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Carol Cox Russell
U.S. EPA Region 8, MC8EPR-EP
999 18th St., Suite 300
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Dear Ms. Russell,

I appreciate the counsel and instruction you have provided to me over the years concerning the restoration of the disturbed mine sites in American Fork Canyon. Much of the success in restoring the numerous mine, mill, and smelter sites that have been treated to date was expedited through your help, as well as others at EPA, Region 8. In recent meetings we have discussed Trout Unlimited and various partners continuing that effort. Our immediate objective is to restore the remainder of Pacific Mine located on properties owned by Mr. Dick Bass, who is also the principle investor/owner of Snowbird Resort. Jim Baker of Snowbird Corp has indicated on behalf of Mr. Bass, privately and publicly, their interest in participating in the proposed cleanup actions at Pacific Mine.

Pacific Mine is listed on EPA's CERCLIS list due to past and potential future releases of heavy metals from the site into the adjacent environment and public lands and waters. Trout Unlimited and Snowbird, as well as other partners, are considering an action to reduce the potential for future releases from this site by consolidating and covering the mine and mill wastes on site. But we are concerned about our future liability under CERCLA for these mine wastes if we engage in the cleanup effort of private lands.

In a combined enforcement strategy developed by the Office of General Counsel representing the Forest Service and EPA's interests in 2001, it was determined that the landowner of Pacific Mine was not a Potentially Responsible Party under CERCLA. The ownership of the property had changed hands several times subsequent to any mine related activities at the site and the current owner was not involved in any actions that lead to the generation and potential releases of toxic materials. It is my understanding that as long as the property owner does not engage in actions that disturb the mine wastes his status as a non-PRP will remain intact and the liability tied to owning those deposits will be primarily a requirement under Section 106 of CERCLA to prevent releases from those private lands on to public lands and waters.

Of course avoiding disturbance of contaminated mine and mill wastes does nothing to restore the site and the environment, or reduce the potential for a release from the site. You have suggested that one instrument that may allow the proposed removal action to

occur without increasing the involved parties' liability for the wastes may be the Utah Voluntary Environmental Cleanup Program. I have met with UDERR and obtained information concerning the VCP and mentioned it at the 319 committee meeting that we were both in attendance at on June 9, 2004. Indeed this program offers Trout Unlimited, and others, the opportunity to engage in cleanup of mine wastes, with the promise of receiving a Certificate of Completion for the project issued by the State once the provisions of the permits to perform the cleanup actions are completed. The Certificate of Completion includes a liability release to the applicants but that release is issued by the State of Utah and does not provide protection from Federal liability.

As this point was discussed at our recent committee meeting, you mentioned that a Memorandum of Understanding was being negotiated between EPA and the State of Utah to reach some agreement addressing the issue of liability under Federal statutes for waste treated under Utah's VCP. To further explore what such an MOU might mean to Trout Unlimited or Snowbird if we do engage in efforts to cleanup the Pacific Mine site, I contacted Phillip Greer of UDERR and inquired about the status of the pending MOU and its availability for review. After he made some inquiries he was advised by the State's counsel that the language in the MOU presents concerns for the State and that the document is not to be released to other parties at this time. They further noted that they were still encouraged that revisions could be made to the MOU that would be satisfactory to the State and EPA. However, there are no projected timeframes for completion of those negotiations.

The issue of future liability for any individual or group that engages in a removal action of abandoned mine wastes is the key criteria in deciding whether to pursue such an action. This has ramifications not only for the work proposed at Pacific Mine but most other potential cleanups. I believe the efforts of the committee to develop a Mining Component for the Clean Water Act's 319 Funds will be of little value unless the entities conducting the cleanup efforts are exempted from future Federal liabilities upon completion of the agreed to actions. That is particularly true for third parties and non-PRPs.

I have reread some of the regulations contained in Section 9622 of CERCLA to try to better understand this liability issue. But several things remain unclear. Recognizing that the VCP-MOU may not be executed soon and that TU is anxious to proceed with the proposed action at Pacific Mine, I am respectfully asking you to provide EPA's position concerning the following:

- 1- An explanation describing the potential liabilities that Trout Unlimited, as a third party involved in a cleanup of the mine wastes at Pacific Mine, could be held responsible for under CERCLA, or other provisions administered by EPA, subsequent to the completed action.
- 2- Since Snowbird has verbally agreed to participate in the removal action proposed by Trout Unlimited, I also ask that you explain what impact such actions by Snowbird could have on their status as a PRP in the event future actions are required at some future date.

- 3- There will probably be other benefactors or partners that participate in financing the removal action at Pacific Mine. In what regard would EPA hold those entities as to future Federal liabilities.
- 4- Possible avenues for protecting TU and Snowbird from liability under CERCLA or other federal statutes.

As you are aware, Trout Unlimited is working in various watersheds throughout the western United States where mine wastes are impairing water quality and fisheries to help raise awareness of these important issues and help organize efforts to address them. It is our intent to make American Fork Canyon a Show Case of how innovative partnerships can work collaboratively to reduce these impacts. We are actively engaged in soliciting parties to participate in completing the work in AFC. Our future efforts will be partially directed by the answers and interpretation you provide to the questions raised above.

Sincerely,

s/ Ted V. Fitzgerald

Ted V. Fitzgerald
AFC Project Manager

cc: Jim Baker, Snowbird Corp
Mike Reichert, UDWQ
Steve Jensen, Salt Lake County Public Works Dept.
Phillip Greer, UDERR