

1 ANN BIRMINGHAM SCHEEL, Acting United States Attorney
2 LON R. LEAVITT, Assistant United States Attorney
(Utah Bar No. 11245)
3 Two Renaissance Square,
4 40 North Central Ave., Suite 1200
5 Phoenix, Arizona 85004-4408
T: (602) 514-7734 / F: (602) 514-7760

6 Assistant Attorney General
7 United States Department of Justice
8 Environment and Natural Resources Division
9 JASON T. BARBEAU, Trial Attorney
(D.C. Bar No. 468200)
10 United States Department of Justice
11 Environment and Natural Resources Division
12 Environmental Enforcement Section
P.O. Box 7611, Washington, D.C. 20044
T: (202) 616-8908 / F: (202) 616-6584

13 *Attorneys for Plaintiff United States of America*

14
15 TOM HORNE, Arizona Attorney General
16 LINDA POLLOCK, Assistant Attorney General
17 1275 West Washington Street
Phoenix, Arizona 85007
) 542-4085

18
19 *Attorneys for Plaintiff State of Arizona*

20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF ARIZONA**

22 _____)
23 United States of America;)
24 and State of Arizona,)
Plaintiffs,) Civil Action No.
25 v.)
26 Freeport-McMoRan Corporation;)
27 and Freeport-McMoRan Morenci Inc.,)
Defendants.)

28 _____) **COMPLAINT**

1 provided in CERCLA, including the recovery of damages and related costs for injury
2 to, destruction of, or loss of the State's natural resources.

3
4 6. Defendant Freeport-McMoRan Corporation has its headquarters in Arizona
5 and does business in the State. Freeport-McMoRan Corporation, formerly known as
6 Phelps Dodge Corporation, is the parent corporation of Freeport-McMoRan Morenci Inc.

7
8 7. Defendant Freeport-McMoRan Morenci Inc. is the owner and operator of
9 the Morenci Mine.

10 **STATUTORY FRAMEWORK**

11 8. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides:

12 (1) the owner and operator of a vessel or a facility,

13
14 (2) any person who at the time of disposal of any hazardous
15 substance owned or operated any facility at which such
16 hazardous substances were disposed of,

17 * * *

18 (4) . . . from which there is a release, or a threatened release
19 which causes the incurrence of response costs, of a hazardous
20 substance, shall be liable for –

21 * * *

22 (C) damages for injury to, destruction of, or loss of natural
23 resources, including the reasonable costs of assessing such
24 injury, destruction, or loss resulting from such a release;

25 9. Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), provides:

26 In the case of injury to, destruction of, or loss of natural resources
27 under subparagraph (C) of subsection (a) of this section liability
28 shall be to the United States Government and to any State for

1 natural resources within the State or belonging to, managed by,
2 controlled by, or appertaining to such State

3 10. The term “natural resources” is defined in Section 101(16) of CERCLA, 42
4 U.S.C. § 9601(16), to mean “land, fish, wildlife, biota, air, water, ground water, drinking
5 water supplies, and other such resources belonging to, managed by, held in trust by,
6 appertaining to, or otherwise controlled by the United States” and, *inter alia*, “any State.”
7

8 11. Damages recovered by the Trustees are used “to restore, replace, or acquire
9 the equivalent of” the injured natural resources. 42 U.S.C. § 9607(f)(1).
10

11 **FACTUAL BACKGROUND**

12 12. The Trustees have evaluated potential impacts to natural resources as
13 defined in the DOI regulations at 43 C.F.R. § 11.14(z). These included geological (e.g.,
14 terrestrial and riparian soils, aquatic sediments), biological (e.g., aquatic, riparian, and
15 terrestrial ecosystems), and hydrological resources (e.g., surface water). In particular, the
16 Trustees evaluated the Mine Site and selected areas at and appurtenant to the Mine Site
17 where historical information indicated releases could have injured natural resources.
18

19 13. Based on historical studies and additional assessment work, the Trustees
20 have determined that releases of hazardous substances at or from the Mine Site have
21 occurred and such releases have caused – and continue to cause – injuries to natural
22 resources at and in the vicinity of the Mine Site, including but not limited to injuries to
23 surface water, sediments, soils, terrestrial habitats and terrestrial receptors, and migratory
24 birds.
25
26
27
28

Morenci Mine Site

1
2 14. The Morenci Mine Site consists of the Morenci Mine and appurtenant
3
4 area. The Morenci Mine Site is located in southeastern Arizona near the towns of
5 Clifton and Morenci, approximately 45 miles northeast of Safford, Arizona on State
6 Highway 191. The primary mining areas lie in west-central Greenlee County between
7 Eagle Creek to the west and the San Francisco River to the East, with mining and ore
8 processing operations located within Townships 3, 4, and 5 South, and Ranges 28, 29,
9 and 30 East, in Greenlee County, Arizona.
10

11 15. The Morenci Mine Site has been operated as a copper mine by Defendants
12 and their corporate predecessors since the 1880s. The Morenci Mine includes a large
13 complex of open pits, numerous leach rock stockpiles and development rock stockpiles,
14 beneficiation plants, tailings impoundments, and uncovered ponds. Processes include
15 crush and convey systems, an agglomerating facility, four solution-extraction (“SX”)
16 plants, three electrowinning tank houses (“EW”), and a copper concentrator facility. The
17 tailings impoundments and most of the ore and solution beneficiation facilities are located
18 in the southern part of the Site near the San Francisco River. Five smelters historically
19 were operated at the Site, as well as historic underground mine workings and surface
20 openings.
21

22 16. Once inactive, mine tailings exposed to air and precipitation release
23 hazardous substances on the surface of the tailings. These hazardous substances
24 include, but are not limited to, sulfuric acid and various dissolved metals (depending on
25
26
27
28

1 the mineral composition of the tailings) such as arsenic, beryllium, cadmium, chromium,
2 cobalt, copper, lead, manganese, mercury, nickel, selenium, and zinc.

3
4 17. Precipitation ponded on the tailings at the Site creates a surface water
5 solution of high acidity that has caused death and other injuries to migratory birds
6 through exposure and ingestion.

7
8 18. Windblown tailings and historic smelter emissions containing hazardous
9 substances also have been deposited on and off-site according to prevailing wind
10 direction and speed.

11
12 19. Surface water flowing from the Site drains into the San Francisco River and
13 Gila River watersheds.

14 **CAUSE OF ACTION**

15 **Recovery of Natural Resource Damages Under Section 107(a) of CERCLA**

16
17 20. The allegations of the foregoing paragraphs are incorporated by reference.

18 21. The Mine Site is a “facility” and contains “facilities” within the meaning
19 of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9), 9607(a).

20
21 22. Each Defendant is the “owner” and/or “operator” of the Mine Site within
22 the meaning of Sections 101(20)(A) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(20)(A),
23 9607(a).

24
25 23. Each Defendant is a “person” within the meaning of Sections 101(21) and
26 107(a) of CERCLA, 42 U.S.C. §§ 9601(21), 9607(a).

27
28 24. Materials disposed of and released at or from the Mine Site include

1 “hazardous substances” within the meaning of Sections 101(14) and 107(a) of CERCLA,
2 42 U.S.C. §§ 9601(14), 9607(a).

3
4 25. Hazardous substances have been disposed of at the Mine Site within the
5 meaning of “disposal” in Sections 101(29) and 107(a) of CERCLA, 42 U.S.C.
6 §§ 9601(29), 9607(a).

7
8 26. Hazardous substances have been “released” at or from the Mine Site within
9 the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22),
10 9607(a).

11
12 27. Response costs have been incurred as a result of the releases of hazardous
13 substances at and from the Mine Site.

14
15 28. Releases of hazardous substances at and from the Mine Site have caused,
16 and continue to cause, injury, destruction, and loss of natural resources within the
17 trusteeship of the United States and the State of Arizona.

18
19 29. The Federal and State Trustees have incurred costs assessing injuries,
20 destruction, and loss of natural resources related to releases of hazardous substances at
21 and from the Mine Site.

22
23 30. Pursuant to Section 107(a)(1), (a)(2), and (f)(1) of CERCLA, the
24 Defendants are jointly and severally liable to the United States and the State of Arizona
25 for damages for injury to, destruction of, and loss of natural resources resulting from the
26 releases of hazardous substances at and from the Mine Site, including the cost of
27 assessing such injuries, destruction, and loss.
28

1 **REQUEST FOR RELIEF**

2 WHEREFORE, the United States and the State of Arizona respectfully request
3 that this Court:
4

5 A. Award the United States and the State of Arizona a judgment against
6 Defendants for damages in an amount to be proven before or at trial for injury to,
7 destruction of, and loss of natural resources resulting from the releases of hazardous
8 substances at and from the Mine Site, including the cost of assessing such injuries,
9 destruction, and loss.
10

11 B. Grant the United States and the State of Arizona such other relief as the
12 Court deems just and proper.
13

14 Respectfully submitted,

15 FOR THE UNITED STATES OF AMERICA:
16

17 ~~IGNACIA~~ IGNACIA S. MORENO
18 Assistant Attorney General
19 United States Department of Justice
20 Environment and Natural Resources Division

21
22 ~~JASON~~ JASON T. BARBEAU
23 Trial Attorney (D.C. Bar No. 468200)
24 United States Department of Justice
25 Environment and Natural Resources Division
26 Environmental Enforcement Section
27 P.O. Box 7611, Ben Franklin Station
28 Washington, D.C. 20044
(202) 616-8908 (telephone)
(202) 616-6584 (facsimile)

1 FOR THE STATE OF ARIZONA:

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

TOM HORNE

Arizona Attorney General

By: Linda Pollock, Assistant Attorney General

1275 West Washington Street

Phoenix, Arizona 85007

Tel: (602) 542-8566

Fax: (602) 542-4085

