

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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	:		
<b>In re</b>	:		<b>Chapter 11</b>
	:		
<b>SANTA FE GOLD CORPORATION, et al.,</b>	:		<b>Case No. 15-11761 (____)</b>
	:		
<b>Debtors.<sup>1</sup></b>	:		<b>Joint Administration Requested</b>
	:		
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**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) PROHIBITING UTILITIES FROM ALTERING, REFUSING, OR DISCONTINUING  
SERVICES ON ACCOUNT OF PRE-PETITION INVOICES; (II) DEEMING UTILITIES  
ADEQUATELY ASSURED OF FUTURE PERFORMANCE; AND (III) ESTABLISHING  
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby move (the “Motion”) for entry of an interim order (the “Interim Order”), substantially in the form attached hereto as **Exhibit B**, and a final order (the “Final Order”), substantially in the form attached hereto as **Exhibit C**: (i) prohibiting the Utility Providers (as defined below) from altering, refusing, or discontinuing services on account of pre-petition amounts outstanding or on account of any perceived inadequacy of the Debtors’ proposed adequate assurance; (ii) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; (iii) approving the Debtors’ proposed offer of adequate assurance and procedures whereby the Utility Providers may request additional or different adequate assurance. In support of the Motion, the Debtors submit the *Declaration of Jakes Jordaan in Support of Chapter 11 Petitions and First Day Relief*

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Santa Fe Gold Corporation (4315); Azco Mica, Inc. (8577); The Lordsburg Mining Company (4474); and Santa Fe Gold (Barbados) Corporation (N/A). The Debtors’ mailing address is 1219 Banner Mine Road, Lordsburg, New Mexico 88045.

(the “First Day Declaration”)<sup>2</sup> filed contemporaneously herewith, and respectfully submit as follows:

### **Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Debtors consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

### **Background**

3. On the date hereof (the “Petition Date”), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors are operating their respective businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases and no committees have been appointed or designated.

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.

4. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration.

**Background Specific to the Motion**

5. In the ordinary course of business, the Debtors regularly incur utility expenses for telephone, electric, internet, water, gas, sewer, garbage, and other services (the “Utility Services”). The Debtors’ aggregate average monthly cost for utility services is approximately \$2,500. The utility services are provided by approximately six utility companies (the “Utility Providers”). A list of these Utility Providers is attached as **Exhibit A** hereto (the “Utility Provider List”).<sup>3</sup>

6. As of the Petition Date, the Debtors are generally current on payments to the Utility Providers for utility services. Overall, the Debtors have a long and established payment history with most of the Utility Providers indicating consistent payment for utility services with few to no material defaults or arrearages with respect to undisputed Utility Service invoices.

7. Access to Utility Services is critical to the Debtors’ effective continuation of “care-and-maintenance” of the Summit Mine and Lordsburg Mill while they seek to expeditiously pursue a sale of their assets. Should any Utility Provider refuse or discontinue a Utility Service even for a brief period of time, the Debtors’ administrative functions would be severely disrupted. Certain Utility Providers provide the Debtors with services necessary to run their day-to-day office operations. In this regard, it is in the best interest of the Debtors, their estates, and their creditors to maintain continuous and uninterrupted Utility Services during the Chapter 11 Cases. Accordingly, the Debtors are seeking the relief requested herein.

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<sup>3</sup> The Debtors reserve the right to amend **Exhibit A** to add any Utility Providers that were omitted therefrom and to request that the relief requested herein apply equally to all such entities and accounts. In addition, the Debtors reserve the right to argue that any of the entities now or hereafter listed in **Exhibit A** to this Motion are not “utilities” within the meaning of section 366(a) of the Bankruptcy Code.

**Relief Requested**

8. By this Motion, the Debtors request that the Court enter the Interim Order, substantially in the form attached hereto as **Exhibit B**, and the Final Order, substantially in the form attached hereto as **Exhibit C**: (i) prohibiting the Utility Providers from altering, refusing, or discontinuing services on account of pre-petition amounts outstanding or on account of any perceived inadequacy of the Debtors' proposed adequate assurance; (ii) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; and (iii) approving the Debtors' proposed offer of adequate assurance and procedures whereby the Utility Providers may request additional or different adequate assurance.

**I. Proposed Adequate Assurance**

9. As adequate assurance of future payment to the Utility Providers, the Debtors propose to deposit cash in an amount equal to the approximate aggregate cost of two weeks of utility service from the Utility Providers calculated as an historical average for the three months most-recently billed prior to the Petition Date, or \$1,250 (the "Adequate Assurance Deposit"), into a newly-created, segregated account (the "Utility Account") within twenty (20) days of the Petition Date. The Adequate Assurance Deposit may be reduced by any amount allocated in the Utility Account to the extent that the Debtors agree to provide a Utility Provider with an alternate form of adequate assurance in accordance with the Adequate Assurance Procedures (as defined herein).

10. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future utility services in the ordinary course of business (collectively, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance to the Utility

Providers. If any Utility Provider believes additional assurance is required, they may request such assurance pursuant to the below described procedures.

## **II. Procedures for Requesting Additional Adequate Assurance**

11. In light of the harm to the Debtors of any interruption in services by the Utility Providers, but recognizing the right of the Utility Providers to evaluate the Proposed Adequate Assurance on a case-by-case basis, the Debtors propose the following procedures (the “Adequate Assurance Procedures”) for approval and adoption:

- Absent compliance with the Adequate Assurance Procedures, the Utility Providers may not alter, refuse, or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of the Chapter 11 Cases or any unpaid pre-petition charges or request payment of a deposit or receipt of other security in connection with any unpaid pre-petition charges.
- Any Utility Provider that believes it requires additional adequate assurance must serve a request (an “Adequate Assurance Request”) upon: (i) the Debtors, care of Santa Fe Gold Corporation, 1219 Banner Mine Road, Lordsburg, New Mexico 88045, Attention: Frank Mueller; (ii) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Rodney Square, Wilmington, Delaware 19801, Attention: Ian J. Bambrick, Esq.; and (iii) counsel to Waterton Global Value, L.P., the proposed DIP lender (“DIP Lender”), Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Attention: Matthew G. Martinez, Esq.
- Any Adequate Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which utility services are provided; (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposits or other prepayments or assurances previously provided by the Debtors; (iv) set forth the basis for the Utility Provider’s belief that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) include a proposal for what would constitute adequate assurance of future payment from the Debtors. Any Adequate Assurance Request that fails to meet these requirements shall be deemed an invalid request for adequate assurance.
- Upon the Debtors’ receipt of any Adequate Assurance Request at the address set forth above, the Debtors shall have until twenty-one (21) days from the receipt of such Adequate Assurance Request or such other date as the parties mutually agree (the “Resolution Period”) to negotiate with a

Utility Provider and advise the Utility Provider that the Adequate Assurance Request is acceptable.

- The Debtors may, in their discretion, but in consultation with counsel to the proposed DIP Lender, resolve any Adequate Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.
- If the Debtors determine that the Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code.
- Pending resolution of an Adequate Assurance Request at any such Determination Hearing and entry of a final, non-appealable order thereon finding that the Utility Provider is not adequately assured of future payment, such Utility Provider shall be (i) prohibited from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for pre-petition services or on account of any objections to the Proposed Adequate Assurance and (ii) deemed to have adequate assurance of payment.
- Unless and until a Utility Provider serves an Adequate Assurance Request pursuant to the Adequate Assurance Procedures, such Utility Provider shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Provider within the meaning of section 366(c)(2) of the Bankruptcy Code.

### **III. Modifications to the Utility Provider List**

12. Although it is very unlikely, to the extent that the Debtors identify additional Utility Providers, the Debtors will promptly (a) file a supplement to the Utility Provider List adding the name of the newly-identified Utility Providers and (b) serve copies of the Motion, the Interim Order, and the Final Order on such Utility Providers.

13. The Debtors request that the Interim Order and Final Order (when entered) be binding on all Utility Providers, regardless of when such Utility Provider was added to the Utility Provider List.

#### **IV. The Final Hearing**

14. The Debtors request a final hearing on this Motion to be held within 30 days of the Petition Date to ensure that, if a Utility Provider argues it can unilaterally refuse service to the Debtors on the 31st day after the Petition Date, the Debtors will have the opportunity, to the extent necessary, to request that the Court make such modifications to the Adequate Assurance Deposit in time to avoid any potential termination of utility service.

#### **Basis for Relief Requested**

15. Section 366 of the Bankruptcy Code provides that, in a chapter 11 case, during the initial thirty days after the commencement of a bankruptcy case, utilities may not alter, refuse, or discontinue service to, or discriminate against, a debtor solely on the basis of the commencement of its case or the existence of pre-petition debts owed by the debtor. In a chapter 11 case, following the thirty-day period under section 366(c) of the Bankruptcy Code, utilities may discontinue service to the debtor if the debtor has not provided adequate assurance of future performance of its post-petition obligations to its utilities providers in a satisfactory form and amount, as determined by the utility providers or the Court.

16. While the acceptable form of adequate assurance of payment is proscribed by subsection 366(c)(1)(A) of the Bankruptcy Code, the determination of the amount of the adequate assurance is within the ultimate discretion of the Court. It is well settled that the requirement that a utility receive adequate assurance of payment does not require a guarantee of payment. Instead, the protection granted to a utility service provider is intended to avoid exposing the provider to an unreasonable risk of nonpayment for services provided post-petition.

17. The Debtors submit that on the facts of the Chapter 11 Cases, the Proposed Adequate Assurance is sufficient to provide adequate assurance to the Utility Providers of the Debtors' future performance. The Debtors fully intend to pay all post-petition obligations owed to the Utility Providers in a timely manner and expect that they will have funds sufficient to pay all post-petition utility obligations. Additionally, the Debtors propose to further protect the Utility Providers by requesting that this Court adopt the Adequate Assurance Procedures outlined above. The Debtors also submit that granting the relief requested will not prejudice the rights of the Utility Providers to seek additional adequate assurance of payment under section 366 of the Bankruptcy Code should the Proposed Adequate Assurance fail to provide the Utility Providers with adequate assurance of payment.

18. As set forth above, the Debtors cannot operate without the continued services of the Utility Providers. If any of the Utility Providers alter, refuse, or discontinue service, even for a brief period, the Debtors' efforts to pursue a sale of their assets would be severely disrupted and the value of their estates would be negatively impacted. In contrast, if the Court grants the relief requested herein, the Utility Providers will not be prejudiced by the continuation of their services.

**Debtors' Reservation of Rights**

19. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any invoice with respect to any potential claims under applicable non-bankruptcy law. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should

not be construed as an admission of the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

**The Motion Satisfies Bankruptcy Rule 6003**

20. The Debtors seek immediate authorization for the relief requested herein. Pursuant to Bankruptcy Rule 6003(b), the Court cannot grant “a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” within 21 days of the filing of the petition unless the relief is “necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003(b). For the reasons set forth above, to the extent that Bankruptcy Rule 6003(b) is applicable to the relief requested herein, the Debtors submit that its requirements are met, as the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

**Waiver of Bankruptcy Rule 6004(h)**

21. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” For the reasons set forth above, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay to the extent that Bankruptcy Rule 6004(h) is applicable to the relief requested herein.

**Notice**

22. Notice of this Motion shall be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to Waterton Global Value, L.P., in its capacity as the senior pre-petition lender; (iii) counsel to Sandstorm Gold (Barbados) Ltd., in its capacity

as the second lien pre-petition lender; (iv) counsel to Waterton Global Value, L.P., in its capacity as the debtor-in-possession lender; and (v) those parties listed on the list of creditors holding the twenty (20) largest unsecured claims against the Debtors (on a consolidated basis), as identified in their chapter 11 petitions; and (vi) the Utility Providers. As this Motion is seeking “first day” relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**Conclusion**

WHEREFORE, the Debtors request that the Court (i) enter the Interim Order and the Final Order granting the relief requested herein and (ii) grant such other and further relief as may be just and proper.

Dated: August 26, 2015  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Kenneth J. Enos

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Robert S. Brady (No. 2847)  
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Facsimile: (302) 571-1253

*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A****SCHEDULE OF UTILITY PROVIDERS**

Name and Address of Provider	Type of Utility	Account Nos.
PNM Post Office Box 17970, Denver, Colorado 80217	Electric	115827575-1313828-4 115740912-1297848-4 115740912-1298830-2
Sprint Post Office Box 219100, Kansas City, Missouri 64121	Phone	926638397
Trans Network 255 Pine Avenue North, Oldsmar, Florida 34677	Internet	000430589-00001
WNM Communications 212 Main Street, Lordsburg, New Mexico 88045	Phone	3832
Verizon Post Office Box 660108, Dallas, Texas 75266	Phone	471326001-00001
City of Lordsburg 409 West Wabast, Lordsburg New Mexico 88045	Sewer, Water, Gas, & Waste Disposal	7-81051.4

**EXHIBIT B**

**PROPOSED INTERIM ORDER**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
**In re** : **Chapter 11**  
:   
**SANTA FE GOLD CORPORATION, et al.,** : **Case No. 15-11761 (\_\_\_\_)**  
:   
**Debtors.**<sup>1</sup> : **Jointly Administered**  
:   
: **Ref. Docket No. \_\_\_\_**  
-----X

**INTERIM ORDER (I) PROHIBITING UTILITIES FROM  
ALTERING, REFUSING, OR DISCONTINUING SERVICES ON ACCOUNT  
OF PRE-PETITION INVOICES; (II) DEEMING UTILITIES ADEQUATELY ASSURED  
OF FUTURE PERFORMANCE; AND (III) ESTABLISHING PROCEDURES FOR  
DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of the Interim Order and the Final Order, pursuant to sections 105(a) and 366 of the Bankruptcy Code, (i) prohibiting the Utility Providers from altering, refusing or discontinuing services on account of pre-petition amounts outstanding or on account of any perceived inadequacy of the Debtors’ proposed adequate assurance; (ii) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code; (iii) approving the Debtors’ proposed offer of adequate assurance and procedures whereby the Utility Providers may request additional or different adequate assurance; and the Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Santa Fe Gold Corporation (4315); Azco Mica, Inc. (8577); The Lordsburg Mining Company (4474); and Santa Fe Gold (Barbados) Corporation (N/A). The Debtors’ mailing address is 1219 Banner Mine Road, Lordsburg, New Mexico 88045.

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

dated as of February 29, 2012; and venue of the Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that this Court may enter a final order consistent with Article III of the United States Constitution; and proper and adequate notice of the Motion, the hearing thereon, and opportunity for objection having been given; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having heard evidence and statements of counsel regarding the Motion and having determined that the legal and factual bases set forth in the Motion and attested to in the First Day Declaration establish just cause for the relief granted herein; and the Court having determined that immediate relief is necessary to avoid irreparable harm; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis, to the extent set forth herein.
2. The Proposed Adequate Assurance is hereby approved on an interim basis and until such time as the Final Order is entered by the Court, the Debtors are deemed to have furnished the Utility Providers with adequate assurance of payment under section 366 of the Bankruptcy Code for post-Petition Date utility services by depositing cash in an amount equal to \$1,250.00 (the “Adequate Assurance Deposit”), into the Utility Account within twenty (20) days after the Petition Date subject to any adjustments made in accordance with the Adequate Assurance Procedures (set forth in paragraph 4 of this Order).
3. Subject to the Adequate Assurance Procedures, until such time as the Final Order is entered by the Court, all Utility Providers are prohibited from (i) discontinuing, altering, or refusing service to the Debtors on account of any pre-petition amounts outstanding,

(ii) discriminating against the Debtors, or (iii) requiring payment of a deposit or receipt of any other security for continued service as a result of the Debtors' bankruptcy filings or any outstanding pre-petition invoices, other than as provided in this Order.

4. The Adequate Assurance Procedures for determining requests for additional adequate assurance are approved on an interim basis as follows:

- Absent compliance with the Adequate Assurance Procedures, the Utility Providers may not alter, refuse, or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of the Chapter 11 Cases or any unpaid pre-petition charges or request payment of a deposit or receipt of other security in connection with any unpaid pre-petition charges.
- Any Utility Provider that believes it requires additional adequate assurance must serve a request (an "Adequate Assurance Request") upon (i) the Debtors, care of Santa Fe Gold Corporation, 1219 Banner Mine Road, Lordsburg, New Mexico 88045, Attention: Frank Mueller; (ii) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Rodney Square, Wilmington, Delaware 19801, Attention: Ian J. Bambrick, Esq.; and (iii) counsel to Waterton Global Value, L.P., the proposed DIP Lender, Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Attention: Matthew G. Martinez, Esq.
- Any Adequate Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which utility services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits or other prepayments or assurances previously provided by the Debtors; (iv) set forth the basis for the Utility Provider's belief that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) include a proposal for what would constitute adequate assurance of future payment from the Debtors. Any Adequate Assurance Request that fails to meet these requirements shall be deemed an invalid request for adequate assurance.
- Upon the Debtors' receipt of any Adequate Assurance Request at the address set forth above, the Debtors shall have until twenty-one (21) days from the receipt of such Adequate Assurance Request or such other date as the parties mutually agree (the "Resolution Period") to negotiate with a Utility Provider and advise the Utility Provider that the Adequate Assurance Request is acceptable.

- The Debtors may, in their discretion but in consultation with counsel to the proposed DIP Lender, resolve any Adequate Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.
- If the Debtors determine that the Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code.
- Pending resolution of an Adequate Assurance Request at any such Determination Hearing and entry of a final, non-appealable order thereon finding that the Utility Provider is not adequately assured of future payment, such Utility Provider shall be (i) prohibited from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for pre-petition services or on account of any objections to the Proposed Adequate Assurance and (ii) deemed to have adequate assurance of payment.
- Unless and until a Utility Provider serves an Adequate Assurance Request pursuant to the Adequate Assurance Procedures, such Utility Provider shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Provider within the meaning of section 366(c)(2) of the Bankruptcy Code.
- If the Debtors reach an agreement with any Utility Provider submitting an Adequate Assurance Request, the Debtors may reduce the amount included in the Utility Account for such Utility Provider to the extent consistent with the agreement reached with such Utility Provider.

5. To the extent that the Debtors identify additional Utility Providers not included on the Utility Provider List, the Debtors will promptly (i) file a supplement to the Utility Provider List adding the name of the newly-identified Utility Providers and (ii) serve copies of the Motion, the Interim Order and the Final Order, as applicable, on such Utility Providers. This

Order shall be binding on all Utility Providers, regardless of when such Utility Provider was added to the Utility Provider List, subject to any further order(s) of the Court.

6. Any Utility Provider subsequently added to the Utility Provider List that believes it requires additional adequate assurance must (i) serve an Adequate Assurance Request as proposed by counsel for the Debtors and (ii) otherwise comply with the Adequate Assurance Procedures.

7. The portion of the Adequate Assurance Deposit in the Utility Account attributable to each Utility Provider shall be returned to the Debtors upon the earlier of (i) the Debtors' termination of services from such Utility Provider (provided, however, that the funds need not be returned until the Debtors have settled with the applicable Utility Provider on the amount of post-petition services, or any dispute regarding the same is resolved by the Court), (ii) entry of an order of the Court authorizing the return of such Adequate Assurance Deposit to the Debtors, and (iii) the effective date of a chapter 11 plan in the Debtors' cases; provided that upon the effective date of a chapter 11 plan in these cases, the Debtors may close the Utility Account and withdraw any amounts that remain in the Adequate Assurance Deposit Account, without further notice or hearing. The Adequate Assurance Deposit may also be adjusted to remove from the monthly spending figure cited in paragraph 5 of the Motion any amount spent on Utility Services from Utility Providers that already hold deposits from the Debtors for such Utility Services. Any bank at which the Debtors maintain the Utility Account may rely on the representations of the Debtors that a request to reduce the Utility Account is in accordance with this Order without liability. If the removed Utility Provider received any value from the Debtors as adequate assurance of payment, the removed Utility Provider shall promptly return such value to the Debtors.

8. Nothing in the Motion or this Interim Order, nor as a result of any payment made pursuant to this Interim Order, shall be deemed or construed as (i) an admission as to the validity, amount, classification, or priority of any claim or lien against the Debtors; (ii) a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity, amount, classification, or priority of any claim, lien, or payment made pursuant to this Order; or (iii) a request or an approval to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

9. The Debtors shall serve a copy of the Motion, together with the proposed Final Order, which includes the proposed Adequate Assurance Procedures, on each Utility Provider, the Debtors' consolidated list of top twenty creditors, the Debtors' secured lenders, the Office of the United States Trustee for the District of Delaware, and those parties entitled to notice pursuant to Bankruptcy Rule 2002 within three (3) business days after entry of this Order by the Court.

10. The deadline by which Utility Providers must file and serve objections, if any, to the Motion is \_\_\_\_\_, 2015 at 4:00 p.m. (ET). If no objections to the Motion are filed, the Court may enter the Final Order without further notice or hearing. The Final Hearing, if required, will be held on \_\_\_\_\_, 2015 at \_\_\_\_:\_\_\_\_.m. (ET).

11. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

12. The Debtors are authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Interim Order.

13. This Court shall retain jurisdiction over the Debtors and any party receiving payment from the Debtors pursuant to this Interim Order with respect to any matters, claims, rights, or disputes arising from or related to the Motion, the implementation of this Interim

Order, or the validity of any of claims against the Debtors or payment made pursuant to this Interim Order.

Dated: August \_\_\_\_, 2015  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT C**

**PROPOSED FINAL ORDER**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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**In re** : **Chapter 11**  
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**SANTA FE GOLD CORPORATION, et al.,** : **Case No. 15-11761 (\_\_\_\_)**  
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**Debtors.**<sup>1</sup> : **Jointly Administered**  
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: **Ref. Docket Nos. \_\_\_\_**  
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**FINAL ORDER PURSUANT (I) PROHIBITING UTILITIES FROM  
ALTERING, REFUSING, OR DISCONTINUING SERVICES ON ACCOUNT  
OF PRE-PETITION INVOICES; (II) DEEMING UTILITIES ADEQUATELY ASSURED  
OF FUTURE PERFORMANCE; AND (III) ESTABLISHING PROCEDURES FOR  
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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Santa Fe Gold Corporation (4315); Azco Mica, Inc. (8577); The Lordsburg Mining Company (4474); and Santa Fe Gold (Barbados) Corporation (N/A). The Debtors’ mailing address is 1219 Banner Mine Road, Lordsburg, New Mexico 88045.

<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

for the District of Delaware dated as of February 29, 2012; and venue of the Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that this Court may enter a final order consistent with Article III of the United States Constitution; and proper and adequate notice of the Motion, the hearing thereon, and opportunity for objection having been given; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having heard evidence and statements of counsel regarding the Motion and having determined that the legal and factual bases set forth in the Motion and attested to in the First Day Declaration establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on a final basis, to the extent set forth herein.
2. The Proposed Adequate Assurance is hereby approved on a final basis and the Debtors are deemed to have furnished the Utility Providers with adequate assurance of payment under section 366 of the Bankruptcy Code for post-Petition Date utility services, subject to the right of a Utility Provider to make an Adequate Assurance Request and any adjustments (in accordance with, paragraph 4 of this Order).
3. Subject to the Adequate Assurance Procedures, all Utility Providers are prohibited from (i) discontinuing, altering, or refusing service to the Debtors on account of any pre-petition amounts outstanding, (ii) discriminating against the Debtors, or (iii) requiring payment of a deposit or receipt of any other security for continued service as a result of the Debtors' bankruptcy filings or any outstanding pre-petition invoices, other than as provided in this Final Order.

4. The Adequate Assurance Procedures for determining requests for additional adequate assurance are approved on a final basis as follows:

- Absent compliance with the Adequate Assurance Procedures, the Utility Providers may not alter, refuse, or discontinue service to or otherwise discriminate against the Debtors on account of the commencement of the Chapter 11 Cases or any unpaid pre-petition charges or request payment of a deposit or receipt of other security in connection with any unpaid pre-petition charges.
- Any Utility Provider that believes it requires additional adequate assurance must serve a request (an “Adequate Assurance Request”) upon (i) the Debtors, care of Santa Fe Gold Corporation, 1219 Banner Mine Road, Lordsburg, New Mexico 88045, Attention: Frank Mueller; (ii) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Rodney Square, Wilmington, Delaware 19801, Attention: Ian J. Bambrick, Esq.; and (iii) counsel to Waterton Global Value, L.P., the proposed DIP Lender, Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Attention: Matthew G. Martinez, Esq.
- Any Adequate Assurance Request must: (i) be made in writing; (ii) set forth the location(s) for which utility services are provided; (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including any security deposits or other prepayments or assurances previously provided by the Debtors; (iv) set forth the basis for the Utility Provider’s belief that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) include a proposal for what would constitute adequate assurance of future payment from the Debtors. Any Adequate Assurance Request that fails to meet these requirements shall be deemed an invalid request for adequate assurance.
- Upon the Debtors’ receipt of any Adequate Assurance Request at the address set forth above, the Debtors shall have until twenty-one (21) days from the receipt of such Adequate Assurance Request or such other date as the parties mutually agree (the “Resolution Period”) to negotiate with a Utility Provider and advise the Utility Provider that the Adequate Assurance Request is acceptable.
- The Debtors may, in their discretion but in consultation with counsel to the proposed DIP Lender, resolve any Adequate Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider

with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments and/or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.

- If the Debtors determine that the Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code.
- Pending resolution of an Adequate Assurance Request at any such Determination Hearing and entry of a final, non-appealable order thereon finding that the Utility Provider is not adequately assured of future payment, such Utility Provider shall be (i) prohibited from discontinuing, altering, or refusing service to the Debtors on account of unpaid charges for pre-petition services or on account of any objections to the Proposed Adequate Assurance and (ii) deemed to have adequate assurance of payment.
- Unless and until a Utility Provider serves an Adequate Assurance Request pursuant to the Adequate Assurance Procedures, such Utility Provider shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Provider within the meaning of section 366(c)(2) of the Bankruptcy Code.
- If the Debtors reach an agreement with any Utility Provider submitting an Adequate Assurance Request, the Debtors may reduce the amount included in the Utility Account for such Utility Provider to the extent consistent with the agreement reached with such Utility Provider.

5. To the extent that the Debtors identify additional Utility Providers not included on the Utility Provider List, the Debtors will promptly (i) file a supplement to the Utility Provider List adding the name of the newly-identified Utility Providers and (ii) serve copies of this Final Order on such Utility Providers. This Final Order shall be binding on all Utility Providers, regardless of when such Utility Provider was added to the Utility Provider List, subject to any further order(s) of the Court.

6. Any Utility Provider subsequently added to the Utility Provider List that believes it requires additional adequate assurance must (i) serve an Adequate Assurance Request and (ii) otherwise comply with the Adequate Assurance Procedures.

7. The portion of the Adequate Assurance Deposit in the Utility Account attributable to each Utility Provider shall be returned to the Debtors upon the earlier of (i) the Debtors' termination of services from such Utility Provider (provided, however, that the funds need not be returned until the Debtors have settled with the applicable Utility Provider on the amount of post-petition services, or any dispute regarding the same is resolved by the Court), (ii) entry of an order of the Court authorizing the return of such Adequate Assurance Deposit to the Debtors, and (iii) the effective date of a chapter 11 plan in the Debtors' cases; provided that upon the effective date of a chapter 11 plan in these cases, the Debtors may close the Utility Account and withdraw any amounts that remain in the Adequate Assurance Deposit Account, without further notice or hearing. The Adequate Assurance Deposit may also be adjusted to remove from the monthly spending figure cited in paragraph 5 of the Motion any amount spent on Utility Services from Utility Providers that already hold deposits from the Debtors for such Utility Services. Any bank at which the Debtors maintain the Utility Account may rely on the representations of the Debtors that a request to reduce the Utility Account is in accordance with this Order without liability. If the removed Utility Provider received any value from the Debtors as adequate assurance of payment, the removed Utility Provider shall promptly return such value to the Debtors.

8. Nothing in the Motion, the Interim Order, or this Final Order, nor as a result of any payment made pursuant to the Interim Order or this Final Order, shall be deemed or construed as (i) an admission as to the validity, amount, classification, or priority of any claim or lien against the Debtors; (ii) a waiver of the right of the Debtors, or shall impair the ability of the

Debtors, to contest the validity, amount, classification, or priority of any claim, lien, or payment made pursuant to this Order; or (iii) a request or an approval to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

9. The Debtors are authorized to take all actions necessary to implement this Final Order.

10. This Court shall retain jurisdiction over the Debtors and any party receiving payment from the Debtors pursuant to this Final Order with respect to any matters, claims, rights, or disputes arising from or related to the Motion, the implementation of this Final Order, or the validity of any of claims against the Debtors or payment made pursuant to this Final Order.

Dated: September \_\_\_\_, 2015  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE