
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED PARK CITY MINES COMPANY,

Defendant.

Case No. 2:19-cv-00200-BSJ

CONSENT DECREE

Judge Bruce S. Jenkins

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	4
III.	PARTIES BOUND	4
IV.	DEFINITIONS.....	4
V.	PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES	7
VI.	FAILURE TO COMPLY WITH CONSENT DECREE	8
VII.	COVENANTS BY PLAINTIFF.....	9
VIII.	RESERVATION OF RIGHTS BY UNITED STATES	10
IX.	COVENANTS BY DEFENDANT.....	10
X.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION	11
XI.	ACCESS TO INFORMATION	13
XII.	NOTICES AND SUBMISSIONS.....	14
XIII.	RETENTION OF JURISDICTION.....	15
XIV.	INTEGRATION/APPENDICES	15
XV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	15
XVI.	SIGNATORIES/SERVICE.....	15
XVII.	FINAL JUDGMENT	16

I. BACKGROUND

Case No. 2:19-cv-00200-BSJ

A. Plaintiff, the United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”) and the U.S. Department of the Interior (“DOI”) for the Bureau of Land Management (“BLM”), filed a complaint in this matter on March 25, 2019 (ECF No. 2), as amended on April 28, 2021 (ECF No. 263), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.*, as amended, against Defendant United Park City Mines Company (“Defendant”) to enforce the 2014 Administrative Settlement Agreement and Order on Consent for EE/CA Investigation, CERCLA Docket No. CERCLA-08-2014-0003, entered into by, *inter alia*, Defendant, EPA, and BLM for Operable Units 2 and 3 of the Richardson Flat Tailings Site located near Park City, Utah (“Richardson Flat Tailings Site AOC”).

B. This Consent Decree, if entered, resolves the pending litigation between the United States and Defendant, including all claims asserted in the litigation. The Consent Decree would also resolve potential future litigation between the United States and Defendant and certain other persons or entities arising out of the Richardson Flat Tailings Site AOC as well as two other agreements, described below, through which Defendant has obligations in the Park City area.

C. The Richardson Flat Tailings Site AOC was issued under the authority vested in the President under Sections 104, 106(a), 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622. One purpose of the Richardson Flat Tailings Site AOC was to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from Operable Units 2 and 3 of the Richardson Flat Tailings Site by requiring Defendant to conduct an engineering evaluation/cost analysis, also known as an EE/CA. The Richardson Flat Tailings Site AOC included, *inter alia*, reimbursement provisions for EPA and BLM’s oversight of Defendant’s work. Defendant initiated work under this AOC.

D. On June 16, 2017, EPA informed Defendant that it was taking over performance of the EE/CA from Defendant pursuant to the Richardson Flat Tailings Site AOC. On April 19, 2021, the Court ruled on summary judgment that Defendant was liable for a \$50,000 stipulated penalty as a result of EPA’s work takeover (ECF No. 260).

E. The United States’ complaint sought reimbursement from Defendant of costs EPA and BLM alleged were incurred pursuant to the Richardson Flat Tailings Site AOC. The United States’ complaint also sought CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), declaratory judgments regarding Defendant’s alleged future liability for response costs under CERCLA Section 107(a), 42 U.S.C. § 9607(a).

F. In response to the release or threatened release of hazardous substances, including lead, arsenic, cadmium, and zinc, at the Richardson Flat Tailings Site, and in performing a response action, EPA and BLM have incurred response costs and will incur additional response costs in the future.

G. EPA has conferred with all signatories to the Richardson Flat Tailings Site AOC concerning a modification of its terms. Upon entry of this Consent Decree, pursuant to paragraph 123 of the Richardson Flat Tailings Site AOC, EPA will seek to modify the terms of the AOC to discharge all obligations and terminate all rights of UPCM as to all other parties to the AOC while maintaining the covenants not to sue or seek contribution from the Utah Division of State Parks (formerly known as the Utah Division of Parks and Recreation) in paragraphs 105(a)(iii) and 114 of the AOC.

The Uintah Mining District Site

H. Defendant and EPA also entered into an Administrative Settlement Agreement and Order on Consent for Removal Action for a site identified for purposes of that document as the Uintah Mining District Site, located near Park City, Utah, CERCLA Docket No. CERCLA-08-2015-0008 (“Uintah Mining District Site AOC”).

I. The Uintah Mining District Site AOC was issued under the authority vested in the President under Sections 104, 106(a), 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622. The Uintah Mining District AOC required Defendant to, *inter alia*, perform the construction or creation of erosion control features at the Uintah Mining District Site to address the off-site migration of hazardous substances. Defendant performed a number of the actions required under the Uintah Mining District AOC.

J. In response to the release or threatened release of hazardous substances, including lead, arsenic, and other metals, at the Uintah Mining District Site, and in performing a response action, EPA has incurred response costs and will incur additional response costs in the future.

K. Upon entry of this Consent Decree, EPA will terminate the Uintah Mining District Site AOC.

Case No. 2:07-cv-00642-BSJ

L. On August 28, 2007, the United States filed a complaint against Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), seeking recovery of response costs and implementation of remedial action at Operable Unit 1 of the Richardson Flat Tailings Site (D. Utah, 2:07-cv-00642-BSJ). On the same date, the United States lodged a Consent Decree with the District of Utah to resolve the claims alleged in the complaint. On October 4, 2007, this Court approved and entered the Consent Decree (“RD/RA Consent Decree”).

M. The RD/RA Consent Decree concerned recovery of costs and implementation of remedial action at Operable Unit 1 (“OU1”) of the Richardson Flat Tailings Site. OU1 includes a tailings impoundment of approximately 160 acres and is located southeast of the junction of U.S. Highway 40 and Utah Highway 248. As of the date the complaint was filed in this action, Case No. 2:07-cv-00642-BSJ, Defendant was the owner of OU1. Defendant constructed the remedy required under this Consent Decree and is subject to operations and maintenance obligations. On or about January 13, 2022, OU1 was sold to a third party in a Sheriff’s sale.

N. This Consent Decree modifies and supersedes the terms of the RD/RA Consent Decree, which modification requires consultation with the State of Utah (“State”). The United States has conferred with the Utah Department of Environmental Quality (“UDEQ”), which is

authorized to enter into agreements under CERCLA on behalf of the State, and provided it a reasonable opportunity to review and comment on the terms of this settlement. UDEQ has expressed no objections to the entry of this Consent Decree.

Case No. 2:17-CV-00482-TC

O. On May 30, 2017, the United States, on behalf of EPA, filed a complaint, captioned *United States v. United Park City Mines Company and Talisker Finance LLC*, Civil Action 2:17-CV-00482-PMW (D. Utah) (since reassigned and renumbered 2:17-CV-00482-TC), against Defendant and Talisker Finance LLC, to enforce certain information requests issued to Defendant and Talisker Finance LLC by EPA pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). The information requests sought financial information from Defendant and Talisker Finance LLC and information regarding certain transactions with other persons or entities.

P. Defendant and Talisker Finance LLC have since responded to EPA's information requests and certified their responses ("Information Request Responses").

Q. This Consent Decree is lodged concurrently with the filing of a Stipulation of Settlement and Judgment in Civil Action 2:17-CV-00482-TC, resolving the United States' claims against Defendant and Talisker Finance LLC under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), for a civil penalty payment of \$50,000.

Claims under the Federal Priority Statute and Federal Debt Collection Procedures Act

R. The United States, on behalf of EPA and DOI, contends that it may have causes of action pursuant to the Federal Priority Statute, 31 U.S.C. § 3713, and the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 *et seq.*, against Defendant and certain other persons or entities for recovery of response costs the United States contends that Defendant is liable for pursuant to CERCLA, 42 U.S.C. §§ 9601 *et seq.*, related to the Richardson Flat Tailings Site and Uintah Mining District Site.

Settlement of Claims

S. The United States alleges that Defendant is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at Operable Units 1, 2, 3, and 4 of the Richardson Flat Tailings Site as well as jointly and severally liable for response costs incurred and to be incurred at the Uintah Mining District Site.

T. The United States alleges that it has claims against Defendant for Natural Resource Damages pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources, including the costs of assessing the injuries, resulting from releases of hazardous substances from the Richardson Flat Tailings Site and the Uintah Mining District Site.

U. Defendant and Related Parties dispute and do not admit any liability to Plaintiff arising out of or relating to the claims, transactions, or occurrences alleged in the complaint in this case, No. 2:19-cv-00200-BSJ, or this Consent Decree. A person's or entity's definitional status as a "Related Party" in this Consent Decree does not constitute any determination or admission that the person or entity is legally related to Defendant or otherwise responsible for

any debts or obligations of Defendant, or that Defendant is responsible for any debts or obligations of such person or entity.

V. The United States has reviewed the Information Request Responses submitted by Defendant to determine whether Defendant is financially able to pay for response costs incurred and to be incurred at the Sites. Based upon these Information Request Responses, the United States has determined that Defendant has limited financial ability to pay for response costs and Natural Resource Damages incurred and to be incurred at the Richardson Flat Tailings Site and Uintah Mining District Site.

W. The United States and Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without any further admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355(a) and 42 U.S.C. §§ 9607(a), 9613(b), and 9622(d)(3), and also has personal jurisdiction over Defendant. Solely for the purposes of this Consent Decree, Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Defendant shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and Defendant and its heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply:

“Affiliate” shall, solely for purposes of this Consent Decree, mean any person or entity that, directly or indirectly through one or more intermediaries, controls or has the power to control (through ownership or management), is controlled by, or is under common control with, Defendant.

“BLM” shall mean the Bureau of Land Management.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Defendant” shall mean United Park City Mines Company.

“DOI” shall mean the U.S. Department of the Interior.

“DOI Restoration Fund” shall mean the DOI Natural Resource Damage Assessment and Restoration Fund established pursuant to 42 U.S.C. §§ 1474b and 1474b-1.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Natural Resource” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. §§ 1801 *et seq.*]), or any State government.

“Natural Resource Damages” shall mean any damages recoverable by the United States pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), on behalf of the public for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, resulting from a release of hazardous substances at or from the Sites.

“Other Entity” or “Other Entities” shall, solely for purposes of this Consent Decree, mean any person or entity having any fee, leasehold or other property or ownership interest in, or otherwise participating in the operation of, the Montage Resort Hotel and Spa or the Canyons at Park City Ski Resort, including property in the vicinity thereof. Other Entities shall also include any Affiliate’s former or current managers, members, partners, shareholders, officers, directors, and employees.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” shall mean the United States and Defendant.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992, also known as the Resource Conservation and Recovery Act.

“RD/RA Consent Decree” shall mean the consent decree between the United States and Defendant, entered by this Court on October 4, 2007, in case number 2:07-cv-00642-BSJ.

“Related Party” or “Related Parties” shall, solely for purposes of this Consent Decree, mean (i) Defendant’s successors and assigns, but only to the extent that the liability of such person or entity is based on the liability of Defendant; (ii) Defendant’s predecessors, actual or as alleged by the United States, including (but not limited to) Daly Mining Company, Ontario Silver Mining Company (CA), Ontario Silver Mining Company (DE), Daly-West Mining Company (UT), Daly-West Mining Company (CO), Daly Judge Mining Company, Judge Mining & Smelting Company, Park City Mining & Smelting Company, Park Utah Consolidated Mines Company, Silver King Mining Company, Kearns-Keith Mining Company, and Silver King Coalition Mines Company; (iii) Naildriver Mining Company; (iv) Talisker Finance LLC; Talisker Empire Pass Hotel LP, successor-by-conversion to Talisker Empire Pass Hotel LLC; and TDC LLC, successor-by-merger to Talisker Development Corporation; (v) Talisker Land Holdings, LLC; TCFC PC Leaseco LP and its predecessor-in-interest TCFC Leaseco LLC; and TCFC PropCo LP, successor-by-conversion to TCFC PropCo LLC; (vi) Hampstead Equities GP Inc.; and (vii) any former or current managers, members, partners, shareholders, officers, directors, and employees of Defendant or Related Parties, but only to the extent that the liability of any such person or entity is based on acts and/or omissions which occurred in the scope of such person’s or entity’s capacity as such.

“Richardson Flat Tailings Site” shall mean, for purposes of this Consent Decree only, Operable Units 1, 2, 3, and 4 of the Richardson Flat Tailings Superfund Site, including the Silver Maple Claims. The Richardson Flat Tailings Site shall also include any areas in close proximity to the property described above and necessary to accomplish the response action goals.

“Richardson Flat Tailings Site AOC” shall mean the Administrative Settlement Agreement and Order on Consent for EE/CA Investigation and Removal Action, U.S. EPA Region 8 CERCLA Docket No. CERCLA-08-2014-0003, executed on March 7, 2014.

“Richardson Flat Tailings Site Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Richardson Flat Tailings Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Silver Maple Claims” shall mean that portion of the Richardson Flat Tailings Site comprising public land under the jurisdiction, custody, or control of BLM, near the eastern end of the Prospector Park in Park City, Utah.

“Sites” shall mean the Richardson Flat Tailings Site and the Uintah Mining District Site as those terms are defined herein.

“State” means the State of Utah.

“Uintah Mining District Site AOC” shall mean the Administrative Settlement Agreement and Order on Consent for Removal Action, U.S. EPA Region 8 CERCLA Docket No. CERCLA-08-2015-0008, executed on September 11, 2015.

“Uintah Mining District Site” shall mean, for purposes of this Consent Decree only, Operable Units 00 and 01 of the Uintah Mining District Superfund Site and the following drainages and all source areas within them: Ontario Canyon, Empire Canyon, Woodside Gulch, Treasure Hollow, and Thaynes Canyon. The Uintah Mining District Site shall also include any areas in close proximity to the areas described above and necessary to accomplish the response action goals.

“Uintah Mining District Site Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Uintah Mining District Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and DOI.

V. PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

4. **Payment of Response Costs and Natural Resource Damages.** Within 10 days after the Effective Date, Defendant shall pay or cause to be paid to EPA and DOI \$7,075,000, plus an additional sum for Interest on that amount calculated from the date of lodging through the date of payment.

5. **Deposit of Payment.** Of the total amount to be paid pursuant to Paragraph 4:

a. \$6,475,000 shall be deposited by EPA in the Richardson Flat Tailings Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Richardson Flat Tailings Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund;

b. \$250,000 shall be deposited by EPA in the Uintah Mining District Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Uintah Mining District Site or to be transferred by EPA to the EPA Hazardous Substance Superfund; and

c. \$350,000 shall be deposited into a segregated, case-specific sub-account within the DOI Restoration Fund. All funds deposited in the DOI Restoration Fund pursuant to this sub-Paragraph shall be managed by DOI to pay for natural resources restoration efforts. All such funds shall be expended for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources in accordance with 42 U.S.C. § 9611(i), including restoration planning, or for reimbursement of past assessment costs.

6. Defendant shall make or cause to be made the payment in Paragraph 4 at <https://www.pay.gov> in accordance with wire instructions provided by the Financial Litigation Unit (FLU) of the U.S. Attorney's Office for the District of Utah after the Effective Date. The wire instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, Site/Spill ID Number 0894 and A8K3, and DJ Number 90-11-3-08764/4, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the wire instructions to:

Christopher R. Hogle
Holland & Hart
222 South Main Street
Salt Lake City, Utah 84101
Phone: (801) 799-5800
Facsimile: (801) 799-5700
Email: crhogle@hollandhart.com

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ, EPA, and DOI in accordance with Section XII (Notices and Submissions).

7. **Notice of Payment.** At the time of payment, Defendant shall send or cause to have sent to EPA, DOI, and DOJ in accordance with Section XII (Notices and Submissions), a notice of this payment including references to the CDCS Number, Site/Spill ID Number 0894 and A8K3, and DJ Number 90-11-3-08764/4. Defendant shall also send or cause to have sent notice of payment to the EPA Cincinnati Finance Office, referencing Site/Spill ID number 0894 and the civil action number assigned to this case, by email at cinwd_acctsreceivable@epa.gov, or by mail to EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. **Interest on Late Payments.** If Defendant fails to cause any payment required by Paragraph 4 (Payment of Response Costs and Natural Resource Damages) to be made by the required due date, Interest shall accrue on the unpaid balance, commencing on the day after the deadline for paying such amount and continuing through the date of payment.

9. **Stipulated Penalty**

a. If any amounts due under Paragraph 4 (Payment of Response Costs and Natural Resource Damages) are not paid by the required due date, Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 8 (Interest on Late Payments), \$1,000 per day that such payment is late for the first 20 days the payment is late, and \$10,000 per day that such payment is late thereafter.

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. Defendant shall make all payments at <https://www.pay.gov> in accordance with the procedures under Paragraph 6 and shall send notice of such payments in accordance with the procedures under Paragraph 7 (Notice of Payment). Defendant shall indicate in the comment field on the <https://www.pay.gov> payment form that the payment is for stipulated penalties.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or DOI has notified Defendant of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree and is the prevailing party, Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Defendant's failure to comply with the requirements of this Consent Decree.

12. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Defendant from payment as required by Section V (Payment of Response Costs and Natural Resource Damages) or from performance of any other requirements of this Consent Decree.

VII. COVENANTS BY PLAINTIFF

13. **Covenants by the United States.** Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants (i) not to sue or to take administrative action against Defendant or Related Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Sites, (ii) not to sue or take administrative action against Defendant or Related Parties as to the RD/RA Consent Decree, the Richardson Flat Tailings Site AOC, and the Uintah Mining District Site AOC, and (iii) not to sue Defendant or any Related Party, Affiliate or Other Entity on behalf of EPA and DOI pursuant to the Federal Priority Statute, 31 U.S.C. § 3713; the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 *et seq.*; or any alter-ego, fraudulent-conveyance, or other debt-collection cause of action for recovery of response costs the United States contends that Defendant or any Related Party or Affiliate is liable for pursuant to

CERCLA, 42 U.S.C. §§ 9601 *et seq.*, related to the Sites. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Defendant of its obligations under this Consent Decree. The covenants set forth in (i) and (ii) above will be null and void should Defendant or any Related Party assert claim(s) against the United States for any “matters addressed” under this Consent Decree or for any cause of action for which Defendant has provided a covenant in Paragraph 15. The covenant set forth in (iii) above will be null and void should Defendant assert claim(s) against the United States for any “matters addressed” under this Consent Decree or for any cause of action for which Defendant has provided a covenant in Paragraph 15. In addition, the covenant set forth in (iii) above will be null and void as to any Related Party, Affiliate, or Other Entity that asserts claim(s) against the United States for any “matters addressed” under this Consent Decree or for any cause of action for which Defendant has provided a covenant in Paragraph 15.

VIII. RESERVATION OF RIGHTS BY UNITED STATES

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendant and Related Parties with respect to all matters not expressly included within Paragraph 13 (Covenants by the United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Defendant and Related Parties with respect to:

- a. liability for failure of Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. claims for damages for injury to, destruction of, or loss of natural resources unrelated to the Sites;
- d. liability based on the ownership or operation of the Sites by Defendant or Related Parties when (i) such ownership or operation commences after signature of this Consent Decree by Defendant, and (ii) such liability is not based on ownership or operation by Defendant or any predecessor of Defendant that concluded before signature of this Consent Decree by Defendant;
- e. liability based on the transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Sites, that occurs after the date of Defendant’s signature of this Consent Decree; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant unrelated to the Sites.

IX. COVENANTS BY DEFENDANT

15. **Covenants by Defendant.** Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Sites and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Sites, including any claim under the United States Constitution, the Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Sites.

16. Except as provided in Paragraph 18 (claims against other PRPs) and Paragraph 24 (res judicata and other defenses), the covenants in this Section shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations in Section VIII (Reservations of Rights by United States), other than in Paragraph 14.a (liability for failure to meet a requirement of the Consent Decree) or 14.b (criminal liability), but only to the extent that Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

17. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

18. Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for response costs and for Natural Resource Damages relating to the Sites against any other person who is a potentially responsible party under CERCLA at the Sites, including but not limited to the Utah Division of State Parks. This waiver shall not apply with respect to any defense, claim, or cause of action that Defendant may have against any person if such person asserts a claim or cause of action relating to the Sites against Defendant.

19. Defendant reserves, and this Consent Decree is without prejudice to, all rights against the United States with respect to all matters not expressly included in Paragraphs 15 and 18. Notwithstanding any other provisions of this Consent Decree, Defendant reserves, and this Consent Decree is without prejudice to, (i) the right to maintain a suit to enforce the terms of this Consent Decree, and (ii) all rights to assert any defenses or compulsory counterclaims if Defendant is sued, except as provided in Paragraph 24. For clarity, Defendant's exercise of any of the foregoing rights does not void the covenant in Paragraph 13(iii).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Except as provided in Paragraph 18 (claims against other PRPs) and Paragraph 13 (Covenants by the United States) as applicable to Related Parties, Affiliates, or Other Entities, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section IX (Covenants by Defendant), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or

occurrence relating in any way to the Sites against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

21. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which Defendant has, as of the Effective Date, resolved its liability, and the liability of Related Parties, to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken, all response costs incurred or to be incurred, and all Natural Resource Damages, at or in connection with the Sites, by the United States or any other person, except for the State; provided, however, that if the United States exercises rights under the reservations in Section VIII (Reservations of Rights by United States), other than in Paragraph 14.a (liability for failure to meet a requirement of the Consent Decree) or 14.b (criminal liability), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions or Natural Resource Damages that are within the scope of the exercised reservation. The contribution protection set forth in this Paragraph is intended to provide the broadest possible protection afforded by CERCLA for matters addressed in this Consent Decree.

22. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which Defendant and each Related Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

23. Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA, DOI, and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA, DOI, and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, Defendant shall notify EPA, DOI, and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding relating to the Sites initiated by the United States pursuant to a reservation of rights, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VII.

25. Upon the Effective Date, this Consent Decree supersedes all terms and conditions of the RD/RA Consent Decree. Prior to the Effective Date, the RD/RA Consent Decree remains in full force and effect under the terms and conditions therein.

XI. ACCESS TO INFORMATION

26. Until ten years after the Effective Date, unless otherwise agreed to by the Parties in writing, Defendant shall provide to EPA and DOI, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within its possession or control or that of its contractors or agents relating to activities at the Sites, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Sites.

27. **Privileged and Protected Claims**

a. Defendant may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 27.b, and except as provided in Paragraph 27.c.

b. If Defendant asserts a claim of privilege or protection, it shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Defendant shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Defendant shall retain all Records that it claims to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Defendant’s favor.

c. Defendant may make no claim of privilege or protection regarding any technical data regarding the Sites, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Sites.

28. **Business Confidential Claims.** Defendant may assert that all or part of a Record submitted to Plaintiff under this Section is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Defendant asserts a business confidentiality claim. Records that Defendant claims to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Defendant.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations;

provided, however, that nothing in this Paragraph affects (a) the enforceability of the covenants by the United States set forth in Paragraph 13, or (b) the Defendant's reserved rights set forth in Paragraphs 16 and 19.

XII. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescdcopy.enrd@usdoj.gov

As to DOJ by mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-08764/4

As to EPA: Amelia Piggott ORC-LEC
Senior Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202
Piggott.amelia@epa.gov

As to DOI: Clare Cragan
U.S. Department of the Interior
Office of the Solicitor
Division of Parks and Wildlife, Environmental Restoration Branch
755 Parfet St., Suite 151
Lakewood, CO 80215
clare.cragan@sol.doi.gov

Nathalie Doherty
Attorney-Advisor
U.S. Department of the Interior
Office of the Solicitor
601 SW 2nd Avenue, Suite 1950
Portland, OR 97204
nathalie.doherty@sol.doi.gov

As to Defendant: Christopher R. Hogle
Holland & Hart LLP
222 S. Main Street, Suite 2200

Salt Lake City, Utah 84101
Phone: (801) 799-5800
Facsimile: (801) 799-5700
Email: crhogle@hollandhart.com

XIII. RETENTION OF JURISDICTION

31. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION/APPENDICES

32. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

33. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

34. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. SIGNATORIES/SERVICE

35. Each undersigned representative of Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, or his/her designee certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

36. Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

37. Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XVII. FINAL JUDGMENT

38. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 2022.

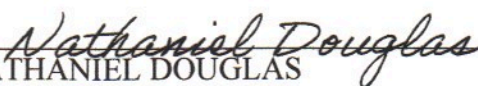
Bruce S. Jenkins
United States District Judge

Signature Page for Consent Decree in the matter of *United States v. United Park City Mines Company*, Civil Action No. 2:19-cv-00200-BSJ

FOR THE UNITED STATES OF AMERICA:

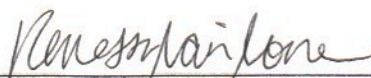
TODD KIM
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20044-7611

Dated



NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

8/25/2022
Dated

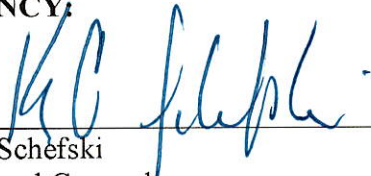


VANESSA MOORE
ALEXANDRA B. SHERERTZ
Trial Attorneys
MARK C. ELMER
Senior Counsel
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for Consent Decree in the matter of *United States v. United Park City Mines Company*, Civil Action No. 2:19-cv-00200-BSJ

**FOR THE ENVIRONMENTAL PROTECTION
AGENCY:**

8/16/2022
Dated




K.C. Schefski
Regional Counsel
U.S. EPA, Region 8

Signature Page for Consent Decree in the matter of *United States v. United Park City Mines Company*, Civil Action No. 2:19-cv-00200-BSJ

FOR THE DEPARTMENT OF THE INTERIOR:

22 August 2022
Dated


Peg Romanik
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor

Dated

Aaron Moody
Associate Solicitor
Division of Land Resources
Office of the Solicitor

Signature Page for Consent Decree in the matter of *United States v. United Park City Mines Company*, Civil Action No. 2:19-cv-00200-BSJ

FOR THE DEPARTMENT OF THE INTERIOR:

Dated

8/23/22

Dated

Peg Romanik
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor



Aaron Moody
Associate Solicitor
Division of Land Resources
Office of the Solicitor

Signature Page for Consent Decree in the matter of *United States v. United Park City Mines Company*, Civil Action No. 2:19-cv-00200-BSJ

FOR UNITED PARK CITY MINES COMPANY:

August 5, 2022
Dated


CHRISTOPHER R. HOGLE
Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, Utah 84101
(801) 799-5800
crhogle@hollandhart.com
Counsel for United Park City Mines Company and Talisker
Finance LLC
(Agent Authorized to Accept Service on Behalf of Above-
signed Party)