

Section 404 Clean Water Act Regulatory Program

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US Army Corps of Engineers, Sacramento District



US Army Corps of Engineers
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Permitting Authority

- Section 10 Rivers and Harbors Act (RHA) 1899
- Section 404 Clean Water Act (CWA) 1972



Section 10 RHA

- Permits for all work affecting navigable capacity of territorial seas, navigable rivers and lakes.
- Purpose: to maintain safe/passable navigable waterways
- Does not have to involve discharge of material into waterway



Section 10 Navigable Waters

- Subject to tidal action and/or;
- Historically or currently used for transportation of Interstate or Foreign Commerce
- Most major waterways in the US
 - Colorado River
 - Green River
 - Flaming Gorge Reservoir
 - Bear Lake
 - Lake Powell



Typical Work Requiring Section 10 Permits

- Work in, over or under the waterway
 - ▶ Dredging & Excavation
 - ▶ Boat Docks/Piers
 - ▶ Marinas/Ramps/Floats
 - ▶ Bank Protection/Levee Work
 - ▶ Utility lines/Power lines
 - ▶ Intake/Outfall Structures



Clean Water Act

- Section 404 Clean Water Act
 - ▶ Requires that a permit be obtained from the Corps prior to discharging dredged or fill material into “waters of the United States, including wetlands”



Regulatory Program

- CWA goal:
 - To protect the physical, chemical and biological functions of our Nation's waters.
- Corps' Regulatory Mission:
 - To protect the Nation's aquatic resources, while allowing for reasonable development through fair, flexible and balanced permit decision making.



Typical Activities Requiring Section 404 Permits

- Deposition of dredged or fill material in waters of the United States or adjacent wetlands.
- Site development fills for residential, commercial, or recreational developments.
- Mining, channelization, ditching, or similar activities.

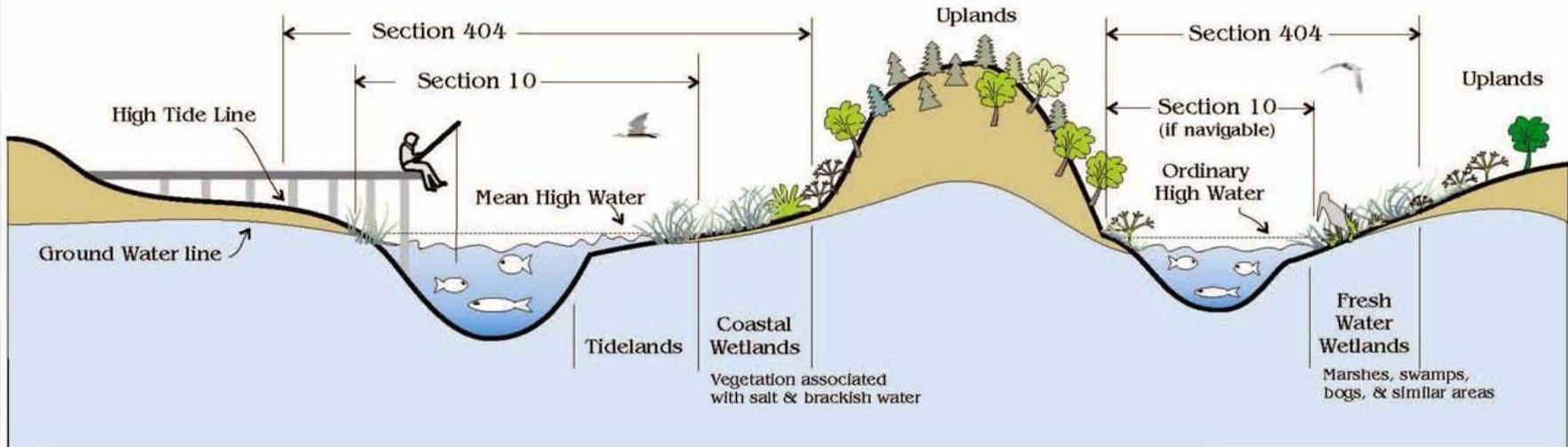


Corps' Jurisdiction

CORPS OF ENGINEERS REGULATORY JURISDICTION

Tidal Waters

Fresh Waters



Section 103 Ocean Disposal of Dredged Material

Typical examples
of regulated activities

Ocean discharges of
dredged material

Section 404 Discharge of Dredged or Fill Material (all waters of the U.S.)

All filling activities, utility lines, outfall structures,
road crossings, beach nourishment, riprap,
jetties, some excavation activities, etc.

Section 10 All Structures and Work (navigable waters)

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pilings, bulkheads, ramps, fills,
overhead transmission lines, etc.



Corps' Permitting Program



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Types of Permits

- General Permits (GP)
- Standard/Individual Permits (IP)



General Permits (GP)

- Most common are the Nationwide Permits and GP 40
- Nationwide Permit (NWP)
 - ▶ Processing Time: 45-60 days
 - ▶ For minimal adverse impacts to aquatic environment
 - ▶ Up to ½ acre impact or 300 linear feet of stream
 - ▶ Activity specific
 - NWP 13 (Bank Stabilization), NWP 14 (Road Crossings), NWP 12 (Utility Lines), NWP 29 (Residential Development)





U.S. Army Corps of
Engineers
Sacramento District

Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide
Permits - March 19, 2007 Includes
corrections of May 8, 2007 and addition of
regional conditions December 2007

39. Commercial and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/4-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

A. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

1. Navigation.

- (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the

removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48.

6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

GP 40

- Joint permit process with State of Utah
- Authorizes minimal impacts to streams only (no wetlands impacts authorized)
- Streamlined permitting process ~30 days



Individual Permits (IP)

- Processing Time – 120 days
- Authorizes activities with more than minimal impacts (no acreage limitations)
- Public process
- Undergo Public Interest Evaluation
- Compliance with Section 404(b)(1) Guidelines
- Section 401 Certification (404 permits only)



Public Interest Evaluation Factors

- Conservation
- Economics
- Aesthetics
- Environmental Concerns
- Fish & Wildlife
- Flood Damage
- Historic & Cultural Resources
- Food Production
- Recreation
- Land Use
- Water Quality
- Water Supply
- Navigation
- Rare/Endangered Species
- Safety
- Energy Needs



Other Requirements

- Threatened/Endangered Species Assessment
- Historic Properties Assessment
 - ▶ GP/NWP need info upfront
 - ▶ IP need info eventually to process permit



Project Updates

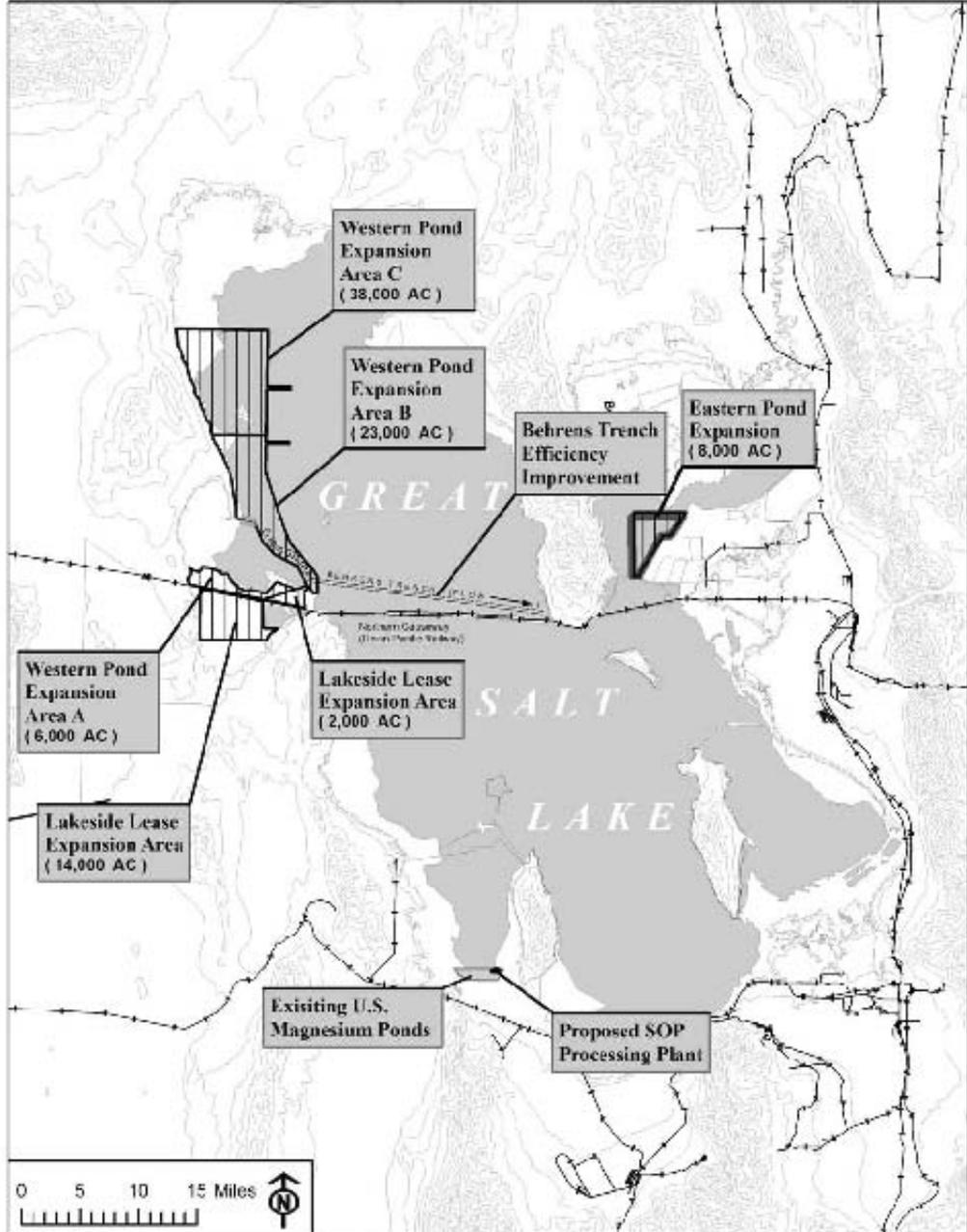


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Great Salt Lake Minerals EIS



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<p>PURPOSE: DATUM: MSL</p> <p>ADJACENT PROPERTY OWNERS:</p> <ol style="list-style-type: none"> 1. BVM 2. Utah Division of Forestry, Game and Fish Services 3. Multi-trust Lands 4. 	<p>Figure 1. Project Vicinity Map, GSL Expansion Project</p> <p>APPLICATION BY: Great Salt Lake Minerals Corp. P.O. Box 1190 Cotton, UT 84402</p>	<p>Proposed By: IN: waters of the United States AT: Great Salt Lake COUNTY OF: Box Elder STATE: Utah Date: 3-20-08 r. 5-19-08</p>
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Great Salt Lake Minerals EIS

- Draft EIS in progress
- Chapters 1 and 2 to Cooperating Agencies shortly
- Environmental baseline almost complete
- Impacts analysis started
- Administrative draft to agencies - September 2011
- Public draft - November 2011

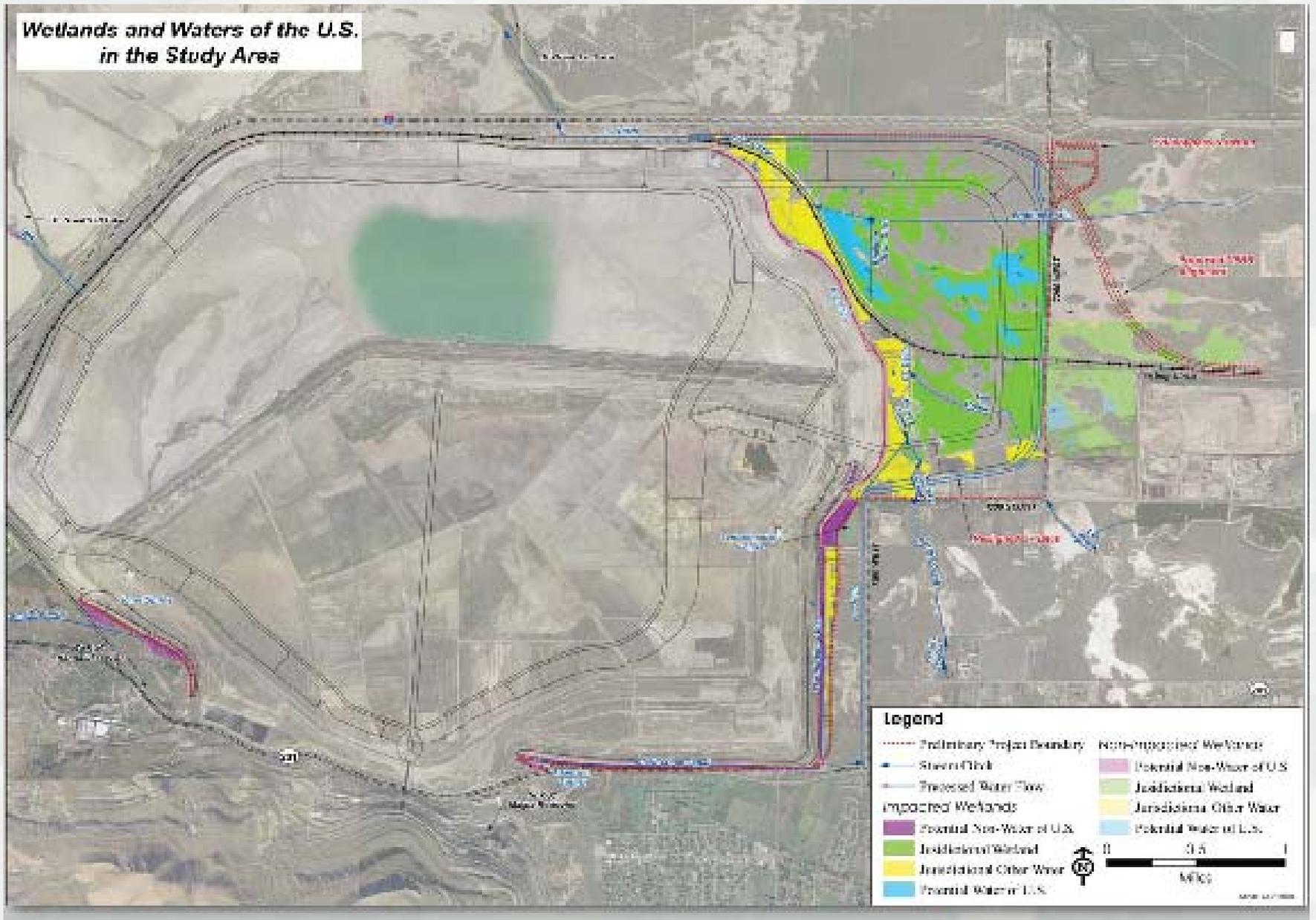


Kennecott Copper EIS



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**Wetlands and Waters of the U.S.
in the Study Area**



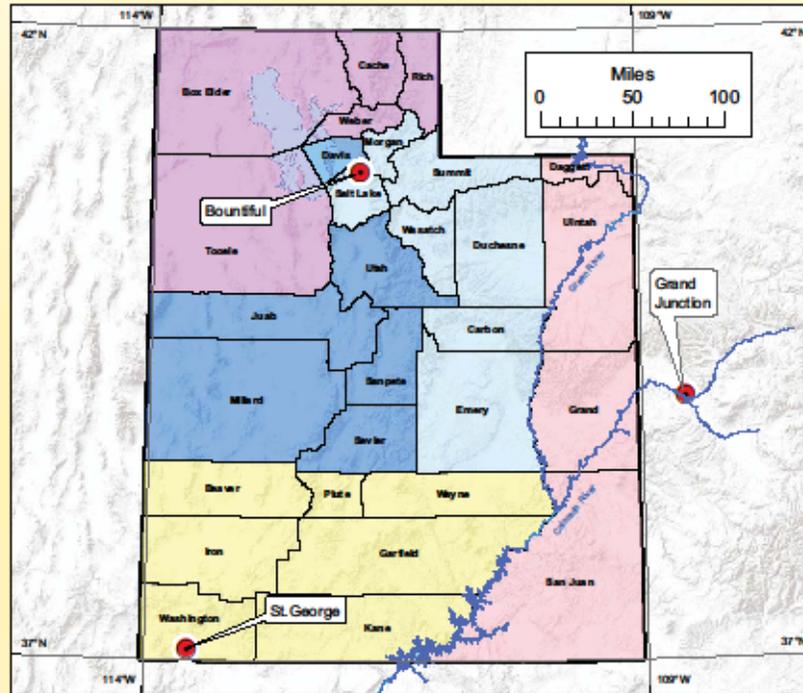
Kennecott Copper EIS

- Public scoping meetings completed (comments due July 11, 2011)
- Compiling comments
- Final scoping report available early August
- Draft EIS for public review scheduled for April 2012



Sacramento Regulatory District

Utah Regulatory Offices



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Questions?



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Thank You

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