



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Denver, Colorado 80202-1129
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DEC 08 2016

Ref: 8TMS-G

Mr. William Tookey
County Administrator
San Juan County
1557 Greene Street
Silverton, Colorado 81433

Re: San Juan County Gold King Mine Cooperative Agreement #V96836101

Dear Mr. Tookey:

This letter is intended to convey the U.S. Environmental Protection Agency's (EPA) final decision on the reimbursement of allowable costs associated with San Juan County's cooperative agreement application submitted on December 22, 2015. Pursuant to that agreement, and a cooperative agreement through the Colorado Department of Public Health and Environment, the EPA has reimbursed the County \$349,565 for allowable pre-award response activities. To promote maximum transparency and provide the County 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 EPA would like to express its appreciation to San Juan County and the Town of Silverton for their support and involvement in the GKM release response. The dedication and commitment demonstrated by the 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 to San Juan County and the City of Silverton for their 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, or Cinna Vallejos, Grants Project Officer, at (303) 312-6376 or by email at 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 December 22, 2015, San Juan County submitted an Application for Federal Assistance to the U.S. Environmental Protection Agency. In this application, the County requested approximately \$8.4 million for both the expenses incurred responding to the Gold King Mine release, and future costs to implement its proposed work plan activities through December 31, 2021.

On March 25, 2016, the County and 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 County and City's allowable expenditures directly related to activities in support of the EPA's response efforts to the Gold King Mine release. That cooperative agreement was intended to reimburse the County and the City for the allowable costs they incurred in support of the EPA's response, and for their meaningful and substantial involvement in the proposed listing of the Bonita Peak Mining District site to the National Priorities List. To accomplish that objective, Region 8 secured deviations from various applicable regulatory provisions to allow it to, (1) reimburse affected entities for pre-award costs up to 180 calendar days prior to the signed award and, (2) reimburse the County and City for the salaries of the local governmental officials engaged in allowable response activities, otherwise deemed unallowable as a general cost of government under 2 C.F.R. § 200.444(a)(2). In total, the EPA has reimbursed the County and City for \$349,565 for a variety of allowable pre-award response activities under this cooperative agreement. As reflected in this Attachment and in Attachment B, the EPA has disallowed the remainder the requested pre-award costs as unallowable, totaling \$6,030, and all of the requested future costs for the reasons described in greater detail below.

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 CFR 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.

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 C.F.R. part 35, Subpart O, removal costs under a Superfund cooperative agreement must also comply with the cost principles for King grants in 2 C.F.R. Part 200, Subpart E.

Disallowed Costs

Government Services

The costs of government services normally provided to the general public, such as fire and police, are unallowable under applicable regulations. 2 C.F.R. § 200.444(a)(5). In that regard, \$4,667 reflects the personnel costs of public safety personnel that were disallowed as general government services normally provided to the public. The information provided to the EPA was insufficient to determine the specific allowable response activities these employees were directly engaged in and, therefore, these costs are unallowable.

Professional Service Costs/Legal Fees

As a general matter, costs of professional and consultant services are allowable when reasonable in relation to the services rendered. 2 C.F.R. § 200.459. In order to determine the allowability of such costs, the EPA may consider, among other factors, the necessity of contracting for the service considering the entity's capability in the particular area, the nature and scope of the service required, and whether the service can be performed more economically by direct employment rather than contracting. 2 C.F.R. § 200.459(b).

The County and City engaged the services of two attorneys, a Public Information Officer and a Communications Consultant. Following a review of the invoices submitted, the EPA has determined that the majority of the services provided by these four professional consultants were in support of allowable response activities at a reasonable hourly rate, and has reimbursed the County and City accordingly. However, as reflected in Attachment B, the EPA disallowed \$1,148 for specific activities that the EPA determined did not support an allowable response activity, were specifically unallowable, or where there was insufficient information for the EPA to make such a determination. These consisted of costs associated with watching the congressional hearings or meeting with congressional representatives, consultants' meal expenses, reviewing and conferring on New Mexico's Notice of Intent to Sue, reviewing a claim letter, student field trip, and archiving records. These costs were therefore disallowed.

Meals

With respect to the request of reimbursement for meals reflected in Attachment B, the EPA disallowed those costs for which the EPA could not make a determination that the cost was directly related to allowable response activities. Accordingly, \$213 is disallowed.

Future Work

The cooperative agreement application also included a request for approximately \$8.2 million to engage in a number of future activities through December 31, 2021. Those future activities included the hiring of a variety of additional personnel, including additional Assistant Administrators for both the City and County, law enforcement officer, public health coordinator, road crew employee, emergency medical services, cooperative agreement manager, public relations specialist, project planning position, science officer, professional services manager, and additional professional services to conduct county surveying, county clerk and assessor duties, information technology services, environmental technical assistance, and public participation consultants. In addition, the proposed future work included a Mine Blowout Hazard Study, Community Action Plan, marketing and branding activities, and other activities.

These requests for future costs are disallowed as not allocable to this cooperative agreement because the agreement was entered into to reimburse the County and City for the pre-award costs incurred in both their support of the EPA's response efforts and their meaningful and substantial involvement in the proposed listing of the Bonita Peak Mining District site to the National Priorities List.

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, the County 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, with a copy to James A. Hageman, Action Official, at 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.

San Juan County/
Town of Silverton
Gold King Mine Release
CA #V9643610

Date	Expense	Amount Requested (associated with unallowed costs)	Amount Determined Unallowable	Description
Payroll				
Government Services				
1 Nov - 30 Nov 2015	Arthur J. Donovan (Emergency Manager)	\$884.00	\$884.00	34 hours @ \$26.00/hr
1 Nov - 30 Nov 2015	Bruce Conrad (Sheriff)	\$141.53	\$141.53	4.5 hours @ \$31.45/hr
1 Nov - 30 Nov 2015	Becky Joyce (Director Public Health)	\$498.00	\$498.00	15 hours @ \$33.20/hr
1 Nov - 30 Nov 2015	Laila Bryant	\$29.99	\$29.99	1.5 hours @ \$19.99/hr
1 Nov - 30 Nov 2015	Lois MacKenzie	\$33.57	\$33.57	1.5 hours @ \$22.38/hr
1 Nov - 30 Nov 2015	Kemmett Holland	\$36.77	\$36.77	1.5 hours @ \$24.51/hr
1 Dec - 31 Dec 2015	Arthur Donovan	\$780.00	\$780.00	30 hours @ \$26.00/hr
1 Jan - 31 Jan 2016	Arthur J. Donovan (Emergency Manager)	\$520.00	\$520.00	20 hours @ \$26.00/hr (0% Fringe)
1 Jan - 31 Jan 2016	Becky Joyce (Director Public Health)	\$381.80	\$381.80	11.5 hrs @ \$33.20/hr (11% Fringe)
1 Feb - 29 Feb 2016	Arthur J. Donovan (Emergency Manager)	\$520.00	\$520.00	20 hours @ \$26.00/hr (0% Fringe)
1 Feb - 29 Feb 2016	Bruce Conrad (Sheriff)	\$78.63	\$78.63	2.5 hrs @ \$31.45/hr (13% Fringe)
1 Feb - 29 Feb 2016	Becky Joyce (Director Public Health)	\$763.60	\$763.60	23 hrs @ \$33.20/hr (11% Fringe)
	Subtotal	\$4,667.89	\$4,667.89	
Professional Services				
11/1 - 11/30/2015	Jeffery P Robbins (Attorney)	\$5,955.00	\$60.00	39.30 hours @ \$150/hr (subtracted 0.4 for review claim letter on spill 11/12/2015)
12/1 - 12/31/2015	Paul Sunderland (Attorney)	\$3,688.55	\$160.00	23 hours @ \$160/hr and \$8.95 in costs (Subtract 1 hour for meeting with Senator Bonnet to update re status.)
12/1 - 12/31/2015	Jeffery P Robbins (Attorney)	\$7,953.00	\$112.50	52.75 hours (\$1.55 hrs @ \$150/hr and 1.2 hrs @ \$90/hr) (subtracted 0.75 hrs from Jeff Robbins billable hours) (for review of GKM contract on 12/9/2015)
12/16/2015	Jeffery P Robbins (Attorney)	\$101.70	\$101.70	Meal Expense (Lunch for Jeff, Bill, Willy, Paul, Anthony)
1/1 - 1/31/2016	Paul Sunderland (County Attorney)	\$4,330.80	\$272.00	For all services rendered during January 2016 as San Juan County Attorney relating to the Gold King spill including: meet with public officials to update re status; review Cooperative Agreements and supporting information; attend public hearing; review NM Notice of Intent to sue and confer with public officials re same; review EPA correspondence; draft commitment letter for EPA review; conference calls with EPA. (Removed 1.7 hrs (\$272) pertaining to review of NM Notice of Intent to Sue)
1/1 - 1/31/2016	Jeff Robbins (Town Attorney)	\$88.11	\$88.11	Meal Expense - The Pickle Barrel - \$70.77 and Café Mobius - \$17.34 (refer to Mark Eddy meal expense for the same day)
02/01 - 02/29/2016	Jeff Robbins (Town Attorney)	\$17.07	\$17.07	Meal Expense - Lunch - \$8.48 and Meal Expense - Dinner \$6.59; Parking meter expense - \$2.00
02/01 - 02/29/2016	Mark Eddy (Communications Consultant)	\$10,875.00	\$337.50	70.25 hrs @ \$150/hr (subtracted 1 hr on 2/4/2016 for call/meeting with Senator Bennett; 0.25 hrs on 2/10/2016 call w/Senator Bennett's office; an 1 hour on 2/12/2016 for call/meeting w/Senator Bennett)
	Subtotal	\$33,009.23	\$1,148.68	
Meal				
11/17/2015	William Gardner	\$213.72	\$213.72	Ineligible - due to expenditure not related to response
	Subtotal	\$213.72	\$213.72	
	Grand Total	\$37,890.84	\$6,030.49	