

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2015 SEP 11 AM 8:28

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )

Uintah Mining District Site )  
Park City, Utah )

United Park City Mines Company, )

Respondent. )

Proceeding Under Sections 104, 106(a), )  
107 and 122 of the Comprehensive )  
Environmental Response, Compensation, )  
and Liability Act, 42 U.S.C. §§ 9604, )  
606(a), 9607 and 9622. )

U.S. EPA Docket No. )  
CERCLA Docket No. )

**CERCLA-08-2015-0008**

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION**

## TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS.....	1
II.	PARTIES BOUND .....	1
III.	DEFINITIONS.....	1
IV.	FINDINGS OF FACT.....	3
V.	CONCLUSIONS OF LAW AND DETERMINATIONS .....	4
VI.	SETTLEMENT AGREEMENT AND ORDER.....	4
VII.	DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR .....	5
VIII.	WORK TO BE PERFORMED.....	5
IX.	PROPERTY REQUIREMENTS .....	8
X.	ACCESS TO INFORMATION .....	8
XI.	RECORD RETENTION.....	10
XII.	COMPLIANCE WITH OTHER LAWS .....	10
XIII.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES.....	10
XIV.	PAYMENT OF RESPONSE COSTS.....	11
XV.	DISPUTE RESOLUTION .....	13
XVI.	FORCE MAJEURE .....	14
XVII.	STIPULATED PENALTIES .....	15
XVIII.	COVENANTS BY EPA .....	16
XIX.	COVENANTS BY RESPONDENT.....	18
XX.	OTHER CLAIMS .....	19
XXI.	EFFECT OF SETTLEMENT/CONTRIBUTION .....	19
XXII.	INDEMNIFICATION.....	20
XXIII.	INSURANCE.....	21
XXIV.	ADDITIONAL WORK/MODIFICATION .....	21
XXV.	NOTICE OF COMPLETION OF WORK.....	22
XXVI.	INTEGRATION/APPENDICES .....	22
XXVII.	EFFECTIVE DATE.....	23

## I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and United Park City Mines Company (Respondent). This Settlement provides for the performance of a removal action by Respondent at or in connection with the Uintah Mining District Site (Site) located in Summit County, Utah as defined in Exhibit A to the Action Memorandum attached hereto as Appendix A.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders). This authority was further redelegated by the Regional Administrator of EPA Region 8 to the Assistant Regional Administrator, Office of Ecosystem Protection and Remediation by EPA Delegation No. 14-14-C and jointly to supervisors in the Legal and Technical Enforcement Programs by EPA Delegation No. 14-14-D.

3. EPA has notified the State of Utah (State) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any responsibility or liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings solely by the United States to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of the findings of facts, conclusions of law, and determinations in Section IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement in any proceeding solely by the United States to enforce or implement this Settlement or its terms.

## II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent or, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement and comply with this Settlement. Respondent shall be responsible for any noncompliance with the terms of this Settlement.

## III. DEFINITIONS

7. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned

to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“Action Memorandum” shall mean the EPA Action Memorandum relating to the Site signed in August 2015 by the Regional Administrator, EPA Region 8, or his delegate, and all attachments thereto. The Action Memorandum is attached hereto as Appendix A.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXVII.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 72 (Work Takeover), community involvement, Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at [http://www.epa.gov/ocfopage/finstatement/superfund/int\\_rate.htm](http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm).

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Respondent.

“Post-Removal Site Control” shall mean actions necessary to ensure the effectiveness and integrity of the erosion control features created during the removal action to be performed pursuant

to this Settlement, consistent with Sections 300.415(*l*) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Respondent” shall mean United Park City Mines Company, also known as UPCM.

“Section” shall mean a portion of this Settlement identified by a Roman numeral.

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVI (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“State” shall mean the State of Utah.

“UDEQ” shall mean the State of Utah Department of Environmental Quality.

“Uintah Mining District Site” or “Site” shall mean those certain areas in Ontario Canyon, Lower Empire Canyon, Upper Woodside Gulch, Treasure Hollow and Upper Thaynes Cannon as defined in Exhibit A to the Action Memorandum attached hereto as Appendix A.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

“Work” shall mean all activities and obligations Respondent is required to perform under this Settlement except those required by Section XI (Record Retention).

“Work Plan” shall mean the work plan attached hereto as Appendix B and incorporated herein for the implementation of the removal action set forth in the Action Memorandum to be performed pursuant to this Settlement and any modifications made thereto in accordance with this Settlement.

#### IV. FINDINGS OF FACT

8. Mining operations undertaken by various entities within the Park City Mining District, including the Site, produced substantial quantities of ore between 1875 and 1982.

9. In 2014, EPA’s Remedial Program requested an assessment of areas where former mining activities once occurred and that could be considered sources of contaminated material.

10. In connection with this Settlement, EPA has created the Uintah Mining District Site.

11. Soil samples at the Site indicate elevated concentrations of lead, arsenic, and other metals. Soils are uncovered and may mobilize or migrate during weather events.

12. Land use on and around the Site is generally recreational, with certain portions located on a ski mountain.

13. The Respondent is a Delaware corporation doing business in Utah. Respondent and others conducted various mining operations within the Park City Mining District until approximately 1969. These activities included mining ore from areas including the California Mine and Ontario Mine; milling ore at the Marsac, Ontario, and Silver King Mills; as well as operating aerial tramways serving the Silver King Mine, Silver King Mill, and Ontario Mill.

14. The Respondent is the current owner of portions of the Site.

15. Exposure to heavy metals including lead, cadmium and arsenic may cause adverse health effects in humans. Ecosystems near sources of heavy metals may also experience adverse effects including loss of biodiversity, changes in community composition, decreased growth and reproductive rates in plants and animals, and neurological effects in vertebrates.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

16. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

- a. The Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent is or was an “owner” and/or “operator” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- e. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The removal action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## VI. SETTLEMENT AGREEMENT AND ORDER

17. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions

of this Settlement, including, but not limited to, all attachments to this Settlement and all documents incorporated by reference into this Settlement.

## VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

18. Respondent may retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 30 days after the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 7 days after EPA's disapproval.

19. Respondent has notified EPA that it intends to use Kerry Gee as Project Coordinator for the actions required by this Settlement. EPA hereby approves Respondent's selection of the foregoing personnel. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 7 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

20. EPA has designated Martin McComb of the Emergency Preparedness and Response Program, Region 8, as its On-Scene Coordinator (OSC). EPA and Respondent shall have the right, subject to Paragraph 19, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA 7 days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

21. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

## VIII. WORK TO BE PERFORMED

22. Respondent shall perform the construction or creation of erosion control features at the Site to address the off-Site migration of lead, arsenic, and other heavy metals, in order to implement the Action Memorandum (Appendix A), but not as to anything referenced in Section II.B. thereof, and the Work Plan (Appendix B).

### 23. Work Plan and Implementation.

- a. Respondent shall conduct the Work activities in accordance with the provisions of this Settlement, the Work Plan attached hereto as Appendix B, CERCLA, the NCP, and EPA Guidance. Upon the Effective Date of this Settlement, Respondent shall commence implementation of the Work in accordance with the Work Plan

schedule. Respondent shall not commence any Work except in conformance with the terms of this Settlement.

- b. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

24. Submission of Deliverables.

a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC at Martin McComb, EPA-ER, 1595 Wynkoop St., Denver, Colorado, 80202, phone number 303-312-6963, email [mccomb.martin@epa.gov](mailto:mccomb.martin@epa.gov). Respondent shall submit all deliverables required by this Settlement, Work Plan, or any other approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondent shall also provide EPA with paper copies of such exhibits.

25. Health and Safety Plan. Within 7 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available at [nepis.epa.gov/Exec/zyPURL.cgi?Dockey=91016578.TXT](http://nepis.epa.gov/Exec/zyPURL.cgi?Dockey=91016578.TXT), and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at <http://www.epaosc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

26. Notwithstanding any provision of this Settlement, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes and regulations.

27. Community Involvement Plan. EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. As requested by EPA, Respondents shall provide information supporting EPA's community involvement plan and shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

28. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for Post-Removal Site Control upon completion of the actions contemplated herein. Upon EPA approval, Respondent shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA with documentation of all Post-Removal Site Control commitments.



29. Progress Reports. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement by the 7<sup>th</sup> day of each month after the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXV, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

30. Final Report. Within 90 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 97 (notice of completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

31. Off-Site Shipments.

- a. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if Respondent complies with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).
- b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. Consistent with EPA's previous determination regarding the applicability of the off-site rule at the Site, the OU1 Repository shall not be considered an off-site location for purposes of this Paragraph. The written notice must include the

following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

## IX. PROPERTY REQUIREMENTS

32. Respondent shall not transfer any of the areas within the Site without first securing transferee's consent to an agreement that: (i) is enforceable by EPA and (ii) until the implementation of Post Removal Site Control at any such area within the Site requires the transferee to (a) provide access to any such areas within the Site; (b) use any such areas in compliance with environmental law; and (c) coordinate with EPA regarding any activities that could potentially cause or exacerbate a release of hazardous substances.

33. If any portion of the Site, or any other property where access is needed to implement this Settlement, is owned and controlled by Respondent, Respondent shall commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to such property, for the purpose of conducting any activity relating to the Settlement.

34. Where any action under this Settlement is to be performed in areas owned by or in possession or control of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 Days after Respondent becomes aware that such access is needed, or as otherwise specified in writing by the EPA project coordinator.

35. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance, and the payment of reasonable sums of money to secure agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondent or take independent action, in obtaining such access. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

36. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

## X. ACCESS TO INFORMATION

37. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) within Respondent's possession or control or that of their contractors or agents relating to activities at

the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work (hereinafter referred to as "Records"). Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

38. Privileged and Protected Claims.

- a. Respondent may assert that certain documents, records, or other information, including all or part of a Record requested by EPA, is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 38.b, and except as provided in Paragraph 38.c.
- b. If Respondent asserts such a privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.
- c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences environmental conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

39. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

40. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## XI. RECORD RETENTION

41. Until ten (10) years after EPA provides Respondent with notice, pursuant to Section XXV (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

42. At the conclusion of the document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 38 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

43. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

## XII. COMPLIANCE WITH OTHER LAWS

44. UPCM shall perform all actions required pursuant to this Settlement in accordance with all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Removal Work Plan subject to EPA approval.

## XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

45. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, Laura Williams, Emergency Response Unit, EPA Region 8 Preparedness, Assessment and Emergency Response Program, at 303-312-6108, and the Region 8 Emergency Response Spill Report Hotline, at 1-800-227-8914 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all

costs of the response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

46. Release Reporting. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at the Region 8 Emergency Response Spill Report Hotline, at 1-800-227-8914 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

#### XIV. PAYMENT OF RESPONSE COSTS

47. Payments for Future Response Costs. Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP.

- a. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a certified cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 49 (Contesting Future Response Costs).
- b. Respondent shall make payments to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number and the EPA docket number for this action.

- c. At the time of payment, Respondent shall send notice that payment has been made to:

U.S. EPA Region 8 Finance Program Manager  
Superfund Remedial Section, 8TMS-FMP  
1595 Wynkoop Street  
Denver, Colorado 80202

and to:

Technical Enforcement Specialist  
Uintah Mining District Site  
U.S. EPA Region 8  
8ENF-RC  
1595 Wynkoop St.  
Denver, Colorado 80202

and to the EPA Cincinnati Finance Office by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), or by mail to:

EPA Cincinnati Finance Office  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number and the EPA docket number for this action.

- d. Deposit of Future Response Costs Payments. The total amount to be paid by Respondent pursuant to Paragraph 47.a shall be deposited by EPA in the Uintah Mining District Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Uintah Mining District Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

48. Interest. In the event that any payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 60 (Stipulated Penalties - Work).

49. Contesting Future Response Costs. Respondent may submit a Notice of Dispute, initiating the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 47 if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the OSC. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 47. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow

account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 47. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 47. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

## XV. DISPUTE RESOLUTION

50. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes between EPA and Respondent arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

51. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 14 days after such action. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through formal negotiations (the Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

52. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

53. Except as provided in Paragraph 49 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 62. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties). In the event Respondent prevails, stipulated penalties shall not apply.

## XVI. FORCE MAJEURE

54. Respondent agrees to perform all Work within the time limits established under this Settlement Agreement, unless the performance is delayed by a force majeure. For purposes of this Settlement Agreement, a force majeure is defined as any event arising from causes beyond the control of Respondent, or any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work or increased cost of performance.

55. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondent shall notify EPA verbally within forth-eight (48) hours following the time when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

56. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

57. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 54 and 55. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

58. The failure by EPA to timely complete any obligation under the Settlement or under the Work Plan is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from meeting one or more deadlines under the Settlement or under the Work Plan, Respondent may seek relief under this Section.



## XVII. STIPULATED PENALTIES

59. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 60 for failure to comply with the requirements of this Settlement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondent shall include completion of all activities and obligations, including payments, required under this Settlement, or any deliverable approved under this Settlement, in accordance with all applicable requirements of law, this Settlement, the Work Plan, and any deliverables approved under this Settlement and within the specified time schedules established by and approved under this Settlement.

60. Stipulated Penalty Amounts – Compliance Milestones.

- a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 60.b.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$800	1st through 14th day
\$1,000	15th through 30th day
\$2,000	31st day and beyond

b. Compliance Milestones. Failure to submit or timely submit the Final Report as described in the Work Plan.

61. In the event that EPA assumes performance of all or any portion(s) of the Work pursuant to Paragraph 72 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$50,000.

62. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue with respect to a decision by the EPA Management Official at the Assistant Regional Administrator level or higher, under Paragraph 52 of Section XV (Dispute Resolution), during the period, if any, beginning the 21<sup>st</sup> day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

63. Following EPA's determination that Respondent failed to comply with a requirement of this Settlement to which stipulated penalties apply, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

64. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 47 (Payments for Future Response Costs).

65. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 62 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 64 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

66. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement.

67. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that the EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 72 (Work Takeover).

68. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

#### XVIII. COVENANTS BY EPA

69. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants not to sue (and all reservations thereto in this Settlement) shall also apply to Respondent's officers, directors, employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of Respondent. These covenants not to sue extend only to Respondent and to Respondent's officers, directors, employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of Respondent, and do not extend to any other person.

#### XIX. RESERVATIONS OF RIGHTS BY EPA

70. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on,

at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

71. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. liability for failure by Respondent to meet a requirement of this Settlement;
- b. liability for costs not included within the definitions of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

72. Work Takeover.

- a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of ten (10) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.
- b. If, after expiration of the ten (10) day notice period specified in Paragraph 72.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (Work Takeover). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 72.b.

- c. Respondent may invoke the procedures set forth in Paragraph 52 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 72.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 72.b until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 52 (Formal Dispute Resolution).
- d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

### XIX. COVENANTS BY RESPONDENT

73. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this Settlement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Settlement.
- c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

74. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 71.a (liability for failure to meet a requirement of the Settlement), 71.d (criminal liability), or 71.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

75. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

76. Respondent reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of

property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

## XX. OTHER CLAIMS

77. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

78. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

79. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## XXI. EFFECT OF SETTLEMENT/CONTRIBUTION

80. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XIX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

81. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are matters relating to the Site, the Work, and Future Response Costs. The contribution protection provisions of this Paragraph shall also apply to UPCM's officers, directors, employees, successors, and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor, or assign of UPCM, and not to the extent that the alleged liability arose independently of the alleged liability of UPCM.

82. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

83. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

84. Effective upon signature of this Settlement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by Section XVII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 81 and that, in any action brought by the United States related to the "matters addressed," Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

## XXII. INDEMNIFICATION

85. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

86. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

87. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but

not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

### XXIII. INSURANCE

88. No later than 30 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXV (Notice of Completion of Work), commercial general liability insurance with limits of \$2 million, for any one occurrence, and automobile insurance with limits of \$1 million, combined single limit, naming the EPA as an additional insured. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

### XXIV. ADDITIONAL WORK/MODIFICATION

89. If Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the EPA project coordinator within seven (7) Days of identification. EPA in its discretion will determine whether the additional data shall be collected by Respondent and whether it will be incorporated into plans, reports and other deliverables.

90. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA project coordinator within twenty-four (24) hours following discovery of the unanticipated or changed circumstances. In the event EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan in writing accordingly in a manner not inconsistent with Respondent's obligations under Paragraph 22 of this Settlement. Respondent shall perform the Work Plan as modified or amended.

91. EPA may, after consultation with Respondent, determine that in addition to tasks defined in the initially approved Work Plan, other additional Work consistent with Paragraph 22 may be necessary to accomplish erosion control features at the Site consistent with the Action Memorandum. EPA shall send to Respondent a request to perform such additional work and, subject to Paragraph 93 below, Respondent agrees to perform these actions in addition to those required by the initially approved Work Plan, including any approved modifications, if EPA determines that such actions are necessary to implement the Action Memorandum (but not as to anything referenced in Section II.B. thereof).

92. Respondent shall confirm its willingness to perform the additional Work in writing to EPA within seven (7) Days of receipt of the EPA request. If Respondent objects to any modification determined by EPA to be necessary pursuant to Paragraph 92, Respondent may seek dispute resolution

pursuant to Section XV (Dispute Resolution). The Work Plan shall be modified in accordance with the final resolution of the dispute.

93. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or written Work Plan supplement. Subject to Paragraph 72, EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent and/or to seek any other appropriate relief.

94. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site. The OSC may modify any schedule for tasks within a given construction season in writing or orally, but may not accelerate tasks under the initially approved Work Plan from 2016 to 2015. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

95. If Respondent seeks permission to deviate from any approved work plan or schedule or the Work Plan, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 94.

96. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

## XXV. NOTICE OF COMPLETION OF WORK

97. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including Post Removal Site Controls and Payment of Future Response Costs, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Removal Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

## XXVI. INTEGRATION/APPENDICES

98. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. [The following appendices are attached to and incorporated into this Settlement:

- a. "Appendix A" is the Action Memorandum.
- b. "Appendix B" is the Work Plan.



XXVII. EFFECTIVE DATE

This Settlement shall be effective upon signature by the Regional Administrator or his delegatee.

The undersigned representative of Respondent certifies that it he is fully authorized to enter into the terms and conditions of this Settlement and to bind the party he represents to this document.

Agreed this \_\_ day of August, 2015.

For Respondent, United Park City Mines Company



By:

Title:

Vice President

DATE:

9-3-15

It is so ORDERED and Agreed:

By: Andrea Madigan  
Andrea Madigan, CERCLA Supervisory Attorney  
Legal Enforcement Program  
U.S. Environmental Protection Agency, Region 8

DATE: 9/4/15

By: Kelcey Land  
Kelcey Land, Director  
RCRA & CERCLA Technical Enforcement Program  
U.S. Environmental Protection Agency, Region 8

DATE: 9/9/15

By: David Ostrander  
David Ostrander, Director  
Preparedness, Assessment, and Emergency Response Program  
U.S. Environmental Protection Agency, Region 8

Date: 9/10/2015

EFFECTIVE DATE: 9.10.15

## Appendix A



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 8**  
**1595 Wynkoop STREET**  
**DENVER, CO 80202-1129**  
**Phone 800-227-8917**  
**<http://www.epa.gov/region08>**

Ref: 8EPR-ER

**ACTION MEMORANDUM**

**SUBJECT:** Request for a Removal Action at the Uintah Mining District Site in Summit County, Utah

**FROM:** Martin McComb  
Federal On-Scene Coordinator

**THRU:** Laura Williams, Unit Leader  
Emergency Response

**TO:** David A. Ostrander, Program Director  
Emergency Response & Preparedness

Site ID# A8K3

**I. PURPOSE**

The purpose of this Action Memorandum is to request and document approval of the removal action described herein at the Uintah Mining District Site (Site) (as generally defined in Attachment A) located in Park City, Summit County, Utah. Lead and other heavy metals are the hazardous substances of concern.

This time-critical removal action involves the creation or construction and subsequent protection of erosion control features at the Site to address migration of hazardous substances in areas where historic mining operations have occurred.

Conditions existing at the Site present a threat to public health and the environment and meet the criteria for initiating a removal action under 40 CFR 300.415(b)(2) of the National Contingency Plan (NCP).

In an August 12, 2015 email, EPA regional Superfund programs were instructed to immediately cease any field work at mines. Subsequent memorandums on August 14, 2015 and September 4, 2015 provided additional details for determining if work should be discontinued at sites subject to the work stoppage. Because there is no substantial hydraulic component (e.g., water-containing mining features such as mine workings, tailings dams, open pits and heap leach piles) related to the Site and the Site has no known water in the mines which present a hazard with the potential to create an emergency, the Site is considered a category 1 Site as defined in the

September 4 memo and work is appropriate to proceed with implementation of this TCRA as documented by approval of this Action Memorandum.

This time-critical removal action involves no nationally-significant nor precedent-setting issues. This removal action will not establish any precedent for how future response actions will be taken and will not commit the EPA to a course of action that could have a significant impact on future responses or resources.

## II. SITE CONDITIONS AND BACKGROUND

Site Name:	Uintah Mining District
Site ID (SSID):	A8K3
NRC Case Number:	Not Applicable
CERCLIS Number:	UTN000801643
Site Location:	Summit County, Utah
Lat/Long:	40.6461/-111.4980
Potentially Responsible Party:	United Park City Mines (UPCM)
NPL Status:	non-NPL
Removal Start Date:	10/01/2015

### A. Site Description

#### 1. Removal Site Evaluation

Mining began in the Uintah Mining District around 1869 and the area produced substantial quantities of ore between 1875 and 1982. Mining operations involved tunnels to extract the ore, tramways and railroads to transport ore, and milling facilities to process the ore. As a result of these mining operations, tailings and other mine waste containing heavy metals were deposited throughout the mining district.

In 2014, EPA's Remedial Program requested an assessment of areas where mining activities once occurred and that could be sources of contaminated material. EPA's Response Unit subsequently utilized existing sampling data and information on the location of former mining activities, visual inspections and in-situ x-ray fluorescence (XRF) analysis to evaluate soil conditions in the following drainages:

- Ontario Canyon
- Empire Canyon
- Woodside Gulch
- Treasure Hollow
- Thaynes Canyon

#### Ontario Canyon

Historic mining features in Ontario Canyon included the Judge Loading Station as well as the Ontario Mine, Mill and Tunnel. The surface concentrations of lead in the waste piles at the Ontario Mine exceed 1,000 mg/kg and the piles display obvious signs of erosion. The historic Ontario Mill was effectively capped and re-vegetated during the construction of a runaway truck

ramp. The concentrations of lead in exposed soil at the Judge Loading Station and Ontario Tunnel area exceed 10,000 mg/kg in several locations and the soil displays obvious signs of erosion.

### Empire Canyon

Historic mining features in Empire Canyon included the Judge and Alliance waste pile. The surface concentrations of lead at the Judge and Alliance waste pile exceed 1,000 mg/kg of lead and some locations exceed 10,000 mg/kg. The pile displays obvious signs of erosion and contaminated soil was identified down gradient of this waste pile. The area is located on the outskirts of town just up gradient of the residential properties along Daly Avenue and is regularly used by hikers and bikers.

### Woodside Gulch

Historic mining features in Woodside Gulch include the Silver King Mine and Mill. The Silver King Mine and Mill area contains approximately 56,000 cubic yards of mine waste and the surface concentrations of lead exceed 10,000 mg/kg in several locations. The waste piles display obvious signs of erosion. The main drainage comes into direct contact with this mine waste and contaminated soil was identified downstream of the waste piles in the middle reaches of Woodside Gulch.

### Treasure Hollow

Historic mining features in Treasure Hollow include the Treasure Hollow waste pile. The waste pile at Treasure Hollow contains approximately 102,000 cubic yards of mine waste. The pile is relatively homogeneous and surface concentrations of lead exceed 1,000 mg/kg. The pile is poorly vegetated and displays obvious signs of erosion. A summer trail crosses the pile.

### Thaynes Canyon

Historic mining features in Thaynes Canyon include the California Mine, Comstock Mine, Apex Mine and Thaynes Shaft. These features together contain approximately 263,000 cubic yards of waste material and the surface concentrations of lead exceed 10,000 mg/kg in several locations. The waste piles display obvious signs of erosion including use of an excavator to maintain an access road on the ski resort. The main Thaynes drainage channel comes into direct contact with the waste piles and mine waste was identified in the drainage downstream of the piles.

## **2. Physical Location**

The Site is located in the upper Silver Creek watershed of the Wasatch Mountains in central Utah and includes areas containing remnant mine waste associated with the historic Ontario Mine, Ontario Tunnel and Judge Loading Station in Ontario Canyon, the Judge and Alliance waste pile in Empire Canyon, the Silver King Mine and Mill in Woodside Gulch, the waste pile at Treasure Hollow and the California Mine, Comstock Mine, Apex Mine and Thaynes Shaft in Thaynes Canyon. These areas are generally depicted in Attachment 2.

### **3. Site Characteristics**

The general area is home to several ski resorts and, depending on the time of year, the tourist population exceeds the number of permanent residents (which were estimated to be 7,558 in 2010). The areas are used primarily for recreational purposes, mainly hiking or skiing.

Woodside Gulch, Treasure Hollow and Thaynes Canyon are located at or proximate to the Park City Ski Resort. Ontario Canyon and Empire Canyon are located just upstream of residential properties in Park City, Utah.

### **4. Release or Threatened Release into the Environment of a Hazardous Substance, Pollutant, or Contaminant**

The presence of lead in the soils presents a release of hazardous substances to the environment. Lead is a listed hazardous substances in 40 CFR §302.4. This contaminant is found at the ground surface and is being released due to erosion.

According to the Agency for Toxic Substances and Disease Registry (ATSDR), “The effects of lead are the same whether it enters the body through breathing or swallowing. Lead can affect almost every organ and system in your body. The main target for lead toxicity is the nervous system, both in adults and children. Long-term exposure of adults can result in decreased performance in some tests that measure functions of the nervous system. It may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage. High level exposure in men can damage the organs responsible for sperm production.

Children are more vulnerable to lead poisoning than adults. A child who swallows large amounts of lead may develop blood anemia, severe stomachache, muscle weakness, and brain damage. If a child swallows smaller amounts of lead, much less severe effects on blood and brain function may occur. Even at much lower levels of exposure, lead can affect a child's mental and physical growth.

Exposure to lead is more dangerous for young and unborn children. Unborn children can be exposed to lead through their mothers. Harmful effects include premature births, smaller babies, decreased mental ability in the infant, learning difficulties, and reduced growth in young children. These effects are more common if the mother or baby was exposed to high levels of lead. Some of these effects may persist beyond childhood.”<sup>1</sup>

### **5. NPL Status**

The Uintah Mining District Site is not on EPA's National Priorities List (NPL).

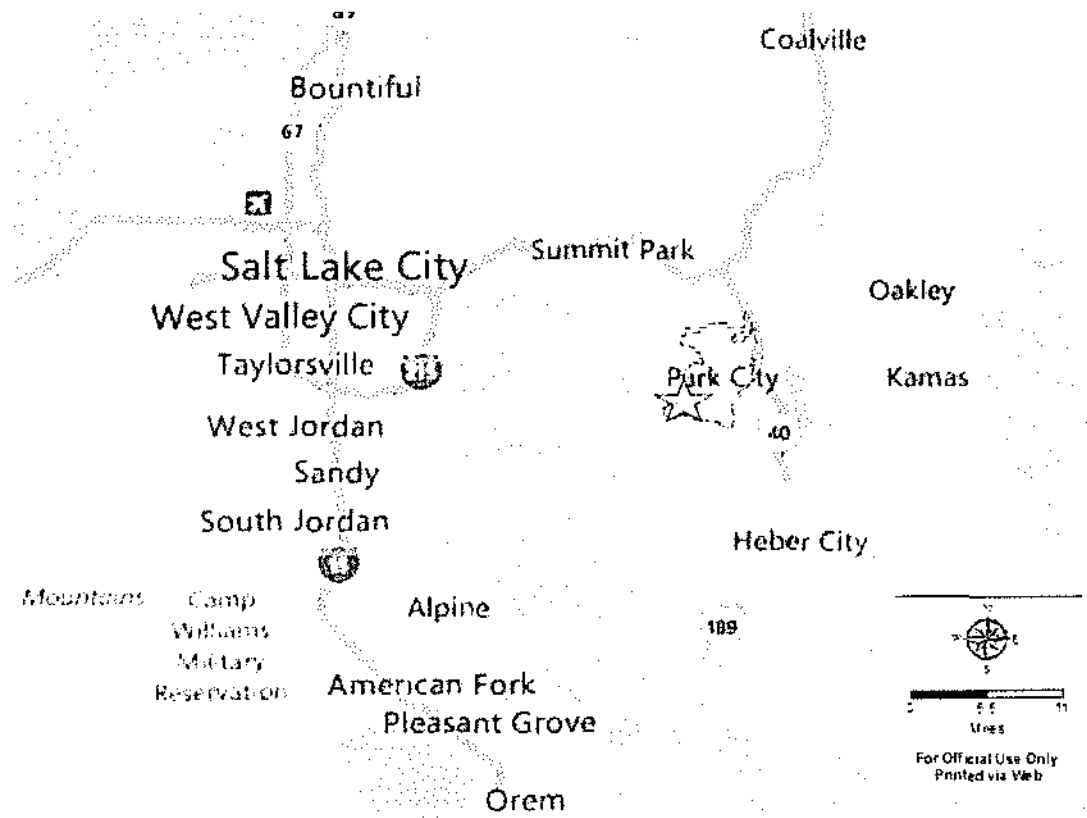
---

<sup>1</sup> Website, <http://www.atsdr.cdc.gov/toxfaqs/tf.asp?id=93&tid=22>.

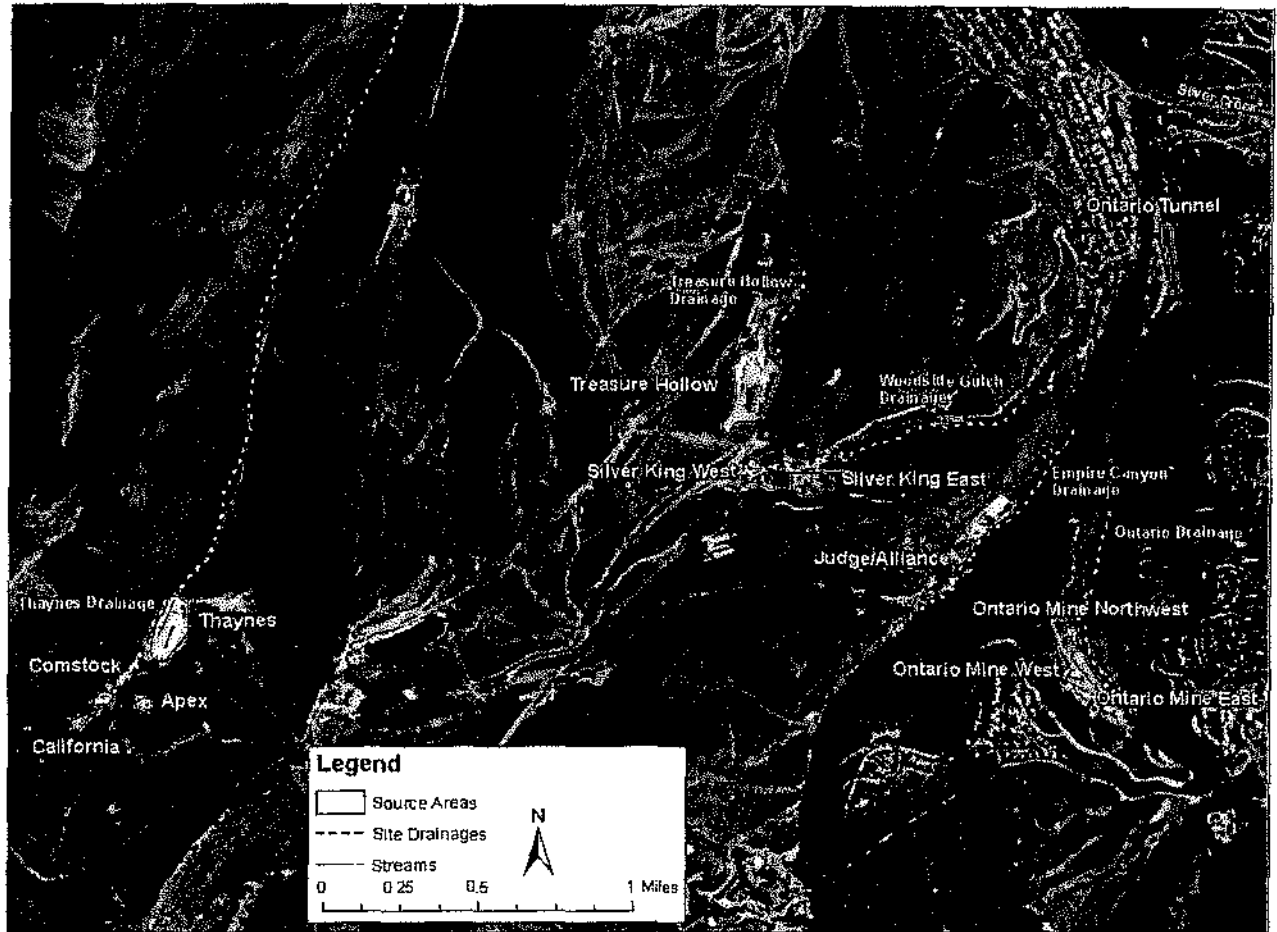


## 6. Maps, Pictures, Other Geographic Representations

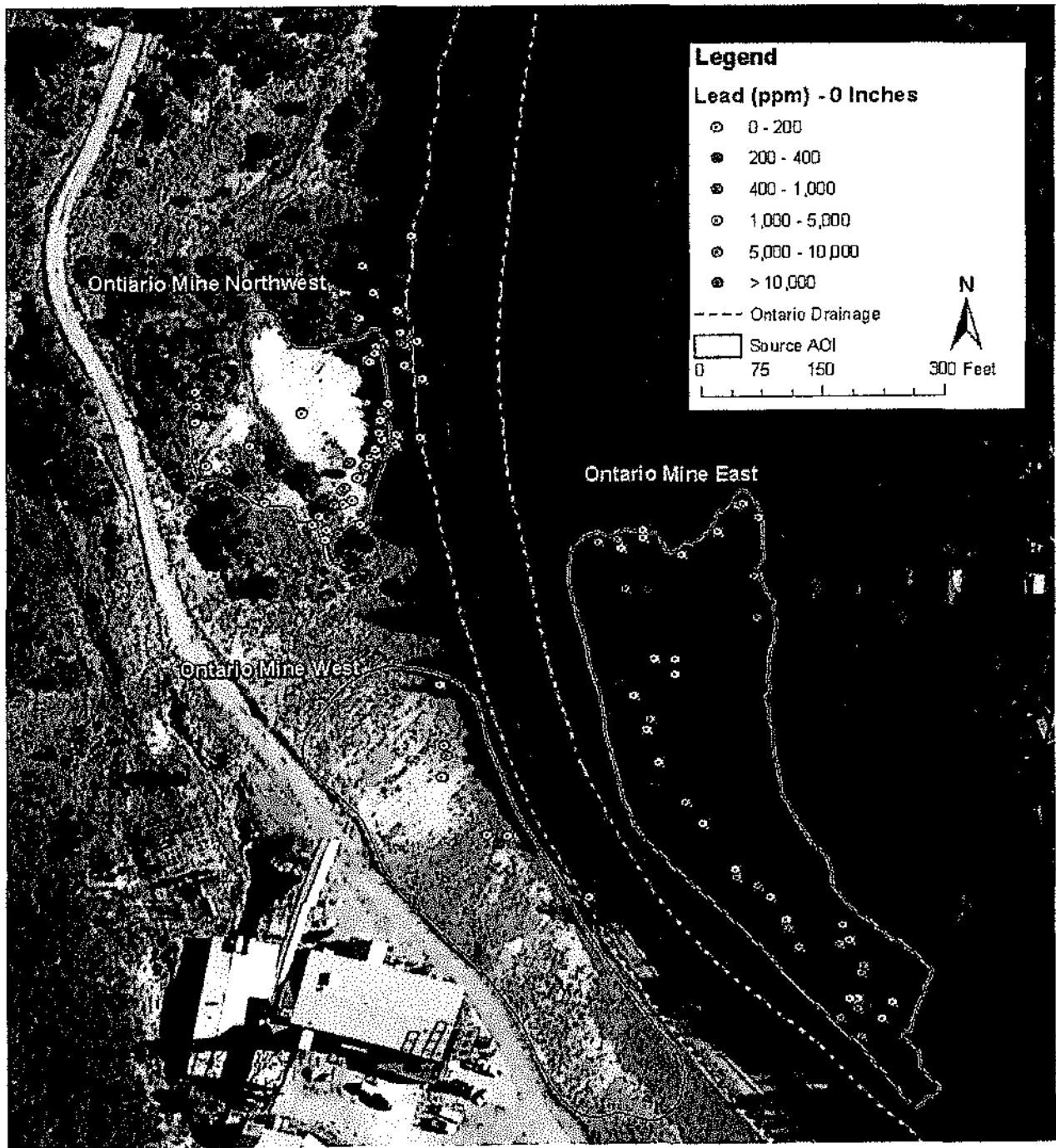
*Location of the Uintah Mining District Site in Park City, Utah*



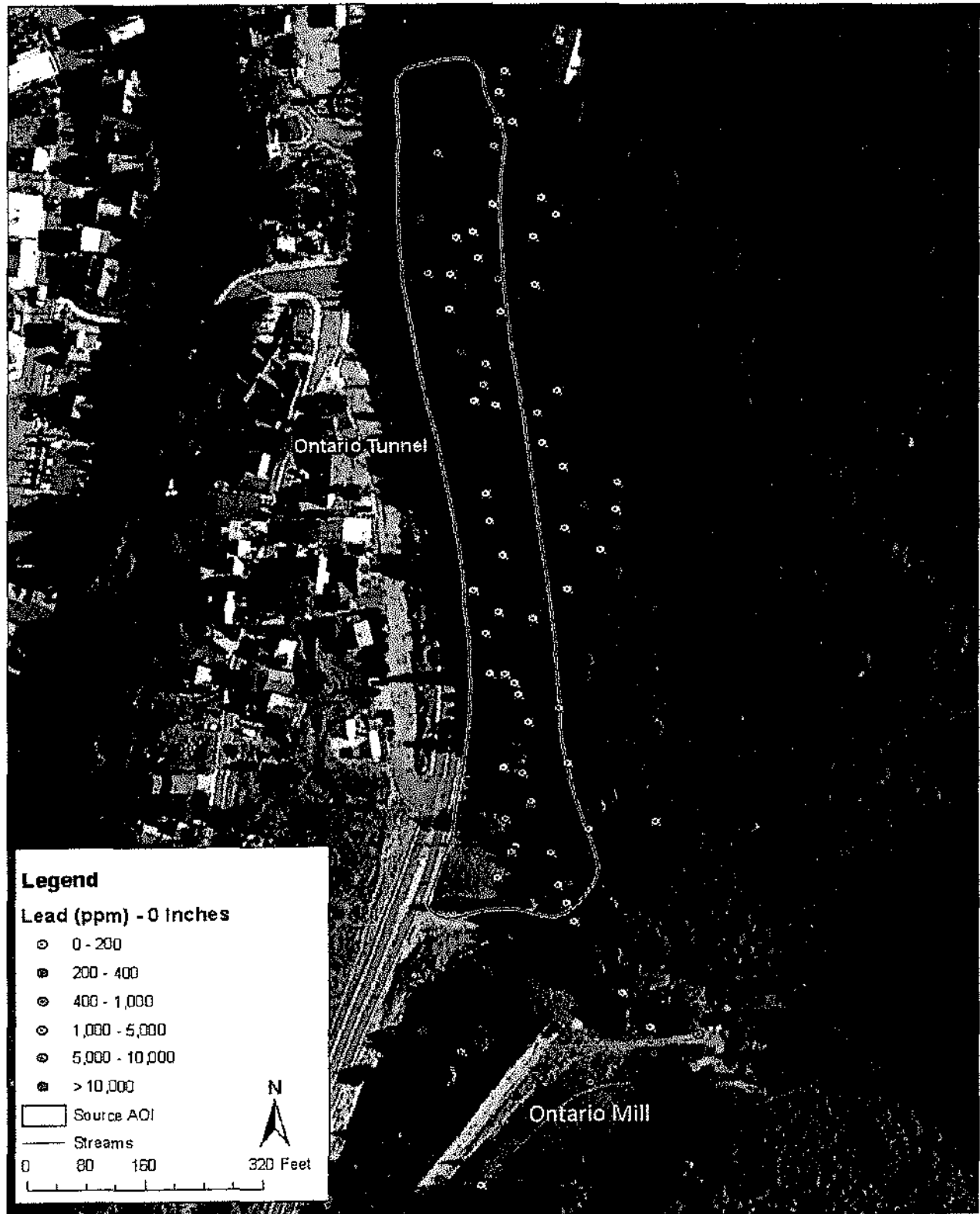
*Areas of Interest at the Site (detailed)*



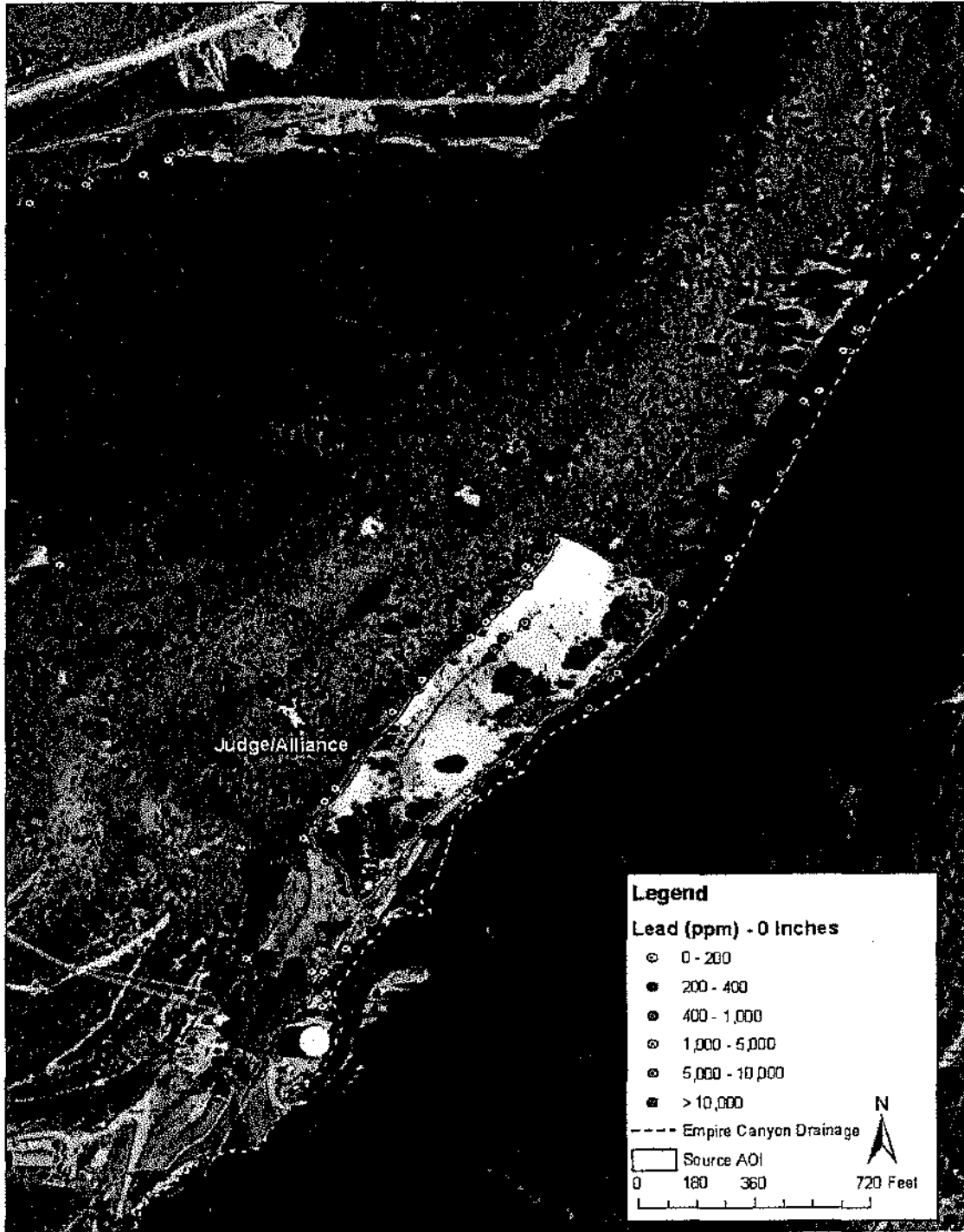
Soil lead concentrations at the surface in the Ontario Mine Area of Interest (Ontario Canyon)



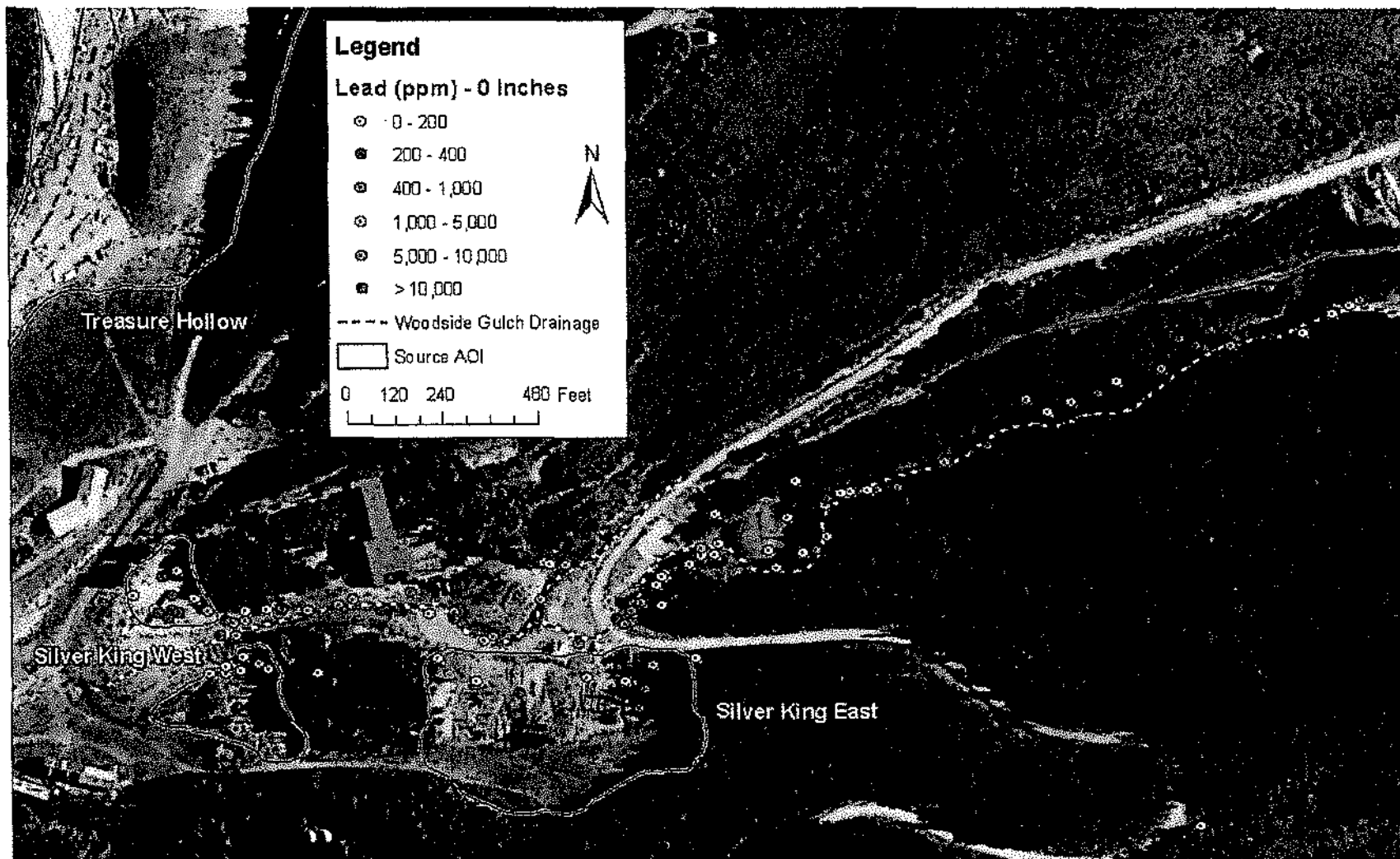
Soil lead concentrations at the surface in the Judge Loading Station, Ontario Tunnel and Ontario Mill Areas of Interest (Ontario Canyon)



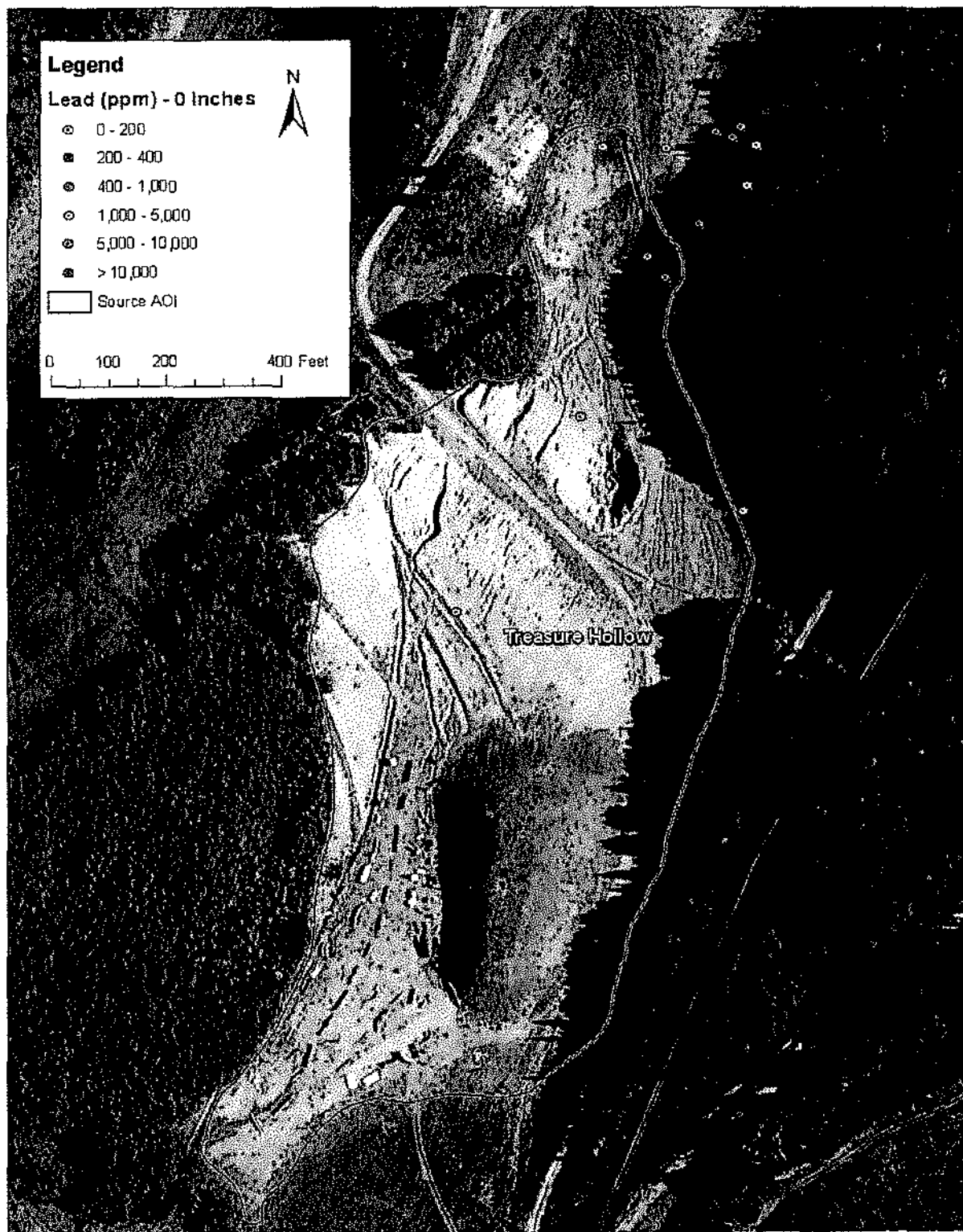
Soil lead concentrations at the surface in the Judge / Alliance waste pile Area of Interest (Empire Canyon)



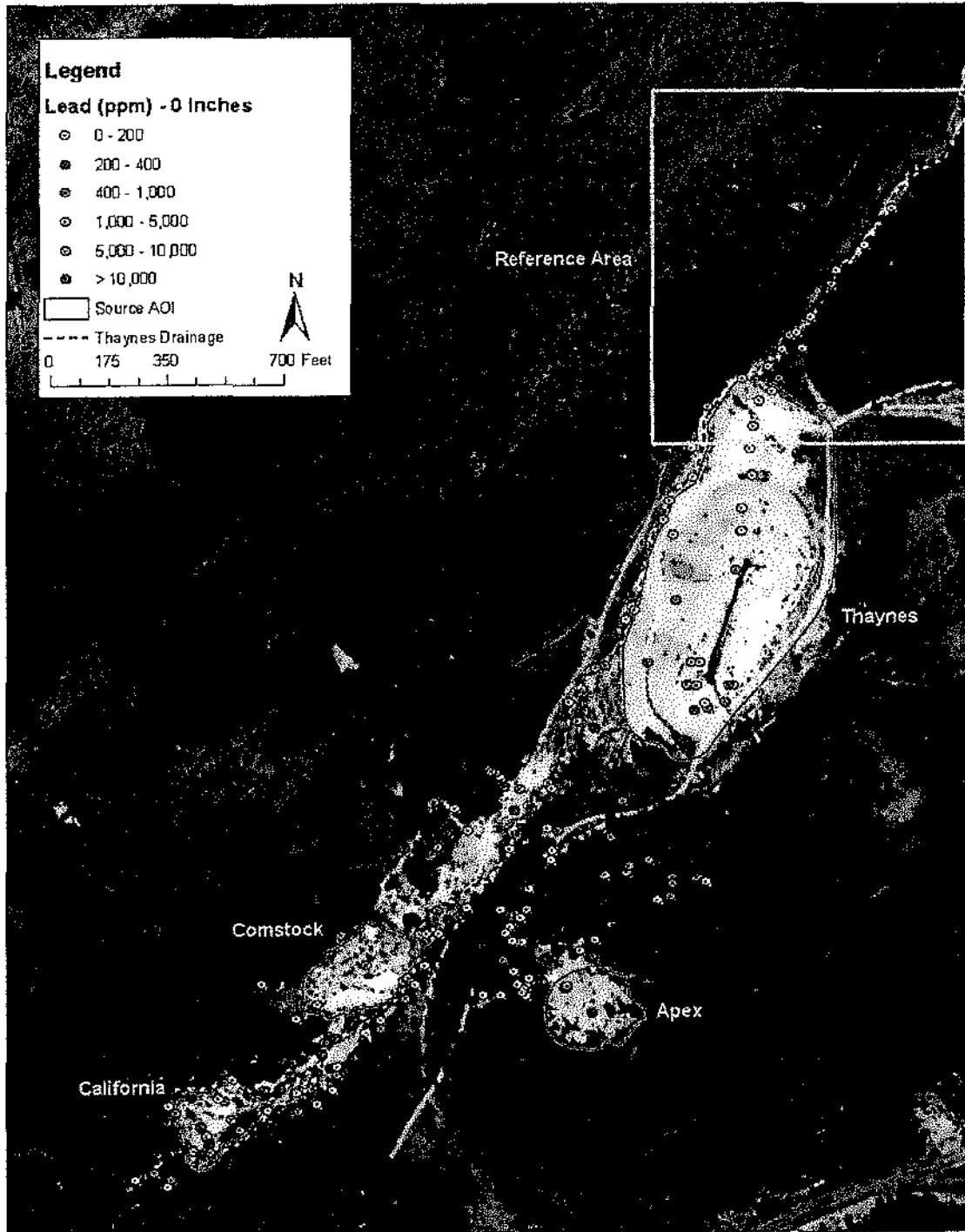
Soil lead concentrations at the surface in the Silver King Mine and Mill Areas of Interest (Woodside Gulch)



Soil lead concentrations at the surface in the Treasure Hollow waste pile Area of Interest

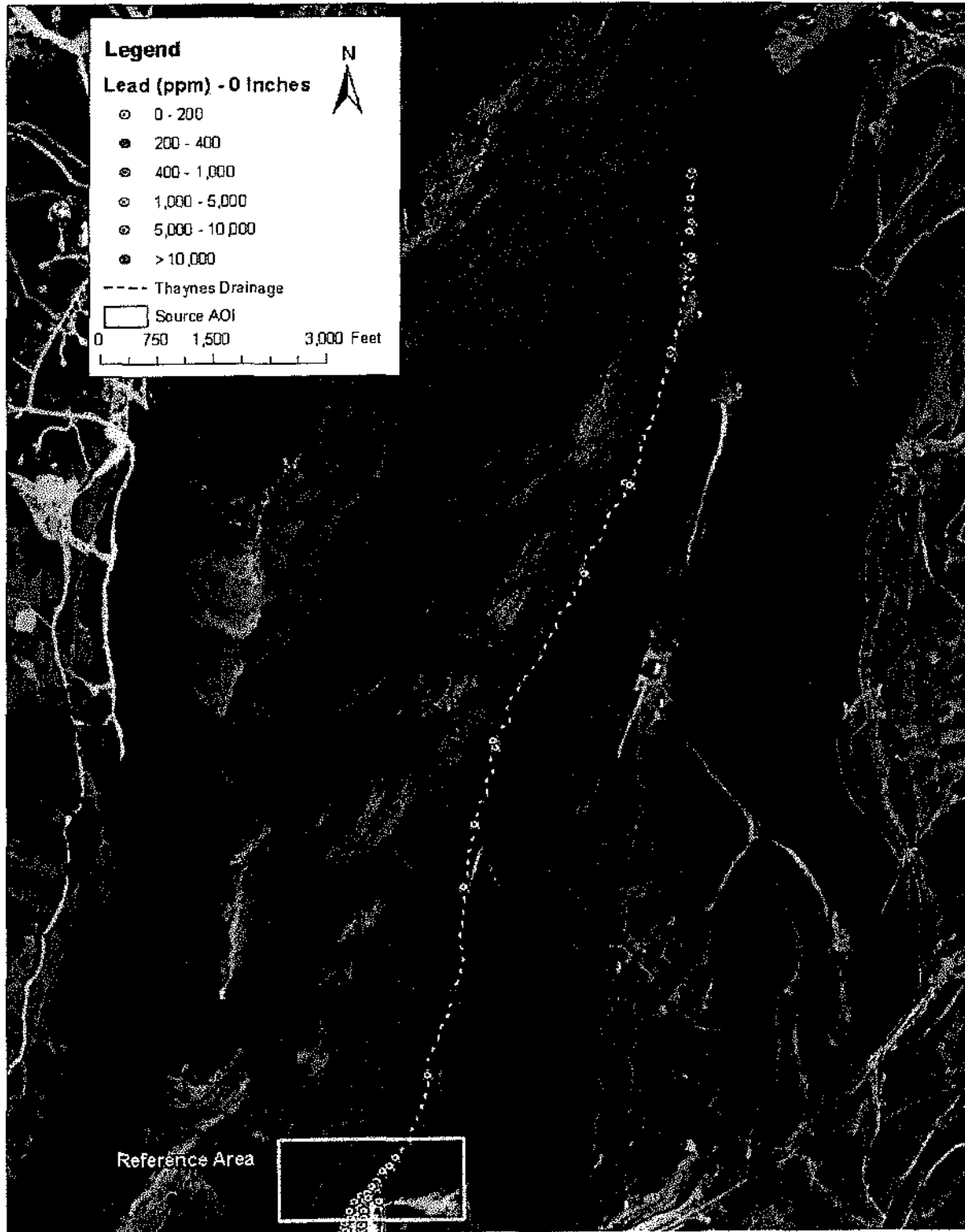


*Soil lead concentrations at the surface in the California Mine, Comstock Mine, Apex Mine and Thaynes Shaft Areas of Interest (Thaynes Canyon)*

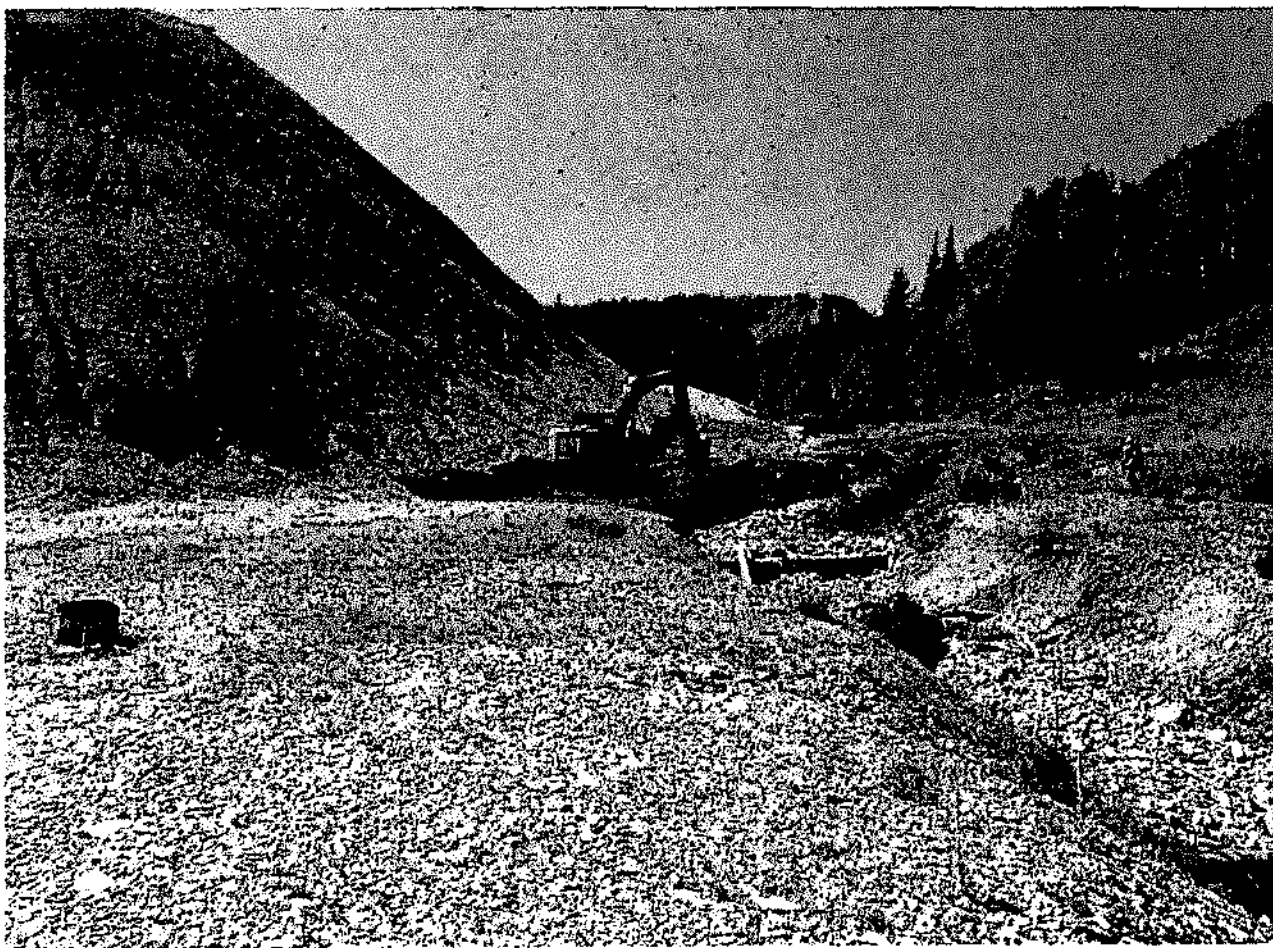




*Soil contamination downstream of mining features in Thaynes Canyon*



*Erosion and disturbance of contaminated soil at the Thaynes Shaft waste pile*



## **B. Other Actions to Date**

### **1. Previous Actions**

In 2014 at the request of EPA's Site Assessment Program, EPA's Response Unit evaluated residential properties near the location of the historic Marsac Mill where sampling data collected during a volunteer cleanup of the mill indicated that the soil in the area may be contaminated. EPA found that the soil in this neighborhood has likely been impacted by historic mining activities but that a traditional yard-by-yard removal of this material is not practical due to the general steepness and small size of the properties in the area.

After consultation with the Utah Department of Environmental Quality (UDEQ) and the Municipality of Park City (Park City) regarding the scarcity of information and lack of existing remedial efforts in other locations, EPA's Response Unit also evaluated soil conditions at the Treasure Mountain Junior High School and associated recreation areas. EPA found that the surface cover at the school was protective and intact but that contamination exists below this cover.

### **2. Current Actions**

The Park City School District is currently planning major renovations to the Treasure Mountain Junior High School property. EPA will evaluate the need for response action once these plans have been finalized.

## **C. State and Local Authorities' Role**

### **1. State and Local Actions to Date**

State and local authorities have reviewed existing information, helped identify residential areas of interest and otherwise provided assistance wherever possible. Park City, Summit County, and the Utah Department of Environmental Quality are consulting with EPA to determine how best to address the elevated soils in the Marsac neighborhood as well as other residential areas. Options include providing educational and/or disposal assistance to property owners.

### **2. Potential for Continued State/Local Response**

State and Local entities do not have the resources nor the authority to conduct this removal action.

## **III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

Conditions at the Site present a threat to public health and the environment, and meet the criteria for initiating a removal action under 40 CFR 300.415(b)(2) of the NCP.

EPA has considered all the factors described in 40 CFR 300.415(b)(2) of the NCP and determined that the following factors apply at the Site.

*(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, or pollutants or contaminants.*

Contaminated soils exist at the Site in areas that are regularly accessed by hikers and bikers.

*(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate.*

The results of EPA's removal assessment show that high levels of contamination exist at or near the surface and that this contamination has and will continue to migrate if it is not addressed.

*(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.*

Park City experiences substantial snowmelt runoff during the annual spring thaw. This runoff as well as rain on snow events and intense summer thunderstorms have the potential of increasing the rate of migration of contaminated material.

*(vii) The availability of other appropriate federal or state mechanisms to respond to the release.*

Local and state governments do not have the capability to conduct the action in a timely manner.

#### **IV. ENDANGERMENT DETERMINATION**

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action described in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.

#### **V. EXEMPTION FROM STATUTORY LIMITS**

Not applicable.

#### **VI. PROPOSED ACTIONS AND ESTIMATED COSTS**

##### **A. Proposed Actions**

##### **1. Proposed Action Description**

United Park City Mines (UPCM), consistent with an Administrative Order on Consent (AOC) with EPA, will create or construct erosion control features at the Site to address the downstream migration of contaminated sediments at the Site.

Primary and secondary runoff channels will be directed around waste piles, stabilized and/or otherwise improved. Waste piles will be re-contoured and berms and terraces will be constructed to control erosion. The majority of excess soil generated during the construction of these erosion control features will be consolidated and capped in-situ. Some material (approximately 1000 cubic yards from Ontario Canyon and Empire Canyon) may be transported to the existing repository at Richardson Flat. Special consideration will be given to protecting existing vegetation and bare areas will be re-vegetated to the extent practicable.

UPCM will establish appropriate post-removal site control measures to maintain the erosion control features including vegetation at the Site.

## **2. Contribution to Remedial Performance**

This effort will, to the extent practical, contribute to any future remedial effort at the Site. However, no further federal action is anticipated at this time.

## **3. Engineering Evaluation/Cost Analysis**

An EE/CA is not required for a time-critical removal action.

## **4. Applicable or Relevant and Appropriate Requirements (ARARs)**

This Action Memorandum addresses the proposed time-critical removal action at the Uintah Mining District Site. Lead is the principal contaminant of concern. Removal actions conducted under CERCLA are required, to the extent practicable considering the exigencies of the situation, to attain ARARs. In determining whether compliance with an ARAR is practicable, EPA may consider appropriate factors, including the urgency of the situation and the scope of the removal action to be conducted. A table containing potential Site-specific ARARs is provided as Exhibit B.

## **5. Project Schedule**

Due to characteristically cold and snowy winters and a limited summer construction season at the Site, the erosion control features will be constructed over two construction seasons. The erosion control features in Ontario Canyon and Empire Canyon will be completed by the fall of 2015. The erosion control features in Thaynes Canyon, Woodside Gulch and Treasure Hollow will be completed by the fall of 2016.

## **B. Estimated Costs**

EPA's costs for this PRP-led removal action, estimated to be \$48,000, will be limited to project oversight. EPA direct and indirect costs, although cost recoverable, do not count toward the Removal Ceiling for this removal action. Liable parties may be held financially responsible for costs incurred by the EPA as set forth in Section 107 of CERCLA.

## **VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

A delay in action or no action at this Site would increase the actual or potential threats to the public health and/or the environment.

## **VII. OUTSTANDING POLICY ISSUES**

None.

## **VIII. ENFORCEMENT**

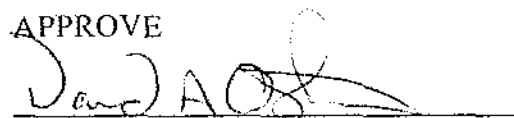
A separate Enforcement Addendum has been prepared providing a confidential summary of current and potential future enforcement activities.

**IX. RECOMMENDATIONS**

This decision document represents the selected removal action for the Uintah Mining District Site in Summit County, Utah, developed in accordance with CERCLA as amended, and is not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Conditions at the Site meet the NCP section 300.415(b) criteria for a removal action and I recommend your approval of the proposed removal action. EPA's costs for this PRP-led removal action, estimated to be \$48,000, will be limited to project oversight which is subject to reimbursement.

APPROVE



David A. Ostrander, Director  
Emergency Response and Preparedness Program

9/10/2015  
Date

DISAPPROVE

\_\_\_\_\_  
David A. Ostrander, Director  
Emergency Response and Preparedness Program

\_\_\_\_\_  
Date

Exhibit A: General Site Boundaries



 Site Boundary

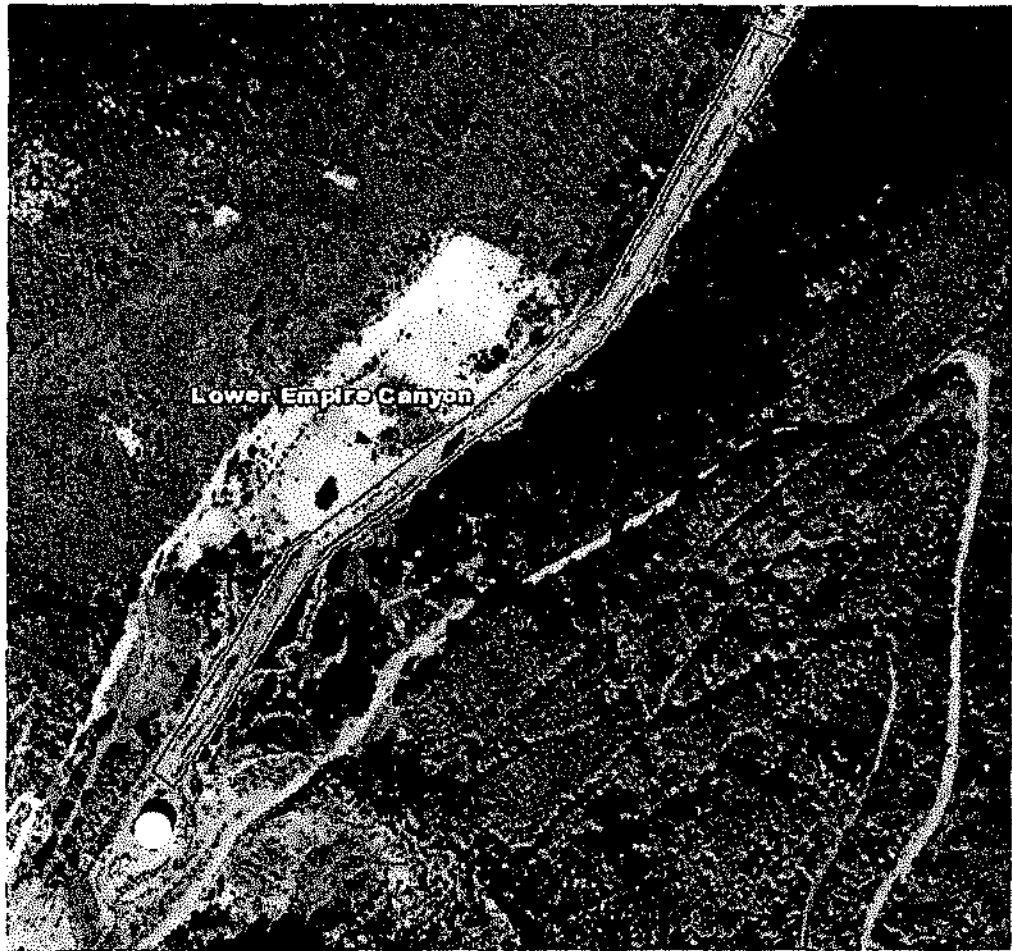
Exhibit A  
Page 1 of 6



 Site Boundary

Exhibit A  
Page 2 of 6





Lower Empire Canyon

—  
Site Boundary

Exhibit A  
Page 3 of 6

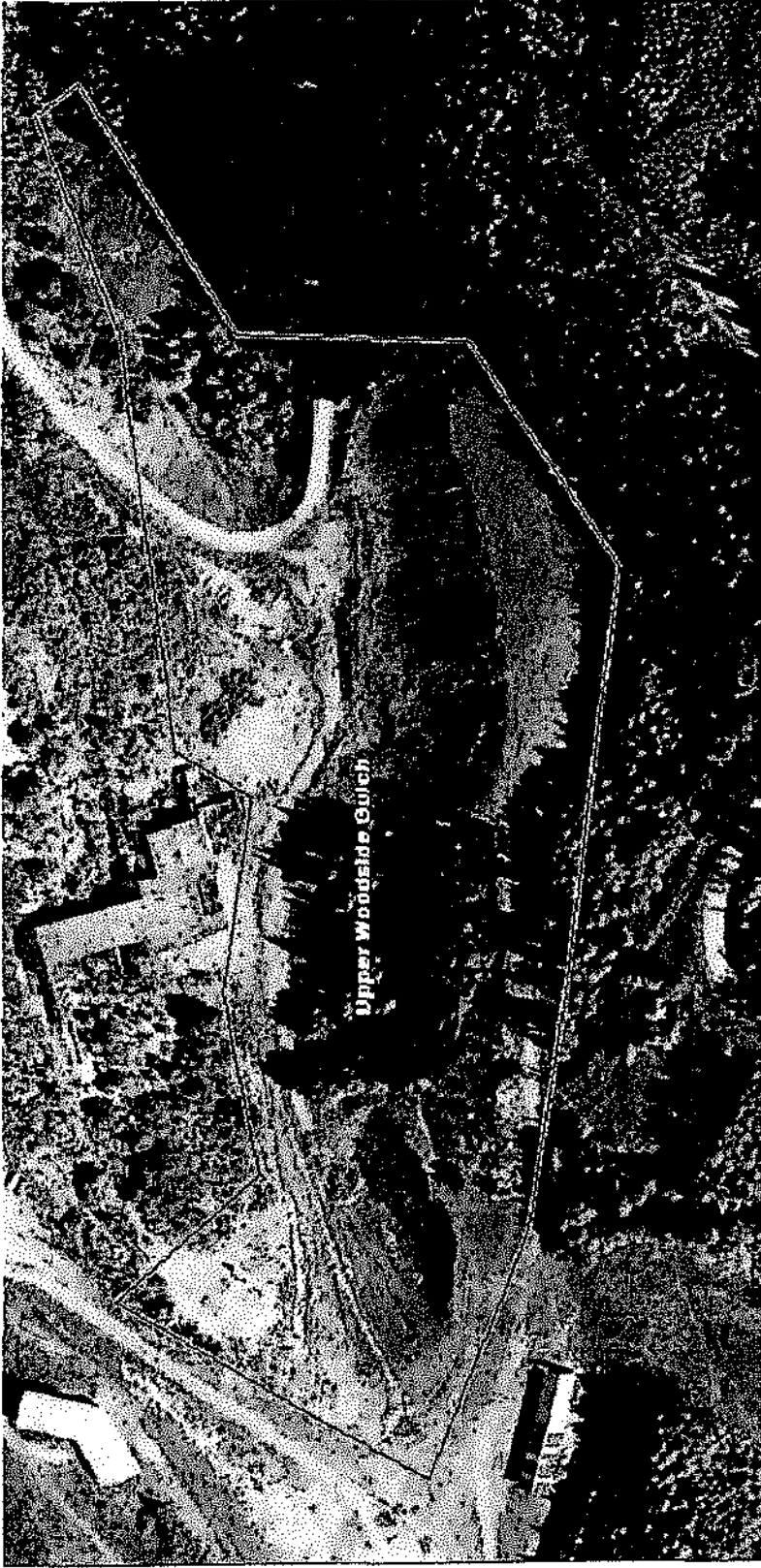


Exhibit A  
Page 4 of 6

Site Boundary



  
Site Boundary

Exhibit A  
Page 5 of 6



Site Boundary

Exhibit A  
Page 6 of 6

**Attachment 1: Applicable or Relevant and Appropriate Requirements (ARARs)**

Standard, Requirement, Criteria, or Limitation	Citation	Description	Applicable or Relevant and Appropriate	Comments
<i>FEDERAL</i>				
National Historic Preservation Act	16 USC § 470 et seq., 30 CFR Part 63, Part 65, Part 800	Regulates impacts to historic places and structures	Applicable	This removal action is limited in scope. Applicable if impacts to historic structures occur. Will be complied with to the extent practicable.
The Historic and Archaeological Data Preservation Act of 1974	16 USC 469	Protects sites with archeological significance	Applicable	This removal action is limited in scope. Applicable if impacts to places of archeological significance occur. Will be complied with to the extent practicable.
Historic Sites Act of 1935, Executive Order 11593	16 USC §§ 461 et seq.	Regulates designation and protection of historic places	Applicable	This removal action is limited in scope. Applicable if impacts to historic places occur. Will be complied with to the extent practicable.

STATE				
Utah Air Quality Rules	UAC R307-205-5	Addresses fugitive dusts from construction activities greater than a quarter-acre in size.	Relevant and Appropriate	To be complied with to the extent practical considering the exigencies of the removal action.
Utah Air Quality Rules	UAC R307-205-8	Specifically describes the proper management of fugitive dusts, construction activities, and roadways associated with tailings piles and ponds.	Applicable	To be complied with to the extent practical considering the exigencies of the removal action.
Utah Water Quality Rules	UAC R317-8-7	Defines UPDES permit requirements for Storm Water Discharges associated with a small construction activity and insures stormwater discharges from the site do not pollute waters of the state.	Relevant and Appropriate	To be complied with to the extent practical considering the exigencies of the removal action.
Archeological and Historical Preservation	Utah Code Section 9-8-307 (notification), and Section 9-8-309 (procedures) UAC R455-4	Addresses disturbance of human remains, including ancient remains, on lands under State jurisdiction.	Applicable	Applicable if human remains, scientific, historic, and archaeological artifacts are identified. To be complied with considering the exigencies of the removal action to the extent practical.

## Appendix B

## Work Plan

### Uintah Mining District

August 3, 2015

The United States Environmental Protection Agency (EPA) has developed an Action Memorandum to prevent the downstream migration of hazardous substances at the Uintah Mining District Site in Park City, Summit County, Utah. United Park City Mines, consistent with an Administrative Order on Consent, will perform the following tasks to construct and maintain erosion control features in drainages where historic mining operations were once concentrated. EPA's On Scene Coordinator (OSC) will approve the successful completion of each task and all changes to this Work Plan will be documented by the OSC in writing.

Drainage	Mine Feature	Task	Due Date
All	Various	Develop a worker Health and Safety Plan.	10/9/15
Ontario Canyon	Ontario Mine	Extend the existing culvert across the toe of the northwest pile.	10/9/15
Ontario Canyon	Ontario Mine	Construct a berm across the base of the northwest pile.	10/9/15
Empire Canyon	Judge / Alliance	Excavate a drainage ditch at the base of the Judge and Alliance waste pile to support the installation of riprap.	10/23/15
Empire Canyon	Judge / Alliance	Stabilize a drainage ditch at the base of the Judge and Alliance waste pile using riprap.	10/23/15
Empire Canyon	Judge / Alliance	Improve the nearby road and trail to prevent future erosion.	10/23/15
Empire Canyon	Judge / Alliance	Stabilize the road and trail with appropriately compacted material.	10/23/15
Empire Canyon	Judge / Alliance	Transport and dispose of excess material at the Richardson Flat repository.	10/23/15
Ontario Canyon	Judge Loading	Pull excess material back from around the Ontario Tunnel as directed by the OSC. Cap and re-vegetate any exposed waste that is left behind.	10/30/15
Ontario Canyon	Judge Loading	Transport and dispose of excess material at the Richardson Flat repository.	10/30/15
All	Various	Develop a Re-vegetation Plan.	5/27/16
Woodside Gulch	Silver King	Create or improve interception trenches above the waste piles to direct hill slope runoff away from the waste piles.	9/30/16
Woodside Gulch	Silver King	Re-contour lower angle waste deposits and establish sediment-capture berms at the base of the higher angle waste piles to prevent future erosion.	9/30/16



Woodside Gulch	Silver King	Excavate the primary drainage channel from the bench containing the Bonanza Chair Lift loading area downstream to the other side of the ski area access road to direct the channel away from waste piles and support the installation of riprap.	9/30/16
Woodside Gulch	Silver King	Consolidate excess material on-site and away from the improved channel.	9/30/16
Woodside Gulch	Silver King	Stabilize the improved channel using riprap and install a new culvert across the ski area access road.	9/30/16
Treasure Hollow	Waste pile	Re-contour the waste pile to prevent future erosion.	9/30/16
Treasure Hollow	Waste pile	Stabilize and cap the summer trail that crosses the waste pile.	9/30/16
Thaynes Canyon	Various	Excavate the primary channel from above the California Mine to below the bench that contains the Thaynes Chair Lift loading area to direct the channel away from waste piles and support the installation of riprap.	9/30/16
Thaynes Canyon	California	Excavate the secondary channel from the mine adit to its confluence with the primary channel to direct the channel away from waste piles and support the installation of riprap.	9/30/16
Thaynes Canyon	California / Comstock	Establish berms at the base of the waste piles to capture sediment.	9/30/16
Thaynes Canyon	various	Stabilize the improved primary and secondary channels using riprap.	9/30/16
Thaynes Canyon	various	Consolidate excess material at the Thaynes Shaft waste pile.	9/30/16
Thaynes Canyon	Thaynes Shaft	Re-contour the existing terraces at the waste pile to prevent future erosion.	9/30/16
Thaynes Canyon	Thaynes Shaft	Establish sediment-capture berms at the base of the waste pile.	9/30/16
Thaynes Canyon	Apex	Establish sediment-capture berms at the base of the waste pile.	9/30/16
All	Various	Re-vegetate bare areas in accordance with the approved Vegetation Plan.	9/30/16
All	Various	Develop Final Report to include as-built documentation and activities that are planned to support post-removal site control.	10/28/16