



W2311946

EN 2311946 PG 1 OF 14
ERNEST D ROWLEY, WEBER COUNTY RECORDER
21-DEC-07 218 PM FEE \$.00 DEP JPM
REC FOR: STATE OF UTAH

To be recorded with Weber County
Recorder – Utah Code Ann § 57-25-108

WHEN RECORDED MAIL TO:

Utah Department of Transportation
Mr. Rex Harris
166 West Southwell Street
Ogden, Utah 84404-4194

With copies to:

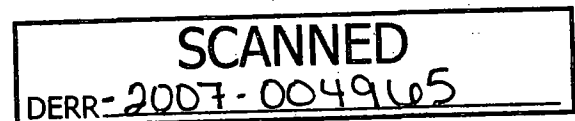
Executive Director
Utah Department of Environmental Quality
168 North 1950 West
P.O. Box 144840
Salt Lake City, UT 84114-4840

And:

Union Pacific Railroad Company
1400 Douglas Street, STOP 1690
Omaha, Nebraska 68179
ATTN: Tony K. Love
Assistant Vice President – Real Estate

And:

Carolyn L. McIntosh
Patton Boggs LLP
1801 California Street, Suite 4900
Denver, CO 80202



ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the Utah Department of Transportation ("Owner" or "UDOT" herein), and the Utah Department of Environmental Quality, ("UDEQ") pursuant to the Uniform Environmental Covenants Act (Utah Code Ann. §§ 57-25-101 et seq.) for the purpose of subjecting the Property described in paragraph 2, below, to the activity and use limitations set forth herein.

Notice ("Notice") is hereby given to all potential and subsequent owners, operators, and any person or entity that may hereafter acquire an interest in the Property, that the Property is or may be contaminated with hazardous materials as described below, that the Property is subject to remediation under: 1) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601, et seq.) ("CERCLA"), pursuant to a Consent Decree for Remedial Design/Remedial Action ("Consent Decree") between the United States of America and Union Pacific Railroad Company ("Union Pacific"), Civil Action No. 1:06CV00115 BSJ (D. Utah); and 2) Utah State laws. Institutional Controls must be imposed to mitigate the risk to the public health, safety and/or the environment from the following contamination:

Dense nonaqueous phase hydrocarbon liquids ("DNAPL") have been identified in soils and below groundwater beneath a portion of Owner's property. The zone of DNAPL has been identified below groundwater in subsurface soils at general depths ranging from 11 to 19 feet below ground surface as measured from the base of the overpass embankments. Following a remedial investigation conducted by Union Pacific and overseen by the U.S. Environmental Protection Agency ("EPA") and the UDEQ under CERCLA protocol, a baseline risk assessment was conducted by the EPA (Region 8). The risk assessment concluded that impacted groundwater would pose a substantial risk from direct ingestion of water and/or inhalation of volatile organic compounds ("VOCs") released from water, if it were ever used for drinking or other indoor purposes. Direct human contact with the DNAPL contamination in subsurface soils may also present an adverse exposure risk.

The risk is driven mainly by the following contaminants found in the subsurface soil and groundwater: benzene, ethylbenzene, benzo(a)pyrene, and naphthalene.

Additional information regarding contamination on the Property is available for review at the public document repository for the Property, CERCLA-8-99-12, at (i) Weber County Library, 2464 Jefferson Ave., Ogden, UT 84401; (ii) the EPA Superfund Record Center, located at 1595 Wynkoop St, Denver, CO 80202-1129; and (iii) the

UDEQ, Division of Environmental Response and Remediation, 168 North 1950 West, Salt Lake City, UT 84114-4840.

Now therefore, Owner and UDEQ agree to the following:

1. **ENVIRONMENTAL COVENANT.** This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq.
2. **PROPERTY.** This Environmental Covenant concerns highway right of way real property, owned by UDOT, located at approximately 550 West 21st Street, Ogden City, in Weber County, Utah 84404, and more particularly described in **Attachment A** and shown in **Attachment B**, both of which are attached hereto and hereby incorporated by reference herein ("Property").
3. **OWNER.** UDOT, whose Ogden City office is located at 166 West Southwell Street, Ogden, in Weber County, Utah 84404, is the owner of the Property.
4. **HOLDER.** Owner, whose Ogden business address is listed above, is also the holder of this Environmental Covenant.
5. **ACTIVITY AND USE LIMITATIONS.** As part of the Consent Decree, Owner hereby imposes and agrees to comply with the following activity and use limitations on the Property:
 - a. **Prohibition on Use of Groundwater.** Use of groundwater for any purpose, including the installation of wells, except as consistent with the Consent Decree for implementation or monitoring of remediation activities, as provided herein, is prohibited.
 - b. **Disturbance of Cofferdam or Engineered Soil Cap.** As a part of the CERCLA remedy, a cofferdam and engineered soil cap will be placed on the east side of 21st Street Pond, near the Property. Any disturbance of the cofferdam or its associated soil cap is strictly prohibited.
 - c. **Health and Safety Plan Required.** Excavations to depths below ten (10) feet below ground surface (as determined from the ground elevation at the base of the overpass embankments) and production or de-watering of any groundwater must be conducted under an appropriate Health and Safety Plan that includes provisions for worker protection, work area monitoring, appropriate testing, and appropriate disposal of contaminated soil and groundwater removed from the excavation. Any such excavations must not directly or indirectly impact the engineered remedial controls implemented by

Union Pacific as required under the Consent Decree by EPA. All excavations shall comply fully with 29 CFR Part 1926 OSHA Subpart P Excavations and Trenches requirements.

- d. Produced Water Management Plan. Any use of the Property that will or may result in dewatering, pumping or other production of groundwater is prohibited unless Owner or its successor in interest ("Transferee") has first submitted a Produced Water Management Plan to UDEQ and Union Pacific and obtained **approval from UDEQ**. UDEQ may charge the applicant - Owner or Transferee - a fee for this review. Produced water must be managed consistent with the approved Produced Water Management Plan and in compliance with all pertinent federal and state environmental laws. Management of produced water in a manner that expands the area of contamination on, under or near the Property is also prohibited.
- e. Soil Management Plan. Any use of the Property that will or may result in drill cuttings, excavation or other production of soil from depths below ten (10) feet below ground surface is prohibited unless the Owner or Transferee has first submitted a Soil Management Plan to UDEQ and Union Pacific and obtained **approval from UDEQ**. UDEQ may charge the applicant - Owner or Transferee - a fee for this review. Soil must be managed consistent with the approved Soil Management Plan and in compliance with all pertinent federal and state environmental laws. Management of soil in a manner that expands the area of contamination on, under or near the Property is also prohibited.
- f. Interference with Remedy Prohibited. Any use of the Property, including management or disposal of produced water or soil, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of remediation activities required under CERCLA and the Consent Decree by the EPA is prohibited.
- g. Restrictions Do Not Apply to Remediation. The use restrictions do not apply to excavation, drilling, or other activities performed to implement remediation activities required under CERCLA and the Consent Decree by the EPA.

6. **SUBSEQUENT PROPERTY INTEREST OWNER OBLIGATIONS.** In addition to the above restrictions, any person or entity that may hereafter acquire an interest in the Property has the following continuous, affirmative obligations to EPA, UDEQ, and Union Pacific:

a. To provide EPA, UDEQ, Union Pacific, and their representatives, and contractors, irrevocable, permanent, and continuing right of access at all reasonable times to the Property, subject to advance notice to Owner or Transferee, as necessary for implementation or enforcement of this Environmental Covenant and for any purpose related to the Consent Decree including but not limited to:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States or the UDEQ;
- iii. Conducting investigations relating to contamination at or near the Remedial Action Area, as identified in the Consent Decree;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Property;
- vi. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plan;
- vii. Implementing the Work pursuant to the conditions set forth in Paragraph 89 of the Consent Decree;
- viii. Assessing Union Pacific's compliance with the Consent Decree;
- ix. Determining whether the Remedial Action Area, Property, or other property 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; and
- x. Conducting remediation activities required under CERCLA and the Consent Decree by the EPA or under Utah law by UDEQ.

b. To comply with the activity and use limitations set forth in Paragraph 5.

7. FACILITATION OF REMEDIAL ACTIONS. EPA, UDEQ, and Union Pacific shall have an irrevocable, permanent and continuing right of access at all reasonable times to the Property, subject to advance notice to Owner or Transferee, for purposes of:

- a. Conducting remediation activities required under CERCLA and the Consent Decree by the EPA or under Utah law by UDEQ;
- b. Constructing, inspecting, maintaining, repairing, operating, closing, or removing any remediation component or equipment including but not limited to monitoring

wells or treatment equipment on the Property required under CERCLA and the Consent Decree by the EPA or under Utah law by UDEQ;

- c. Verifying any data or information obtained from monitoring on the Property;
- d. Verifying that no action is being taken on the Property in violation of the terms of this Environmental Covenant, any approved Produced Water Management Plan or Soil Management Plan, or any federal or state environmental laws or regulations;
- e. Monitoring remediation and post-remediation activities under CERCLA and the Consent Decree or Utah law, on the Property and conducting investigations relating to contamination on or near the Property, including, without limitation, sampling of air, water, sediments, soils, as authorized or required by any federal or state environmental laws or regulations and specifically, without limitation, obtaining split or duplicate samples; and
- f. Conducting the activities set forth in Paragraph 6 above.

8. **RUNNING WITH THE LAND.** This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land and the Institutional Controls described herein shall be maintained in perpetuity, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean 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.

9. **COMPLIANCE ENFORCEMENT.** Compliance with this Environmental Covenant may be enforced by Owner, UDEQ, EPA, Union Pacific, or any entity entitled to enforce compliance under Utah Code Ann. § 57-25-111. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict Owner, the UDEQ, EPA, or Union Pacific from exercising any authority under applicable law.

10. **RIGHTS OF ACCESS.** Owner hereby grants to the EPA, its agents, contractors, and employees, UDEQ, its agents, contractors, and employees, and Union

Pacific, its agents, contractors, and employees, the right of access at all reasonable times to the Property for implementation or enforcement of activities related to the Consent Decree including but not limited to the activities set forth in paragraphs 6 and 7 above and implementation or enforcement of this Environmental Covenant.

11. NOTICE UPON CONVEYANCE. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 200__, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE WEBER COUNTY RECORDER ON _____, 200__, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: *[Insert the language from Paragraph 5, herein, exactly as it appears in the Environmental Covenant.]*

Owner shall notify the UDEQ, EPA and Union Pacific within thirty (30) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name and address of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred.

12. REPRESENTATIONS AND WARRANTIES. Owner hereby represents and warrants to the UDEQ:

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property;
- C. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
- D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

13. AMENDMENT OR TERMINATION. This Environmental Covenant may only be amended or terminated by consent of all of the following: the Owner or a Transferee,

EPA, Union Pacific, and the UDEQ,¹ pursuant to Utah Code Ann. § 57-25-110 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Executive Director of the UDEQ, the EPA, Union Pacific, and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Weber County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to UDEQ, EPA, and Union Pacific.

14. SEVERABILITY. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. GOVERNING LAW. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

16. RECORDATION. Within thirty (30) days after the date of the final required signature on the Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Weber County Recorder's Office, except that if Owner forwards the original to Union Pacific's representative, Union Pacific will complete the recording and return the original recorded document to Owner, at no additional cost to Owner.

17. EFFECTIVE DATE. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Weber County Recorder.

18. DISTRIBUTION OF ENVIRONMENTAL COVENANT. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the EPA; the UDEQ; Union Pacific; and the City of Ogden, except that if Owner forwards the original fully executed Environmental Covenant to Union Pacific's representative, as provided in paragraph 16, above, Union Pacific will distribute the copies pursuant to this paragraph, at no additional cost to Owner.

19. NOTICE. Unless otherwise notified in writing by or on behalf of the Owner or UDEQ, any document or communication required by this Environmental Covenant shall be submitted to:

ation."

Utah Department of Transportation:

Mr. Rex Harris
166 West Southwell Street
Ogden, Utah 84404-4194
Phone: 801-620-1605
Fax: 801-620-1665
REXHARRIS@utah.gov

The City of Ogden:

Mr. George Benford
Ogden City Public Services Director
133 W. 29th Street
Ogden, Utah 84401
Phone: 801-629-8215
Mobile Phone: 801-540-8936
Fax: 801-622-8933
georgebenford@ci.ogden.ut.us

Union Pacific Railroad Company:

Mr. Gary L. Honeyman
Manager of Environmental Site Remediation
221 Hodgeman
Laramie, WY 82072
Phone: 307-745-6532
Mobile Phone: 307-760-0117
Fax: 307-745-3042
glhoneym@up.com

Utah Department of Environmental Quality:

Michael Storck
Ogden Rail Yard Superfund Site Project Manager
Division of Environmental Response and Remediation
168 North 1950 West
P.O. Box 144840
Salt Lake City, Utah 84114-4840
MStorck@utah.gov

And


U.S. Environmental Protection Agency:

Erna Waterman
Remedial Project Manager
U. S. EPA Region 8
Mail Code 8EPR-SA
999 18th Street, Suite 300
Denver, CO 80202
Waterman.Erna@epa.gov

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

IT IS SO AGREED:

UTAH DEPARTMENT OF TRANSPORTATION



Executive Director,
Utah Department of Transportation

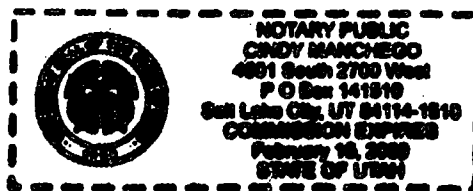
STATE OF UTAH)
) ss.
County of Salt Lake)

Subscribed and sworn to and acknowledged before me this 21 day of
Nov, 2007, by John Njord, Exec. Dir. of the Utah
Department of Transportation, or his/her designated representative.



Notary Public

My Commission expires: 2/15/2009



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 Sections 57-25-102(2) and 57-25-104(1)(e).

By: Brad T Johnson

Brad T Johnson

Title: Director, Division of Environmental Response
and Remediation

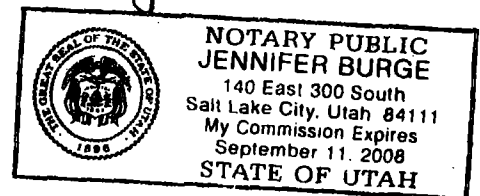
Utah Department of Environmental Quality

STATE OF UTAH)
) ss.
County of Salt Lake)

Subscribed and sworn to and acknowledged before me this 11 day of
December, 2007, by Brad T Johnson.

Jennifer Burge
Notary Public

My Commission expires: 9-11-08



This instrument prepared by:

Carolyn L. McIntosh
Patton Boggs LLP
1801 California Street
Suite 4900
Denver, CO 80202
Ph: 303-894-6127
cmcintosh@pattonboggs.com

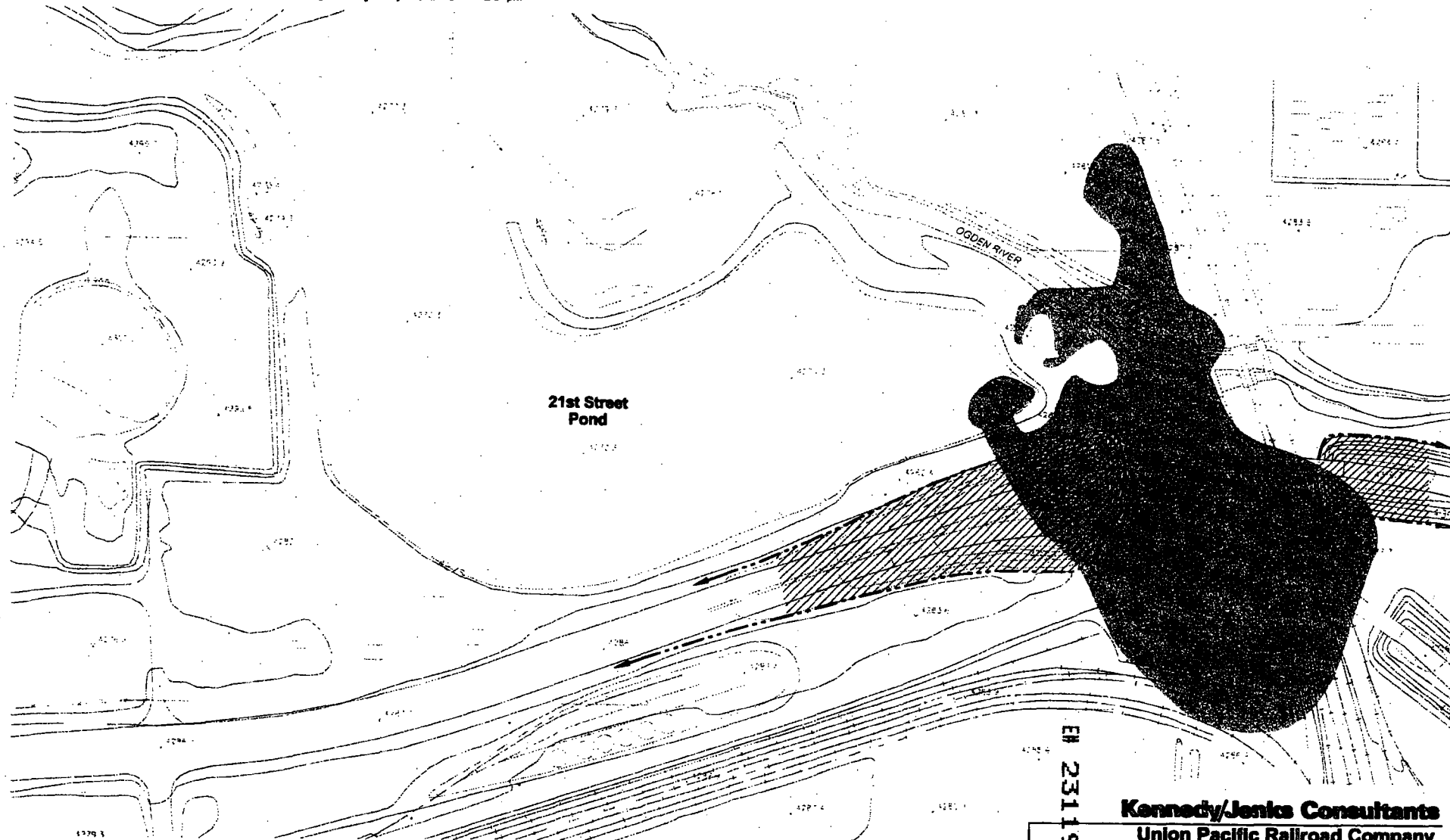
ATTACHMENT A**Legal Description of the Property Subject to the Environmental Covenant****WEST PARCEL**

BEING A PART OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, WEBER COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 30; THENCE SOUTH A DISTANCE OF 811.51 FEET; THENCE WEST A DISTANCE OF 450.93 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING 120 FEET PERPENDICULARLY DISTANT NORTHERLY FROM THE CENTER LINE OF THE WESTBOUND LANE OF INTERSTATE I-15 AT ENGINEERS STATION 103+92; THENCE S.43°06'33"E 97.20 FEET; S.22°09'52"W. 92.78 FEET; THENCE S.35°02'20"W. 135.99 FEET; THENCE S.43°41'54"W. 94.32 FEET; THENCE N.87°53'29"W. 118.90 FEET; THENCE S.76°33'32"W. 265.75 FEET; THENCE S.76°33'38"W. 161.49 FEET; THENCE N.18°57'45"W. 179.54 FEET; THENCE N.67°16'04"E. 239.73 FEET; THENCE N.68°49'57"E. 308.71 FEET; THENCE N.73°37'42"E. 203.79 FEET, TO THE POINT OF BEGINNING. CONTAINS 3.91 ACRES, MORE OR LESS.





EAST PARCEL

BEING PART OF AN ENTIRE TRACT OF PROPERTY, IN LOTS 6, 7 AND 8 OF BLOCK 6, FIVE ACRE PLAT A, OGDEN CITY SURVEY AND THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT OF THE SOUTH LINE OF A UDOT PARCEL OF LAND (SERIAL NUMBER 03-009-0014), SAID POINT BEING S.1°19'29"W. 186.50 FEET, N.70°49'34"W. 21.73 FEET, N.77°46'58"W. 197.00 FEET AND N.82°49'55"W. 293.45 FEET FROM THE NORTHEAST CORNER OF SAID LOT 6, AND RUNNING; THENCE N.82°49'55"W. 65.59 FEET; THENCE N.34°13'54"W. 88.87 FEET; THENCE NORTHWESTERLY 20.46 FEET ALONG THE ARC OF AN 1869.86 FOOT RADIUS CURVE TO THE LEFT (NOTE: TANGENT TO SAID CURVE AT ITS POINT OF BEGINNING BEARS N.87°02'54"W.) TO AN EASTERLY RIGHT OF WAY LINE OF THE CENTRAL PACIFIC RAILROAD COMPANY; THENCE N.18°12'28"W. 85.18 FEET ALONG SAID EASTERLY RIGHT OF WAY LINE; THENCE SOUTHEASTERLY 20.59 FEET ALONG THE ARC OF A 1949.86 FOOT RADIUS CURVE TO THE RIGHT (NOTE: TANGENT TO SAID CURVE AT ITS POINT OF BEGINNING BEARS S.87°56'54"E.) THENCE N.21°49'50"E. 84.80 FEET; THENCE S.82°58'32"E. 109.44 FEET; THENCE S.83°35'46"E. 26.82 FEET; THENCE S.62°4'14"W. 226.43 FEET TO THE POINT OF BEGINNING. CONTAINS 0.71 ACRES, MORE OR LESS.

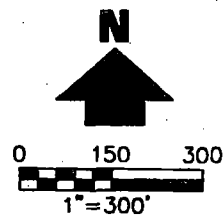
ATTACHMENT B
Map of the Property Subject to the Environmental Covenant



LEGEND

-  PROPERTY BOUNDARY
-  ZONE OF SUBSURFACE DNAPL
-  PORTION OF PROPERTY UNDER INSTITUTIONAL CONTROL
-  SURFACE ELEVATION

NOTE:
BASE MAP SOURCE: OGDEN
FEASIBILITY STUDY (9/27/04,
THE FORRESTER GROUP)



EN 2311946 PG 14 OF 14

Kennedy/Jenks Consultants
Union Pacific Railroad Company
Ogden, Utah

UDOT OVERPASS

FIGURE B
K/J 0578777.16