

January 18, 2022

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UNITED STATES DEPARTMENT OF JUSTICE,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 8
AND
COLORADO DEPARTMENT
OF PUBLIC HEALTH AND ENVIRONMENT

Received by
EPA Region VIII
Hearing Clerk

)
IN THE MATTER OF:)
)
Eagle Mine Superfund Site)
Eagle County, Colorado)
)
)
Battle North, LLC, and)
Battle South, LLC)
)
Owners.)
)
Proceeding Under the Comprehensive)
Environmental Response, Compensation)
and Liability Act, 42 U.S.C. §§ 9601-9675)
)
)
_____)

Docket No. CERCLA-08-2018-0009

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR RESPONSE ACTION
AND RELEASE AND WAIVER OF
CERCLA § 107(r) LIEN**

**ADDENDUM: CERTIFICATION FOR TRANSFER OF ADMINISTRATIVE
SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR RESPONSE ACTION
AND RELEASE AND WAIVER OF CERCLA §107(R) LIEN**

**Certification for Transfer of Administrative Settlement Agreement and Order on Consent
for Response Action and Release and Waiver of CERCLA §107(r) Lien**

The Eagle River Water and Sanitation District and the Upper Eagle Regional Water Authority (collectively, the “District/Authority”) certify that the following information is true and accurate:

1. In accordance with Section II, Paragraph 9 of the Administrative Settlement Agreement and Order on Consent (EPA Docket No. CERCLA-08-2018-009) (the “AOC”) between the United States Environmental Protection Agency (“EPA”), the Colorado Department of Public Health and the Environment (“CDPHE”), Battle North, LLC, and Battle South, LLC, Battle North, LLC intends to transfer to the District/Authority all of the rights, benefits, and obligations held by Battle North, LLC under the AOC as they relate to the property specifically described in Attachment A (the “Property” or the “Trestle Area” as identified in Attachment A), upon transfer of title to the Property to the District/Authority.
2. Pursuant to a separate agreement, the District/Authority will acquire the Property from Battle North, LLC. The Property is located within the Eagle Mine Superfund Site (“Site”). The District/Authority acknowledges that the Property is part of the Site.
3. The District/Authority has reviewed the AOC. Pursuant to Section II, Paragraph 9 of the AOC, the District/Authority hereby agrees and certifies that, solely with respect to the Property, it shall be bound by and subject to the terms of the AOC and will act consistent with the terms of the AOC; provided that such agreement and certification by District/Authority shall become effective only upon transfer of title to the Property from Battle North, LLC to the District/Authority.
4. To the best of its knowledge, the District/Authority has not caused or contributed to the release or threat of release of any Existing Contamination, as that term is defined in the AOC, at the Site or the Property.
5. The District/Authority shall take reasonable steps, as that term is defined in 42 U.S.C. § 9601(40)(d) and further described in a certain letter from EPA to the District/Authority dated June 3, 2021 with respect to future use of the Property.
6. The District/Authority will permit EPA and CDPHE to access the Property, as set forth in Paragraph 48 of the AOC.
7. The District/Authority will not interfere with response actions taken on or around the Property.
8. The District/Authority acknowledge the benefits and rights provided by the AOC to District/Authority for the Property are limited to the Existing Contamination on the Property as of the date of this Agreement. With respect to liability for any new hazardous substance, pollutants, or contaminants that first became present at the Property after September 25, 2018, the District/Authority has taken steps to avail itself of protections

afforded a “bona fide prospective purchaser” and will continue to maintain its status as a “bona fide prospective purchaser” for the duration of its interest in the Property, including taking reasonable steps in accordance with 42 U.S.C. § 9601(40).

9. Through this certification, the District/Authority is requesting that EPA and the State of Colorado (“State”) provide written consent to the transfer the rights, benefits and obligations under the AOC, solely with respect to the Property, held by Battle North, LLC, which provides the rights and benefits set forth in Section XX (Covenants by United States and State) and Section XXIV (Effect of Settlement/Contribution). By signing this Certification, EPA and the State hereby provide such written consent.
10. The District/Authority acknowledges that at any time EPA and/or the State determine that the District/Authority’s Certification is materially inaccurate or incomplete, the Covenant Not to Sue and Contribution Protection set forth in Sections XX and XXIV of the AOC shall be null and void and the United States, EPA, and the State reserve any and all rights they may have.
11. The District/Authority acknowledges that in cases of future transfer of ownership of the Property, EPA and CDPHE will direct purchasers to the self-implementing statutory liability protections for certain landowners who are not responsible for a property’s contamination, included in the 2002 Brownfields Amendments to the Superfund law, intended to enable private parties to save time and costs, in part by avoiding EPA involvement in the majority of private property transactions. EPA’s August 25, 2015 Revised Policy on Issuance of Superfund Comfort/Status Letters may also be of interest to future purchasers of the Property.
12. For further reference, upon the transfer or assignment set forth in Paragraph 25 of the AOC, all notices and submissions required under the AOC and relating to the Property shall be sent to the following contact person: Linn Brooks, General Manager, Eagle River Water & Sanitation District, 846 Forest Road, Vail, CO 81657.

Certified by:

EAGLE RIVER WATER & SANITATION DISTRICT

Signature: *Linn Brooks*
Linn Brooks
General Manager
Eagle River Water & Sanitation District

Date: 11.22.2021

-and-

UPPER EAGLE REGIONAL WATER AUTHORITY

Signature: *Linn Brooks*
Linn Brooks
General Manager
Upper Eagle Regional Water Authority

Date: 11.22.2021

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

The Colorado Department of Public Health and Environment hereby gives written consent to the transfer of the AOC.

Signature: 
Tracie White
Division Director
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment

Date: 12/14/2021

Signature: 
Jason E. King
Senior Assistant Attorney General
Colorado Attorney General's Office

Date: 11/30/21

U.S. ENVIRONMENTAL PROTECTION AGENCY

The U.S. Environmental Protection Agency hereby gives written consent to the transfer of the AOC.

Signature: _____
Betsy Smidinger
Division Director, Region 8
Superfund & Emergency Management Division
U.S. Environmental Protection Agency

Date: _____

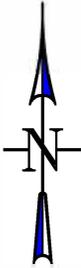
Signature: _____
Kenneth "KC" Schefski
Region Counsel, Region 8
Office of Regional Counsel
U.S. Environmental Protection Agency

Date: _____

ATTACHMENT A
MAP AND LEGAL DESCRIPTION OF THE PROPERTY

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C34	74.76	131.74	32°30'56"	N18°03'26"E	73.76
C35	22.79	180.00	7°15'16"	N30°41'16"E	22.78
C36	74.09	230.00	18°27'27"	N17°49'54"E	73.77
C37	262.85	345.33	43°36'37"	N13°12'08"W	256.55
C38	143.34	385.33	21°18'50"	N26°46'36"W	142.52
C39	86.98	270.00	18°27'27"	N17°49'54"E	86.60
C40	27.85	220.00	7°15'16"	S30°41'16"W	27.84
C41	52.06	91.74	32°30'56"	S18°03'26"W	51.37
C42	21.31	129.20	9°27'01"	N89°13'41"E	21.29
C43	14.10	543.00	1°29'17"	N85°17'22"W	14.10

LINE TABLE		
LINE	LENGTH	BEARING
L196	88.83	N34°18'54"E
L197	170.68	N27°03'38"E
L198	122.85	N08°36'11"E
L199	96.07	S16°17'50"E
L200	170.68	S27°03'38"W
L201	88.83	S34°18'54"W
L202	113.65	S00°46'30"E
L203	128.46	N00°46'30"W



H.E.S. 40
PATENT DATE: 3-7-1912

SOUTHWEST CORNER SECTION 36,
TOWNSHIP 5 SOUTH, RANGE 81 WEST



TIE: N34°53'12"W
5204.35'

TIGIWON ROAD RIGHT
OF WAY EASEMENT
60.00 FEET WIDE
BOOK 135 PAGE 72

H.E.S. No. 41
PATENT DATE: 3-7-1912

N86°02'00"W 4.69'

POB

N06°16'44"W
294.28'

L203

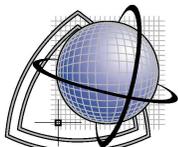
L202

C43

C42

Eagle River

Map of Trestle Area



BATTLE MOUNTAIN

SCALE: 1" = 300' DATE: OCTOBER 20, 2020 DRAWN BY: BK

SHEET: 2 of 2 PROJECT: 05554-04 CHKD BY: MJG

DRAWING: North Property Quiet Title Boundary 20181128 revised 20200621.dwg

DIRECTORY: I:\GVWF\05554\04\Survey\2011 Quiet Title\North Property\Survey\Updated North Property Survey 20130604.dwg

GAMBA
ASSOCIATES

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS

970/945-2550 WWW.GAMBAENGINEERING.COM

113 NINTH ST., STE. 214 P.O. BOX 1458 GLENWOOD SPRINGS, CO 81602

Legal Description of Trestle Area

An area of land located in Sections 1 and 2 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 34°53'12" W a distance of 5204.45 feet; thence N 70°24'37" E a distance of 263.93 feet; thence N 01°47'58" E a distance of 431.39 feet; thence 74.76 feet along the arc of a tangent curve to the right having a radius of 131.74 feet, a central angle of 32°30'56", and the chord bears N 18°03'26" E a distance of 73.76 feet; thence N 34°18'54" E a distance of 88.83 feet; thence 22.79 feet along the arc of a tangent curve to the left having a radius of 180.00 feet, a central angle of 07°15'16", and the chord bears N 30°41'16" E a distance of 22.78 feet; thence N 27°03'38" E a distance of 170.68 feet; thence 74.09 feet along the arc of a tangent curve to the left having a radius of 230.00 feet, a central angle of 18°27'27", and the chord bears N 17°49'54" E a distance of 73.77 feet; thence N 08°36'11" E a distance of 122.85 feet; thence N 03°57'24" W a distance of 422.83 feet; thence N 27°09'22" E a distance of 288.98 feet; thence N 08°36'11" E a distance of 4.83 feet; thence 262.85 feet along the arc of a tangent curve to the left having a radius of 345.33 feet, a central angle of 43°36'37", and the chord bears N 13°12'08" W a distance of 256.55 feet; thence S 61°46'23" W a distance of 323.62 feet; thence N 45°00'00" W a distance of 20.89 feet; N 61°49'23" E a distance of 359.94 feet; N 54°33'32" E a distance of 7.22 feet; thence 143.34 feet along the arc of a non tangent curve to the right having a radius of 385.33 feet, a central angle of 21°18'50", and the chord bears S 26°46'36" E a distance of 142.52 feet; thence S 56°45'44" E a distance of 185.20 feet; thence S 16°17'50" E a distance of 96.07 feet; thence S 44°48'26" W a distance of 293.69 feet; thence S 08°36'11" W a distance of 574.19 feet; thence 86.98 feet along the arc of a tangent curve to the right having a radius of 270.00 feet, a central angle of 18°27'27", and the chord bears S 17°49'54" W a distance of 86.60 feet; thence S 27°03'38" W a distance of 170.68 feet; thence 27.85 feet along the arc of a tangent curve to the right having a radius of 220.00 feet, a central angle of 07°15'16", and the chord bears S 30°41'16" W a distance of 27.84 feet; thence S 34°18'54" W a distance of 88.83 feet; thence 52.06 feet along the arc of a tangent curve to the left having a radius of 91.74 feet, a central angle of 32°30'56", and the chord bears S 18°03'26" W a distance of 51.37 feet; thence S 01°47'58" W a distance of 441.29 feet; thence S 29°36'11" W a distance of 453.22 feet; thence S 44°11'09" W a distance of 347.60 feet; thence S 00°46'30" E a distance of 113.65 feet to a point on the northerly right-of-way of Tigiwon Road as recorded in Book 135 page 72; thence along said right-of-way the following three courses:

1. 21.31 feet along the arc of a non tangent curve to the right having a radius of 129.20 feet, a central angle of 09°27'01", and the chord bears S 89°13'41" W a distance of 21.29 feet;
2. thence N 86°02'00" W a distance of 4.69 feet;
3. thence 14.10 feet along the arc of a tangent curve to the right having a radius of 543.00 feet, a central angle of 01°29'17", and the chord bears N 85°17'22" W a distance of 14.10 feet;

thence leaving said northerly right-of-way N 00°46'30" W a distance of 128.46 feet; thence N 44°11'09" E a distance of 359.03 feet; thence N 06°16'44" W a distance of 294.28 feet to the point of beginning containing 5.31 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602