

ENTRY NO. 00266547

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Environmental Notice PAGE 1 / 9
CRAIG J. SPERRY, JUAB COUNTY RECORDER
FEE \$ 27.00 BY JUAB TITLE & ABSTRACT COMPANY



After recording, return to:

Project Manager, Eureka Mills Site
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
P. O. Box 144840
Salt Lake City, UT 84114-4840
Re: Eureka Mills NPL Site, Eureka, UT

And

Remedial Project Manager - Eureka Mills Site
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver Colorado 80202-1129
Mail Code: 8EPR-SR
Re: Eureka Mills NPL Site, Eureka, UT

This document is being recorded solely as a courtesy and an accommodation to the parties named herein. Juab Title & Abstract Company hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.

ENVIRONMENTAL COVENANT

Pursuant to the Utah Uniform Environmental Covenants Act (Utah Code Ann. Section 57-25-101 et seq.), the Owner of the property located in the City of Eureka, Juab County, State of Utah ("Property" herein); more particularly described on Attachment A (Property Description) which is affixed hereto and by this reference made a part hereof hereby makes and imposes upon the Property the following described Environmental Covenant, subject to the terms and conditions stated herein.

This Environmental Covenant applies to the Property that lies wholly or partially within the survey description of the Remedial Action Structures that are shown in Survey No. 484 and Survey No. 485 filed with the Juab County Recorder's Office in Nephi, Utah on July 7, 2011.

The location of the Remedial Action Structures are depicted and described in the filed survey. More information about the Remedial Action Structures may be found in the "Operations and Maintenance Manual-Eureka Mills Superfund Site, July 31, 2009," which is available at the Environmental Protection Agency Region 8 (EPA) or the Utah Department of Environmental Quality (UDEQ).

1. **Notice.** Notice is hereby given that the Property is or may be contaminated with hazardous substances as described below and, therefore, this Environmental Covenant must be imposed to mitigate the risk to the public health, safety and/or the environment.

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SCANNED

DERR 2011-014215

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Environmental Response &
Remediation

2. **Environmental Response Project.** Elevated levels of lead and other metals have been found in the soil and mine waste within the boundaries of the Eureka Mills National Priorities List (NPL) Site. EPA completed a Remedial Investigation (RI) Report for the Site in July 2002 and a Feasibility Study (FS) Report in September 2002. During the RI, EPA conducted a risk assessment and concluded that the elevated levels of lead and other metals in the soil and mine waste created an unacceptable risk to human health. A removal action was completed at the Site, authorized by an EPA Action Memorandum, dated May 29, 2001. Remedial actions for the Site are identified in EPA's Record of Decision (ROD) for Lead Contaminated Soils in Operable Units 00, 01, 02 and 03 (OUs) of the Eureka Mills Superfund Site, dated September 2002. The Remedial Action was completed for the Site in October, 2010. On October 12, 2010, the City of Eureka adopted a land use ordinance, entitled "Regulations and Permitting Procedures for Excavations and Development in the Eureka Mills Superfund Site, Ordinance 10-12-2010, Chapter 13." The ordinance is a local land use ordinance approved by EPA and UDEQ. In addition to the Owner complying with this ordinance, the Environmental Covenant outlined herein is necessary to fully implement the remedy selected in the ROD.

3. **Administrative Record.** The name of the Administrative Record for the environmental response project is "Eureka Mills Site" and it is located at the EPA Superfund Record Center, located in Denver, CO. Information about contamination on the Property is also available for review at UDEQ, Division of Environmental Response and Remediation, located in Salt Lake City, UT.

4. **Owner.** The United States Government is the current Owner of the Property. Consistent with the provisions of this Environmental Covenant, the obligations of the Covenant are imposed on assigns and successors in interest, including any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees ("Transferee") during that Transferee's period of occupation, ownership or control.

5. **Holder.** The UDEQ is a Holder of this Environmental Covenant. UDEQ assumes no affirmative obligation through the entry of this Environmental Covenant and shall not incur any liability under state law or otherwise solely by virtue of being a holder under this Environmental Covenant.

6. **Agency.** The EPA and the UDEQ are each an Agency for the purpose of this Environmental Covenant as that term is defined in the Utah Uniform Environmental Covenants Act. Neither the EPA nor the UDEQ assume any affirmative obligation through the entry of this Environmental Covenant.

7. **Use Restrictions: Remedial Action Structures.** EPA's Superfund Remedial Action Structures are shown in Survey No. 484 and Survey No. 485. That part of the Property on which a Remedial Action Structure is located is hereby affected by the following use restrictions:

- a) **Restriction on New Construction or Surface Disturbance.** No new construction or disturbance of any kind that disrupts or may have the potential to disrupt the

integrity of the Remedial Action Structure is allowed except as authorized specifically and expressly in writing by UDEQ with written concurrence by EPA.

b) **Prohibition on Agricultural Use.** No agricultural use shall be permitted or allowed, including, but not limited to, the grazing, feeding or keeping of any animal for agricultural or commercial purposes.

c) **Prohibition on Residential and Public Use.** No residential use, including, but not limited to, any single family or multi-family residential dwelling, whether permanent or temporary, and no playgrounds, parks, schools, daycare centers (whether independent or ancillary to a permitted use), recreational facilities of any type, community centers, hospitals, or adult care centers shall be permitted or allowed

8. **Compliance With Local Land Use Ordinance.** The Property is also hereby limited or otherwise affected by the following restrictions:

a) The Owner shall follow the process required by the local institutional control ordinances.

b) In the event that the terms of this Covenant conflict with the local land use ordinance, the stricter provision shall apply to the property, subject to written approval by UDEQ and written concurrence by EPA.

9. **Applicability.** The covenants and use restrictions established herein apply to Transferees and any Owner subsequent to EPA. EPA's ownership of the property and establishment of environmental covenants and use restrictions is not intended to limit or otherwise change EPA's authority under CERCLA or any other federal law.

10. **Protection of the integrity of Remedial Actions.** Use of the Property shall not in any way interfere with the operation and/or maintenance of Remedial Action Structures. The Remedial Action Structure may include, but is not limited to, any equipment or infrastructure constructed as part of the Remedial Action. It may also include any rock or soil material, or structure that prevents contact with contaminated materials in the ground or at the surface. "As-Built" drawings that show the specific features of the Remedial Action Structures subject to this Environmental Covenant are incorporated into EPA's Operation and Maintenance Manual, copies of which are available from either EPA or UDEQ.

11. **Access.** EPA, UDEQ and their designees shall have an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

a) Facilitating implementation of EPA's Remedial Actions as set out in the above-mentioned ROD, including but not limited to construction, operation, maintenance, monitoring, and decommissioning of Remedial Action Structures. Remedial Action Structures shall mean such man made terrain features or contours

or structures that are identified in Survey No. 484 and Survey No. 485. Such features or structures may include, but are not limited to, access control features, boulders, fencing, gates, roadways, retaining walls, drainages, sedimentation basins, capped mine waste piles, and ground water monitoring wells.

- b) Verifying any data or information submitted to EPA and UDEQ;
- c) Verifying that no action is being taken on the Property in violation of the terms of this Environmental Covenant, or of any federal, state or local laws, regulations or ordinances;
- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e) Conducting periodic reviews of the Remedial Actions, including but not limited to, any review required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions if EPA or UDEQ, in their sole discretion, determine that: (i) such actions are necessary to protect human health or the environment because either the original Remedial Actions have proven to be ineffective or because new technology has been developed that will accomplish the purposes of the Remedial Actions in a significantly more efficient or cost effective manner; and, (ii) the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.
- g) Implementing or enforcing this Environmental Covenant.

12. **Covenant Running with the Land.** As provided for in the Utah Environmental Covenants Act and Utah Code Ann. Section 57-25-109, this Environmental Covenant shall be maintained in perpetuity and shall run with the land and be binding on Transferees and all successors in interest of the Owner, unless or until they are modified or terminated as provided for in the Utah Environmental Covenant Act and Utah Code Ann. Section 57-25-110, or as otherwise provided for in this Environmental Covenant.

13. **Modification or Termination.** This Environmental Covenant can be modified or terminated as provided for in the Utah Environmental Covenants Act and Utah Code Ann. Section 57-25-110.

13. **Notice.** Any document or communication required by this Environmental Covenant shall be submitted to the parties at the addresses provided below unless a party provides written notice of its new address to the other parties.

To EPA at:

Remedial Project Manager - Eureka Mills Site
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver Colorado 80202-1129
Mail Code: 8EPR-SR

And to UDEQ at:

Project Manager, Eureka Mills Site
Division of Environmental Response and Remediation
Department of Environmental Quality
P.O. Box 144840
Salt Lake City, Utah 84114-4840

14. **Enforcement.** This Environmental Covenant may be enforced and/or protected as provided in the Utah Environmental Covenants Act and Utah Code Ann. Section 57-25-111. Enforcement of the terms of this instrument by UDEQ and EPA shall be at the discretion of UDEQ and EPA, and any forbearance, delay or omission to exercise those agencies' rights under this instrument shall not be deemed to be a waiver by UDEQ or EPA of such term or of any subsequent breach of the same or any other term, or of any of the rights of UDEQ or EPA under this instrument.

15. **Notice Upon Conveyance.** Instruments that convey any interest in the Property (fee, leasehold, easement, etc.,) shall include a notification to the person or entity who acquires the interest that the Property is subject to this Environmental Covenant and identify the date, entry no. book and page number at which this document is recorded in the records of the Juab County Recorder, in the State of Utah.

16. **Recordation and Distribution of Environmental Covenant.** Within forty five (45) days after the date of the final required signature upon this Environmental Covenant, the Owner shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Juab County Recorder's Office. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to the UDEQ and the EPA at the addresses provided above.

17. **Governmental immunity.** In executing this Environmental Covenant, neither the UDEQ nor EPA waives governmental immunity afforded by law. The Owner, for itself and its successors, assigns, and transferees, hereby fully and irrevocably releases and covenants not to sue the State of Utah, EPA, their agencies, successors, departments, agents, and employees from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-109 and 57-25-110 or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to

the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101 et seq. or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Utah Code Ann. Sections 63G-7-202 and -902, as determined in a court of law.

18. **Reservation of Rights.** Nothing in this Environmental Covenant shall restrict the EPA or UDEQ from exercising any authority under applicable law.

20. **Compliance Reporting.** Upon request, Owner shall submit written documentation to the UDEQ and EPA to demonstrate compliance with the property use restrictions in Paragraphs 7, 8, and 10. Any Owner subsequent to EPA shall inform EPA and UDEQ in writing of any change in Owner's contact information.

The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Andrew J. Lensink, acting
Andy Lensink, Supervisory Attorney
Legal Enforcement Program

9/28/11
Date

Kelcey Land
Kelcey Land, Director
Technical Enforcement Program

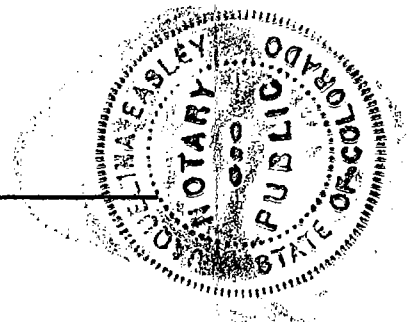
9/28/11
Date

State of Colorado)
)
County of Denver) ss:

Before me, a notary public, in and for said county and state, personally appeared Andy Lensink and Kelcey Land, Directors respectively of Legal Enforcement and Technical Enforcement at the United States Environmental Protection Agency, who acknowledged to me that they executed the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal
this 28th day of September 2011.

Angeline Early
Notary Public



COMMISSION EXPIRES
09/30/2011

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

The Utah Department of Environmental Quality authorized representative Identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Brent H. Everett

Brent H. Everett, Director
Division of Environmental Response
and Remediation

9/8/2011
Date

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



Before me, a notary public, in and for said county and state, personally appeared Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, who acknowledged to me that he did execute the foregoing instrument this 8 day of September 2011.

Dana J. Powers
NOTARY PUBLIC

**Attachment A to Environmental Covenant
Survey No. 484 and 485**

Owner	Parcel #	Name or Description
U.S. Government	Tax ID No. XE00-5458 11B:	Beginning at a point in a fence line which is S58° 17' 00" W. 149.91 feet and S22° 41' 27" W. 128.09 feet and S35° 21' 15" W. 15.12 feet from the Southeast corner of Lot 4, Block 2, Plat "D", Eureka Townsite Survey; thence along said fence S35° 21' 15" W. 276.11 feet to the Northerly line of the D&RG RR Property; thence Northeasterly along a curve to the left 272.84 feet (with a chord bearing and distance of N35° 33' 48" E 271.07 feet); thence N24° 15' 18" E 5.14 feet to the point of beginning. Containing 0.059+/- acres.
U.S. Government	Tax ID No. XE00-5458 11C:	Beginning at the Southeast corner of Lot 4, Block 2, Plat "D", Eureka Townsite Survey; thence along the South line of said Lot 4 S58° 17' 00" W. 59.51 feet to the Southerly line of the D&RG RR Property; thence along said Southerly line S24° 15' 18" W. 222.93 feet to a curve to the right; thence along said curve to 396.02 feet (with a chord bearing and distance of S39° 33' 41" W. 391.33 feet); thence N70° 54' 00" E 462.32 to the East line of Lot 5; thence North 00° 46' 46" E. 320.89 feet along said line; thence N37° 51' 00" W. 81.16 feet to the point of beginning. Containing 1.944+/- acres.