

7532765

WHEN RECORDED, RETURN TO:

Marcelle Shoop
Kennecott Utah Copper Corporation
8315 West 3595 South
P.O. Box 6001
Magna, Utah 84044-6001

7532765
12/14/1999 10:39 AM 129.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
MARCELLE SHOOP
KENNECOTT UTAH COPPER CORP
PO BOX 6001
MAGNA UT 84044-6001
BY: SBM, DEPUTY - WI 60 P.

NOTICE OF OBLIGATION TO PROVIDE ACCESS AND INSTITUTIONAL CONTROLS

This NOTICE OF OBLIGATION TO PROVIDE ACCESS AND INSTITUTIONAL CONTROLS is executed by Kennecott Utah Copper Corporation, the Owner Settling Defendant under that certain Consent Decree entered by the United States District Court for the District of Utah, Central Division, in the matter of United States of America v. Kennecott Holdings Corporation and Kennecott Utah Copper Corporation, Civil Action No. 2:99-CV-0437K (the "Consent Decree") and is made with respect to that certain real property located in Salt Lake County, Utah (the "Property"), more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

NOTICE is hereby given, that pursuant to the requirements of Section V, Paragraph 4(b) of the Consent Decree, the following obligations to provide access and institutional controls are imposed on the Property under Section VI of the Consent Decree:

ACCESS AND INSTITUTIONAL CONTROLS

1. Commencing on the date of lodging of the above-referenced Consent Decree, KUCC (or subsequent owner(s) of the Property) shall provide the United States and its representatives, including EPA and its authorized contractors, with access at all reasonable times to the Limited Bastian Ditch Area, for the purpose of conducting any activity related to the Consent Decree including, but not limited to, the following activities:

- a. Verifying any data or information submitted to the United States;
- b. Conducting investigations relating to contamination at or near the Limited Bastian Ditch Area;
- c. Obtaining samples;
- d. Assessing the need for, planning, or implementing additional response actions at or near the Limited Bastian Ditch Area;
- e. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or its

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- agents, consistent with Section XIV of the Consent Decree (Access to Information);
- f. Assessing compliance with the Consent Decree; and
 - g. Determining whether the Limited Bastian Ditch Area is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree;

These individuals shall conduct themselves in a safe and prudent manner in accordance with EPA health and safety standards. The obligation to provide access under Section VI of the Consent Decree, shall not apply for the Limited Bastian Ditch Area, if soil with lead levels greater than 1,100 ppm and/or arsenic levels greater than 100 ppm has been removed.


2. KUCC (or subsequent owner(s) of the Property) shall comply with the following institutional controls or restrictions applicable to the property:

- a) With respect to the Lead Mine Mill Site, to the extent that historic wastes remain in place, such locations may be used only for industrial, mining or other non-residential uses, unless otherwise mutually agreed to by EPA and KUCC or a subsequent purchaser, and EPA documents its decision. If any portion of the Lead Mine Mill Site ceases to exist because it is subsumed by mining operations or is otherwise cleaned up to EPA-approved levels, such institutional controls shall no longer apply to such area(s);
- b) With respect to the Limited Bastian Ditch Area, any excavation at a depth equal to or greater than 18 inches below the surface which exposes soils with lead levels greater than 1,100 ppm and/or arsenic levels greater than 100 ppm will be conducted in a manner consistent with the procedures KUCC used to comply with the Lark Waste Rock and Tailings Site Administrative Order on Consent (CERLCA VIII-98-09). If such soils are permanently removed, said institutional controls shall no longer apply.
- c) If EPA and KUCC or a subsequent owner(s) mutually agree, or if pursuant to the Dispute Resolution procedures of Section VIII of the Consent Decree it is determined that, subsequent events, circumstances or facts nullify the need for an institutional control for any portion of the Lead Mine Mill Site or for the Limited Bastian Ditch Area, EPA will cooperate with KUCC or subsequent owners to provide acceptable documentation or evidence of the termination of the obligations of Section V and VI of this Consent Decree for purposes of making such termination a matter of record.

3. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the EPA Record of Decision relating to the Property signed on November 3, 1998, by the Assistant Regional Administrator for Ecosystems Protection and Remediation, EPA Region VIII, to ensure the integrity and protectiveness thereof, or to ensure non-interference therewith, KUCC (or the current owner of the Property) shall cooperate with EPA's efforts to secure such governmental controls.

DATED this 13TH day of December 1999.

OWNER SETTLING DEFENDANT
KENNECOTT UTAH COPPER CORPORATION

By 
Its General Manager HSEQ and Technical Services *ms*

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 13th day of DECEMBER, 1999, by W. R. Williams, the General Manager HSEQ and Technical Services of Kennecott Utah Copper Corporation.



Shannon S. Crompton
NOTARY PUBLIC
Residing at: SL-G. UT

My Commission Expires:

1 OCT 2002

EXHIBIT "A"

The following described real property located in Salt Lake County, Utah:

Lead Mine Mill Site: The historic Lead Mine Mill site comprising approximately 2.3 acres and having the following legal description: Beginning at the NW corner of section 18, T 3 S, R 2 W, SLBM and proceeding due South 1200 feet, thence due East 3200 feet to the NW corner of said property. From the NW corner of property commence due East 500 feet to NE corner, then due South 200 feet to SE corner, then 500 feet due West to SW corner, then 200 feet due North to the NW corner and place of beginning.

Limited Bastian Ditch Area: The portion of the Bastian Ditch described as a strip of land 10 feet wide, 5 feet both sides of centerline, the centerline of which is described as follows: Beginning at a point on the north quarter section line of the SE ¼ of Section 16, T.3 S., R.2 W., SLBM, lying 46 feet West of the E ¼ corner of Section 16, thence from said point of beginning South 54°15' East 80 feet, thence South 17°13' East 325.5 feet to the terminus of this description.

WHEN RECORDED, RETURN TO:

Marcelle Shoop
Kennecott Utah Copper Corporation
8315 West 3595 South
P.O. Box 6001
Magna, Utah 84044-6001

NOTICE OF OBLIGATIONS

This NOTICE OF OBLIGATIONS is executed by Kennecott Utah Copper Corporation, the Owner Settling Defendant under that certain Consent Decree entered by the United States District Court for the District of Utah, Central Division, in the matter of United States of America v. Kennecott Holdings Corporation and Kennecott Utah Copper Corporation, Civil Action No. 2:99-CV-0437K (the "Consent Decree") and is made with respect to that certain real property located in Salt Lake County, Utah (the "Property"), more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

NOTICE is hereby given that:

1. A certified copy of the Consent Decree is attached to A Notice of Consent Decree, dated December 13, 1999, which will be recorded in the Salt Lake County Recorder's Office contemporaneously with this Notice Of Obligations;
2. Pursuant to Section V, paragraph 4a. of the Consent Decree, and effective the date the Notice of Consent Decree is recorded, each deed, title or other instrument of conveyance conveying an interest in the Property executed by KUCC or its successors in title to the Property shall include a notice stating that the Property is subject to the Consent Decree and shall reference the recorded location of the Consent Decree and the restrictions applicable to the Property under the Consent Decree;
3. The Property is subject to various obligations and duties respecting providing access to the Property pursuant to Section V of the Consent Decree; and
4. The Property is subject to certain obligations to provide access and respecting the implementation, administration and maintenance of the Institutional Controls pursuant to Section VI of the Consent Decree.

DATED this 13 day of December 1999.

OWNER SETTLING DEFENDANT
KENNECOTT UTAH COPPER CORPORATION

By W.B. Williams
Its General Manager HSEQ and Technical Services 

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 13th day of ~~DECEMBER~~, 1999, by W. R. Williams, the General Manager HSEQ and Technical Services of Kennecott Utah Copper Corporation.



Shannon S. Crompton
NOTARY PUBLIC
Residing at: SL Co UT

My Commission Expires:

1 Oct 2002

EXHIBIT "A"

The following described real property located in Salt Lake County, Utah:

Lead Mine Mill Site: The historic Lead Mine Mill site comprising approximately 2.3 acres and having the following legal description: Beginning at the NW corner of section 18, T 3 S, R 2 W, SLBM and proceeding due South 1200 feet, thence due East 3200 feet to the NW corner of said property. From the NW corner of property commence due East 500 feet to NE corner, then due South 200 feet to SE corner, then 500 feet due West to SW corner, then 200 feet due North to the NW corner and place of beginning.

Limited Bastian Ditch Area: The portion of the Bastian Ditch described as a strip of land 10 feet wide, 5 feet both sides of centerline, the centerline of which is described as follows: Beginning at a point on the north quarter section line of the SE ¼ of Section 16, T.3 S., R.2 W., SLBM, lying 46 feet West of the E ¼ corner of Section 16, thence from said point of beginning South 54°15' East 80 feet, thence South 17°13' East 325.5 feet to the terminus of this description.

WHEN RECORDED, RETURN TO:

Marcelle Shoop
Kennecott Utah Copper Corporation
8315 West 3595 South
P.O. Box 6001
Magna, Utah 84044-6001



**NOTICE OF CONSENT DECREE and
ORDER TO LIFT STAY AND ENTER CONSENT DECREE**

This NOTICE of Consent Decree and Order to Lift Stay and Enter Consent Decree, is executed by Kennecott Utah Copper Corporation, the Owner Settling Defendant under that certain Consent Decree and Order to Lift Stay and Enter Consent Decree, entered by the United States District Court for the District of Utah, Central Division, in the matter of United States of America v. Kennecott Holdings Corporation and Kennecott Utah Copper Corporation, Civil Action No. 2:99-CV-0437K (the "Consent Decree"), copies of which are attached hereto as Exhibits "B" and "C" and incorporated herein by this reference, and this NOTICE is made with respect to the certain real property located in Salt Lake County, Utah (the "Property"), more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

NOTICE is hereby given, pursuant to Section V, paragraph 4(a) of the Consent Decree, of the entry of the Consent Decree and Order to Lift Stay and Enter Consent Decree with respect to the Property described on Exhibit "B."

DATED this 13 day of December 1999.

OWNER SETTLING DEFENDANT
KENNECOTT UTAH COPPER CORPORATION

By 
Its **General Manager** HSEQ and Technical Services 

STATE OF UTAH)
 :
 COUNTY OF SALT LAKE) ss.

The foregoing instrument was acknowledged before me this 13th day of DECEMBER 1999, by W. R. Williams, the General Manager HSEQ and Technical Services of Kennecott Utah Copper Corporation.



Shannon S. Crompton
NOTARY PUBLIC
Residing at: S.L.-CO, UT

My Commission Expires:

1 OCT 2002

EXHIBIT A

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Limited Bastian Ditch Area: The portion of the Bastian Ditch described as a strip of land 10 feet wide, 5 feet both sides of centerline, the centerline of which is described as follows: Beginning at a point on the north quarter section line of the SE $\frac{1}{4}$ of Section 16, T.3 S., R.2 W., SLBM, lying 46 feet West of the E $\frac{1}{4}$ corner of Section 16, thence from said point of beginning South $54^{\circ}15'$ East 80 feet, thence South $17^{\circ}13'$ East 325.5 feet to the terminus of this description.

EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RECEIVED CLERK
JUN 11 1999
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO.

KENNECOTT HOLDINGS
CORPORATION (formerly
Kennecott Corporation) and
KENNECOTT UTAH COPPER
COMPANY,

Defendants

CONSENT DECREE

2:99CV 0437K

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I. BACKGROUND

A. Concurrent with the lodging of this Consent Decree, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter against Kennecott Holdings Corporation (formerly Kennecott Corporation) ("Kennecott") and Kennecott Utah Copper Corporation ("KUCC") (collectively referred to as "Settling Defendants"), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9607, as amended ("CERCLA").

B. The United States in its complaint seeks reimbursement of response costs incurred by EPA and the Department of Justice for response actions in connection with the release or threatened release of hazardous substances at the Bingham Creek Channel Phase II operable unit ("OU"), as defined below, in Salt Lake County, Utah. This OU is part of the "Kennecott South Zone Site" which pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA proposed placing on the National Priorities List ("NPL"), set forth at Appendix C of 40 C.F.R. Part 300, by publication in the Federal Register on Tuesday January 18, 1994, 59 Fed. Reg. 2568. That proposed NPL listing has not been finalized. Response actions have been conducted in phased removal actions.

C. On July 31, 1995 the United States, on behalf of the Administrator of the EPA, filed a complaint against the Atlantic Richfield Company ("ARCO") in a related matter. That complaint, also filed pursuant to Section 107 of CERCLA, sought reimbursement of response costs incurred and to be incurred by EPA and the Department of Justice for response actions in connection with the release or threatened release of hazardous substances at the Bingham Creek

Channel OU and the Copperton Tailings OU, also part of the Kennecott South Zone Site.

D. EPA conducted a removal of soils from residential yards pursuant to the Bingham Creek Channel Action Memorandum dated May 7, 1991 ("Phase I"). Soils with lead levels in excess of 2,500 parts per million ("ppm") were removed from residential areas adjacent to Bingham Creek in West Jordan, Salt Lake County, Utah. On May 20, 1991 EPA entered into an Administrative Order on Consent for Removal Action (CERCLA VIII-91-11) with Kennecott Corporation (now known as Kennecott Holdings Corporation), the parent of KUCC. This agreement provided that Kennecott would perform certain work activities related to EPA's removal, and pay a portion of EPA's response costs of approximately \$2,250,000. By letter dated June 1, 1993, EPA issued Kennecott a certificate of completion for all work required under the terms of said Administrative Order on Consent.

E. On June 23, 1992 EPA entered into an Administrative Order on Consent for Removal Action (CERCLA VIII-92-10) with Kennecott for the Large Bingham Reservoir OU. The Action Memorandum dated February 21, 1995 documents the activities conducted by Kennecott at this OU located in the Bingham Creek drainage approximately 11 miles above the confluence of Bingham Creek and the Jordan River. By letter dated June 9, 1994, EPA issued Kennecott a certificate of completion for all work required under the terms of the Administrative Order on Consent.

F. ARCO conducted a removal action for the Copperton (also known as the Anaconda or ARCO) Tailings pursuant to an Administrative Order for Removal Action (CERCLA VIII-93-06) issued by EPA on January 15, 1993 implementing an Action Memorandum dated August 5, 1993. The Copperton Tailings OU is located on ARCO's

property on the south side of Bingham Creek and below the Large Bingham Reservoir.

G. Settling Defendants and ARCO conducted a removal action of the Bingham Creek Channel ("Phase II") pursuant to a Unilateral Administrative Order for Removal Action (CERCLA VIII-93-10) issued on February 18, 1993. This removal action, selected in the Action Memorandum dated January 28, 1993, addressed lead contamination above 2,000 ppm in the channel itself between the Brookside Mobile Home Park (east of Redwood Road) to the base of the Large Bingham Reservoir. By letter dated September 19, 1995, EPA provided a certificate of completion specifying that Settling Defendants satisfied all requirements of said Unilateral Administrative Order and related Statement of Work.

H. ARCO conducted the "Phase III" Bingham Creek Channel removal action pursuant to a Unilateral Administrative Order For Removal Action (CERCLA VIII-95-19) issued by EPA on July 17, 1995 and implementing a July 17, 1995 Action Memorandum which documents this second removal action in the same residential area included in the Phase I order. This action removed soil with lead concentrations in excess of 1,100 ppm in the remaining residential yards.

I. Between 1994 and 1997 under two different administrative orders, KUCC and ARCO removed lead tailings from the Bastian Ditch, an historic irrigation ditch which conveyed water from Bingham Creek to and from the Copperton Tailings. KUCC addressed the portion of the Bastian Ditch on its property along the State Highway 111 right-of-way pursuant to the Lark Waste Rock and Tailings Site Administrative Order on Consent (CERCLA VIII-98-09). By letter dated August 31, 1998, EPA issued KUCC a certificate of completion for all work required under the terms of said Lark Administrative Order on Consent. ARCO addressed the portion of the

Bastian Ditch on its property during the Copperton Tailings removal action referenced in Paragraph F above. EPA's November 3, 1998 Record of Decision ("ROD") determined that no additional action was necessary for the Bastian Ditch.

J. In May 1994, EPA conducted sampling in the town of Copperton, Utah located at the mouth of Bingham Canyon adjacent to Bingham Creek (known as the "Copperton Soils"). EPA's investigation indicated that the east end of Copperton had been built on mine wastes but that concentrations of hazardous substances in the Copperton Soils were below levels of concern. Lead values were below 300 ppm, which is lower than EPA's soil screening level as well as the action level of 1,100 ppm lead used in the Bingham Creek Phase III residential area removal action. EPA's November 3, 1998 ROD determined that no action was necessary for the Copperton Soils.

K. The portion of Bingham Creek between the Brookside Mobile Home Park and its confluence with the Jordan River (the Lower Bingham Creek) was addressed in EPA's November 3, 1998 ROD. Because the reasonably anticipated future land use along this portion of the creek is for agricultural and industrial use, EPA selected a remedy requiring institutional controls. The institutional controls will either maintain the current land use or impose specified requirements for different land use scenarios.

L. Between 1993 and 1998 Settling Defendants investigated and characterized many mining related facilities known to have operated in Bingham Canyon ("Bingham Canyon Historic Facilities") and submitted the results of these studies to EPA in three On-Site Environmental Assessments.

M. In accordance with the NCP and Section 121(f)(1)(G)&(H) of CERCLA, 42

U.S.C. § 9621(f)(1)(G)&(H), EPA notified the State of Utah (the "State") in March, 1998 of the proposed plan for remedial action for the Site, and EPA provided the State with an opportunity to comment upon such proposed plan.

N. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published a notice of the proposed plan for remedial action on May 6, 1998, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the EPA based the selection of the response action.

O. The decision by EPA on the remedial action is embodied in a ROD, executed on November 3, 1998, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

P. On January 27, 1999, EPA issued a Certification of Completion of Remedial Action for the November 3, 1998 ROD indicating that all remedial actions associated with that ROD had been satisfactorily completed.

Q. The purpose of this Consent Decree is to resolve Settling Defendants' liability for CERCLA response costs incurred in connection with the Site.

R. By entering into this Consent Decree Settling Defendants do not admit any liability arising out of the transactions or occurrences alleged in the United States' complaint.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this

Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, 9613(b) and 9622(f). This Court also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Except as otherwise provided, any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which 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 Consent Decree or in any appendix attached hereto the following definitions shall apply:

- a. "**Bastian Ditch**" shall mean the irrigation ditch in unincorporated Salt Lake County, Utah, commencing at the Copperton Tailings Property and extending in a southerly direction along the west side of State Highway 111 to Gate 47.
- b. "**Bingham Canyon Historic Facilities**" shall mean those historic mining related facilities characterized by KUCC in the Historic Site Assessments and which are listed in Appendix A and identified on the map, which is Appendix B. In the 11/3/98 ROD, EPA determined that no action is necessary because these facilities have been subsumed by KUCC's active mining operations.
- c. "**CERCLA**" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.
- d. "**Certification of Completion**" shall mean EPA's certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that remedial action has been completed at the Site in accordance with the requirements of the NCP and the ROD.
- e. "**Consent Decree**" shall mean this Decree and any attached appendices.
- f. "**Copperton Soils**" shall mean surface soils in the town of Copperton, Utah addressed in EPA's November 3, 1998 ROD.
- g. "**Copperton Tailings Property**" shall mean the approximately 96 acre property owned by ARCO located near Copperton, Utah, in South ½ North ½ of Section 16, Township 3 South, Range 2 West, Salt Lake Meridian, Salt Lake County, Utah which was the subject of an Action Memorandum dated August 5, 1993.

h. **"Day"** shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

i. **"EPA"** shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

j. **"Interest"** in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507. In calculating the Interest EPA may compound on a daily, monthly or annual basis.

k. **"Lead Mine Mill Site"** shall mean the historic Lead Mine Mill site comprising approximately 2.3 acres and having the following legal description: Beginning at the NW corner of section 18, T 3 S, R 2 W, SLBM and proceeding due South 1200 feet, thence due East 3200 feet to the NW corner of said property. From the NW corner of property commence due East 500 feet to NE corner, then due South 200 feet to SE corner, then 500 feet due West to SW corner, then 200 feet due North to the NW corner and place of beginning.

l. **"Limited Bastian Ditch Area"** shall mean that portion of the Bastian Ditch, legally described as a strip of land 10 feet wide, 5 feet both sides of centerline, the centerline of which is described as follows: Beginning at a point on the north quarter section line of the SE ¼ of Section 16, T.3 S., R.2 W., SLBM, lying 46 feet West of the E ¼ corner of Section 16, thence from said point of beginning South 54° 15' East 80 feet, thence South 17° 13' East 325.5 feet to the terminus of this description.

m. **"Large Bingham Reservoir"** shall mean the reservoir constructed by KUCC in western Salt Lake County, Utah, approximately ½ mile east of Copperton, Utah in Section 17, Township 3 South, Range 2 West, Salt Lake Base and Meridian, which was the subject of a February 21, 1995 Action Memorandum.

n. **"Lower Bingham Creek"** shall mean that portion of the Bingham Creek Channel that runs east from the eastern edge of the Brookside Mobile Home Park at Redwood Road to the confluence of Bingham Creek with the Jordan River. It does not include any portion of the Jordan River.

o. **"National Contingency Plan"** 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, including but not limited to any amendments thereto.

p. **"Owner, Operator, or Lessee of Residential Property"** shall mean a person who owns, operates, manages, or leases Residential Property and who uses or allows the use of the Residential Property exclusively for residential purposes.

q. **"Paragraph"** shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

r. **"Parties"** shall mean the United States and Settling Defendant.

s. **"Record of Decision"** or **"ROD"** shall mean the EPA Record of Decision relating to the Site signed on November 3, 1998 by the Assistant Regional Administrator for Ecosystems Protection and Remediation, EPA Region VIII, and all attachments thereto.

t. **"Remedial Action"** shall mean the response actions at the Site set forth in the Record of Decision.

u. **"Residential Property"** shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use and, which were the subject of the response actions referenced in Paragraphs D and H, above.

v. **"Response Costs"** unless otherwise specified in this Consent Decree shall mean all costs, including, but not limited to, direct and indirect costs, that EPA and the U.S. Department of Justice on behalf of EPA have incurred or will incur for response actions at the Site, and accrued interest on such costs through the date of entry of this Consent Decree.

w. **"Section"** shall mean a portion of this Consent Decree identified by a roman numeral.

x. **"Settling Defendants"** shall mean Kennecott Holdings Corporation, formerly known as Kennecott Corporation ("Kennecott") and Kennecott Utah Copper Corporation ("KUCC").

y. **"Site"** shall mean those areas addressed in the November 3, 1998 ROD and including those areas which were the subject of the following administrative orders: the May 20, 1991 "Phase I" Administrative Order on Consent for Removal Action (CERCLA VIII-91-11) referenced in Paragraph D; the February 18, 1993 "Phase II" Unilateral Administrative Order for Removal Action (CERCLA VIII-93-10) referenced in Paragraph G; the July 17, 1995 "Phase III" Unilateral Administrative Order For Removal Action (CERCLA VIII-95-19) referenced in Paragraph H; the June 23, 1992 Large Bingham Reservoir Administrative Order on Consent for

Removal Action (CERCLA VIII-92-10) referenced in Paragraph E; and the August 5, 1993 Copperton Tailings Administrative Order for Removal Action (CERCLA VIII-93-06) referenced in Paragraph F. "Site" shall include the following additional areas also addressed in the November 3, 1998 ROD: the Bastian Ditch referenced in Paragraph I; the Lower Bingham Creek referenced in Paragraph K; Copperton Soils referenced in Paragraph J; and the Bingham Canyon Historic Facilities referenced in Paragraph L and as generally depicted in Appendix B. For purposes of this Consent Decree the railroad easements formerly belonging to the Denver & Rio Grande Western Railroad Company between Midvale and Bingham Canyon, Utah are included in the definition of the "Site." All these areas comprising the "Site" are depicted more clearly on the map included in Appendix "C" to this Consent Decree. Ground water, and any releases of Waste Materials to ground water from those areas described above, and current mining facilities including, but not limited to, the Bingham Mine, the Bingham Waste Rock Dumps, Copperton Precipitation Plant, Copperton Concentrator and current truck and rail facilities, are not included within the definition of the "Site" for purposes of this Consent Decree.

z. "State" shall mean the State of Utah.

aa. "United States" shall mean the United States, including its departments, agencies, and instrumentalities.

bb. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. NOTICE OF OBLIGATIONS TO SUCCESSORS-IN-TITLE

4. a. Within 45 days after the entry of this Consent Decree, KUCC shall record notice of the entry of this Consent Decree with the Clerk and Recorder's Office, Salt Lake County, State of Utah. Thereafter, each deed, title, or other instrument in which KUCC conveys an interest in the Limited Bastian Ditch Area and the Lead Mine Mill Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of KUCC with respect to the provision of notices, access and the implementation of institutional controls under Sections V and VI shall, to the extent allowed by law, be binding upon any and all persons who subsequently acquire any interest in the areas referenced in Paragraph 4.a. (hereinafter "Successors-in-Title"). Within 45 days after the entry of this Consent Decree, KUCC shall record at the Clerk and Recorder's Office a notice of obligation to provide access and institutional controls under Section VI. Each instrument conveying an interest to such property executed by KUCC shall require, to the extent allowed by law, that each subsequent instrument conveying such an interest reference the recorded location of such notice and institutional controls applicable to the property, unless such institutional controls have otherwise been eliminated as provided for in Sections V and VI of this Consent Decree.

c. KUCC shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance,

KUCC's obligations under this Consent Decree shall continue to be met, provided that KUCC's obligations under Section V and VI of this Consent Decree, in whole or in part, will be terminated if: (1) KUCC assigns such obligations in whole or in part to another entity which EPA reasonably determines is financially and otherwise capable and willing to assume the obligations of this Consent Decree; and (2) EPA consents in advance and in writing to such assignment and termination of KUCC's obligations under Section V and VI of this Consent Decree.

VI. ACCESS AND INSTITUTIONAL CONTROLS

5. Commencing on the date of lodging of this Consent Decree, KUCC shall provide the United States and its representatives, including EPA and its authorized contractors, with access at all reasonable times to the Limited Bastian Ditch Area, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- a. Verifying any data or information submitted to the United States;
- b. Conducting investigations relating to contamination at or near the Limited Bastian Ditch Area;
- c. Obtaining samples;
- d. Assessing the need for, planning, or implementing additional response actions at or near the Limited Bastian Ditch Area;
- e. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or its agents, consistent with Section XIV (Access to Information);
- f. Assessing KUCC's compliance with this Consent Decree; and

- g. Determining whether the Limited Bastian Ditch Area is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

These individuals shall conduct themselves in a safe and prudent manner in accordance with EPA health and safety standards. The obligation to provide access under this Section VI, shall not apply for the Limited Bastian Ditch Area, if soil with lead levels greater than 1,100 ppm and/or arsenic levels greater than 100 ppm has been removed.

6. KUCC shall comply with the following institutional controls or restrictions applicable to the property:

(a) With respect to the Lead Mine Mill Site, to the extent that historic wastes remain in place, such locations may be used only for industrial, mining or other non-residential uses, unless otherwise mutually agreed to by EPA and KUCC or a subsequent purchaser, and EPA documents its decision. If any portion of the Lead Mine Mill Site ceases to exist because it is subsumed by mining operations or is otherwise cleaned up to EPA-approved levels, such institutional controls shall no longer apply to such area(s);

(b) With respect to the Limited Bastian Ditch Area, any excavation at a depth equal to or greater than 18 inches below the surface which exposes soils with lead levels greater than 1,100 ppm and/or arsenic levels greater than 100 ppm will be conducted in a manner consistent with the procedures KUCC used to comply with the Lark Waste Rock and Tailings Site Administrative Order on Consent (CERLCA VIII-98-09). If such soils are permanently removed, said institutional controls shall no longer apply.

(c) If EPA and KUCC or a subsequent owner(s) mutually agree, or if pursuant to the Dispute Resolution procedures of Section VIII it is determined that, subsequent events, circumstances or facts nullify the need for an institutional control for any portion of the Lead Mine Mill Site or for the Limited Bastian Ditch Area. EPA will cooperate with KUCC or subsequent owners to provide acceptable documentation or evidence of the termination of the obligations of Section V and VI of this Consent Decree for purposes of making such termination a matter of record.

7. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, KUCC shall cooperate with EPA's efforts to secure such governmental controls.

8. Notwithstanding any other provision of this Consent Decree, if KUCC complies with the provisions of Paragraphs 4(a) and 4(b), KUCC shall not be subject to the stipulated penalty provisions of Section IX, if following an initial conveyance by KUCC of any portion or all of the Limited Bastian Ditch Area or the Lead Mine Mill Site any subsequent owner (not affiliated with KUCC) of an interest in such land fails to comply with the provisions of Sections V and VI of this Consent Decree.

VII. REIMBURSEMENT OF RESPONSE COSTS

9. Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to the United States \$256,000 in reimbursement of Response Costs.

10. Payment shall be made by certified or cashier's check or wire transfer made payable to "EPA Hazardous Substance Superfund." Each check or wire transfer documentation shall

reference the name and address of the party making the payment, the Site name, the EPA Region and Site/Spill ID number 08-T4, and the DOJ case number and shall be sent to:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, Pennsylvania 15251-6859

Federal Express, Airborne, Etc.:

Mellon Bank
3 Mellon Bank Center
Room #153-2713
Pittsburgh, PA 15259

or other such address as EPA may designate in writing or by wire transfer to:

ABA=021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Wire transfers must be sent to the Federal Reserve Bank in New York.

11. At the time of such payment, Settling Defendants shall send notice that such payment has been made to:

Enforcement Specialist, Kennecott Site
U.S. Environmental Protection Agency
STE 500 (8ENF-T)
999 18th Street
Denver, Colorado 80202

VIII. DISPUTE RESOLUTION PROCEDURES

12. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless

otherwise agreed in writing by the parties. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute.

13. In the event that the parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Settling Defendant[s] invoke[s] the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant[s].

14. Within 20 days after receipt of Settling Defendant[s]' Statement of Position, the United States will serve on Settling Defendant[s] its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the United States.

15. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the United States may allow submission of supplemental statements of position by the parties to the dispute. The administrative record will be made available to all parties to the dispute for review and copying at EPA's offices in Denver, Colorado.

16. The Regional Administrator, EPA Region VIII, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 15. This decision shall be binding upon the Settling Defendant[s], subject only to the right to seek judicial review pursuant to Paragraphs 17 and 18 below.

17. Any administrative decision made by EPA pursuant to Paragraph 16 shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendant[s] with the Court and served on all Parties within 30 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant[s]' notice of judicial appeal. The Federal Rules of Civil Procedure and local court rules for motions shall govern the resolution of the dispute.

18. In proceedings on any dispute relating to the adequacy of the response action, Settling Defendant[s] shall have the burden of demonstrating that the decision of the Regional Administrator was arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled by EPA. For proceedings that neither pertain to the adequacy of the response action nor are otherwise accorded review on the administrative record under applicable rules of administrative law, judicial review shall be governed by applicable provisions of law.

IX. STIPULATED PENALTIES

19. KUCC shall be liable for stipulated penalties of \$2,500 per violation per day to the United States for failure to comply with the requirements of this Consent Decree. "Compliance" by KUCC shall include completion of the activities under this Consent Decree in accordance with all applicable requirements of law, this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

20. Stipulated penalties are due and payable within 30 days of KUCC's receipt from EPA of a demand for payment of the penalties. All payments under this Section shall be paid by certified or cashier's check or wire transfer made payable to "EPA Hazardous Substance Superfund," shall be mailed to Mellon Bank, EPA Region VIII, Attn: Superfund Accounting, Post Office Box 360859M, Pittsburgh, Pennsylvania 15251, and shall reference SSID# 08-T4 and Civil No. 2:95 CV 698S. Copies of check[s] paid or wire transfer[s] made pursuant to this Section, and any accompanying transmittal letter, shall be sent to the United States as provided in Paragraph 8. Penalties relating to the timeliness of deliverables, or Reimbursement of Response Costs pursuant to Section VII, shall accrue regardless of whether EPA has notified KUCC of the violation or made a demand for payment, but need only be paid upon demand. All other penalties shall accrue from the date EPA notifies KUCC of such violation or act of noncompliance.

21. If the United States must bring an action to enforce the terms of this Consent Decree, KUCC shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time, but only if the United States is the prevailing party.

22. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of KUCC's failure to comply with the terms of this Decree. Notwithstanding the foregoing, EPA agrees that if it seeks stipulated penalties for a violation, EPA shall not seek statutory penalties for the identical violation.

X. COVENANT NOT TO SUE BY PLAINTIFF

23. In consideration of the actions that have been and will be performed by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 24, 25 and 26, the United States covenants not to sue or to take administrative action

against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. §6973, relating to the Site. These covenants not to sue take effect upon entry of this Consent Decree. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and/or their successors, assigns, and their officers, directors and employees, and do not extend to any other person.

24. United States' Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

25. For purposes of Paragraph 24, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record(s) supporting the Record of Decision, and EPA's administrative Site file as of the date this Consent Decree is lodged with the Court.

26. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 23. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability for damages for injury to, destruction of, or loss of natural resources;
- d. criminal liability.

XI. COVENANTS BY SETTLING DEFENDANT

27. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to costs Settling Defendants incurred at the Site prior to the effective date of this Consent Decree or to implement any of the requirements of this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) under Sections 106(b)(2), 107, 111, 112, or 113, of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, any claim against the United States for contribution pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 of 9613, or any other provision of law, including claims based on EPA's selection of response actions, oversight of response actions, or approval of plans for such activities. Nothing in this Consent Decree shall be

deemed to constitute 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).

28. Upon the entry of this Consent Decree Settling Defendants waive all claims or causes of action that they may have for all matters addressed in this Consent Decree against any person whose liability to Settling Defendants is based solely on CERCLA §§ 107(a)(1) and 113(f), 42 U.S.C. §§ 9607(a)(1) and 9613(f), and who: is the Owner, Operator, or Lessee of Residential Property, except however, such waiver will not apply to bar Settling Defendants from pursuing or raising such claims, cross-claims or defenses, to any claims or causes of action raised by an Owner, Operator, or Lessee of Residential Property against Settling Defendants.

29. Except as expressly stated in the preceding Paragraphs 27 and 28, Settling Defendants do not waive any claims or causes of action it may have now or in the future against any person.

XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

30. Except as provided in Paragraph 28, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree and each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), 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.

31. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA

Sections 113(f)(2) and 122(h)(4), 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). The matters addressed in this settlement are response actions taken or to be taken and all response costs incurred and to be incurred by the United States or any other person with respect to the Site. The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

32. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

33. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing

in this Paragraph affects the enforceability of the covenants not to sue set forth in Section X (Covenant Not to Sue by Plaintiff) or the reservations of Settling Defendants contained in Section XI.

XIII. ACCESS TO INFORMATION

34. Settling Defendants shall provide, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site, 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 related to the Site.

35. Confidential Business Information and Privileged Documents

a. Settling Defendant[s] may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree 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). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant[s] that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant[s].

b. Settling Defendant[s] may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant[s] assert such a privilege in lieu of providing documents,

they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only.

36. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIV. RETENTION OF RECORDS

37. Until 5 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

38. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such

records or documents to the EPA. Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide the Plaintiff with the information and follow the procedures set forth in Paragraph 35b of this Consent Decree.

39. Based upon a reasonable inquiry of relevant current employees of Settling Defendants, and the knowledge of such employees, the undersigned representatives of Settling Defendants believe and hereby certify to the best of their knowledge that Settling Defendants have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information, except drafts of such records, documents or other information for which a final of such record, document or information was prepared, relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XV. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Joel M. Gross
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: 90-11-2-1065

As to EPA:

Enforcement Attorney
Kennecott Superfund Site (8ENF-L)
U.S. Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80221

As to Settling Defendants:

Marcelle Shoop
Associate General Counsel or
ATTN: LAW DEPARTMENT
Kennecott Utah Copper Corporation
8315 West 3595 South
P.O. Box 6001
Magna, Utah 84044-6001

XVI. RETENTION OF JURISDICTION

41. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

XVII. APPENDICES

42. The following appendices are attached to and incorporated into this Consent Decree.

"Appendix A" is a list of Bingham Canyon Historic Facilities included in this Consent Decree.

"Appendix B" is the map depicting the Bingham Creek Historic Facilities.

"Appendix C" is the map of the Site.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

43. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES/SERVICE

44. The undersigned representative of Settling Defendants to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.


45. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree.

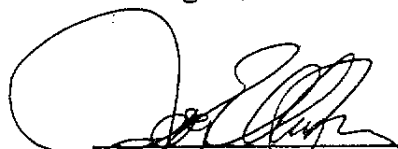
SO ORDERED THIS 14th DAY OF June, 1999


United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of Bingham Creek Channel, SSID No 08-T4, Civil No. _____ relating to the Kennecott South Zone Superfund Site.

FOR THE UNITED STATES OF AMERICA:


~~LOIS J. SCHIFFER~~ *Lois J. Schiffer*
Army Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

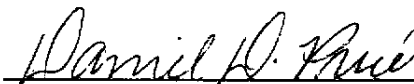

JEREL L. ELLINGTON
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
999 18th St., Suite 945N
Denver, CO 80222



ROBERT H. FOSTER
Trial Attorney
Environmental Defense Section
Environment and Natural Resources
Division
U.S. Department of Justice
999 18th St., Suite 945N
Denver, CO 80222

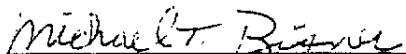
PAUL M. WARNER
United States Attorney

U.S. Attorney for the District of Utah



DANIEL D. PRICE
Assistant U.S. Attorney
185 South State Street
Suite 400
Salt Lake City, UT 84111

FOR THE U. S. ENVIRONMENTAL PROTECTION AGENCY.



MICHAEL T. RISNER
Director, Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
Region VIII
U.S. Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202




SHARON KERCHER
Director, Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
Region VIII
U.S. Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202



KAREN S. KELLEN
Enforcement Attorney
U.S. Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202

FOR KENNECOTT HOLDINGS CORPORATION:


By: W. ORCHOW *MS*
Its: Senior Vice President *WRW*

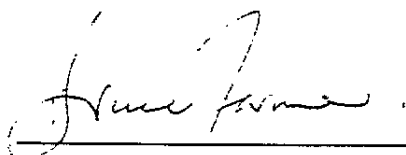
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Corporation Service Company

Title: Registered Agent

Address: One Utah Center
201 South Main Street
Salt Lake City, UT 84111

FOR KENNECOTT UTAH COPPER CORPORATION:


By: D. FARMER *MS*
Its: President and Chief Executive Officer *WRW*

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Corporation Service Company

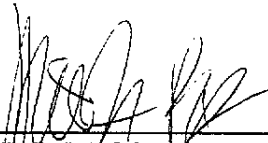
Title: Registered Agent

Address: One Utah Center
201 South Main Street
Salt Lake City, UT 84111



MARCELLE SHOOP

Associate General Counsel
Kennecott Holdings Company
Kennecott Utah Copper Corporation
8315 West 3595 South
Magna, Utah 84044-6001



HAL J. POS

Parsons Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Counsel for
Kennecott Holdings Company
Kennecott Utah Copper Corporation

BK8329PG3721

**Bingham Creek Historic Facilities
(BCHF)**

Name/Site No./Priority No.	Sidwell No. Property Description Latitude/Longitude	Current Status
Lead Mine Mill 1.00 P3	PT 26-18-251-002 Lat: 40° 33' 38" Long: 112° 8' 38"	Buried by current Kennecott Precipitation Plant
Utah Copper Company Mill 2.00 P3	PT 25-13-400-001 Lat: 40° 33' 21" Long: 112° 7' 42"	Partially buried by waste rock
Winnamuck Mill 3.00 P3	PT 25-23-200-002 Lat: 40° 32' 35" Long: 112° 8' 48"	Buried by waste rock and rail lines
Markham Mill 4.00 P3	PT 25-23-300-001	Buried by waste rock
Walls Mill 5.00 P3	PT 25-26-100-001	Buried by waste rock
Shawmut Mill 6.00 P3	PT 25-26-100-001	Buried by waste rock
Utah Apex Mill 7.00 P3	PT 25-27-400-001	Subsumed by the pit
Rogers Mill #1 & #2 8.00 P3	PT 25-35-200-001 PT 25-26-400-001	Subsumed by the pit
Boston Consolidated Mill 9.00 P3	PT 25-35-200-001	Subsumed by the pit
Stewart #2 Mill 10.00 P3	PT 25-34-200-001	Subsumed by the pit

**Bingham Creek Historic Facilities
(BCHF)**

Name/Site No./Priority No.	Sidwell No. Property Description Latitude/Longitude	Current Status
Highland Boy Mill 11.00 P3	PT 25-34-300-001	Buried by waste rock
Bingham New Haven 12.00 P3	PT 25-34-300-001	Buried by waste rock
Columbia Copper Mill 13.00 P3	PT 25-35-200-001	Subsumed by the pit
Last Chance Mill 14.00 P3	PT 25-34-400-001	Buried by waste rock
New England Gold and Copper Mill 15.00 P3	PT 25-34-400-001	Subsumed by the pit or buried by waste rock
Jordan Mill 16.00 P3	PT 25-35-300-001	Subsumed by the pit.
Stewart Mill 17.00 P3	PT 25-34-400-001	Subsumed by pit, or buried by dumps
Spanish Mill 18.00 P3	PT 25-35-300-001	Subsumed by the pit
Telegraph Mill 19.00 P3	PT 25-35-400-001 Lat: 40° 30' 39" Long: 112° 8' 32"	Subsumed by the pit
Bernis Mill 20.00 P3	PT 25-26-100-001	Buried by the 6190 truck shops

**Bingham Creek Historic Facilities
(BCHF)**

Name/Site No./Priority No.	Sidwell No. Property Description Latitude/Longitude	Current Status
West Mountain Mining Concentrator 21.00 P3	PT 25-34-400-001	Buried by waste rock
Silver Shield Mill 22.00 P3	PT 31-2-100-001	Subsumed by the pit
Bingham Mining and Milling Co. 23.00 P3	PT 25-34-400-001	Subsumed by the pit or buried by waste rock
Utah Consolidated Gold Mine Mill 24.00 P3	PT 25-34-300-001	Buried by waste rock
Bingham Gold Mining Company 25.00 P3	PT 25-35-300-001	Subsumed by the pit
Utah Concentrator 26.00 P3	PT 25-35-300-001	Subsumed by the pit
Heaston Concentrator Jigs 27.00 P3	PT 25-23-300-001	Buried by waste rock
Massasoit Mill 28.00 P3	PT 25-23-300-001	Buried by waste rock
Utah Mill 30.00 P3	PT 25-35-300-001	Subsumed by the pit

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**Bingham Creek Historic Facilities
(BCHF)**

Name/Site No./Priority No.	Sidwell No. Property Description Latitude/Longitude	Current Status
Brooks Mill 31.00 P3	PT 25-35-400-001	Subsumed by the pit
Durrant Mill 32.00 P3	Unknown	Subsumed by the pit
Eagan and Bates Mill 33.00 P3	PT 25-35-200-001	Subsumed by the pit
Bingham New England Mill 34.00 P3	PT 25-34-400-001	Subsumed by the pit or buried by waste rock
What Cheer Mill 37.00 P3	?	Subsumed by the pit
Murphy Mill 38.00 P3	?	Subsumed by the pit
CW Watson's Jig 40.14 P3	PT 26-18-177-003 (Unsure)	Buried by waste rock
Darrenugue Jig 40.15 P3	?	Mobile facility, Buried by waste rock
New York and Utah Mill 40.17 P3	PT 26-15-100-005 Lat: 40° 33' 34" Long: 112° 3' 26"	Cleaned up during BC Phase II

* Kennecott estimates based tonnages of ore milled and/or mill capacity and years of operation

**Bingham Creek Historic Facilities
(BCHF)**

Name/Site No./Priority No.	Sidwell No. Property Description Latitude/Longitude	Current Status
Utah Smelter 41.00 P3	PT 25-35-300-001	Subsumed by the Bingham Pit
Winnamuck Smelter 42.00 P3	PT 25-23-200-002 Lat: 40° 32' 35" Long: 112° 8' 48"	Buried by waste rock
Revere Smelter (a.k.a. New York and Utah Mill site) 43.00 P1	PT 26-15-100-005 Lat: 40° 33' 43" Long: 112° 2' 56"	Cleaned up as part of the Bingham Creek Phase II action
Yampa Smelter 44.00 P3	PT 25-23-200-001 Lat: 40° 32' 58" Long: 112° 8' 34"	Buried by waste rock

**Bingham Creek Historic Facilities
(BCHF)**

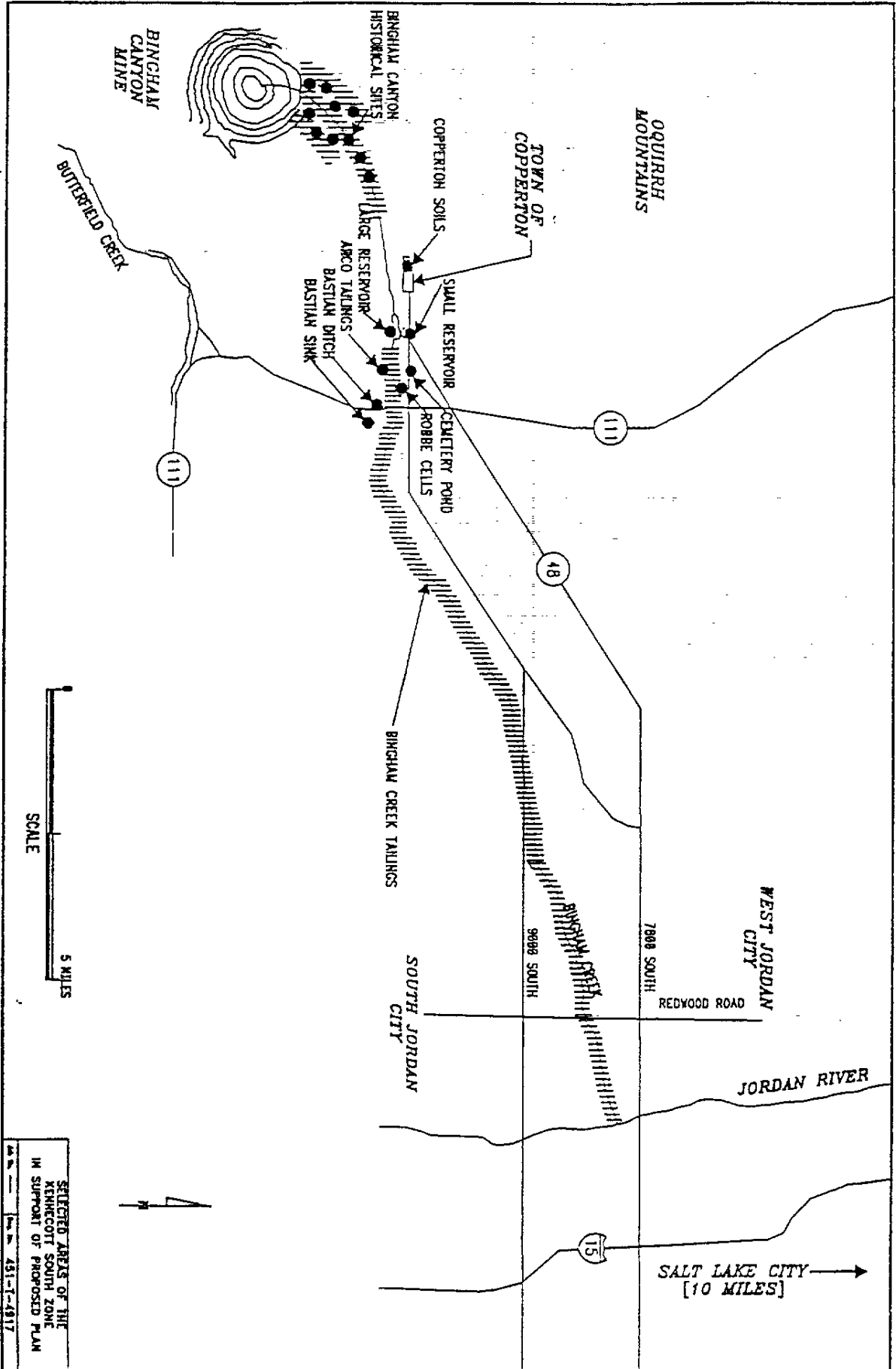
Name/Site No./Priority No.	Sidwell No. Property Description Latitude/Longitude	Current Status
Boston Launder 40.01 P3	Unknown	Location unknown
Apex Yard 40.02 P3	PT 25-27-400-001	Subsumed by pit
Ohio Copper Launder 40.03 P3	Unknown	The launder was in the shaft of the mine, the discharge was sent to Mascotte Tunnel at Lark. The mine has been subsumed by the pit. (Mascotte Tunnel discharges are not addressed in this decision document.)
Ute Copper Tiewaukee Dump 40.04 P3	PT 25-23-400-002	Buried by waste rock
McGuire's Gulch 40.05 P3	PT 25-23-300-002	Buried by waste rock
Galena Gulch 40.06 P3	PT 25-35-400-001	The upper portion of the gulch is buried by waste rock; the lower portion has been subsumed by the pit.
Copper Center Gulch 40.07 P3	PT 25-35-200-001	Subsumed by the pit
Main Canyon 40.08 P3	Unknown	Location unknown
"A" Pit 40.09 P3	PT 25-26-300-001 PT 25-26-400-001 PT 25-35-100-001 PT 25-35-200-001	Subsumed by the pit

**Bingham Creek Historic Facilities
(BCHF)**

Name/Site No./Priority No.	Sidwell No. Property Description Latitude/Longitude	Current Status
Drain Tunnel Launder 40.10 P3	Unknown	Location unknown
Ingersoll Gulch 40.11 P3	PT 25-34-200-001	Subsumed by the pit
Starless 40.11a P3	Unknown	Subsumed by the pit
McGregor Plant 40.11b P3	PT 26-16-200-008 (Unsure)	Buried by a later operation called Robbe Cells, area was cleaned up during Bingham Creek Phase II.
Robbe Cells 35.00 P2	PT 26-16-200-008 (Unsure) Lat: 40° 33' 44" Long: 112° 4' 8"	Cleaned up during Bingham Creek Phase II.
Copper Placer Plant 40.12 P3	PT 25-26-100-001	Subsumed by Bingham Pit
Cuprum Yard Plant 40.13 P2	PT 25-23-300-002 or PT 25-26-200-001 (Site is on the section line.) Lat: N40° 32' 14" Long: W112° 8' 54"	One portion has been subsumed by the pit; the other portion is buried by waste rock
Verona Uranium Mill 40.16 P2	PT 25-23-200-001 Lat: 40° 32' 51" Long: 112° 8' 40"	Plant decommissioned in 1983, site now mostly buried by waste rock
Yellow Cake Plant 83.00 P2	PT 26-18-201-003 Lat: 40° 33' 49" Long: 112° 6' 26"	Cleaned up in 1995

AREAS OF FOCUS

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SELECTED AREAS OF THE
KENNECOTT SOUTH ZONE
IN SUPPORT OF PROPOSED PLAN
Map No. 431-T-4817

EXHIBIT C

BK8329PG3731

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DISTRICT OF UTAH

BY: _____ S. DISTRICT COURT
DEPUTY CLERK

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Copper Corporation

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

* * * * *

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNECOTT HOLDINGS CORPORATION
(formerly Kennecott Corporation) and
KENNECOTT UTAH COPPER COMPANY,

Defendants.

Case No. 2:99-CV-0437K

ORDER TO LIFT STAY AND TO
ENTER CONSENT DECREE

* * * * *

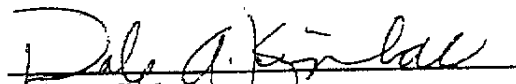
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The Court having considered the Motion to Lift Stay and to Enter Consent Decree filed by the United States of America, for and on behalf of the United States Environmental Protection Agency, and it appearing that said Motion is not opposed and good cause appearing therefor, it is hereby

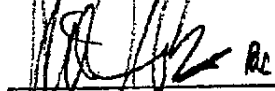
ORDERED that (1) the Consent Decree between the United States and Settling Defendants Kennecott Holdings Corporation and Kennecott Utah Copper Company (the "Kennecott Decree"), lodged with this Court on June 11, 1999, is approved and entered as of the date of this Order, and (2) the stay of the Kennecott Decree, entered on June 23, 1999, is lifted.

DATED this 10th day of November, 1999.

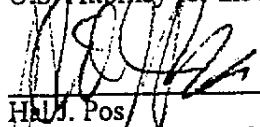
BY THE COURT:


Dale A. Kimball
United States District Court Judge

APPROVED AS TO FORM:


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Environmental Enforcement Section
U.S. Department of Justice

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Counsel for Kennecott Holdings Corporation
and Kennecott Utah Copper Corporation

asb

United States District Court
for the
District of Utah
November 10, 1999.

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:99-cv-00437

True and correct copies of the attached were mailed by the clerk to the following:

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