

Bryan Hurlbutt (ISB #8501)
Laurence (“Laird”) J. Lucas (ISB #4733)
Advocates for the West
P.O. Box 1612
Boise, ID 83701
(208) 342-7024
(208) 342-8286 (fax)
bhurlbutt@advocateswest.org
llucas@advocateswest.org

Andrew Hawley (*pro hac vice*)
Northwest Environmental Defense Center
10015 SW Terwilliger Blvd.
Portland, OR 97219
(503) 768-6673
(503) 768-6671 (fax)
hawleya@nedc.org

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

IDAHO CONSERVATION LEAGUE and)
NORTHWEST ENVIRONMENTAL)
DEFENSE CENTER,)
)
Plaintiffs,)
)
v.)
)
ATLANTA GOLD CORPORATION,)
)
Defendant.)

Case No. 1:11-cv-161-MHW

**MOTION TO HOLD DEFENDANT
IN CIVIL CONTEMPT, AND IMPOSE
ADDITIONAL PENALTIES AND
ENFORCEMENT REMEDIES**

Plaintiffs Idaho Conservation League (“ICL”) and Northwest Environmental Defense Center (“NEDC”) hereby move the Court pursuant to Federal Rule of Civil Procedure 70(e) to hold Defendant Atlanta Gold Corporation (“Atlanta Gold”) in civil contempt; and to impose additional Clean Water Act penalties plus other enforcement remedies for Defendant’s ongoing violations of the Court’s July 27, 2012 Injunction Order (*Dkt. # 88*), as amended on October 10,

2012 (*Dkt. # 97*) (hereafter, “Injunction Order”), and incorporated into the September 2013 Final Judgment, which expressly reserved the Court’s jurisdiction to enforce the Injunction Order including through contempt remedies (*Dkt. #125*).

The Injunction Order set a deadline of December 15, 2012, for Atlanta Gold to come into compliance with the effluent limits in its Clean Water Act permit (the “Permit”) for discharges of arsenic and iron from the Atlanta Gold Project 900 Level Adit (“Adit”). As shown in the accompanying Opening Brief and Declarations of Justin Hayes and Bryan Hurlbutt, Atlanta Gold’s own discharge monitoring reports show that Defendant has repeatedly violated the Permit’s arsenic and iron pollution discharge limits since the December 15, 2012 deadline and, thereby, repeatedly violated the Injunction Order for over three and a half years.

On April 19, 2016, Plaintiffs provided written notice to Atlanta Gold of its ongoing violations of the Permit requirements and Injunction Order, and advised they would move to reopen this case and seek contempt remedies. *See* accompanying Hayes, Hurlbutt Declarations. But Atlanta Gold has failed even to respond to Plaintiffs, and the last discharge monitoring reports available to Plaintiffs show that Atlanta Gold’s violations of its Clean Water Act Permit and the Injunction Order are continuing. *Id.*

Based on the record from the last three and a half years (and counting) showing continuing and ongoing Permit violations at the 900 Level Adit, in violation of the Clean Water Act, Injunction Order, and Final Judgment, the Court should hold Atlanta Gold in civil contempt, and impose additional Clean Water Act penalties plus other enforcement remedies.

Specifically, the Court should impose additional Clean Water Act civil penalties under 33 U.S.C. § 1319(d), to be paid to the U.S. Treasury, of \$1,000 per violation per day for each violation committed by Atlanta Gold since December 15, 2012. This includes the 497 violations

identified herein (totaling \$497,000 in penalties), plus any additional Clean Water Act violations Plaintiffs discover and prove to the Court during these proceedings.

Additionally, to enforce its Injunction Order and ensure that Atlanta Gold stops violating the Clean Water Act and cures its contempt, Plaintiffs request the Court to impose the following Enforcement Remedies:

1. **New Compliance Deadline**: First, the Court should set a new deadline ordering Defendant to come into full compliance with the Permit by no later than July 1, 2017, through the measures set forth in Paragraph 2 below.

The proposed July 1, 2017 deadline is intended to allow Atlanta Gold adequate time to design and install the new or upgraded treatment facilities needed to ensure full compliance with the Permit effluent limitations. This deadline is reasonable in light of the fact that the Court previously ordered Defendant to install treatment facilities in fall 2012, and then extended it to December 15, 2012. Over three and a half years later, Atlanta Gold still has not complied, so a new, firm deadline should be set by the Court for full compliance.

2. **Plan for Compliance**: Second, to demonstrate its ability and intent to fully comply with the Permit by that date, the Court should order Atlanta Gold to file with the Court no later than April 1, 2017, a Plan for Compliance prepared by a certified engineer, which includes:

- a. **Treatment Facilities Plan**: A Treatment Facilities Plan to install and/or upgrade water treatment facilities with sufficient capacity to adequately treat all potential discharges from the 900 Level Adit to achieve compliance with the Permit, along with a sworn certification from Atlanta Gold that will invest the financial and

technical resources needed to fully implement the Treatment Facilities Plan by July 1, 2017;

- b. Operations and Maintenance Plan: An Operations and Maintenance Plan demonstrating that Atlanta Gold has adequate resources and will utilize them to operate and maintain the water treatment facilities to meet the Permit discharge limits, for so long as the Permit is in place and/or discharges are occurring from the Adit; and
- c. Monitoring and Reporting: In addition to the monitoring and reporting required under the Permit, order Atlanta Gold to gather and certify as accurate monitoring information demonstrating compliance with the Operations and Maintenance Plan; and requiring Atlanta Gold to provide Plaintiffs every 6 months all reporting to EPA under the Permit, as well as the operations compliance monitoring, for the previous 6 months.

These measures are necessary and appropriate for the Court to impose in order to ensure that Atlanta Gold commits the financial, technical, and staff resources necessary to identify and install the new or upgraded treatment facilities necessary to ensure Permit compliance under Step 1 above, while giving Defendant adequate time to do so during the winter/spring 2016 and early 2017. Moreover, the requested Plan of Compliance, with the components of the Treatment Facilities Plan and Operation and Maintenance Plan, will provide Plaintiffs and the Court sufficient details in advance of the July 1, 2017 compliance deadline to review and evaluate whether Atlanta Gold's proposed steps forward will be adequate to ensure compliance with the Injunction, Permit terms, and Clean Water Act.

3. Civil Contempt Sanctions: In response to Atlanta Gold's contempt of the Court's orders, and to ensure that the company comes into compliance with the Injunction Order and Permit, the Court should impose (suspended) civil sanctions of \$1,000 for each and every act of contempt Plaintiffs show Atlanta Gold has committed between December 15, 2012, and the date this Court's contempt order. This would include 497 acts of contempt identified herein (totaling \$497,000 in sanctions), plus any additional violations Plaintiffs discover and prove to the Court during these proceedings.

As explained in the accompanying Opening Brief, the civil contempt sanctions would be suspended pending Atlanta Gold's compliance with the timelines and steps requested in Paragraphs 1-2 above, in order to allow Atlanta Gold to purge its civil contempt. Upon successful completion of the above actions, Atlanta Gold will have purged its contempt and, thus, need not pay the suspended sanctions to the Court. However, should Atlanta Gold fail to comply with any of the above actions, the suspended sanctions will become immediately due to the Court, and Atlanta Gold will be subject to further contempt sanctions thereafter of \$1,000 per day until it complies with the above actions.

This Motion and Plaintiffs' requested relief is supported by the accompanying Opening Brief and the accompanying Declarations of Justin Hayes and Bryan Hurlbutt (and all exhibits thereto). This Motion is also supported by the pleadings and files before the Court and such other matters as may be brought before the Court prior to decision on this motion.

WHEREFORE, Plaintiffs respectfully pray that the Court hold Defendant Atlanta Gold in civil contempt and impose the additional Clean Water Act penalties and enforcement remedies identified above, or such other remedies and/or sanctions as the Court deems just and appropriate

to remedy Atlanta Gold's ongoing Clean Water Act violations and bring Atlanta Gold into compliance with the Clean Water Act and the Injunction Order/Final Judgment.¹

DATED: November 3, 2016

Respectfully submitted,

/s/ Laird J. Lucas
Bryan Hurlbutt (ISB #8501)
Laurence ("Laird") J. Lucas (ISB #4733)
Advocates for the West
P.O. Box 1612
Boise, ID 83701
(208) 342-7024
(208) 342-8286 (fax)
bhurlbutt@advocateswest.org
llucas@advocateswest.org

Andrew Hawley (*pro hac vice*)
Northwest Environmental Defense Center
10015 SW Terwilliger Blvd.
Portland, OR 97219
(503) 768-6673
(503) 768-6671 (fax)
hawleya@nedc.org

Attorneys for Plaintiffs

¹ After the Court resolves this motion, Plaintiffs will request a supplemental award of attorney fees and costs pursuant to the Clean Water Act and any other relevant authorities for prosecuting Atlanta Gold's post-judgment Clean Water Act violations and contempt.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2016, I caused the foregoing MOTION TO HOLD DEFENDANT IN CIVIL CONTEMPT, AND IMPOSE ADDITIONAL PENALTIES AND ENFORCEMENT REMEDIES, and the accompanying OPENING BRIEF, DECLARATION OF JUSTIN HAYES, and DECLARATION OF BRYAN HURLBUTT (and all exhibits thereto) to be electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected in the Electronic Notice of Filing:

Amy S. Howe
amy.howe@usdoj.gov

Michelle R. Points
mpoints@pointslaw.com

Gary D. Babbitt
gbabbitt@hawleytroxell.com

Richard G. Smith
rsmith@hawleytroxell.com

/s/ Laird J. Lucas
Laird J. Lucas