



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Denver, Colorado 80202-1129  
Phone 800-227-8917  
www.epa.gov/region8

**DEC 08 2016**

Ref: 8TMS-G

Mr. Ron LeBlanc  
City Manager  
949 East 2nd Avenue  
Durango, CO 81301

Re: City of Durango Gold King Mine Cooperative Agreement #V96836501

Dear Mr. LeBlanc:

This letter is intended to convey the U.S. Environmental Protection Agency's (EPA) final decision on the reimbursement of allowable costs associated with the City of Durango's cooperative agreement application submitted on January 5, 2016. Under that agreement, the EPA has approved reimbursement to the City of Durango of \$55,403 for allowable pre-award costs incurred in responding to the Gold King Mine (GKM) release. To promote maximum transparency and provide the City of Durango with a meaningful opportunity to avail itself of the EPA's dispute process, the attachments contain the specific costs that were disallowed and the Agency's bases for the disallowance.

The City's application also included a request for \$101,465.56 to support the improvements of the Santa Rita Pump Station monitoring system for monitoring and analysis in support of the Bonita Peak Mining District Superfund site. The EPA is funding this request through a separate Cooperative Agreement with the Colorado Department of Public Health and Environment.

The EPA would like to express its appreciation to the City of Durango for its support and involvement in the GKM release response. The dedication and commitment demonstrated by the City's staff, management and leadership have been exemplary. The EPA recognizes that this effort did not occur without an increased workload to staff and management and, on behalf of the EPA, I wish to express our gratitude for the City's support and involvement in this response.

If you have any questions about this letter, please contact Sarah Hulstein, Grants Specialist, at (303) 312-6014 or by email at [hulstein.sarah@epa.gov](mailto:hulstein.sarah@epa.gov), or Cinna Vallejos, Grants Project Officer, at (303) 312-6376 or by email at [vallejos.cinna@epa.gov](mailto:vallejos.cinna@epa.gov).

Sincerely,

A handwritten signature in blue ink that reads "James A. Hageman".

James A. Hageman  
Program Director  
Grants/Audit/Procurement Program

Enclosures: Attachment A and Attachment B

cc: Cinna Vallejos, EPA R8  
Sarah Hulstein, EPA R8

## Attachment A

### Cooperative Agreement

On January 5, 2016, the City of Durango submitted an Application for Federal Assistance to the U.S. Environmental Protection Agency that was subsequently revised on January 26, 2016. The application requested pre-award costs of \$444,032<sup>1</sup> for expenses incurred responding to the Gold King Mine release, and future expenses of \$5,232,183 to implement its proposed work plan activities through September 30, 2030.

On March 25, 2016, the City and the EPA entered into a cooperative agreement under the authority of section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and implementing regulations at 40 C.F.R. Part 35, Subpart O, for the City's allowable expenditures directly related to activities in support of the EPA's response efforts to the GKM release. That cooperative agreement was intended to reimburse the City for the allowable pre-award costs it incurred in support of the EPA's removal response activities, and for the costs it incurred in participating in the tour of Superfund sites in November 2015. To accomplish that objective, Region 8 secured deviations from various applicable regulatory provisions to allow it to reimburse affected entities for pre-award costs up to 180 calendar days prior to the signed award. The EPA has reimbursed the City for \$55,403 for a variety of allowable response activities. Through a separate cooperative agreement with the Colorado Department of Public Health and Environment, the City of Durango will receive \$101,465 to support the improvements to the Santa Rita Pump Station monitoring system. The EPA has disallowed the remainder of the requested pre-award costs as unallowable, totaling \$193,784, and all of the future costs for the reasons described in greater detail below. See Attachment B.

### General Provisions

As a threshold matter, a cost is allowable under a federal award if necessary and reasonable for the performance of the award and allocable to the award. 2 C.F.R. § 200.403. A cost is reasonable if it doesn't exceed that which a prudent person under the circumstances at the time would incur. 2 C.F.R. § 200.404. Finally, a cost is allocable to a particular award if the goods or services involved are chargeable or assignable to that award in accordance with relative benefits received. This standard is met if the cost is incurred specifically for the award, benefits both the award and other work of the entity, and can be distributed in proportions using reasonable methods, and is necessary to the overall operation of the entity and is assignable in part to the award. 2 C.F.R. § 200.405.

The CERCLA defines removal response costs as costs for the cleanup or removal of released hazardous substances from the environment including costs for such actions that may be necessary in the event of the threat of release of hazardous substances into the environment; such actions that may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare of the United States or to the environment, which may otherwise result from a release or threat of release. 42 U.S.C. § 9601(23).

In addition to the general regulatory provisions governing the use of federal funds, and the specific requirements applicable to Superfund cooperative agreement, codified at 40 CFR Part 35, Subpart O, removal costs under a Superfund cooperative agreement must also comply with the cost principles for federal grants in 2 C.F.R. Part 200, Subpart E.

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<sup>1</sup> This figure does not reflect the actual invoiced pre-award costs. Therefore the amount of disallowed costs will not reflect the difference between this figure and the reimbursed amount.

## **Disallowed Costs**

### Insufficient Documentation

In accordance with generally applicable regulations affecting the reasonableness and allowability of costs, they must be adequately documented (2 C.F.R. § 200.403(g)) and must be reasonable (2 C.F.R. § 200.404). In that regard, the amounts of \$98.36 (Travel 3, SF Tour) and \$394.53 (Food) for a total of \$492.89 reflect those costs that were disallowed due to insufficient documentation either because no receipts were provided, or the documentation failed to demonstrate the connection between the claimed expense and any eligible response activity. See Attachment B, Travel 3, Food & Miscellaneous.

### Costs Incurred in Connection with Congressional Hearings

The City sought reimbursement for travel costs incurred of approximately \$1,932.97 for its participation in a congressional hearing before the Joint Oversight Committee related to the GKM release. See Attachment B, Travel 1. A review of the Committee's statement reveals that the purpose of the hearing was to examine the EPA's activities in connection with the release and subsequent response. The EPA has determined that these costs are not allocable to the cooperative agreement because participation in hearings of this nature do not constitute cleanup or removal of released hazardous substances from the environment. Further, to the extent participation in those hearings was intended to influence the City's receipt of any grants, contracts, cooperative agreement or loans, those are deemed an unallowable lobbying cost by the cost principles applicable to this cooperative agreement at 2 C.F.R. § 200.450, and do not fall within the exception in 2 C.F.R. § 200.450(c)(2)(i) applicable to technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement. Accordingly, those costs are disallowed.

### Lost Revenue

The City sought reimbursement of \$190,000 due to loss of revenue from water distribution, including "implementing voluntary restriction on water consumption from City residents as well as stopping the sale of water to large irrigators such as all City parks and recreation facilities, sale of water to Fort Lewis College and Hillcrest Golf course." The EPA has determined that lost revenue is not an allowable response cost in that it does not constitute cleanup or removal of released hazardous substances from the environment. Therefore, these costs are disallowed. See Attachment B.

### Travel

The City sought reimbursement of approximately \$1,072.63 in connection with costs it incurred for travel to Denver for the purpose of "professional development" and discussions concerning future water monitoring. See Attachment, Travel 2. The EPA has determined that these costs are not allowable insofar as they did not involve removal-response activities, and were disallowed.

### Miscellaneous

The City sought reimbursement of approximately \$285.79 in connection with costs it incurred for an appreciation lunch for GKM responders. In accordance with 2 C.F.R. § 200.438, costs of entertainment, including social activities, are unallowable unless they have a programmatic purpose *and* are authorized in the budget or with prior written approval of the awarding agency. Accordingly, these costs are disallowed. See Attachment B, Food & Miscellaneous.

### Future Work

The cooperative agreement application also included \$5,232,183 for a number of future activities from FY 2016 through FY 2030. Those future activities included a contract for communication and public engagement activities, construction and installation of a pipeline, and preparedness activities in anticipation of future rain events.

These requests for future costs are disallowed as not allocable to this cooperative agreement because the agreement was entered into to reimburse the City for the pre-award costs it incurred in supporting the EPA's response efforts. In addition, some of these activities were funded through other EPA grants.

### **Appeal Process**

In accordance with 2 C.F.R. § 35.6770, the dispute process applicable to this decision is set forth in 2 C.F.R. part 1500, subpart E. Specifically, in accordance with 2 C.F.R. § 1500.14, you may dispute this Agency decision by filing an appeal electronically within 30 calendar days from the date this Agency decision is electronically transmitted to you. The appeal must be transmitted via email to the EPA Region 8 Disputes Decision Official (DDO), Richard D. Buhl, at [buhl.rick@epa.gov](mailto:buhl.rick@epa.gov), with a copy to James A. Hageman, Action Official, at [hageman.james@epa.gov](mailto:hageman.james@epa.gov), within this 30-calendar day period.

The appeal must include the following:

- (1) An electronic copy of the disputed Agency decision.
- (2) A detailed statement of the specific legal and factual grounds for the appeal including electronic copies of any supporting documents.
- (3) The specific remedy or relief sought under the appeal.
- (4) The name and contact information, including email address, of the designated point of contact for the appeal.

If you require a time extension to file the appeal, you may submit by electronic means a written request for the extension to the DDO (with a copy to the Action Official) before the expiration of the 30-day period. The DDO may grant a one-time extension of up to 30 calendar days when justified by the situation.

City of Durango  
Gold King Mine Release  
CA # V96836501

Expense	Amount Requested (associated with unallowed costs)	Amount Determined Unallowable	Dates Costs Incurred	Description
<b>Other</b>				
Loss of Revenue	\$190,000.00	\$190,000.00	No date supplied	Amount not eligible under this CA
<b>Subtotal</b>	<b>\$190,000.00</b>	<b>\$190,000.00</b>		
<b>Travel</b>				
<b>Travel 1 - Congressional Hearing</b>				
Dean Brookie (Mayor)	\$0.00	\$1,932.97	9/8 - 9/11/2015	Ineligible - due to travel not related to response Purpose of travel: To testify before Congress RE: EPA and Gold King Mine Spill (Congressional Hearing RE: EPA and Gold King Mine Spill); Lodging cost \$204.96 (The Quincy); Meals and Incidentals (\$12 for breakfast, \$18 for lunch, \$36 for dinner, and \$5 for incidentals) Per diem based on FY15 rates of \$71/day; Taxi/cab fares \$42.31 on 9/9/2015; \$1,412.20 airfare to DC; \$25 on United (Baggage Charge?)
<b>Subtotal Travel 1</b>	<b>\$1,932.97</b>	<b>\$1,932.97</b>		
<b>Travel 2 - Denver Trip</b>				
Dean Brookie (Mayor)	\$0.00	\$199.83	2/5/2016	Ineligible - due to travel not related to response Purpose of travel was for Professional Development (Animas/San Juan Water Monitoring discussion w/EPA) Lodging cost (Hampton Inn & Suites - Cherry Creek) Meals and incidentals (\$16 for breakfast, \$31 for dinner, and \$5 for incidentals)
Ron LeBlank (City Manager)	\$0.00	\$147.71	2/4 - 2/5/2016	Ineligible - due to travel not related to response: Lodging cost (Hampton Inn & Suites - Cherry Creek)
Ron LeBlank (City Manager)	\$0.00	\$131.39	2/4 - 2/5/2016	Ineligible - due to travel not related to response Car Rental
Ron LeBlank (City Manager)	\$0.00	\$506.20	2/4 - 2/5/2016	Ineligible - due to travel not related to response Airfare (Durango to Denver and return)
Ron LeBlank (City Manager)	\$0.00	\$87.50	2/4 - 2/5/2016	Ineligible - due to travel not related to response Per Diem - Based on TA form from City of Durango
<b>Subtotal Travel 2</b>	<b>\$1,072.63</b>	<b>\$1,072.63</b>		
<b>Travel 3 - SF Tour</b>				
<b>Lodging</b>				
Best Western	\$98.36	\$98.36	11/12/2015	No Supporting Documentation - SF Tour
<b>Subtotal Travel 3</b>	<b>\$98.36</b>	<b>\$98.36</b>		
<b>Total of evaluated Travel</b>	<b>\$3,103.96</b>	<b>\$3,103.96</b>		
<b>Food and Miscellaneous</b>				
All Food items are not allowed as they are not related to the response				
Carver Brewing	\$82.00	\$82.00	8/20/2015	Love the Animas Raft Trip before 7:30 City Council Meeting Working Breakfast for Terry Hoecker and Trevor Denney
Dennys	\$11.89	\$11.89	8/11/2015	(CODHSEM)
Lost Dog Bar & Lounge	\$33.00	\$33.00	8/8/2015	Working Lunch for Ron and Sherri
Steamworks	\$50.00	\$50.00	8/9/2015	Working Lunch for Sherri and Mary Beth
Lost Dog Bar & Lounge	\$51.00	\$51.00	8/10/2015	Working Lunch for Sherri and Mary Beth
Sq raider Ridge Café	\$21.09	\$21.09	8/12/2015	Working Lunch for Mary Beth & Sherri
El Moro	\$58.55	\$58.55	8/13/2015	Working Lunch for Amber, Sherri, and MB
Chimayo	\$87.00	\$87.00	8/14/2015	Working Lunch for Julie, Sherri, and MB
<b>Subtotal Food</b>	<b>\$394.53</b>	<b>\$394.53</b>		
Albertson's	\$78.79	\$78.79	10/13/2015	Gold King Mine Lunch (Social Event)
Walmart	\$136.45	\$136.45	10/13/2015	Gold King Mine Lunch (Social Event)
Family Dollar	\$70.55	\$70.55	10/13/2015	Ineligible - unrelated to response Decorations for GKM Responder thank you lunch (Social Event)
<b>Subtotal Miscellaneous</b>	<b>\$285.79</b>	<b>\$285.79</b>		
<b>Total Food and Miscellaneous</b>	<b>\$680.32</b>	<b>\$680.32</b>		
<b>Grand Total</b>	<b>\$193,784.28</b>	<b>\$193,784.28</b>		