08/11/2008 03:38 PM 137080
JESSICA LOVINGIER GILPIN COUNTY, CO
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129 COVENANTS TotalFee:46.25 DocFee:0.00

This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to Section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

The City of Black Hawk grants an Environmental Covenant ("Covenant") this 28 day of May, 2008 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq*. The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, the City of Black Hawk is the owner of certain property ("the Property") which includes an area commonly referred to as the **Powers Lode Claim MS# 550**, located in Gilpin County, Colorado, as legally described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth.

WHEREAS, the Property is located within the Central City/Clear Creek Superfund Site Study Area ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register in 1983; and

WHEREAS, in the Central City/Clear Creek Superfund Site Operable Unit 4 Record of Decision dated September 29, 2004 (the "ROD"), the EPA Region VIII Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions:

a. Mine waste pile remediation including erosion control measures;
b. Stream restoration/stabilization actions;
c. Maintenance related to all construction components;
d. Institutional controls (e.g., an environmental covenant) to ensure the long-term integrity of the remedial action; and

WHEREAS, the Property as described includes a portion where erosion control measures were constructed on or around a mine waste rock pile, which includes remedial actions such as re-grading, construction of run-on/run-off control structures, placement of rock covers over mine waste or riprap along the base of mine waste piles and revegetation of disturbed areas. The actions may also include stream restoration/stabilization and sediment control measures. The area affected by these remedial actions is defined in Attachment B (hereinafter referred to as the "Subject Property"); and;

WHEREAS, pursuant to the ROD, the Subject Property is the portion of the Property where the remedial action will be constructed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601. et seq. ("CERCLA"); and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by ensuring that constructed portions of the remedy remain intact and functioning as designed, and

WHEREAS, the City of Black Hawk desires to subject the Subject Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Subject Property and bind the City of Black Hawk and all parties having any right, title or interest in the Subject Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein, for the benefit of the Department.

NOW, THEREFORE, the City of Black Hawk hereby grants this Environmental Covenant to the Department, and declares that the Subject Property shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 10, below, which shall run with the Subject Property in perpetuity and be binding on the City of Black Hawk and all parties having any right, title or interest in the Subject Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein. As used in this Environmental Covenant, the term OWNER means the record owner of the Subject Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Subject Property or placement of encumbrances on the Subject Property, other than by the exercise of eminent domain.

1) Use restrictions

   a) No person shall till, excavate, grade, construct, or take any other activity that disturbs the ground surface of the Subject Property without modification of this Covenant pursuant to paragraph 2, below.

   b) No person shall make any uses or take any activities that would in any manner interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed at the Subject Property.

   c) No person shall prohibit or deny CDPHE personnel, including its representatives, agents and contractors, access to the Subject Property for the purposes of environmental sampling, inspecting the remedy, conducting maintenance, and inspecting OWNER'S compliance with this Environmental Covenant.

2) Modifications This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Covenant. The request shall contain information

showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

a) a proposal to perform additional remedial work;
b) new information regarding the risks posed by the residual contamination;
c) information demonstrating that residual contamination has diminished;
d) information demonstrating that an engineered feature or structure is no longer necessary;
e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
f) other appropriate supporting information.

3) Conveyances OWNER shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Subject Property.

4) Notice to Lessees OWNER shall incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Subject Property.

5) Notification for proposed construction and land use OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use affecting the Subject Property.

6) Inspections The Department shall have the right of entry to the Subject Property at reasonable times with prior notice for the purposes described in 1c. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Subject Property.

7) No Liability The Department does not acquire any liability under State law by virtue of accepting this Environmental Covenant.

8) Enforcement The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. the City of Black Hawk may file suit in district court to enjoin actual or threatened violations of this Covenant.

9) Owner's Compliance Certification OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER's compliance, and any lack of compliance, with the terms of this Covenant.

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10) Notices Any document or communication required under this Covenant shall be sent or directed to:

Remedial Programs Manager
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

The City of Black Hawk, has caused this instrument to be executed this 30 day of May, 2008.

The City of Black Hawk

By: [signature]

Title: Mayor

STATE OF Colorado)
) ss:
COUNTY OF Gilpin)

The foregoing instrument was acknowledged before me this 30 day of May, 2008 by David D. Spellman on behalf of the City of Black Hawk

JEANIE M. MAGNO NOTARY PUBLIC STATE OF COLORADO

Jeanie M. Magno
Notary Public

53 Wallens Place
Address

Golden, CO 80403

My commission expires: 5/14/09

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Accepted by the Colorado Department of Public Health and Environment this 25th day of June, 2008.

By: Gary W. Baughman

Title: Director, HMWMD

STATE OF COLORADO)
) ss:
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 25 day of JUNE, 2008 by GARY BAUGHMAN on behalf of the Colorado Department of Public Health and Environment.

Claudette M. Ferris
Notary Public

4300 Cherry Creek Dr So
Address

Denver, CO 80246

My commission expires: October 21, 2011

CLAUDETTE M. FERRIS NOTARY PUBLIC STATE OF COLORADO

ATTACHMENT A
Tax Record Description

Account: N001345

Location

Parcel Number
Tax Area 010 - TAX AREA 10 - 010
Situs Address
Legal Summary MINE: POWERS - 550 100% 5 ACRESRUSSELL
S: 18 T: 3S R: 72W S: 13 T: 3S R: 73W

Owner Information

Owner Name CITY OF BLACK HAWK
Owner Address PO BOX 17
BLACK HAWK, CO 80422-0017

Assessment History

Actual (2007)	$27,000
Assessed	$7,830

Tax Area: 010 **Mill Levy:** 22.716

Type	Actual	Assessed	Acres
9149	$27,000	$7,830	5.000

Transfers

Sale Price	Sale Date
	11/11/1998

Tax History

Tax Year	Taxes
*2008	$0.00
2007	No Tax Values

* Estimated

Images

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ATTACHMENT B
TO COVENANT

MAP OF THE SUBJECT PROPERTY (DEPICTING THE PORTION OF THE PROPERTY SUBJECT TO THE ENVIRONMENTAL COVENANT)

(The Subject Property is that portion of the Property where the remedy was implemented as pointed to on the map)

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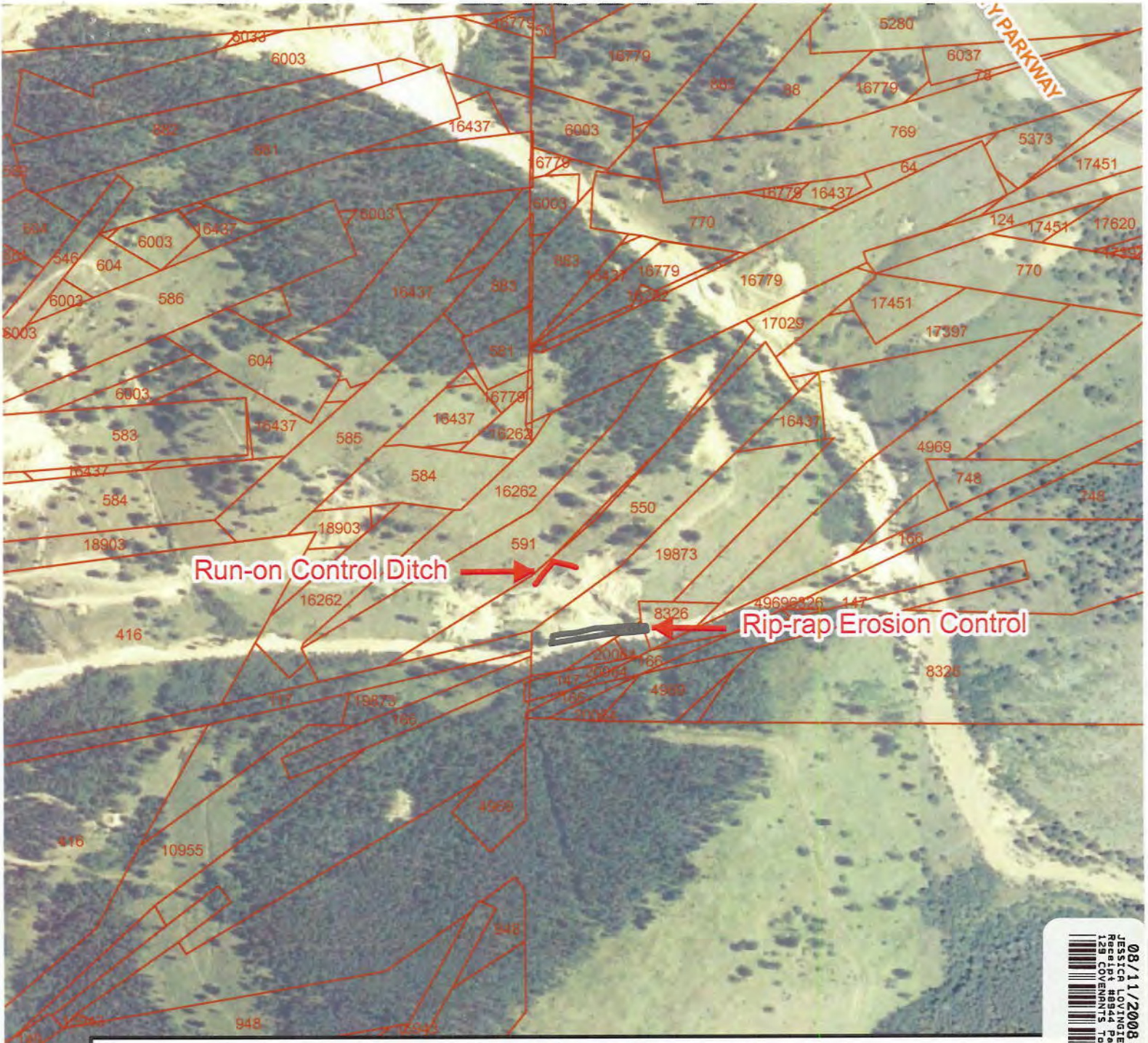

EXHIBIT B
POWERS WASTE ROCK PILE

CENTRAL CITY/CLEAR CREEK SUPERFUND SITE

US Environmental Protection Agency & Colorado Department of Public Health and Environment

Phase I Waste Rock Pile Remediation Project
Gilpin County, Colorado

KEY

Use Restricted Areas Per Covenant Description

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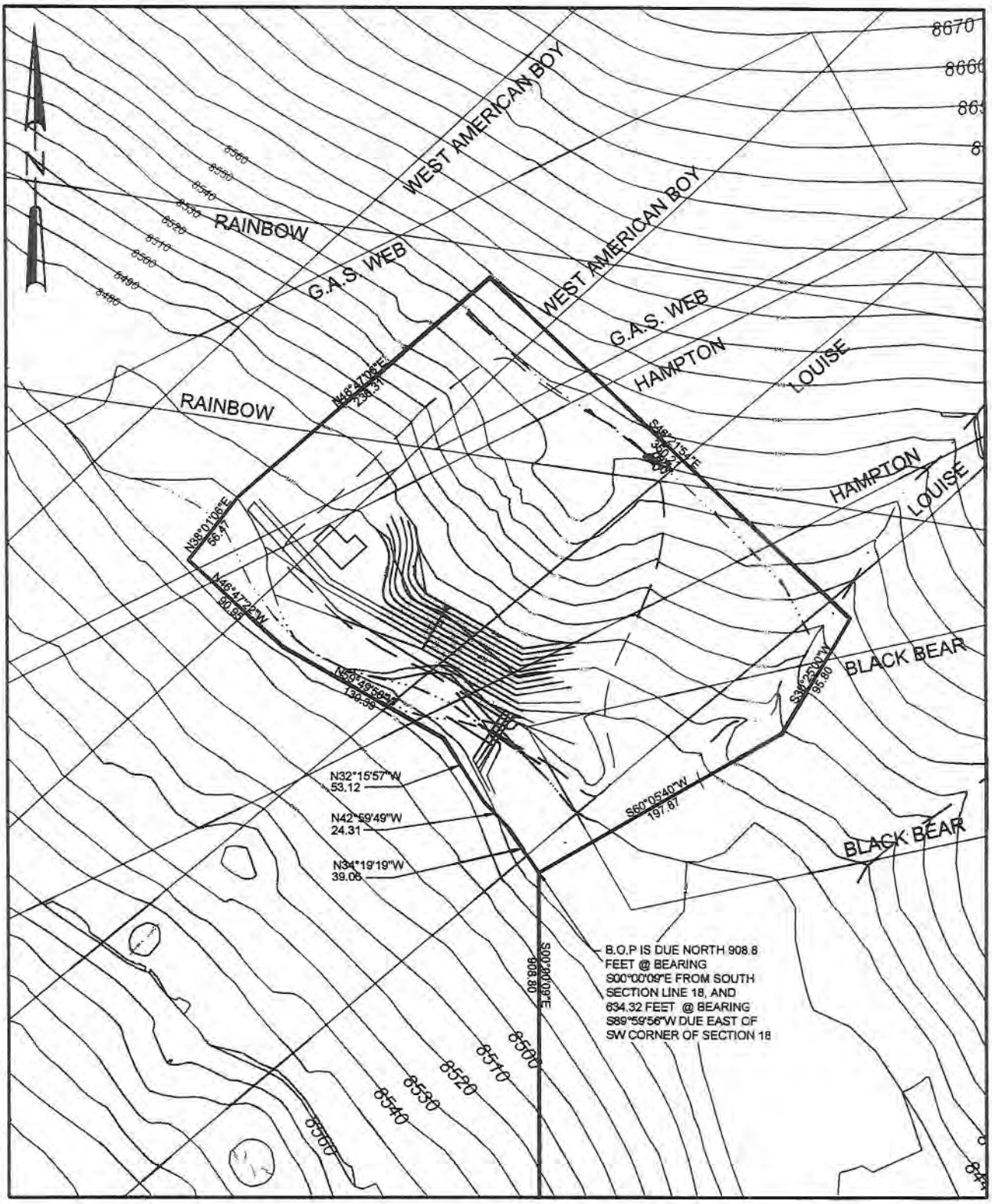

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SCALE IN FEET

CLEAR CREEK / CENTRAL CITY
SUPERFUND SITE OU4

ENVIRONMENTAL COVENANT
BOUNDARY
HAMPTON WASTE ROCK PILE

DATE: 2/7/2008 | BY: JB SCG

JOB NO: 1149-047.07

TETRA TECH

FIGURE:

1

R:\1149_04\DWG\AS-BUILTS-12-07\FIGURES FOR ENVIRONMENTAL CONVENANT\HAMPTON.DWG , HAMPTON, 2/7/2008 4:52:09 PM, STEVE GALLEGOS

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