GRP”), which is the site of a former uranium milling operation located 5.5 miles north of Milan, in Cibola County, New Mexico.

Relevant here, License Condition 10, by reference to Table 1, prescribes public dose and background monitoring locations for radon gas and direct gamma radiation.<sup>1</sup> The data derived from a background monitoring location is used in the calculation to determine the public dose from operations at the GRP as required by 10 C.F.R. § 20.1301(a).<sup>2</sup> The location of the current background radon and gamma monitor is designated HMC-16 and is located generally to the northwest of the GRP. The locations of the points of compliance—i.e., the monitoring stations located near occupied residences near the GRP—are designated as HMC-4 and HMC-5 and are located generally south to southwest of the GRP site. Presently, HMC subtracts the background data obtained from HMC-16 from the overall data obtained from HMC-4 and HMC-5 (whichever value is higher) to determine the public dose from operations at the GRP.<sup>3</sup>

On December 18, 2020, Homestake submitted to the NRC a license amendment request (“LAR”) proposing a change in License Condition 10 to eliminate the specification of background monitoring station HMC-16 and replace it with two new locations for routine monitoring of ambient background radon gas (radon-222) and direct gamma radiation levels at the GRP.<sup>4</sup> The new locations proposed by Homestake are designated as stations HMC-1OFF and HMC-6OFF,<sup>5</sup> which are located generally to the northeast of the GRP site. The below

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<sup>1</sup> “Safety Evaluation Report, Homestake Mining Company of California, Grants Reclamation Project, Request to Change the Background Monitoring Location for Radon and Ambient Gamma Radiation” dated August 2023 (ADAMS Accession No. ML23186A151) (hereinafter, the “Safety Evaluation Report”) at 1.

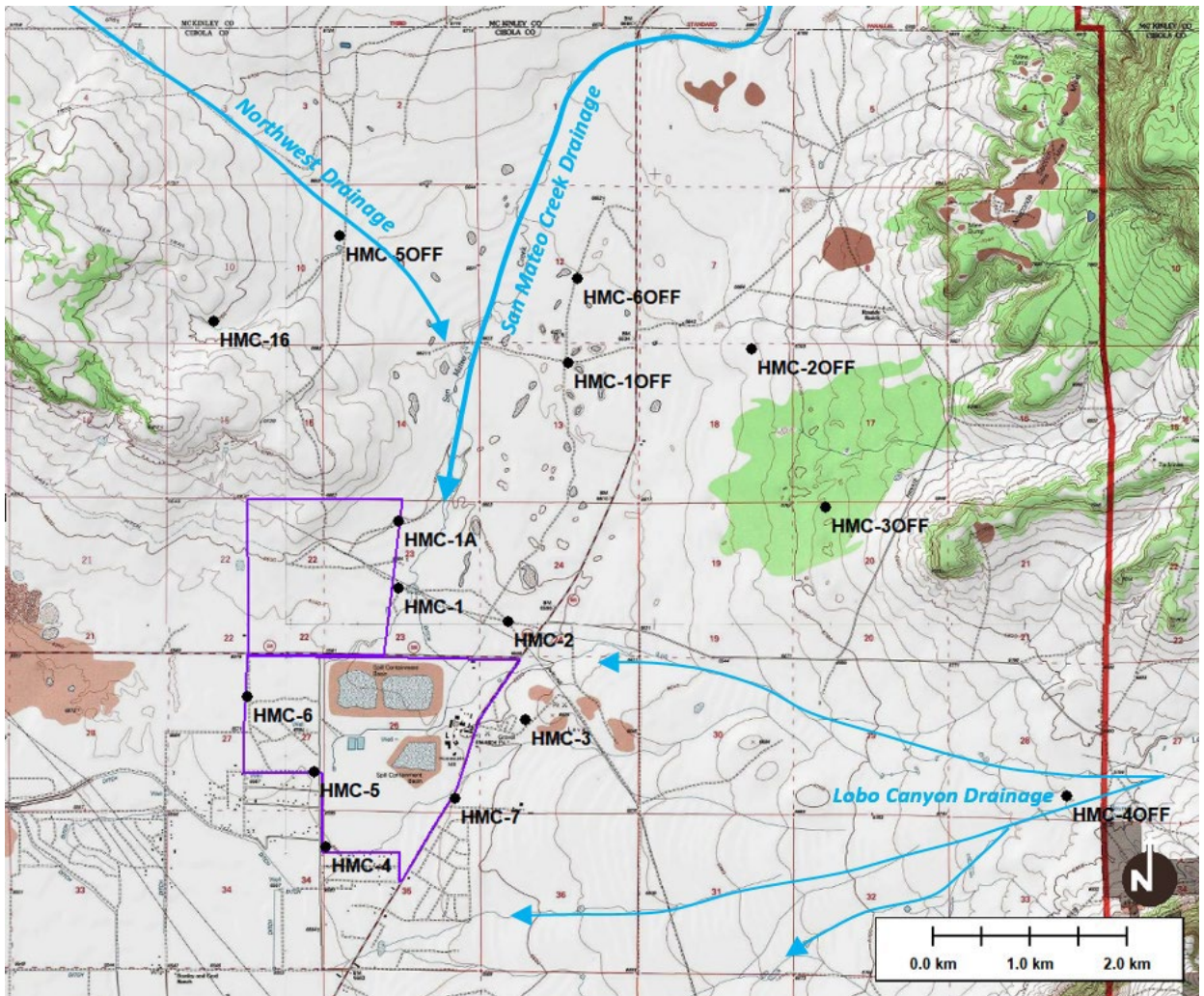
<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at iii.

<sup>4</sup> Letter from B. Bingham, HMC Closure Manager, Grants Reclamation Project, Homestake Mining Company of California, to R. Linton, Project Manager, Materials Decommissioning Branch, Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Materials Safety and Safeguards, NRC (Dec. 18, 2020) (ADAMS Accession No. ML20356A288) (hereinafter, the “LAR”). The LAR consists of a Cover Letter and four Attachments.

<sup>5</sup> *Id.*, Cover Letter at 1.

figure<sup>6</sup> depicts the locations of (a) current background monitor location HMC-16; (b) points of compliance locations HMC-4, and HMC-5; (c) Homestake’s proposed new background monitor locations HMC-1OFF and HMC-6OFF; and (d) other designated monitoring locations around the GRP site.



As detailed in the LAR, Homestake requested the background monitor location be moved from HMC-16 because “conditions at HMC-16 are not representative of background radon

<sup>6</sup> *Id.*, Attachment 1 at 2 (Figure 1: Topographical Site map with radon monitoring locations and generalized hydrologic drainage flow patterns).

conditions at the [GRP] Site.”<sup>7</sup> More specifically, HMC-16 was established in an area “where geomorphic/geological characteristics differ significantly from the floor of the San Mateo Creek (SMC) valley in which the [GRP] site is situated.”<sup>8</sup> HMC proposed to relocate the background monitoring location to HMC-10FF and HMC 6-OFF because (among other reasons) they “are located near the middle of the northern portions of SMC wash, distant enough to preclude measurable impacts from the Site, yet close enough to be representative of the geologic/geomorphic setting in which the Site is situated.”<sup>9</sup>

By letter dated February 22, 2021, the Staff determined the information provided in the LAR contained adequate information for the Staff to begin a detailed technical review.<sup>10</sup> By email dated March 31, 2021, HMC supplemented the LAR with data that was unavailable at the time of the December 18, 2020, submission.<sup>11</sup> The Staff performed a detailed technical review and issued a request for additional information (“RAI”) to HMC on September 14, 2021.<sup>12</sup> HMC responded to the Staff’s RAI in a letter dated March 11, 2022.<sup>13</sup> By letter dated June 10,

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<sup>7</sup> *Id.*, Cover Letter at 2.

<sup>8</sup> *Id.*, Attachment 1 at 2. *See also id.*, Attachment 1 at 27 (“The current background radon monitoring station (HMC-16) is located in an upland area, well beyond the floor of the SMC wash, and the radiological properties of local geologic materials differ significantly from the alluvial materials in the wash where the Site is situated.”).

<sup>9</sup> *Id.*, Attachment 1 at 28.

<sup>10</sup> Letter from R. Linton, Project Manager, Uranium Recovery and Materials Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Materials Safety and Safeguards, NRC, to B. Bingham, HMC Closure Manager, Grants Reclamation Project, Homestake Mining Company of California (Feb. 22, 2021) (ADAMS Accession No. ML21053A325).

<sup>11</sup> Email from R. Whicker to R. Linton Project Manager, Materials Decommissioning Branch, Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Materials Safety and Safeguards, NRC (Mar. 31, 2021) (ADAMS Accession No. ML21092A009).

<sup>12</sup> Letter from R. Linton, Project Manager, Uranium Recovery and Materials Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Materials Safety and Safeguards, NRC, to B. Bingham, HMC Closure Manager, Grants Reclamation Project, Homestake Mining Company of California (Sept. 14, 2021) (ADAMS Accession No. ML21237A454).

<sup>13</sup> Letter from B. Bingham, HMC Closure Manager, Grants Reclamation Project, Homestake Mining Company of California, to R. Linton, Project Manager, Materials Decommissioning Branch, Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Materials Safety and Safeguards, NRC (Mar. 11, 2022) (ADAMS Accession No. ML22071A000).

2022, the Staff responded to HMC's RAI response by requesting clarifying information.<sup>14</sup> HMC responded to the request for clarifying information on August 9, 2022.<sup>15</sup> After receipt of the HMC response to the Staff request for clarifying information, the Staff and HMC held a public observational meeting on August 25, 2022, and NRC published a summary of the meeting dated September 8, 2022.<sup>16</sup>

By letter dated August 15, 2023 the Staff denied the LAR.<sup>17</sup> The Staff's letter asserted that the Staff had determined the proposed background monitoring stations at locations HMC-1OFF and HMC-6OFF do not meet the applicable regulations in 10 C.F.R. Part 20, "would not make an appropriate survey pursuant to 10 CFR 20.1302(a) and (b), and would not make [a] reasonable survey pursuant to 10 CFR 20.1501(a) to demonstrate compliance with the dose limits for individual members of the public in 10 CFR 20.1301 when reviewed in accordance with the NRC guidance."<sup>18</sup> Summarizing its reasoning in the LAR Denial, the Staff stated that

Current background radon-222 conditions at public exposure locations are not reflected at proposed background monitoring stations HMC-1OFF and HMC-6OFF. The current point of compliance (POC) monitoring locations (HMC-4 and HMC-5) are adjacent to and impacted by an area where the remediation work performed by the licensee has lowered the background to levels which are below the background for non-remediated areas. Selection of a background monitoring location that is in an area where remediation has not taken place (a preoperational

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<sup>14</sup> Letter from R. Linton, Project Manager, Uranium Recovery and Materials Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Materials Safety and Safeguards, NRC, to B. Bingham, HMC Closure Manager, Grants Reclamation Project, Homestake Mining Company of California (June 10, 2022) (ADAMS Accession No. ML22137A097).

<sup>15</sup> Letter from B. Bingham, HMC Closure Manager, Grants Reclamation Project, Homestake Mining Company of California, to R. Linton, Project Manager, Materials Decommissioning Branch, Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Materials Safety and Safeguards, NRC (Aug. 9, 2022) (ADAMS Accession No. ML22222A123).

<sup>16</sup> Summary of Public Observational Meeting to discuss the LAR for Background Monitoring Location Change for Radon and Ambient Gamma Radiation (Aug. 25, 2022) (ADAMS Accession No. ML22245A065).

<sup>17</sup> NRC Letter from J. Marshall, Division Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards to B. Bingham, HMC Closure Manager, Grants Reclamation Project (Aug. 15, 2023) (ADAMS Accession No. ML23186A150) ("LAR Denial").

<sup>18</sup> *Id.* at 2.

location), will result in a calculation of an annual public dose that is lower than what is the maximum exposed individual is receiving.<sup>19</sup>

The LAR Denial was accompanied by the Safety Evaluation Report, which further explained the bases for the Staff’s denial. Despite its denial of the LAR, the Staff did conclude that the “current background location at HMC-16 is located in a different geological setting which is not representative of the POC monitoring stations.”<sup>20</sup>

On September 5, 2023, Homestake filed a hearing demand challenging the LAR Denial.<sup>21</sup> On September 20, 2023, the Board held a status conference with the Parties, during which the Staff indicated that it did not oppose Homestake’s hearing demand.<sup>22</sup> Also during the status conference, the Parties informed the Board that they were discussing a possible settlement and wished to continue those discussions.<sup>23</sup> By Order dated September 25, 2023, the Board granted Homestake’s hearing demand, deferred setting a date for the scheduling conference, and directed that the Parties provide updates to the Board on the status of their settlement negotiations.<sup>24</sup> By Order dated September 26, 2023, the Board issued a notice of hearing.<sup>25</sup>

The Parties have since conducted settlement discussions in good faith and twice requested from the Board additional time to continue those discussions,<sup>26</sup> which requests the

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<sup>19</sup> *Id.*

<sup>20</sup> Safety Evaluation Report at 34.

<sup>21</sup> [Homestake’s] Demand for Hearing on Denial of the Homestake Mining Company’s License Amendment Request for Source Materials License No. SUA-1471 (Sept. 5, 2023) (ADAMS Accession No. ML23248A353).

<sup>22</sup> *See Tr.* at 3.

<sup>23</sup> *See id.* at 10-12.

<sup>24</sup> Licensing Board Order (Granting Hearing Demand; Deferring Scheduling Conference) (Sept. 25, 2023) (ADAMS Accession No. ML23268A369).

<sup>25</sup> Licensing Board Order (Notice of Hearing) (Sept. 26, 2023) (ADAMS Accession No. ML23269A200).

<sup>26</sup> *See Joint Settlement Status Update* (Nov. 2, 2023) (ADAMS Accession No. ML23306A155); *Second Joint Settlement Status Update* (Dec. 14, 2023) (ADAMS Accession No. ML23348A354).

Board granted.<sup>27</sup> On January 26, 2024, the Parties submitted a joint notice of settlement to the Board and requested that the proposed settlement agreement be filed on or before February 29, 2024,<sup>28</sup> which request the Board granted.<sup>29</sup>

### **III. Discussion**

The Parties hereby move the Board to terminate this proceeding because the Parties have resolved the disputed issues. As a result of the Parties' settlement discussions and exchanges of information, the Parties have developed the proposed settlement agreement, included as Attachment A to this motion. The Parties believe that this proposed settlement agreement is a fair, reasonable, and efficient resolution to all of the disputed issues in this proceeding.

In particular, the Parties have agreed to a modification of License Condition 10 requiring Homestake to derive background radon and gamma data by averaging the data obtained from three locations around the GRP site: HMC-1OFF, HMC-1A, and HMC-6.<sup>30</sup> Different factors are considered when siting representative background radon and gamma monitors, including geology, topography, meteorology, and the duration of the dose limit being an annual average value. In this case, the Parties have agreed to Homestake averaging data from the three locations around the GRP site, which will account for variations among the factors to be considered. In addition, going forward, the Parties have agreed that Homestake will average the data obtained

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<sup>27</sup> Licensing Board Order (Second Deferral of Setting Date for Scheduling Conference Pending Continued Settlement Discussions) (Nov. 3, 2023) (ADAMS Accession No. ML23307A122); Licensing Board Order (Third Deferral of Setting Date for Scheduling Conference Pending Continued Settlement Discussions) (Dec. 15, 2023) (ADAMS Accession No. ML23349A154).

<sup>28</sup> Joint Notice of Settlement (Jan. 26, 2024) (ADAMS Accession No. ML24026A169).

<sup>29</sup> Licensing Board Order (Setting Date for Filing Joint Proposed Settlement Agreement) (Jan. 31, 2024) (ADAMS Accession No. ML24031A617).

<sup>30</sup> Proposed Settlement Agreement at 2.

from point of compliance stations HMC-4 and HMC-5 when calculating public dose.<sup>31</sup> The Parties anticipate that this will provide reliable and stable data in the public dose calculations.

Additionally, the Parties agree that the public interest does not require the adjudication of the issues. The Parties believe the settlement is a reasonable compromise between parties that are represented by counsel. Were the adjudication to continue, both sides would face litigation risks, as well as the possibility of extended litigation that would further delay resolution and significant costs. The settlement agreement involved negotiation by both sides to reach a mutually agreeable result and a reasonable outcome for both Parties. The compromise reached—averaging the background radon and gamma data from three separate locations around the GRP site and averaging the data from the two points of compliance—provides reasonable assurance that the public dose calculation required under 10 C.F.R. § 20.1301(a) is reasonably accurate and therefore is consistent with the public health and safety. Moreover, the survey locations and data calculation requirements under the proposed settlement agreement meet the intent of the methodology requirements of 10 C.F.R. §§ 20.1302(b) and 20.1501(a). The proposed settlement agreement also is consistent with the Commission’s policy encouraging the “fair and reasonable settlement and resolution of issues.”<sup>32</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> 10 C.F.R. § 2.338.



#### IV. Conclusion

For the reasons stated above, the Parties respectfully request that the Board grant this motion, approve the proposed settlement agreement included as Attachment A, issue the consent order included as Attachment B, and terminate this proceeding.

Respectfully submitted,

**/Signed (electronically) by/**

Timothy J. V. Walsh  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
1200 17th Street, NW  
Washington, DC 20036  
Tel. 202-663-8455  
Fax 202-883-8007  
timothy.walsh@pillsburylaw.com

Counsel for Homestake Mining Company  
of California

**Executed in Accord with 10 CFR 2.304(d)**

Patricia A. Jehle, Attorney  
Mail Stop: OWFN 14 A44  
U.S. NUCLEAR REGULATORY COMMISSION  
Washington, DC 20555-0001  
Telephone: (301) 287-9199  
E-mail: Patricia.Jehle@nrc.gov

Counsel for NRC Staff

Dated: February 29, 2024

**Attachment A**  
**Proposed Settlement Agreement Between**  
**U.S. Nuclear Regulatory Commission**  
**And**  
**Homestake Mining Company of California**

This agreement is made by and between the Staff of the U.S. Nuclear Regulatory Commission (“NRC Staff” or “Staff”) and Homestake Mining Company of California (“Homestake” or “HMC”), to wit:

*Whereas*, HMC is the holder of NRC source materials license No. SUA-1471 for the Grants Reclamation Project (“GRP”) located in Grants, New Mexico;

*Whereas*, HMC submitted an application requesting an amendment to License Condition 10 of its license to eliminate the specification of background monitoring station HMC-16 in Table 1 and replace it with stations HMC-1OFF and HMC-6OFF as new approved locations for routine monitoring of ambient background radon and direct gamma radiation at the GRP;

*Whereas*, the Staff reviewed HMC’s license amendment application, as supplemented, and issued an August 15, 2023, letter denying the application;

*Whereas*, on September 5, 2023, HMC filed a hearing demand challenging the denial of its application;

*Whereas*, on September 20, 2023, at a status conference held by the Atomic Safety and Licensing Board (Board), the Staff stated that it did not oppose HMC’s hearing demand, and the Staff and HMC jointly requested deferral of a hearing to engage in settlement discussions;

*Whereas*, on September 25, 2023, the Board granted HMC’s hearing demand and the parties’ request to defer scheduling a hearing during settlement negotiations;

*Whereas*, the parties held multiple settlement conferences and reached an agreement regarding new approved background radiation monitoring station locations and data reporting methods at the point of compliance monitoring stations;

*Whereas*, the Parties agree that the public interest does not require adjudication of the issues resolved by the settlement agreement because the provisions of the agreement provide the Staff with reasonable assurance that the public dose calculation required under 10 C.F.R. § 20.1301(a) is reasonably accurate and therefore is consistent with the public health and safety, and there are no disputed issues to litigate. The settlement agreement is also consistent with the Commission’s policy encouraging the “fair and reasonable settlement and resolution of issues;”<sup>1</sup> and

*Whereas*, the PARTIES AGREE TO THE FOLLOWING IN SETTLEMENT:

1. Based on information provided in the LAR application and during settlement discussions, the Staff has determined that amending Table 1, as referenced in License Condition 10 of HMC source materials license No. SUA-1471 for the GRP, as follows meets the regulatory requirements of 10 C.F.R. §§ 20.1301(a)(1), 20.1302(b)(1), and 20.1501(a). The Staff will amend License Condition 10 of source materials license No. SUA-1471 upon receipt of a letter from HMC enclosing a copy of changes to Table 1 reflecting that:  
1) the new background radon and gamma monitoring station locations are HMC 1-OFF, HMC-1A, and HMC-6, 2) data derived from these stations will be averaged, and 3) going

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<sup>1</sup> 10 C.F.R. § 2.338.

forward HMC will average the data obtained from point of compliance stations HMC-4 and HMC-5 when calculating public dose;

2. HMC agrees to provide by letter to the Staff a copy of the changes to Table 1, as referenced in License Condition 10, reflecting the license amendment described in paragraph (1) within 30 days of the Board approving this settlement agreement.
3. The Staff agrees to issue the license amendment described in paragraph (1) to HMC within 30 days of receiving HMC's letter enclosing Table 1 changes described in this settlement agreement.<sup>2</sup>
4. HMC agrees to withdraw its hearing request regarding the LAR at issue in this proceeding. The hearing request withdrawal shall be effective upon the Board approval of this settlement agreement and termination of this proceeding.
5. All regulatory requirements and conditions that apply to HMC as a licensee under 10 C.F.R. Part 40 shall apply to HMC just as they would if the approval described in Paragraph (3) had been issued through the traditional licensing process.
6. Consistent with 10 C.F.R. § 2.338(h), the Parties agree that:
  - a. This proposed settlement agreement admits all jurisdictional facts;
  - b. The Parties expressly waive further procedural steps before the presiding officer, any right to challenge or contest the validity of the order entered into in accordance with this proposed settlement agreement, and all rights to seek judicial review or otherwise contest the validity of the consent order;
  - c. The order implementing this proposed settlement agreement has the same force and effect as an order made after full hearing; and


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<sup>2</sup> See 10 C.F.R. § 2.306 (providing procedures for counting of days).

d. The matters identified in this proposed settlement agreement that were required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

7. This Settlement Agreement shall be effective upon the Board's approval. Should the Board disapprove this Settlement Agreement, it shall be null and void.

WHEREOF, the Parties have executed this agreement as of the last date written below.

  
\_\_\_\_\_  
Jane Marshall, Director 2/26/24  
Date  
Division of Decommissioning, Uranium Reclamation, and Waste  
Office of Nuclear Material Safety and Safeguards  
Mail Stop: OWFN 14 A44  
U.S. NUCLEAR REGULATORY COMMISSION  
Washington, DC 20555-0001  
Telephone: (301) 415-2918  
Email: [Jane.Marshall@NRC.GOV](mailto:Jane.Marshall@NRC.GOV)

  
\_\_\_\_\_  
Michael McCarthy 2/26/24  
Date  
Director  
Homestake Mining Company of California  
310 South Main Street, Suite 1150  
Salt Lake City, Utah 84101  
Telephone: (775) 401-4409  
Email: [mmccarthy@barrick.com](mailto:mmccarthy@barrick.com)

**Attachment B – Proposed Consent Order**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

Michael M. Gibson, Chair  
G. Paul Bollwerk, III  
Dr. Sue H. Abreu

In the Matter of:

HOMESTAKE MINING COMPANY OF  
CALIFORNIA

(Denial of License Amendment Request)

Docket No. 40-8903-LA

ASLBP No. 23-980-03-LA-BD01

\_\_\_\_\_, 2024

**ORDER**

(Approving Proposed Settlement Agreement and Terminating Proceeding)

On December 18, 2020, Homestake Mining Company of California (“HMC” or “Homestake”) submitted to the U.S. Nuclear Regulatory Commission (“NRC”) staff (“Staff”) (collectively, the “Parties”) a license amendment request (“LAR”) for its source materials license No. SUA-1471 for HMC’s Grants Reclamation Project (“GRP”) located in Cibola County, New Mexico.<sup>1</sup> The LAR proposed a change to License Condition 10 to eliminate the specification of background monitoring station HMC-16 in Table 1 and replace it with two new locations for routine monitoring of ambient background radon gas (radon-222) and direct gamma radiation levels at the GRP.<sup>2</sup> The Staff reviewed HMC’s LAR, as supplemented, and issued an August

<sup>1</sup> Letter from B. Bingham, HMC Closure Manager, Grants Reclamation Project, Homestake Mining Company of California, to R. Linton, Project Manager, Materials Decommissioning Branch, Decommissioning, Uranium Recovery & Waste Programs, Office of Nuclear Materials Safety and Safeguards, NRC (Dec. 18, 2020) (ADAMS Accession No. ML20356A288) (hereinafter, the “LAR”). The LAR consists of a Cover Letter and four Attachments.

<sup>2</sup> Id.

15, 2023, letter,<sup>3</sup> with an accompanying safety evaluation report,<sup>4</sup> denying the application. Pending before the Licensing Board (the “Board”) is a February 29, 2024, joint motion from Homestake and the Staff asking the Board to (1) approve an attached proposed settlement agreement specifying three locations for routine monitoring of ambient background radon and direct gamma radiation levels at the GRP; and (2) terminate this proceeding.<sup>5</sup>

For the reasons set forth below, pursuant to 10 C.F.R. § 2.338(i), we grant the Parties’ February 29, 2024 joint motion, approve the settlement agreement, a copy of which is attached to this order at Attachment A; and terminate this proceeding.

#### I. Background

10 C.F.R. § 20.1301(a)(1) prescribes that NRC licensees shall conduct their operations such that the total effective dose equivalent from licensed operations to individual members of the public shall not exceed 0.1 rem in a year, which dose excludes (among other things) any dose received from background radiation.<sup>6</sup> Section 20.1302(a) requires licensees to make surveys of radiation levels to demonstrate compliance with the dose limit set forth in Section 20.1301(a)(1), and Section 20.1302(b) provides that licensees may demonstrate by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from licensed operation does not exceed the Section 20.1301(a)(1) dose limit.<sup>7</sup> Also pertinent is 10 C.F.R. § 20.1501(a), which requires (in relevant part) that

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<sup>3</sup> NRC Letter from J. Marshall, Division Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards to B. Bingham, HMC Closure Manager, Grants Reclamation Project (Aug. 15, 2023) (ADAMS Accession No. ML23186A150) (“LAR Denial”).

<sup>4</sup> Safety Evaluation Report, Homestake Mining Company of California, Grants Reclamation Project, Request to Change the Background Monitoring Location for Radon and Ambient Gamma Radiation” dated August 15, 2023 (ADAMS Accession No. ML23186A151) (“Safety Evaluation Report”).

<sup>5</sup> See Joint Motion to Approve Proposed Settlement Agreement and Terminate Proceeding (Feb. 29, 2024) (the “Joint Motion”); Proposed Settlement Agreement Between U.S. Nuclear Regulatory Commission and Homestake Mining Company of California (dated Feb. 26, 2024) (“Proposed Settlement Agreement”).

<sup>6</sup> 10 C.F.R. § 20.1301(a)(1).

<sup>7</sup> Id. at § 20.1302(a)-(b).

surveys conducted under Part 20 are “reasonable under the circumstances” to evaluate the magnitude and extent of radiation levels, concentrations of residual radioactivity, and any potential radiological hazards of the radiation levels and residual radioactivity detected.<sup>8</sup>

Relevant here, licensee Homestake presently determines the public dose from operations at the GRP by subtracting the data obtained from its current background monitor location (HMC-16) from the data derived from two monitoring stations (HMC-4 and HMC-5, whichever value is higher).<sup>9</sup> HMC-4 and HMC-5 are sited closest to the member of the public who resides in nearest proximity to the GRP<sup>10</sup> and are referred to as the “point of compliance” monitoring locations, or “POCs.” HMC-16 is located to the northwest of the GRP, and HMC-4 and HMC-5 are located to the south/southwest of the GRP.<sup>11</sup>

On December 18, 2020, Homestake submitted the LAR, which requested to replace HMC-16 with two new background monitoring locations, HMC-1OFF and HMC-6OFF,<sup>12</sup> which are generally located to the northeast of the GRP site.<sup>13</sup> Homestake requested the change because (among other reasons) “conditions at HMC-16 are not representative of background radon conditions at the [GRP] [s]ite,”<sup>14</sup> whereas proposed locations HMC-1OFF and HMC 6-OFF “are located near the middle of the northern portions of SMC wash, distant enough to preclude measurable impacts from the [s]ite, yet close enough to be representative of the geologic/geomorphic setting in which the [s]ite is situated.”<sup>15</sup>

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<sup>8</sup> Id. at § 20.1501(a).

<sup>9</sup> Safety Evaluation Report at iii.

<sup>10</sup> Id.

<sup>11</sup> See LAR, Attachment 1 at 2 (Figure 1: Topographical Site map with radon monitoring locations and generalized hydrologic drainage flow patterns).

<sup>12</sup> See generally id.

<sup>13</sup> See id., Attachment 1 at 2 (Figure 1).

<sup>14</sup> Id., Cover Letter at 2.

<sup>15</sup> Id., Attachment 1 at 28.



By letter dated August 15, 2023, the Staff issued the LAR Denial and its accompanying Safety Evaluation Report. According to the Staff, it determined that the proposed locations HMC-10FF and HMC-60FF do not meet the applicable regulations in 10 C.F.R. Part 20, “would not make an appropriate survey pursuant to 10 CFR 20.1302(a) and (b), and would not make [a] reasonable survey pursuant to 10 CFR 20.1501(a) to demonstrate compliance with the dose limits for individual members of the public in 10 CFR 20.1301 when reviewed in accordance with the NRC guidance.”<sup>16</sup> The Staff’s determination and the detailed technical bases supporting its rationale are discussed in its Safety Evaluation Report.”<sup>17</sup>

On September 5, 2023, HMC transmitted its hearing request challenging the denial of its application.<sup>18</sup> On September 20, 2023, the Licensing Board held a status conference with the Parties, during which the Staff indicated that it did not oppose Homestake’s hearing demand.<sup>19</sup> The Parties also indicated they wished to pursue settlement of the dispute.<sup>20</sup>

By Order dated September 25, 2023, the Board granted Homestake’s hearing demand, deferred setting a date for the scheduling conference, and directed that the Parties provide updates to the Board on the status of their settlement negotiations.<sup>21</sup> By Order dated September 26, 2023, the Board issued a notice of hearing.<sup>22</sup>

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<sup>16</sup> LAR Denial at 2.

<sup>17</sup> See generally Safety Evaluation Report.

<sup>18</sup> See [HMC]’s Demand for Hearing on the NRC Staff’s Denial of the License Amendment Request to Change the Background Monitoring Location for Radon and Ambient Gamma Radiation for Source Materials License No. SUA-1471 (Sept. 5, 2023) (ADAMS Accession No. ML23248A353) (“Demand for Hearing”).

<sup>19</sup> See Tr. at 3.

<sup>20</sup> See id. at 10-12.

<sup>21</sup> Licensing Board Order (Granting Hearing Demand; Deferring Scheduling Conference) (Sept. 25, 2023) (ADAMS Accession No. ML23268A369).

<sup>22</sup> Licensing Board Order (Notice of Hearing) (Sept. 26, 2023) (ADAMS Accession No. ML23269A200); see also Order; (Providing Notice of Hearing), 88 Fed. Reg. 67,828 (Oct. 2, 2023).

The Parties have since conducted settlement discussions in good faith and twice requested from the Board additional time to continue those discussions,<sup>23</sup> which in both instances the Board granted.<sup>24</sup> On January 26, 2024, the Parties submitted a joint notice of settlement to the Board and requested that the proposed settlement agreement be filed on or before February 29, 2024,<sup>25</sup> which request the Board granted.<sup>26</sup> On February 29, 2024, the Parties submitted their joint motion asking the Board to approve the Proposed Settlement Agreement and terminate this proceeding.

## II. Analysis

### A. Standards Governing the Approval of Settlement Agreements

10 C.F.R. § 2.338 encourages the settlement of issues proposed for litigation in NRC adjudicatory proceedings and provides certain requirements for such settlement.<sup>27</sup> A proposed settlement

must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted. It must be signed by the consenting parties or their authorized representatives.

10 C.F.R. § 2.338(g). In addition, the proposed settlement agreement must contain:

- (1) An admission of all jurisdictional facts;
- (2) An express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise to contest the validity of the consent order;

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<sup>23</sup> See Joint Settlement Status Update (Nov. 2, 2023) (ADAMS Accession No. ML23306A155); Second Joint Settlement Status Update (Dec. 14, 2023) (ADAMS Accession No. ML23348A354).

<sup>24</sup> Licensing Board Order (Second Deferral of Setting Date for Scheduling Conference Pending Continued Settlement Discussions) (Nov. 3, 2023) (unpublished) (ADAMS Accession No. ML23307A122); Licensing Board Order (Third Deferral of Setting Date for Scheduling Conference Pending Continued Settlement Discussions) (Dec. 15, 2023) (unpublished) (ADAMS Accession No. ML23349A154).

<sup>25</sup> Joint Notice of Settlement (Jan. 26, 2024) (ADAMS Accession No. ML24026A169).

<sup>26</sup> Licensing Board Order (Setting Date for Filing Joint Proposed Settlement Agreement) (Jan. 31, 2024) (unpublished) (ADAMS Accession No. ML24031A617).

<sup>27</sup> 10 C.F.R. § 2.338.

(3) A statement that the order has the same force and effect as an order made after full hearing; and

(4) A statement that matters identified in the agreement, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

10 C.F.R. § 2.338(h). The same regulation also prescribes the settlement agreement approval process:

Following issuance of a notice of hearing, a settlement must be approved by the presiding officer or the Commission as appropriate in order to be binding in the proceeding. The presiding officer or Commission may order the adjudication of the issues that the presiding officer or Commission finds is required in the public interest to dispose of the proceeding...If approved, the terms of the settlement or compromise must be embodied in a decision or order. Settlements approved by a presiding officer are subject to the Commission's review in accordance with § 2.341.

10 C.F.R. § 2.338(i).

The Commission has stated in another context that a “presiding officer’s approval of a settlement is a matter that must give due consideration to the public interest.”<sup>28</sup> Such consideration may include the following four factors:

(1) whether, in view of the agency's original order and the risks and benefits of further litigation, the settlement result appears unreasonable;

(2) whether the terms of the settlement appear incapable of effective implementation and enforcement;

(3) whether the settlement jeopardizes the public health and safety; and

(4) whether the settlement approval process deprives interested parties of meaningful participation.<sup>29</sup>

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<sup>28</sup> See Sequoyah Fuels Corp. (Gore, Oklahoma Site), CLI-97-13, 46 NRC 195, 207 (1997) (quoting Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994)) (footnote omitted).

<sup>29</sup> See Sequoyah Fuels Corp., CLI-97-13, 46 NRC at 209 (footnote omitted).

At least one other licensing board had given due weight to these factors when evaluating a settlement agreement between a materials licensee and the NRC Staff.<sup>30</sup> Accordingly, with the applicable regulations and these factors in mind, we will review the Proposed Settlement Agreement between Homestake and the NRC Staff.

#### B. Homestake / NRC Staff Settlement Agreement

The settlement agreement between Homestake and the NRC Staff states that the Staff will amend License Condition 10 of the Homestake source materials license No. SUA-1471 for the GRP (1) to identify three new background radon and gamma monitoring locations at HMC-10FF, HMC-1A, and HMC-6; (2) to specify that the data from these stations will be averaged; and (3) to specify that, going forward, Homestake will average the data obtained from POC stations HMC-4 and HMC-5 when calculating the public dose under 10 C.F.R. § 20.1301(a)(1).<sup>31</sup> According to the settlement agreement, Homestake will submit a letter to the Staff with the proposed changes to Table 1, as referenced in License Condition 10, within 30 days of the Board's approval of the agreement.<sup>32</sup> The Staff, in turn, will approve the revisions to the license within 30 days of Homestake's submittal.<sup>33</sup>

Homestake has also agreed to withdraw its hearing request, which withdrawal will be effective upon the Board's approval of the settlement agreement and the termination of this proceeding.<sup>34</sup>

Lastly, the settlement agreement states that "[a]ll regulatory requirements and conditions that apply to HMC as a licensee under 10 C.F.R. Part 40 shall apply to HMC just as they would

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<sup>30</sup> Cammenga and Associates, LLC (Denial of License Amendment Requests), LBP-23-03, 97 NRC 59, 70 (2023), Commission review declined, Memorandum from Brooke P. Clark, Secretary, Office of the Secretary, NRC, to Board and Parties (Mar. 30, 2023).

<sup>31</sup> Proposed Settlement Agreement at 2-3.

<sup>32</sup> Id. at 3.

<sup>33</sup> Id.

<sup>34</sup> Id.

if the approval” of the revisions to the license “had been issued through the traditional licensing process.”<sup>35</sup>

### C. Licensing Board Determination

#### 1. 10 C.F.R. § 2.338(g) and (h): Settlement Agreement’s Form and Content.

As previously described, 10 C.F.R. § 2.338(g) and (h) prescribe the elements of the settlement agreement’s form and content. Here, we find the requirements of these provisions are met.

In accordance with Section 2.338(g), the Parties submitted (1) a proposed settlement agreement; (2) a proposed consent order; and (3) a motion for entry of the settlement agreement with the reasons why it should be accepted.<sup>36</sup> The settlement agreement is also signed by the parties’ authorized representatives.<sup>37</sup> We therefore find that the settlement agreement complies with the form requirements of Section 2.338(g).

In accordance with Section 2.338(h), the settlement agreement includes (1) the admission of all jurisdictional facts; (2) the express waiver of any “further procedural steps before the presiding officer, any right to challenge or contest the validity of the order entered into in accordance with this proposed settlement agreement, and all rights to seek judicial review or otherwise contest the validity of the consent order”; (3) the statement that the “order implementing this proposed settlement agreement has the same force and effect as an order made after full hearing”; and (4) the statement that the “matters identified in this proposed settlement agreement that were required to be adjudicated have been resolved by the proposed

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<sup>35</sup> Id.

<sup>36</sup> See Joint Motion; Joint Motion at Attachment A (Proposed Settlement Agreement); Joint Motion at Attachment B (Proposed Consent Order).

<sup>37</sup> Settlement Agreement at 4.

settlement agreement and consent order.”<sup>38</sup> We therefore conclude that the settlement agreement contains the provisions required of Section 2.338(h).

## 2. Settlement Agreement and the Public Interest

As previously summarized,<sup>39</sup> evaluation of a proposed settlement agreement involves due consideration of the public interest, which may be accomplished by applying the four factors from the Commission’s Sequoyah Fuels decision. The Board turns to such consideration below.

- a. Whether the settlement result appears unreasonable in view of the agency’s original order and the risks and benefits of further litigation.

We find that the settlement agreement is a reasonable compromise between parties that are each represented by counsel. Were the Board to adjudicate Homestake’s claims, it is not clear that Homestake would prevail on the merits. In its hearing demand, Homestake asserted that its LAR was more than adequately supported and met all applicable requirements.<sup>40</sup> The Staff, on the other hand, denied the LAR for several reasons,<sup>41</sup> some or all of which may or may not prove true at hearing. In short, both sides face litigation risks at potentially significant costs, making settlement a reasonable choice for both Parties.

As noted above,<sup>42</sup> the Parties have agreed to obtain background radon and gamma radiation by averaging data obtained from three monitoring locations around the GRP.<sup>43</sup> The settlement includes one of the locations advanced by Homestake in the LAR (HMC-10FF), but not the second (HMC-6OFF), and instead includes two different locations (HMC-1A and HMC-6).<sup>44</sup> The Parties have also agreed to average the data from the two established points of

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<sup>38</sup> Id. at 3-4.

<sup>39</sup> Supra, Section II.A.

<sup>40</sup> Demand for Hearing at 4.

<sup>41</sup> See LAR Denial.

<sup>42</sup> Supra, Section II.B.

<sup>43</sup> Proposed Settlement Agreement at 2-3.

<sup>44</sup> Id.

compliance (HMC-4 and HMC-5).<sup>45</sup> Both Parties agree that the current background monitoring station (HMC-16) is not situated in a location that is representative of conditions at the GRP site.<sup>46</sup> These items suggest that the agreement reached reflects a mutually agreeable result that is the product of considered negotiation by both sides.<sup>47</sup>

With these considerations in mind, the Board finds no basis to disturb the balance of risks and benefits made by the Staff and Homestake in reaching the agreement, rather than continuing to pursue litigation. These considerations support approval of the agreement.

- b. Whether the terms of the settlement appear incapable of effective implementation and enforcement.

The Board finds that the agreement reached between the parties appears capable of implementation and enforcement. In this case, Homestake will submit a letter to the Staff requesting the amendment to the license in accordance with the agreed upon terms within 30 days of the Board's approval, and has agreed to withdraw its hearing request.<sup>48</sup> The Staff, in turn, has agreed to issue the revised license amendment within 30 days of Homestake's letter.<sup>49</sup> The settlement agreement provides that all regulatory requirements and conditions will apply to Homestake just as they would had the terms of the agreement been reached through the traditional licensing process.<sup>50</sup> Nothing in the agreement suggests that its terms are not capable of being implemented and enforced. These considerations support approval of the settlement agreement.

- c. Whether the settlement jeopardizes the public health and safety.

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<sup>45</sup> Id. at 3.

<sup>46</sup> Joint Motion at 3-4 (citing LAR Attachment 1 at 1, 27-28) and 6 (citing the Safety Evaluation Report at 34).

<sup>47</sup> See Joint Motion at 8 ("The settlement agreement involved negotiation by both sides to reach a mutually agreeable result and a reasonable outcome for both Parties.").

<sup>48</sup> Proposed Settlement Agreement at 3.

<sup>49</sup> Id.

<sup>50</sup> Id.

The Board concludes that the settlement agreement does not jeopardize the public health and safety. The agreement includes the finding by the Staff that, based on information provided in the LAR application and during settlement discussions, the terms of the agreement meet the regulatory requirements set forth 10 C.F.R. §§ 20.1301(a)(1), 20.1302(b)(1), and 20.1501(a).<sup>51</sup> In addition, the Parties state in their joint motion that siting a representative background monitor location involves consideration of different factors, and averaging data from three locations will account for variations among the factors.<sup>52</sup> The Parties also state that averaging the data from the points of compliance locations “will provide reliable and stable data in the public dose calculations.”<sup>53</sup> Altogether, the Parties state that these agreed to measures will provide reasonable assurance that the public dose calculation required under 10 C.F.R. § 20.1301(a) “is reasonably accurate and therefore is consistent with the public health and safety.”<sup>54</sup>

This information supports approval of the settlement agreement, as we conclude that its terms are fully consistent with the public health and safety.

d. Whether the settlement approval process deprives interested parties of meaningful participation

We find that approval of this settlement agreement will not deprive any interested parties of meaningful participation in this proceeding. The Board issued a notice of hearing on September 26, 2023.<sup>55</sup> That notice has been available on the NRC website since then and was published in the Federal Register approximately one week later on October 2, 2023.<sup>56</sup> Since that time, no potential intervenors or other interested participants have sought to intervene in

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<sup>51</sup> Id. at 2.

<sup>52</sup> Joint Motion at 7.

<sup>53</sup> Id. at 8.

<sup>54</sup> Id.

<sup>55</sup> See Notice of Hearing.

<sup>56</sup> 88 Fed. Reg. at 67,828.



this proceeding,<sup>57</sup> or otherwise have come forward to assert that their interests might be adversely impacted by any settlement agreement reached.

For these reasons, we conclude that our approval of the settlement agreement does not deprive any interested participant of meaningful participation in this proceeding. This determination supports approval of the settlement agreement.

In summary, after applying the four factors from the Commission's Sequoyah Fuels decision, we find that the public interest does not require adjudication of any issue in this proceeding.

### III. Conclusion

Upon review of the proposed settlement agreement and joint motion, the Board is satisfied that the terms in the proposed settlement agreement reflect a fair and reasonable settlement of all the issues in this proceeding and that the public interest does not require the adjudication of these issues. Therefore, the Board grants the parties' joint motion and approves the proposed settlement agreement. The settlement agreement, attached hereto, is hereby incorporated into this Order.

Because all of the issues required to be adjudicated as part of this proceeding have been resolved, the proceeding is terminated.

It is so ORDERED.

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<sup>57</sup> Pursuant to 10 C.F.R. § 2.309(b)(3), any intervention request and list of contentions must have been filed within 60 days of publication in the Federal Register.

February 29, 2024

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Atomic Safety and Licensing Board**

In the Matter of	)	
	)	Docket No. 040-8903-LA
Homestake Mining Company of California	)	
	)	License No. SUA-1471
(Denial of License Amendment Request)	)	

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Joint Motion to Approve Proposed Settlement Agreement and Terminate Proceeding has been served through the E- Filing system on the participants in the above-captioned proceeding this 29th day of February 2024.

**/Signed (electronically) by/**  
Timothy J. V. Walsh  
Pillsbury Winthrop Shaw Pittman LLP

Date: February 29, 2024