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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
TUCSON DIVISION**

UNITED STATES OF AMERICA AND
TOHONO O'ODHAM NATION,

Plaintiffs,

v.

CYPRUS TOHONO CORPORATION,

Defendant.

CIVIL ACTION NO. 09-296

**COMPLAINT FOR PAST
NATURAL RESOURCE DAMAGES**

The United States of America, through the Attorney General and at the request of the Secretary of the Department of the Interior, and the Tohono O'odham Nation (the "Nation") file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought against the Cyprus Tohono Corporation (“Defendant”) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. § 9607, seeking damages for injury to, destruction of, or loss of natural resources resulting from release of hazardous substances at the Cyprus Tohono Mine Site (the “Site”) on the Tohono O’odham Nation, near North Komelik, Arizona.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of the United States’ claims in this action under 28 U.S.C. §§ 1331 (Federal question) and 1345 (United States as plaintiff), and 42 U.S.C. § 9613(b) (CERCLA - Jurisdiction; venue).

3. Venue is proper in the District of Arizona pursuant to 28 U.S.C. §§ 82 (Arizona) and 1391(b) (Venue generally), and 42 U.S.C. § 9613(b) (CERCLA - Jurisdiction; venue), because it is the judicial district in which the release of hazardous substances and resulting injuries occurred.

PARTIES

4. Pursuant to Executive Order 12,580 and the National Contingency Plan, 40 C.F.R. § 300.600(b)(2) and (3), the Secretary of the Interior, through the services and bureaus of DOI, has been delegated authority to act as the Federal Trustee for certain natural resources, including those impacted by the release of hazardous substance at or from the Site.

DOI is performing its trustee role at this Site through: the United States Fish and Wildlife Service, whose trusteeship includes birds and endangered species, and the Bureau of Indian Affairs, which is trustee for resources on and within Indian lands, and which has interests in hard rock mining in Indian country. 25 U.S.C. §§ 396 (hard rock mining) and 415 (leasing and leaseholds); 25 C.F.R. Part 211 & 216.

5. The Nation seeks damages for injury to natural resources pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. The Nation is acting in its capacity as a Trustee for Natural Resources which have been affected by the releases of hazardous substances. 40 C.F.R. § 300.610.

6. CTC is a corporation, incorporated under the laws of the State of Arizona. CTC is a wholly owned subsidiary of Cyprus Amax, which in turn is a subsidiary of Freeport MacMoRan. CTC is a "person" within the meaning of Section 101 of CERCLA. 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

7. The Cyprus Tohono Mine Superfund Site ("Site") is located near North Komelik on lands leased from the Tohono O'odham Nation, 32 miles southwest of Casa Grande, Arizona.

8. Copper oxide mining at the Site began in the 1880s, and continues to the present, with several changes of operators. In 1987 CTC began mining operations at the Site.

9. The Site is a "facility" within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

10. There have been “releases” and “threatened releases,” within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), 9607(a), at and from the Site.

11. "Hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, including sulfuric acid and copper, have been released at and from the Site.

12. “Natural Resources” within the meaning of Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), have been injured, lost, or destroyed as a result of the releases of hazardous substances from the Site.

13. CTC has been and is the operator of the Site, within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

14. The United States EPA is investigating the Site but has not completed its response actions under CERCLA at the Site.

CLAIM FOR RELIEF

15. Paragraphs 1 through 14 are re-alleged and incorporated herein by reference.

16. Defendant CTC is liable as the “operator” of the Site under 42 U.S.C. § 9607(a)(1).

17. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), CTC is jointly and severally liable to the United States and to the Nation for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from a release of hazardous substances from the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Award Plaintiffs a judgment against the Defendants for damages and assessment costs; and
2. Grant the Plaintiffs such other relief as this Court may deem appropriate.

Respectfully submitted,

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