STATE OF COLORADO

OFFICE OF THE GOVERNOR

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John W. Hickenlooper
Governor

February 29, 2016

Mr. Shaun L. McGrath
Regional Administrator
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Proposed Listing of the "Bonita Peak Mining District" site on EPA's Superfund National Priorities List

Dear Mr. McGrath:

I write to express my support for the proposed listing of the "Bonita Peak Mining District" site located in San Juan County, Colorado on the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA" or "Superfund") National Priorities List ("NPL") making it eligible for cleanup and assistance.

The Bonita Peak Mining District site consists of historic and on-going releases from 48 mine or mine related sources in three drainages - Cement Creek, Mineral Creek and the Upper Animas - which converge into the Animas River near Silverton, Colorado. These sources are contributing to the on-going releases of arsenic, aluminum, cadmium, copper, lead, manganese and zinc present in the surface water and sediment and are adversely impacting the environment. Based on the complexity and anticipated costs of remediating the Bonita Peak Mining District site, it appears that the best program to undertake a comprehensive cleanup is the CERCLA program.

The Town of Silverton, San Juan County, Durango, La Plata County, local tribes, and many other interested stakeholders have requested that this site be added to the Superfund NPL. I support this listing, so long as certain protections are put in place to address the concerns of the local communities that would be affected by designating this site as a Superfund National Priority. Accordingly, I want to stress the importance that the EPA do all that it can to address the concerns raised by the Silverton and San Juan County officials in their February 22, 2016 letter (attached). I share many of their concerns.

I am concerned about water quality conditions worsening before Superfund remedy decisions are finalized and implemented. Accordingly, before moving forward with any plans to stop operating the existing temporary water treatment facility in Gladstone, Colorado or closing the bulkhead at the Red & Bonita mine site, I urge EPA to consider all interim measures and options available and work

closely with the State and local stakeholders to ensure that water quality conditions do not deteriorate further.

I urge EPA to ensure that adequate funding for this site is provided during each stage of the CERCLA process, including listing, investigation, design and remediation so as to avoid any delays or interruptions; to continue to work collaboratively with the state and local officials and health departments to ensure that they have active and meaningful involvement in decision making through all phases of the project; to ensure that there is robust and significant community involvement and outreach; to form and fund a community advisory group as soon as practical; to ensure that the best available technologies and technical expertise are utilized during all phases of the Superfund process; and to ensure that the community be given technical assistance funding and support to the maximum extent possible.

In addition, the community is also concerned about associated costs to local governments, local businesses and residents. EPA should continue to make its best efforts to mitigate the negative impacts on the local economy and strive to ensure that the Superfund cleanup supports the economy of the Town of Silverton and San Juan County. Every effort should be made to alert local businesses to contracting opportunities related to the Superfund investigation, design and remediation. I encourage EPA to use contracting methods and offer job training grants that maximize the potential for local employment in the Superfund cleanup process.

I support listing the Bonita Peak Mining District site on the NPL List, and urge the EPA to use its best efforts to address the concerns identified above and conduct the cleanup in a timely, effective and collaborative fashion. With close coordination and careful consideration and response to local concerns, cleanup of the Bonita Peak Mining site should be accomplished efficiently with minimal disruption of the local community. Thank you in advance for your consideration of the concerns and needs of the people of Colorado. Should you have any questions, please do not hesitate to contact me.

Sincerely,

John W. Hickenlooper
Governor

cc: Gary Herbert, Governor of Utah
Susan Martinez, Governor of New Mexico
Russell Begaye, President Navajo Nation
Clement Frost, Chairman Southern Ute Indian Tribe
Manuel Heart, Chairman Ute Mountain Ute Tribe
U.S. Senator Michael Bennet
U.S. Senator Cory Gardner
U.S. Representative Scott Tipton

Christine Tookey, Mayor of Silverton
Ernest Kuhlman, San Juan County Commissioner
Dean Brookie, Mayor of Durango
Joe Kerby, La Plata County Manager
Larry Wolk, MD, MSPH, Executive Director and Chief Medical Officer, CDPHE
Robert Randall, Department of Natural Resources
Martha Rudolph, Director of Environmental Programs, CDPHE
Gary Baughman, HMWMD Director, CDPHE
Monica Sheets, Remediation Program Manager, HMWMD, CDPHE

Town of
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SAN JUAN COUNTY

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February 22, 2016

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[1] 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[2] 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

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[1] Labor Market Information, Quarterly Census of Employment and Wages Program, Second Quarter 2015

[2] 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.