

TOOELE COUNTY CORPORATION  
CONTRACT # 11-07-03

LEASE

THIS LEASE ("Lease") is entered into this 5<sup>th</sup> day of July, 2011 (the "Effective Date"), by and between Kennecott Utah Copper, LLC, a Utah limited liability company ("Landlord"), and Tooele County, a political subdivision of the State of Utah ("Tenant"). Landlord and Tenant are referred to individually as a "Party" and collectively as the "Parties."

1. **Lease of the Premises.** For value received, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the surface of real property, more particularly described on Exhibit A (the "Premises").
2. **Term.** The term of the Lease shall be one year, commencing on July, 2011, and expiring on July, 2012 (the "Term"). The Term shall automatically renew for successive periods of one year, unless, at least sixty (60) days prior to the expiration of the Term then in effect, Landlord or Tenant elect not to renew the Term by delivering written notice to the other Party.
3. **Use.**
  - 3.1. **Permitted Use.** Tenant is authorized to construct and maintain a trail head for public use on the Premises. Tenant shall comply with all local, state and federal laws related to the construction, use and maintenance of the trail head and shall maintain the improvements in good condition. Tenant shall ensure that the Premises is kept clean and free from trash, debris and environmental hazards.
  - 3.2. **No Interference.** Tenant shall conduct its operations upon the Premises so as not in any manner to interfere with any improvements or other property placed upon the Premises by Landlord and so as not to intentionally interfere with the use of the Premises, or any part thereof, by Landlord for its own operation or by those with a right to use the Premises or any portion thereof.
  - 3.3. **Restricted Activities.** Tenant shall not use the property for purposes other than those stated in section 3.1 above. If Tenant should allow anyone access to the Premises for any purpose not related to the specific use permitted hereunder, it shall be considered a breach of the terms of this Lease by tenant and, in such event, Landlord shall have the immediate right to terminate this Lease upon ten (10) days notice to Tenant.
4. **Rent.** In lieu of rent, Landlord shall have the right to utilize a portion of the informational kiosk, constructed at Tenant's sole cost, for educational materials about Landlord's operation. Landlord may determine, in its sole discretion, the type and content of the materials placed at the educational kiosk. The Parties shall work together to determine the best location for the kiosk so as to ensure that it can be viewed by the public without interfering with Tenant's use of the Premises.
5. **Tax Waiver.** Tenant shall not assess against landlord property taxes on the Premises during the Term or Terms of this Lease, or during any holdover period as provided for in Section 20.5 below.
6. **"As-Is" Transaction.**
  - 6.1. **"As-Is" Transaction.** Tenant represents to Landlord that Tenant has inspected the Premises (or has had the opportunity to inspect the Premises and has elected not to) prior to the execution and delivery of this Lease and has found the same to be satisfactory for all purposes hereunder and Tenant accepts them in their "as is", "where is" condition, subject to all legal requirements, any state of facts which an accurate survey or physical inspection of the

**Premises might show, without warranties, either express or implied, "with all faults", including but not limited to both latent and patent defects, and the existence of hazardous materials, if any.**

- 6.2. **Additional Matters.** Tenant accepts this Lease and the possession of the Premises, with full knowledge of the nature and character of the industries that are now operated in the vicinity of the Premises and of the annoyances, inconveniences and unpleasantness possibly to attend or result from such operations, and Tenant hereby waives all claims against Landlord for damage to property in, upon or about the Premises and for injury to persons in, upon or about the Premises, from any cause arising at any time during the Term. Tenant also acknowledges (and waives any claims against Landlord with respect to) that Landlord reserves the right and privilege at any and all times hereinafter, to discharge through the air upon each and every portion of the Premises, any and all gases, dust, dirt, fumes, particulates and other substances and matter which may be released, given, thrown or blown off, emitted or discharged in the course of, by, or through the existence of or operations of any and all smelting plants, reduction works, mines, mills, refineries, manufactories, tailing deposits and other works and factories which now are, or which may hereafter at any time be established or operated by Landlord, its successors, grantees, lessees or assigns, within Salt Lake County, Utah or Tooele County, Utah.
7. **Access.**
- 7.1. **Access by Third Parties.** Tenant acknowledges and agrees that its use of any access roads or rights-of-way pertaining to or providing access to or within the Premises are not exclusive and are subject to the existing access rights of others and any easements or rights that may be granted in the future. Landlord makes no representation or warranty regarding the location of or the availability of vehicular or pedestrian access to or within the Premises.
- 7.2. **Landlord's Reserved Right of Access.** Landlord, at all times, reserves to itself and its employees, contractors and agents, the right to enter upon the Premises, or any portion thereof, for any purposes, provided the same does not unreasonably interfere with Tenant's use of the Premises as contemplated hereunder. If Landlord's access will interfere with Tenant's use of the Premises, Landlord shall give Tenant ten (10) days written notice of such interference. In the event of an emergency, which shall be determined in Landlord's sole discretion, Landlord shall have the right to immediately access the Premises, even if such access interferes with Tenant's use of the Premises.
8. **Surrender and Restoration of the Premises.** Upon the expiration or termination of this Lease, Tenant shall peaceably and promptly surrender possession of the Premises to Landlord in a condition that is the same, or better, than the condition of the Premises at the commencement of the Lease. Restoration of the Premises is to occur within 60 days of lease termination.
9. **Utilities.** Tenant shall be solely responsible for providing and paying for water, electric power and all other utilities for the operation, care and maintenance of the Premises. All necessary connections, if any, distribution lines or electric power facilities necessary for operation of the Premises, shall be made or installed by Tenant at its sole expense. Landlord shall have no obligation to provide any utilities to the Premises or any portion thereof.

## 10. Improvements and Maintenance of the Premises.

- 10.1. **Construction of Improvements.** Except for the existing improvements located on the Premises, no improvements shall be constructed or located on the Premises by Tenant without the prior written consent of Landlord.
- 10.2. **Liens.** Tenant shall not permit the lien of any contractor, subcontractor, mechanic, materialman, laborer, architect or any other person or entity arising out of work, material or services performed or supplied or contracted for by Tenant, or those claiming by, through or under it, to be or to remain a lien upon the Premises.
- 10.3. **Maintenance.** Tenant shall be solely responsible, at Tenant's sole cost and expense, for maintaining or causing to be maintained the Premises and all portions thereof.

## 11. Indemnification/Insurance.

- 11.1. **Indemnification.** Tenant hereby indemnifies, holds harmless and agrees to defend Landlord, and its officers, agents, directors, employees (the "Indemnitees"), from and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring on the Premises or on the ways immediately adjoining the Premises caused by: (i) the breach by Tenant of the obligations of Tenant under this Lease; (ii) the active or passive negligence or willful misconduct of Tenant, its agents, servants or employees; provided, Tenant does not indemnify Landlord against any injury, loss of life, or damage which is caused by the active negligence or willful misconduct of Landlord or its agents, servants or employees. Tenant's obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration of the Term or earlier termination of this Lease, as to claims arising or accruing prior to the expiration of the Term or earlier termination of this Lease.
- 11.2. **Required Insurance.**
- 11.2.1. Tenant shall provide and maintain comprehensive general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) covering its obligations under this Lease and insuring it against claims for personal injury, bodily injury or death, and property damage or destruction.
- 11.2.2. All insurance required under this Lease shall be written with an insurer licensed to do business in the State of Utah and shall name Landlord as an additional insured.
- 11.2.3. The limits of liability of all insurance required by this Section 11.2 shall be not less than \$2,000,000 for personal injury or bodily injury or death of any one person, \$2,000,000 for personal injury or bodily injury or death of more than one person in one occurrence and \$500,000 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$2,000,000 per occurrence.
- 11.2.4. Tenant shall furnish Landlord with certificates evidencing such insurance and additional insured endorsements. The policies of such insurance shall provide that the insurance represented by such certificates shall not be cancelled, materially changed or non-renewed without the giving of thirty (30) days prior written notice to the holders of such insurance and the holders of such certificates.

11.2.5. The insurance required by this Section 11.2 may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Lease.

## 12. Condemnation.

12.1. **Tenant's Right to Terminate.** In the event of: (i) a total taking of the Premises; or (ii) a taking of any portion of the Premises which renders the balance of the Premises unsuitable for Tenant's use thereon (in Tenant's reasonable judgment), Tenant may cancel this Lease by notice to Landlord within six (6) months after the taking. If Tenant elects not to terminate this Lease in the event of taking, Landlord shall still have the right to maintain an educational kiosk on the Premises, or any portion of the Premises still subject to this Lease, as set forth in Section 4.

12.2. **Tenant's Award.** In the event of any condemnation and whether or not Tenant elects to terminate this Lease, so long as the same does not, in any manner, reduce Landlord's award, Tenant shall be entitled to awards or payments made in the condemnation proceedings with respect to any damage to the trail head or other improvements to the Premises made by Tenant.

13. **Assignment and Subletting.** Tenant shall not assign this Lease or any interest therein or sublet the whole or any portion of the Premises without the prior written consent of Landlord, which Landlord may grant or deny in its sole, subjective discretion. If Tenant assigns this Lease, Tenant shall remain liable to Landlord for full performance of Tenant's obligations under this Lease.

## 14. Default.

14.1. **Events of Default.** Tenant shall be deemed to be in default of this Lease only upon the expiration of twenty (20) days (five [5] days in the event of failure to pay money) from receipt of written notice from Landlord specifying the particulars in which Tenant has failed to perform the obligations of this Lease unless Tenant, prior to the expiration of said twenty (20) days (five [5] days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, Tenant shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said twenty (20) day period and Tenant is using good faith and its best efforts to rectify the particulars specified in the notice of default.

14.2. **No Waiver.** The failure of Landlord to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any rights or remedies that Landlord may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

14.3. **Remedies Not Exclusive.** In the event of a Tenant default, Landlord shall have all remedies provided by law or statute to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to Landlord shall exclude any other remedy herein or by law provided, but each shall be cumulative.

## 15. Hazardous Materials; Compliance with Laws.

15.1. **Hazardous Materials.** "Hazardous Materials" means any substance or material which is defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "acutely hazardous wastes," "restricted hazardous waste," "toxic substances," or "known to cause cancer or reproductive toxicity" (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any

other chemical, substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health or safety, the environment or natural resources ("Environmental Law"). "Release" or "Released" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, presence, dumping, migration on or from the Premises or adjacent property, or disposing of Hazardous Materials into the environment. Tenant covenants that it will not Release any Hazardous Materials at the Premises in violation of any Environmental Law and shall indemnify, hold harmless and defend Landlord, and its Agents, from and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property arising as a result of or in connection its breach of such covenant. Tenant's indemnity obligations hereunder shall survive the expiration or termination of this Lease.

15.2. **Compliance with Laws.** Tenant agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the Premises, including, without limitation, any Environmental Law. Tenant may contest the validity of any such law, ordinance, rule or regulation but shall indemnify and hold Landlord harmless against the consequences of any violation thereof by Tenant. Tenant shall, at its sole cost and expense, obtain and maintain all licenses, permits and approvals required or appropriate in connection with its use of the Premises and its operations thereon and otherwise comply with all laws, statutes, codes, regulations and ordinances pertaining to Tenant's use of the Premises and its operations thereon. Tenant shall, when determined appropriate by Landlord, comply with Landlord's health, safety and environmental standards as they may be modified from time to time.

## 16. Notices.

16.1. **Addresses for Notices.** All notices given pursuant to this Lease shall be in writing and shall be given by fax, personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate Party at the address or fax number set forth below. All notices to Landlord or Tenant shall be sent to the person and address set forth below:

Landlord: Kennecott Utah Copper, LLC  
Attn: Land and Water  
4700 Daybreak Parkway  
South Jordan, Utah 84095  
Fax No.: (801) 204-2887

Tenant: Tooele County Commission  
Attn:  
47 South Main Street  
Tooele, Utah 84074  
Fax No.: (435) 843-3400

- 16.2. **Change of Notice Address.** The person and address to which notices are to be given may be changed at any time by any Party upon written notice to the other Party. All notices given pursuant to this Lease shall be deemed given upon receipt.
- 16.3. **Receipt.** For the purpose of this Lease, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 16.1 as shown on the return receipt; (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to Section 16.1; or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of: (a) the date of the attempted delivery or refusal to accept delivery; (b) the date of the postmark on the return receipt; or (c) the date of receipt of notice of refusal or notice of non-delivery by the sending Party.
17. **Landlord's Operations.** Should Landlord determine, in its sole and absolute discretion, that any portion of the Premises is necessary in connection with the operations of Landlord or its affiliates, then Tenant shall, upon ten (10) days prior written notice from Landlord, cease its use of that portion of the Premises as required by Landlord, and the description of the Premises set forth on Exhibit "A".
18. **Fencing.**
- 18.1. **Relocation of Fence.** Prior to initiating any construction or maintenance on the Premises and prior to permitting public use of the Premises, Tenant shall relocate any fences on the Premises to maintain the enclosed pasture on the surrounding property.
- 18.2. **Construction.** Tenant shall promptly pay all costs associated with any construction or any maintenance work performed by Tenant on any fence to effectively utilize the Premises. Landlord shall have no obligation to Tenant or to any third party to construct, repair or maintain any fences on the Premises.
- 18.3. **Boundary.** Tenant shall secure the Premises by providing adequate gates, locks and necessary maintenance on all boundary fences, and shall use reasonable efforts to protect the Premises from any third party who may seek to place boundary lines or markers upon the Premises and to prevent any third parties from doing anything which would allow adverse claims or encroachments to be perfected against the Premises.
- 18.4. **Release and Waiver.** Tenant will not hold Landlord responsible for and hereby releases Landlord from and waives any claim against Landlord for any loss or damage to the trail head or any other property of any nature whatsoever, upon the Premises by reason of lack of fencing or unsafe fencing surrounding the Premises or caused by fire, overflow of water, flood, rock slide, earthquake, dust, fumes, gas, smoke or any other loss or damage arising from any source or cause during the Term.
19. **Termination.** If, at any time during the Term, Landlord, in its sole and absolute discretion, determines that it requires the use of the Premises, Landlord may terminate this Lease upon thirty (30) days notice to Tenant. Landlord shall have the right to terminate this Lease at any time for any reason upon six (6) months notice to Tenant. At the end of thirty-day or six-month period, as the case may be, Tenant shall restore and surrender the Premises as required under Section 8 of this Lease.

## 20. Miscellaneous.

- 20.1. **Successors.** All of the rights and obligations under this Lease shall bind and inure to the benefit of the heirs, personal representatives, successors and assigns of the Parties.
- 20.2. **Attorneys' Fees.** If either Party to this Lease is required to initiate or defend litigation in any way connected with this Lease, the prevailing Party in such litigation in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. If either Party to this Lease is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Lease, or obligation of the other Party to this Lease, then the Party so litigating shall be entitled to reasonable attorneys' fees from the other Party. Attorneys' fees shall include attorneys' fees on any appeal. In addition a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and the discovery, travel, and all other necessary costs incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.
- 20.3. **Subordination.** This Lease and the use of the Premises is subject and subordinate to any and all encumbrances, easements, rights and rights-of-way now existing or hereafter granted with respect to the Premises, whether or not a matter of record and whether or not apparent.
- 20.4. **Relationship of the Parties.** Nothing herein shall be deemed or construed by the Parties or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that no provision herein, nor any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of landlord and tenant.
- 20.5. **Holdover.** If Tenant holds over following the expiration or termination of this Lease, Tenant shall be deemed to be occupying the Premises as an at will tenant. During any holdover period, (i) Tenant shall pay an occupancy fee in an amount equal to five hundred dollars on a monthly basis; (ii) Tenant shall not assess property taxes against the Premises; and (iii) Landlord shall have the right to maintain an educational kiosk, as provided for in Section 4 of this Lease, on the Premises. In no event shall such holding over be deemed to create or renew any other form of tenancy, nor shall either Party have the right to create such a tenancy.
- 20.6. **No Presumption.** This Lease shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party. Landlord and Tenant represent and warrant to each other that they have been represented by, and have had the opportunity to consult with, legal counsel in connection with the review, negotiation and execution of this Lease.
- 20.7. **Severability.** If any term or provision of this Lease or the application of it to any person or circumstance shall to any extent be held by a court in an action between the Parties or otherwise affecting this Lease to be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.
- 20.8. **No Other Agreements.** The terms set forth in this Lease are intended by the Parties as a final expression of their agreement with respect to such terms and may not be contradicted or

supplemented by evidence of any prior agreement or of any contemporaneous oral agreement. This Lease is intended to be a complete and exclusive statement of the terms of the agreement between the Parties and the terms of this Lease may not be explained or supplemented by evidence of consistent additional terms. This Lease may not be amended or modified by any act or conduct of the Parties or by oral agreement, unless reduced to a writing signed by Landlord and Tenant. This Lease replaces and supersedes any existing leases or other agreements between Landlord and Tenant regarding the Premises or any portion thereof.

20.9. **Authority.** The individuals who execute this Lease represent and warrant that: (i) they are duly authorized to execute this Lease on behalf of Landlord or Tenant, as the case may be; (ii) the parties named are all the necessary and proper parties; and (iii) no other signature, act or authorization is necessary to bind such entity to the provisions of this Lease.

20.10. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to its conflict of laws principles.

20.11. **Recording.** This Lease shall not be recorded, nor shall any memorandum thereof.

EXECUTED as of the date first above written.

**LANDLORD:**

Kennecott Utah Copper, LLC, a Utah limited liability company,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

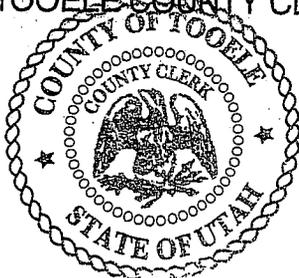
**TENANT:**

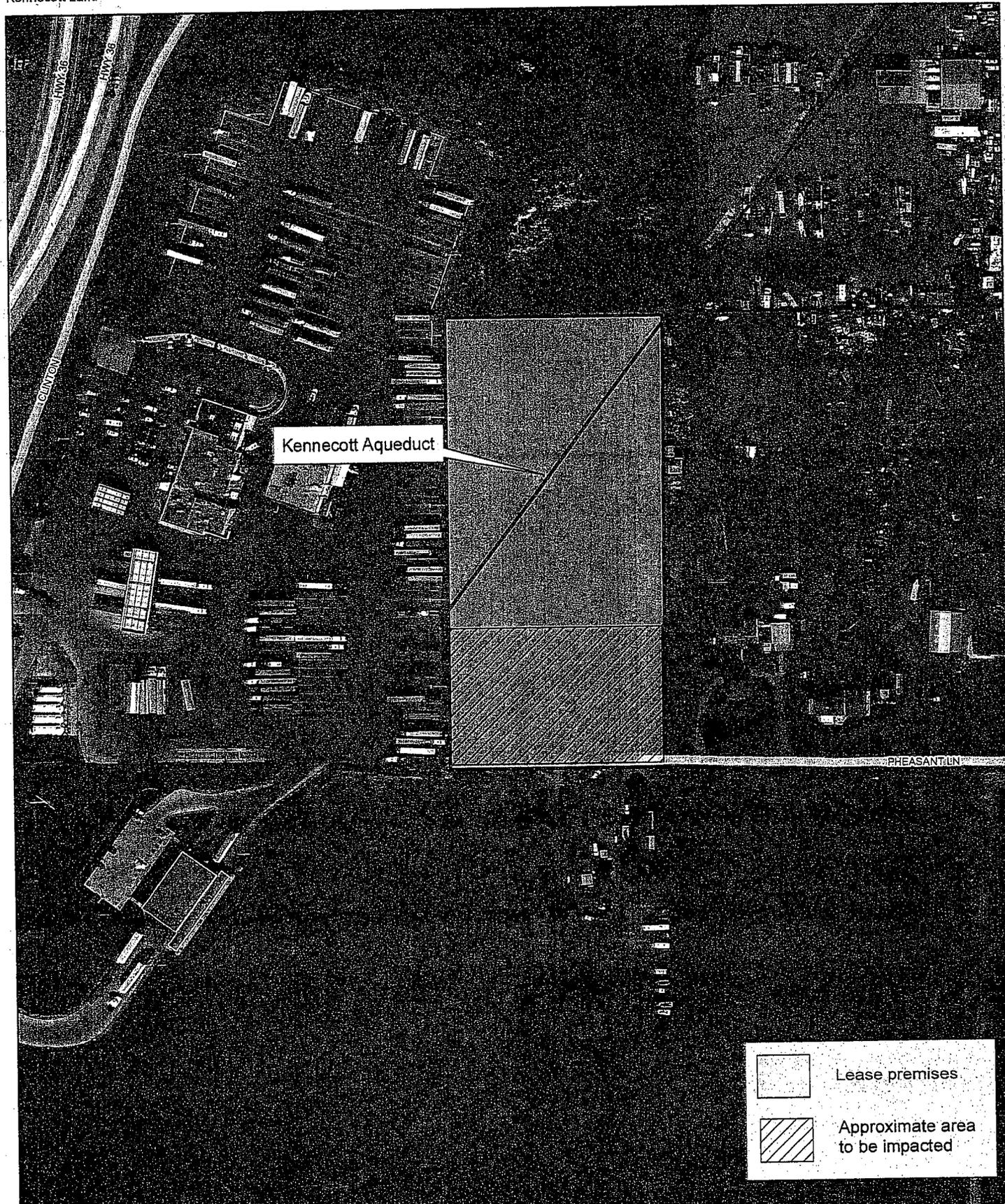
Tooele County, a political subdivision of the State of Utah

By: Colleen Johnson  
Name: COLLEEN JOHNSON  
Title: Commissioner

**ATTEST:**

Marilyn K. Gillette  
MARILYN K. GILLETTE  
TOOELE COUNTY CLERK





Kennecott Aqueduct

Legend:

-  Lease premises
-  Approximate area to be impacted

The information on this map is based on the most current information available to Kennecott Land and should be used for planning purposes only. No warranty expressed or implied is made regarding the accuracy or utility of the data for general or scientific purposes, and shall the act of distribution constitute any such warranty.

