

STATE OF UTAH )  
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COUNTY OF UTAH )

ENT 22194 BK 2800 PG 220  
NINA B REID UTAH CO RECORDER BY MB  
1991 JUN 10 1:45 PM FEE 13.50  
RECORDED FOR KERN RIVER

NON-EXCLUSIVE RIGHT-OF-WAY EASEMENT AND AGREEMENT

formerly Sunshine Precious Metals, Inc. ~~and~~ Sunshine Mining Company, a Delaware corporation, and HMC Mining, Inc., a Utah corporation, (hereinafter referred to as "Grantors"), whether one or more, hereby grant to KERN RIVER GAS TRANSMISSION COMPANY, A Texas General Partnership, qualified to do business in the State of Utah, whose address is P.O. Box 58900, Salt Lake City, Utah 84158-0900 (hereinafter referred to as "Grantee") its successors and assigns, for the sum of Ten Dollars (\$10.00) and other considerations, including, the agreements of Grantee set forth below, the non-exclusive right-of-way and easement fifty (50) feet in width, (25 feet on each side of the centerline) to survey, construct, entrench, maintain, operate, protect, remove and replace a natural gas pipeline, together with valves, metering equipment, cathodic protection equipment, boxes and other related gas transmission facilities through and across the following described land and premises situated in Utah County, State of Utah, to-wit:

formerly Sunshine Precious Metals, Inc. ~~and~~ Sunshine Mining Company: *M*

The land and rights in land of Grantors in the NW 1/4 of Section 18, T10S, R1W, SLM;

the center line of said right-of-way and easement will extend through and across the above described land and premises as follows, to-wit:

Commencing at a point on the South right-of-way line of U.S. Highway No. 6 of the above described tract in Section 18, Township 10 South, Range 1 West, Salt Lake Base and Meridian, County of Utah, State of Utah said point being South 50 feet, more or less; from the Northeast Corner of the NW 1/4 of said Section 18. Thence South 01° 41' 54" East 148.85 feet, more or less, to a point, said point being the point of beginning and entry to the said described tract. Thence South 17° 06' 21" West, 158.36 feet to a point, thence South 01° 41' 54" East, 358.43 feet to the point of exit on the South property line of said tract. Said point being 50 feet westerly from the East 1/4 line of said Section 18 and 657.47 feet Southerly along the East 1/4 line from the Northeast property corner within the NW 1/4 of the afore described Section 18. The right-of-way boundaries of said strip of land shall be shortened or lengthened to enter and exit the parcel on the property boundaries so as to provide for a continuous 50 feet right-of-way width. Containing 0.593 acres, more or less. All bearings are based on the Utah State Plane Coordinate System.

and HMC Mining, Inc.

The land and rights in land of Grantors in the NE 1/4 of Section 18, T10S, R1W, SLM;

the center line of said right-of-way and easement will extend through and across the above described land and premises as follows, to-wit:

Beginning at a point on the South right-of-way line of U.S. Highway No. 6 of the above described 156.74 acre tract in Section 18, Township 10 South, Range 1 West, Salt Lake Base and Meridian, County of Utah, State of Utah said point being South 50 feet, more or less; and South 89° 25' 56" East 51.11 feet, more or less, from the Northwest Corner of the Northeast Quarter of said Section 18, thence South 17° 06' 21" West 156.95 feet, more or less, to a point of exit on the Center Quarter Section line of said Section 18, said point being 148.85 feet Southerly along the 1/4 line from the Northwest corner of the said property. The right-of-way boundaries of said strip of land shall be shortened or lengthened to enter and exit the parcel on the property boundaries so as to provide for a continuous 50 feet right-of-way width. The above described strip of land contains 0.18 acres, more or less. All bearings are based on the Utah State Plan Coordinate System.

TO HAVE AND TO HOLD the same unto said Grantee, its successors and assigns, so long as such gas transmission facilities shall be maintained, with the right of ingress and egress to and from said right-of-way and easement and the right to use existing roads to maintain, operate, repair, inspect, protect, remove, and replace the same, and the Grantee may assign the right-of-way and easement herein granted, either in whole or in part, subject to the terms of this grant, and such rights and easements hereof shall be covenants running with the land and be binding upon Grantee, its successor and assigns.

Grantee, in consideration of said Grant, agrees with Grantors, their successors and assigns, as follows:

1. Grantee recognizes and acknowledges that; (a) Grantors intend to make use of the land and rights owned by them in the NW 1/4 of Section 18, T10S, R1W, SLM., for the use of an existing drainage ditch and the possible construction of a new ditch on or near the Southeast corner of the Sunshine Precious Metals, Inc. property in connection with resumption of operations at the New Burgin Mine for drainage of water from the mine to an existing pond complex lying in the NE 1/4 and partially in the NW 1/4 of Section 18, T10S, R1W, SLM; and that Grantors reserve the right to cross the pipeline right-of-way with roads, drainage facilities and make use of the described land for these purposes; provided that all such crossings are made after written notice to Grantee and subject to such reasonable safety and encroachment standards of Kern River Gas Transmission Company as are applicable to the pipeline; and (b) Grantors have informed Grantee of the highly mineralized content of the water to be discharged into the ditches from the new Burgin Mine and Grantee hereby confirms that it has determined and selected to its own satisfaction qualified protective pipeline materials in recognition of the nature of the water and assumes all risk, if any, of damage or injury to the pipeline caused by such water.

2. Grantee agrees that as the pipeline enters the NE 1/4 of Section 18, Township 10 South, Range 1 West, S.L.M., it will be buried at a depth of not less than four feet (4') below the existing surface of the ground and as it traverses across the said parcel it shall slope to a depth of not less than nine feet (9') below the existing surface of the ground prior to reaching the west property line of said parcel and as it enters and traverses across the NW 1/4 of Section 18, Township 10 South, Range 1 West, S.L.M., it shall be buried at a depth of not less than nine feet (9') below the existing surface of the ground with the exception that it shall be buried at a depth of not less than three feet (3') below the bottom of the existing wash or ditch to avoid any interference with Grantors' use of the existing ditch and the proposed drainage ditch and other facilities. The Grantors agree that the Grantee has the right to use an additional one hundred feet (100') wide temporary work space along and adjacent to the easement area for deep burial across the above described property.

3. The Grantee shall indemnify and hold harmless the Grantors and Grantors' successors, assigns, lessees, tenants, employees or agents (hereinafter collectively the "Indemnified Parties"), from and against all costs, expenses and damages, including but not limited to, reasonable attorneys' fees, which the Indemnified Parties and any one or more of them incur as a result of any claim, cause of action, damage or injury arising out of or resulting from the construction, operation or maintenance of the pipeline, including, but not limited to, claims, causes of action, losses, damages, or injury with respect to contamination or environmental damage of the described land and contamination or environmental damage of air, water, people, personal property or other real estate wherever located; provided, however, the Grantee shall have no obligation to indemnify if and to the extent that the claim, cause of action, loss, damage or injury arises out of or results from preexisting contamination or willful and malicious misconducts, of the Grantors, or Grantors' agent, or employees. Grantors shall within a reasonable time of Grantors' knowledge of any claim, cause of action or other matter to which Grantee's indemnification obligations would apply provide written notice to the Grantee of the existence of any claim, cause of action or other matter to which Grantee's indemnification obligations would apply and shall give the Grantee a reasonable opportunity to defend the same at the Grantee's sole expense and with counsel of Grantee's own selection; provided, however, that the Grantors shall at all times also have the right to fully participate in the defense at Grantors' own expense. If the Grantee shall, within a reasonable time after this notice fail to provide the defense required by the indemnifications obligations, the Grantors shall have the right, but not the obligation, to undertake the defense and the entire cost thereof (including,

but not limited to, attorneys' fees and damages) shall be reimbursed to the Grantors by the Grantee. The effectiveness of the provisions of this paragraph shall survive any termination or cancellation of this Non-exclusive Right-of-Way and Easement Agreement.

4. Grantee shall install pipeline location signs at appropriate intervals along the right of way to designate its course.

5. Grantee agrees to H-brace all fences prior to cutting and to return all fences to a condition equal to or better than that which existed prior to construction; to restore any and all surface facilities, including the existing drainage ditch to the depth and contour and width as presently exists; and shall reseed disturbed areas along the right-of-way with a seed mix native to the area.

6. In addition to all of the other rights and privileges which are reserved to Grantors as a matter of law, there is expressly reserved to Grantors all oil, gas and other minerals of any kind or character in, on and under the above described lands.

7. Grantee shall notify Grantors of the construction schedule a minimum of 48 hours prior to the initiation of construction activities on the Grantors' land. Grantors may be contacted at P.O. Box 250, Eureka, Utah 84628, Telephone (801) 436-6854, Attn: Tim Hannifin.

8. Grantee shall maintain functional effectiveness of livestock separation and control devices, including cattle guards, fences, gates, and natural barriers, but Grantee may not install additional fencing on either side of Grantors' ditch(s).

9. In the event the Grantee fails to initiate construction activities within the right-of-way and easement within a period of five years from the execution date hereof, said right-of-way agreement and easement shall become null and void.

10. Following completion of installation of the pipeline through Grantors' land, Grantee shall provide to Grantors, an as-built survey of the course and depth of the pipeline through the above described property within ninety (90) days after the pipeline is placed in service and the Grantee agrees to stake the centerline of the constructed pipeline as soon as construction is completed through the described land and furnish survey notes & field plats in order to allow Grantors' surveyor to make property ties to said centerline easement.

11. Grantors warrant those parts of the described land against claims and demands of persons claiming by, through or under Grantors, but against none other, described in tracts conveyed under the following deeds:

(a) Deed from Kennecott Corporation, Grantor, to HMC Mining, Inc., Grantee, dated April 4, 1983, recorded in Book 2041, at Page 195, records of Utah County, Utah; and

(b) Warranty Deed from Leland Fitzgerald, Grantor, to Sunshine Mining Company, Grantee, dated November 9, 1984, recorded in Book 2176, Page 468, records of Utah County, Utah;

and subject to all exceptions contained in said deeds. Grantee shall have the right to discharge for Grantors delinquency on any mortgage, tax or other lien on the described land and thereupon be subrogated to such lien and rights incident thereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective corporate officers, thereunto duly authorized, as of the 22nd day of May, 1991.

formerly **SUNSHINE PRECIOUS METALS, INC.**  
~~aka SUNSHINE MINING COMPANY~~

By: Joe O'Sullivan  
Title: President

KERN RIVER GAS TRANSMISSION COMPANY

By: Regina M. Carter  
Title: Attorney in fact

HMC MINING INC.  
By: Robert H. Peterson  
Title: Vice President

Land No. 355W & 355.01W

#### **ACKNOWLEDGEMENT---CORPORATE**

STATE OF Idaho }  
COUNTY OF Ada }

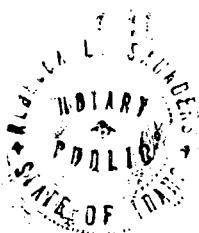
On the 22nd day of May, 1991, personally appeared before me John S. Simko, who, being by me duly sworn, did say that he is the President of Sunshine Precious Metals Inc. and that the Non-Exclusive Right-of-Way Easement & Agreement was signed on behalf of said corporation by authority of a resolution of its Board of Directors and said John S. Simko acknowledged to me that said corporation executed the same.

My Commission Expires:

3-4-93

Notary Public  
Residing at:

Boise, Idaho



#### **ACKNOWLEDGEMENT---CORPORATE**

STATE OF IDAHO )  
COUNTY OF ADA )

On the 22nd day of May, 1991, personally appeared before me Robert H. Peterson, who, being by me duly sworn, did say that he is the Vice President of HMC Mining, Inc. and that the Non-Exclusive Right-of-Way Easement and Agreement was signed on behalf of said corporation by authority of a resolution of its Board of Directors and said Robert H. Peterson acknowledged to me that said corporation executed the same.

My Commission Expires:

Notary Public  
Residing at: Boise, Idaho



**ACKNOWLEDGEMENT---CORPORATE**

STATE OF UTAH  
COUNTY OF SALT LAKE

On the 23rd day of May, 1991, personally appeared before me Regina M. Castro, who, being by me duly sworn, did say that she is the Attorney in Fact of Kern River Gas Transmission Company and that the Non-Exclusive Right-of-Way Easement & Agreement was signed on behalf of said corporation by authority of a resolution of its Board of Directors and said Regina M. Castro acknowledged to me that said corporation executed the same.

My Commission Expires:

June 12, 1994



Cheryl A. Cook  
Notary Public  
Residing at:

Notary Public  
Residing at:

Salt Lake City