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8  
9 **IN THE UNITED STATES BANKRUPTCY COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 In re:  
12 ELEVATION GOLD MINING  
CORPORATION, *et al.*

13 Debtors in a Foreign Proceeding.

14  
15 PATRIOT GOLD CORP.,

16 Plaintiff,

17 v.

18 GOLDEN VERTEX CORP., *et al.*,

19 Defendants.  
20  
21

In Proceedings Under Chapter 15

Case No. 2:24-bk-06359-EPB

Jointly Administered with:

Case No. 2:24-bk-06364-EPB

Case No. 2:24-bk-06367-EPB

Case No. 2:24-bk-06368-EPB

Case No. 2:24-bk-06370-EPB

Case No. 2:24-bk-06371-EPB

Adv. No. 2:24-ap-00253-EPB

**REPLY IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
AND RESPONSE TO DEFENDANTS'  
CROSS-MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

22 Plaintiff Patriot Gold Corp. ("Patriot") files this Reply/Response (a) in further  
23 support of *Plaintiff's Motion For Partial Summary Judgment* [Adv. Dkt. 57] (the "Patriot  
24 MSJ") and in reply to *Defendants' Response To Plaintiff's Motion For Partial Summary*  
25 *Judgment* [D.E. 58] *And Defendants' Cross-Motion For Partial Summary Judgment*  
26 [Adv. Dkt. 75] (the "Response-Cross Motion") filed by Defendants; and (b) in response to  
27  
28

1 Defendants' cross motion for partial summary judgment contained in their Response-Cross  
2 Motion.<sup>1</sup>

3 **I. INTRODUCTION.**

4 The Court has already found in this Adversary Proceeding that "[i]t is undisputed  
5 that Sandstorm and Patriot each hold an interest in the minerals and proceeds generated  
6 therefrom at GVC's Moss Mine located in Arizona." See Minute Entry/Order dated  
7 August 15, 2025 (denying Patriot's motion for preliminary injunction) [Adv. Dkt. 68],  
8 p. 2. There also is no dispute regarding what the Patriot Royalty Deed says -- both parties  
9 agree that its terms are unambiguous. In this context, Patriot requests partial summary  
10 judgment on two basic points: (a) that pursuant to its duly recorded Royalty Deed, GVC  
11 granted and conveyed to Patriot a royalty interest in the mineral estate at the Moss Mine  
12 that runs with the land (which is a real property interest); and (b) as an inherent part of the  
13 royalty grant, Patriot owns the proceeds produced from the subject minerals in the amount  
14 of the Royalty once they are extracted and produced.

15 Defendants' Response-Cross Motion does not refute either of these points. Rather,  
16 the entirety of their argument boils down to the following theory -- (a) all royalties that  
17 use a production metric are "accrued royalties" and therefore cannot be real property  
18 interests (which is legally wrong); and (b) because the Royalty Deed uses a "Net Smelter  
19 Return" metric to calculate the amount of the Royalty conveyed to Patriot, the Royalty  
20 Deed cannot have conveyed a real property interest (which is both legally wrong and  
21 contrary to the terms of the Royalty Deed and the parties' expressly stated intent that  
22 Patriot's royalty interest runs with the Mine Property). The fundamental flaw in  
23 Defendants' argument is their failure to recognize that, under a mineral royalty conveyance  
24 such as the Royalty Deed, the royalty holder owns **both** a real property interest in the  
25 mineral estate for future royalties, in particular when the parties intend to convey a real

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26 <sup>1</sup> Unless specifically defined herein, capitalized defined terms used in this Reply/Response  
27 will have the same meanings as defined in the Patriot MSJ, Patriot's *Memorandum Of Law In*  
28 *Support Of Plaintiff's Motion For Partial Summary Judgment* [Adv. Dkt. 58] (the  
"Memorandum"), or the *Statement Of Facts In Support Of Plaintiff's Motion For Partial Summary*  
*Judgment* [Adv. Dkt. 59] (the "SOF") filed by Patriot, as applicable.

1 property interest (an "unaccrued royalty") **and** ownership of the proceeds in the amount  
2 of the royalty once the minerals are extracted and produced (an "accrued royalty").

3 In a recent case, the Third Circuit addressed these very issues in *In re Ursa*  
4 *Operating Company, LLC*, 2024 WL 278397 (3rd Cir., January 25, 2024). In the context  
5 of a bankruptcy of Ursa Operating Company, LLC, an operator of oil and gas wells, the  
6 Third Circuit considered the rights of certain royalty holders that had been granted royalty  
7 interests. The Third Circuit held that (i) the grant of a royalty in minerals created a real  
8 property interest that vested in the royalty holder, among other things, the right to the  
9 proceeds therefrom in the amount of the royalties;<sup>2</sup> and (ii) royalties due to the royalty  
10 holder were owned by the royalty holder and thus never became part of Ursa's bankruptcy  
11 estate (citing Bankruptcy Code §541(d)).<sup>3</sup> *Id.* at \*2-3. The Third Circuit's analysis applies  
12 equally in this case, and requires that the Patriot MSJ be granted.

13 Both parties agree that, in determining the nature of the Royalty granted to Patriot  
14 under the Royalty Deed, the parties' intent regarding whether the Royalty interest is a real  
15 property interest is important. As discussed below, the Royalty Deed states expressly that  
16 the Royalty and all of GVC's related obligations are a covenant running with the Mine  
17 Property which is binding on GVC and all future owners of the Mine Property. In other  
18 words, the Royalty is a real property interest that runs with the land, not "just" a personal  
19 property interest or mere contract right. Defendants do not point to any language in the  
20 Royalty Deed indicating the parties' intent to the contrary.

21 In support of their cross-motion for summary judgment, Defendants try to reference  
22 extrinsic evidence regarding the parties' purported intent to somehow controvert the  
23 dispositive statement of intent in the Royalty Deed itself. This is improper as a matter of  
24 law. In all events, and as established in the Declarations filed by Patriot in support of its

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25  
26 <sup>2</sup> The Third Circuit cited to a Colorado statute that states that a conveyance of a royalty  
27 interest in minerals creates a real property interest held by the royalty holder, but noted that this  
statute simply codifies longstanding Colorado common law on the nature of royalties.

28 <sup>3</sup> Section 541(d) recognizes that interests in assets that are not owned by a debtor are excluded  
from the debtor's bankruptcy estate.

1 response to the cross-motion,<sup>4</sup> **all** of the summary judgment evidence before the Court  
2 supports and confirms the parties' intent that the Royalty Deed conveyed to Patriot a real  
3 property interest in the mineral estate comprising the Mine Property.

4 Accordingly, Patriot is entitled to entry of partial summary judgment and  
5 Defendants' cross-motion for partial summary judgment should be denied in its entirety.<sup>5</sup>

6 **II. PATRIOT'S REPLY TO DEFENDANTS' RESPONSE.**

7 **A. The Royalty Deed By Its Terms Grants And Conveys A Property**  
8 **Interest In The Mineral Estate.**

9 As all authorities cited to the Court recognize, determination of Patriot's interests  
10 starts with the terms of the Royalty Deed itself. Its terms are dispositive. The Royalty  
11 Deed:

- 12 (a) is styled and structured as a deed for the present conveyance of an interest  
13 in real property;
- 14 (b) states expressly that GVC "grants and conveys" to Patriot "a Royalty of  
15 THREE PERCENT (3%) OF Net Smelter Returns the production of  
16 minerals from the Property";
- 17 (c) clearly identifies by legal description the real property mining patents which  
18 are subject to the Royalty under the Royalty Deed (defined as the "Property"  
19 in the Royalty Deed);

20  
21  
22 <sup>4</sup> Patriot filed the following Declarations in support of its response to Defendants' cross-  
23 motion for summary judgment: (i) Declaration of Trevor B. Newton (the "Newton Declaration"),  
24 and (ii) Declaration of Randall E. Hubbard (the "Hubbard Declaration"). The Newton Declaration  
25 and the Hubbard Declaration are attached as Exhibits "A" and "B," respectively, to the  
26 *Supplemental Appendix Of Exhibits Cited In Controverting Statement Of Facts* (the "Supplemental  
27 Appendix") filed by Patriot.

28 <sup>5</sup> Irrespective of how the Royalty interest conveyed to Patriot is characterized, Defendants  
have not identified any basis under which Patriot's rights and interests can be terminated or  
eliminated. Patriot fully reserves all of its rights and arguments regarding its Royalty interest and  
the inability of Defendants (or anyone else) to avoid or recharacterize its interest (if one is ever  
articulated by Defendants).

1 (d) defines "Net Smelter Returns" and how they are calculated based on the  
2 minerals produced from the Property that is subject to the Royalty; and

3 (e) was properly recorded in the real property records of Mohave County,  
4 Arizona.

5 *See* Memorandum at p. 4; SOF at ¶¶ 5-8, 11.

6 Moreover, GVC states expressly its intent that the Royalty conveyed under the  
7 Royalty Deed "shall be a covenant running with the Property and shall be binding on  
8 [GVC] and its successors and assigns, including any third party who acquires any interest  
9 in any portion of the Property." *See* Memorandum at p. 4; SOF at ¶ 14.

10 In short, it is clear from the four corners of the Royalty Deed that (i) it is a present  
11 grant and conveyance of a Royalty interest in identified real property (the mining claims  
12 identified as the "Property" in the deed); and (ii) GVC states expressly its intent that the  
13 conveyed Royalty is an interest that runs with the mineral estate and is binding on both  
14 GVC and all future owners of the Property. Further, and as GVC agreed in the underlying  
15 Purchase Agreement, the Royalty Deed was duly recorded in the proper real property  
16 records and therefore is part of the title to the Property and puts any future owner of the  
17 Property on notice of the Royalty that encumbers the Property.

18 Defendants do not (nor could they) dispute these clear terms, nor that these terms  
19 track the requirements for a conveyance of a real property interest under Arizona law. In  
20 fact, Defendants have admitted in the Sandstorm Adversary Proceeding that the Royalty  
21 Deed contains the hallmarks of a real property conveyance. *See* Memorandum at p. 5,  
22 SOF at ¶ 25. Defendants' claim that the Royalty Deed somehow does not really state an  
23 intent to create an interest in real property is ludicrous. *See* Response-Cross Motion at  
24 pp. 8-11. The Royalty Deed states expressly that the Royalty conveyed under the deed  
25 "shall be a covenant running with the Property" and the "Property" is clearly identified as  
26 the real property mining claims identified in the deed. To accept the Defendants' contorted  
27 claim on this point would require the Court to improperly ignore these provisions of the  
28 Royalty Deed in their entirety. Further, Defendants' claim that the Royalty conveyance is

1 not really perpetual because that word does not appear in the deed is equally ludicrous.  
2 *See* Response-Cross Motion at pp. 12-13. The Royalty Deed has no expiration date and it  
3 states expressly it is binding on "[GVC] and its successors and assigns, including any third  
4 party who acquires any interest in any portion of the Property."<sup>6</sup>

5 The only material response Defendants assert to these terms is their claim that,  
6 because the Royalty Deed expresses the conveyed Royalty in terms of a "Net Smelter  
7 Return" metric, the Court should ignore every other term of the deed, including GVC's  
8 own stated intent, and construe the deed to not be a conveyance of a real property interest  
9 (*i.e.*, the exact opposite of what it says). This would violate every principal of contract  
10 construction under Arizona law. *See* Memorandum at p. 3 (and authorities cited therein).  
11 Moreover, as discussed below and in the Memorandum, the "Net Smelter Return" metric  
12 used in the Royalty Deed is entirely consistent with the fact that the deed conveys a real  
13 property interest.

14 **B. The Entirety Of Defendants' Response-Cross Motion Is Based On**  
15 **A False Legal Premise.**

16 Defendants' opposition to the Patriot MSJ is based entirely on the following  
17 premise: that a mineral royalty that uses a production metric to calculate the amount of the  
18 royalty somehow does not convey a real property interest because "accrued royalty  
19 interests are personal property". *See* Response-Cross Motion at p. 4. This is simply wrong  
20 as a matter of law because a mineral royalty grant conveys to the royalty holder a real  
21 property interest in the subject mineral estate (the right to future royalty payments or an  
22 "unaccrued royalty") **and**, as an inherent part of the conveyance, an ownership interest in  
23 the proceeds from the subject minerals in the amount of the royalty when the subject  
24 minerals are extracted (an "accrued royalty"). The two are not different or exclusive  
25 "types" of royalties, they are the aggregate rights of the royalty holder as minerals are

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26 <sup>6</sup> Defendants' reference to the provision in the Royalty Deed that allows an owner of the  
27 Property to abandon certain unpatented mining claims that are subject to the deed after 25 years  
28 also gets them nowhere. *See* Response-Cross Motion at 10. This provision (if ever employed by  
an owner of the Property) does not terminate the Royalty grant under the Royalty Deed, it would  
simply reduce some of the Property that is subject to the Royalty.

1 extracted from a mineral estate subject to a royalty grant. The universal use of production  
2 metrics in mineral royalties does not change either of these interests, or somehow make  
3 the underlying royalty interest in the mineral estate go away.<sup>7</sup>

4 Despite the length of their response, Defendants do not successfully challenge any  
5 of the following points:

6 1. Arizona law recognizes the separate nature of mineral estates and surface  
7 estates. *See Spurlock v. Santa Fe Pacific R. Co.*, 143 Ariz. 469, 478 (App. 1985); *see also*  
8 *Paulden Indus. LLC v. Big Chino Materials LLC*, 249 Ariz. 442, 445, ¶ 14 (App. 2020)  
9 (approving severance of mineral estate from surface estate).<sup>8</sup>

10 2. A mineral estate severed from the surface estate has five general attributes:  
11 (1) the right to develop (the right to ingress and egress), (2) the right to lease (the executive  
12 right), (3) the right to receive bonus payments, (4) the right to receive delay rentals, and  
13 (5) the right to receive royalty payments. *Lyle v. Jane Guinn Revocable Trust*, 365 S.W.3d  
14 342, 354 (Tex. App. 2010) (citing *Hamilton v. Morris Resources, Ltd*, 225 S.W.3d 342,  
15 344 (Tex. App. 2007) (emphasis added); *see also In re Murray Energy Holdings Co.*, 638  
16 B.R. 588, 594 (Bankr. S.D. Ohio 2022) (identifying the same five rights that may be  
17 conveyed with respect to a mineral estate).

18 3. The different interests comprising a mineral estate, including the right to  
19 receive royalty payments, can be conveyed in whole or in part by the owner of the mineral  
20 estate. “The right to receive *royalty payments* is one of the five attributes comprising a  
21 severed mineral estate and is a ‘separate, distinct property interest that may be conveyed  
22 or reserved in connection with a conveyance of a mineral interest.’” *Lyle*, 365 S.W.3d at  
23

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24 <sup>7</sup> To state the obvious, most or all percentage mineral royalties must be calculated based on  
25 the production of the mineral in question as a practical matter. Royalties cannot, for instance, be  
26 based on the gross amount of rock mined given the very wide discrepancies in the concentration of  
minerals in various rock.

27 <sup>8</sup> Mining claims, which are the Property subject to the Royalty Deed, are real property  
28 interests. *See Kasey v. Molybdenum Corp. of America*, 336 F.2d 560, 564 (9th Cir. 1964); *Bradford*  
*v. Morrison*, 10 Ariz. 214, 215 (1906) (“[T]he estate which the owner of an unpatented mining  
claim has therein must be held to be real property.”).

1 354 (quoting *Hamilton*, 225 S.W.3d at 344)) (emphasis added). Arizona law also  
2 recognizes that a fee owner can convey or reserve parts of a fee interest rather than the  
3 entirety of same. See A.R.S. § 33-432; *Phoenix Title & Tr. Co. v. Smith*, 101 Ariz. 101,  
4 106 (1966) (A.R.S. § 33-432 provides that “[a] grantor has the right to make a reservation  
5 of an interest in real property” by its presumption of passing fee simple title while allowing  
6 for a lesser conveyance).

7 5. Because the royalty right attribute of a mineral estate is an economic right,  
8 essentially *all* mineral royalties (including those analyzed by Arizona courts) are  
9 expressed in terms of a production metric, with one of the most common for hard rock  
10 mineral royalties being some version of a “Net Smelter Return” metric. Patriot  
11 Memorandum at pp. 7-8 (and authorities cited therein). The expression of a royalty in  
12 terms of a production metric does not somehow “transform” a mineral royalty into a non-  
13 real property conveyance. Rather, the courts in Arizona and essentially everywhere else  
14 recognize that royalties using a production metric grant the royalty holder a present real  
15 property interest in the right to receive royalty payments (which is one component of the  
16 mineral estate) when the subject minerals are extracted from the property. See  
17 Memorandum at pp. 6-7 (and authorities cited therein). The law on this point is  
18 overwhelming. See, e.g., *Peppertree Farms, L.L.C. v. Thonen*, 188 N.E.3d 1069, 1074  
19 (Ohio 2022) (a “present right to a future royalty is real property”); *Angichiodo v. Cerami*,  
20 28 F. Supp. 720, 722 (W.D. La. 1939) (“An oil and mineral lease, or a royalty interest, is  
21 an interest in real property. . . .”); *Laughran v. Bank of Am. Nat. Tr. & Sav. Ass’n*, 88 F.2d  
22 551, 554 (9th Cir. 1937) (assignments of royalty interest “were conveyances of an interest  
23 in real property”); *Palmer v. Crews*, 35 So. 2d 430, 434 (Miss. 1948) (“[a] royalty is an  
24 interest in real estate, entitling the royalty owner to a share in the production of oil, gas,  
25 or other minerals therefrom.”); *Venable Royalty, LTD v. EQT Prod. Co.*, 908 S.E.2d 501,  
26 508 (W. Va. Ct. App. 2024) (mineral royalty in oil and gas measured by “one sixteenth of  
27 all the oil and one half the royalty of gas produced from the [...] premises[,]” was a real  
28 property interest); *Lyle v. Jane Guinn Revocable Tr.*, 365 S.W.3d 341, 352 (Tex. App.



2010) (mineral royalty measured by percentage of profit realized by extraction of oil and gas from underlying property was a real property interest); *Hanson v. Ware*, 274 S.W.2d 359, 363 (Ark. 1955) (mineral royalty measured by percentage of oil and gas produced and saved from underlying property a real property interest); *Corbett v. La Bere*, 68 N.W.2d 211, 214 (N.D. 1955) (same); *Mounger v. Pittman*, 108 So.2d 565, 566 (Miss. 1959) (same); *Duvall v. Stone*, 213 P.2d 212, 214 (N.M. 1949) (same); *Uhden v. New Mexico Oil Conservation Comm'n*, 817 P.2d 721, 723, ¶ 8 (N.M. 1991) (“royalty interest of 6.25 percent of [mineral] production” was “itself real property.”).

6. Since at least 1942, the Arizona Supreme Court (like courts in essentially all other states) has recognized that mineral royalties, including those using a calculation metric based on production, create a real property interest (in particular when the parties state it is their intent to do so). See Memorandum at pp. 5-6 (discussing *Shreck v. Coates*, 59 Ariz. 269, 279 (1942) (a 5% overriding royalty in production from Arizona gold mine found to be a real property interest) and *Paloma Inv. Ltd. P'ship v. Jenkins*, 194 Ariz. 133, 138 (App. 1998) (mineral royalty in water rights, calculated by percentage of proceeds generated from sale of same, found to be a real property interest)).<sup>9</sup>

Defendants try to distinguish the authorities cited by Patriot because some of these courts have observed that an accrued royalty is an interest in personal property. See Response-Cross Motion at pp. 14-17. But this simply proves the point: the case authorities recognize that a holder of a production based mineral royalty holds **both** a real property interest in the mineral estate for future royalties **and** a personal property interest in the proceeds generated from the subject minerals in the amount of the royalty once the minerals are extracted and produced. It should surprise no one that the proceeds themselves from the sale of extracted minerals are personal property (e.g., cash, accounts and the like).

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<sup>9</sup> Defendants' efforts to distinguish *Shreck* go nowhere because, whatever else the Court assessed in its decision, it found that a royalty interest conveyed in an Arizona gold mine, with the amount of the royalty calculated as a percentage of the gold produced from the mine, was an incorporeal hereditament that constituted an interest in the real property mineral estate that followed the reversion of same. See *Shreck*, 59 Ariz. at 279.

1       The cases cited by Defendants for the point that “an accrued royalty is a personal  
2 property interest” show the same thing, as these cases also recognize that under the same  
3 royalty the royalty holder **also** holds a real property interest in the mineral estate for future  
4 royalties.

5       --       In *U.S. v. Noble*, 237 U.S. 74 (1915), the U.S. Supreme Court found that a  
6 “royalty of 5 percent of the market value of all minerals mined or removed” from the  
7 subject property was a conveyance of a real property interest.

8       --       In *Peppertree Farms, L.L.C. v. Thonen*, 188 N.E.3d 1061 (Ohio 2022), the  
9 court recognized that a reserved royalty right in a mineral estate is a real property interest  
10 that can be separately conveyed or reserved by the estate owner, and this is not altered by  
11 the fact that once the subject minerals are extracted they or their proceeds become the  
12 personal property of the royalty owner. *Id.* at 1067-68. This same court held expressly  
13 that a “present right to a future royalty is real property.” *Peppertree Farms, L.L.C. v.*  
14 *Thonen*, 188 N.E.3d 1069, 1074 (Ohio 2022).

15       --       Defendants cite the Illinois case of *Hardy v. Greathouse*, 94 N.E.2d 134 (Ill.  
16 1950) for the unexceptional proposition that once minerals are extracted from property  
17 they become personal property. Had Defendants bothered to check, they would have  
18 found that subsequent Illinois authorities reviewing *Hardy* and other Illinois cases hold  
19 that the “rule in Illinois, therefore, is that a perpetual reservation of the royalties in the  
20 mineral estate or part thereof creates a real property right in the land.” *See Logue v. Marsh*,  
21 365 N.E.2d 1159, 1161 (Ill. App. 1977).

22       --       In *Sabine Prod. Co. v. Frost Nat'l Bank of San Antonio*, 596 S.W.2d 271,  
23 276 (Tex. Civ. App. 1980), the court stated expressly that “[a] right to a future royalty  
24 payment is an interest in land.” (citing *Clyde v. Hamilton*, 414 S.W.2d 434 (Tex. Sup.  
25 1967)). There is no suggestion in the case that once minerals are extracted from the mineral  
26 estate and generate proceeds or other personal property that the underlying real property  
27 interest in future royalties evaporates.  
28

1           --     In *Finstrom v. First State Bank of Buxton*, 525 N.W.2d 675, 677 (N.D.  
2 1994), the court recognized that “an unaccrued royalty . . . is an interest in real property.”

3           The law is equally clear that when the royalty becomes payable (*i.e.*, “accrues”) the  
4 royalty holder **owns** the proceeds subject to the royalty grant. *See In re Ursa Operating*  
5 *Co., LLC*, No. 22-1729, 2024 WL 278397, at \*1–3 (3d Cir. Jan. 25, 2024). In *Ursa*, the  
6 Third Circuit ruled that a holder of a mineral royalty owns a real property interest in the  
7 minerals and the proceeds therefrom, and that property owned by the royalty holder is not  
8 included as property of the debtor’s bankruptcy estate under Bankruptcy Code § 541(d);  
9 therefore the debtor that operates property subject to the royalty does not own or “have an  
10 equitable interest in the Royalty Claimants’ *designated share of the proceeds that it*  
11 *received from the sale of those resources*” and the claimants are entitled to assert a  
12 constructive trust claim against the debtor to prevent unjust enrichment. *Id.* at 3-5  
13 (emphasis added). *See also Boyd v. Martin Exploration Co.*, 56 B.R. 776, 779–80 (E.D.  
14 La. 1986) (overriding oil and gas royalty interests conveyed by debtor prepetition were  
15 property of royalty holders and not estate property; royalty owners entitled to, and estate  
16 held royalties owed in, constructive trust for benefit of royalty holders).<sup>10</sup>

17           Even the cases cited by Defendants recognize that the royalty holder **owns** the  
18 proceeds subject to a royalty grant and can sue for conversion of same when they are not  
19 paid over to the royalty holder. *See Ferguson v. Coronado Oil Company*, 884 P.2d 971,  
20 977-78 (Wyo. 1994). This is the same court that has subsequently found that mineral  
21 royalties “are also universally recognized as real property rights.” *Powder River Coal Co.*  
22 *v. Wyo. State Board of Equalization*, 38 P.3d 423, 428 (Wyo. 2002) (citing Robert E.  
23 Sullivan, *All About Royalties*, 16 Rocky Mtn. Min. L. Inst. 227, 237 (1971)).

24  
25  
26           <sup>10</sup> Defendants try to distinguish *Ursa* on the ground that it was applying Colorado law. *See*  
27 *Response-Cross Motion* at 16 and n. 2. This goes nowhere as Colorado law is consistent with the  
28 law in Arizona and essentially all other states as discussed above. Defendants just ignore *Boyd*  
completely.

1 **III. PATRIOT'S RESPONSE TO DEFENDANTS' CROSS MOTION FOR**  
2 **PARTIAL SUMMARY JUDGMENT.**

3 As an initial matter, Defendants' cross-motion for partial summary judgment (the  
4 "Cross-MSJ" (which is part of Defendant's Response-Cross Motion)) should be denied as  
5 a matter of law for all of the reasons discussed above and in the Memorandum.

6 In conjunction with their Cross-MSJ, Defendants ask the Court to consider certain  
7 documents extrinsic to the Royalty Deed as purported "evidence" that the parties did not  
8 intend for the Royalty Deed to convey to Patriot a real property interest. *See* Response-  
9 Cross Motion at 11. It is notable that, while Defendants were free to present any summary  
10 judgment evidence they wanted, they did not present a single under oath statement by any  
11 representative of Defendants about GVC's intent with respect to the Royalty conveyance  
12 under the Royalty Deed. This complete lack of evidence on GVC's purported intent itself  
13 speaks volumes.

14 Defendants' reference to other documents extrinsic to the Royalty Deed in an effort  
15 to re-write the clear statement of intent contained in the Royalty Deed itself is prohibited  
16 as a matter of law. *See Goodman v. Newzona Inv. Co.*, 101 Ariz. 470, 472 (1966) (when  
17 "the intent of the parties is expressed [in the contract] in clear and unambiguous language,  
18 there is no need or room for construction or interpretation."); *Aquaquim SA de CV v. Envntl.*  
19 *Fluids Inc.*, 667 F. Supp. 3d 1003, 1007 (D. Ariz. 2023) ("... when the terms of a contract  
20 are clear, the intent of the parties must be ascertained from the contract itself.");  
21 Memorandum at 11.

22 Moreover, the extrinsic materials cited by Defendants do not advance their  
23 argument in any event -- the cited materials are consistent with the GVC's stated intent  
24 that the Royalty Deed conveyed a property interest to Patriot that runs with the Property.  
25 Defendants reference a grand total of three (3) items of "evidence" extrinsic to the Royalty  
26 Deed that Defendants allege show the parties did not intend for the Royalty Deed to create  
27 a real property interest: (a) the warranty deed executed in conjunction with the Purchase  
28 Agreement under which Patriot sold the Moss Mine to GVC; (b) a demand letter from

1 Patriot to GVC regarding GVC's failure to pay and deliver to Patriot the required royalties;  
2 and (c) form 10-K reports filed by Patriot with the SEC. As shown by these documents  
3 themselves, and by the Newton Declaration and the Hubbard Declaration filed by Patriot  
4 in conjunction with its response to the Defendants' cross-motion, these materials are fully  
5 consistent with the parties' stated intent that the Royalty Deed conveyed a property interest  
6 to Patriot that runs with the land:

7 *First*, both Mr. Newton (the principal of Patriot who negotiated the Purchase  
8 Agreement, the Royalty Deed and related matters) and Mr. Hubbard (a nationally known  
9 mining attorney who represented Patriot in the negotiation and documentation of the  
10 Purchase Agreement, the Royalty Deed, and the related transactions) testify directly that  
11 the Royalty Deed was intended to grant and convey to Patriot a real property interest in  
12 the mineral estate at the Moss Mine that runs with the Mine Property, and that at no time  
13 did anyone for GVC ever state or suggest any different or contrary intent. *See* Newton  
14 Declaration at ¶¶ 12-13; Hubbard Declaration at ¶ 23.

15 *Second*, the Purchase Agreement under which Patriot sold the Mine Property to  
16 GVC (and pursuant to which both the warranty deed and the Royalty Deed were issued)  
17 states expressly that the sale was subject to GVC conveying back to Patriot the royalty  
18 interest documented in the Royalty Deed. *See* Mining Claims Purchase Agreement at  
19 Sections 1.1; 2.3, 6.4 and its attached Exhibit F; Hubbard Declaration at ¶ 16.

20 *Third*, Patriot had stated and disclosed its interests under the Royalty Deed in the  
21 "Minerals Properties" section of its Form 10-Ks; it understood that disclosure to be a  
22 disclosure of its real property royalty interest; at the request of the SEC, Patriot added  
23 detail to its disclosures and listed the royalty interest under description of properties as  
24 requested by the SEC; and that the changes to the descriptions of its Royalty interest from  
25 earlier Form 10-Ks, including the timing of same, had nothing whatsoever to do with  
26 Patriot's claims against GVC for failing to make Royalty payments when due. *See*  
27 Newton Declaration at ¶ 15.

1 In short, and even if the Court considers extrinsic summary judgment evidence,  
2 there is no triable fact dispute issue regarding the parties' intent because **all** of the summary  
3 judgment evidence is clear that the parties intended for the Royalty Deed to convey a real  
4 property interest to Patriot as stated in the Royalty Deed.

5 **IV. CONCLUSION.**

6 For all of the reasons discussed above, and in the Patriot MSJ and supporting  
7 Memorandum, Patriot respectfully requests that the Court enter an order:

8 A. Granting the Patriot MSJ and entering partial summary judgment in favor of  
9 Patriot as requested in the Patriot MSJ;

10 B. Denying Defendants' cross-motion for partial summary judgment in its  
11 entirety; and

12 C. Granting Patriot such other and further relief as is proper under the facts of  
13 this Adversary Proceeding.

14 DATED this 4th day of September, 2025.

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18 By /s/ John A. Harris

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6 **COPY** of the foregoing served via  
7 CM/ECF this 4th day of September,  
8 2025 upon all parties registered to  
9 receive notice via CM/ECF.

10 /s/ Lisa Childress