



Southern Ute Indian Tribe Communications Plan

For facilitating communication between the

U.S. Environmental Protection Agency and the
Southern Ute Indian Tribe at the Bonita Peak Mining
District Site, Colorado

*November 11, 2016, Revised June 2, 2017, September 13, 2018,
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Table of Contents

Section 1 Introduction	1-1
Background.....	1-1
Purpose of the Plan.....	1-2
Section 2 Site Activities.....	2-1
Data Collection (Remedial Investigation/Feasibility Study).....	2-1
Why Data Are Needed	2-1
Types of Samples to Be Collected	2-1
Response Actions	2-1
Ongoing Work.....	2-2
Early Actions	2-2
Section 3 Communication	3-1
Reporting Results and Providing Information	3-1
<i>Bonita Peak Mining District Update</i> and Routine Communication.....	3-1
Briefings.....	3-1
Site Field Trips.....	3-1
Biological Technical Assistance Group	3-1
Data Sharing Plan	3-1
Consultation	3-2
Responsibilities and Points of Contact.....	3-2
Contact Information by Organization.....	3-2
Appendix A Data Sharing Plan.....	A-1

Acronyms

BTAG	Biological Technical Assistance Group
CIC	Community Involvement Coordinator
EPA	United States Environmental Protection Agency
FS	Feasibility Study
NAGPRA	Native American Graves Protection and Repatriation Act
NPL	National Priorities List
RI	Remedial Investigation
the Site	Bonita Peak Mining District Superfund Site

Section 1

Introduction

Background

The U.S. Environmental Protection Agency (EPA) is currently undertaking investigative and response actions in the Bonita Peak Mining District Superfund Site (Site) in Colorado. This document, *Southern Ute Indian Tribe Communications Plan*, has been prepared by EPA to optimize communication between the Southern Ute Indian Tribe (the Tribe or Southern Ute) and EPA over the life of the project.

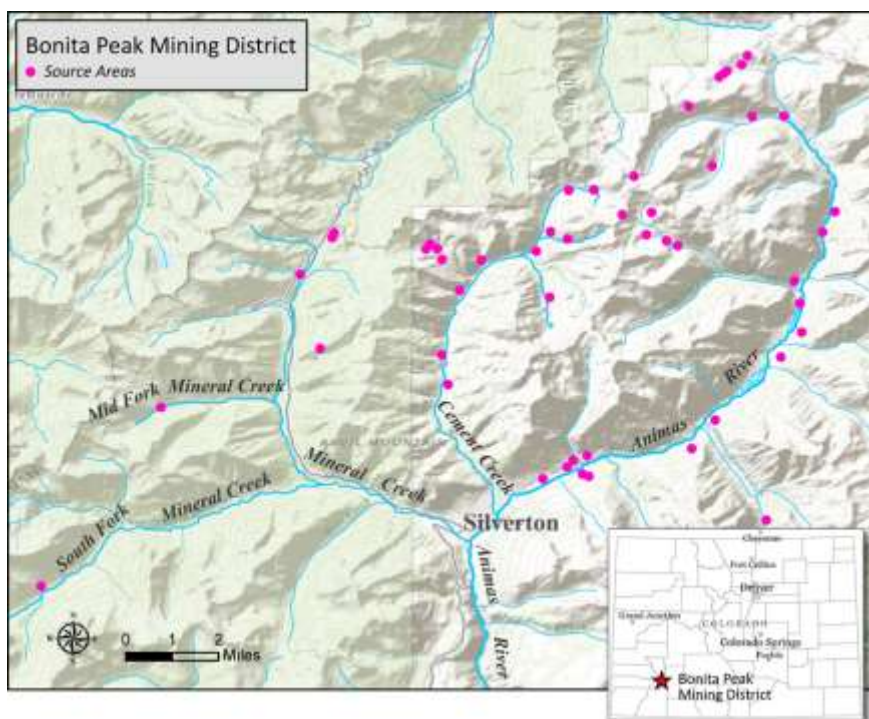
Included in this plan are:

- **Section 1. Introduction.** Background and purpose of the plan.
- **Section 2. Site Activities.** Description of the work that is planned that may impact Tribal interests.
- **Section 3. Communicating with the Tribe.** Identification of the communication methods and tools to be used and the primary points of contact.

The Site consists of 48 historic mines or mining-related source areas where releases of metals-laden water and sediments are occurring within the Mineral Creek, Cement Creek, and Upper Animas River drainages. Near Silverton, Colorado, these drainages join to form the Animas River, which is used for drinking water, recreation, and agricultural purposes (see map).

Contaminants from the source areas include arsenic, cadmium, copper, manganese, zinc, lead, and aluminum. These contaminants impact fisheries that are harvested for human consumption, as well as wetlands and habitat for the threatened Canada lynx.

On August 5, 2015, EPA was conducting an investigation of the Gold King Mine near Silverton, Colorado, to assess the ongoing water releases from the mine, treat mine water, and assess the feasibility of further mine remediation. During excavation above the old adit,



pressurized water began leaking above the mine tunnel, spilling about three million gallons of water stored behind the collapsed material into Cement Creek, a tributary of the Animas River. In February 2016, Colorado Governor John Hickenlooper requested that the Site be added to EPA's National Priorities List (NPL) of Superfund sites. The Site was added to the NPL in September 2016.

EPA is the lead federal agency at the Site, and the state of Colorado is the support agency. They will conduct work on privately-owned properties. U.S. Forest Service and Bureau of Land Management are also conducting investigative and cleanup activities on properties they manage at the Site.

Purpose of the Plan

This plan recognizes that the Site contains areas in which the Tribe has had both historic and contemporary interests and uses. It is EPA's desire to conduct investigative and response activities in a manner that is sensitive to the needs and customs of the Tribe.

This plan briefly describes the types of activities EPA anticipates performing as well as communication methods and contacts for the parties involved. EPA will consult the plan as it conducts its work at the Site. EPA intends to review the plan on an annual basis and to ask the Tribe for its input on the effectiveness of the plan and any changes Tribal representatives might like to see.

Section 2

Site Activities

Data Collection (Remedial Investigation/Feasibility Study)

EPA will continue collecting samples, making field measurements, and visiting the Site for various purposes related to the Remedial Investigation and Feasibility Study (RI/FS). The goal of the RI is to determine the nature and extent of contamination at the Site. The data gathered in the RI will be used in the FS, which assesses whether certain technologies are capable of treating the contamination and evaluates the cost and performance of technologies that could be used to clean up the site.

Why Data Are Needed

Data are being collected at the Site for various purposes. They include:

- Remedial investigation to determine nature and extent of contamination
 - Aquatic and Terrestrial Ecological Risk Assessment
 - Human Health Risk Assessment
- Understanding underground hydrology of the Site
- Identifying historic and cultural resources at the Site

Types of Samples to Be Collected

As EPA conducts the RI, the following types of samples will be collected:

- Groundwater
- Surface water
- Seep/spring
- Soil/rock
- Sediment
- Porewater
- Cultural Resources

Field measurements, such as stream flow rate or depth to groundwater, will be taken during sampling to provide information needed for evaluating analytical results. Other activities that may be conducted as part of the remedial investigation include surveying, mine reconnaissance, photo documentation and mapping. EPA may also install monitoring wells at various locations around the Site.

Response Actions

While Site-wide investigations continue, EPA and its federal and state partners will be taking actions that will provide water quality benefits. These include ongoing work at the Gold King Mine and Red and Bonita Mines as well as early actions taking place across 26 source areas. They are planned to take place over the next five years. The selection of early response actions were documented in an Interim Record of Decision.

Ongoing Response Work

- Sludge disposal at the Interim Water Treatment Plant at Gladstone and at the Interim Sludge Management Location at the Kittimac Tailing Source Area
- Evaluation of bulkhead closure at the Red & Bonita Mine

Early Response Actions

- Removal or capping of contaminated soils at two informal campgrounds
- Diversion of adit drainage away from waste rock piles
- Sediment basin management
- Run-on controls to prevent contamination of stormwater by waste rock
- Excavation of in-stream waste rock

Section 3

Communication

Reporting Results and Providing Information

EPA has the following tools for providing information to the Tribe. These tools will be used in various combinations depending on the type of information to be shared.

Bonita Peak Mining District Update and Routine Communication

EPA will continue to distribute the *Bonita Peak Mining District Update* newsletter for the Site via email. EPA encourages the Tribe to provide information to EPA's Community Involvement Coordinator (CIC) for inclusion in the monthly updates.

EPA will continue to distribute routine announcements and public notices via its email list. It will post all public notices in the Southern Ute Drum newspaper.

Tribal leadership and staff are currently included in the email distribution list for the newsletter, routine communications and announcements/notices.

Briefings

EPA will provide briefings on Site status and other areas of interest for the Southern Ute Tribal Council and other pertinent Tribal staff. The briefings will be held annually in the fall. The briefings will include a brief, formal presentation to Tribal Council followed by a work session with Tribal staff and leadership. The Tribe may request additional briefings throughout the year depending on the specific activities and source areas of the BMPD.

EPA intends provide written summaries of meetings held with the Tribe, within 30 days of the meeting. Summaries will be provided by EPA's CIC to Mark Hutson of the Tribe.

Site Field Trips

EPA has conducted field trips of the Site for the Tribe's managers, and EPA will continue to offer such opportunities. These trips allow the Tribe's managers to talk to field staff and other managers face to face, which increases engagement and understanding of the areas of most importance. EPA encourages the Tribe to suggest field trips when they feel one would be useful, and EPA intends to do the same.

Biological Technical Assistance Group

A Biological Technical Assistance Group (BTAG) has been established for the Site to support ecological risk assessment. The BTAG meets on an as-needed basis, not on a regular schedule. As a Natural Resource Trustee, the Tribe has representation in the BTAG.

Data Sharing Plan

EPA has developed a data sharing plan (Appendix A) describing EPA's plan to manage cultural resource information gathered by EPA during sampling and other activities.

Consultation

The U.S. has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and they are responsible for strengthening the government-to-government relationship between the U.S. and Indian tribes. EPA is committed to effective consultation with the Tribe.

Responsibilities and Points of Contact

The primary EPA point of contact for the Tribe to obtain information and learn about activities on the Site is the Team Lead, Christina Proggess. Ms. Proggess has overall responsibility for the Site and decisions on scope and schedule. Natasha Davis is the EPA Remedial Project Managers in charge of compliance with the National Historic Preservation Act and the identification and protection of Tribal cultural resources. The table below provides the contact information for the EPA Site Team.

Contact Information by Organization

Name	Role	Specialty	Phone Number	email
U.S. Environmental Protection Agency				
Betsy Smidinger	Superfund and Emergency Division Director	Region 8 Superfund	303-312-6231	Smidinger.Betsy@epa.gov
Christina Proggess	Team Lead	Overall project management	303-312-6009	Proggess.christina@epa.gov
Rob Parker	Project Manager	Response activities	303-312-6664	Parker.robert@epa.gov
Natasha Davis	Project Manager	Cultural Resources	303-312-6225	Davis.natasha@epa.gov
Cynthia Peterson	Community Involvement Coordinator	Public outreach	303-312-6879	Peterson.cynthia@epa.gov
Ian Bowen	Hydrologist	Surface water	303-312-7029	Bowen.ian@epa.gov
Andrew Todd	Toxicologist	Aquatic and terrestrial ecological risk	303-312-7821	Todd.Andrew@epa.gov
Steven Merritt	Toxicologist	Human health risk	303-312-6146	Merritt.steven@epa.gov
Southern Ute Indian Tribe				
Mark Hutson	Environmental Program Director	Overall environmental	970-563-0135 x 2206	mhutson@southernute-nsn.gov
Peter Diethrich	Water Quality Program Manager	Water	970-563-2206	pdiethrich@southernute-nsn.gov

Forrest Vaughan	GKM Coordinator	Water	970-563-2201	fvaughan@southernuten-sn.gov
Edward Box III	Cultural Preservation Director	Cultural Preservation	970-563-2306	ebbox@southernuten-sn.gov
Cassandra Atencio	NAGPRA Coordinator	Cultural Preservation	970-563- 2989	catencio@southernuten-sn.gov

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Appendix A

Data Sharing Plan

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Southern Ute Indian Tribe Data Sharing Plan for the Bonita Peak Mining District Superfund Site

Purpose

The purpose of this Data Sharing Plan is to describe planned communications between the U.S. Environmental Protection Agency (EPA) and the Southern Ute Indian Tribe (Tribe) concerning cultural resources on private lands in the Bonita Peak Mining District Superfund Site (Site). EPA anticipates that the information exchanged through these communications may be pertinent to investigative and response actions at the Site. This plan is an appendix to the *Southern Ute Indian Tribe Communications Plan* for EPA and the Tribe at the Site.

EPA's Planned Actions

As a part of the Remedial Investigation (RI) at the Site, EPA will be collecting samples, making field measurements, and visiting the Site for various purposes related to identifying the nature and extent of contamination. As the RI continues, EPA also is identifying a number of early response actions that might be taken in the near term to improve water quality in the Animas River and its tributaries. The selection of early response actions will be documented in an Interim Record of Decision.

National Historic Preservation Act

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), EPA's investigative and response actions must comply with the substantive requirements of all applicable laws and regulations, including those protecting cultural resources. Accordingly, throughout its efforts at the Site, EPA will be taking into account the effect of its actions on historic properties under the National Historic Preservation Act (NHPA), 54 U.S.C. § 300101 *et seq.*

For all information gathered during the RI, EPA intends to evaluate the potential applicability of NHPA section 304, 54 U.S.C. § 307103, which requires agencies withhold information about the location, character, or ownership of historic resources, if the agency (in consultation with the Secretary of the Interior) determines that disclosure may cause a significant invasion of privacy, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. *See also* 36 CFR § 800.11(c) (Advisory Council on Historic Preservation regulations concerning confidentiality and NHPA reviews) and "Advisory Council on Historic Preservation's Frequently Asked Questions on Protecting Sensitive Information about Historic Properties under Section 304 of the National Historic Preservation Act" (2017), available at <http://www.achp.gov/304guidance.html>.

Section 304 only applies to historic properties, which are defined as those that are eligible for or listed in the National Register of Historic Places.

To minimize the risk of harm to traditional cultural properties, where consistent with applicable Federal laws, the agency intends to refrain from disclosing cultural resource information received from the Tribe that the Tribe identifies as sensitive in nature. Among other applicable laws, EPA's activities at the Site are subject to the Freedom of Information Act, 5 U.S.C. § 552, as amended (FOIA), and related regulations at 40 CFR part 2. Requests for EPA records related to the Site will be processed in accordance with normal EPA FOIA procedures.

FOIA does provide for certain exemptions from disclosure, including exemption 3, which concerns records that are "specifically exempted from disclosure by statute." In response to any request for records containing cultural resource information at the Site, EPA intends to evaluate under exemption 3 the potential applicability of NHPA section 304, the Archaeological Resources Protection Act and other federal laws concerning cultural resources.

Communications

EPA intends to establish a regular meeting schedule with the Tribe, through the Tribal Chair or a designated Tribal representative, to discuss the Tribe's interests related to specific investigative or response actions taking place at the Site.

EPA's representative is Christina Progross, the Site remedial project manager. She will work with the Tribe's designated representative on cultural resource issues related to the Site. EPA will notify the Tribal Chair of any change in the designated EPA representative.

EPA seeks and welcomes any information the Tribe may choose to provide concerning the identification of historic properties, which may include properties of traditional religious and cultural importance to the Tribe. Also, to help EPA evaluate properties under NHPA section 304, the agency would appreciate input from the Tribe as to whether disclosure of information concerning any specific historic properties could cause an invasion of privacy, risk harm to those resources or impede the use of a traditional religious site by practitioners. To the extent practicable, EPA will provide the Tribe advance notice of the location and nature of any planned Site activities so that the Tribe can determine if the work might affect cultural resources and can then notify EPA of any locations that may be impacted.

Disclaimer

This Plan does not create any enforceable right or benefit, and does not affect the authority or rights of the Tribe, EPA, or any other entity.