



April 11, 2016

The Honorable Gina McCarthy  
Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Dear Administrator McCarthy:

The communities that we represent have formally requested a Superfund designation for the Bonita Peak Mining District (District) and we recognize there is state and local consensus on the matter. We write to ask that you work to address additional concerns that the Town of Silverton and San Juan County have expressed in the attached letters regarding the Environmental Protection Agency's (EPA) proposed listing of the District. We urge you to prioritize funding for this project as soon as possible to restore the health of Animas River watershed, protect public health, and maintain the local recreation and tourism economy.

As we have expressed many times, the Gold King Mine spill last August was both a disaster and a wake-up call. The Towns of Silverton and Durango, San Juan and La Plata Counties, and the State of Colorado have now formally requested that your agency proceed with the proposed addition of the District to the National Priorities List. While there is now an effort to move forward with Superfund, it must be implemented in a way that works for the local communities and the State of Colorado.

Specifically, we encourage the EPA to continue to collaborate with local, tribal, and state officials and to form a community advisory group. The EPA must also work to protect the local economy, to maximize local employment opportunities where possible, and to provide adequate funding to ensure that the cleanup is not delayed. In addition, we encourage you to consider local concerns and not close the bulkhead installed on the Red and Bonita Mine before the effects of such a closure and the hydrology are fully understood. Although the underlying issues in this area are historical, the EPA must recognize its role in the most recent spill and its subsequent obligation to this community. For our part, we will work to ensure that the District will remain a priority within the Superfund program.

In addition, while EPA has improved water quality in the Animas River by placing a temporary water treatment plant on Cement Creek, we are concerned that this facility is not being used to its full capacity and may not operate beyond fall 2016. It is our understanding that this facility has the ability to treat more of the acid mine drainage in the watershed. We urge EPA to expand the scope of this plant and continue to operate it throughout the cleanup process.

We have also heard significant concerns from local communities that the current water quality monitoring on the Animas River is not sufficient. It is likely that spring runoff will remobilize the sediments and metals deposited during the spill into the water column. Better monitoring is essential to characterize the conditions and reassure local communities. Specifically, community members are concerned about whether fish in the river are safe to eat and if it is ok to let their kids and dogs play on the sand bars and in local swimming holes this summer. Those who draw water from the Animas for irrigation or drinking water supplies also need this information. The EPA must provide adequate funding and collaborate with local governments, tribes, and the state to conduct long-term monitoring along the Animas River and at sites of specific concern to each community. The funds pledged to date by EPA for these needs are insufficient.

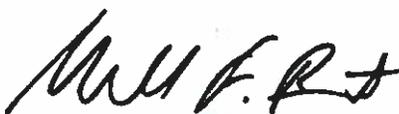
Finally, we need to ensure that the EPA's claims and reimbursement process moves forward more quickly. Local municipalities, counties, tribes, and businesses incurred extensive costs due to the spill. We expect that the EPA will compensate those affected for any losses and encourage your agency to move more quickly to do so.

We thank you for your consideration of this letter.

Respectfully,



Cory Gardner  
United States Senator



Michael F. Bennet  
United States Senator



John W. Hickenlooper  
Governor



Scott Tipton  
Member of Congress





## Town of **Silverton**

PO Box 250  
Silverton, CO 81433  
970-387-5522  
February 22, 2016



## **SAN JUAN COUNTY**

PO Box 466  
Silverton, CO 81433  
970-387-5766

The Hon. John W. Hickenlooper  
Governor  
State of Colorado  
136 State Capitol  
Denver, Colorado 80203-1792

Re: Proposed listing of the Gold King mine and other legacy mines in San Juan County on the EPA's Superfund National Priorities List

Dear Governor Hickenlooper:

San Juan County and its only town, Silverton, are genuine Colorado treasures. San Juan County is not only Colorado's most spectacularly beautiful county, it is Colorado's most remote and least populated.

Unfortunately, it also has one of the smallest and lowest-paid<sup>1</sup> workforces in the state and, because 87 percent of the county's land is owned by the federal government, its local governments are among the smallest and most poorly funded in the state. San Juan County is a uniquely fragile place; not only its ecosystems but, despite its hardy and resourceful people, its economy and its very existence.

While local and state officials have worked for years to improve our local economy, we remain heavily dependent upon tourism for our survival. Because of its position astride the source of the Animas and Rio Grande Rivers, San Juan County is at the heart of a significant portion of the west's water supply.

Unfortunately, that water supply and the county's survival have been, and continue to be, gravely threatened by acid mine drainage from century-old legacy mines, a threat dramatically illustrated by last year's Gold King mine disaster.

San Juan County has been working for over two decades to correct the environmental damage caused by legacy mines. Our community and local governments have been instrumental in the Animas River Stakeholders Group, which pioneered a nationally recognized and applauded cooperative effort by government, the environmental community, mining companies and the public to identify and clean up sources of contamination affecting the Animas and its tributaries. While these efforts have been extraordinarily successful in identifying and actually cleaning up sources of contamination<sup>2</sup> instead of supporting legions of lawyers pursuing endless litigation, they have been limited both by lack of funds and the absence of any Good Samaritan legislation protecting cleanup efforts from potential liability.

In the immediate aftermath of its Gold King spill, EPA Director Gina McCarthy came to Colorado and rightly promised the people of the state and the nation that the EPA would hold itself to the highest standard in correcting the damage that resulted from the spill. Since then, the EPA has proposed that the Gold King and

<sup>1</sup> Labor Market Information, Quarterly Census of Employment and Wages Program, Second Quarter 2015

<sup>2</sup> Abandoned Mine Lands: A Decade of Progress Reclaiming Hardrock Mines, September 2007, United States Department of Agriculture Forest Service Publication No. FS-891, United States Department of the Interior, Bureau of Land Management Publication No. BLM-WO-07-013-3720

other leaking mines in the area be listed on the Superfund National Priorities List so a comprehensive cleanup can be designed, funded and completed to dramatically improve water quality in the Animas River basin. In connection with that proposal, EPA officials at the national and regional levels have repeated and expanded upon Director McCarthy's promises, committing in extensive discussions with San Juan County and the Town of Silverton to make sure the local community has a real seat at the decision-making table and to work with local officials to reduce the negative impacts of a Superfund listing.

Silverton and San Juan County want the mines and rivers cleaned up and we want to ensure that our downstream neighbors and our communities are protected. Building upon the commitments from numerous people at all levels of the EPA, and despite the crushing financial strain placed on our very limited town and county budgets, a committee of local representatives appointed by our town and county governments, has spent hundreds hours working with the EPA. We have worked to clarify the agency's processes and plans, and to ensure that any action taken to remediate acid mine drainage actually improves water quality, doesn't further damage the environment or our community and our downstream neighbors, and doesn't create another spill like the Gold King.

In our discussions, we have pressed strongly for the EPA to commit to a number of reasonable assurances regarding the proposed NPL listing, assurances we believe are essential to protect the environment, improve water quality in the Animas River and minimize the risk of future spills while protecting the local community and its tourist economy.

These points (detailed in Exhibit A) seek reasonable assurances from the EPA that negative impacts to our community will be mitigated; that we have a real seat at the table where decisions are made; that the best available science be used in determining the cleanup; that the Superfund site should include only the mines and areas listed on the attached Exhibit B; and that, because of our small budget and the fact that EPA caused the situation in the first place, EPA reimburse Silverton and San Juan County for all expenses incurred in seeking Superfund listing. Unfortunately, while members of the EPA staff have indicated that some important requests can and will be accommodated, the EPA's letter of February 12, 2016 (attached hereto as Exhibit C) in which the agency outlines its commitments to both the local community and the nation fails to incorporate some items we believe to be essential to any NPL listing related to the Gold King spill.

The purpose of this letter is to request that the State of Colorado make a request to the EPA that the Bonita Peak Mining District Site (as defined by the EPA's attached list of specific properties from which, according to data already gathered, discharges may be adversely affecting water quality on the Animas River) be added to the National Priority List thereby making it eligible for funding under Superfund. As part of this request, we ask that you work closely with us to ensure the EPA addresses the points in Exhibit A. We understand that some of the points cannot be addressed until after a listing is obtained but we are depending on you to continue to stand with us throughout this process.

Our goal is to ensure that the EPA's actions actually improve water quality in the Animas River and its tributaries and that remediation efforts don't risk causing future disasters like the Gold King spill. To that end, we further request that:

A. The State of Colorado insist that the existing water treatment plant built by the EPA in response to the Gold King spill continue to operate and that no other bulkheads on mine tunnels (including the bulkhead on the Red and Bonita, which is presently scheduled to be closed by the EPA in June, 2016 despite the EPA's lack of information or understanding as to the consequences of such a closure) be built or closed until the consequences of any such action are fully studied and understood;

B. Because each of the investigative reports on the Gold King spill specifically notes (and the EPA itself has admitted) that the Gold King spill occurred because those involved did not adequately understand the unique hydrologic, geologic and other issues with which they were dealing and did not adequately appreciate the consequences of their actions, the State of Colorado prohibit further actions by EPA or anyone else that might have adverse consequences until the unique geology and underground hydrology of the area are fully understood. We have offered the EPA access to a team of nationally known academic and government scientists in the relevant areas who have offered to assist in this effort. If for any reason the EPA is unable or unwilling to take advantage of this scientific expertise, we request that the State of Colorado form and lead a consortium of affected states, native American nations and interested stakeholders to study existing conditions and develop the necessary information for the EPA so that we do not again have to suffer the consequences of actions taken in ignorance;

C. To the extent that EPA cannot legally reimburse the local community for all expenses incurred as a result of the Gold King spill, we request that the State of Colorado bear those costs where appropriate and applicable because the local governments and the community they represent simply lack the resources to pay them.

We believe that it is critical that the State of Colorado take the lead in ensuring that, whatever the outcome of this request for NPL listing, no action is ever taken in the name of environmental protection that will damage hundreds of miles of rivers and their surrounding ecosystems and the millions of people who rely on those rivers.

We would welcome the opportunity to meet with you and your staff to provide any assistance we can in formulating the State of Colorado's request to the EPA for NPL listing relating to the Gold King spill.

Respectfully,

Board of County Commissioners  
San Juan County, Colorado

  
Ernest F. Kuhlman, Chairman

Board of Trustees  
Town of Silverton, Colorado

  
Christine M. Tookey, Mayor

## Exhibit A

The assurances we have sought include:

1. The Superfund site should include only the mines and areas listed on the attached Exhibit B.
2. The Superfund site will be named the Bonita Peak Mining District Site so as to minimize any negative association with either Silverton or San Juan County and the damage which such association necessarily would cause to our community and its fragile tourism based economy.
3. Because of the vast amount of local knowledge, information and expertise relating to the mines of our area, while the EPA will retain the ultimate decision-making authority with regard to activities within the Superfund site, the EPA will actively involve the Town and County governments and representatives of relevant state agencies in all phases of work in connection with the site including but not limited to the listing process, the determination of the nature, scope and extent of the studies to be performed and of the data to be gathered, the remedial investigation and feasibility study, as well as the formulation, selection, design and implementation of potential remedies. The scope of this involvement will not be limited to the typical review and comment on EPA proposals but instead will include active and meaningful involvement throughout this process and particularly in the formulation and evaluation of the EPA's proposals.
4. When requested, the EPA will authorize and fund Technical Assistance (TAG) Grants or other scientific and research grants to fund such technical assistance as the Town and County may require in order to meaningfully participate in all aspects of the Bonita Peak Mining District Site project and also cause the EPA's Office of Research and Development to authorize and fund whatever Science Technical Research (STAR) or other grants to develop a complete understanding of the geology and underground hydrology of the area so that any actions taken can be based on adequate information as to their potential consequences.
5. EPA will use its best efforts to utilize the Bonita Peak Mining District project to develop and study new or alternative technologies, approaches and remedies for use in connection with mine drainage generally. This will include utilization of expertise in academia and industry regarding hydrology and other areas which properly should be considered in formulating any remediation plan for the site.
6. EPA will authorize and fund, via a Cooperative Agreement, Community Assistance (CAG) Grants or otherwise, financial assistance to the Town and County to enable them to meaningfully participate in all activities related to the site and to address all impacts caused by the Gold King incident, the Superfund listing and cleanup including reimbursing the Town and County for expenses incurred from and after August 5, 2015. Because, unlike the usual Superfund site, the Gold King spill was caused by the EPA's contractor and thus the EPA bears financial responsibility for all consequences of that spill, the scope of this assistance is intended to be considerably broader than typical for Superfund listings and to cover all expenses reasonably stemming from the Gold King

incident, the listing process and all post-listing costs including housing, legal assistance, additional manpower needs, etc.

7. In order to avoid unintended consequences which may be caused by ignorance of the geology and underground hydrology of the San Juan Mountains, before developing or implementing any alternative remedies, acting in conjunction with academic and government experts in all relevant areas and with the State of Colorado, EPA will work closely with both the local and state governments to assemble a team of scientific consultants with the necessary expertise in all areas where study may be required (particularly in the area of geology and underground hydrology) to develop such data, knowledge and information as may be necessary to understand the underground hydrology of the area and the potential consequences of remedial actions which may eventually be taken.

8. In order to prevent worsening water quality and further degradation of local streams, EPA will continue to operate the existing water treatment plant to treat discharges from the Gold King, Red and Bonita, and other area mines until final remedies are selected and implemented.

9. In order to prevent worsening water quality and to avoid the potential for another catastrophic release of acid mine drainage, the EPA will delay closure of the bulkhead installed on the Red and Bonita adit until the potential effects of such closure have been thoroughly studied and it has been determined that such closure can be effectuated without risk of causing a future blowout or release of contamination from other discharges.

10. Declaration of a Superfund site without adequately funding it will be a meaningless gesture. Because the Gold King incident is unique in that it was caused by an EPA contractor, EPA will give the Bonita Peak Mining District site adequate funding.

11. EPA will not seek to recover cleanup costs nor will it otherwise seek contribution from either a) innocent property owners who have not commercially operated any listed mine property or otherwise caused or contributed to any contaminated mine discharge or drainage or b) local governments.

12. Because the boundaries of the site are being defined so as to permit study of as wide an area as possible in order to determine which sites actually discharge significant contamination into the Animas and its tributaries, if data gathered during the preliminary stages of the project demonstrate that any property initially listed is not a significant contributor to contamination of the Animas River or its tributaries, EPA will de-list the non-contributing property and provide a letter confirming that the property is not a significant contributor to contamination of local waters and thus is not subject to action under Superfund.

13. If requested by owners of property outside of the Superfund site boundaries, the EPA will at its own expense conduct tests of the property as requested and provide either written confirmation to such property owners that contamination located within the Bonita Peak Mining District Site does not have any meaningful effect on their properties

or such other documentation as may be required in order to satisfy funding conditions, limitations or requirements of any state or federal agency or program such as HUD, FHA, Fannie Mae or Freddie Mac.

DRAFT DELIBERATIVE PROCESS

Mines under consideration for Bonita Peak NPL Proposal

February 12, 2016

Cement Creek – 15 Total; 3 Private; 4 BLM; 5 Mixed; 1 Unknown; 2 Study Areas

Ross Basin/Bonita Peak

Water from Sunnyside Mine Pool and other associated, interconnected pools draining to Cement Creek, West Fork Animas River and Eureka Gulch. (specific language still being worked out)

Grand Mogul	Top Adit and Waste Rock Loader
Mogul	Top Adit and Waste Rock Loader
Red and Bonita	Draining Sunnyside Mine Pool
Gold King	Draining Sunnyside Mine Pool
American Tunnel	Draining Sunnyside Mine Pool
South Fork	
Natalie/Occidental	Renamed Natalie/Occidental; Top Adit Loader
Dry Gulch	
Wynona	Top Adit Loader, Passive Treatment not proving effective

Prospect Gulch

Waste rock leaching or water draining from mines to Prospect Gulch between Henrietta and Galena Queen Mine. (specific language still being worked out)

Joe and Johns	Top adit loader
Lark	Prospect Gulch Study Area
Henrietta	Prospect Gulch Study Area
Cement Creek	
Mammoth	Top Adit Loader (perhaps connection to Elk Tunnel)
Anglo Saxon	Top Adit Loader
Yukon Tunnel (Gold Hub)	

**Upper Animas – 26 Total; 13 Private; 4 BLM; 1 Mixed; 8 Unknown**

**North Fork / Burrows Creek**

<b>London</b>	2015 sampling by EPA indicate loading within Burrows Creek
<b>Dewitt</b>	2015 sampling by EPA indicate loading within Burrows Creek
<b>Boston</b>	2015 sampling by EPA indicate loading within Burrows Creek
<b>Red Cloud</b>	2015 sampling by EPA indicate loading within Burrows Creek
<b>Ben Butler</b>	2015 sampling by EPA indicate loading within Burrows Creek

**West Fork / Placer Gulch**

<b>Vermillion</b>	Top Loader; Upper and lower
<b>Mountain Queen</b>	Top Adit Loader; 2015 sampling by EPA showed adit draining at 5,600 ug/L and concentrations downstream increasing to levels immediately toxic to fish (7,000 ug/L). Significant waste rock leaching of Pb and Zn indicated by sampling.
<b>Bagley Tunnel</b>	Top Adit loader
<b>Sunbank Group</b>	2015 sampling by EPA indicates loading from this area
<b>Columbus</b>	Top Adit and Waste Rock loader

**Animas – Upgradient from Eureka**

<b>Silver Wing</b>	Top Adit Loader
<b>Tom Moore</b>	Top Waste Rock Loader
<b>Eureka Gulch</b>	
<b>Sunnyside</b>	Top Waste Rock Loader; also potentially part of Sunnyside Mine Pool Study Area.
<b>Clipper</b>	Top Waste Rock Loader; sensitive environments may limit response, but to be determined as part of FS.
<b>Senator</b>	Top Adit Loader; possible connection with Ransom mine
<b>Ben Franklin</b>	Top Waste Rock Loader
<b>Terry Tunnel</b>	Long term commitment for continued maintenance of bulkhead, also potentially part of Sunnyside Mine Pool Study Area.

**DRAFT DELIBERATIVE PROCESS**  
**Mines under consideration for Bonita Peak NPL Proposal**

February 12, 2016

**Animas – Eureka to Middleton**

**Eureka Fluvial Tailings**      Sampling indicates contaminated sediment/soil.

**Kittimack Tailings**      Sampling indicates contaminated soil.

**Forest Queen**      Bioreactor not proving effective

**Cunningham Creek**

**Pride of the West**      Top Adit Loader

**Animas – Below Middleton**

**Mayflower Tailings**

**Howardsville Co Gold  
Field Tailings  
(Impoundments)**

**Aspen**      Draining Adit

**Amy Tunnel (of Aspen  
Mine)**

**Little Nation**      Draining may be coming from Katy mine – awaiting name clarification from Bill Simon

**Mineral Creek – 7 Total; 5 Private; 2 Mixed**

**Upper Mineral Creek**

**Longfellow**      Water inside could be communicating with Junction

**Koelher**      Top Adit Loader; Continued maintenance of bulkhead

**Junction**      Top adit loader

**Silver Ledge**      Draining adit/seep directly into Mineral Creek

**Browns Gulch**

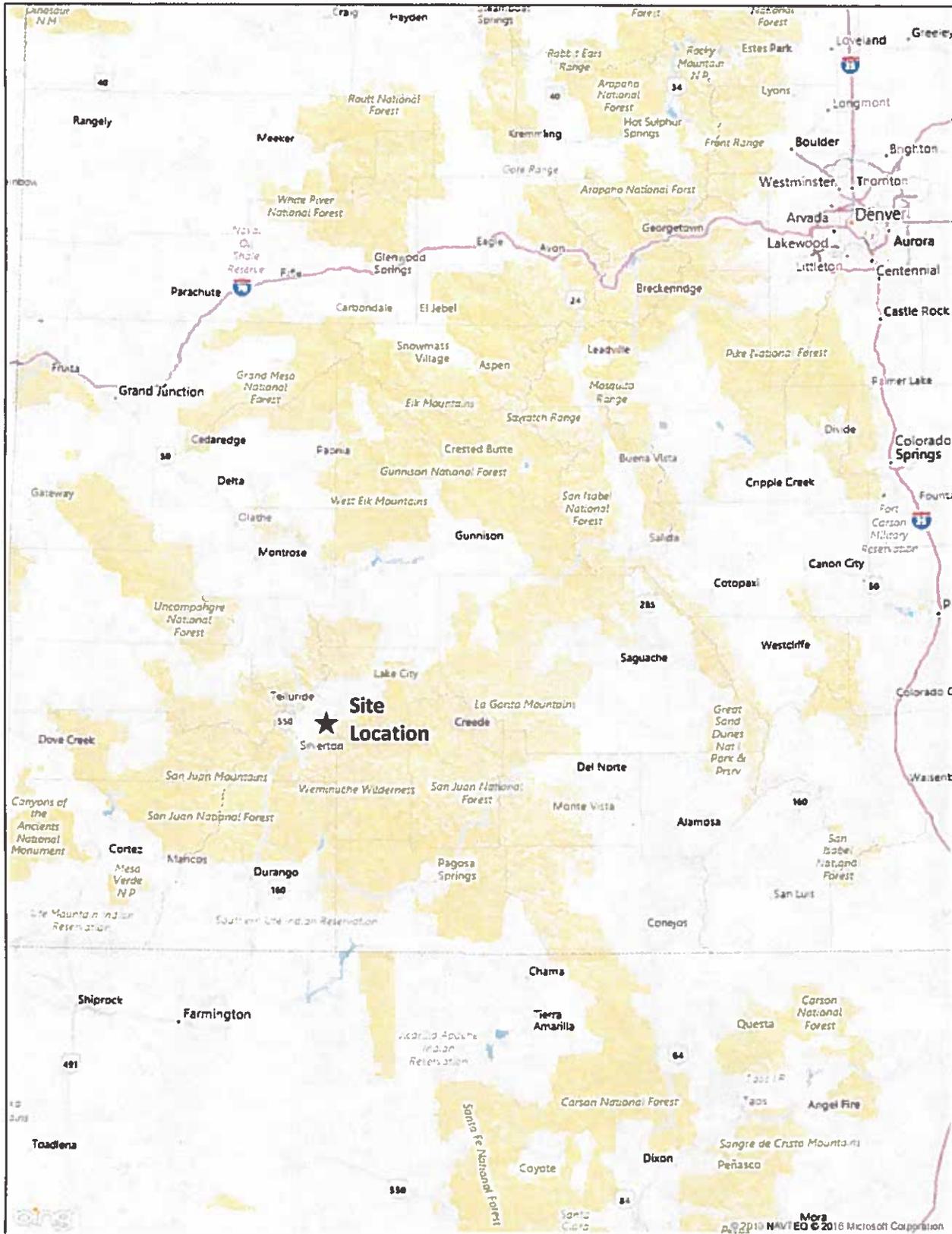
**Brooklyn Mine**      Top Adit and Waste Rock Loader

**Middle Fork**

**Paradise**      Top Adit Loader

**South Fork**

**Bandora**      Top Adit Loader



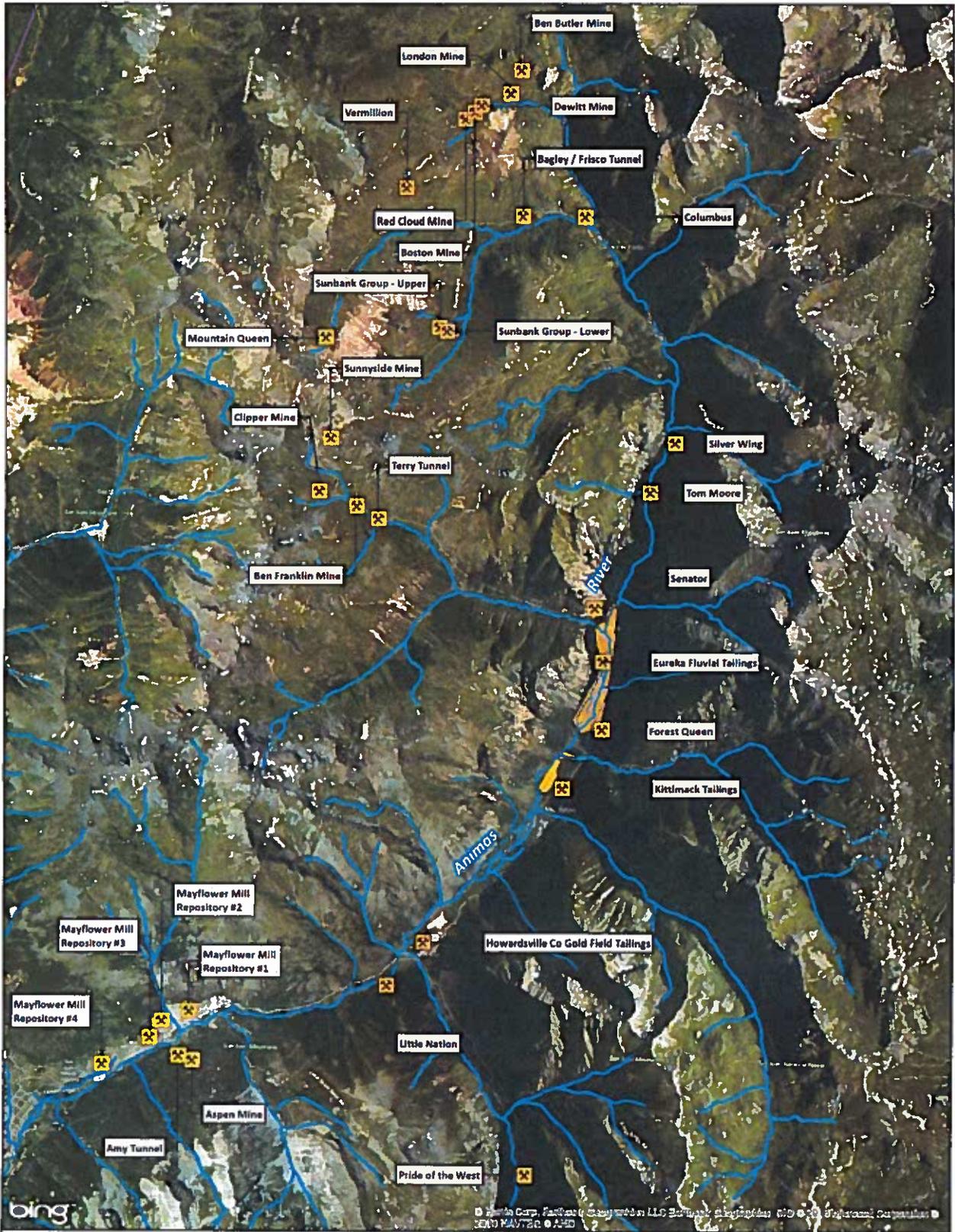
**Figure 1. Bonita Peak Mining District Site Location Map**

Date: February 1, 2016

Data Sources:  
 Mine Locations - U.S. EPA Region 8 (2015)  
 Streams - CDOW (2004)  
 Base Map - Microsoft Bing web service (2016)

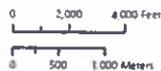
Map Projection: UTM, Meters, Zone 13N, NAD83





**Figure 2. Bonita Peak Mining District  
Upper Animas Area  
Source Mine Locations**

-  Source Mines
-  Eureka Fluvial Tailings
-  Perennial Streams
-  Intermittent Streams



Date: February 16, 2016

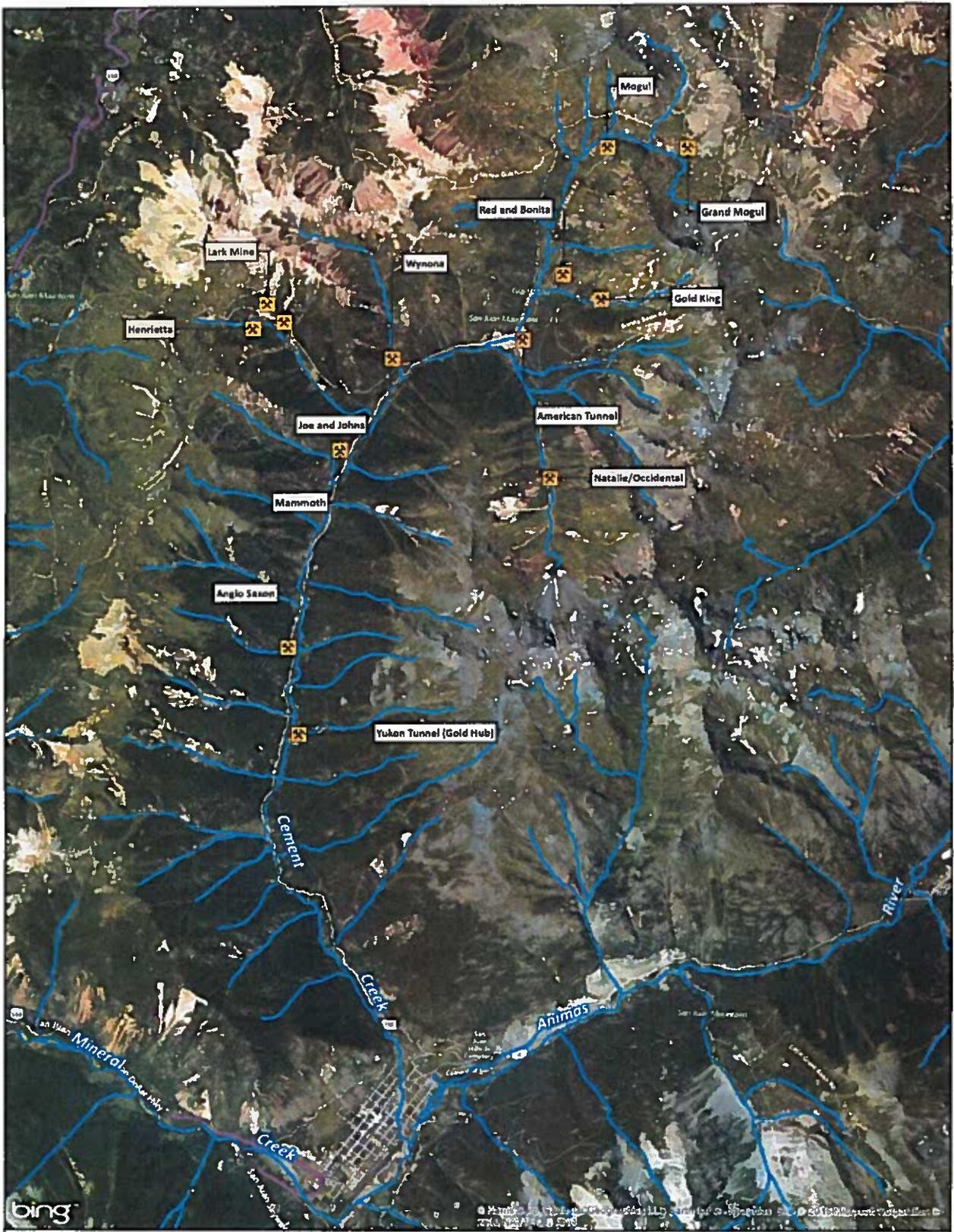
Data Sources:  
 Surface Water, Mine Locations - U.S. EPA  
 Region 8 (2015)  
 Streams - CDOW (2004)  
 Base Map - Microsoft Bing web service (2016)

Map Projection: UTM, Meters, Zone 13N, NAD83



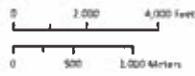
Colorado

Area of Interest



**Figure 3. Bonita Peak Mining District  
Cement Creek  
Source Mine Locations**

-  Source Mines
-  Perennial Streams
-  Intermittent Streams



Date: February 16, 2016

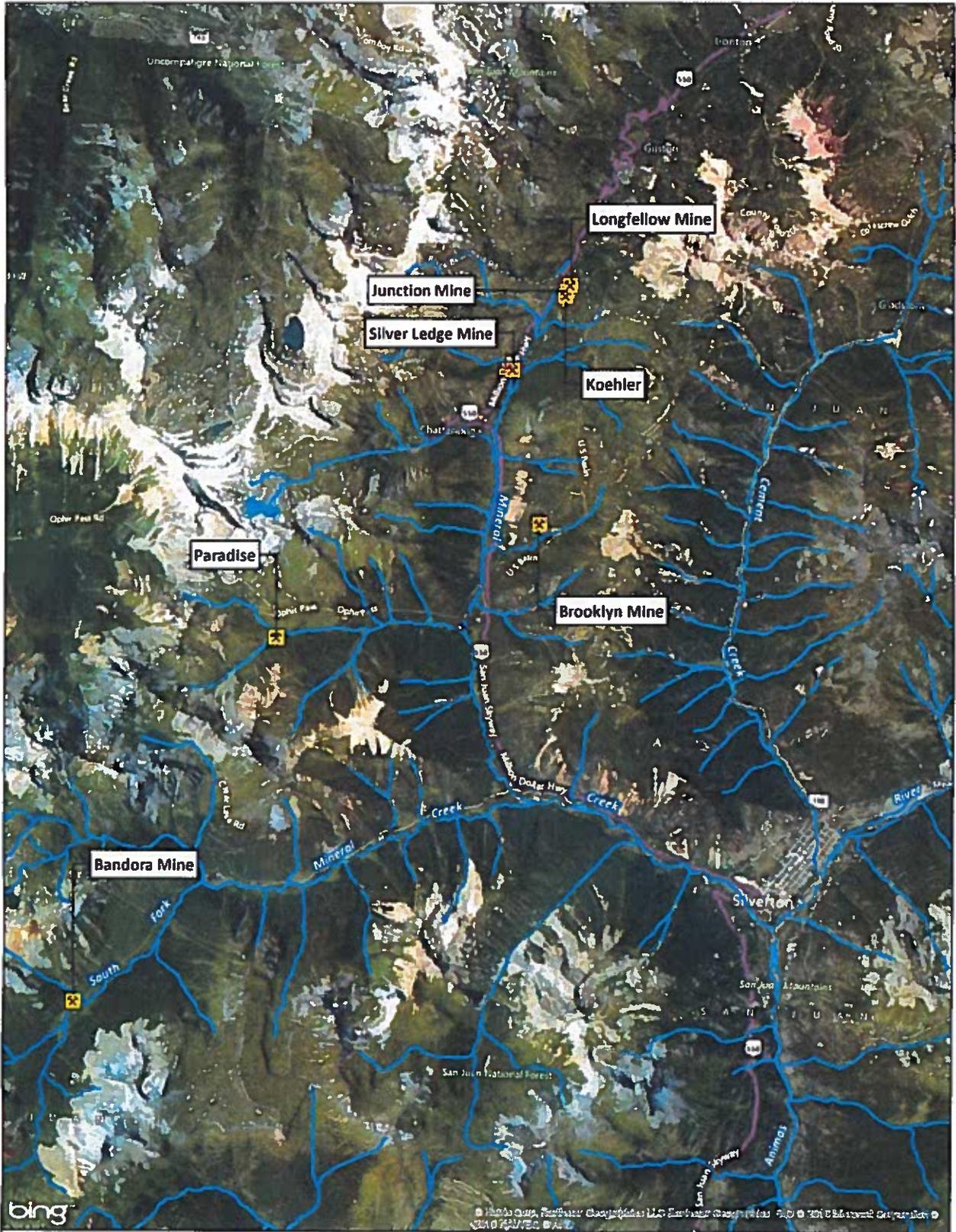
Data Sources:  
 Mine Locations - U.S. EPA  
 Region 8 (2015)  
 Streams - COOW (2004)  
 Base Map - Microsoft Bing web service (2016).

Map Projection: UTM, Meters, Zone 13N, NAD83



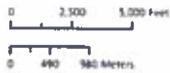
Colorado





**Figure 4. Bonita Peak Mining District  
Mineral Creek  
Source Mine Locations**

-  Source Mines
-  Perennial Streams
-  Intermittent Streams



Date: February 16, 2016

Data Sources:  
 Mine Locations - U.S. EPA  
 Region 8 (2015)  
 Streams - CDDW (2004)  
 Base Map - Microsoft Bing web service (2016)

Map Projection: UTM, Meters, Zone 13N, NAD83



Area of Interest

Exhibit C



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
www.epa.gov/region08

FFI 12 2016

Ref: 8ENF-L

Town of Silverton  
c/o Jeffery P. Robbins  
Robbins, Nicholson & Mack, PC  
679 E. 2nd Ave., Suite C  
PO Box 2270  
Durango, Colorado 81302

San Juan County  
c/o Paul Sunderland  
2427 Avenue  
Ouray, Colorado 81427

**RE: Understanding with the Town of Silverton and San Juan County Regarding Potential Superfund Listing of Mining Sources in San Juan County**

Dear Silverton and San Juan County Officials:

The U. S. Environmental Protection Agency (EPA) is considering proposing releases of hazardous substances from certain mines in and around San Juan County, to be referred to as the Bonita Peak Mining District Site, for inclusion on the National Priorities List (NPL). The purpose of this letter is to confirm discussions among the EPA, the Colorado Department of Public Health and Environment (CDPHE), San Juan County (County), and the Town of Silverton (Town) regarding the EPA's commitments to the Town and County concerning the potential NPL proposal.

The EPA is committed to early and meaningful community participation during the entire Superfund process through the completion of any cleanup. This commitment is premised on the belief that members of the public, including local entities potentially affected by a Superfund site, have a right to know what the Agency is doing in their community and to know how their concerns are considered in the site decision-making process. These principles are embodied in the EPA regulations as well as the EPA policy. Local government officials are an integral part of the community and we anticipate the Town and County playing an important role during a potential Superfund cleanup in the area, along with downstream communities interested in the potential Superfund investigation and cleanup.

The EPA is committed to taking the following actions:

1. The EPA plans, after consultation with the Town and County, to name the Superfund site the Bonita Peak Mining District Site.
2. The EPA acknowledges that there is a vast amount of local knowledge, information and expertise relating to the potential Superfund site, and will actively involve the Town and County governments in the Superfund process to the maximum extent practicable.

3. The EPA will provide information to the community about the availability of a Technical Assistance Grant (TAG) to help communities understand site-related information.
4. If it is desired, a Community Advisory Group may be established to allow for the exchange of information among the local community and the EPA, the State regulatory agency, and other pertinent federal agencies involved in cleanup of the Superfund site.
5. During the remedial investigation/feasibility study, the EPA plans to consider the development and study of new or alternative technologies, approaches, and remedies for use in connection with mine drainage generally.
6. Because the boundaries of the site are being defined so as to permit study of possible sources, if data gathered during the project demonstrate that any property is not a significant contributor to contamination of the Animas River or its tributaries, the EPA may redefine the site boundaries as appropriate and will provide a confirming letter to the relevant property owners.

Thank you for your continued interest and effort on behalf of your community.

Sincerely,

A handwritten signature in black ink, appearing to be 'Bill Murray', with a long horizontal flourish extending to the right.

Bill Murray  
Director, Superfund Remedial Program