

SGC

Sunnyside Gold Corporation
5075 S. Syracuse Street, Suite 800
Denver, Colorado 80237
www.sgcreclamation.com

June 26, 2019

Mr. Gregory Sopkin
Regional Administrator
U.S. Environmental Protection, Region 8
1595 Wynkoop Street
Denver, Colorado 80201-1129

Re: Request for Retraction of False and Defamatory Statement

Dear Regional Administrator Sopkin:

It is an irrefutable scientific fact that SGC's mining, remediation and reclamation have improved water quality. As noted in a cover story in the Engineering & Mining Journal: "*It is incontrovertible that both SGC's five years of mining [. . .] and SGC's 30 years of remediation and reclamation in the Silverton Caldera each substantially reduced metals loading in the Animas River from what would have otherwise been the case.*"ⁱ The fact that SGC has improved water quality has been recognized by regulatory agencies and a Colorado District Court.ⁱⁱ

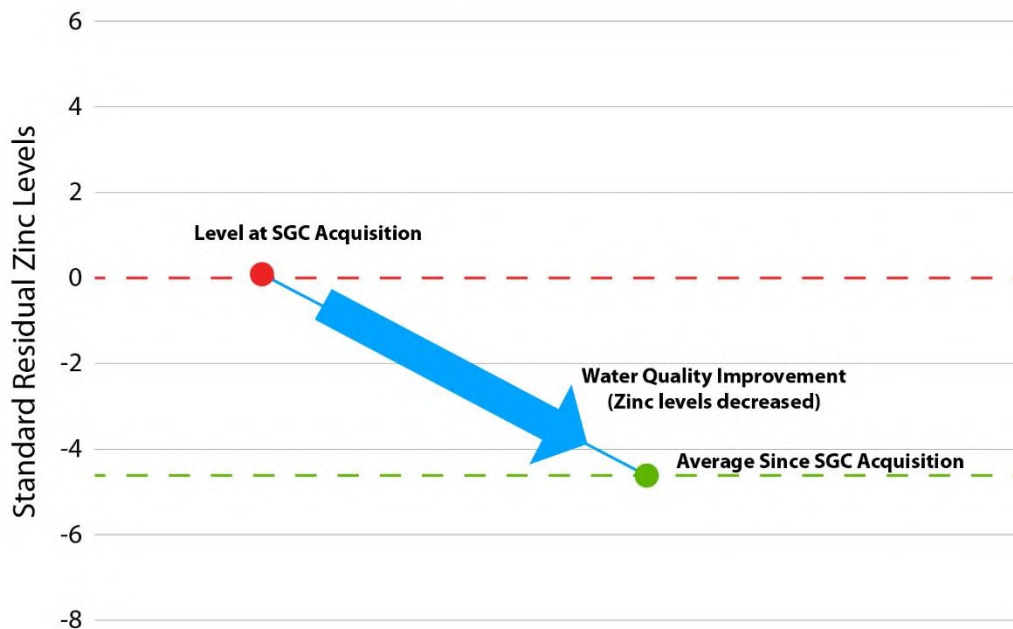
SGC was formed and acquired the Sunnyside Mine in 1985 and mined it from 1986 until 1991 using modern techniques and under the modern era of environmental regulation. SGC closed the Mine in accordance with the law, its permits and a court-approved Consent Decreeⁱⁱⁱ that was supported by the Animas River Stakeholders Group^{iv} and EPA^v, and has spent more than \$30 million on successful reclamation and remediation. SGC has received awards and recognition for its work, and has earned a stellar reputation for its successful improvement of water quality. Unfortunately, a recent false and defamatory statement by EPA has damaged the reputation of numerous persons and entities. I am hereby requesting that EPA immediately retract this false and defamatory statement.

The EPA Statement. According to the Associated Press EPA has stated that "[SGC's] previous mining work contributed to significant water quality problems in the area."^{vi} This EPA Statement is false and defamatory. EPA's lack of veracity can only be attributed to what Mountain States Legal Foundation has, in a recent letter to the EPA Office of the Inspector General, called a

“blatant and impactful conflict of interest”^{vii} arising out of EPA acting “as a regulator and supervisor of cleanup activities in the Bonita Peak Mining District while at the same time be[ing] a responsible party”^{viii}.

The EPA Statement is False. A Report by Steven Lange, M.S., Knight Piésold Consulting, an expert in geochemistry and hydrology, determined that “Water quality in the Animas River immediately downstream from Silverton, Colorado has dramatically improved since SGC acquired the Sunnyside Mine in 1985, and SGC’s activities played an important role in this improvement. The positive effect on water quality resulting from both SGC’s mining operations and SGC’s subsequent remediation/reclamation activities is conclusively and quantitatively demonstrated by decades of reliable water quality sampling.”^{ix} The findings of this Report have been confirmed by Stephen Day, MSc, SRK Consulting, an expert geochemist specializing in acid rock drainage.^x This is in keeping with previous determinations that “[I]t is incontrovertible that the actions of SGC have substantially reduced acid rock drainage and metals loading in the Animas from what would have otherwise been the case.”^{xi} The below chart comparing water quality at the time SGC acquired the Sunnyside Mine and water quality since that date is reproduced from the Knight Piésold Report.^{xii}

Figure 1: Animas Zinc Levels
A-72 South of Silverton, CO



SGC’s Mining Operations Improved Water Quality. At the time SGC acquired the Sunnyside Mine in 1985, the Mine was closed and under a Cease and Desist Order for multiple permit violations, including failure to comply with water discharge permits. SGC brought all discharge permits into compliance and reopened the Mine. The Colorado Mined Land Reclamation Division (CMLRD) awarded SGC the 1987 Mined Land Reclamation Award in the classification “Most

Improved Sites.”^{xiii} As noted in a 2018 Paper, “*During the period of SGC’s operations, the “net” load that SGC removed from the Animas was tremendous [and] SGC’s five years of mining . . . substantially reduced metals loading in the Animas River.*”^{xiv}

SGC’s Reclamation and Remediation Improved Water Quality. Having seen water quality markedly improve during SGC’s five years of mining operations, there was a consensus to protect post-mining water quality. In furtherance of this objective, Colorado and SGC entered into the Consent Decree, under which SGC agreed to complete numerous reclamation and remediation projects in the region. SGC successfully completed all requirements under the Consent Decree, and the Colorado Department of Public Health and Environment (CDPHE) determined that SGC had improved water quality and SGC was released from further obligations.^{xv} The results of the actions undertaken by SGC pursuant to the Consent Decree are a continuing success. A recent peer-reviewed analysis of more than two decades of water samples “*conclusively demonstrates that SGC’s Bulkheading and Remediation was successful and improved water quality by substantially reducing acid rock drainage and metals loading in the Animas River and its tributaries.*”^{xvi} As noted in early 2019, “*The new River Watch data further vindicates Colorado Department of Public Health and Environment’s . . . determination . . . that SGC’s bulkheading and remediation was successful and improved water quality in the Animas River.*”^{xvii}

The EPA Statement is Defamatory. A communication is defamatory if it “*tends so to harm the reputation of another as to lower him in the estimation of the community.*”^{xviii} The EPA Statement is defamatory and has damaged numerous persons and entities.

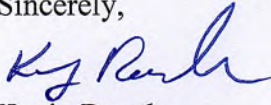
The EPA Statement has damaged the reputations of State and Federal regulatory agencies. CDPHE and CMLRD were charged with overseeing, and did in fact diligently oversee, SGC’s activities to ensure they were protective of the environment.^{xix} The American Tunnel and significant other properties where SGC undertook activities are managed by the Bureau of Land Management (BLM). The BLM is responsible for ensuring that there is no unnecessary and undue degradation of the environment.^{xx} SGC’s authorizations to engage in mining at the Sunnyside Mine were granted pursuant to a Memorandum of Understanding between the BLM and Colorado.^{xxi} Were the EPA Statement accurate, CDPHE, CMLRD and BLM should be held in utter contempt for completely failing to fulfill their statutory responsibilities.

The EPA Statement also disparages numerous others, including the Animas River Stakeholders Group, past leadership of EPA, and a Colorado District Judge, who endorsed SGC’s notable environmental achievements.^{xxii}

SGC has a well-deserved reputation as a steward of the environment because of its success in improving water quality. The false EPA Statement has undoubtedly damaged SGC’s reputation and that of past and present SGC Directors, Officers and employees.

The EPA Statement Should Be Retracted. In addition to injuring multiple third parties, the EPA Statement undermines the integrity and credibility of EPA. It is incumbent upon EPA to expeditiously retract the false and defamatory EPA Statement. I trust that you, in your new role as Regional Administrator, will so do.

Sincerely,



Kevin Roach
Director, Reclamation Operations

Cc: Charles J. Sheehan, Acting Inspector General, EPA Office of the Inspector General

ⁱ *Remediation Helps Rescue a River*, Engineering & Mining Journal (July 2018) (Attached as Exhibit 1).

ⁱⁱ *See, e.g.*, Consent Decree and Order, as amended, *Sunnyside Gold Corporation v. Colorado WQCD* (D. Colo. May 8, 1995) (Case No. 94 CV 5459) (“Consent Decree”); Letter from Sarah Johnson of CDPHE to Larry Perino of SGC, *Re: Consent Decree Termination*, 1 (February 26, 2003) (Attached as Exhibit 2).

ⁱⁱⁱ *Id.*

^{iv} *See, e.g.*, Letter to Robert Shukle, Chief, Water Quality Control Division, Colorado Department of Public Health and the Environment from William Simon, Animas River Watershed Coordinator (April 4, 1996) (Attached as Exhibit 3).

^v *See, e.g.*, Letter from Max Dodson, EPA to David Holm, Director CDPHE (April 5, 1996) (Attached as Exhibit 4).

^{vi} Dan Elliott, *Gold company Says EPA is mishandling Colorado mining cleanup*, Associated Press (February 26, 2019) A copy of the story containing the EPA statement (“EPA Statement”) is attached as Exhibit 5.

^{vii} Letter from Mountain States Legal Foundation to Charles Sheehan, Acting Inspector General for the EPA, *Re: Impactful EPA Conflict of Interest at the Bonita Peak Mining District* (March 7, 2019) (Attached as Exhibit 6).

^{viii} State of New Mexico’s First Amended Complaint at ¶ 120, *In Re Gold King Mine Release in San Juan County, Colorado on August 5, 2015* (May 11, 2018) (MDL No. 1:18-md-02824-WJ) ECF No. 8.

^{ix} Knight Piésold Consulting, *Animas River Water Quality 1985 – Present, Quantification of the Positive Effects of SGC’s Mining and Reclamation* (Letter Report from Steven Lange, MS, June 20, 2019) (Attached as Exhibit 7). *See also*, Letter from Kevin Roach, SGC, to Bonita Peak Mining District Community Advisory Group (March 27, 2019) (Attached as Exhibit 8).

^x Letter from Stephen Day, SRK Consulting, to Kevin Roach, SGC (June 20, 2019) (Attached as Exhibit 9).

^{xi} Knight Piésold Consulting, *SGC Mining and Reclamation Activities and Metals Loading in the Animas River* (Steven Lange, M.S., Jan. 2018) (Attached as Exhibit 10).

^{xii} Knight Piésold Consulting, *Animas River Water Quality 1985 – Present, Quantification of the Positive Effects of SGC’s Mining and Reclamation* (Letter Report from Steven Lange, MS, June 20, 2019). (Zinc concentrations have historically been utilized to analyze water quality in the Animas River because the properties of Zinc make it an ideal indicator of overall metals loading. A-72 is a long established monitoring point on the Animas River below the confluences of Cement and Mineral Creeks with prodigious historical data.)

^{xiii} Letter from Fred Banta, Colorado Mined Land Reclamation Division, to Frank Bergstrom, SGC, *Re: Colorado Mined Land Reclamation Division, 1987 Mined Land Reclamation Award for Most Improved Site* (February 29, 1988). (Attached as Exhibit 11).

^{xiv} Knight Piésold Consulting, *SGC Mining and Reclamation Activities and Metals Loading in the Animas River* (Steven Lange, M.S., Jan. 2018).

^{xv} *See, e.g.*, Letter from Sarah Johnson of Colorado WQCD to Larry Perino of SGC, 1 (February 26, 2003); Letter from Sarah Johnson of CDPHE to Wells Fargo Bank, N.A., *Re: Letter of Credit*, 1 (December 18, 2002) (Attached as Exhibit 12) SGC has no factual, equitable, or legal liability within the so-called Bonita Peak Mining District *See, e.g.*, Letter from Neil Westesen, Crowley Fleck to Doug Naftz, EPA (August 28, 2018) (Attached as Exhibit 13).

^{xvi} *SGC Mining and Reclamation – Evaluating Animas River Water Quality at A-72*, SME Annual Conference & Expo and CMA 121st National Western Mining Conference (February 2019); Letter from Stephen Day, SRK Consulting, to Larry Perino, SGC (February 19, 2019) (Attached as Exhibits 14 and 15).

^{xvii} Letter from Steven Lange, Knight Piésold, to Mark Rudolph, CDPHE, *Re: New Data from River Watch, Animas River Metals Loading Subject-KP* (January 30, 2019) (Attached as Exhibit 16).

^{xviii} Restatement (Second) of Torts § 559 (Attached as Exhibit 17).

^{xix} Colo. Rev. Stat. Ann. § 25-8-501.

^{xx} 43 U.S.C. § 1732(b).

^{xxi} Memorandum of Understanding, the BLM and the CMLRD (June 28, 1984).

^{xxii} *See, e.g.*, supra notes ii, iv and v.