

After Recording Return
Original Signed Covenant to:
Toxics Cleanup Program
Attn: Brendan Dowling
Department of Ecology
Eastern Regional Office
4601 N. Monroe Street
Spokane, WA 99205

Auditor File #: **2017 0008437**

Recorded at the request of:

MCGRANE & SCHUERMAN, COLVILLE

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STEVENS COUNTY, WASHINGTON
TIM GRAY, AUDITOR

FCLINTON

Environmental Covenant

Grantors: Arthur G. Arrington and Joan C. Arrington, husband and wife,

Grantee: State of Washington, Department of Ecology (hereafter "Ecology"),

Brief Legal Description: Fifteen (15) foot gravel roadway traversing across the S $\frac{1}{2}$ of the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 20, T.38N., R41E. W.M. Stevens County, WA ,

Tax Parcel Nos.: Portion of 5651900 (legally described gravel roadway), see Exhibit A attached to this Covenant.

RECITALS

a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq*, and the Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.

b. The Property that is the subject of this Covenant was part of a site commonly known as SIERRA ZINC MINE (FACILITY SITE ID: 1786484) (the "Sierra Zinc Site"). The Grantors are the fee simple owner of a parcel of real property that included a portion of the Sierra Zinc Site, which parcel portion is referred to herein as the "Property." The Property is a gravel roadway legally described in Exhibit A attached hereto. The Restrictive Covenant Area, which includes this gravel roadway, is described and illustrated in the Record of Survey in Exhibit B attached hereto. The "Restrictive Covenant Area" is defined as and is limited to the area within the boundary described in the Record of Survey. Areas outside of the boundaries of the Restrictive Covenant Area are not subject to this Environmental Covenant. An aerial map of the Sierra Zinc Site outlining the extent of the caps/contamination left in place and the property lines is attached as Exhibit C hereto.

c. The Property was the subject of remedial action conducted pursuant to CERCLA under the supervision of the Environmental Protection Agency and pursuant to MTCA under the supervision of Ecology. This Covenant is required because residual contamination remains within the Restrictive Covenant Area, after completion of remedial actions. Specifically, the following principal contaminants remain within the Restrictive Covenant Area:

Medium	Principal Contaminants Present
Soil	Arsenic, Cadmium, Lead, Mercury, Thallium and Zinc

d. It is the purpose of this Covenant to restrict certain activities and uses of the Restrictive Covenant Area to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology. This includes the following documents: Draft Removal Action Alternatives Analysis, Administrative Settlement Agreement and Order of Consent for Removal Action (CERCLA Docket No. 10-2014-0168) and the Maintenance and Repair Plan for Sierra Zinc Mine and Mill.

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property; however, this is not an ownership interest which equates to liability under MTCA or CERCLA. The rights of Ecology as an "agency" under UECA, other than its' right as a holder, are not an interest in real property.

COVENANT

Arthur G. Arrington and Joan C. Arrington, husband and wife, as Grantors and fee simple owners of the Property hereby grant to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantors that such covenants shall supersede any prior interests the Grantors have in the Restrictive Covenant Area and run with the land and be binding on all current and future owners of any portion of, or interest in, the Restrictive Covenant Area.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Restrictive Covenant Area (gravel roadway legally described on Exhibit A and shown on Exhibit B):

a. **Interference with Remedial Action.** The Grantors shall not engage in any activity within the Restrictive Covenant Area that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.

b. **Protection of Human Health and the Environment.** The Grantors shall not engage in any activity within the Restrictive Covenant Area that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining within the Restrictive Covenant Area.

c. **Continued Compliance Required.** Grantors shall not convey any interest in any portion of the Restrictive Covenant Area of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.

d. Leases. Grantors shall restrict any lease for any portion of the Restrictive Covenant Area to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the area within the Restrictive Covenant Area.

e. Preservation of Reference Monuments. Grantors shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of the Restrictive Covenant Area.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the area within the Restrictive Covenant Area.

a. Land use. Any activity on the Property that may interfere with the integrity of the Remedial Action and the resultant continued protection of human health and the environment is prohibited. As such, the land within the Restrictive Covenant Area shall not be used for any purpose, in perpetuity, except as for open space – wildlife habitat. Prohibited uses on the Restrictive Covenant Area include but are not limited to residential uses, childcare facilities, K-12 public or private schools, parks, growing of food crops, and industrial and non-industrial commercial uses. Grazing of animals may be considered following preparation of a grazing plan by the Grantors and approval by Ecology. Grazing will be dependent on site conditions and following the five year review to be conducted in 2020.

b. Containment of soil/waste materials. The remedial action for the Property resulted in the placement of mill tailings and other contaminated materials within the boundary of the Restrictive Covenant Area. Contaminated soils and mine tailings were consolidated under a cap consisting of 24 inches of clean soil and located within the boundary of the Restrictive Covenant Area. The primary purpose of this cap is to minimize the potential for contact with contaminated soil, minimize leaching of contaminants to groundwater and surface water and prevent runoff from contacting contaminated soil. As such, the following restrictions shall apply within the Restrictive Covenant Area:

- Any activity within the Restrictive Covenant Area that may compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantors shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap.

Section 3. Access.

a. The Grantors shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.

b. The Grantors freely and voluntarily grant Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the

effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. **Conveyance of Any Interest.** The Grantors, when conveying any interest in the Property, including but not limited to title, easement, leases, and security or other interests, must:

- i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
- ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON Nov. 22nd, 2017 AND RECORDED WITH THE STEVENS COUNTY AUDITOR UNDER RECORDING NUMBER 2017 000 8437. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

- iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. **Reporting Violations.** Should the Grantors become aware of any violation of this Covenant, Grantors shall promptly report such violation in writing to Ecology.

c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantors are authorized to respond to such an event in accordance with state and federal law. The Grantors must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. **Notification procedure.** Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

Arthur G. Arrington and Joan C. Arrington
2289 Aladdin Road
Colville, WA 99114
(509) 732-4223 (Home)
(509) 690-1984 (Cell)

Environmental Covenants Coordinator
Washington State Department of Ecology
Toxics Clean-up Program
P.O. Box 47600
Olympia, WA 98504 – 7600
(360) 407-6000
ToxicsCleanupProgramHQ@ecy.wa.gov

Section 5. Modification or Termination.

a. Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:

i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and

ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

b. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

a. This Covenant is being freely and voluntarily granted by the Grantors.

b. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

c. This Covenant shall be liberally construed to meet the intent of MTCA and UECA.

d. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

e. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS]

The Grantors, Arthur G. Arrington and Joan C. Arrington, husband and wife, warrant they hold the title to the Property as tenants in common, and have authority to execute this Covenant.

EXECUTED this 31 day of October, 2017.

Arthur G. Arrington
ARTHUR G. ARRINGTON

EXECUTED this 31 day of October, 2017.

Joan C. Arrington
JOAN C. ARRINGTON

STATE OF WASHINGTON
COUNTY OF STEVENS

On this 31st day of October, 2017, I certify that Arthur G. Arrington personally appeared before me, acknowledged that he is the individual described herein and who executed the within and foregoing instrument and signed the same at his free and voluntary act and deed for the uses and purposes therein mentioned.

ABIGAIL LEMBCKE
Notary Public
State of Washington
My Commission Expires
March 20, 2021

Abigail Lembcke
Notary Public in and for the State of Washington
Residing at Colville
My appointment expires 3-20-21

On this 31st day of October, 2017, I certify that Joan C. Arrington personally appeared before me, acknowledged that she is the individual described herein and who executed the within and foregoing instrument and signed the same at her free and voluntary act and deed for the uses and purposes therein mentioned.

ABIGAIL LEMBCKE
Notary Public
State of Washington
My Commission Expires
March 20, 2021

Abigail Lembcke
Notary Public in and for the State of Washington
Residing at Colville
My appointment expires 3-20-21

The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Kathleen L. Falconer

by: _____

Title: TCP Section Manager

Dated: November 15, 2017

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON

COUNTY OF Spokane

On this 15th day of November, 2017 I certify that Kathleen L. Falconer personally appeared before me, acknowledged that he/she is the Section Manager - TCP of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said state agency.

Cynthia K Anderson
Notary Public in and for the State of Washington

Residing at Spokane, WA

My appointment expires Sept 14, 2019

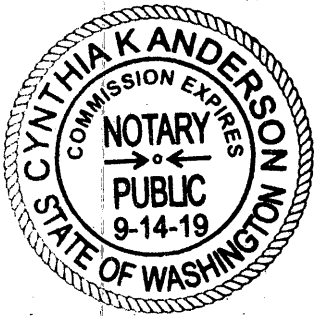


Exhibit A

LEGAL DESCRIPTION

PORTION OF PARCEL 5651900 CONSISTING OF THE LEGALLY DESCRIBED GRAVEL ROAD
PURSUANT TO AMENDED RECORD OF SURVEY, RECORDED UNDER AFN 20170004163 ON
JANUARY 26, 2017, AS:

An existing road described as follows including 7.50 feet on each side of the centerline of said road.

Commencing at the Center Quarter corner of Section 20 in Township 38 North Range 41 East of the Willamette Meridian in Stevens County, Washington, which point is also the Northeast corner of the Southwest Quarter of said Section 20; Thence S 88°11'20" W along the North line of the said Southwest Quarter a distance of 90.00 feet to the centerline of said existing road; Thence along said centerline of the said existing road in a Westerly direction to a point which bears N 01°48'40" W a distance of 149.98 feet to a point, which point is the most Northwesterly corner of the above described covenant description and the terminus of the road description.

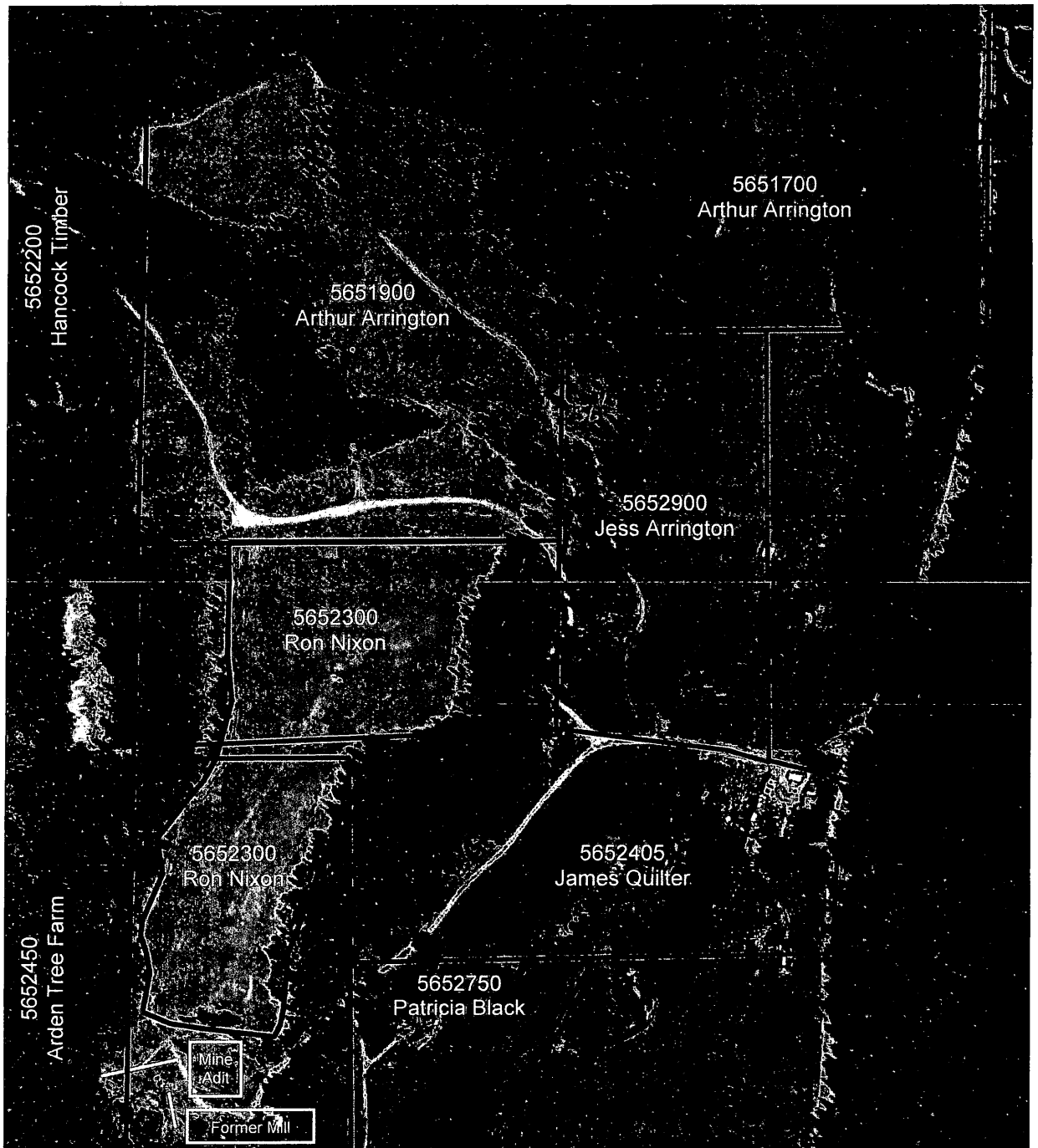
Located in Section 20, Township 38 North, Range 41 East, W.M., in Stevens County, Washington.

Exhibit B

Record of Survey

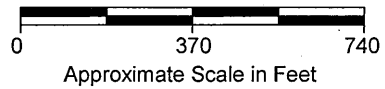
Exhibit C

AERIAL MAP OF SIERRA ZINC SITE



5652300 = Stevens County Tax Parcel No.
 Ron Nixon = Parcel Owner

Impoundment Boundary (approximate)



Sierra Zinc Mine and Mill
 Goldfield, Corp.
 Stevens County, Washington

**Impoundment &
 Parcel Locations**

Figure
1