Message

From: Midas Gold Idaho [community@midasgoldinc.com]
Sent: 12/14/2019 6:57:38 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: Fact Checking the News Reports

View this email in your browser

FACT CHECK.

Find out the full story.

A recent article about permitting the Stibnite Gold Project misconstrued the facts. We want to assure you that Midas Gold is engaging in the permitting process as it was built and intended. We are following the rules and enhancing transparency and collaboration in the process.

The article alleges we are writing the environmental report called a Biological Assessment and leads one to believe this is unheard of and inappropriate. That is absolutely untrue.

We are collaboratively working with five federal agencies, three state agencies and the tribes to compile the DRAFT Biological Assessment for our project through an informal consultation process under Section 7 of the Endangered Species Act. This draft will be delivered to U.S. Forest Service and they will approve or disapprove any of the content before they create the Biological Assessment. Then, this assessment will be delivered to the U.S. Fish and Wildlife Service and NOAA and they will craft the final Biological Opinion. The project will be judged based on the

Biological Opinion.

This process is no different than the dozens of other technical reports we have been asked to prepare alongside our consultants and submit to the Forest Service.

It is very common for applicants, like Midas Gold, to be granted non-federal representative status and help prepare the draft Biological Assessment. We gave many examples to the reporter, from energy projects to mines, but he failed to mention any of them in the story. You can see the examples for yourself in our briefing paper.

It is also important to note, Midas Gold has used its role as a non-federal representative to advocate to include both state agencies and the tribes in the informal consultation process. Without our efforts, they may not have a seat at the table.

If you want to learn more, we encourage you to read our blog fact checking the story. Please reach out if you have any questions.

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You are receiving this email because you opted in on Midas Gold's website. We send emails to keep you informed about critical project updates and let you know how you can help restore the site and bring jobs to rural Idaho.

Our mailing address is:
Midas Gold Idaho
PO Box 429
Donnelly, ID 83615-0429

Add us to your address book

unsubscribe from this list update subscription preferences

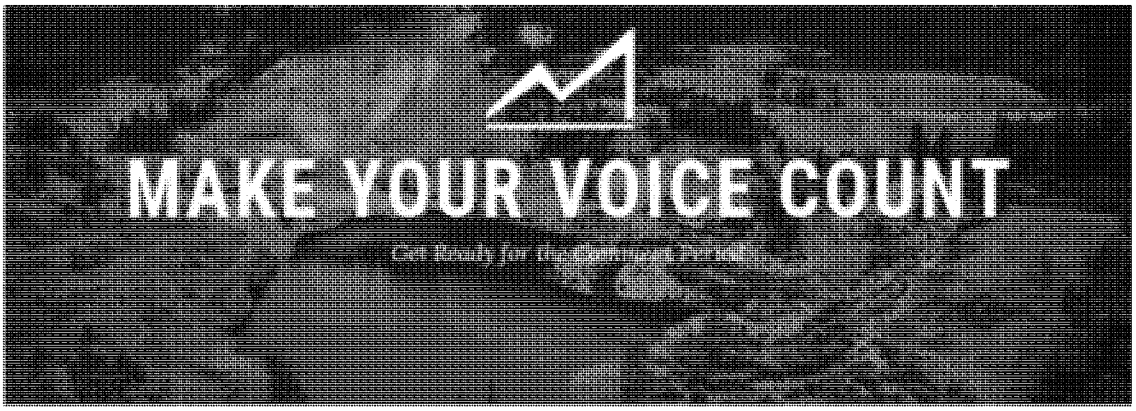
mailchimp

Message

From: Midas Gold Idaho [community@midasgoldinc.com]
Sent: 11/25/2019 4:29:44 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: Thanks for connecting with Midas Gold!

Find out the latest news from Midas Gold.

View this email in your browser



THANK YOU!

Over the next few months, every voice will count when it comes to making the Stibnite Gold Project a reality.

You, along with thousands of others from across Idaho, will stand in support of responsible, modern mining here at home and restoring Stibnite using private investment.

WHEN?
The U.S. Forest Service is analyzing our proposed Stibnite Gold Project and will release a draft Environmental Impact Statement for the public to comment on.

We anticipate the comment will begin at the end of this year.

HOW?

Now that you have signed up with us, we will keep you in the loop on any relevant activity regarding the project and the start of the public comment period.

NOW WHAT?

We will notify you when the comment period opens but in the meantime, here are some helpful resources:

1. Read up on the details of the Stibnite Gold Project.
2. Learn about the problems plaguing the East Fork South Fork of the Salmon River.
3. Find out exactly what it takes to permit the Stibnite Gold Project.
4. Learn how tougher mining laws implemented in Idaho require us to put aside all the money needed for restoration before one shovel enters the ground.
5. Check out what Midas Gold Idaho is already doing for communities near Stibnite.

JOIN OTHER COMMUNITY SUPPORTERS

You can also get more information and get involved through the Support Stibnite Coalition. Sign up here: www.SupportStibnite.com.

WE WOULD ALSO LOVE TO HEAR FROM YOU!

Our staff is more than willing to walk you through the details of our project and answer any questions you might have.

Feel free to email us at Community@MidasGoldInc.com to set up a time to speak with one of our skilled staff members.

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You are receiving this email because you opted in on Midas Gold's website. We send emails to keep you informed about critical project updates and let you know how you can help restore the site and bring jobs to rural Idaho.

Our mailing address is:

Midas Gold Idaho

PO Box 429
Donnelly, ID 83615-0429

Add us to your address book

unsubscribe from this list update subscription preferences

mailchimp

Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 12/19/2019 12:13:39 AM
To: JMeyer@midasgoldcorp.com
Subject: Email introduction

Hi, John. I've been assigned Stibnite Mine and will be taking over from Kathy Cerise. Are you available to talk at all over the holidays? I'd like to have a quick introductory call with you. I'm leaving soon today but will be in the office the rest of this week and except for Christmas Eve and Christmas day, will be in through the end of December. If there is a good time for you to talk, let me know.

Regards,

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 12/31/2019 4:48:51 PM
To: John Meyer [JMeyer@midasgoldcorp.com]
Subject: RE: Email introduction

Hi, John. I am in the office today. If you are working today and have time to talk, let me know or just give me shout – desk phone is 206-553-6069.

If you're not in the office today, it will be a while before we can talk in person. I'll be on leave Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP) – through January 17.

Regards,

Helen Bottcher

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Wednesday, December 18, 2019 4:32 PM
To: Bottcher, Helen <Bottcher.Helen@epa.gov>
Subject: Re: Email introduction

Helen,
Thanks for touching base with me.
I am available to participate in a call at your convenience.
If you propose a day, time and appropriate number to contact you, I will give you a call.
I'm looking forward to working with you.
Regards,
John

Get Outlook for iOS

From: Bottcher, Helen <Bottcher.Helen@epa.gov>
Sent: Wednesday, December 18, 2019 5:13:39 PM
To: John Meyer <JMeyer@midasgoldcorp.com>
Subject: Email introduction

Warning: This email originated externally. **DO NOT CLICK** links if the sender is unknown.

Hi, John. I've been assigned Stibnite Mine and will be taking over from Kathy Cerise. Are you available to talk at all over the holidays? I'd like to have a quick introductory call with you. I'm leaving soon today but will be in the office the rest of this week and except for Christmas Eve and Christmas day, will be in through the end of December. If there is a good time for you to talk, let me know.

Regards,

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Appointment

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 7/3/2019 8:39:05 PM
To: John Meyer [JMeyer@midasgoldcorp.com]; Andy Koulermos [akoulermos@FormationEnv.com]; Bradley M. Marten [bmarten@martenlaw.com]; Terry T. Uhling [tuhling@martenlaw.com]; Merissa A. Moeller [mmoeller@martenlaw.com]; Aaron.Scheff@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; Lisa.O'Hara@deq.idaho.gov; Cerise, Kathy [Cerise.Kathryn@epa.gov]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Keegan Hahn [keegan@midasgoldinc.com]

Subject: FW: Stibnite Gold Project Technical Meeting
Location: https://Ex. 6 Personal Privacy (PP)

Start: 7/10/2019 5:00:00 PM
End: 7/10/2019 6:00:00 PM
Show Time As: Busy

Recurrence: (none)

-----Original Appointment-----
From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Wednesday, June 26, 2019 11:44 AM
To: John Meyer; Bradley M. Marten; Merissa A. Moeller; L. Michael Bogert
Subject: Stibnite Gold Project Meeting
When: Wednesday, July 10, 2019 11:00 AM-12:00 PM (UTC-07:00) Mountain Time (US & Canada).
Where: Ex. 6 Personal Privacy (PP)

A Zoom meeting has been setup for Monday.

To join the Zoom meeting via computer video and audio please use:
Ex. 6 Personal Privacy (PP)

To join via audio only use:
Ex. 6 Personal Privacy (PP)

Meeting ID: Ex. 6 Personal Privacy (PP)

Appointment

From: Hood, Lynne [Hood.Lynne@epa.gov]
Sent: 7/26/2019 8:52:23 PM
To: Hood, Lynne [Hood.Lynne@epa.gov]; Piper M Goessel [kgoessel@fs.fed.us]; Leeds, Todd - FS [toddleeds@fs.fed.us]; Zamba, Kathy -FS [kathy.zamba@usda.gov]; Cerise, Kathy [Cerise.Kathryn@epa.gov]; Willming, Morgan - CO 6th [Morgan.Willming@dhw.idaho.gov]; Dan Kline [dkline@midasgoldinc.com]; R10IOO-ConfLine Ex. 6 Personal Privacy (PP) ID Ex. 6 Personal Privacy (PP) [R10IOO-ConfLine Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP)]
CC: Alan Haslam [ahaslam@midasgoldinc.com]; Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]; Leeds, Todd - FS [todd.leeds@usda.gov]; Porter, Valerie [valerie.porter@aecom.com]; Kristan Robbins [KRobbins@BrwnCald.com]; Scheffler, Laura [laura.scheffler@aecom.com]

Subject: Webinar address added Discuss Public Health analysis
Location: Call in Ex. 6 Personal Privacy (PP)

Start: 7/31/2019 3:30:00 PM
End: 7/31/2019 4:30:00 PM
Show Time As: Busy

Please use the link below to access screen share. The call in will remain the same- Ex. 6 Personal Privacy (PP) Ex. 6 Personal Privacy (PP)

Hello, thanks for your availability for a call and it sounds like this time works for all.
Suggested topics are:

- Discuss public health and the purpose of the health assessment
- Discuss Midas' view of applying this date to health assessments
- Talk about the appropriateness of using this information for NEPA or CERCLA
- Other?

Thanks and look forward to talking with you!

Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 7/2/2019 5:39:36 AM
To: Bradley M. Marten [bmarten@martenlaw.com]
CC: Terry T. Uhling [tuhling@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; gary.fremerman@usda.gov
Subject: Stibnite Mine
Attachments: rifs-asaoc-uao-mods-mem-2016_0.pdf

I have attached the most recent guidance and model SA/AOC for an RI/FS. This will be the template that EPA proposes to use for the Site. Lisa, please take a look and let me know what provisions the state would need to include as a co-signatory.

- Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Friday, June 28, 2019 2:20 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: 'Michael Bogert' <mbogert@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Terry T. Uhling <tuhling@martenlaw.com>; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; gary.fremerman@usda.gov; Andy Koulermos <akoulermos@formationenv.com>
Subject: Midas -- Monday meeting at IDEQ

Elizabeth:

Just left you an e-mail asking if you could let me know who from the three agencies will be participating in our meeting on Monday, and whether in person or by conference call.

I believe you have the call in number from an earlier e-mail but please let me know if you need me to circulate it again. You also have our attendance list. There may be one additional lawyer from my firm – Merissa Moeller, who you met in Seattle at an earlier meeting and who is working with Terry Uhling and me on this project. Merissa's attendance is uncertain, because of a Monday hearing in Bend that may or may not be going forward.

Thanks – see you Monday (in person or by conference call – please advise) at IDEQ at 10:30 am.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 29 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Issuance of Revised Model Consent Order and New Model Unilateral Order for Remedial Investigation/Feasibility Study and Updated Financial Assurance and Insurance Language for All CERCLA Response Action Settlements and Unilateral Administrative Orders

FROM: Cynthia L. Mackey, Director
Office of Site Remediation Enforcement

TO: Regional Counsels, Regions I-X
Superfund National Policy Managers, Regions I-X

I. INTRODUCTION

This memorandum transmits the revised Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) *Model Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study* (RI/FS ASAOC) and the new CERCLA *Model Unilateral Administrative Order for Remedial Investigation/Feasibility Study* (RI/FS UAO). These models were developed in collaboration with Headquarters, Regional, and Department of Justice (DOJ) staff. These documents are now available from the RI/FS category on the Cleanup Enforcement Model Language and Sample Documents Database ("Cleanup Models Database") located at https://cfpub.epa.gov/compliance/models/.

These models are effective today and supersede the *Revised Model Administrative Order on Consent for Remedial Investigation and Feasibility Study* (Jan. 21, 2004) ("2004 RI/FS AOC") and the RI/FS administrative settlement agreement and order on consent elements of the *Interim Revisions to CERCLA Removal, RI/FS and RD AOC Models to Clarify Contribution Rights and Protection Under Section 113(f)* (Aug. 3, 2005).

As explained further in Section II below, we are also using these two models to introduce several changes to the financial assurance and insurance provisions of all of our CERCLA response action settlement and unilateral administrative order models.

II. RI/FS ASAOC

The RI/FS ASAOC contains myriad revisions, including a substantial restructuring of the 2004 RI/FS AOC. These revisions are generally designed to bring the RI/FS ASAOC into conformance with more recently issued CERCLA guidance and models, including the *Revised Model Administrative Settlement Agreement and Order on Consent for Removal Actions* ("Removal ASAOC").[1] In addition, the RI/FS ASAOC incorporates revised model settlement language announced in September 2014 as applicable to all CERCLA models (i.e., immediately effective covenants not to sue and contribution protection and rights language updates).[2] It also incorporates the model geospatial data and electronic submission of deliverables language announced in September 2014.[3] Further, the RI/FS ASAOC contains a number of conforming changes to the *Model Remedial Design/Remedial Action Consent Decree* (RD/RA CD) and *Model Remedial Design/Remedial Action Statement of Work* (RD/RA SOW),[4] adapted to the RI/FS context, including updated: property requirements (covering site access and applicable use restrictions); access to information; record retention; financial assurance; past and future response costs payment provisions; force majeure; and the consolidated waiver of claims covering de micromis, municipal solid waste, and *de minimis*/ability to pay parties. It also contains revised technical assistance plan language[5] and a new community involvement provision for use in accordance with applicable EPA guidance and the National Contingency Plan.

Financial Assurance Language

The RI/FS ASAOC introduces some new financial assurance (FA) language that we are also adding to our other CERCLA administrative and judicial response action models at this time. First, we amended the introductory note in Section XXVIII (Financial Assurance) to reference the April 6, 2015 FA guidance.[6] More importantly, we clarified the requirements of the financial test and corporate guarantee mechanisms by stating them in the model language itself (see Paragraphs 111-112) rather than by referencing the Resource Conservation and Recovery Act (RCRA) FA regulations. Inclusion of the requirements in the model is helpful because the RCRA

---

[1] The latest version of the Removal ASAOC is available online at https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=754.

[2] See *Revisions to 2009 ARC Memo and Issuance of Revised CERCLA Past Cost, Peripheral, De Minimis, De Micromis, and Municipal Solid Waste Settlement Models* (Sept. 26, 2014), available at http://www2.epa.gov/enforcement/guidance-revisions-2009-arc-memo-and-issuance-cercla-payment-models.

[3] See *Transmittal of Model Geospatial Data and Electronic Submission of Deliverables Language for Inclusion in CERCLA Statements of Work* (Sept. 29, 2014), available at http://www2.epa.gov/enforcement/guidance-model-geospatial-data-language-use-cercla-sows.

[4] The latest version of the RD/RA CD and RD/RA SOW are available on the Cleanup Models Database at https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=81 (RD/RA CD) and https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=543 (RD/RA SOW).

[5] See *Interim Guidance: Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements* (Sept. 3, 2009), available at https://www.epa.gov/enforcement/interim-guidance-opportunities-independent-technical-assistance-superfund-settlements, and *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), OSWER Directive No. 9200.2-125, available at https://www.epa.gov/sites/production/files/documents/rev-saa-2012-mem.pdf.

[6] See *Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders*, available at https://www.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders.

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FA regulations are only partially applicable to the CERCLA settlement context. Further, the FA language has been streamlined to clearly provide the elements that need to be met for each FA mechanism.

Insurance Language

Additionally, in response to Regional request, Section XXVII of the RI/FS ASAOC introduces some new insurance language that we are also adding to our other CERCLA administrative and judicial response action models at this time. Specifically, we are modifying the first paragraph of the insurance provision to include suggested minimum coverage amounts for several types of insurance policies based on input from OSRE's Insurance Team, and we are adding a new sentence to the end of that paragraph requiring Respondents to include identifying information with their insurance submittals.

> No later than __ days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXX (Notice of Completion of Work), commercial general liability insurance with limits of ~~$__ million, for any one occurrence, and automobile insurance with limits of $__ million, combined single limit,~~ liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming the EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. . . . Respondents shall ensure that all submittals to EPA under this Paragraph identify the [**Site name, City, State**] and the EPA docket number for this action.

Stipulated Penalties Language

Finally, the RI/FS ASAOC introduces some minor clarifications to the stipulated penalties section that we are also adding to our other CERCLA administrative and judicial response action settlement models at this time. First, we simplified, but did not substantively change, the definition of "comply" in Paragraph 75. Second, we clarified the two stipulated penalty "amount" categories addressed by Paragraphs 76-77. Prior to the change, Paragraph 76 covered "Work (including Payments)" and Paragraph 77 covered "Reports." This division was confusing because reports are a type of Work, and some reports are significant deliverables and some reports are more minor. Revised Paragraph 76 now covers "Payments, Financial Assurance, Major Deliverables, and Other Milestones," and revised Paragraph 77 now covers "Other Deliverables."

III. RI/FS UAO

The RI/FS UAO is a new model that we are issuing as a result of our increased use of and greater experience with UAOs in the RI/FS context. The UAO mirrors the ASAOC with the exception of provisions that apply only to the negotiated agreement context. The UAO-specific provisions are

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modeled after the recently issued *Model Unilateral Administrative Order for Removal Actions* ("Removal UAO") and *Model Unilateral Administrative Order for Remedial Design/Remedial Action* ("RD/RA UAO").[7] Consistent with these previously-issued UAOs, the RI/FS UAO contains the Financial Assurance and Enforcement/Work Takeover model language issued for UAOs in 2015,[8] as amended by the changes to the FA language described in Section II above. Recognizing that the UAO FA section may not always be practical or needed in smaller RI/FS actions, the FA section is presented as optional language in the UAO model. However, Regions are encouraged to include the FA section, especially for larger RI/FS actions, to ensure completion of the work.

Property Requirements and Privileged and Protected Claims

The RI/FS UAO introduces two other minor changes that we are also making to the Removal UAO and RD/RA UAO:

1. In the Property Requirements section (Section XIV of the RI/FS UAO), we are not including the following paragraph (and we are removing it from the other two UAOs) because we believe that institutional controls that may be selected by a future decision document are better addressed by a future UAO or UAO amendment or by some other future enforcement tool:

   > If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's [and the State's] efforts to secure and ensure compliance with such institutional controls.

2. In the Privileged and Protected Claims paragraph of the Access to Information section (Section XV, Paragraph 53.b of the RI/FS UAO), we are modifying the third sentence as follows to better fit the UAO context, as there is no dispute resolution provision in a UAO:

   > Respondents shall retain all Records that they claim to be privileged or protected until EPA [and the State] ~~has [have] had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in~~

---

[7] These models are available on the Cleanup Models Database at https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=755 (Removal UAO) and https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=752 (RD/RA UAO).

[8] See *Model Unilateral Administrative Order for [RD/RA, RI/FS, or Removal Action]April 2015 [Financial Assurance and Enforcement/Work Takeover Sections Only],* https://www.epa.gov/sites/production/files/2015-04/documents/fa-provision-fa-work-2015.pdf, issued as an attachment to *Issuance of CERCLA Financial Assurance Guidance, Updated and New Sample Mechanisms, and Model Language Provisions for Unilateral Administrative Orders* (Apr. 6, 2016), https://www.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders. The sample FA mechanisms for use in connection with CERCLA settlement agreements and UAOs issued with the FA Guidance are available in Word format from the Financial Assurance category of our Cleanup Models Database at https://cfpub.epa.gov/compliance/models/.

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~~Respondents' favor~~ or a court determines that such Record is privileged or protected.

IV. CONTACTS

Please direct any questions about the RI/FS ASAOC to Greg Wall of OSRE's Regional Support Division (RSD) at 202-564-4498 (wall.gregory@epa.gov) and any questions about the RI/FS UAO to Doug Dixon of RSD at 202-564-4232 (dixon.douglas@epa.gov).

V. DISCLAIMER

This memorandum and the documents referenced herein are intended as guidance for EPA employees. They are not rules and do not create any legal obligation. The extent to which EPA applies them in a particular case will depend on the facts of the case.

Attachments

cc: John Michaud, Associate General Counsel, OGC/SWERLO
James Woolford, Director, OLEM/OSRTI
Tom Mariani, Chief, Environmental Enforcement Section, DOJ
Superfund Regional Counsel Branch Chiefs

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ___

IN THE MATTER OF: [Site Name and Location] [Names of Respondents (if many, reference attached list)], Respondents Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622.	)	CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

MODEL ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION / FEASIBILITY STUDY

September 2016

[**NOTE: This model is designed for settlements involving performance of remedial investigations and feasibility studies under the Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988).**]

This document contains automatic section and paragraph numbers and automatic section and paragraph cross references, and an automated Table of Contents. If you add or delete sections or paragraphs, please do not attempt to manually renumber any sections or paragraphs or cross references. Please see instructions at the end for more details.

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency (EPA) and [**insert names or attach list of Respondents**] ("Respondents"). This Settlement provides for the performance of a remedial investigation and feasibility study (RI/FS) [**insert if applicable:** for the operable unit(s) consisting of (description of operable unit(s)] by Respondents and the payment of certain response costs incurred by the United States at or in connection with the [**insert name**] Site (the "Site") generally located at [**insert address or descriptive location of Site**] in [**City or Town, County, State**].

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). [**Insert if applicable:** These authorities were further redelegated by the Regional Administrator of EPA Region ___ to the _____ **(insert title of manager to whom delegation is made)** by **(insert the numerical designation and date of regional delegation).**]

3. EPA and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Section IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

4. This Settlement is binding upon EPA and upon Respondents and their [heirs,] successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement.

5. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

6. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

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7. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into under this Settlement upon performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

[**NOTE: The following list of definitions may be reduced or expanded as appropriate.**]

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

[**NOTE: In the definition below, it is generally sufficient to describe the property using the street address or the tax parcel ID number, but you also may use the legal property description. Legal property descriptions can be lengthy. It is common in conveyance documents to include the legal property description in an attachment. If using a legal property description, it should be the kind found in a deed.**]

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions are needed to implement the RI/FS, including, but not limited to, the following properties **[insert property descriptions]**.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXXV.

"Engineering Controls" shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. §9507.

["_____" shall mean the [**insert name of State pollution control agency or environmental protection agency**] and any successor departments or agencies of the State.]

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XI (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access [**if applicable:** or land, water, or other resource use restrictions], including, but not limited to, the amount of just compensation), Section XV (Emergency Response and Notification of Releases), Paragraph 89 (Work Takeover), [**if Financial Assurance included:** Paragraph 114 (Access to Financial Assurance)], [**if Paragraph 27.c included:** Paragraph 27.c (Community Involvement Plan) [**if paragraph 27.c not included:** community involvement] [**use in all cases:** (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)], Section XVIII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site [**if Past Response Costs are being paid under the Settlement, also insert:** all Interim Response Costs, and all Interest on those Past Response Costs Respondents have agreed to pay under this Settlement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from [**insert date identified in Past Response Costs definition**] to the Effective Date].

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action pursuant to this Settlement; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

["[**Site name**] Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and [**identify prior settlement under which EPA established the special account**].]

[**NOTE: Insert the following definition if Past Response Costs are being paid under the Settlement.**]

["Interim Response Costs" shall mean all costs, including but not limited to direct and indirect costs, (a) paid by the United States in connection with the Site between [**insert date identified in Past Response Costs definition**] and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.]

[NOTE: If including Paragraph 95.a(2) (MSW Waiver), insert the following definition.]

["Municipal Solid Waste" or "MSW" shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial or institutional entity, to the extent that the waste material (1) is essentially the same as waste normally generated by a household; (2) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (3) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.]

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

[**NOTE: Include next definition if any "Affected Property" is owned or controlled by persons other than any Respondent.**]

["Non-Settling Owner" shall mean any person, other than a Respondent, that owns or controls any Affected Property, including [**insert names**]. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by Non-Settling Owner.]

[**NOTE: Include next definition if any "Affected Property" is owned or controlled by any Respondent.**]

["Owner Respondent" shall mean any Respondent that owns or controls any Affected Property, including [**insert names**]. The clause "Owner Respondent's Affected Property" means Affected Property owned or controlled by Owner Respondent.]

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondents.

[**NOTE: Insert the following definition if Past Response Costs are being paid under the Settlement.**]

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["Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through [**insert date of most recent cost summary**], plus Interest on all such costs through such date.]

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Respondents" shall mean [**insert names of Respondents**] [**insert if applicable:** those Parties identified in Appendix __].

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXXIII (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the _____ Superfund Site, encompassing approximately __ acres, located at [**insert address or description of location**] in **[city], _____** County**, [state]** [**insert if applicable:** , and depicted generally on the map attached as Appendix __.]

"State" [or "Commonwealth"] shall mean the State [or Commonwealth] of _____.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to develop the RI/FS for [**insert "the Site" or "Operable Unit(s) ___ for the Site"**], as set forth in Appendix __ to this Settlement. The Statement of Work is incorporated into this Settlement and is an enforceable part of this Settlement as are any modifications made thereto in accordance with this Settlement.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

[NOTE: Substitute the following definition of "Tribe" for the definition of "State" if the Site is entirely on tribal land. Add a definition for "Tribe" in addition to the definition of "State" if both have a role at or interest in the Site. Additional changes will be needed throughout the Settlement to either add and/or substitute the Tribe for the State.]

["Tribe" shall mean the _____ Tribe.]

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any ["hazardous material"] under [**insert appropriate State statutory citation and "hazardous material" terminology**].

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section XIII (Record Retention).

IV. FINDINGS OF FACT

[**NOTE: Because Findings of Fact are site-specific, no specific model language is provided. However, suggested topics are provided below for some findings. Facts should be presented concisely, accurately, and logically. Findings of fact should clearly support each conclusion of law. Regions should include a discussion of the following points: identification of Respondents; site location and description; site history and operations; site ownership; enforcement history; general categories of Respondents' liability; past EPA and/or State activities and investigations; and conditions and data showing hazardous substances are present and releases or threats of releases exist.**]

9. [Identification of the Site by name, location, and description (including characteristics of the Site and a description of the surrounding areas, e.g., commercial/industrial/residential area, nearest public supply wells, nearby water bodies, potentially sensitive ecological areas).]

10. [A brief history of the Site including Site ownership and operations (process or other activity producing waste, nature of wastes produced).]

11. [Information that there are hazardous substances at the Site by listing specific chemicals found at the Site, and their locations, concentrations, and quantities where known.]

12. [Description of actual and/or potential release (i.e., leaking drums, contaminated soils, etc.) and contaminant migration pathways, and possible or known routes of exposure, making clear that these are not exclusive.]

13. [Identification of the populations at risk, both human and non-human.]

14. [Health/environmental effects of some major contaminants.]

15. [Whether the Site is on the [proposed] National Priorities List. Sample language follows:

"The _____ Site was [listed on] [proposed for inclusion on] the National Priorities List (NPL) by EPA pursuant to CERCLA § 105, 42 U.S.C. § 9605, on [**insert month, day, year**], [**insert Federal Register citation**]."]

16. [Identification of Respondents, i.e., name/business; legal status (i.e., corporation, partnership, sole proprietor, trust, individual, federal, state or local government, etc.), general

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categories of Respondents' liability under CERCLA § 107(a) and connection with the Site, e.g., owner or operator of hazardous waste site, including years of ownership or operation, or person who arranged for disposal or treatment of, or transporter of hazardous substances found at the Site.]

17. [Identification of prior response and enforcement actions, including investigations and assessments, if any, taken at the Site, by EPA or the State.]

[**NOTE: If the Settlement compromises a claim for response costs,[1] but Attorney General approval is not required because the total response costs are not expected to exceed $500,000, excluding interest, insert a finding of fact stating:** The Regional Administrator of EPA Region ___, or [his/her] delegatee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.]

V. CONCLUSIONS OF LAW AND DETERMINATIONS

18. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The [**insert name**] Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes [a] "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). [**Regions should specify each category of liability under Section 107. For example:**

(1) Respondents [**insert names**] are the "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(2) Respondents **[insert names]** were the "owners" and/or "operators" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

(3) Respondents **[insert names]** arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous

[1] Note that CERCLA § 104(a)(1) requires that potentially responsible parties must agree to pay oversight costs.

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substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

(4) Respondents **[insert names]** accept or accepted hazardous substances for transport to the facility within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).]

e. The conditions described in [Paragraphs __ of] the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The actions required by this Settlement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

g. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement.

VI. SETTLEMENT AGREEMENT AND ORDER

19. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

20. **Selection of Contractors, Personnel**. All Work performed under this Settlement shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of Work, Respondents retain additional contractors or subcontractors, Respondents shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least __ days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within __ days after EPA's disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP

should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," EPA/240/B-01/002 (Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

21. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph 20 (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within __ days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to all Respondents. [**NOTE: If Respondents' Project Coordinator has been selected prior to signature of the Settlement, replace the first sentence with the following (and delete the third sentence):** Respondents have designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondents required by this Settlement: [**insert name, title, address, telephone number, and email address**].]

22. EPA has designated _____ of the **[insert Regional Office, e.g., Emergency and Enforcement Response Branch, Region __**] as its Project Coordinator [**replace with "On-Scene Coordinator" (OSC) or "Remedial Project Manager" (RPM) as appropriate, here and throughout this Settlement.**] EPA will notify Respondents of a change of its designated Project Coordinator. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Settlement, shall be directed to the EPA Project Coordinator in accordance with Paragraph 33.a.

23. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the EPA Project Coordinator from the area under study pursuant to this Settlement shall not be cause for stoppage or delay of Work.

VIII. WORK TO BE PERFORMED

[**NOTE: Regions may choose between two alternatives for this Section, each of which may be modified on a site-by-site basis to reflect Site needs and Regional practice. The Regions may use Alternative 1, modified in accordance with Regional practice, to describe, in general, the major components of the Work at the Site, but without restating the provisions covered by the SOW, or they may use the more detailed Alternative 2, which contains**

provisions found in the SOW. Depending on how the SOW is drafted, use of Alternative 1 may also eliminate the need for other paragraphs in this Section. However, Regions opting to use Alternative 1 must ensure that the following provisions are addressed either in the Settlement or in the SOW as appropriate:

1) **Paragraph 27.c (Community Involvement Plan) - optional language for Technical Assistance Plans for Superfund Alternative Approach settlements.**
2) **Paragraph 27.e (Reuse Assessment).**
3) **Paragraph 27.f (Baseline Human Health Risk Assessment and Ecological Risk Assessment).**
4) **Paragraph 27.j(1) (Memorandum on Remedial Action Objectives) - inclusion of remedial action objectives for Engineering Controls and Institutional Controls.**
5) **Paragraph 27.k(4) (Alternatives Analysis for Institutional Controls and Screening).**

Regions opting to use the more comprehensive Alternative 2 should make sure that any changes made to the SOW are accurately reflected in the applicable provisions of this Settlement. Please note that Alternative 2 is not intended to replace the SOW as it is not a comprehensive restatement of the SOW.

Regions should also address the use of presumptive remedies in the SOW, if appropriate and applicable to any area of the Site. Consult EPA's Guidance titled "Implementing Presumptive Remedies: A Notebook of Guidance and Resource Materials" (EPA 540-R-97-029, October 1997)) for more information on the use of presumptive remedies.]

24. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

25. [**Alternative 1: Paragraphs 25 and 26**] [Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at https://semspub.epa.gov/src/document/11/128301, "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at http://semspub.epa.gov/src/document/11/156756, and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances,

pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

26. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section IX (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section IX (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.]

27. [**Alternative 2: Paragraph 27.a-.l**] [**Activities and Deliverables**

a. Respondents shall conduct activities and submit deliverables as provided by the SOW, for the development of the RI/FS. All such Work shall be conducted in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance") (OSWER Directive # 9355.3-01, October 1988), available at http://semspub.epa.gov/src/document/11/128301, "Guidance for Data Useability in Risk Assessment (Part A), Final" (OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at http://semspub.epa.gov/src/document/11/156756, and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The general activities that Respondents are required to perform are identified below, followed by a list of deliverables. The tasks that Respondents must perform are described more fully in the SOW and guidance. The activities and deliverables identified below shall be developed as provided in the RI/FS Work Plan and Sampling and Analysis Plan, and shall be submitted to EPA as provided therein. All Work performed under this Settlement shall be in accordance with the schedules in this Settlement or established in the SOW, and in full accordance with the standards, specifications, and other requirements of the RI/FS Work Plan and Sampling and Analysis Plan, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time.

a. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section IX (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section IX

(Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

b. **Scoping**. EPA will determine the Site-specific objectives of the RI/FS and devise a general management approach for the Site, as stated in the SOW. Respondents shall conduct the remainder of scoping activities as described in the SOW and referenced guidance. At the conclusion of the project planning phase, as referenced in Chapter 2.2 of the RI/FS Guidance, Respondents shall provide EPA with the following deliverables:

(1) RI/FS Work Plan. Within __ days after the Effective Date [NOTE: Regions may change this provision to any other appropriate milestone, e.g., within 60 days after notice of contractor approval], Respondents shall submit an RI/FS Work Plan to EPA for review and approval. Upon its approval by EPA pursuant to Section IX (Submission and Approval of Deliverables), the RI/FS Work Plan shall be incorporated into and become enforceable under this Settlement.

[NOTE: Regions may include the list of items to be included in the RI/FS Work Plan or provide a cross-reference to the SOW provision that lists those items.]

(2) **Sampling and Analysis Plan**. Within __ days after the Effective Date, Respondents shall submit a Sampling and Analysis Plan to EPA for review and approval pursuant to Section IX (Submission and Approval of Deliverables). This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP), as described in the SOW, that is consistent with the NCP, **[insert any contaminant specific or Regional specific applicable guidance documents,]** "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002) and **[applicable guidance documents]**, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA/240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA pursuant to Section IX (Submission and Approval of Deliverables), the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

(3) **Health and Safety Plan**. Within __ days after the Effective Date, Respondents shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-O1C (November 2002), available on the NSCEP database at https://www.epa.gov/nscep/index.html, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the

plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. [**NOTE: Regions may provide more detail, e.g., Spill Prevention Control and Countermeasures Plan, evacuation plans, etc.**] Respondents shall incorporate all changes to the plan provided by EPA and shall implement the plan during the pendency of the RI/FS.

c. **Community Involvement Plan [insert the following for Superfund Alternative Approach settlements: and Technical Assistance Plan**]. EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP.

(1) If requested by EPA, Respondents shall participate in community involvement activities, including participation in (i) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (ii) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondents' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (i) any Community Advisory Groups, (ii) any Technical Assistance Grant recipients and their advisors, and (iii) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its community involvement plan Respondents' responsibilities for community involvement activities. All community involvement activities conducted by Respondents at EPA's request are subject to EPA's oversight. [**Insert if the Region contemplates conducting enhanced community involvement during the RI/FS:** Upon EPA's request, Respondents shall make all deliverables available on a website that is accessible to the public.] Upon EPA's request, Respondents shall establish a community information repository at or near the Site to house one copy of the administrative record.

(2) As requested by EPA, Respondents shall, within [15] days, designate and notify EPA of Respondents' Community Involvement Coordinator ("CI Coordinator"). Respondents may hire a contractor for this purpose. Respondents' notice must include the name, title, and qualifications of the Respondents' CI Coordinator. Respondents' CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Site.

[**NOTE: The sample language below is an additional provision that Regions should add to provide for technical assistance for community representatives during response actions for Superfund Alternative Approach settlements and at other appropriate sites:**

(3) Within 30 days after a request by EPA, Respondents shall provide EPA with a Technical Assistance Plan (TAP) for arranging (at Respondents' own expense up to $50,000) for a qualified community group: (i) to receive services

from [an] independent technical advisor[s] who can help group members understand Site cleanup issues, and (ii) to share this information with others in the community during the Work conducted pursuant to this Settlement. The TAP shall state that Respondents will provide and arrange for any additional assistance needed if the selected community group demonstrates such a need as provided in the SOW prior to EPA's issuance of the Record of Decision contemplated by this Settlement. If EPA disapproves of or requires revisions to Respondents' draft TAP, in whole or in part, then Respondents shall amend and submit to EPA a revised TAP that is responsive to EPA's comments, within __ days after receiving EPA's comments.]

d. **Site Characterization**. Following EPA approval or modification of the RI/FS Work Plan and Sampling and Analysis Plan, Respondents shall implement the provisions of these plans to characterize the Site. Respondents shall complete Site characterization and submit all deliverables in accordance with the schedules and deadlines established in this Settlement, the attached SOW, and/or the EPA-approved RI/FS Work Plan and Sampling and Analysis Plan.

e. **Reuse Assessment**. If EPA determines that a Reuse Assessment is necessary,[2] Respondents will perform the Reuse Assessment in accordance with the SOW, RI/FS Work Plan, and applicable guidance. The Reuse Assessment should provide sufficient information to develop realistic assumptions of the reasonably anticipated future uses for the Site. Respondents shall prepare the Reuse Assessment in accordance with EPA guidance, including, but not limited to: "Reuse Assessments: A Tool to Implement the Superfund Land Use Directive." OSWER Directive 9355.7-06P (June 2001).[3]

f. **Baseline Human Health Risk Assessment and Ecological Risk Assessment**.[4] Respondents will perform the Baseline Human Health Risk Assessment and Ecological Risk Assessment ("Risk Assessments") in accordance with the SOW, RI/FS Work Plan, and applicable EPA guidance, including but not limited to: "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A)," RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A (December 1989); "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," RAGS, EPA-540-R-97-033, OSWER Directive 9285.7-01D (January 1998); and "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments," ERAGS, EPA-540-R-97-006, OSWER Directive 9285.7-25 (June 1997).

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[2] OSWER Directive No. 9355.7-06P, "Reuse Assessments: A Tool To Implement The Superfund Land Use Directive," states that "[d]etermining the applicability and scope of a reuse assessment will be dependent on site specific circumstances and/or the overall approach anticipated for addressing the site." The guidance indicates that a reuse assessment may not be necessary at every site.

[3] This guidance permits, in general, the party performing the RI/FS to perform the reuse assessment. EPA can determine the appropriate level of oversight when PRPs perform the reuse assessment.

[4] OSWER Directive No. 9340.1-02, "Revised Policy on Performance of Risk Assessments During Remedial Investigation/Feasibility Studies (RI/FS) Conducted by Potentially Responsible Parties," permits PRPs to perform the baseline risk assessment where appropriate. Consult the policy document for criteria for deciding whether or not to allow the PRPs to perform the risk assessment.

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g. **Draft RI Report**. Within __ days after EPA's approval of the Risk Assessments, Respondents shall submit to EPA for review and approval pursuant to Section IX (Submission and Approval of Deliverables), a draft Remedial Investigation Report ("RI Report") consistent with the SOW, RI/FS Work Plan, and Sampling and Analysis Plan. The draft RI Report shall also contain the Risk Assessments.

h. **Treatability Studies**. Respondents shall conduct treatability studies, except where Respondents can demonstrate to EPA's satisfaction that they are not needed. The major components of the treatability studies are described in the SOW. In accordance with the schedules or deadlines established in this Settlement, its attached SOW, and/or the EPA-approved RI/FS Work Plan, Respondents shall provide EPA with the following deliverables for review and approval pursuant to Section IX (Submission and Approval of Deliverables):

(1) Identification of Candidate Technologies Memorandum. This memorandum shall be submitted [insert "within __ days after the Effective Date," "as specified by EPA," or other scheduling provision preferred by the Region].

(2) **Treatability Test Statement of Work**. If EPA determines that treatability testing is required, within __ days thereafter [or as specified by EPA], Respondents shall submit a Treatability Test Statement of Work (TTSOW).

(3) **Treatability Test Work Plan**. Within __ days after submission of the TTSOW, Respondents shall submit a Treatability Test Work Plan, including a schedule.

(4) **Treatability Study Sampling and Analysis Plan**. Within __ days after identification of the need for a separate or revised QAPP or FSP, Respondents shall submit a Treatability Study Sampling and Analysis Plan.

(5) **Treatability Study Evaluation Report**. Within __ days after completion of any treatability testing, Respondents shall submit a treatability study evaluation report as provided in the SOW and RI/FS Work Plan.

i. **Treatability Study Health and Safety Plan**. Within __ days after the identification of the need for a revised Health and Safety Plan, Respondents shall submit a Treatability Study Health and Safety Plan.

j. **Development and Screening of Alternatives**. Respondents shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FS Work Plan. In accordance with the schedules or deadlines established in this Settlement, the SOW, and/or the EPA-approved RI/FS Work Plan, Respondents shall provide EPA with the following deliverables for review and approval pursuant to Section IX (Submission and Approval of Deliverables):

(1) **Memorandum on Remedial Action Objectives**. The Memorandum on Remedial Action Objectives shall include remedial action objectives for Engineering Controls as well as for Institutional Controls.

(2) **Memorandum on Development and Screening of Alternatives**. The Memorandum on Development and Screening of Alternatives shall summarize the development and screening of remedial alternatives.

k. **Detailed Analysis of Alternatives**. Respondents shall conduct a detailed analysis of remedial alternatives, as described in the SOW and RI/FS Work Plan. In accordance with the deadlines or schedules established in this Settlement, the attached SOW, and/or the EPA-approved RI/FS Work Plan Respondents shall provide EPA with the following deliverables for review and approval pursuant to Section IX (Submission and Approval of Deliverables):

(1) **Individual Analysis of Alternatives**. Within __ days after [**insert appropriate milestone**], Respondents shall conduct an assessment of individual alternatives against each of the nine evaluation criteria, as described in the SOW, and prepare a summary report.

(2) **Comparative Analysis of Alternatives**. Within __ days after [**insert appropriate milestone**], Respondents shall conduct a comparative analysis of alternatives to evaluate the relative performance of each alternative in relation to the nine evaluation criteria, as described in the SOW, and prepare a summary report.

(3) Within __ days after [**insert appropriate milestone**], Respondents shall prepare a summary report of the findings of the FS, including the above analyses, and present the results to EPA.

(4) **Alternatives Analysis for ICs and Screening**. Respondents shall submit a memorandum on the ICs identified in the Memorandum on Development and Screening of Alternatives as potential remedial actions. The Alternatives Analysis for ICs and Screening shall (i) describe the restrictions needed on land, water, or other resources and their relationship to the remedial action objectives; (ii) determine the specific types of ICs that can be used to address and implement the land, water, or other resource use restrictions; (iii) investigate when the ICs need to be implemented and how long they must remain in place; (iv) research, discuss, and document any agreement or other arrangements with the proper entities (e.g., state, local government, local landowners, conservation organizations, Respondents) on exactly who will be responsible for implementing, maintaining, and enforcing the ICs.[5] The Alternatives Analysis for ICs and Screening shall also evaluate the ICs identified in the Memorandum on Development and Screening of Alternatives against the nine evaluation criteria outlined in the NCP (40 C.F.R. § 300.430(e)(9)(iii)) for CERCLA cleanups,

[5] See "Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups" ("A Site Manager's Guide to ICs"), OSWER Directive 9355.0-74FS-P (September 2000) and "Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites" ("PIME IC Guide"), OSWER Directive 9355.0-89 (November 2010) for guidance on these considerations.

including but not limited to costs to implement, maintain, and/or enforce the ICs.[6] The Alternatives Analysis for ICs and Screening shall be submitted as an appendix to the draft Feasibility Study Report ("FS Report").

l. **Draft FS Report.** Within __ days after the presentation to EPA described in Paragraph 27.k(4), Respondents shall submit to EPA a draft FS Report for review and approval pursuant to Section IX (Submission and Approval of Deliverables). Respondents shall refer to Table 6-5 of the RI/FS Guidance for report content and format. The draft FS Report as amended, and the administrative record, shall provide the basis for the proposed plan under Sections 113(k) and 117(a) of CERCLA, 42 U.S.C. §§ 9613(k) and 9617(a), by EPA, and shall document the development and analysis of remedial alternatives.] [**End of Alternative 2**]

28. Upon receipt of the draft Feasibility Study Report ("FS Report"), EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the cost, implementability, and long-term effectiveness of any proposed ICs for that alternative.

29. **Modification of the RI/FS Work Plan**

a. If at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to EPA's Project Coordinator within __ days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify EPA's Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall modify the RI/FS Work Plan in writing accordingly or direct Respondents to modify and submit the modified RI/FS Work Plan to EPA for approval. Respondents shall perform the RI/FS Work Plan as modified.

c. EPA may determine that, in addition to tasks defined in the initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Respondents shall perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a thorough RI/FS.

d. Respondents shall confirm their willingness to perform the additional work in writing to EPA within 7 days after receipt of the EPA request. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

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[6] See A Site Manager's Guide to ICs, *id.*, for discussion of what factors to consider with respect to evaluation of ICs under the nine criteria. It is not necessary to evaluate "reduction of toxicity, mobility or volume through treatment" in the context of ICs. See the PIME IC Guide, *id.*, for further discussion of ICs lifecycle considerations.

e. Respondents shall complete the additional work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the work itself, to seek reimbursement from Respondents for the costs incurred in performing the work, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

30. **Off-Site Shipments**

a. Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the RI/FS and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

[NOTE: Paragraphs 31 and 32 below may be modified on a site-by-site basis to reflect Site needs and Regional practice.]

31. **Meetings**. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the preparation of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

32. **Progress Reports**. In addition to the deliverables set forth in this Settlement, Respondents shall submit written [monthly] progress reports to EPA by the ___ day of the following month. At a minimum, with respect to the preceding month, these progress reports shall:

a. describe the actions that have been taken to comply with this Settlement;

b. include all results of sampling and tests and all other data received by Respondents;

c. describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion; and

d. describe all problems encountered in complying with the requirements of this Settlement and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

IX. SUBMISSION AND APPROVAL OF DELIVERABLES

33. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to EPA's Project Coordinator at [**insert EPA Project Coordinator's name, address, phone number, email**] and to the State at [**insert contact information**]. Respondents shall submit all deliverables required by this Settlement, [the attached SOW,] or any approved work plan in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 33.b. All other deliverables shall be submitted in the electronic form specified by EPA's Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide paper copies of such exhibits. [**NOTE: If paper copies of specific deliverables (in addition to large exhibits) are needed, this paragraph should be edited accordingly.**]

b. **Technical Specifications for Deliverables**

[NOTE: The information in this paragraph is consistent with the EPA National Geospatial Data Policy 2008, which is under review and may be revised at any time. The case team should check https://www.epa.gov/geospatial/geospatial-policies-and-standards for the latest guidance on the policy and associated EPA and CERCLA procedures and technical specifications, including standards and quality assurance for geographic information system (GIS) deliverables.]

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(1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. [**Specify the EDD format that the Region uses.**] Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (i) in the ESRI File Geodatabase format [**or insert Regionally-preferred spatial file format**]; and (ii) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://edg.epa.gov/EME/.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

34. **Approval of Deliverables**

a. **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Settlement [**insert if applicable:** or the attached SOW], EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmissions**. Upon receipt of a notice of disapproval under Paragraph 34.a(1) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 34.a(1), Respondents shall, within __ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for

approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation**. Upon approval, approval upon conditions, or modification by EPA under Paragraph 34.a (Initial Submissions) or Paragraph 34.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (ii) Respondents shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section XX (Stipulated Penalties) for violations of this Settlement.

35. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

36. In the event that EPA takes over some of the tasks, but not the preparation of the Remedial Investigation Report ("RI Report") or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into those reports.

37. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: RI/FS Work Plan; Sampling and Analysis Plan; draft RI Report; Treatability Testing Work Plan; Treatability Testing Sampling and Analysis Plan; Treatability Testing Health and Safety Plan [**delete any of the foregoing not required as a deliverable and add any additional deliverables, if desired**]; and draft FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement.

38. For all remaining deliverables not listed in Paragraph 37, Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

39. **Material Defects**. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 34.a (Initial Submissions) or 34.b (Resubmissions) due to such material defect, Respondents shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section XX (Stipulated Penalties).

40. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

41. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

42. **Laboratories**

a. Respondents shall ensure that EPA [and State] personnel and its [their] authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with EPA's "Field Operations Group Operational Guidelines for Field Activities" (http://www.epa.gov/region8/qa/FieldOperationsGroupOperationalGuidelinesForFieldActivities.pdf) and "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements, and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (https://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (https://www.epa.gov/ttnamti1/airtox.html).

b. Upon approval by EPA [, after a reasonable opportunity for review and comment by the State], Respondents may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-

01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the approved QAPP.

43. **Sampling**

a. Upon request, Respondents shall provide split or duplicate samples to EPA [and the State] or its [their] authorized representatives. Respondents shall notify EPA [and the State] not less than [7] days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA [and the State] shall have the right to take any additional samples that EPA [or the State] deem[s] necessary. Upon request, EPA [and the State] shall provide to Respondents split or duplicate samples of any samples it [they] take[s] as part of EPA's oversight of Respondents' implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. Respondents shall submit to EPA [and the State], in the next monthly progress report as described in Paragraph 32 (Progress Reports) the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

c. Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

XI. PROPERTY REQUIREMENTS

[NOTE: Here and in other places in this section, optional text to be used if there is an Owner Respondent is set off in brackets.]

44. **Agreements Regarding Access and Non-Interference**. Respondents shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by Respondents and the United States, providing that such Non-Settling Owner [**if Owner Respondent:** , and Owner Respondent shall, with respect to Owner Settling Respondent's Affected Property]: (i) provide EPA [, the State,] and the other Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those listed in Paragraph 44.a (Access Requirements); and (ii) refrain from using such

Affected Property in any manner that EPA determines will [pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or] interfere with or adversely affect the implementation or integrity of the Work [**use if applicable:** , including the restrictions listed in Paragraph 44.b (Land, Water, or Other Resource Use Restrictions)].

a. **Access Requirements**. The following is a list of activities for which access is required regarding the Affected Property:

[NOTE: Augment this list as appropriate.]

(1) Monitoring the Work;

(2) Verifying any data or information submitted to EPA [or the State];

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 89 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section XII (Access to Information);

(9) Assessing Respondents' compliance with the Settlement;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

[NOTE: Include Paragraph 44.b if land, water, or other resource use restrictions are needed. If Proprietary Controls selected in an action memorandum are required to restrict land, water, or other resource use during performance of the RI/FS, consult Appendix A, Optional Model Institutional Controls Language, of the "Model Administrative Settlement Agreement and Order on Consent for Removal Actions"

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(https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=754) for appropriate language.]

b. [**Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

[NOTE: Customize and augment this list as appropriate. Be as specific as possible.]

(1) Prohibiting the following activities that could interfere with the Work: _____; and

(2) Ensuring that any new structures will not be constructed in the following manner that could interfere with the Work: _____.]

45. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XVI (Payment of Response Costs).

46. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's [and the State's] efforts to secure and ensure compliance with such Institutional Controls.

47. **[Insert if needed: Notice to Successors-in-Title**

a. Owner Respondent shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner Respondent's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title that: (i) the Affected Property is part of, or related to, the Site; (ii) EPA has entered into an agreement with Respondents for performance of an RI/FS with respect to the Affected Property; and (iii) potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring performance of the RI/FS; and (3) identify the name, docket number, and effective date of this Settlement. Owner Respondent shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Respondent shall, prior to entering into a contract to Transfer Owner Respondent's Affected Property, or 60 days prior to Transferring Owner Respondent's Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has entered into an agreement with Respondents for performance of an RI/FS with respect to the Affected Property (identifying the name, docket number, and the effective date of this Settlement); and

(2) Notify EPA [and the State] of the name and address of the proposed transferee and provide EPA [and the State] with a copy of the notice that it provided to the proposed transferee.]

48. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

49. Notwithstanding any provision of the Settlement, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

50. Respondents shall provide to EPA [and the State], upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA [and the State], for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

51. **Privileged and Protected Claims**

a. Respondents may assert that all or part of a Record requested by EPA [or the State] is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 51.b, and except as provided in Paragraph 51.c.

b. If Respondents assert a claim of privilege or protection, they shall provide EPA [and the State] with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA [and the State] in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA [and the State] has [have] had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

52. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA [and the State] under this Section or Section XIII (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA [and the State], or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

53. Notwithstanding any provision of this Settlement, EPA [and the State] retain[s] all of its [their] information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION

54. Until 10 years after EPA provides Respondents with notice, pursuant to Section XXX (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

55. At the conclusion of the document retention period, Respondents shall notify EPA [and the State] at least 90 days prior to the destruction of any such Records, and, upon request by EPA [or the State], and except as provided in Paragraph 51 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA [or the State].

56. Each Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIV. COMPLIANCE WITH OTHER LAWS

57. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XIX (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

58. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at [**insert Regional spill phone number**] of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XVI (Payment of Response Costs).

59. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at [**insert Regional spill phone number**], and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of

CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

60. For any event covered under this Section, Respondents shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XVI. PAYMENT OF RESPONSE COSTS

61. [**Payment for Past Response Costs**

a. Within 30 days after the Effective Date, Respondents shall pay to EPA $___ for Past Response Costs. Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

[**NOTE: Regions may substitute the following for payment by Automated Clearinghouse (ACH) or for online payment:**

For ACH payment:

Respondents shall make payment to EPA by Automated Clearinghouse (ACH) to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
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and shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

For online payment:

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Respondents shall make payment at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.]

[**NOTE: If Respondents have difficulty making EFT, ACH, or online payments, you may substitute the following:** Respondents shall make payment by official bank check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, Site/Spill ID Number ____, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000]

b. At the time of payment, Respondents shall send notice that payment has been made to [**insert name and address of EPA's Project Coordinator or other receiving official in Region**], and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

[**NOTE ON SPECIAL ACCOUNTS: The Agreement should specify whether payments for Past Response Costs (if any) and Future Response Costs should be deposited in the EPA Hazardous Substance Superfund or in a site-specific special account within the EPA Hazardous Substance Superfund, or should be split between the Superfund and the Special Account (and should specify the split).**]

c. **Deposit of Past Response Costs Payments**. [**Insert one of the following three sentences here.**] [The total amount to be paid by Respondents pursuant to Paragraph 61.a shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid by Respondents pursuant to Paragraph 61.a shall be deposited by EPA in the [**Site name**] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.] [Of the total amount to be paid by Respondents pursuant to Paragraph 61.a, ["$____" or "___%"] shall be deposited by EPA in the EPA Hazardous Substance Superfund and ["$____" or "___%"] shall be deposited by EPA in the [**Site name**] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.]

62. **Payments for Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP.

[**NOTE ON USE OF PREPAID FUTURE RESPONSE COSTS SPECIAL ACCOUNTS: Keep Paragraphs 62.c (Periodic Bills) and 62.d (Deposit of Future Response Costs Payments) in all Settlements. If Respondents will be prepaying any part of EPA's Future Response Costs, also keep Paragraphs 62.a (Prepayment of Future Response Costs), 62.b (Shortfall Payments) and 62.e (Unused Amount). (Note that Paragraph 62.b (Shortfall Payments) is an optional provision for replenishment of the Future Response Costs Special Account in the event of a shortfall in the prepayment.) For an explanation of prepaid accounts, including when prepayment is appropriate, see "Additional Guidance on Prepayment of Oversight Costs and Special Accounts" (Dec. 22, 2006), available at https://www2.epa.gov/enforcement/guidance-prepayment-oversight-costs-and-special-accounts.**]

a. [**Prepayment of Future Response Costs**. Within 30 days after the Effective Date, Respondents shall pay to EPA $_____ as a prepayment of [**if the Paragraph 62.b (Shortfall Payment) optional provision for replenishment is used substitute**: as an initial payment toward] Future Response Costs. Respondents shall make payment in accordance with Paragraphs 61.a and 61.b (Payment for Past Response Costs). The total amount paid shall be deposited by EPA in the [**Site name**] Future Response Costs Special Account. These funds shall be retained and used by EPA to conduct or finance future response actions at or in connection with the Site. [**NOTE: If Past Response Costs are not being paid, insert Paragraphs 61.a and 61.b payment instructions here.**]

[**NOTE: Paragraph 62.b (Shortfall Payment) is an optional provision for replenishment of the Future Response Costs Special Account in the event of a shortfall in the prepayment.**]

b. **Shortfall Payment**. If at any time prior to the date EPA sends Respondents the first bill under Paragraph 62.c (Periodic Bill), or one year after the Effective Date, whichever is earlier, the balance in the [**Site name**] Future Response Costs Special Account falls below $ _____, EPA will so notify Respondents. Respondents shall, within 30 days after receipt of such notice, pay $ _____ to EPA. Payment shall be made in accordance with Paragraphs 61.a and 61.b (Payment for Past Response Costs). The amounts paid shall be deposited by EPA in the [**Site name**] Future Response Costs Special Account. These funds shall be retained and used by EPA to conduct or finance future response actions at or in connection with the Site.

c. **Periodic Bill**. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a [**insert name of standard Regionally-prepared cost summary**], which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 64 (Contesting Future Response Costs), and in accordance with Paragraphs 61.a and 61.b (Payments for Past Response Costs). [**NOTE: If neither Past Response Costs nor Prepaid Future Response Costs are being paid, insert Paragraphs 61.a and 61.b payment instructions here.**]

d. **Deposit of Future Response Costs Payments**. [**Insert one of the following three sentences here.**] [The total amount to be paid by Respondents pursuant to

Paragraph 62.c (Periodic Bill) shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid by Respondents pursuant to Paragraph 62.c (Periodic Bill) shall be deposited by EPA in the [**Site name**] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the [**Site name**] Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.] [Of the total amount to be paid by Respondents pursuant to Paragraph 62.c (Periodic Bill), ["$____" or "___%"] shall be deposited by EPA in the EPA Hazardous Substance Superfund and ["$____" or "___%"] shall be deposited by EPA in the [**Site name**] Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit the entire amount of the Future Response Cost payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the [**Site name**] Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.] [**If second or third sentence is used:** Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.]

e. **Unused Amount**. After EPA issues the Notice of Completion of Work pursuant to Paragraph 120 and a final accounting of the [**Site name**] Future Response Costs Special Account (including crediting Respondents for any amounts received under Paragraphs 62.a (Prepayment of Future Response Costs) [, 62.b (Shortfall Payment),] or 62.c (Periodic Bill), EPA will [**choose one or more of the following three clauses**: "offset the next[7] Future Response Costs bill by the unused amount paid by Respondents pursuant to Paragraphs 62.a Prepayment of Future Response Costs) [, 62.b (Shortfall Payment),] or 62.c (Periodic Bill);" "apply any unused amount paid by Respondents pursuant to Paragraphs 62.a (Prepayment of Future Response Costs) [, 62.b (Shortfall Payment),] or 62.c (Periodic Bill) to any other unreimbursed response costs or response actions remaining at the Site;" or "remit and return to Respondents any unused amount of the funds paid by Respondents pursuant to Paragraphs 62.a (Prepayment of Future Response Costs) [, 62.b (Shortfall Payment),] or 62.c (Periodic Bill)."] [**If the second clause is chosen, insert**: Any decision by EPA to apply unused amounts to unreimbursed response costs or response actions remaining at the Site shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.]

63. **Interest**. In the event that any payment for [**if applicable:** Past Response Costs or] Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. [**If applicable:** The Interest on [Past Response Costs] [and] [prepaid Future Response Cost] shall begin to accrue on the Effective Date. The Interest on [**if prepaid Future Response Costs:** all subsequent] Future Response Costs shall begin to accrue on the date of the bill [**if prepaid Future Response Costs:** or on the date of the prepayment shortfall notice

[7] If the RI/FS is complete at the time of the final accounting, in the "offset" clause, use "final" instead of "next."

pursuant to Paragraph 62.b (Shortfall Payment)]. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XX (Stipulated Penalties).

64. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section XVIII (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 62 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such a dispute, Respondents shall submit a Notice of Dispute in writing to EPA's Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 62, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to EPA's Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 62. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 62. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

[**NOTE: Include the following section in RI/FS AOCs for Superfund Alternative Approach settlements.**]

XVII. [NATURAL RESOURCE DAMAGES]

65. [___. For the purposes of Section 113(g)(1) of CERCLA, the Parties agree that, upon the Effective Date of this Settlement for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action [**if RI/FS is being performed for an operable unit (OU) of a multi-OU site, continue with:** for the last operable unit at the Site.]

XVIII. DISPUTE RESOLUTION

[NOTE: The Regions should develop a record for the dispute and its resolution.]

66. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

67. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within__ days after such action. EPA and Respondents shall have __ days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

68. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within [20] days after the end of the Negotiation Period, submit a statement of position to EPA's Project Coordinator. EPA may, within [20] days thereafter, submit a statement of position. Thereafter, an EPA management official at the [**insert Region-specific**] level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

69. Except as provided in Paragraph 64 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph 79, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XIX. FORCE MAJEURE

70. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force

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majeure" does not include financial inability to complete the Work or increased cost of performance.

71. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondents shall notify EPA's Project Coordinator [**replace with OSC or RPM, as appropriate, and adjust the remainder of this paragraph to be consistent**] orally or, in his or her absence, the alternate EPA Project Coordinator, or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region __, within [**insert period of time**] of when Respondents first knew that the event might cause a delay. Within ___ days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 70 and whether Respondents have exercised their best efforts under Paragraph 70, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

72. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

73. If Respondents elect to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 70 and 71. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

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74. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XX. STIPULATED PENALTIES

75. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 76.a and 77 for failure to comply with the obligations specified in Paragraphs 76.b and 77, unless excused under Section XIX (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

76. **Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with any obligation identified in Paragraph 76.b:

Penalty Per Violation Per Day	Period of Noncompliance
$ _____	1st through 14th day
$ _____	15th through 30th day
$ _____	31st day and beyond

b. **Obligations**

(1) Payment of any amount due under Section XVI (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXVIII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 64 (Contesting Future Response Costs).

(4) [Continue list of major deliverables and other milestones.]

77. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in Paragraph 76.a:

Penalty Per Violation Per Day	Period of Noncompliance
$ _____	1st through 14th day
$ _____	15th through 30th day
$ _____	31st day and beyond

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78. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of _____. [**Include the following sentence if Section XXVIII (Financial Assurance) is included in the Settlement:** Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 89 (Work Takeover) and 114 (Access to Financial Assurance).]

79. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section IX (Submission and Approval of Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the [**insert Region specific**] level or higher, under Paragraph 68 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

80. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

81. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XVIII (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 62 (Payments for Future Response Costs).

82. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 79 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 81 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

83. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement.

84. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover).

[NOTE: A provision for EPA to elect between seeking stipulated and statutory penalties for a particular Settlement violation may be substituted in the paragraph above in appropriate cases by changing "for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation" to "for any violation for which a stipulated penalty is collected pursuant to this Settlement."]

85. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XXI. COVENANTS BY EPA

86. Except as provided in Section XXII (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work [**if addressed:** , Past Response Costs,] and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XXII. RESERVATIONS OF RIGHTS BY EPA

87. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

88. The covenant not to sue set forth in Section XXI (Covenants by EPA) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement;

b. liability for costs not included within the definition[s] of [**if addressed:** Past Response Costs or] Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

89. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 89.a, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 89.b. [**Include the following sentence if Section XXVIII (Financial Assurance) is included in the Settlement:** Funding of Work Takeover costs is addressed under Paragraph 114 (Access to Financial Assurance).]

c. Respondents may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 89.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and

continue a Work Takeover under Paragraph 89.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 68 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY RESPONDENTS

90. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, [Past Response Costs,] Future Response Costs, or this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, [**if addressed:** , Past Response Costs,] Future Response Costs, and this Settlement; [or]

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the [State] Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law [; or]

[NOTE: If the Settlement contains a Future Response Cost prepayment provision under which Respondents may receive a return of unused amounts under option 3 of Paragraph 62.e, include Paragraph 90.d.]

d. [any direct or indirect claim for return of unused amounts from the [**Site name**] Future Response Costs Special Account, except for unused amounts that EPA determines shall be returned to Respondents in accordance with Paragraph 62.e (Unused Amount).]

91. Except as provided in Paragraph 95 (Waiver of Claims by Respondents) these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XXII (Reservations of Rights by EPA), other than in Paragraph 88.a (liability for failure to meet a requirement of the Settlement), 88.d (criminal liability), or 88.e (liability for violations of federal or state law), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

92. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

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93. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

[NOTE: The following provision should be included if the Settlement includes removal activities other than the RI/FS.]

94. [Respondents agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.]

95. **Waiver of Claims by Respondents**

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver**. For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

[NOTE: Use next paragraph if there is MSW at the Site.]

(2) [**MSW Waiver**. For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site; and]

[NOTE: Use the next paragraph if there are known or potential *de minimis* and/or ability to pay (ATP) parties at the Site. Include bracketed reference to *de minimis* party settlement, ATP party settlement, or both as appropriate given Site facts. Use the bracketed "[or in the future enters]" if there are known or potential *de minimis* and/or

ATP PRPs with whom the United States has not yet settled. Note that inclusion of the future component of the waiver does not affect Respondents' right to oppose entry of any such future settlement through the public comment process and does not have any effect unless and until the United States enters into any such future settlement. The scope of the waiver should generally track the scope of the "matters addressed" in the contribution provision of the concluded *de minimis* or ATP settlement. Normally, this means that the scope will be "response costs" as included below. However, if the settlement included natural resource damages, also include "natural resource damages and assessment costs," and if the settlement was not site-wide, limit the scope as appropriate. Also, if the "[or in the future enters]" bracket is used and the scope of the future settlement is likely to be different from the past settlement(s), redraft as necessary.]

(3) [***De Minimis*/Ability to Pay Waiver**. For response costs relating to the Site against any person that has entered [or in the future enters] into [a final CERCLA § 122(g) *de minimis* settlement] [, or] [a final settlement based on limited ability to pay] [,] with EPA with respect to the Site.]

b. **Exceptions to Waiver[s]**

(1) The waiver[s] under this Paragraph 95 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver[s] if such person asserts a claim or cause of action relating to the Site against such Respondent.

[NOTE: If a Respondent asserts that it has a claim against a PRP within the scope of the waiver[s] that is unrelated to the PRP's CERCLA liability at the Site, e.g., a claim for contractual indemnification, add an exception for such claim, such as the following:

(2) The waiver[s] under this Paragraph 95 shall not apply to Respondent [**insert name**]'s contractual indemnification claim against [**insert name**].]

(3) The waiver under Paragraph 95.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

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(4) [The waiver under Paragraph 95.a(2) (MSW Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.]

XXIV. OTHER CLAIMS

96. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

97. Except as expressly provided in Paragraphs 95 (Waiver of Claims by Respondents) and Section XXI (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

98. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXV. EFFECT OF SETTLEMENT/CONTRIBUTION

99. Except as provided in Paragraphs 95 (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XXIII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

100. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C.

§§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work [**if addressed:** Past Response Costs,] and Future Response Costs.

101. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

102. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

103. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XXI (Covenants By EPA).

[NOTE: Include Paragraph 104 if Past Response Costs are being paid under the Settlement.]

104. [Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payment(s) required by Paragraphs 61 (Payment for Past Response Costs) and, if any, Section XX (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 100 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.]

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XXVI. INDEMNIFICATION

105. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

106. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

107. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVII. INSURANCE

108. No later than __ days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXX (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of

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policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to the contractor or subcontractor, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the [**Site name, City, State**] and the EPA docket number for this action.

XXVIII. FINANCIAL ASSURANCE

[NOTES ON PARAGRAPHS 109 AND 110: Financial assurance should be included in settlements as a general matter. Case teams should negotiate and finalize the form, substance, and value of Respondents' financial assurance well before finalizing the Settlement so that the final financial assurance mechanism can take effect within 30 days after the Effective Date. Such review should ensure, among other things, that an instrument or account is established (or can be established) to receive financial assurance resources when needed. Case teams can find the most current sample financial assurance documents in the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/. Case teams should also ensure that entities providing a demonstration or guarantee pursuant to Paragraphs 109.e or 109.f have: (1) submitted all required documentation well in advance of finalizing the Settlement so that EPA can determine whether such financial assurance is adequate; and (2) fully and accurately reflected in their submission all of their financial assurance or "performance guarantee" obligations (under CERCLA, RCRA, the Underground Injection Control Program, the Toxic Substances Control Act, and any other federal, state, or tribal environmental obligation) to the United States or other governmental entities so all such obligations have been properly accounted for in determining whether any such entity meets the financial test criteria. When reviewing which of the permissible financial assurance mechanisms set forth in Paragraph 109 may be appropriate for inclusion in the Settlement, case teams should consider, as part of the facts and circumstances of each case, the estimated cost of the Work to be performed, the estimated time to complete the Work, the nature and extent of contamination at the Site, the financial health of Respondents, and the industry sector(s) in which Respondents operate. Regions have discretion, for example, to require that Respondents provide the financial assurance through a liquid mechanism rather than through a demonstration or guarantee pursuant to Paragraphs 109.e or 109.f. If any Respondent is a municipality, contact financial assurance team members within the Office of Site Remediation Enforcement for assistance. For more specific information and considerations, see "Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders" (April 6, 2015), available at http://www2.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders.]

109. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $ [_____] ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by a Respondent that it meets the financial test criteria of Paragraph 111[, accompanied by a standby funding commitment, which obligates the affected Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover]; or

[NOTE: A sample of a standby funding commitment is available via the link in Paragraph 109.]

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 111.

110. [**If the case team and Respondents have already negotiated the form of the Financial Assurance, use this text**: Respondents have selected, and EPA has found satisfactory, as an initial financial assurance a [**insert type**] in the form attached as Appendix __. Within 30 days after the Effective Date, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the form of financial assurance attached as Appendix __]

[**Otherwise use this text**: Respondents have selected, and EPA has found satisfactory, as an initial financial assurance a [**insert type**] prepared in accordance with Paragraph 109. Within

30 days after the Effective Date, or 30 days after EPA's approval of the form and substance of Respondents' financial assurance, whichever is later, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance]

[**Keep following text with either option**] and shall submit such mechanisms and documents to the [**insert "Regional Financial Management Officer" or an alternative recipient such as "Regional financial assurance specialist"**] at [**insert address**].

111. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 109.e or 109.f, must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the affected Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance-Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

112. Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph 109.e or 109.f must also:

a. Annually resubmit the documents described in Paragraph 111.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in Paragraph 111.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

113. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within [7] days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed [60] days. Respondents shall follow the procedures of Paragraph 115 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance

mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

[NOTE REGARDING PARAGRAPH 114 (Access to Financial Assurance): Case teams should make sure that the "trigger" for obtaining funds and/or work under the financial assurance mechanism is consistent with the trigger in the Settlement, e.g., if the Settlement allows EPA to access the funds in the event of a Work Takeover or a Respondent's failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.]

114. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 89.b, then, in accordance with any applicable financial assurance mechanism, **[if a standby funding commitment requirement is included in Paragraph 109.e, insert**: and/or related standby funding commitment], EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 114.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 114.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 89.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism [and/or related standby funding commitment], whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraphs 109.e or 109.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within __ days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 114 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the [**Site name**] Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 114 must be reimbursed as Future Response Costs under Section XVI (Payment of Response Costs).

115. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to

by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 110, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XVIII (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 110.

116. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXX (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XVIII (Dispute Resolution).

XXIX. MODIFICATION

117. EPA's Project Coordinator may modify any plan or schedule [or the SOW] in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of EPA's Project Coordinator's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

118. If Respondents seek permission to deviate from any approved work plan or schedule [or the SOW], Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Coordinator pursuant to Paragraph 117.

119. No informal advice, guidance, suggestion, or comment by EPA's Project Coordinator or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

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XXX. NOTICE OF COMPLETION OF WORK

120. When EPA determines that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including [**insert list of such obligations, e.g., payment of Future Response Costs [, if applicable: land, water, or other resource use restrictions] and Record Retention**], EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Work Plan, if appropriate, in order to correct such deficiencies. Respondents shall implement the modified and approved RI/FS Work Plan and shall submit a modified draft RI Report and/or FS Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Settlement.

XXXI. [PUBLIC COMMENT]

[**NOTE: Include this Section if any response costs are compromised under Section XVI (Payment of Response Costs) or this Settlement.**]

121. [Final acceptance by EPA of Paragraph __ **(insert paragraph title)** [**insert paragraph number within Section XVI that addresses the costs, if any, that are being compromised, or, if in the highly unusual event that either all Past Response Costs or all Future Response Costs are being compromised for, e.g., orphan share compensation, insert instead:** "Final acceptance by EPA of the [Past Response Costs] [Future Response Costs] [Past Response Costs and Future Response Costs] compromise included in this Settlement"] shall be subject to Section 122(i) of CERCLA, 42 U.S.C.§ 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. EPA may withhold consent from, or seek to modify, all or part of Section XVI (Payment of Response Costs) of this Settlement if comments received disclose facts or considerations that indicate that Section XVI of this Settlement is inappropriate, improper, or inadequate. Otherwise, Section XVI shall become effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from Section XVI of this Settlement.]

XXXII. [ATTORNEY GENERAL APPROVAL]

[**NOTE: This Section should be used if Attorney General approval is required for Section XVI (Payment of Response Costs) or this Settlement because total past and projected response costs of the United States at the Site will exceed $500,000, excluding interest, and the Settlement compromises a claim for past or future costs. If Attorney General approval is required, the Region should consult with DOJ during the negotiations process and obtain written DOJ approval before publishing notice of the proposed cost compromise in the Federal Register. If the Settlement compromises a claim, but Attorney General approval is not required because total response costs are not expected to exceed $500,000, excluding interest, insert a finding of fact in Section IV above stating that: The Regional**

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Administrator of EPA Region __, or [his/her] delegatee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.]

122. The Attorney General or [his/her] designee has approved the response cost settlement embodied in this Settlement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).]

XXXIII. INTEGRATION/APPENDICES

123. This Settlement [and its appendices] constitute[s] the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. [The following appendices are attached to and incorporated into this Settlement:

a. ["Appendix _" is the complete list of Respondents.]

b. ["Appendix _" is the description and/or map of the Site.]

c. ["Appendix _" is the SOW.]

d. ["Appendix _" is the financial assurance.].]

XXXIV. ADMINISTRATIVE RECORD

124. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of the RI/FS upon which selection of the remedial action may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the remedial action, and all communications between Respondents and state, local, or other federal authorities concerning selection of the remedial action.

XXXV. EFFECTIVE DATE

125. [**NOTE: Regions may insert specific practice and language.**] This Settlement shall be effective __ days after the Settlement is signed by the Regional Administrator or his/her delegatee [**if the Settlement includes a cost compromise, include the following:** , with the exception of Paragraph __ (**insert paragraph title**) [**insert paragraph number within Section XVI that addresses the costs, if any, that are being compromised**] [**if either all Past Response Costs or all Future Response Costs are being compromised (and, therefore, there is no paragraph within the payment provision to reference) insert instead:** , with the exception of the [Past Response Cost] [Future Response Cost] compromise included in this Settlement], which shall be effective when EPA issues notice to Respondents that public comments received, if any, do not require EPA to modify or withdraw from [Paragraph __ (insert

paragraph title)] [the [Past Response Cost/Future Response Cost] compromise included within this Settlement.] [**NOTE: The notice sent after the comment period, if one is required, should inform Respondents that payment is now due in accordance with Paragraph 61.a (Payment for Past Response Costs) [and Paragraph 62.a (Prepayment of Future Response Costs), if applicable].**]

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____
Dated

_____
[Name]
Regional Administrator (or designee/delegatee), Region __

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Signature Page for Settlement Regarding _____ Superfund Site

FOR _____:
[Print name of Respondent]

_____
Dated

_____
[Name]
[Title]
[Company]
[Address]

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[NOTE: A separate signature page is required for each settlor.]

Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
Inserting text copied from a different document	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. **Therefore, ALWAYS use the "Paste Special" function to insert text copied from another document**. Press Ctrl-Alt-V; in the pop-up menu, click "Unformatted Text" and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
Inserting a new paragraph	Click at the end of the ¶ immediately preceding the place where you wish to add the new **paragraph**, and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the "LVL 1" Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
Adding an updateable section or paragraph cross-reference	(a) Click where you wish to insert a cross-reference; (b) Click the "References" tab, and, in the "Captions" box, click "Cross-reference;" (c) In the pop-up menu that appears, make sure the "Reference type" field contains "Numbered item" and the "Insert reference to" field contains "Paragraph Number (full context); (d) In the "For which numbered item" field" select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert.
Updating the cross-references	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click "Update Field;" click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: "Error! Reference source not found."
Updating the table of contents	Right-click in the TOC, and in the pop-up menu, left-click "Update Field." Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
Inserting a new section heading	Click in the text of the new heading and assign the "SECTION" paragraph style to the text by clicking the "Home" tab, and in Styles box, clicking the "SECTION" style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
Changing the font	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click "Font;" in the "font" field, select a new font; click OK.

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ___

IN THE MATTER OF: [Site Name and Location] [Names of Respondents (if many, reference attached list)], Respondents Proceeding under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9606(a).	)	CERCLA Docket No. ____ **UNILATERAL ADMINISTRATIVE ORDER FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

MODEL UNILATERAL ADMINISTRATIVE ORDER FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

September 2016

This document contains automatic section and paragraph numbers and automatic section and paragraph cross references, and an automated Table of Contents. If you add or delete sections or paragraphs, please do not attempt to manually renumber any sections or paragraphs or cross references. Please see instructions at the end for more details.

This model and any internal procedures adopted for its implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this model or its internal implementing procedures.

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[**NOTE: Bracketed sections above are optional.**]

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order ("Order") is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. [**Insert if applicable:** This authority was further redelegated by the Regional Administrator of EPA Region ___ to the _____ [**insert title of manager to whom delegation is made**] by [**insert numerical designations and dates of Regional redelegations**].]

2. This Order pertains to property located at [**insert address or descriptive location of the Site**] in [**insert name of City or Town, County, State**] (the "[**insert name**] Site" or the "Site"). This Order requires Respondents to prepare and perform a remedial investigation/feasibility study (RI/FS) to: (a) determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances [, pollutants, or contaminants] at or from the Site; and (b) identify and evaluate remedial alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances [, pollutants, or contaminants] at or from the Site, in order to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State [**insert** "Commonwealth" **if appropriate**] of _____ (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondents and their [heirs,] successors[,] and assigns. Any change in ownership or control of the Site or change in the corporate or partnership status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Order.

5. Respondents are jointly and severally liable for implementing all activities required by this Order. Compliance or noncompliance by any Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent. No Respondent shall interfere in any way with performance of the Work in accordance with this Order by any other Respondent. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.

6. Respondents shall provide a copy of this Order to each contractor hired to perform the Work required by this Order and to each person representing any Respondent with respect to the Site or the Work, and shall condition all contracts entered into under this Order upon performance of the Work in conformity with the terms of this Order. Respondents or their contractors shall provide written notice of the Order to all subcontractors hired to perform any

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portion of the Work required by this Order. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Order.

III. DEFINITIONS

7. Unless otherwise expressly provided in this Order, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in appendices to or documents incorporated by reference into this Order, the following definitions shall apply:

[**NOTE: In the definition below, it is generally sufficient to describe the property using the street address or the tax parcel ID number, but you also may use the legal property description. Legal property descriptions can be lengthy. It is common in conveyance documents to include the legal property description in an attachment. If using a legal property description, it should be the kind found in a deed.**]

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions are needed to implement the RI/FS, including, but not limited to, the following properties [**insert property descriptions**].

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Order as provided in Section VIII.

"Engineering Controls" shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

["_____" shall mean the [**insert name of State pollution control agency or environmental protection agency**] and any successor departments or agencies of the State.]

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"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action pursuant to this Order; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

[NOTE: A definition for "Interest" should not be included if Section XIX (Payment of Response Costs) is not included in the Order.]

["Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.]

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

[NOTE: Include next definition if any "Affected Property" is owned or controlled by persons other than any Respondent.]

["Non-Respondent Owner" shall mean any person, other than a Respondent, that owns or controls any Affected Property, including [**insert names**]. The clause "Non-Respondent Owner's Affected Property" means Affected Property owned or controlled by Non-Respondent Owner.]

"Order" shall mean this Unilateral Administrative Order, all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

[NOTE: Include next definition if any "Affected Property" is owned or controlled by any Respondent.]

["Owner Respondent" shall mean any Respondent that owns or controls any Affected Property, including [**insert names**]. The clause "Owner Respondent's Affected Property" means Affected Property owned or controlled by Owner Respondent.]

"Paragraph" shall mean a portion of this Order identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondents.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created

pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Respondents" shall mean [**insert names of Respondents**] [**insert if applicable:** those Parties identified in Appendix __].

[NOTE: A definition for "Response Costs" should not be included if Section XIX (Payment of Response Costs) is not included in the Order.]

["Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in monitoring and supervising Respondents' performance of the Work to determine whether such performance is consistent with the requirements of this Order, including costs incurred in reviewing any deliverable submitted pursuant to this Order, as well as costs incurred in overseeing implementation of this Order, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.]

"Section" shall mean a portion of this Order identified by a Roman numeral.

"Site" shall mean the _____ Superfund Site, encompassing approximately __ acres, located at [**insert address or description of location**] in [**city**], _____ County, [**state**] [**insert if applicable:** ,and depicted generally on the map attached as Appendix __.]

"State" [or "Commonwealth"] shall mean the State [or Commonwealth] of _____.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to develop the RI/FS for [**insert "the Site" or "Operable Unit(s) ____ for the Site**"], as set forth in Appendix __ to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order as are any modifications made thereto in accordance with this Order.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

[NOTE: Substitute the following definition of "Tribe" for the definition of "State" if the Site is entirely on tribal land. Add a definition for "Tribe" in addition to the definition of "State" if both have a role at or interest in the Site. Additional changes will be needed throughout the Order to either add and/or substitute the Tribe for the State.]

["Tribe" shall mean the _____ Tribe.]

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

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"Waste Material" shall mean: (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any ["hazardous material"] under [**insert appropriate State statutory citation and "hazardous material" terminology**].

"Work" shall mean all activities and obligations Respondents are required to perform under this Order, except those required by Section XVI (Record Retention).

IV. FINDINGS OF FACT

[**NOTE: Because findings of fact are site-specific, no specific model language is provided. However, suggested topics are provided below for some findings. Facts should be presented concisely, accurately, and logically. Findings of fact should clearly support each conclusion of law. Regions should include a discussion of the following points: identification of Respondents; Site location and description; Site history and operations; Site ownership; enforcement history; general categories of Respondents' liability; past EPA and/or State activities and investigations; and conditions and data showing hazardous substances are present and releases or threats of releases exist. The Order should contain findings of fact sufficient to support the determination of imminent and substantial endangerment (ISE) by the authorized delegated official and reference the actual ISE determination. If such a determination has not been previously made, this Section should include data clearly documenting that the releases or threats of releases may present an ISE, e.g., exposure routes, risk assessment, affected populations, environmental harm, potential for fire or explosion, or other dangers, and should be fully supported by an administrative record.**]

8. [Identification of the Site by name, location, and description (including characteristics of the Site and a description of the surrounding areas, e.g., commercial/industrial/residential area, nearest public supply wells, nearby water bodies, potentially sensitive ecological areas).]

9. [A brief history of the Site including Site ownership and operations (process or other activity producing waste, nature of wastes produced).]

10. [Information that there are hazardous substances at the Site by listing specific chemicals found at the Site, and their locations, concentrations, and quantities where known.]

11. [Description of actual and/or potential release (i.e. leaking drums, contaminated soils, etc.) and contaminant migration pathways, and possible or known routes of exposure, making clear that these are not exclusive.]

12. [Identification of the populations at risk, both human and non-human.]

13. [Health/environmental effects of some major contaminants.]

14. [Whether the Site is on the [proposed] National Priorities List. Sample language follows:

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"The _____ Site was [listed on] [proposed for inclusion on] the National Priorities List (NPL) by EPA pursuant to CERCLA § 105, 42 U.S.C. § 9605, on [**insert month, day, year**], [**insert Federal Register citation**]."]

15. [Identification of Respondents, i.e., name/business; legal status (i.e., corporation, partnership, sole proprietor, trust, individual, federal, state, or local government, etc.), general categories of Respondents' liability under CERCLA § 107(a) and connection with the Site, e.g., owner or operator of hazardous waste site, including years of ownership or operation, or person who arranged for disposal or treatment of, or transporter of hazardous substances found at the Site.]

16. [Identification of prior response and enforcement actions, including investigations and assessments, if any, taken at the Site, by EPA or the State.]

V. CONCLUSIONS OF LAW AND DETERMINATIONS

17. Based on the Findings of Fact set forth above and the administrative record, EPA has determined that:

a. The [**insert name**] Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Each Respondent is a liable party under one or more provisions of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). [**NOTE: Regions should specify each category of liability under Section 107. For example:**

(1) Respondents [**insert names**] are the "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(2) Respondents [**insert names**] were the "owners" and/or "operators" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

(3) Respondents [**insert names**] arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

(4) Respondents [**insert names**] accept or accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).]

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d. The contamination [**insert the names of the particular hazardous substances**] found at the Site, as identified in the Findings of Fact above, includes [a] "hazardous substance[s]" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) [, and also includes [a] "pollutant[s] or contaminant[s]" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1)].

e. The conditions described in [Paragraphs __ of] the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions at the Site may constitute a threat to public health or welfare or the environment, based on the factors set forth in Section 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following [**include only those that apply**]:

(1) actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances [and pollutants and contaminants]**;** this factor is present at the Site due to the existence of [**identify**];

(2) actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of [**identify**];

(3) hazardous substances [and pollutants and contaminants] in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of [**identify**];

(4) high levels of hazardous substances [and pollutants and contaminants] in soils largely at or near the surface, that may migrate; this factor is present at the Site due to the existence of [**identify**];

(5) weather conditions that may cause hazardous substances [and pollutants and contaminants] to migrate or be released; this factor is present at the Site due to the existence of [**identify**];

(6) threat of fire or explosion; this factor is present at the Site due to the existence of [**identify**];

(7) the unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because [**describe**]; and

(8) other situations or factors that may pose threats to public health or welfare or the environment; this factor is present at the Site due to the existence of [**identify**].

g. The conditions at the Site may constitute an imminent and substantial endangerment to public health or welfare or the environment.

h. The actions required by this Order are necessary to protect the public health, welfare, or the environment.

VI. ORDER

18. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, Respondents are hereby ordered to comply with all provisions of this Order and any modifications to this Order, including all appendices to this Order and all documents incorporated by reference into this Order.

VII. OPPORTUNITY TO CONFER

19. Within [5] days after this Order is signed by the Regional Administrator or his/her delegatee, Respondents may, in writing, request a conference with EPA to discuss this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondents are ordered to take, or any other relevant and material issues or contentions that Respondents may have regarding this Order.

20. Respondents may appear in person or by an attorney or other representative at the conference. Any such conference shall be held at least [5] days prior to the Effective Date. Respondents may also submit written comments or statements of position on any matter pertinent to this Order no later than [5] days after the conference, or within [10] days [**NOTE: this date should coincide with the conference date plus [5] days**] after this Order is signed if a conference is not requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Any request for a conference or written comments or statements should be submitted to:

[**Attorney**], [**Office of Regional Counsel or Office of Environmental Stewardship**]
United States Environmental Protection Agency
[**Address**]
[**Telephone**]
[**Email**]

VIII. EFFECTIVE DATE

[**NOTE: Regions may modify Paragraph 21 in accordance with Regional practice. The provision for scheduling a conference date in Paragraph 19 should be drafted so that holding the conference will not unduly delay the Effective Date. Regions may issue unilateral administrative orders (UAOs) that include a delayed effective date in order to encourage negotiation.**]

21. This Order shall be effective [5] days after the Order is signed by the Regional Administrator or his/her delegatee unless a conference is requested or written materials submitted in accordance with Section VII (Opportunity to Confer). If a conference is requested or written materials are submitted, this Order shall be effective on the later of the [10th] day after

the conference, or the [10th] day after written materials, if any, are submitted, unless EPA determines that the Order should be modified based on the conference or written materials. In such event, EPA shall notify Respondents, within the [10] day period, that EPA intends to modify the Order. The modified Order shall be effective [5] days after it is signed by the Regional Administrator or his/her delegatee.

IX. NOTICE OF INTENT TO COMPLY

[NOTE: The timing of Respondents' opportunity to confer under Section VII should always precede the deadline for the notice of intent to comply.]

22. On or before the Effective Date, each Respondent shall notify EPA in writing of Respondent's irrevocable intent to comply with this Order. Such written notice shall be sent to EPA as provided in Paragraph 20. Each Respondent's written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defense(s) asserted by such Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of any Respondent's assertions. Failure of any Respondent to provide such written notice within this time period shall, as of the Effective Date, be treated as a violation of this Order by such Respondent.

X. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

23. **Selection of Contractors, Personnel**. All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of Work, Respondents retain additional contractors or subcontractors, Respondents shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least __ days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within __ days after EPA's disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," EPA/240/B-01/002 (Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

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24. Within __ days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Order and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on-Site or readily available during the Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph 23 (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within __ days following EPA's disapproval. Respondents shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. Respondents shall notify EPA ___ days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinator. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

25. EPA has designated _____ of the [**insert Regional Office, e.g., Emergency and Enforcement Response Branch, Region __**], as its Project Coordinator [**replace with "On-Scene Coordinator" (OSC) or "Remedial Project Manager" (RPM) as appropriate, here and throughout Order**]. EPA will notify Respondents of a change of its designated Project Coordinator. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Order, shall be directed to the EPA Project Coordinator in accordance with Paragraph 36.a.

26. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Order, or to direct any other response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the EPA Project Coordinator from the area under study pursuant to this Order shall not be cause for stoppage or delay of Work.

XI. WORK TO BE PERFORMED

[**NOTE: Regions may choose between two alternatives for this Section, each of which may be modified on a site-by-site basis to reflect Site needs and Regional practice. The Regions may use Alternative 1, modified in accordance with Regional practice, to describe, in general, the major components of the Work at the Site, but without restating the provisions covered by the SOW, or they may use the more detailed Alternative 2, which contains provisions found in the SOW. Depending on how the SOW is drafted, use of Alternative 1 may also eliminate the need for other paragraphs in this Section. However, Regions opting to use Alternative 1 must ensure that the following provisions are addressed either in the Order or in the SOW as appropriate:**

1) **Paragraph 30.d (Community Involvement Plan)**
2) **Paragraph 30.f (Reuse Assessment)**

3) **Paragraph 30.g (Baseline Human Health Risk Assessment and Ecological Risk Assessment)**
4) **Paragraph 30.k(1) (Memorandum on Remedial Action Objectives) - inclusion of remedial action objectives for Engineering Controls and Institutional Controls**
5) **Paragraph 30.l(4) (Alternatives Analysis for Institutional Controls and Screening)**

Regions opting to use the more comprehensive Alternative 2 should make sure that any changes made to the SOW are accurately reflected in the applicable provisions of this Order. Please note that Alternative 2 is not intended to replace the SOW as it is not a comprehensive restatement of the SOW.

Regions should also address the use of presumptive remedies in the SOW, if appropriate and applicable to any area of the Site. Consult EPA's Guidance titled "Implementing Presumptive Remedies: A Notebook of Guidance and Resource Materials" (EPA 540-R-97-029, October 1997) for more information on the use of presumptive remedies.]

27. For any regulation or guidance referenced in the Order, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

28. [**Alternative 1: Paragraphs 28 and 29**] [Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Order, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at https://semspub.epa.gov/src/document/11/128301, "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at http://semspub.epa.gov/src/document/11/156756, and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances [, pollutants, or contaminants] at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

29. All written documents prepared by Respondents pursuant to this Order shall be submitted by Respondents in accordance with Section XII (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such

submittals will be reviewed and approved by EPA in accordance with Section XII (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally approved, or modified deliverables.]

30. **[Alternative 2: Paragraph 30.a-m.] [Activities and Deliverables.]**

a. Respondents shall conduct activities and submit all deliverables as provided by the SOW, for the development of the RI/FS. All such Work shall be conducted in accordance with the provisions of this Order, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive No. 9355.3-01 (October 1988), available at http://semspub.epa.gov/src/document/11/128301, "Guidance for Data Useability in Risk Assessment (Part A), Final" (OSWER Directive No. 9285.7-09A, PB 92-963356 (April 1992), available at http://semspub.epa.gov/src/document/11/156756, and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances [, pollutants, or contaminants] at or from the Site. The general activities that Respondents are required to perform are identified below, followed by a list of deliverables. The tasks that Respondents must perform are described more fully in the SOW and guidance. The activities and deliverables identified below shall be developed as provided in the RI/FS Work Plan and Sampling and Analysis Plan, and shall be submitted to EPA as provided therein. All Work performed under this Order shall be in accordance with the schedules in this Order or established in the SOW, and in full accordance with the standards, specifications, and other requirements of the RI/FS Work Plan and Sampling and Analysis Plan, as initially approved or modified by EPA, and as may be amended or modified by EPA from time to time.

b. All written documents prepared by Respondents pursuant to this Order shall be submitted by Respondents in accordance with Section XII (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section XII (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally approved, or modified deliverables.

c. **Scoping**. EPA will determine the Site-specific objectives of the RI/FS and devise a general management approach for the Site, as stated in the SOW. Respondents shall conduct the remainder of scoping activities as described in the SOW and referenced guidance. At the conclusion of the project planning phase, as referenced in Chapter 2.2 of the RI/FS Guidance, Respondents shall provide EPA with the following deliverables:

(1) **RI/FS Work Plan.** Within ___ days after the Effective Date **[NOTE: Regions may change this provision to any other**

appropriate milestone, e.g., within 60 days after notice of contractor approval], Respondents shall submit an RI/FS Work Plan to EPA for review and approval. Upon its approval by EPA pursuant to Section XII (Submission and Approval of Deliverables), the RI/FS Work Plan shall be incorporated into and become enforceable under this Order.

[**NOTE: Regions may include the list of items to be included in the RI/FS Work Plan or provide a cross-reference to the SOW provision that lists those items.**]

(2) **Sampling and Analysis Plan**. Within ___ days after the Effective Date, Respondents shall submit a Sampling and Analysis Plan to EPA for review and approval pursuant to Section XII (Submission and Approval of Deliverables). This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP), as described in the SOW, that is consistent with the NCP, [**insert any contaminant specific or Regional specific applicable guidance documents,**] "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)," EPA 240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3," EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA pursuant to Section XII (Submission and Approval of Deliverables), the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Order.

(3) **Health and Safety Plan.** Within __ days after the Effective Date, Respondents shall submit for EPA review and comment a Health and Safety Plan that ensures the protection of on-site workers and the public during performance of on-site Work under this Order. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at https://www.epa.gov/nscep/index.html, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. [**NOTE: Regions may provide more detail, e.g., Spill Prevention Control and Countermeasures Plan, evacuation plans, etc.**] Respondents shall incorporate all changes to the plan provided by EPA and shall implement the plan during the pendency of the RI/FS.

d. **Community Involvement Plan [insert the following for Superfund Alternative Approach settlements: and Technical Assistance Plan].** EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP.

(1) If requested by EPA, Respondents shall participate in community involvement activities, including participation in (i) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (ii) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondents' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (i) any Community Advisory Groups, (ii) any Technical Assistance Grant recipients and their advisors, and (iii) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondents at EPA's request are subject to EPA's oversight. [**Insert if the Region contemplates conducting enhanced community involvement during the RI/FS:** Upon EPA's request, Respondents shall make all deliverables available on a website that is accessible to the public.] Upon EPA's request, Respondents shall establish a community information repository at or near the Site to house one copy of the administrative record.

(2) As requested by EPA, Respondents shall, within [15] days, designate and notify EPA of Respondents' Community Involvement Coordinator ("CI Coordinator"). Respondents may hire a contractor for this purpose. Respondents' notice must include the name, title, and qualifications of the Respondents' CI Coordinator. Respondents' CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Site.

e. **Site Characterization**. Following EPA approval or modification of the RI/FS Work Plan and Sampling and Analysis Plan, Respondents shall implement the provisions of these plans to characterize the Site. Respondents shall complete Site characterization and submit all deliverables in accordance with the schedules and deadlines established in this Order, the attached SOW, and/or the EPA-approved RI/FS Work Plan and Sampling and Analysis Plan.

f. **Reuse Assessment**. If EPA determines that a Reuse Assessment is necessary,[1] Respondents will perform the Reuse Assessment in accordance with the SOW, RI/FS Work Plan, and applicable guidance. The Reuse Assessment should provide sufficient

[1] OSWER Directive No. 9355.7-06P, "Reuse Assessments: A Tool to Implement the Superfund Land Use Directive," states that "[d]etermining the applicability and scope of a reuse assessment will be dependent on site specific circumstances and/or the overall approach anticipated for addressing the site." The guidance indicates that a reuse assessment may not be necessary at every site.

information to develop realistic assumptions of the reasonably anticipated future uses for the Site. Respondents shall prepare the Reuse Assessment in accordance with EPA guidance, including, but not limited to, "Reuse Assessments: A Tool to Implement the Superfund Land Use Directive," OSWER Directive 9355.7-06P (June 2001).[2]

g. **Baseline Human Health Risk Assessment and Ecological Risk Assessment**.[3] Respondents will perform the Baseline Human Health Risk Assessment and Ecological Risk Assessment ("Risk Assessments") in accordance with the SOW, RI/FS Work Plan, and applicable EPA guidance, including but not limited to: "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A)," RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A (December 1989); "Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," RAGS, EPA 540-R-97-033, OSWER Directive 9285.7-01D (January 1998); and "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments," ERAGS, EPA-540-R-97-006, OSWER Directive 9285.7-25 (June 1997).

h. **Draft RI Report**. Within __ days after EPA's approval of the Risk Assessments, Respondents shall submit to EPA for review and approval pursuant to Section XII (Submission and Approval of Deliverables), a draft Remedial Investigation Report ("RI Report") consistent with the SOW, RI/FS Work Plan, and Sampling and Analysis Plan. The draft RI Report shall also contain the Risk Assessments.

i. **Treatability Studies**. Respondents shall conduct treatability studies, except where Respondents can demonstrate to EPA's satisfaction that they are not needed. The major components of the treatability studies are described in the SOW. In accordance with the schedules or deadlines established in this Order, the attached SOW, and/or the EPA-approved RI/FS Work Plan, Respondents shall provide EPA with the following deliverables for review and approval pursuant to Section XII (Submission and Approval of Deliverables):

(1) **Identification of Candidate Technologies Memorandum**. This memorandum shall be submitted [**insert: "within __ days after the Effective Date," "as specified by EPA," or other scheduling provision preferred by the Region**].

(2) **Treatability Test Statement of Work**. If EPA determines that treatability testing is required, within __ days thereafter [or as specified by EPA], Respondents shall submit a Treatability Test Statement of Work (TTSOW).

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[2] This guidance permits, in general, the party performing the RI/FS to perform the reuse assessment. EPA can determine the appropriate level of oversight when PRPs perform the reuse assessment.

[3] OSWER Directive No. 9340.1-02, "Revised Policy on Performance of Risk Assessments During Remedial Investigation/Feasibility Studies (RI/FS) Conducted by Potentially Responsible Parties," permits PRPs to perform the baseline risk assessment where appropriate. Consult the policy document for criteria for deciding whether or not to allow the PRPs to perform the risk assessment.

(3) **Treatability Test Work Plan**. Within __ days after submission of the TTSOW, Respondents shall submit a Treatability Test Work Plan, including a schedule.

(4) **Treatability Study Sampling and Analysis Plan**. Within __ days after identification of the need for a separate or revised QAPP or FSP, Respondents shall submit a Treatability Study Sampling and Analysis Plan.

(5) **Treatability Study Evaluation Report**. Within __ days after completion of any treatability testing, Respondents shall submit a treatability study evaluation report as provided in the SOW and RI/FS Work Plan.

j. **Treatability Study Health and Safety Plan**. Within __ days after the identification of the need for a revised Health and Safety Plan, Respondents shall submit a Treatability Study Health and Safety Plan.

k. **Development and Screening of Alternatives**. Respondents shall develop an appropriate range of waste management options that will be evaluated through the development and screening of alternatives, as provided in the SOW and RI/FS Work Plan. In accordance with the schedules or deadlines established in this Order, the attached SOW, and/or the EPA-approved RI/FS Work Plan, Respondents shall provide EPA with the following deliverables for review and approval pursuant to Section XII (Submission and Approval of Deliverables):

(1) **Memorandum on Remedial Action Objectives**. The Memorandum on Remedial Action Objectives shall include remedial action objectives for Engineering Controls as well as for Institutional Controls.

(2) **Memorandum on Development and Screening of Alternatives**. The Memorandum on Development and Screening of Alternatives shall summarize the development and screening of remedial alternatives.

l. **Detailed Analysis of Alternatives**. Respondents shall conduct a detailed analysis of remedial alternatives, as described in the SOW and RI/FS Work Plan. In accordance with the deadlines or schedules established in this Order, the attached SOW, and/or the EPA-approved RI/FS Work Plan, Respondents shall provide EPA with the following deliverables for review and approval pursuant to Section XII (Submission and Approval of Deliverables):

(1) **Individual Analysis of Alternatives**. Within __ days after [**insert appropriate milestone**], Respondents shall conduct an assessment of individual alternatives against each of the nine evaluation criteria, as described in the SOW, and prepare a summary report.

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(2) **Comparative Analysis of Alternatives**. Within __ days after [**insert appropriate milestone**], Respondents shall conduct a comparative analysis of alternatives to evaluate the relative performance of each alternative in relation to the nine evaluation criteria, as described in the SOW, and prepare a summary report.

(3) Within __ days after [**insert appropriate milestone**], Respondents shall prepare a summary report of the findings of the FS, including the above analyses, and present the results to EPA.

(4) **Alternatives Analysis for Institutional Controls and Screening**. Respondents shall submit a memorandum on the ICs identified in the Memorandum on Development and Screening of Alternatives as potential remedial actions. The Alternatives Analysis for ICs and Screening shall (i) describe the restrictions needed on land, water, or other resources and their relationship to the remedial action objectives; (ii) determine the specific types of ICs that can be used to address and implement the land, water, or other resource use restrictions; (iii) investigate when the ICs need to be implemented and how long they must remain in place; (iv) research, discuss, and document any agreement or other arrangements with the proper entities (e.g., state, local government, local landowners, conservation organizations, Respondents) on exactly who will be responsible for implementing, maintaining, and enforcing the ICs.[4] The Alternatives Analysis for ICs and Screening shall also evaluate the ICs identified in the Memorandum on Development and Screening of Alternatives against the nine evaluation criteria outlined in the NCP (40 C.F.R. § 300.430(e)(9)(iii)) for CERCLA cleanups, including but not limited to, costs to implement, maintain, and/or enforce the ICs.[5] The Alternatives Analysis for ICs and Screening shall be submitted as an appendix to the draft Feasibility Study Report ("FS Report").

m. **Draft FS Report**. Within __ days after the presentation to EPA described in Paragraph 30.l(1), Respondents shall submit to EPA a draft FS Report for review and approval pursuant to Section XII (Submission and Approval of Deliverables). Respondents shall refer to Table 6-5 of the RI/FS Guidance for report content and format. The draft FS Report as amended, and the administrative record, shall provide the basis for the proposed plan under Sections 113(k)

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[4] See "Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups" ("A Site Manager's Guide to ICs"), OSWER Directive 9355.0-74FS-P (September 2000) and "Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites" ("PIME IC Guide"), OSWER Directive 9355.0-89 (November 2010) for guidance on these considerations.

[5] See A Site Manager's Guide to ICs, *id.*, for discussion of what factors to consider with respect to evaluation of ICs under the nine criteria. It is not necessary to evaluate "reduction of toxicity, mobility or volume through treatment" in the context of ICs. See the PIME IC Guide, *id.*, for further discussion of ICs lifecycle considerations.

and 117(a) of CERCLA, 42 U.S.C. §§ 9613(k) and 9617(a), by EPA, and shall document the development and analysis of remedial alternatives.] [**End of Alternative 2**]

31. Upon receipt of the draft Feasibility Study Report ("FS Report"), EPA will evaluate, as necessary, the estimates of the risk to the public and environment that are expected to remain after a particular remedial alternative has been completed and will evaluate the cost, implementability, and long-term effectiveness of any proposed ICs for that alternative.

32. **Modification of the RI/FS Work Plan**

a. If at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to EPA's Project Coordinator within ___ days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify EPA's Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall modify the RI/FS Work Plan in writing accordingly or direct Respondents to modify and submit the modified RI/FS Work Plan to EPA for approval. Respondents shall perform the RI/FS Work Plan as modified.

c. EPA may determine that, in addition to tasks defined in the initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Respondents shall perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a thorough RI/FS.

d. Respondents shall complete the additional work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the work itself, to seek reimbursement from Respondents for the costs incurred in performing the work, and/or to seek any other appropriate relief.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

33. **Off-Site Shipments**

a. Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the RI/FS and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

[**NOTE: Paragraphs 34 and 35 below may be modified on a site-by-site basis to reflect Site needs and Regional practice.**]

34. **Meetings**. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the preparation of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

35. **Progress Reports**. In addition to the deliverables set forth in this Order, Respondents shall submit written [monthly] progress reports to EPA by the __ day of the following month. At a minimum, with respect to the preceding month, these progress reports shall:

a. describe the actions that have been taken to comply with this Order;

b. include all results of sampling and tests and all other data received by Respondents;

c. describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion; and

d. describe all problems encountered in complying with the requirements of this Order and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

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XII. SUBMISSION AND APPROVAL OF DELIVERABLES

36. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to EPA's Project Coordinator [**insert EPA Project Coordinator's name, address, phone number, email**] and to the State at [**insert contact information**]. Respondents shall submit all deliverables required by this Order [the attached SOW,] or any approved work plan in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 36.b. All other deliverables shall be submitted in the electronic form specified by EPA'S Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches. Respondents shall also provide paper copies of such exhibits. [**NOTE: If paper copies of specific deliverables (in addition to large exhibits) are needed, this paragraph should be edited accordingly.**]

b. **Technical Specifications for Deliverables**

[NOTE: The information in this paragraph is consistent with the EPA National Geospatial Data Policy 2008, which is under review and may be revised at any time. The case team should check https://www.epa.gov/geospatial/geospatial-policies-and-standards for the latest guidance on the policy and associated EPA and CERCLA procedures and technical specifications, including standards and quality assurance for geographic information system (GIS) deliverables.]

(1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. [**Specify the EDD format that the Region uses.**] Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (i) in the ESRI File Geodatabase format [**or insert Regionally-preferred spatial file format**]; and (ii) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be

compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://edg.epa.gov/EME/.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

37. **Approval of Deliverables**

a. **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Order [**insert if applicable:** or the attached SOW], EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmissions**. Upon receipt of a notice of disapproval under Paragraph 37.a(1) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 37.a(1), Respondents shall, within __ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation**. Upon approval, approval upon conditions, or modification by EPA under Paragraph 37.a (Initial Submissions) or Paragraph 37.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Order; and (ii) Respondents shall take any action required by such deliverable, or portion thereof. Implementation of any non-

deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section XX (Enforcement/Work Takeover) for violations of this Order.

38. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

39. In the event that EPA takes over some of the tasks, but not the preparation of the Remedial Investigation Report ("RI Report") or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into those reports.

40. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: RI/FS Work Plan; Sampling and Analysis Plan; draft RI Report; Treatability Testing Work Plan; Treatability Testing Sampling and Analysis Plan; Treatability Testing Health and Safety Plan [**delete any of the foregoing not required as a deliverable and add any additional deliverables, if desired**]; and draft FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Order.

41. For all remaining deliverables not listed in Paragraph 40, Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point during the Work.

42. **Material Defects**. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 37.a (Initial Submissions) or 37.b (Resubmissions) due to such material defect, Respondents shall be deemed in violation of this Order for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section XX (Enforcement/Work Takeover).

43. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

XIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

44. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003, March 2001 (reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3," EPA/505/B-04/900A-900C (March 2005).

45. **Laboratories**

a. Respondents shall ensure that EPA [and State] personnel and its [their] authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Order. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with EPA's "Field Operations Group Operational Guidelines for Field Activities" (http://www.epa.gov/region8/qa/FieldOperationsGroupOperationalGuidelinesForFieldActivities.pdf) and "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements, and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (https://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (https://www.epa.gov/ttnamti1/airtox.html).

b. Upon approval by EPA [, after a reasonable opportunity for review and comment by the State], Respondents may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Order have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the approved QAPP.

46. **Sampling**

a. Upon request, Respondents shall provide split or duplicate samples to EPA [and the State] or its [their] authorized representatives. Respondents shall notify EPA [and the State] not less than [7] days in advance of any sample collection activity. In addition, EPA [and the State] shall have the right to take any additional samples that EPA [or the State] deem[s] necessary. Upon request, EPA [and the State] shall provide to Respondents split or duplicate samples of any samples it [they] take[s] as part of EPA's oversight of Respondents' implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. Respondents shall submit to EPA [and the State], in the next monthly progress report as described in Paragraph 35 (Progress Reports) the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Order.

XIV. PROPERTY REQUIREMENTS

[NOTE: Here and in other places in this Section, optional text to be used if there is an Owner Respondent is set off in brackets.]

47. **Agreements Regarding Access and Non-Interference**. Respondents shall, with respect to any Non-Respondent Owner's Affected Property, use best efforts to secure from such Non-Respondent Owner an agreement, enforceable by Respondents and by EPA, providing that such Non-Respondent Owner [**if Owner Respondent:** , and Owner Respondent shall, with respect to Owner Respondent's Affected Property]: (i) provide EPA [, the State,] and the other Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Order, including those listed in Paragraph 47.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will [pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or] interfere with or adversely affect the implementation or integrity of the Work [**use if applicable:** , including the restrictions listed in Paragraph 47.b (Land, Water, or Other Resource Use Restrictions)].

a. **Access Requirements**. The following is a list of activities for which access is required regarding the Affected Property:

[NOTE: Augment this list as appropriate.]

(1) Monitoring the Work;

(2) Verifying any data or information submitted to EPA [or the State];

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 68 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section XV (Access to Information);

(9) Assessing Respondents' compliance with the Order;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

[NOTE: Include Paragraph 47.b if land, water, or other resource use restrictions are needed. If proprietary controls selected in an action memorandum are required to restrict land, water, or other resource use during performance of the RI/FS, consult Appendix A, Optional Model Institutional Controls Language of the "Model Unilateral Administrative Order For Removal Actions" (https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=755) for appropriate language.]

b. **[Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

[NOTE: Customize and augment this list as appropriate. Be as specific as possible.]

(1) Prohibiting the following activities that could interfere with the Work: _____; and

(2) Ensuring that any new structures will not be constructed in the following manner that could interfere with the Work: _____.]

48. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within __ days after the Effective Date, Respondents are unable to accomplish what is required through "best efforts," they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. EPA reserves the right to seek payment from Respondents for all costs, including cost of attorneys' time, incurred by the

United States in obtaining such access or agreements to restrict land, water, or other resource use.

49. **[Insert if needed: Notice to Successors-in-Title**

a. Owner Respondent shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner Respondent's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that EPA determined that an RI/FS must be performed at the Site; and (iii) that EPA has issued an order to potentially responsible parties requiring implementation of such RI/FS; and (3) identify this Order and the date this Order was issued by EPA. Owner Respondent shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Owner Respondent shall, prior to entering into a contract to Transfer Owner Respondent's Affected Property, or 60 days prior to Transferring Owner Respondent's Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has determined that an RI/FS must be performed at the Site, and that EPA has issued an order to potentially responsible parties requiring implementation of such RI/FS, and identifying this Order and the date it was issued by EPA; and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.]

50. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Order, including their obligation to secure access and ensure compliance with any land, water or other resource use restrictions regarding the Affected Property.

51. Notwithstanding any provision of this Order, EPA [and the State] retain[s] all of its [their] access authorities and rights, as well as all of its [their] rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XV. ACCESS TO INFORMATION

52. Respondents shall provide to EPA [and the State], upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also

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make available to EPA [and the State], for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

53. **Privileged and Protected Claims**

a. Respondents may assert that all or part of a Record requested by EPA [or the State] is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 53.b, and except as provided in Paragraph 53.b.

b. If Respondents assert a claim of privilege or protection, they shall provide EPA [and the State] with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA [and the State] in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA [and the State] or a court determines that such Record is privileged or protected.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

54. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA [and the State] under this Section or Section XVI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Order for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA [and the State], or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

55. Notwithstanding any provision of this Order, EPA [and the State] retain[s] all of its [their] information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XVI. RECORD RETENTION

56. During the pendency of this Order and for a minimum of 10 years after Respondents' receipt of EPA's notification pursuant to Section XXVII (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or

control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

57. At the conclusion of this document retention period, Respondents shall notify EPA [and the State] at least 90 days prior to the destruction of any such Records, and, upon request by EPA [or the State], and except as provided in Paragraph 53 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA [or the State].

58. Within __ days after the Effective Date, each Respondent shall submit a written certification to EPA's Project Coordinator that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification by the United States or the State, and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law. Any Respondent unable to so certify shall submit a modified certification that explains in detail why it is unable to certify in full with regard to all Records.

XVII. COMPLIANCE WITH OTHER LAWS

59. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

60. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

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XVIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

61. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at [**insert Regional spill phone number**] of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, EPA reserves the right to pursue cost recovery.

62. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify EPA's Project Coordinator, or, in the event of his/her unavailability, the Regional Duty Officer at [**insert Regional spill phone number**] and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

63. For any event covered under this Section, Respondents shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIX. PAYMENT OF RESPONSE COSTS

[**NOTE: Regions have discretion to include this section consistent with Regional practice and in light of site-specific circumstances.**]

64. Upon EPA's written demand, Respondents shall pay EPA all Response Costs incurred or to be incurred in connection with this Order. On a periodic basis, EPA will send Respondents a bill requiring payment of all Response Costs incurred by the United States with respect to this Order that includes a [**insert name of standard Regionally-prepared cost summary**], which includes direct and indirect costs incurred by EPA, its contractors, and the Department of Justice.

65. Respondents shall make all payments within 30 days after receipt of each written demand requiring payment. Payment shall be made to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004

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Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number ____ and the EPA docket number for this action.

[**NOTE: Regions may substitute the following instructions for payment by Automated Clearinghouse (ACH) or for online payment:**

For ACH payment:

Respondents shall make payment to EPA by Automated Clearinghouse (ACH) to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number ____ and the EPA docket number for this action.

For online payment:

Respondents shall make payment at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.]

[**NOTE: If Respondents have difficulty making EFT, ACH, or online payments, you may substitute the following:** Respondents shall make payment by official bank check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, Site/Spill ID Number___, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000]

66. At the time of payment, Respondents shall send notice that payment has been made to [**insert name and address of EPA's Project Coordinator or other receiving official**

in Region], and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

67. In the event that the payments for Response Costs are not made within 30 days after Respondents' receipt of a written demand requiring payment, Respondents shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section. Respondents shall make all payments required by this Paragraph in the manner described in Paragraphs 65 and 66.

XX. ENFORCEMENT/WORK TAKEOVER

68. Any willful violation, or failure or refusal to comply with any provision of this Order may subject Respondents to civil penalties of up to $53,907 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091, 40 C.F.R. Part 19.4. In the event of such willful violation, or failure or refusal to comply, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. [**Include the following sentence if Section XXIV (Financial Assurance) is included in the Order:** In addition, nothing in this Order shall limit EPA's authority under Section XXIV (Financial Assurance).] Respondents may also be subject to punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure to comply, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3).

XXI. RESERVATIONS OF RIGHTS BY EPA

69. Nothing in this Order shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Order shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site [and not paid by Respondents].

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XXII. OTHER CLAIMS

70. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

71. Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

72. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2), or 40 C.F.R. § 300.700(d).

73. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. INSURANCE

74. No later than ___ days before commencing any on-site Work, Respondents shall secure, and shall maintain for the duration of this Order, commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Order. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondents in furtherance of this Order. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the [**Site name, City, State**] and the EPA docket number for this action.

XXIV. [FINANCIAL ASSURANCE]

[NOTES ON SECTION XXIV: When determining whether to include this Section in the Order or whether to modify it to limit the form of the financial assurance (FA) to certain mechanisms, case teams should consider the facts and circumstances of each case,

including: the estimated cost of Work to be performed; the estimated time to complete the Work; the nature and extent of contamination at the Site; whether the financial assurance can be secured before commencement of the Work (or soon thereafter); the industry sectors in which the Respondents operate; and the financial health of the Respondents. Regions are strongly encouraged to include this Section for the more costly and time-consuming RI/FS actions. Case teams can find the most current sample financial assurance documents in the "Financial Assurance - Orders" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/. When this Section is included in an Order, Regions should examine the form and substance of all financial assurance mechanisms submitted by Respondents, both initially and over time, to ensure consistency and compliance with this Section (e.g., case teams should ensure that entities providing a demonstration or guarantee pursuant to Paragraph 75.d or 75.e have: (a) submitted all required documentation so that EPA can determine whether such financial assurance is adequate; and (b) fully and accurately reflected in their submission all of their financial assurance obligations (under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) to the United States or other governmental entities so all such obligations have been properly accounted for in determining whether such entity meets the financial test criteria). For more specific information and considerations, see "Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders" (April 6, 2015), available at https://www.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders. Financial assurance team members within the Office of Site Remediation Enforcement are available to assist with any financial assurance matters, including the evaluation of submissions.]

75. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $**[insert initial FA estimate]** ("Estimated Cost of the Work"). The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Orders" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to trust funds, surety bonds guaranteeing payment, and/or letters of credit.

a. A trust fund: (1) established to ensure that funds will be available as and when needed for performance of the Work; (2) administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the **[insert appropriate Regional official (e.g., Superfund Division Director)]** advises the trustee in writing that: (i) payments are necessary to fulfill the affected Respondents' obligations under the Order; or (ii) funds held in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Order;

b. A surety bond, issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury, guaranteeing payment or performance in accordance with Paragraph 81 (Access to Financial Assurance);

c. An irrevocable letter of credit, issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency, guaranteeing payment in accordance with Paragraph 81 (Access to Financial Assurance);

d. A demonstration by a Respondent that it meets the relevant financial test criteria of Paragraph 78; or

e. A guarantee to fund or perform the Work executed by a company (1) that is a direct or indirect parent company of a Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 78.

76. **Standby Trust**. If Respondents seek to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondents shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in Paragraph 75.a, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to Paragraph 81 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with Paragraph 77. Until the standby trust fund is funded pursuant to Paragraph 81 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

77. Within **[insert appropriate time period (e.g., 30)]** days after the Effective Date, Respondents shall submit to EPA proposed financial assurance mechanisms in draft form in accordance with Paragraph 75 for EPA's review. Within **[insert appropriate time period (e.g., 60-90)]** days after the Effective Date, or 30 days after EPA's approval of the form and substance of Respondents' financial assurance, whichever is later, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the [**insert desired recipient(s) (e.g., Regional Financial Management Officer, Regional financial assurance specialist, Regional attorney, and/or RPM) and relevant contact information if not provided elsewhere in the Order**].

78. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 75.d or 75.e must, within [**insert appropriate time period**]:

a. Demonstrate that:

(1) the affected Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

iii. Tangible net worth of at least $10 million; and

iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance – Orders" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/.

79. Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph 75.d or 75.e must also:

a. Annually resubmit the documents described in Paragraph 78.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in Paragraph 78.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

80. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. Respondents shall follow the procedures of Paragraph 82 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Order.

[NOTE: Case teams should make sure that the "trigger" regarding EPA's ability to direct the deposit of funds into a standby trust and/or demand work under the financial assurance mechanism is consistent with the trigger in the following paragraph, e.g., if the Order allows EPA to direct a financial assurance provider to deposit funds into a standby trust in the event of either a Performance Failure Notice that is not remedied by a Respondent within the allotted cure period or a Respondent's failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.]

81. **Access to Financial Assurance**

a. If EPA determines that Respondents (1) have ceased implementation of any portion of the Work, (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Performance Failure Notice") to both Respondents and the financial assurance provider regarding the affected Respondents' failure to perform. Any Performance Failure Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice. If, after expiration of the 10-day period specified in this Paragraph, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice, then, in accordance with any applicable financial assurance mechanism, EPA may at any time thereafter direct the financial assurance provider to immediately: (i) deposit any

funds assured pursuant to this Section into the standby trust fund; or (ii) arrange for performance of the Work in accordance with this Order.

b. If EPA is notified by the provider of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section.

82. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or following Respondents' request for, and EPA's approval of, another date, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to the EPA individual(s) referenced in Paragraph 77, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, a description of the proposed changes, if any, to the form or terms of the financial assurance, and any newly proposed financial assurance documentation in accordance with the requirements of Paragraphs 75 and 76 (Standby Trust). EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change. Respondents may reduce the amount or change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Within 30 days after receipt of EPA's approval of the requested modifications pursuant to this Paragraph, Respondents shall submit to the EPA individual(s) referenced in Paragraph 77 all executed and/or otherwise finalized documentation relating to the amended, reduced, or alternative financial assurance mechanism. Upon EPA's approval, the Estimated Cost of the Work shall be deemed to be the estimate of the cost of the remaining Work in the approved proposal.

83. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) after receipt of documentation issued by EPA certifying completion of the Work; or (b) in accordance with EPA's written approval of such release, cancellation, or discontinuation.

XXV. MODIFICATION

84. The EPA Project Coordinator may make modify any plan or schedule [or the SOW] in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within ___ days, but shall have as its effective date the date of EPA's Project Coordinator's oral direction. Any other requirements of this Order may be modified in writing by signature of the [**insert title of designated signatory or designee of EPA Region __**].

85. If Respondents seek permission to deviate from any approved Work Plan or schedule [or the SOW], Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving approval from the EPA Project Coordinator pursuant to Paragraph 84.

86. No informal advice, guidance, suggestion, or comment by EPA's Project Coordinator or other EPA representatives regarding any deliverables submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVI. DELAY IN PERFORMANCE

87. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the EPA Project Coordinator within 48 hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within 7 days after notifying EPA by telephone and email, Respondents shall provide to EPA written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

88. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of Paragraph 87 shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

XXVII. NOTICE OF COMPLETION OF WORK

89. When EPA determines that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including [**insert list of such obligations, e.g., [if applicable: land, water, or other resource use restrictions,] Payment of Response Costs, and Record Retention,**] EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Work Plan, if appropriate, in order to correct such deficiencies within ___ days after receipt of the EPA notice. The modified RI/FS Work Plan shall include a schedule for correcting such deficiencies. Within ___ days after receipt of written approval of the modified RI/FS Work Plan, Respondents shall implement the modified and approved RI/FS Work Plan and shall submit a modified draft RI Report and/or FS Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Order.

XXVIII. ADMINISTRATIVE RECORD

90. EPA has established an administrative record that contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of ___ and ___ at the EPA offices in [**insert Region-specific logistical information for review of the record**]. To review the administrative record, please contact [**insert name of Regional contact person**] at [**insert contact phone number and email**

address] to make an appointment. [**Optional:** A copy of the administrative record is also available for viewing at [**insert address where copy of the record is located**]]. [**Optional:** An index of the administrative record is attached.]

91. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of the RI/FS upon which selection of the remedial action may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the remedial action, and all communications between Respondents and state, local, or other federal authorities concerning selection of the remedial action.

XXIX. SEVERABILITY

92. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

It is so ORDERED.

BY: _____ DATE: _____
Name
Regional Administrator (or designee/delegatee)
Region (Number)
U.S. Environmental Protection Agency

EFFECTIVE DATE: _____

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Instructions Regarding Automated Features

FEATURE	INSTRUCTIONS
INSERTING TEXT COPIED FROM A DIFFERENT DOCUMENT	Text copied from a different document will usually have embedded formatting codes. Pasting the text into your document will cause the formatting codes to be inserted as well, which will create unpredictable and frustrating formatting and numbering results. **Therefore, ALWAYS use the "Paste Special" function to insert text copied from another document**. Press Ctrl-Alt-V; in the pop-up menu, click "Unformatted Text" and OK. (You can also click the Home tab, Paste, Paste Special, Unformatted Text and OK.)
INSERTING A NEW PARAGRAPH	Click at the end of the ¶ immediately preceding the place where you wish to add the new **paragraph**, and press Enter. To change the new ¶'s outline level use (under the Home tab) the styles menu. For example, to change ¶12.b into ¶12.a(1), click in that ¶ and then (using the Home tab) click the "LVL 3" style. To change ¶13.a into ¶14, click in that ¶ and then (using the Home tab) click the "LVL 1" Style. Note that in consent decree models, the letters denoting each background paragraph must be manually updated.
ADDING AN UPDATEABLE SECTION OR PARAGRAPH CROSS-REFERENCE	(a) Click where you wish to insert a cross-reference; (b) Click the "References" tab, and, in the "Captions" box, click "Cross-reference;" (c) In the pop-up menu that appears, make sure the "Reference type" field contains "Numbered item" and the "Insert reference to" field contains "Paragraph Number (full context); (d) In the "For which numbered item" field" select the numbered item (section, paragraph. or subparagraph) you wish to cross-reference, and click Insert.
UPDATING THE CROSS-REFERENCES	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click "Update Field;" click OK. Note: If a numbered paragraph that has been cross-referenced elsewhere in the document is deleted, remove the obsolete paragraph cross-reference. Otherwise, when you update the cross-references, the following message will appear: "Error! Reference source not found."
UPDATING THE TABLE OF CONTENTS	Right-click in the TOC, and in the pop-up menu, left-click "Update Field." Or click in the TOC, press F9, click Update Entire Table and OK. If you have just added a new section heading, click Update entire table before pressing Enter.
INSERTING A NEW SECTION HEADING	Click in the text of the new heading and assign the "SECTION" paragraph style to the text by clicking the "Home" tab, and in Styles box, clicking the "SECTION" style button.) That will add the section number, change the numbering of later sections, and ensure that the new section will be referenced in the table of contents.
CHANGING THE FONT	Press Ctrl-A (to select entire document); right click; in the pop-up menu, click "Font;" in the "font" field, select a new font; click OK.

ED_004715_00016270-00105

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 7/13/2019 2:08:26 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: RE: Stibnite Mine

Sounds good. **Ex. 6 Personal Privacy (PP)**

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Friday, July 12, 2019 7:05 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Cc: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: Stibnite Mine

Hi Brad. I drafted a response to Midas' markup of the SOW but I'm not sending it tonight because I would like to give the FS and IDEQ the opportunity to weigh in. Kathy will coordinate with the agencies and send you our response on Monday.

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

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Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 11/13/2019 3:50:48 PM
To: Bradley M. Marten [bmarten@martenlaw.com]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Lisa.O'Hara@deq.idaho.gov
CC: Jill Grant [jgrant@jillgrantlaw.com]; Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: Stibnite Mine Site
Attachments: 2019-11-13 SBT Comments on Draft SOW for Stibnite Mine RIFS.docx

Hello, Brad, Gary, and Lisa. Please see the attached modified comments from the Shoshone-Bannock Tribes. I would appreciate you forwarding these comments to your respective teams. Thank you.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Draft Statement of Work for Stibnite Mine RI/FS
Shoshone-Bannock Tribes' Comments
November 12, 2019, updated November 13, 2019

General Comments and Questions:

1. Many places throughout the Statement of Work (SOW) should refer to "analyses" rather than "analysis."
2. Does the Mining Plan of Restoration and Operations (PRO) cover all of Midas Gold's patented land, other than the DMEA Adit and Waste Rock Dump (#5 on page 2) and the Bonanza Adit (#6)? What are the plans for the parcels of land outside the PRO?
3. The SOW refers to the PRO, which is very lengthy; we would like some time to review the PRO in its entirety. Our initial comments regarding the PRO are as follows: (1) The PRO refers to a Technical Report and a Pre-Feasibility Report that have been conducted, and we're assuming much of the data in these reports will be used for the RI/FS. The data should be of Tier 4 Quality if it will be used for human health risk purposes. (2) The PRO references Canadian Mining Principles, N143-101. We think that U.S. guidance should be used.

Purpose/Description of the Site:

Page 2 - The Site is defined by 8 areas. Areas #5 and #6 (DMEA Adit and Waste Rock Dump and Bonanza Adit) are listed as not within the footprint of the Midas Gold PRO. The distance of these two areas from proposed mining activities should be listed, as well as any overflow expectations, connectivity of features to proposed mining, tailings, and expected or unexpected impacts on the hydrogeology of both surface water and groundwater.

Oversight:

Page 3 – The Shoshone-Bannock Tribes ("SBT" or "Tribes") should be listed as an oversight Agency, along with the EPA, USFS and IDEQ. [Note –The term "Agency" in the rest of these comments is intended to include the SBT.]

SBT should receive copies of all reports, etc., because the Tribes plan to comment on these documents as part of their oversight responsibilities. This seems to be what Midas Gold intended, since Attachment E (schedule) refers throughout to "consolidated Agency comments." We added specific references to SBT/Tribes (which could be changed to "Agencies" assuming SBT is added as an "Agency" and assuming that the other Agencies want to be included) where we thought appropriate, just to be sure. For example, on page 3 the last full paragraph should say "Respondent shall submit all documents or deliverables required as part of this SOW to EPA <u>and the Tribes</u>, for EPA's <u>and the Tribes'</u> review and <u>EPA's</u> approval." The last paragraph should say "Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA <u>and the Tribes</u> to aid in project planning."

Guidance:

Page 4 – All Guidance documents followed should be the most up to date drafts.

Roles and Responsibilities:

Page 4 – Please add the underlined language for clarity, since there's a required process for EPA to go through before issuing a ROD: "At the completion of the RI/FS . . . in a Record of Decision (ROD), consistent with the NCP."

Task 1 - Scoping:

Page 4 – "Respondent shall document the specific project scope in the RI/FS Work Plan, which shall be consistent with the AOC." Also, "During the scoping process, the Site- specific objectives of the RI/FS . . . will be proposed by the Respondent but will be determined ~~and approved~~ by EPA."

Page 5 – "When scoping the specific aspects of this project, Respondent shall meet with EPA and the Tribes either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site."

Page 5 – "The Respondent, ~~and~~ EPA and the Tribes shall conduct a Site visit during the project scoping phase."

Page 6 – "The Respondent shall meet with EPA's Remedial Project Manager (RPM) and with the appropriate contact from the Tribes (either in person or telephonically) regarding the following activities and before drafting the scoping deliverables listed below."

Page 7 – Document the Need for Treatability Studies – "Should treatability studies be determined to be necessary, a testing plan . . . should be submitted to EPA and the Tribes for review and for EPA's approval."

Page 7 – Scoping Deliverables – "These plans must be reviewed by EPA and the Tribes and approved by EPA prior to the initiation of field activities."

Page 7 - RI/FS Work Plan – "A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM and the Tribes for review and for EPA's approval."

Pages 11 through 14 – Potential Target Analytes – The only radiological constituent listed is uranium, and it isn't listed for all media. Since uranium may be a concern, as indicated by it being listed as a COPC for surface water, then uranium and all associated uranium daughters should be listed as COPCs in all media.

Task 2 - Community Relations:

Page 14 – "Respondent may assist by providing information regarding the Site's history, participating in public and community (including tribal community) meetings, and preparing fact sheets for distribution to the general public and relevant tribes, including the Shoshone-Bannock Tribes." All impacted tribes should be included, even though the Shoshoni historically were the main tribes in this area.

Also, SBT would like to have a copy of the administrative record kept at Fort Hall so that it is readily available to tribal members, especially those who exercise their treaty rights in this area. And finally, "Any PRP-conducted community relations activities will be subject to oversight by EPA and the other Agencies."

Task 3 - Site Characterization

Page 15, 2d ¶ – "The Respondent shall notify the RPM and the relevant contacts for the other Agencies at least two weeks in advance of the field work regarding the planned dates for field activities . . . ."

Same edit in last sentence on pages 15-16: "The Respondent shall notify the RPM and the relevant contacts for the other Agencies at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM and the relevant contacts for the other Agencies upon completion of field support activities."

Page 17 – "All data and programming, including any proprietary programs, shall be made available to EPA and the Tribes together with a sensitivity analysis.

Page 18 – same edit: "All validated data shall be made available to EPA and the Tribes in electronic format. . . . Field and validated analytical data results for all media sampled shall be submitted to EPA and the Tribes by uploading the data . . . ."

Page 18 – Similarly, "The Respondent shall prepare and submit a draft RI report to the RPM for review and approval, and shall provide a copy of the report to the Tribes."

Page 19 – The Tribes would provide comments on the report, but they could do so directly to Midas Gold or through EPA (see first complete sentence at the top of p. 19).

Page 19 – BLRA – The EPA human health risk assessment must include a tribal scenario.

Task 4 – Treatability Studies

Page 20 – first sentence: "Respondent shall identify in a technical memorandum, subject to EPA and the Tribes' review and EPA's approval, candidate technologies for a treatability studies program during project planning (Task 1)."

Page 20 – Evaluation of Treatability Studies – "Once a decision has been made to perform treatability studies, the Respondent and EPA, in consultation with the Tribes, will decide the types of treatability testing to utilize. . . . the Respondent shall either submit to the RPM and the Tribes a treatability testing work plan or an amendment to the original Site work plan for EPA's and the Tribes' review and EPA's approval."

Pages 20-21 – Treatability Testing Work Plan – "The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's and the Tribes' review and EPA's approval." Same edit to Treatability Study SAP.

Task 5 – Feasibility Study

Page 22 – "The modified PRGs shall be documented in a technical memorandum that will be reviewed by EPA and the Tribes and approved by EPA."

Attachment C – Suggested RI Report Format

Vegetation results need to be included here so the Tribes can see what has been evaluated. If they aren't included, this will be a major data gap.

Message

From: Cerise, Kathy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3CCF3F66D09943FE914BE271FC992084-HERNANDEZ, KATHRYN]
Sent: 7/26/2019 12:39:17 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; John Meyer [JMeyer@midasgoldcorp.com]
CC: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Aaron.Scheff@deq.idaho.gov; Albert.Crawshaw@deq.idaho.gov; Zamba, Kathy -FS [kathy.zamba@usda.gov]; Lisa.O'Hara@deq.idaho.gov
Subject: Draft SOW
Attachments: 2019-07-25 Draft Stibnite SOW.docx

Please see the attached response to the Stibnite draft SOW.

Thank you

Kathryn Cerise

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Appendix 1

STATEMENT OF WORK FOR THE
STIBNITE MINE REMEDIAL INVESTIGATION / FEASIBILITY STUDY
Valley County ID near Yellow Pine, ID

Purpose

This Statement of Work (SOW) sets forth the requirements for conducting a Remedial Investigation and Feasibility Study (RI/FS) at the Stibnite Mine Site ("Site") located in northwest Idaho approximately 14 miles from the town of Yellow Pine (see Figure 1). The purpose of the RI/FS is to investigate the nature and extent of contamination at the Site and to develop and evaluate remedial alternatives, as appropriate. This SOW provides an overview of Work that will be carried out by Midas Gold Idaho, Inc. ("Midas Gold" or "Respondent") as it implements the RI/FS at the Site.

In September 2016, Midas Gold filed a Plan of Restoration and Operations ("PRO") with the United States Forest Service ("USFS") for the redevelopment of Stibnite, and plans to undertake mining, mineral processing and restoration activities on portions of the Site that will result in landscape-scale changes to many of the existing Site features. As such, the scope and timing of sampling and other elements of the RI/FS will consider potential mining acitivies in the PRO, any modifications and subsequent remediation ~~must be consistent with the PRO and the subsequent restoration~~. This will require flexibility in the RI/FS and could require a phased approach to accelerate certain activities.

The Site is defined as the ~~features~~ areas described below (general locations summarized on Figure 2) and the areal extent of contamination from those features and all suitable areas in ~~very~~ close proximity to the contamination necessary for response action implementation:

1. **Yellow Pine Pit (Figure 3)** – The Yellow Pine Pit (formerly known as "The Glory Hole") was actively mined during the 1930s through the 1950s for antimony, tungsten, gold and silver. The pit is located on Midas Gold patented land, and most of the waste rock dumps associated with the pit are adjacent to the pit; some of the waste rock dumps are located on USFS managed land. During active mining, the East Fork of the South Fork of the Salmon River (EFSFSR) was routed around the pit through the Bailey Tunnel but was allowed to return to its natural course through the pit after the Bailey Tunnel was abandoned in the mid-1950s. The EFSFSR now runs through the pit, but does not currently support fish passage to the headwaters. The Yellow Pine Pit, and the majority of waste rock dumps associated with it, are within the footprint of Midas Gold's proposed PRO.

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2. **Bradley Tailings Pile (Figure 4)** – The Bradley Tailings Pile, also known as the Historical Tailings and Spent Ore Disposal Area, is located on Midas Gold patented land. Approximately 3 million tons of mine tailings generated during the 1940s and 1950s are stored in this area, and they are overlain by approximately 6 million tons of spent heap leach ore placed in the 1980s and 1990s. The downstream end of the Tailings Pile is constrained by a structure known as the Keyway Dam, and a wetland exists downgradient of the Keyway Dam, which is also referred to as the Keyway Marsh. Meadow Creek is diverted around the south side of the Tailings Pile. The Bradley Tailings Pile is within the footprint of Midas Gold's proposed PRO.

3. **Hangar Flats Tailings Pile (Figure 5)** – The Hangar Flats Tailings Pile, also known as the Hecla Heap Leach Facility, is a reclaimed heap-leach facility which was built and operated in the 1990s to extract oxide gold and silver. The facility is located on Midas Gold controlled patented land, and is within the footprint of Midas Gold's proposed PRO.

4. **Bailey Tunnel (Figure 6)** – The Bailey Tunnel was constructed in the early 1940s to divert the EFSFSR around the Yellow Pine Pit and into Sugar Creek to facilitate open pit mining operations. The tunnel was no longer used after the mid-1950s, following cessation of open pit mining activities. The Bailey Tunnel is on Midas Gold patented land, and is within the footprint of Midas Gold's proposed PRO.

5. **DMEA Adit and Waste Rock Dump (Figure 7)** – The Defense Minerals Exploration Administration (DMEA) Adit and Waste Rock Dump are mining-related disturbances resulting from underground exploration activities during the 1950s. The adit and dump are located on USFS managed land, and are not within the footprint of the Midas Gold PRO.

6. **Bonanza Adit (Figure 8)** – The Bonanza Adit area is a mining-related disturbance in the Sugar Creek drainage resulting from underground exploration activities during the 1930s and 1940s. The Bonanza Adit area is located on USFS managed land, and is not within the footprint of the Midas Gold PRO.

7. **Cinnabar Tunnel (Figure 9)** – The Cinnabar Tunnel is a mining-related disturbance resulting from underground exploration activities during the late 1920s and early 1930s. The Tunnel is located on USFS managed land; the tunnel portal is within the footprint of the Midas Gold PRO.

8. **Meadow Creek Adit (Figure 10)** – The Meadow Creek Adit and associated waste rock dumps are mining-related disturbances that resulted from underground mining activities from the 1920s through the 1940s. The adit and waste rock dumps are located on Midas Gold controlled patented land, and are within the footprint of Midas Gold's proposed PRO.

This RI/FS SOW is attached to and is incorporated into the Settlement Agreement and Administrative Order on Consent (AOC) for the Site. Technical work described in this

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SOW is intended to provide more information to the Respondent for the purpose of implementing the AOC and is not intended to change the meaning of any AOC language. This SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the [HYPERLINK "http://www.epa.gov/oilspill/pdfs/40cfr300.pdf" \h] [HYPERLINK "http://www.epa.gov/oilspill/pdfs/40cfr300.pdf" \h]commonly called the National Contingency Plan (NCP), 40 CFR 300. The AOC and this SOW are hereafter referred to interchangeably as the "AOC." Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the AOC will control any interpretive disputes.

Scope

The specific RI/FS activities to be conducted at the Site are set forth in ~~seven~~ six separate tasks.

Task 1 – Scoping
Task 2 – Community Relations
Task 3 – Site Characterization
Task 4 – Treatability Studies
Task 5 – Feasibility Study
Task 6 – Detailed Analysis of Remedial Alternatives

Oversight

Work conducted under the AOC is intended to satisfy the legal requirements for the RI/FS established under both Section 104(a)(l) of CERCLA and Idaho's Environmental Protection & Health Act, Idaho Code§§ 39-101 to 39-130; the Hazardous Waste Management Act of ldaho, Idaho Code§§ 39-4401 to 39-4432; and Idaho's Water Quality Act, Idaho Code§§ 39-3601 et seq. As such, oversight of the Respondent's Work conducted under the SOW will be carried out by EPA, the USFS, and the IDEQ (the Agencies) in a manner to assure the satisfaction of all federal and state requirements. The Respondent shall support the Agencies' initiation and conduct of activities related to the implementation of oversight activities.

Respondent shall submit all documents or deliverables required as part of this SOW to EPA, for EPA's review and approval. All work products submitted to EPA are subject to EPA approval, including but not limited to, submissions specified in the Work Plan(s) or Settlement Agreement and additional work products that may be required under Work Plan modifications. Respondent shall ensure that all plans, reports, and records are comprehensive, accurate, and consistent in content and format with the NCP and relevant EPA guidance.

Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA to aid in project planning. These reports must document the status of all work products under development. These reports shall describe the actions and decisions taken, and problems encountered during the previous quarter, and activities

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scheduled during the upcoming reporting period. Progress reports shall also summarize the extent to which the procedures and dates set forth in the AOC and the Work Plan are being met. These reports shall be submitted according to the Schedule included as Attachment E.

Schedule

Refer to Attachment E for the primary and potential secondary deliverables and associated schedules.

Guidance

The Respondent shall conduct the RI/FS, and produce technical reports that are in accordance with the AOC, SOW, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (RI/FS Guidance) (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance relevant to conducting an RI/FS. A list of the pertinent guidance documents is included at the end on this SOW. Attachments A, B, C, and D include suggested document formats for the Work Plan, Sampling and Analysis Plan, RI Report, and FS Report, respectively. The RI/FS guidance describes the required report contents.

Roles and Responsibilities

The Respondent shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the RI/FS, except as otherwise specified in the AOC. At the completion of the RI/FS, EPA will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision (ROD).

Remedy Requirements

The remedial action alternative selected by the EPA will meet the cleanup standards specified in Section 121 of CERCLA. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements (ARARs) of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS report including the baseline risk assessment (BLRA), as adopted by the EPA, will, with the administrative record, form the basis for the selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

TASK 1 - SCOPING

Scoping is the initial planning process of the RI/FS. Respondent shall document the specific project scope in the RI/FS Work Plan. During the scoping process, the Site-specific objectives of the RI/FS, including the identification of potential preliminary remediation goals (PRGs) will be proposed by the Respondent and approved by EPA. In

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addition to developing the Site-specific objectives of the RI/FS, Respondent shall define a general project management approach for the Site, which shall be documented by the Respondent in a draft Work Plan. Because the Work required to perform an RI/FS is not fully known at the outset and is phased in accordance with a Site's complexity and the amount of available information, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study. When scoping the specific aspects of this project, Respondent shall meet with EPA either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site.

The following activities shall be performed by the Respondent as a function of the project planning process.

a. Site Background

The Respondent shall gather, analyze, and present existing Site background information and shall conduct a work session to assist in planning the scope of the RI/FS.

Collect and analyze existing data and document the need for additional data

Before planning RI/FS activities, all existing Site data shall be thoroughly compiled and reviewed by the Respondent. Historical data shall be submitted electronically according to EPA Region 10 specifications. The Respondent shall refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources. Specifically, this must include presently available data relating to the varieties and quantities of hazardous substances at the Site, and past disposal practices. This must also include results from any previous sampling events that may have been conducted. Only data that is determined by EPA to be of appropriate type and quality to support specific intended uses shall be utilized in the RI/FS. This includes data utilized to develop the BLRA, to identify additional data needs to better characterize the Site, to better define potential applicable or relevant and appropriate requirements (ARARs), and to develop a range of preliminarily identified remedial alternatives. Data Quality Objectives (DQOs) shall be established, subject to EPA's approval, which shall be used to assess the usefulness of existing data and to direct future data gathering efforts. Decisions regarding the necessary data needs and DQOs will be made by EPA. Guidance on systematic planning using the data quality objectives process (EPA QA/G-4). Washington, D.C.: 121. [HYPERLINK "http://www.epa.gov/quality/qs-docs/g4-final.pdf"], U.S. EPA (2006)

Conduct site visit

The Respondent and EPA shall conduct a Site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of contamination as well as potential exposure pathways and receptors at the Site. During the Site visit the Respondent shall observe the Site's physiography, hydrology, geology, and demographics, as well as natural resource, ecological, and cultural resources. This information shall be utilized to better scope the project and

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to determine the extent of additional data necessary to characterize the Site, better define potential ARARs, and assist in identifying potential remedial alternatives.

b. *Project Planning*

Once the Respondent has collected and analyzed existing data and conducted a Site visit, the specific project scope shall be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols. The Respondent shall meet with EPA's Remedial Project Manager (RPM) regarding the following activities and before drafting the scoping deliverables listed below.

Preliminary conceptual site model

Information on the waste sources, pathways, receptors, cultural resources, and other information concerning the Site is used to develop a conceptual understanding of the Site which helps to evaluate potential risks to human health and the environment. The Conceptual Site Model (CSM) should include known and suspected sources of contamination, types of contamination and affected media/resources, known and potential routes of migration, and known or potential human and environmental receptors. This effort, in addition to assisting in identification of locations where sampling is necessary, will also assist in the identification of potential remedial technologies. Additional information for evaluating exposure concerns through the use of a CSM is provided in the DQO Guidance. The CSM must be updated as new information becomes available.

The preliminary CSM associated with the ecological risk assessment (ERA) must include species and their habitats that could be impacted by Site-related contamination based on information generated from a historical review and a cultural resource audit and will show the relationships among species and potential exposure pathways. The Respondent shall provide assistance to the RPM in collecting this information as requested. If information is not provided to the Respondent within the timeframe specified by EPA, the RPM will notify the Respondent in writing either to proceed with the preparation of the RI/FS Work Plan without the information or to delay its submittal pending receipt of the information. The preliminary CSM for the human health risk assessment (HHRA) must identify potential receptor populations and potential exposure pathways.

Refine and document preliminary remedial action objectives and alternatives

Once existing Site information has been analyzed and an understanding of the potential Site risks have been determined, the Respondent shall review and, if necessary, refine the Remedial Action Objectives (RAOs) that have been identified by EPA for each actually or potentially contaminated medium. The revised RAOs must be documented in a technical memorandum and subject to EPA's approval.

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The Respondent shall then identify a preliminary comprehensive range of potential remedial action alternatives and associated technologies. The range of potential alternatives shall encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative.

Document the need for treatability studies

Respondent shall conduct bench and/or pilot studies as necessary to determine the suitability of various remedial technologies to Site conditions and problems. Technologies that may be suitable to the Site should be identified as early as possible to determine whether there is a need to conduct treatability studies to better estimate costs and performance capabilities. Should treatability studies be determined to be necessary, a testing plan identifying the types and goals of the studies, the level of effort needed, a schedule for completion, and the data management guidelines should be submitted to EPA for review and approval. Upon EPA approval, a test facility and any necessary equipment, vendors, and analytical services will be procured by the contractor.

When the treatability studies are completed, Respondent shall evaluate the results to assess the technologies with respect to the goals identified in the test plan. A report summarizing the testing program and its results shall be prepared by the Respondent and presented in the final RI/FS report. The Respondent shall implement all management and quality control review activities for this task. If remedial actions involving treatment have been identified by the Respondent or EPA, treatability studies shall be required, except where the Respondent can demonstrate to the satisfaction of EPA that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) should be planned to occur concurrently with Site characterization activities.

Begin preliminary identification of potential ARARs

The Respondent shall conduct a preliminary identification of potential ARARs (chemical-specific, location-specific, and action-specific) to assist in the refinement of the RAOs and the initial identification of remedial alternatives. ARAR identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.

c. *Scoping Deliverables*

At the conclusion of the project planning phase, the Respondent shall submit an RI/FS Work Plan, a Sampling and Analysis Plan (SAP) consisting of a Field Sampling Plan (FSP) and Quality Assurance Project Plan (QAPP), and a Site Health and Safety Plan (HASP). These plans must be reviewed and approved by EPA prior to the initiation of field activities.

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RI/FS Work Plan

A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM for review and approval. The Work Plan will ~~fully account~~ take in to consideration for the timing and scope of potential mining and processing activities associated with the PRO. This could include a phased approach to focus on issues of most concern or requiring early action. The Work Plan shall be developed in conjunction with the SAP and the Site HASP, although each plan may be delivered under separate cover. The Work Plan shall include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan shall include the rationale for performing the required activities. Specifically, the Work Plan must present a statement of the problem(s) and potential problem(s) posed by the Site and the objectives of the RI/FS. Furthermore, the plan must include a Site background summary setting forth the Site description including the geographic location of the Site, and to the extent possible, a description of the Site's physiography, hydrology, hydrogeology, geology, demographics, ecological, cultural, and natural resource features; a synopsis of the Site history and a description of previous responses that have been conducted at the Site by local, state, federal, or private parties; and a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified, and their distribution among the environmental media at the Site. In addition, the plan must include a description of the Respondent's Site management strategy developed during scoping and a preliminary identification of remedial alternatives and data needs for evaluation of remedial alternatives. The plan must reflect coordination with treatability study requirements, if treatability studies are initiated. It must include a process for and manner of identifying potential ARARs (chemical-specific, location-specific, and action-specific).

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Finally, the major part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task and for the BLRA, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the RPM. This includes the deliverables set forth in the remainder of this SOW; a schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to the RPM and meetings and presentations to EPA and the Support Agencies at the conclusion of each major phase of the RI/FS. The Respondent must refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required Work Plan, and a suggested format can be found in Attachment A.

Sampling and Analysis Plan

The Respondent shall prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and

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that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a FSP and a QAPP. A suggested format for the SAP (inclusive of the FSP and QAPP) is provided in Attachment B. The SAP, FSP, and QAPP shall be prepared in accordance with EPA DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006).

The FSP must define in detail the sampling and data-gathering methods that will be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytic methods to identify contamination and remediate contamination consistent with the levels for remedial action objectives identified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), pages 51425-26 and 51433 (December 21, 1988). The QAPP shall be prepared in accordance with requirements in EPA QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision) and specifically should contain the twenty-four elements specified in Table 11 – List of QA Project Plan Elements, EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Investigations, and EPA QA/G-4 Guidance for the Data Quality Objective Process. All sampling and analyses performed pursuant to this SOW shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain-of-custody procedures. In addition, the QAPP must address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

Field personnel must be trained and conduct work in accordance with EPA and OSHA requirements and guidance. The Respondent shall demonstrate, in advance and to the satisfaction of EPA, that each laboratory they may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by EPA will be used. If the laboratory is not in the CLP program, a laboratory QA program must be submitted for EPA's review and approval. EPA may require that the Respondent submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment, and material specifications. The Respondent shall provide assurances that EPA has access to laboratory personnel, equipment, and records for sample collection, transportation, and analysis.

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Potential Target Analytes

The following list of chemicals include the initial Chemicals of Potential Concern (COPCs). The initial COPC list includes, but is not limited to, the analytes listed below. The Respondent shall review this list for surface water, groundwater, sediments, soils, and vegetation analytes relative to ARARs, preliminary remediation goals (PRGs), screening levels, Site-specific risk assessment data needs, treatability study data needs, feasibility study data needs, and other potential performance standards. All metal analytes (aqueous) shall be analyzed for total and dissolved constituents unless otherwise approved by EPA. Analytes may be added and/or removed from further consideration or monitored at varying frequencies based upon Site-specific factors such as dry or wet year hydrologic cycles as approved or otherwise directed by EPA.

Chemicals/Analytes of Potential Concern for Surface Water

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for surface water sampling stations during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph. A minimum of two storm event sampling events shall be conducted.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Boron
- Cadmium
- Calcium
- Chloride
- Chromium (III)
- Chromium (VI)
- Cobalt
- Copper
- Hardness
- Iron
- Lead
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel

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- Nitrogen, total Kjeldahl
- Phosphorus
- Potassium
- Selenium
- Silver
- Sodium
- Sulphate
- Thallium
- Tungsten
- Total Dissolved Solids
- Total Organic Carbon
- Total Suspended Solids
- Uranium
- Vanadium
- Zinc

Field Analyses
- Conductivity
- Dissolved Oxygen
- Flow
- pH
- Temperature

The Respondent shall review the results of the first year's surface water sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent surface water sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent surface water sampling events.

Chemicals/Analytes of Potential Concern for Sediments:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for sediment sampling stations.

Laboratory Analyses
- Antimony
- Arsenic
- Cadmium
- Chromium
- Copper
- Lead
- Manganese
- Mercury
- Nickel
- Selenium

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- Silver
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Soils/Waste Rock:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for soils/waste rock sampling.

Laboratory Analyses
- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Uranium
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Vegetation:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for vegetation sampling stations.

Laboratory Analyses
- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead

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- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Groundwater

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for groundwater sampling stations and shall be sampled at a minimum during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph and the low flow sampling shall be conducted at all groundwater sampling stations as close as possible to the low point of the surface water flow hydrograph.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Calcium
- Chloride
- Chromium III
- Chromium VI
- Cobalt
- Copper
- Hardness
- Iron
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrate/nitrite as N
- Nitrogen (TKN)
- Orthophosphate
- Potassium

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- Selenium
- Silver
- Sodium
- Sulfate
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Total Organic Carbon
- Tungsten
- Uranium
- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen or ORP
- Ferric Iron
- Ferrous Iron
- Nitrite
- pH
- Temperature

The Respondent shall review the results of the first year's groundwater sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent groundwater sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent groundwater sampling events.

Site Health and Safety Plan

A HASP shall be prepared in conformance with the Respondent's health and safety program, and in compliance with OSHA regulations and protocols. It should be noted that EPA does not "approve" the Respondent's health and safety plan, but rather EPA reviews it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

TASK 2 - COMMUNITY RELATIONS

The development and implementation of community relations activities are the responsibility of EPA. The critical community relations planning steps performed by EPA include conducting community interviews and developing a community relations plan. Although implementation of the community relations plan is the responsibility of EPA, the Respondent may assist by providing information regarding the Site's history, participating in public meetings, and preparing fact sheets for distribution to the general public. In addition, the Respondent shall establish a community information repository, at or near the City of McCall, to house one copy of the administrative record. The extent of community

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relations activities involvement by potentially responsible parties (PRPs) is left to the discretion of EPA. The Respondent's community relations responsibilities, if any, are specified in the community relations plan. Any PRP-conducted community relations activities will be subject to oversight by EPA.

TASK 3 - SITE CHARACTERIZATION

As part of the RI, the Respondent shall perform the activities described in this task, including the preparation of a Site characterization summary and a RI report. The overall objective of Site characterization is to describe areas of a Site that may pose a threat to human health or the environment. This is accomplished by first determining a Site's physiography, geology, and hydrology/hydrogeology. Surface and subsurface pathways of migration must be defined. The Respondent shall identify the sources of contamination and define the nature, extent, and volume of the sources of contamination, including their physical and chemical constituents as well as their background concentrations at incremental locations in the affected media. The Respondent shall also investigate the extent of migration of this contamination as well as its volume and any changes in its physical or chemical characteristics, to provide for a comprehensive understanding of the nature and extent of contamination at the Site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the Work Plan, SAP, and HASP are implemented. Field data are collected and analyzed to provide the information required to accomplish the objectives of the study. The Respondent shall notify the RPM at least two weeks in advance of the field work regarding the planned dates for field activities, including ecological field surveys, field layout of the sampling grid, excavation, installation of wells, initiating sampling, installation and calibration of equipment, pump tests, and initiation of analysis and other field investigation activities. The Respondent shall demonstrate that the laboratory and type of laboratory analyses that will be utilized during Site characterization meet the specific QA/QC requirements and the DQOs of the Site investigation as specified in the SAP. In view of the unknown Site conditions, activities are often iterative, and to satisfy the objectives of the RI/FS, it may be necessary for the Respondent to supplement the work specified in the initial Work Plan. In addition to the deliverables below, the Respondent shall provide a monthly progress report and participate in weekly meetings or conference calls at major points in the RI/FS.

a. Field Investigation

The field investigation shall include the gathering of data to define Site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. These activities shall be performed by the Respondent in accordance with the Work Plan and SAP. At a minimum, this shall address the following:

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Implement and document field support activities

The Respondent shall initiate field support activities following approval of the Work Plan and SAP. Field support activities may include obtaining access to the Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondent shall notify the RPM at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM upon completion of field support activities.

Investigate and define site physical and biological characteristics

The Respondent shall collect data on the physical and biological characteristics of the Site and its surrounding areas, including the physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information must be ascertained through a combination of physical measurements, observations, and sampling efforts, and will be utilized to define potential transport pathways and human, cultural, and ecological receptor populations. In defining the Site's physical characteristics, the Respondent shall also obtain sufficient engineering data (such as the effects of contaminated media weathering and ground and surface water contaminant loading) to aid in the projection of contaminant fate and transport, and the development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination

The Respondent shall locate each source of contamination and define the areal extent and depth of contamination associated with each source in all media. The physical characteristics and chemical constituents and their concentrations must be determined for all known and discovered sources of contamination. The Respondent shall conduct sufficient sampling to define the boundaries of the contaminant sources consistent with the QAPP and DQOs.

Defining the source of contamination must include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence over time, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

~~Describe~~ Delineate the nature and extent of contamination

The Respondent shall gather information to ~~describe~~ delineate the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondent must utilize the information and site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondent shall then implement an iterative monitoring program and any study program identified in the work plan or SAP such that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration

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of contaminants through the various media at the Site can be determined. In addition, the Respondent shall gather data for calculations of contaminant fate and transport. This process must be continued until the area and depth of contamination are known. This information will be used to determine the level of risk presented by the Site and to help develop appropriate remedial action alternatives for evaluation.

b. Data Analyses

Evaluate Site characteristics

The Respondent shall analyze and evaluate the data to describe: (1) Site physical and biological characteristics; (2) contaminant source characteristics; (3) nature and extent of contamination; and (4) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The evaluation must include the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to EPA together with a sensitivity analysis. The RI data shall be presented in a format (i.e., computer disc or equivalent) to facilitate the preparation of the BLRA. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. The Respondent shall then collect any data required to address data gaps identified by EPA as needed to complete the BLRA. This evaluation shall also provide information relevant to Site characteristics necessary to evaluate the need for remedial action in the BLRA and to aid in the development and evaluation of remedial alternatives. Analyses of data collected for Site characterization must meet the DQOs developed in the QA/QC plan stated in the SAP (or as revised during the RI).

c. Data Management Procedures

The Respondent shall consistently document the quality and validity of field and laboratory data compiled during the RI.

Document field activities

Information gathered during Site characterization shall be consistently documented and adequately recorded by the Respondent in well-maintained field logs and laboratory reports. The method(s) of documentation must be specified in the work plan and/or the SAP. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document sample custody, analytical responsibility,

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analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking

The Respondent shall maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that only validated analytical data are reported and utilized in the development and evaluation of remedial alternatives. Analytical results developed under the Work Plan must not be included in any Site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, the Respondent shall establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

Data validation management

All validated data shall be made available to EPA in electronic format. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. Field and validated analytical data results for all media sampled shall be submitted to EPA by uploading the data to the Water Quality Exchange (WQX) using the Central Data Exchange (CDX). Field and laboratory samples must include information on the sampling locations which will also be submitted to WQX via CDX. (See [HYPERLINK "http://www.epa.gov/storet/wqx.hmtl)" \h]

d. *Site Characterization Deliverables*

The Respondent shall prepare the preliminary Site characterization summary and the RI report.

Data Summary Reports

After completing each annual field season's sampling and analysis (i.e., at the end of the field season each calendar year), the Respondent shall prepare a concise Site characterization Data Summary Report (DSR). This report must review the investigative activities that have taken place and describe and display Site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, including the affected media, locations, types, physical state, concentrations of contaminants and quantities. In addition, reports shall document the location, dimensions, physical condition and varying concentrations of each contaminant for each source and the extent of contaminant migration through each of the affected media. Each DSR must also evaluate data gaps and identify additional and/or modified sampling and analysis that shall be included in modifications to the SAP for each subsequent field season. If acceptable to EPA, the DSR following the final field season of data collection can be eliminated as a separate deliverable, and the information collected during the final field season can be presented in the RI report.

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Remedial Investigation Report (RI)

The Respondent shall prepare and submit a draft RI report to the RPM for review and approval. This report shall summarize results of field activities to characterize the Site, sources of contamination, nature and extent of contamination, and the fate and transport of contaminants. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and contents, and a suggested format for the RI report can be found in Attachment C. Following comment by EPA, the Respondent shall prepare a final RI report satisfactorily addressing the comments.

Baseline Risk Assessment (BLRA)

The Respondent shall conduct a BLRA to assess the potential human health, and environmental risks posed by the Site in the absence of any remedial action, but will consider implementation of the PRO. This effort will involve four components: contaminant identification, exposure assessment, toxicity assessment, and risk characterization.

Contaminant Identification – The Respondent shall review available information on all hazardous substances present at the Site and identify the major contaminants of concern. Contaminants of concern should be selected based on their intrinsic toxicological properties because they are present in large quantities, and/or because they are currently in, or potentially may migrate into, critical exposure pathways (e.g., drinking water).

Exposure Assessment – The Respondent shall identify actual or potential exposure pathways, characterize potentially exposed populations, and evaluate the actual or potential extent of exposure.

Toxicity Assessment – The Respondent shall provide a toxicity assessment of those chemicals found to be of concern during Site investigation activities. This will involve an assessment of the types of adverse health or environmental effects associated with chemical exposures, the relationship between magnitude of exposures and adverse effects, and the related uncertainties for contaminant toxicity, (e.g., weight of evidence for a chemical's carcinogenicity). EPA has prepared chemical screening tables with updated toxicity values and Preliminary Remediation Goals for various land uses available from: [HYPERLINK "https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables"]

Risk Characterization – The Respondent shall integrate information developed during the exposure and toxicity assessments to characterize the current or potential risk to human health and/or the environment posed by the Site. This characterization should identify the potential for adverse health or environmental effects for the chemicals of concern and identify any uncertainties associated with contaminant(s), toxicity(ies), and /or exposure assumptions.

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TASK 4 - TREATABILITY STUDIES

If potential remedial actions involving treatment have been identified by Respondent or EPA, Respondent shall conduct treatability studies except where Respondent can demonstrate to the satisfaction of EPA that they are not needed. The following activities shall be performed by the Respondent to support all treatability studies.

a. Determination of Candidate Technologies and of Need for Testing

The Respondent shall identify in a technical memorandum, subject to EPA review and approval, candidate technologies for a treatability studies program during project planning (Task 1). The listing of candidate technologies must cover the range of technologies required for the development and analysis of alternatives (Task 5 and 6) The specific data requirements for the testing program will be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 3, 5, and 6).

Conduct literature survey and determine the need for treatability testing

The Respondent shall conduct a literature survey to gather information of performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. If practical candidate technologies have not been sufficiently demonstrated or cannot be adequately evaluated for this Site based on available information, treatability testing must be conducted. Where it is determined by EPA that treatability testing is required, and unless the Respondent can demonstrate to EPA's satisfaction that it is not needed, the Respondent shall submit a SOW to the RPM outlining the steps and data necessary to evaluate and initiate the treatability testing program.

Evaluation of treatability studies

Once a decision has been made to perform treatability studies, the Respondent and EPA will decide the types of treatability testing to utilize (e.g., bench and/or pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing should be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, the Respondent shall either submit to the RPM a treatability testing work plan or an amendment to the original Site work plan for EPA's review and approval.

b. Treatability Testing and Deliverables

The deliverables that are required, in addition to the memorandum identifying candidate technologies, where treatability testing is conducted, include a work plan, a sampling and analysis plan, and a final treatability evaluation report. EPA may also require a treatability study health and safety plan, where appropriate.

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Treatability testing work plan

The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's review and approval, describing the Site background, remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The DQOs for treatability testing must be documented as well. If pilot scale treatability testing is to be performed, the pilot scale work plan will describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-site, permitting requirements must be addressed.

Treatability study SAP

If the original QAPP or FSP does not address activities to be performed during the treatability tests, a separate treatability study SAP or amendment to the original Site SAP must be prepared by the Respondent for EPA's review and approval. Task 1, Item c. of this statement of work provides additional information on the requirements of the SAP.

Treatability study HASP

If the original HASP is not adequate for defining the activities to be performed during the treatment tests, a separate or amended HASP must be developed by the Respondent. Task 1, Item c, of this SOW provides additional information on the requirements of the health and safety plan. EPA does not "approve" the treatability study HASP.

Treatability study evaluation report

Following completion of treatability testing, the Respondent shall analyze and interpret the testing results in a technical report to EPA. Depending on the sequence of activities, this report may be a part of the RI/FS report or a separate deliverable. The report must evaluate each technology's effectiveness, implementability, cost, and actual results as compared with predicted results. The report must also evaluate full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 5 - FEASIBILITY STUDY

The Feasibility Study is comprised of two primary activities: (1) the development and screening of alternatives, and (2) the detailed analysis of alternatives. The alternatives surviving the screening process will be subject to the detailed analysis process. The FS Report must document the results of these two components of FS. Interim deliverables associated with these activities will be identified in the RI/FS Work Plan. The RI and FS

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are interactive and will be conducted concurrently, to the extent practicable, in a manner that allows information and data collected during the RI to influence the development of remedial alternatives during the FS, which in turn affect additional information and data needs and the scope of any necessary treatability studies and risk assessments.

a. Remedial Alternative Development

The Respondent shall develop and evaluate a range of appropriate waste management options that, at a minimum, will remediate or control any contaminated media (soil, surface water, ground water, sediments) remaining at the Site, as deemed necessary in the RI to ensure protection of human health and the environment and comply with ARARs, concurrent with the RI site characterization task.

A range of remedial alternatives must be developed to identify and provide a variety of waste management options which then can be evaluated. This range of alternatives must include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which varies in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed. Options involving containment with little or no treatment must be included, as well as options involving both treatment and containment, and a no-action alternative. The following activities shall be performed by the Respondent during the development of remedial alternatives.

Refine and document remedial action objectives

Based on the BLRA, the Respondent shall review, and if necessary, modify the Site-specific remedial action objectives (RAOs) and the list of applicable preliminary remediation goals (PRGs). The modified PRGs shall be documented in a technical memorandum that will be reviewed and approved by EPA. These modified PRGs must specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

Develop general response actions

The Respondent shall develop a range of general response actions for each medium of interest addressing containment, treatment, excavation, pumping, or any other actions, singly or in combination, that may be utilized to satisfy the remedial action objectives for the Site.

Identify areas or volumes of media

The Respondent shall identify volumes and/or areas of media to which general response actions might be applied, taking into account the requirements for protectiveness as identified in the RAOs and the chemical and physical characterization of the Site.

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Identify, screen, and document remedial technologies

The Respondent shall identify and evaluate potential remedial technologies applicable to each general response action. The Respondent shall identify various alternatives for implementing each remedial technology. These alternatives must be evaluated and screened based upon their effectiveness, implementability, and cost factors. Generally, this screening is only necessary when there are many feasible alternatives available for detailed analysis. If necessary, the screening of alternatives shall be conducted to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening must preserve the range of treatment and containment alternatives that was initially developed insuring that the alternatives will meet RAOs, ARARs and all other identified performance standards. The range of remaining alternatives must include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondent shall prepare a technical memorandum summarizing the results and reasoning employed in screening and arraying alternatives that remain after screening. In addition, a description of the remedial technology alternatives which were eliminated from further consideration as well as the reasons for eliminating the alternatives must be included in the memorandum.

Assemble and document alternatives

The Respondent shall assemble selected representative technologies into a range of alternatives for each affected medium or operable unit. Together, all of the alternatives will represent treatment and containment combinations that will address either all of the Site or operable units. A summary of the assembled alternatives and their related action-specific ARARs must be prepared for EPA by the Respondent for inclusion in a technical memorandum.

TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES

The detailed analysis of alternatives shall be conducted by the Respondent to provide EPA with the information needed to allow for the selection of a Site remedy. This analysis is the final task to be performed by the Respondent during the FS.

a. Detailed Analysis of Alternatives

The Respondent shall conduct a detailed analysis of alternatives which must consist of an analysis of each option against a set of nine evaluation criteria and a comparative analysis of all options using the same evaluation criteria as a basis for comparison. EPA has developed the nine evaluation criteria to address the statutory requirements and preferences of CERCLA

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Apply nine criteria and document analysis

The Respondent shall apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) costs; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: Criteria 8 and 9 are considered after the RI/FS report has been released to the general public). For each alternative, the Respondent must provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative; and (2) a discussion of the individual criterion assessment.

Compare alternatives against each other and document the comparison of alternatives

The Respondent shall perform a comparative analysis between the remedial alternatives. That is, each alternative must be compared against the others using the evaluation criteria as a basis of comparison. Identification and selection of the preferred alternative are reserved by EPA. The Respondent shall prepare a technical memorandum summarizing the results of the comparative analysis.

b. *Detailed Analysis Deliverables*

In addition to the technical memorandum summarizing the results of the comparative analysis, the Respondent shall submit a draft FS report to the RPM for review and approval. Once EPA's comments have been addressed by the Respondent to the satisfaction of EPA, the final FS report may be bound with the final RI report.

Feasibility Study report

The Respondent shall submit a draft FS report for EPA and the Support Agencies' review and comment. This report, as ultimately adopted or amended by EPA, provides a basis for remedy selection by EPA, and documents the development and analysis of remedial alternatives. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and the required report content, and a suggested format for the report can be found in Attachment D. The Respondent shall prepare a final FS report which satisfactorily addresses the comments.

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REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process.

The (revised) National Oil and Hazardous Substance Pollution Contingency Plan (NCP).

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA", U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3.

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"A Compendium of Superfund Field Operations Methods", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.

U.S. EPA, NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA -330/9-78-991-R.

"Data Quality Objectives for Remedial Response Activities", U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.

"Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Research and Development, Cincinnati, Ohio, QAMS-004/80, December 29, 1980.

"QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision), EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Studies, and EPA QA/G-4 Guidance for the Data Quality Objective Process"

"Interim Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.

"Users Guide to the Lead Agency(ies) Contract Laboratory Program, U.S. EPA, Sample Management Office, August 1982.

"Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements", U.S. EPA, Office of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.

"CERCLA Compliance with Other Laws Manual", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.

"Guidance on Remedial Actions for Contaminated Groundwater at Superfund Sites", U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.

"Draft Guidance on the Lead Agency(ies) Superfund Decision Documents", U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02.

"Risk Assessment Guidance for Superfund--Volume I, Human Health Evaluation Manual (Part A)", December 1989, EPA/540/1-89/002.

"Risk Assessment Guidance for Superfund--Volume II Environmental Evaluation Manual", March 1989, EPA /540/1-89/001.

"Guidance for Data Usability in Risk Assessment", October 1990, EPA /540/G-90/008. "Performance of Risk Assessments in Remedial Investigation/ Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)", August 28, 1990, OSWER Directive No. 9835.15.

"Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions", April 22, 1991, OSWER Directive No. 9355.0-30.

"Health and Safety Requirements of Employees Employed in Field Activities", U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

"Interim guidance on Administrative Records for Selection of CERCLA Response Actions", U.S. EPA, Office of Waste Programs Enforcement, March 1, 1989, OSWER Directive No. 9833.3A.

"Community Relations in Superfund: A Handbook", U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9320.0-03B.

"Community Relations During Enforcement Activities and Development of the Administrative Record", U.S. EPA, Office of Waste Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1A.

Attachments

Attachment A – Suggested RI/FS Work Plan Format

Executive Summary

1. Introduction
2. Site Background and Setting
3. Initial Evaluation
   - Types and volumes of waste present
   - Potential pathways of contaminant migration/preliminary public health and environmental impacts
   - Preliminary identification of operable units
   - Preliminary identification of response objectives and remedial action alternatives
4. Work Plan Rationale
   - DQO needs
   - Work Plan approach
5. RI/FS Tasks
6. Cost and Key Assumptions
7. Schedule
8. Project Management
   - Staffing
   - Coordination
9. References

Appendices

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Attachment B – Suggested Format for SAP (FSP and QAPP)

FSP

1. Site Background
2. Sampling Objectives
3. Sample Location and Frequency
4. Sample Designation
5. Sampling Equipment and Procedures
6. Sample Handling and Analysis

QAPP

Project Management

A1 Title and Approval Sheet
A2 Table of Contents
A2 Distribution List
A4 Project/Task Organization
A5 Problem Definition/Background
A6 Project/Task Description
A7 Quality Objectives and Criteria
A8 Special Training/Certifications
A9 Documentation and Records

Data Generation and Acquisition

B1 Sampling Process Design (Experimental Design)
B2 Sampling Methods
B3 Sample Handling and Custody
B4 Analytical Methods
B5 Quality Control
B6 Instrument/Equipment Testing, Inspection, and Maintenance
B7 Instrument/Equipment Calibration and Frequency
B8 Inspection/Acceptance of Supplies and Consumables
B9 Non-direct Measurements
B10 Data Management

Assessment and Oversight

C1 Assessments and Response Actions
C2 Reports to Management

Data Validation and Usability

D1 Data Review, Verification, and Validation
D2 Verification and Validation Methods
D3 Reconciliation with User Requirements

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~~Title Page~~

~~Table of Contents~~

~~1. Project Description~~

~~2. Project Organization and Responsibilities~~

~~3. QA Objectives for Measurement~~

~~4. Sampling Procedures~~

~~5. Sample Custody~~

~~6. Calibration Procedures~~

~~7. Analytical Procedures~~

~~8. Data Reduction, Validation, and Reporting~~

~~9. Internal Quality Control~~

~~10. Performance and Systems Audits~~

~~11. Preventative Maintenance~~

~~12. Data Assessment Procedures~~

~~13. Corrective Actions~~

~~14. Quality Assurance Reports~~

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Attachment C – Suggested RI Report Format

Executive Summary

1. Introduction
   - 1.1 Purpose of Report
   - 1.2 Site Background
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Previous Investigations
   - 1.3 Report Organization
2. Study Area Investigation
   - 2.1 Includes field activities associated with site characterization. These may include physical and chemical monitoring of some, but not necessarily all, of the following:
     - 2.1.1 Surface Features (topographic mapping, etc.) (natural and manmade features)
     - 2.1.2 Contaminant Source Investigations
     - 2.1.3 Meteorological Investigations
     - 2.1.4 Surface-Water and Sediment Investigations
     - 2.1.5 Geological Investigations
     - 2.1.6 Soil and Vadose Zone Investigations
     - 2.1.7 Ground-Water Investigations
     - 2.1.8 Human Population Surveys
     - 2.1.9 Ecological Investigations
   - 2.2 If technical memoranda documenting field activities were prepared, they may be included in an appendix and summarized in this report chapter
3. Physical Characteristics of the Study Area
   - 3.1 Includes results of field activities to determine physical characteristics. These may include some, but not necessarily all, of the following:
     - 3.1.1 Surface Features
     - 3.1.2 Meteorology
     - 3.1.3 Surface-Water Hydrology
     - 3.1.4 Geology
     - 3.1.5 Soils
     - 3.1.6 Hydrogeology
     - 3.1.7 Demography and Land Use
     - 3.1.8 Ecology
4. Nature and Extent of Contamination

ED_004715_00016322-00030

4.1 Presents the results of Site characterization, both natural and chemical components and contaminants in some, but not necessarily all, of the following media:

4.1.1 Sources (lagoons, sludges, tanks, etc.)

4.1.2 Soils and Vadose Zone

4.1.3 Ground Water

4.1.4 Surface Water and Sediments

4.1.5 Air

5. Contaminant Fate and Transport

5.1 Potential Routes of Migration (i.e., air, groundwater, etc.)

5.2 Contaminant Persistence

5.2.1 If they are applicable (i.e., for organic contaminants), describe estimated persistence in the study area environment and physical, chemical, and/or biological factors of importance for the media of interest

5.3 Contaminant Migration

5.3.1 Discuss factors affecting contaminant migration for the media of important (e.g., sorption onto soils, solubility in water, movement of ground water, etc.)

5.3.2 Discuss modeling methods and results, if applicable

6. Baseline Risk Assessment

6.1 Human Health Evaluation

6.1.1 Exposure Assessment

6.1.2 Toxicity Assessment

6.1.3 Risk Characterization

6.2 Environmental Evaluation

7. Summary and Conclusions

7.1 Summary

7.1.1 Nature and Extent of Contamination

7.1.2 Fate and Transport

7.1.3 Risk Assessment

7.2 Conclusions

7.2.1 Data Limitations and Recommendations for Future Work

7.2.2 Recommended Remedial Action Objectives

Appendices

A. Technical Memorandum on Field Activities (if available)

B. Analytical Data and QA/QC Evaluation Results

C. Risk Assessment Methods

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Attachment D – Suggested Format for Feasibility Study Report

Executive Summary

1. Introduction
   - 1.1 Purpose and Organization Report
   - 1.2 Background Information (Summarized from RI Report)
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Nature and Extent of Contamination
     - 1.2.4 Contaminant Fate and Transport
     - 1.2.5 Baseline Risk Assessment
2. Identification and Screening of Technologies
   - 2.1 Introduction
   - 2.2 Remedial Action Objectives – Presents the development of remedial action objectives for each medium of interest (i.e., ground water, soil, surface water, air, etc.) For each medium, the following should be discussed:
     - Contaminants of interest
     - Allowable exposure based on risk assessment (including ARARs) Development of remediation goals
   - 2.3 General Response Actions – For each medium of interest, describes the estimation of areas or volumes to which treatment, containment, or exposure technologies may be applied.
   - 2.4 Identification and Screening of Technology Types and Process Options – For each medium of interest, describe:
     - 2.4.1 Identification and Screening of Technologies
     - 2.4.2 Evaluation of Technologies and Selection of Representative Technologies
3. Development and Screening of Alternatives
   - 3.1 Development of Alternatives – Describes rationale for combination of technologies/media into alternatives. Note: This discussion may be by medium or for the Site as a whole.
   - 3.2 Screening of Alternatives (if conducted)
     - 3.2.1 Introduction
     - 3.2.2 Alternative 1
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.2 Alternative 2
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.3 Alternative 3

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3.2.3.1 Description
3.2.3.2 Evaluation
4. Detailed Analysis of Alternatives
4.1 Introduction
4.2 Individual Analysis of Alternatives
4.2.1 Alternative 1
4.2.1.1 Description
4.2.1.2 Evaluation
4.2.2 Alternative 2
4.2.2.1 Description
4.2.2.2 Evaluation
4.2.3 Alternative 3
4.2.3.1 Description
4.2.3.2 Evaluation
4.3 Comparative Analysis

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Attachment E – Stibnite Mine Remedial Investigation and Feasibility Study (RI/FS) Statement of Work (SOW) Schedule

RI/FS Work Plan/Sampling and Analysis Plan (WP/SAP):

- Draft due within 120 days after the Effective Date of the Settlement Agreement/CO.
- Final Work Plan due within 90 days of receipt of consolidated Agency comments.

Data Summary Reports (DSRs):

- Draft DSRs due within 120 days completion of each season's field work or within 90 days of the receipt of final laboratory data, whichever is earlier. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the completion date. Within 5 days of the receipt of final laboratory data for the preceding field season, Respondent shall provide written notification to EPA identifying the receipt date of final laboratory data.
- Final DSRs due within 30 days of receipt of consolidated Agency comments.

Remedial Investigation Report (RI):

- Submit draft RI within 120 days after receipt of laboratory data from the final field season. Within 5 days of receipt of final laboratory data, Respondent shall provide written notification to EPA identifying receipt date of final laboratory data.
- Final RI due within 60 days of receipt of consolidated Agency comments.

Baseline Risk Assessment Report (BLRA):

- Submit draft BLRA within 60 days after submittal of Final RI.
- Final BLRA due within 60 days of receipt of consolidated Agency comments.

Feasibility Study (FS):

- Submit draft FS within 120 days after submittal of BLRA Report.
- Final FS due within 90 days of receipt of consolidated Agency comments.

Data Validation Summaries (DVSs):

- DVSs due within 120 days from the date of collection of the last sample from each sampling event. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the date of collection of the last sample from each sampling event.

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Interim Deliverables

- Draft Interim Deliverables (i.e., Technical Memoranda for Treatability Studies Preliminary Remedial Goals, Remedial Action Objectives, etc.) as identified in the SOW, or as required by EPA, shall be due within 30 days receipt of notice by Respondent that said Deliverable is required.
- Final Interim Deliverables due within 60 days of receipt of consolidated Agency comments.

Quarterly Progress Reports

- Quarterly Progress Reports shall be due 15 days after the end of the previous calendar quarter.

[1]Documents may initially be released as "draft final" pending final resolution of issues.

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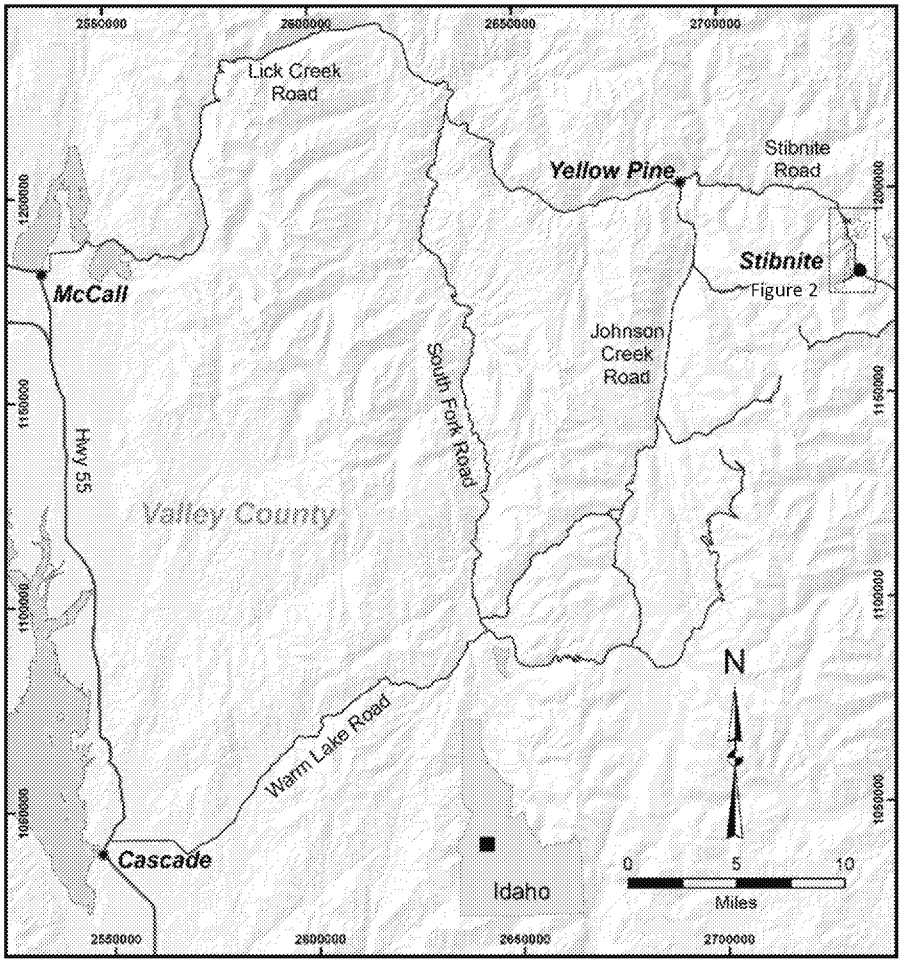

Figure 1 – Site Location

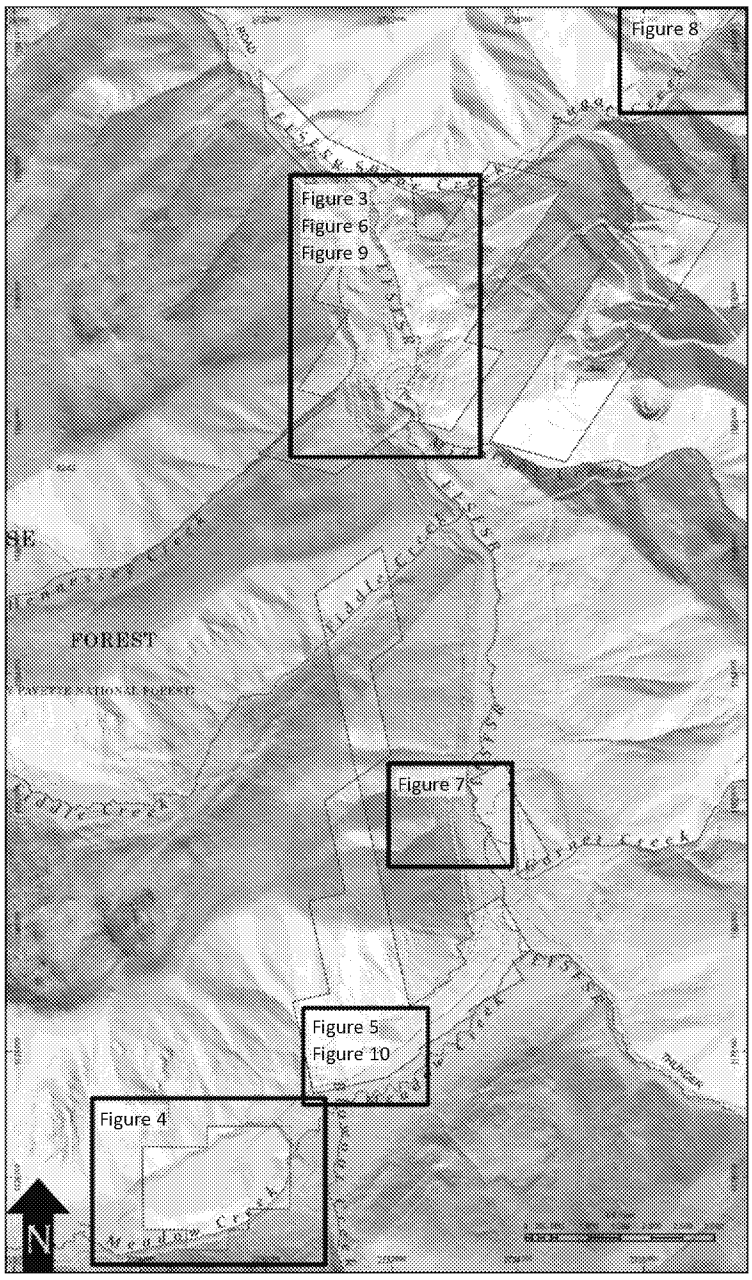

Figure 2 – Stibnite Mine Site

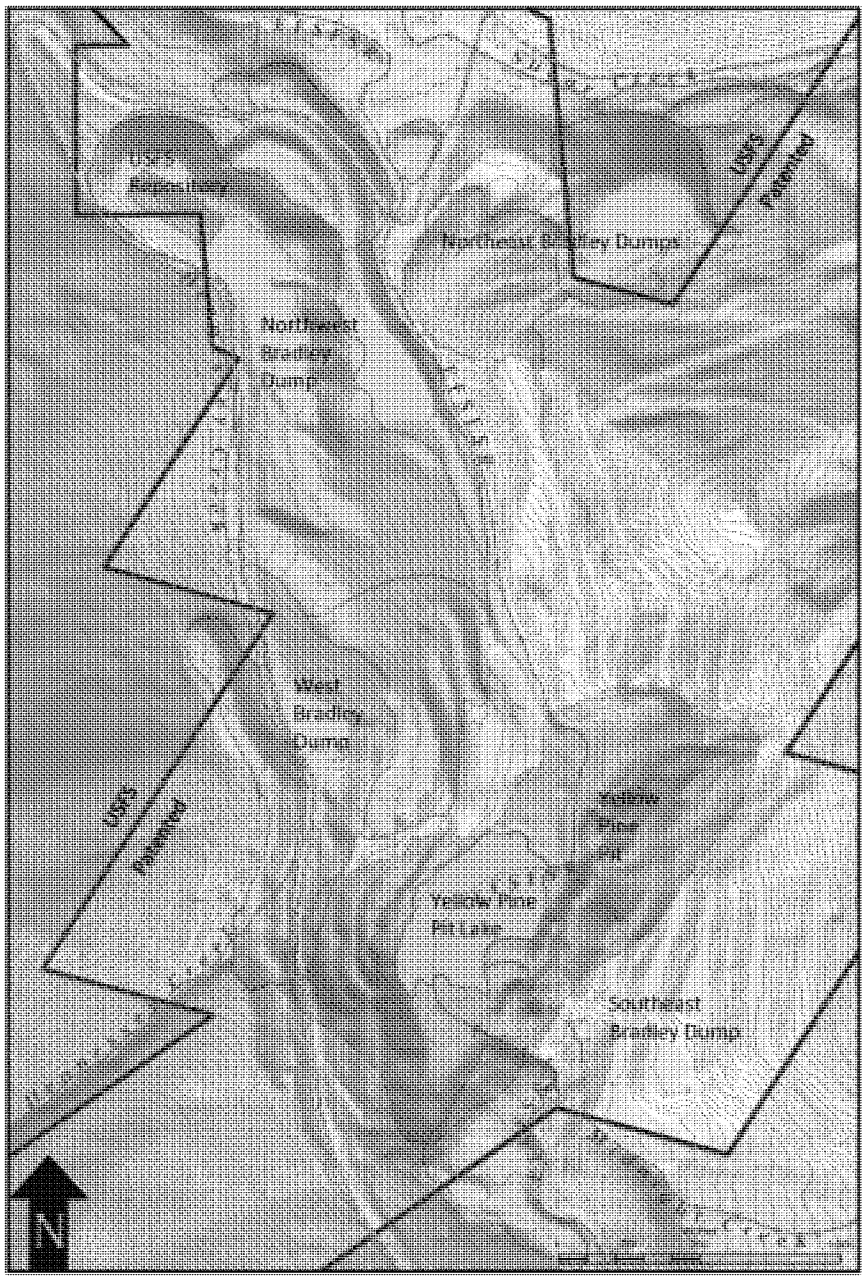

Figure 3 –Yellow Pine Pit

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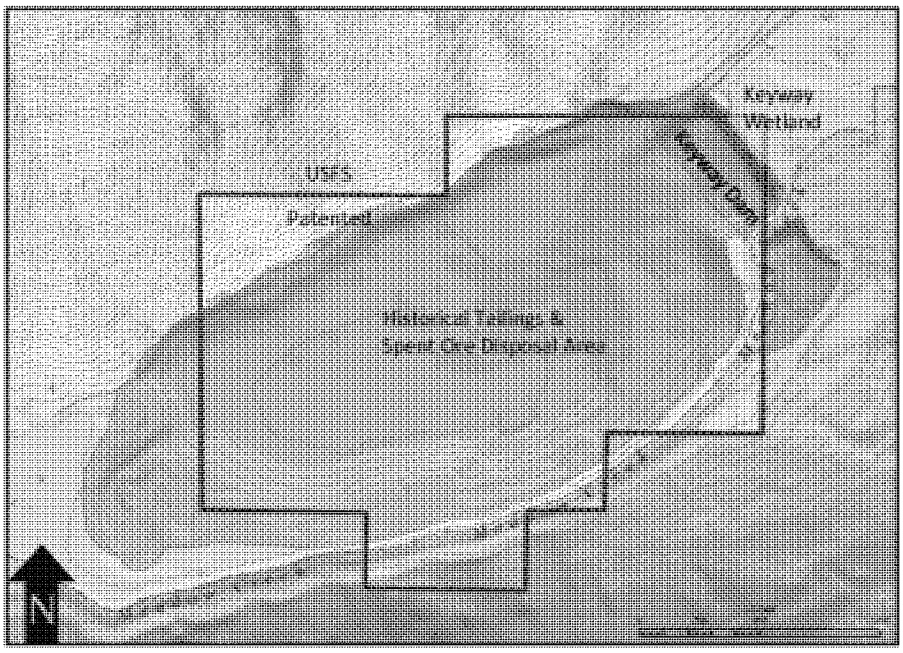

Figure 4 – Historical Tailings and Spent Ore Disposal Area

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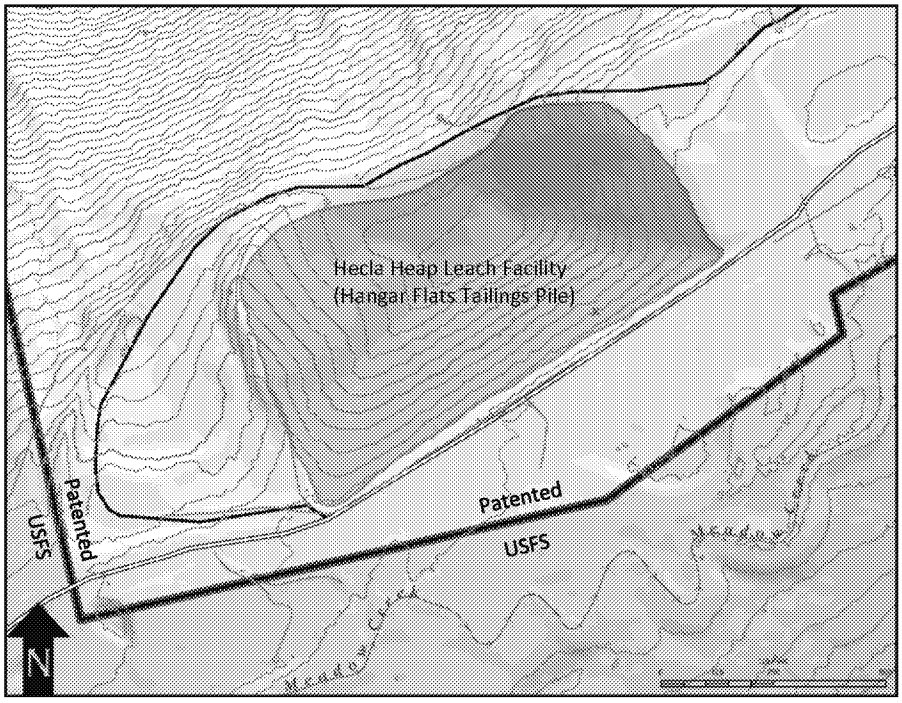

Figure 5 – Hecla Heap Leach Facility

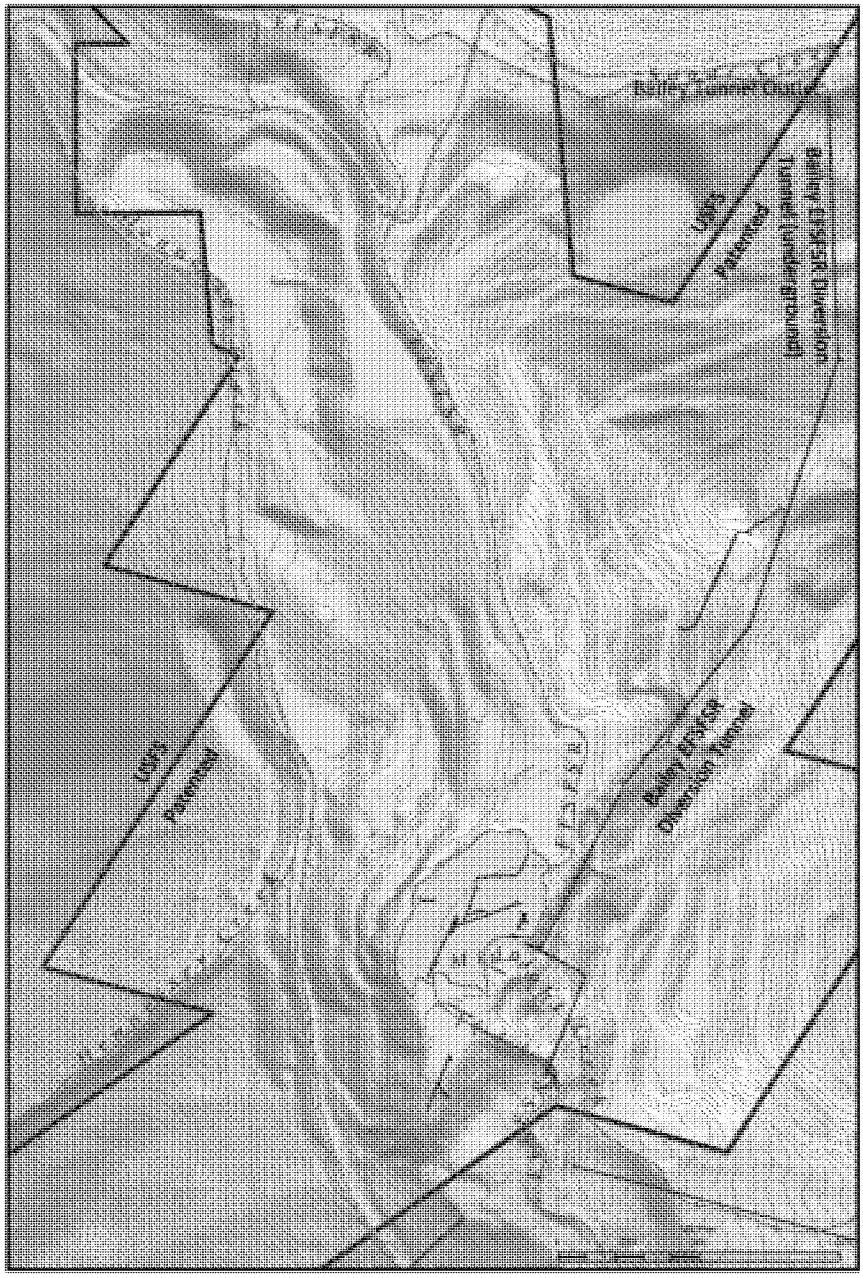

Figure 6 – Bailey Tunnel

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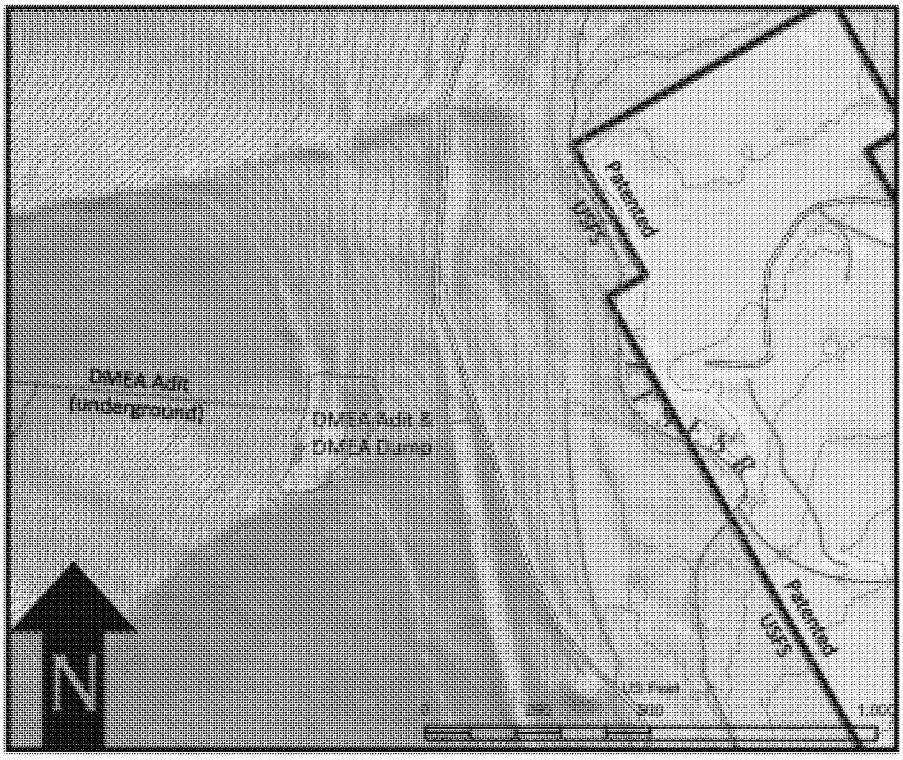


Figure 7 – Defense Minerals Exploration Administration Adit and Waste Rock Dump

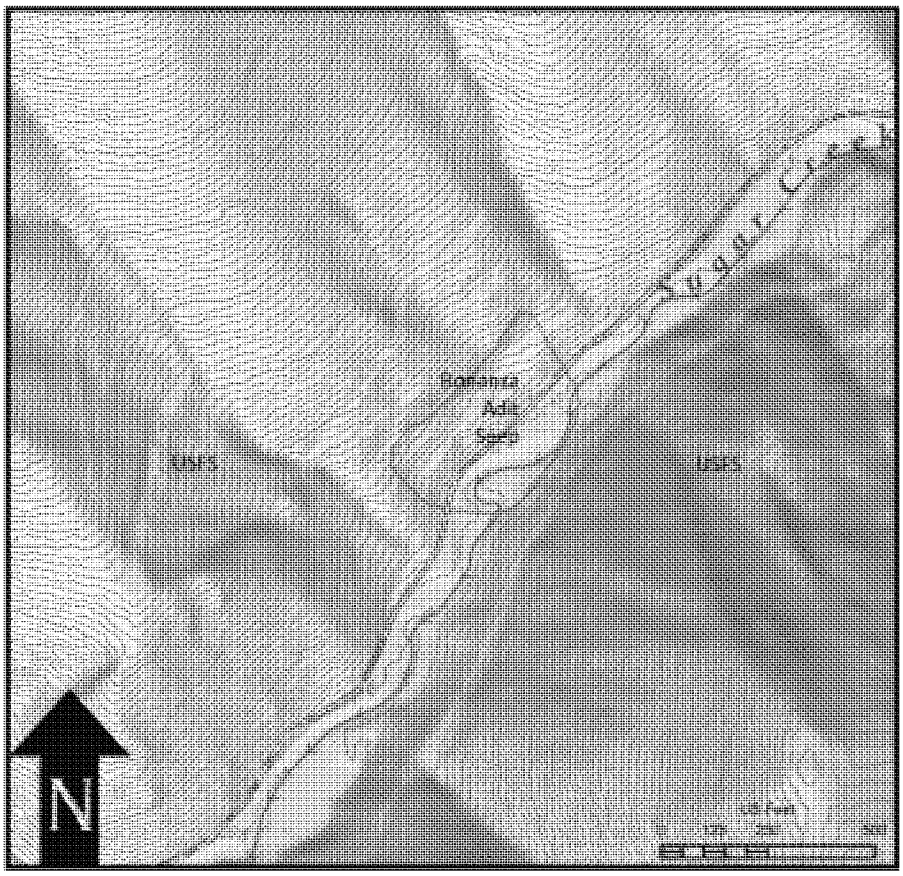


Figure 8 – Bonanza Adit

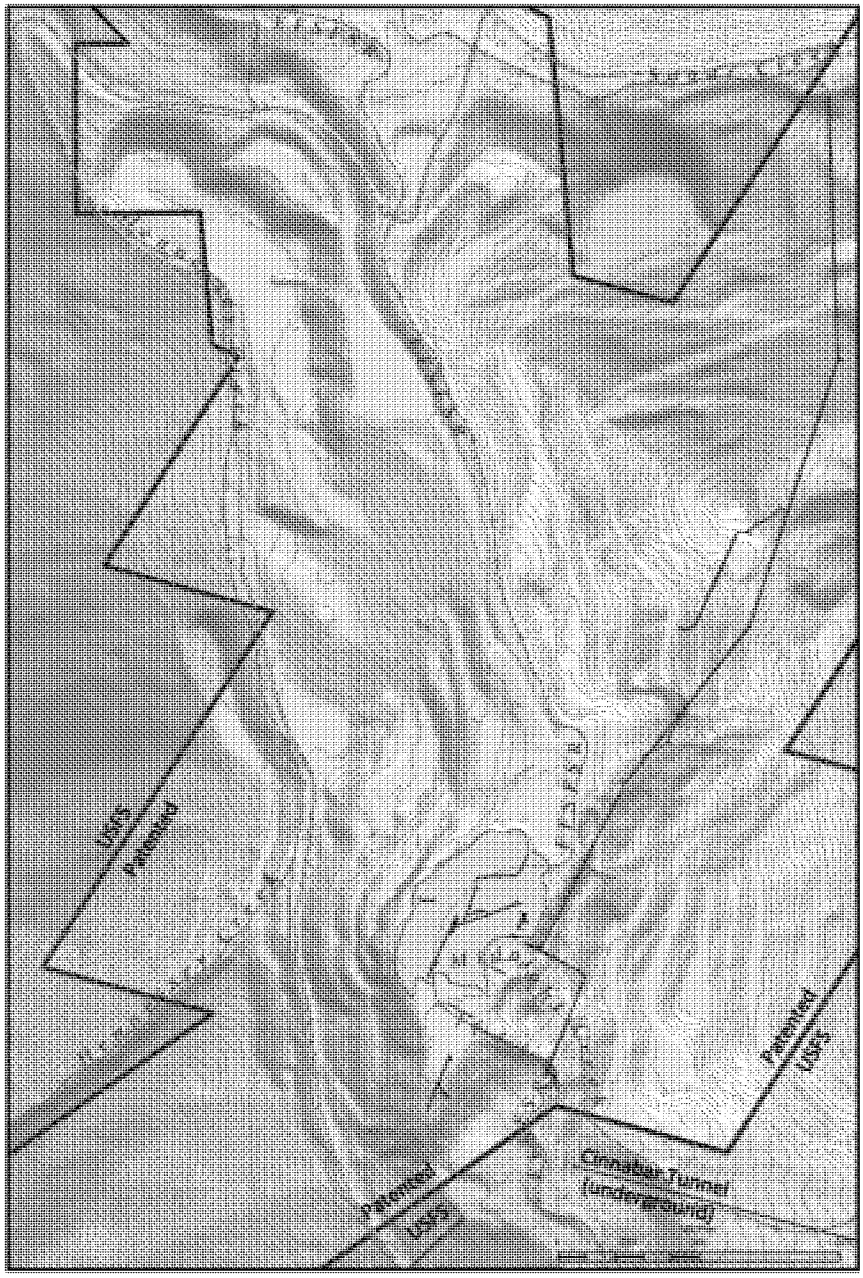


Figure 9 – Cinnabar Tunnel

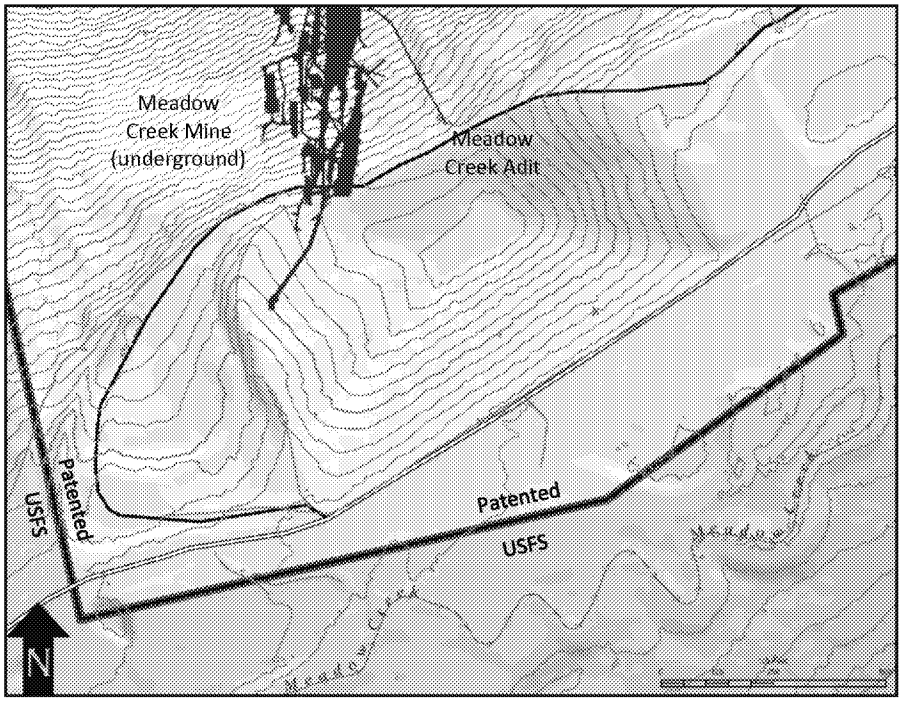


Figure 10 – Meadow Creek Adit

Message

From: Austin Zinsser [zinsser@midasgoldinc.com]
Sent: 8/6/2019 7:47:29 PM
To: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: RE: USGS data
Attachments: 2019-08-06_USGS_Data.not_zip

Try this one, it's a zip…

From: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Sent: Tuesday, August 6, 2019 1:44 PM
To: Austin Zinsser <zinsser@midasgoldinc.com>
Subject: RE: USGS data

It got delete since it had a .zip extension. I think if you save it with a different extension then I can change it back and open it.

Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1
Phone: 206-553-2589

From: Austin Zinsser <zinsser@midasgoldinc.com>
Sent: Tuesday, August 06, 2019 12:42 PM
To: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Cc: John Meyer <JMeyer@midasgoldcorp.com>; L. Michael Bogert <mbogert@midasgoldinc.com>
Subject: RE: USGS data

Kathy-
Attached is a zip file with provisional and final USGS presentations on the stibnite synoptic study as well as the final publication. USGS has done other work on site, specifically on the mineral endowment and deposit paragenesis. Let me know if this is what you are looking for or if you need anything else.
Thanks,
Austin

From: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Sent: Tuesday, August 6, 2019 8:45 AM
To: Austin Zinsser <zinsser@midasgoldinc.com>
Subject: FW: USGS data

Looks like John is out. Can you send me the USGS data/reports for Stibnite?

Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1
Phone: 206-553-2589

From: Cerise, Kathy
Sent: Tuesday, August 06, 2019 7:44 AM
To: John Meyer <JMeyer@midasgoldcorp.com>
Cc: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: USGS data

Good Morning John,

Can you send me the USGS data /reports on Stibnite?

Thanks

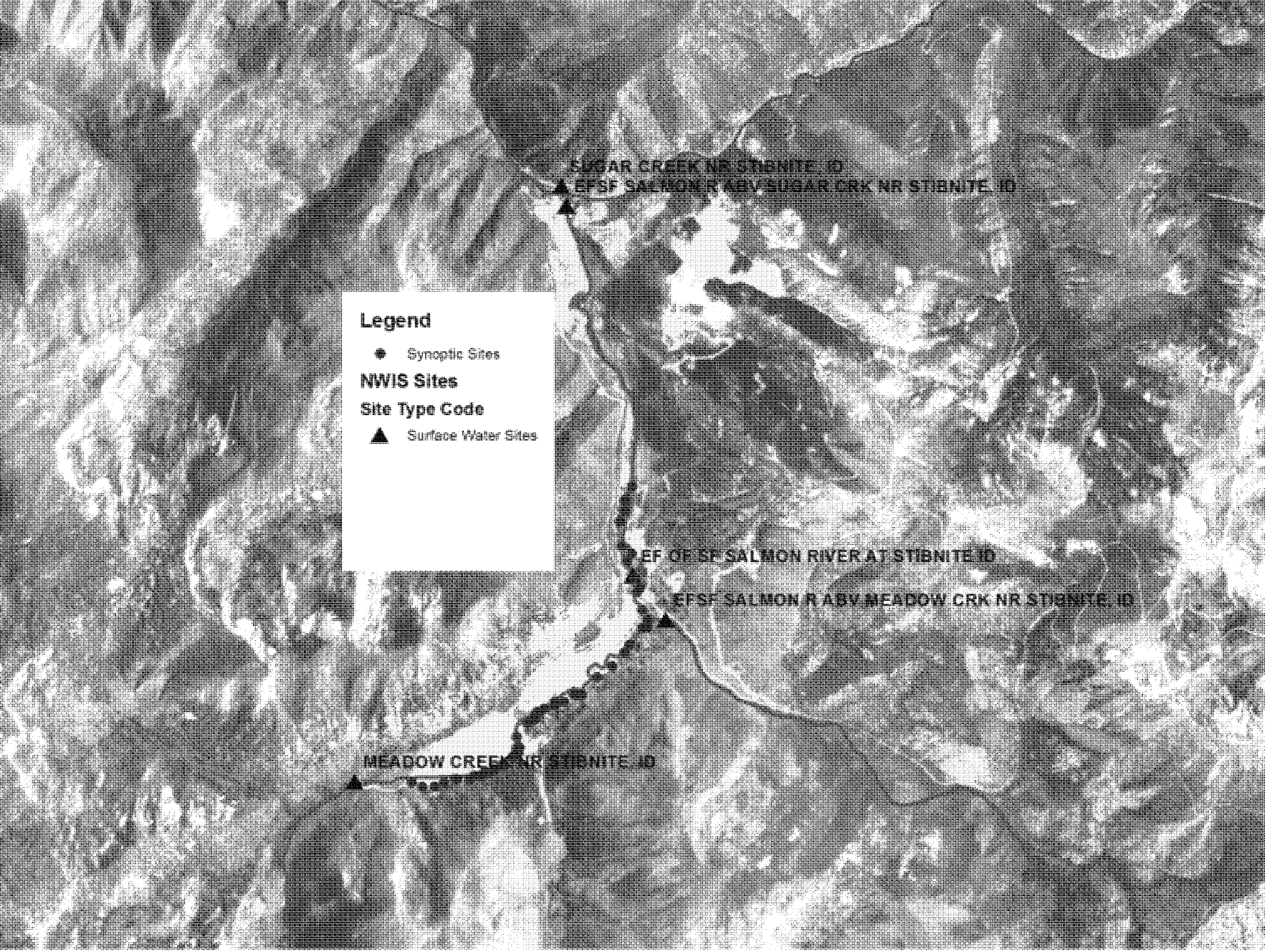
Kathy

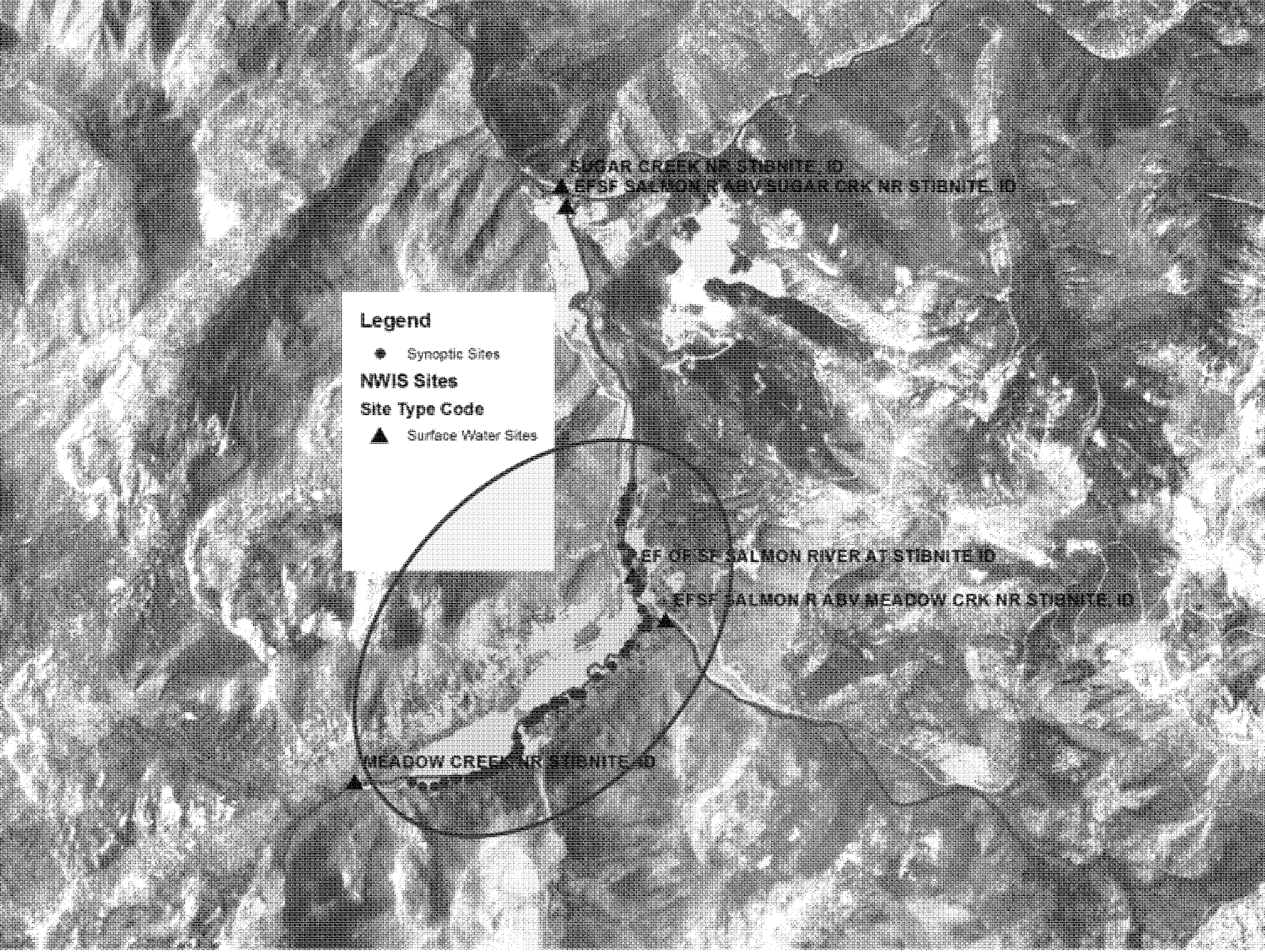
Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1
Phone: 206-553-2589

Loading Trends from Stibnite Synoptic

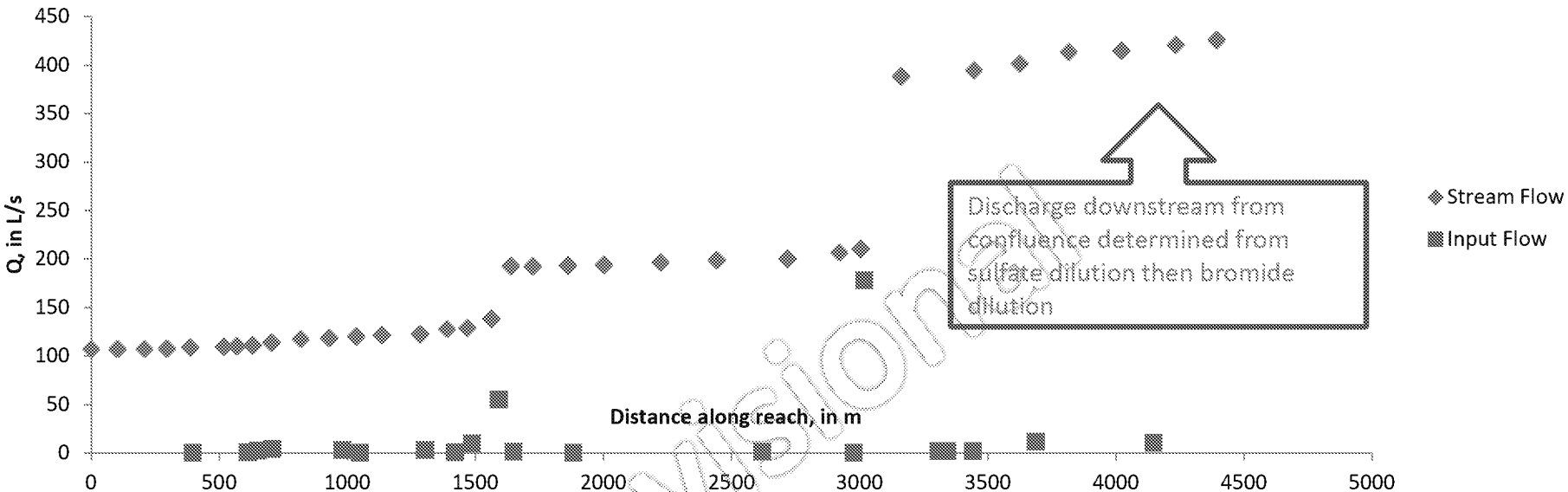
Sept 22, 2011

Candice Adkins
U. S. Geological Survey
cadkins@usgs.gov


SUGAR CREEK NR STIBNITE, ID
EFSF SALMON R ABV SUGAR CRK NR STIBNITE, ID
Legend
Synoptic Sites
NWIS Sites
Site Type Code
Surface Water Sites
EF OF SF SALMON RIVER AT STIBNITE ID
EFSF SALMON R ABV MEADOW CRK NR STIBNITE, ID
MEADOW CREEK NR STIBNITE, ID


SUGAR CREEK NR STIBNITE, ID
EFSF SALMON R ABV SUGAR CRK NR STIBNITE, ID
Legend
Synoptic Sites
NWIS Sites
Site Type Code
Surface Water Sites
EF OF SF SALMON RIVER AT STIBNITE ID
EFSF SALMON R ABV MEADOW CRK NR STIBNITE, ID
MEADOW CREEK NR STIBNITE, ID

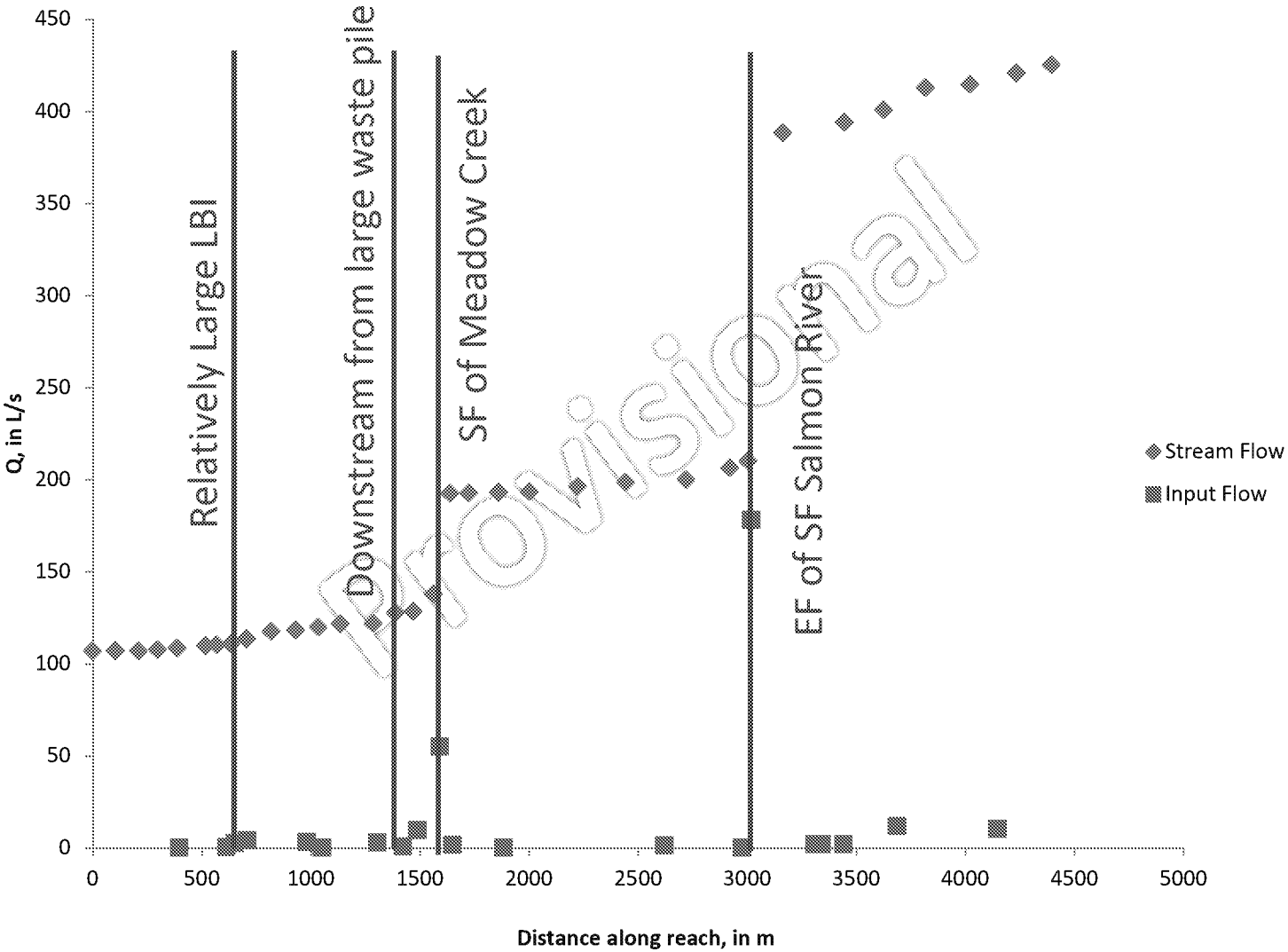
Stream Hydrodynamics Identified by Salt Tracer



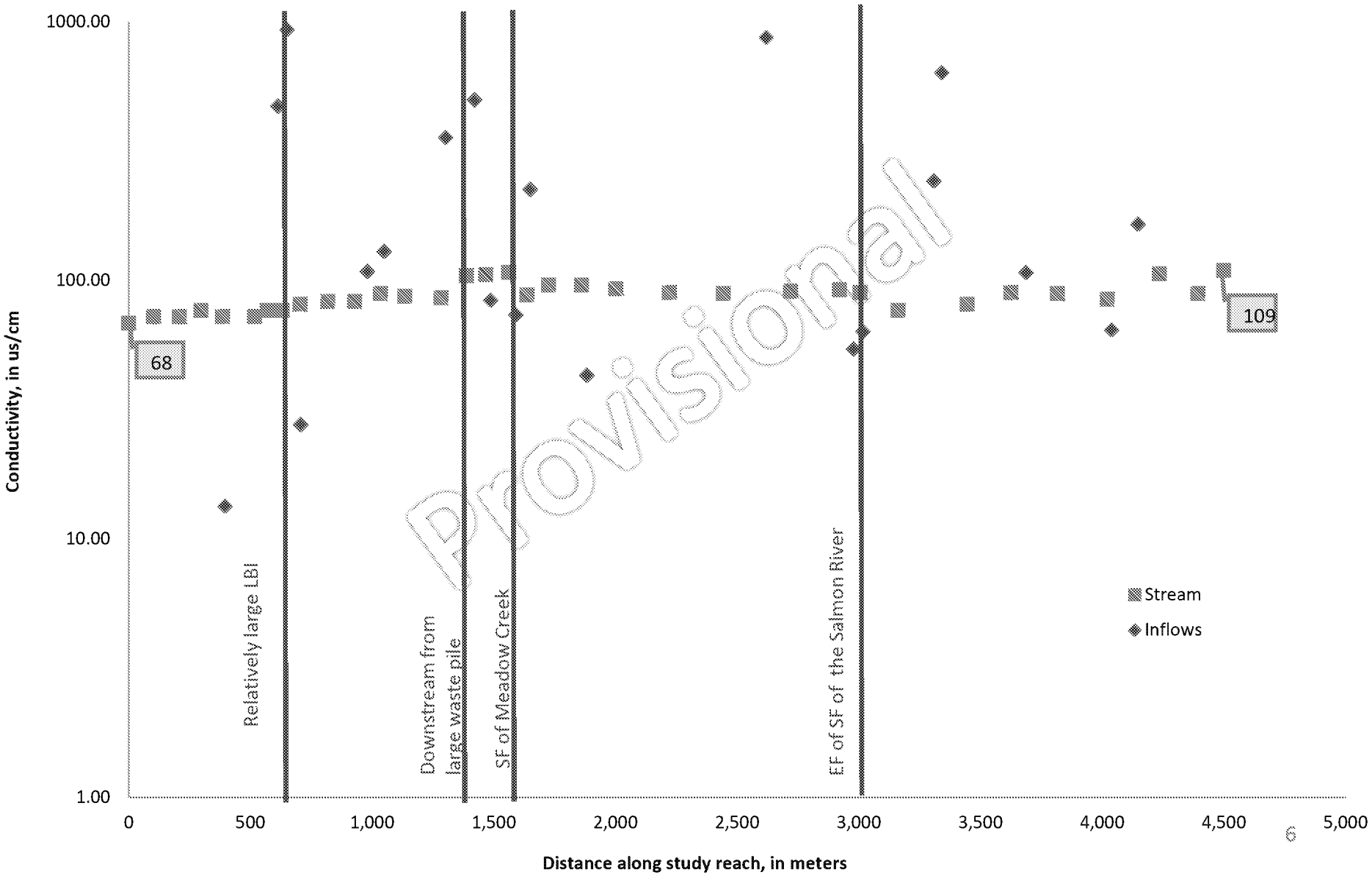
Provisional

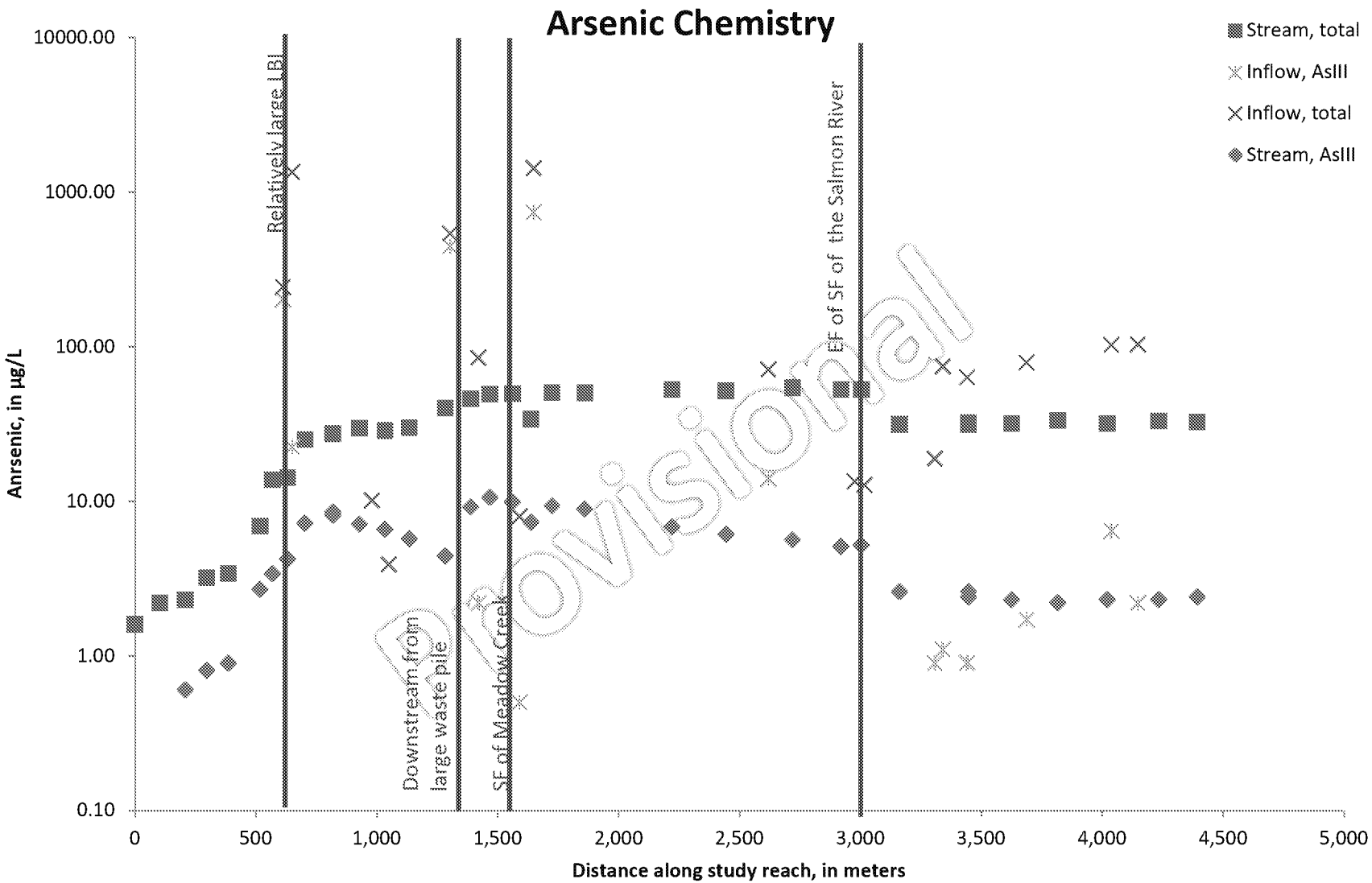
- Salt tracers provide a clear signal of flow
- We are able to see two larger inflows and many smaller inflows along Meadow Creek

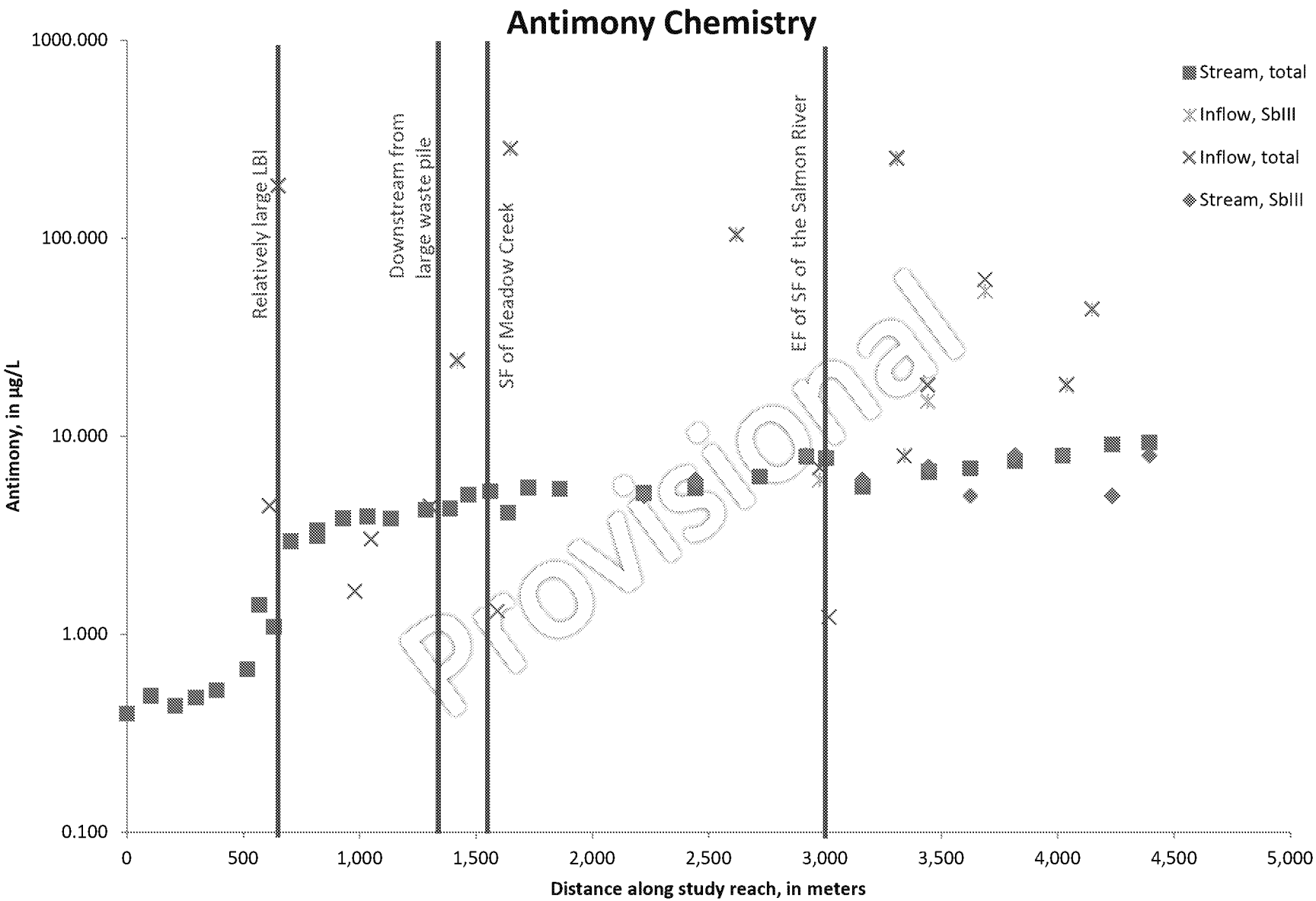
Significant Inflows

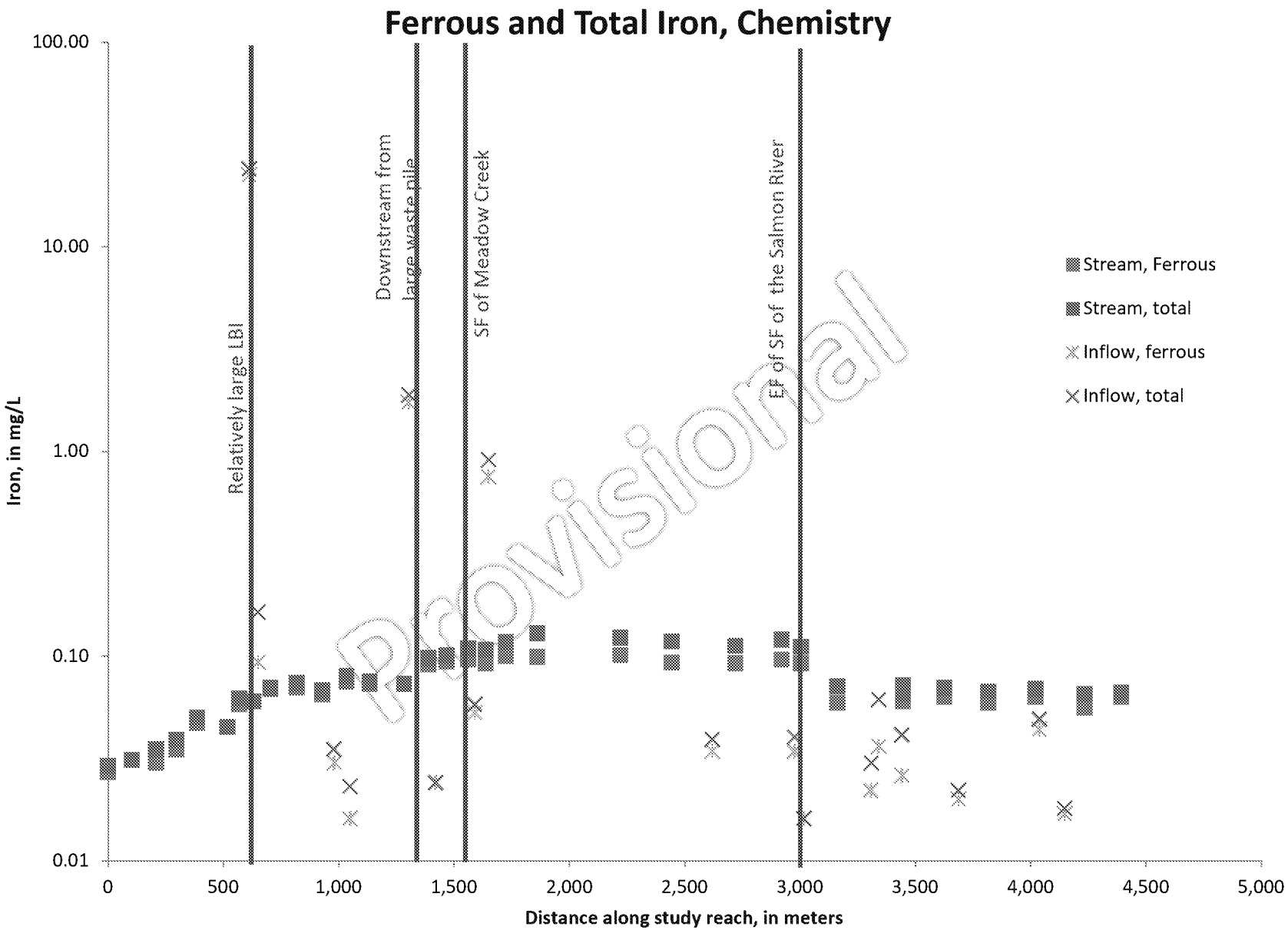


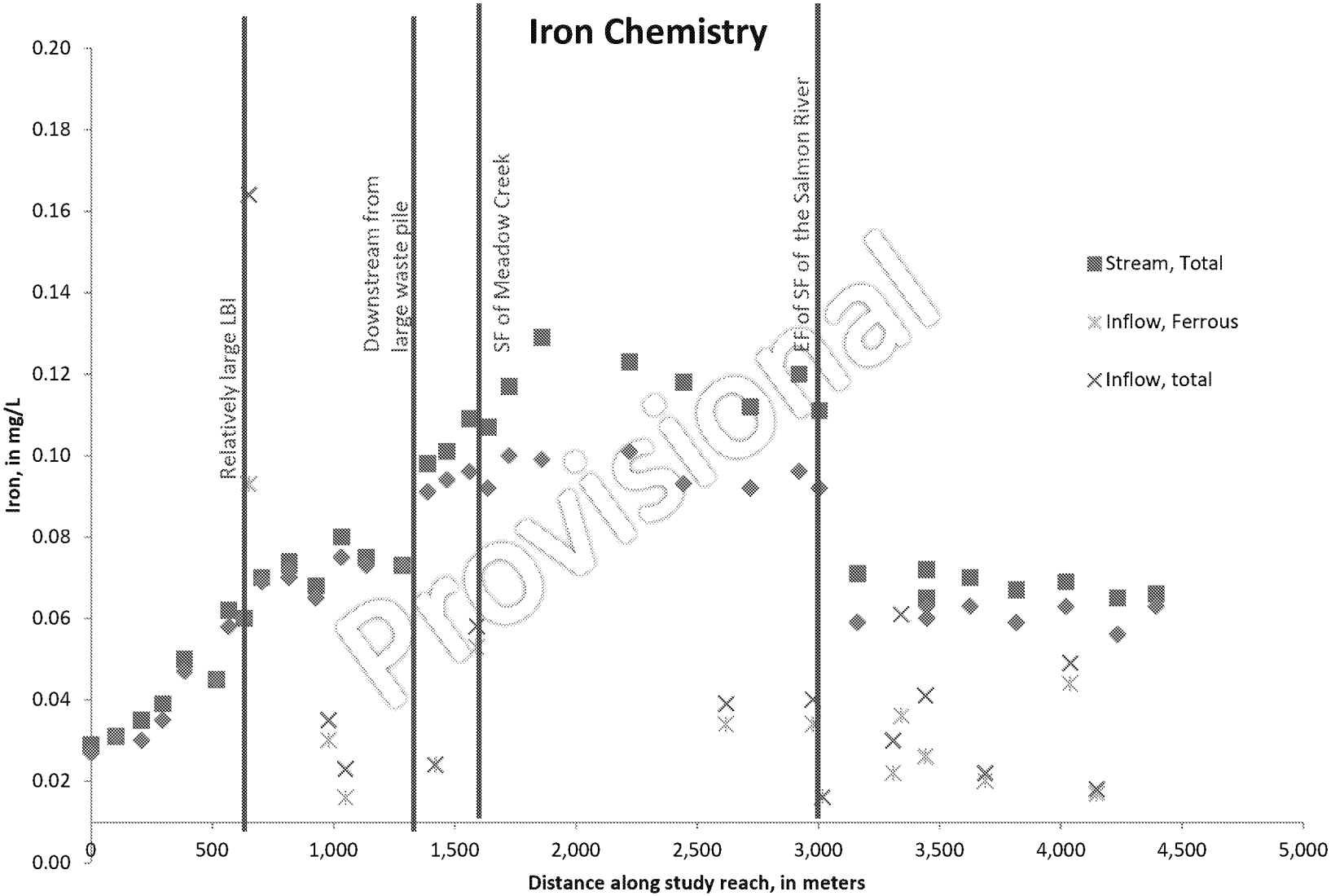
Change in Conductivity along Study Reach




Arsenic Chemistry
Stream, total
Inflow, AsIII
Inflow, total
Stream, AsIII
Anrsenic, in µg/L
10000.00
1000.00
100.00
10.00
1.00
0.10
0
500
1,000
1,500
2,000
2,500
3,000
3,500
4,000
4,500
5,000
Distance along study reach, in meters
Relatively large LBL
Downstream from large waste pile
SF of Meadow Creek
EF of SF of the Salmon River
Provisional

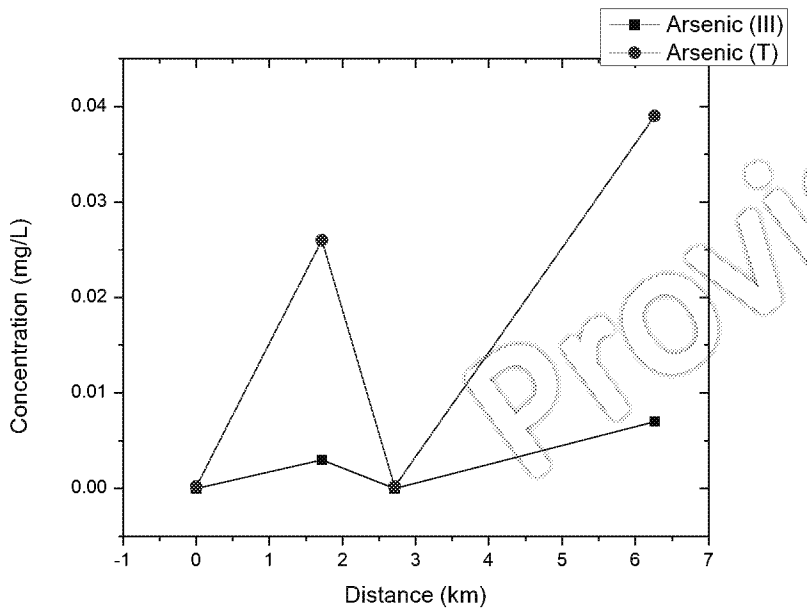

Antimony Chemistry
Antimony, in µg/L
1000.000
100.000
10.000
1.000
0.100
0
500
1,000
1,500
2,000
2,500
3,000
3,500
4,000
4,500
5,000
Distance along study reach, in meters
Relatively large LBI
Downstream from large waste pile
SF of Meadow Creek
EF of SF of the Salmon River
Stream, total
Inflow, SbIII
Inflow, total
Stream, SbIII
Provisional

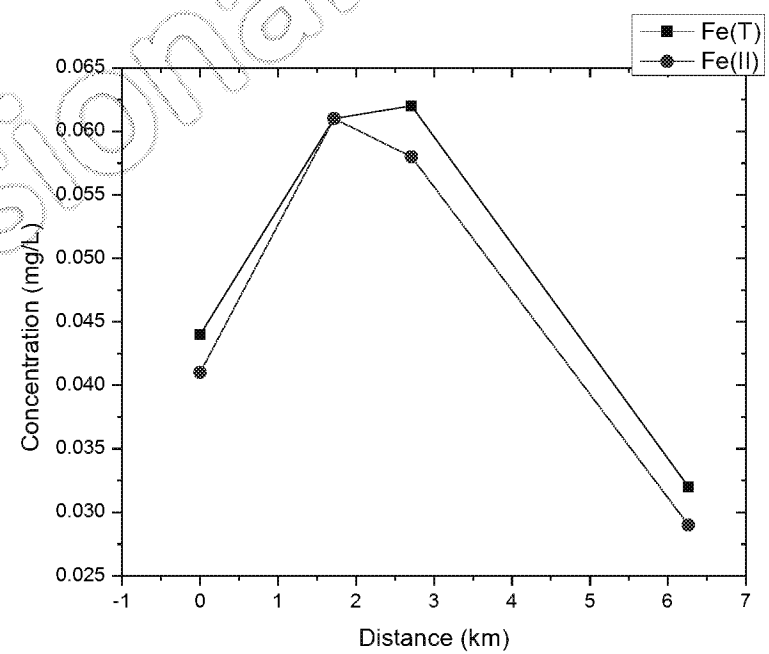

Ferrous and Total Iron, Chemistry
100.00
10.00
1.00
0.10
0.01
Iron, in mg/L
0
500
1,000
1,500
2,000
2,500
3,000
3,500
4,000
4,500
5,000
Distance along study reach, in meters
Relatively large LBI
Downstream from large waste pile
SF of Meadow Creek
EF of SF of the Salmon River
Stream, Ferrous
Stream, total
Inflow, ferrous
Inflow, total
Provisional


Iron Chemistry
Relatively large LBI
Downstream from large waste pile
SF of Meadow Creek
EF of SF of the Salmon River
Stream, Total
Inflow, Ferrous
Inflow, total
Iron, in mg/L
0.20
0.18
0.16
0.14
0.12
0.10
0.08
0.06
0.04
0.02
0.00
0
500
1,000
1,500
2,000
2,500
3,000
3,500
4,000
4,500
5,000
Distance along study reach, in meters
Provisional

Nordstrom's Findings

- Found small amount of aluminum, antimony, arsenic, and iron coming into Meadow Creek from the tailings pile
- Some arsenic is taken out by the iron in the swamps on the south side of the road from the pile
- Lots of arsenic/antimony type iron floc in these pools.

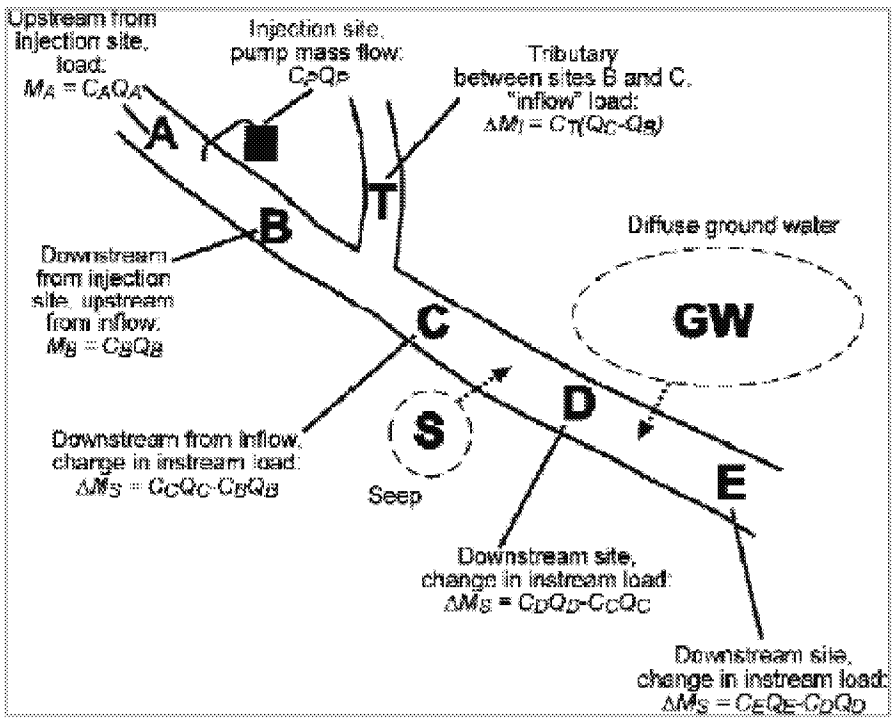




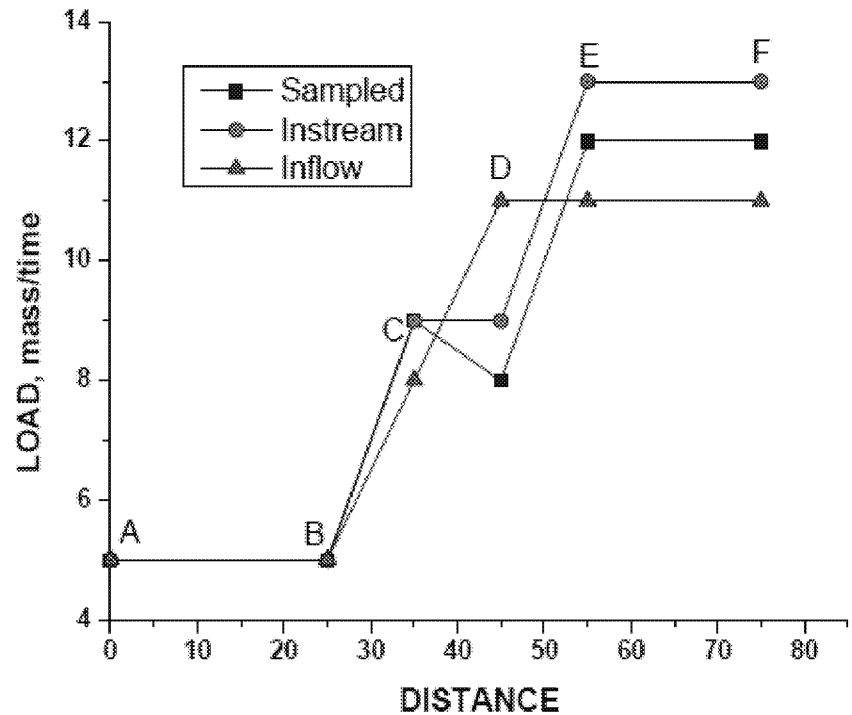
Provisional

Loading Profiles

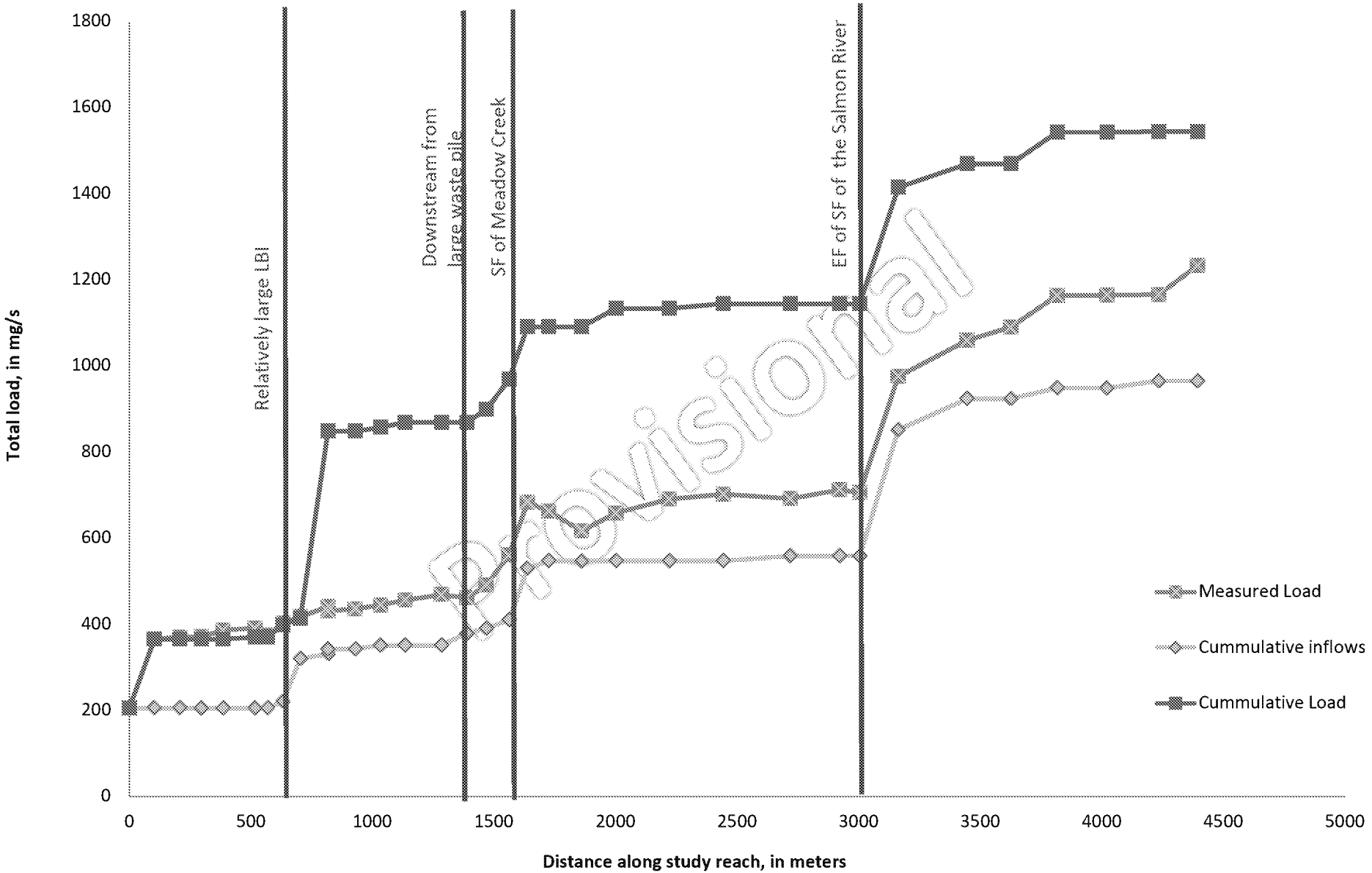
- Loading profiles are available for each individual element



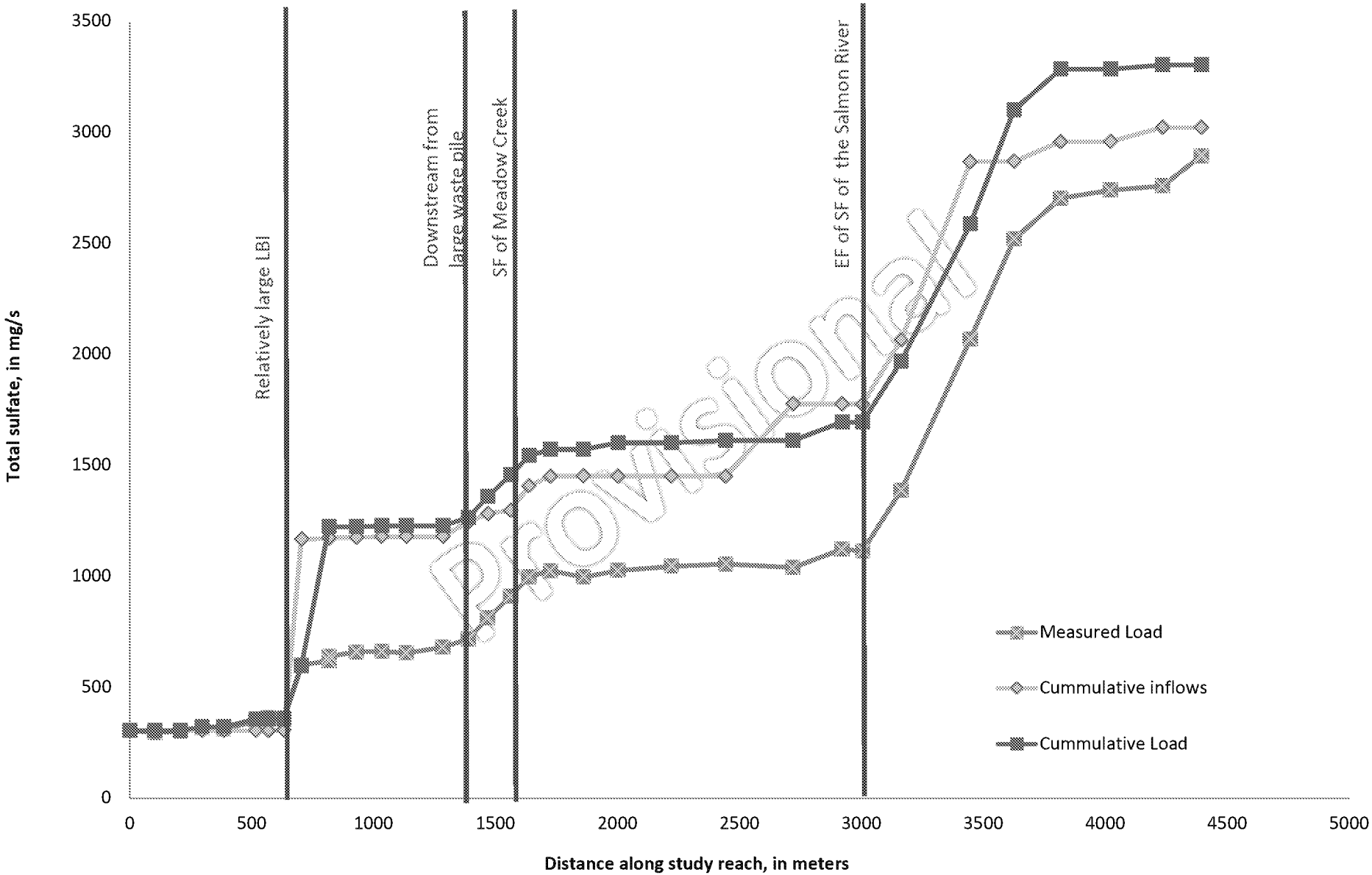
- Sampled in-stream
- Cumulative in-stream
- Cumulative inflow



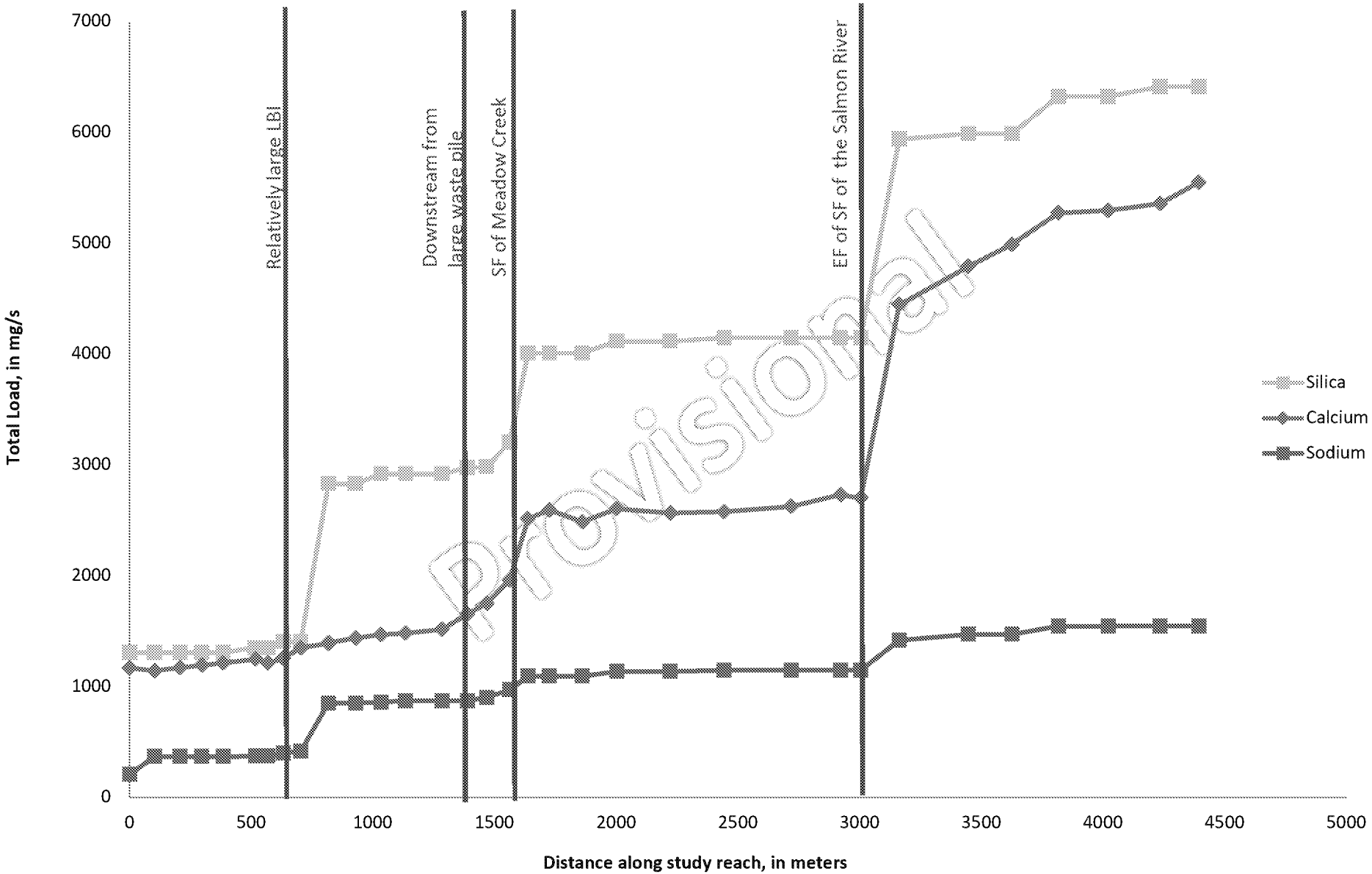
Total Calcium Load Profile

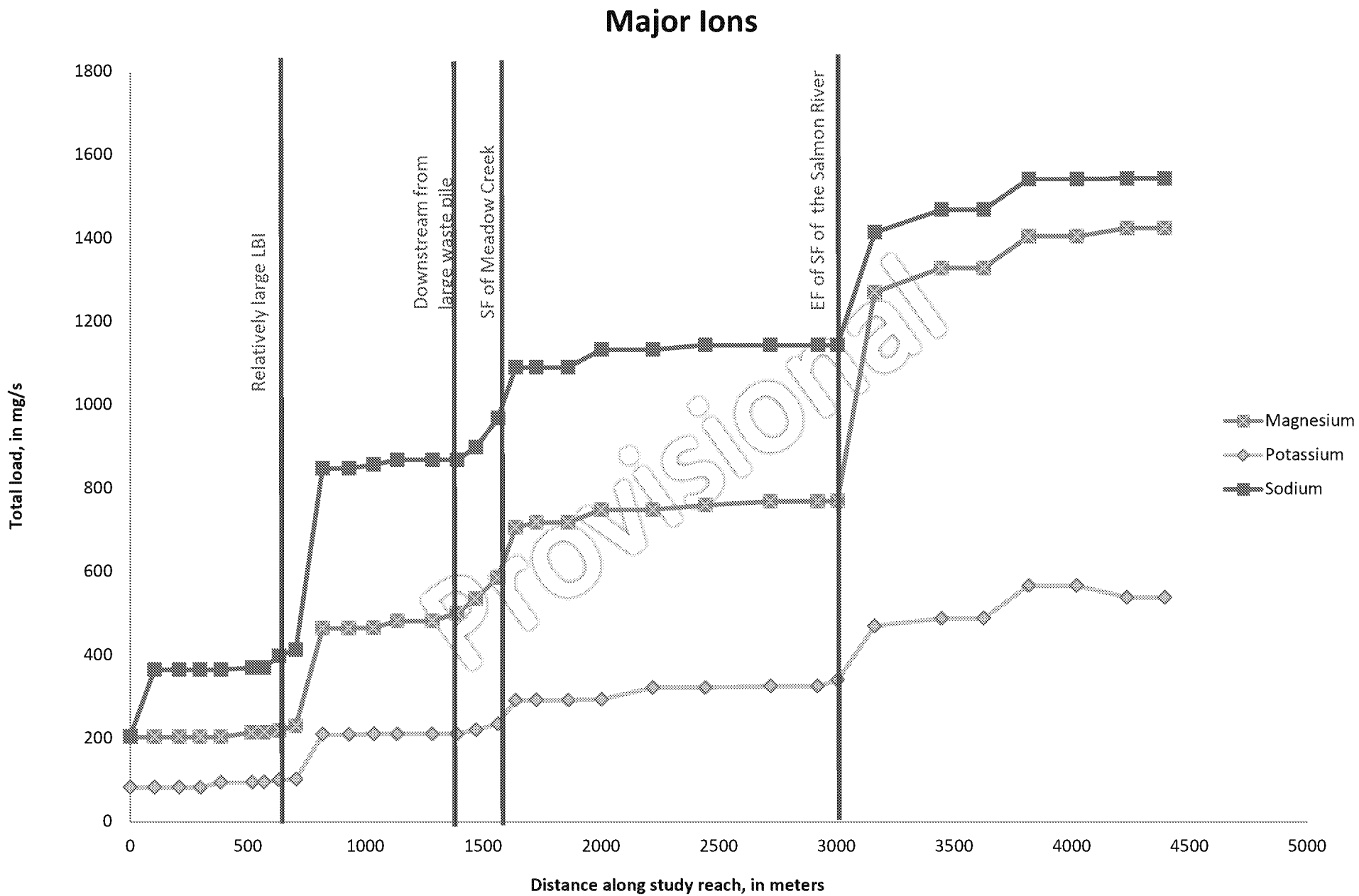


Total sulfate load profile

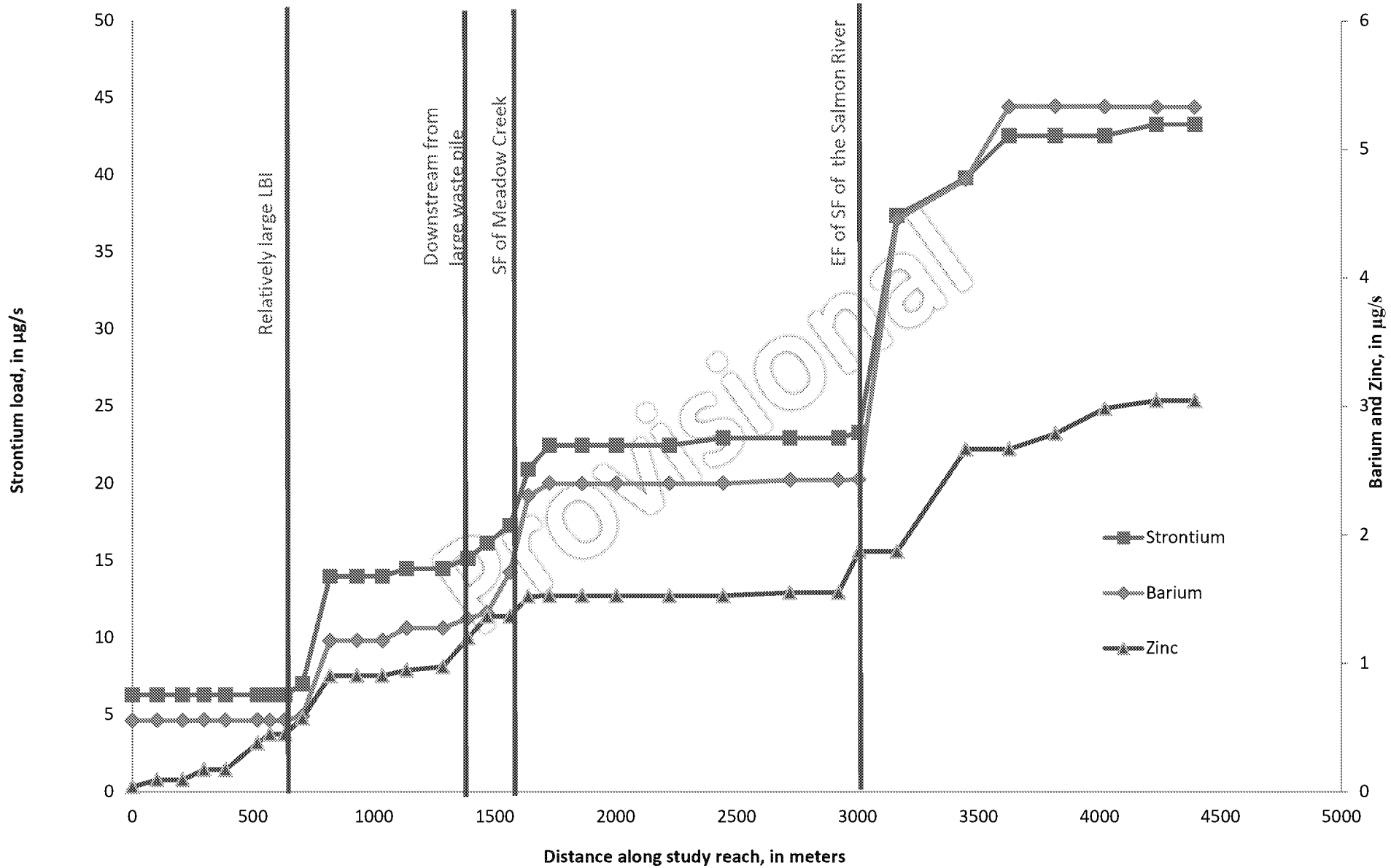


Major Ions


Total Load, in mg/s
7000
6000
5000
4000
3000
2000
1000
0
0
500
1000
1500
2000
2500
3000
3500
4000
4500
5000
Distance along study reach, in meters
Relatively large LBI
Downstream from large waste pile
SF of Meadow Creek
EF of SF of the Salmon River
Silica
Calcium
Sodium
Provisional

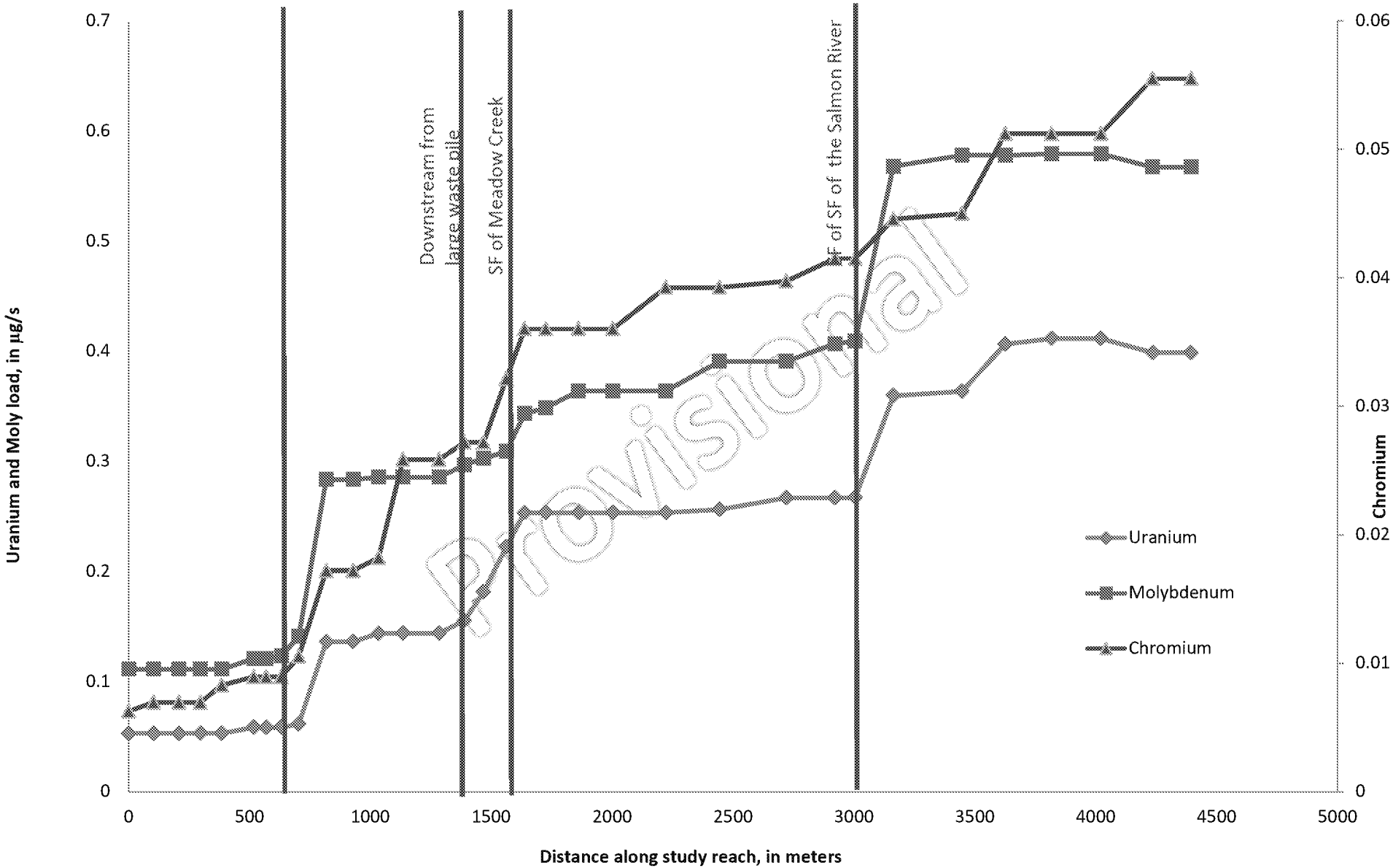

Major Ions
Total load, in mg/s
1800
1600
1400
1200
1000
800
600
400
200
0
0
500
1000
1500
2000
2500
3000
3500
4000
4500
5000
Distance along study reach, in meters
Relatively large LBI
Downstream from large waste pile
SF of Meadow Creek
EF of SF of the Salmon River
Magnesium
Potassium
Sodium
Provisional

Similar trends to Major Ions



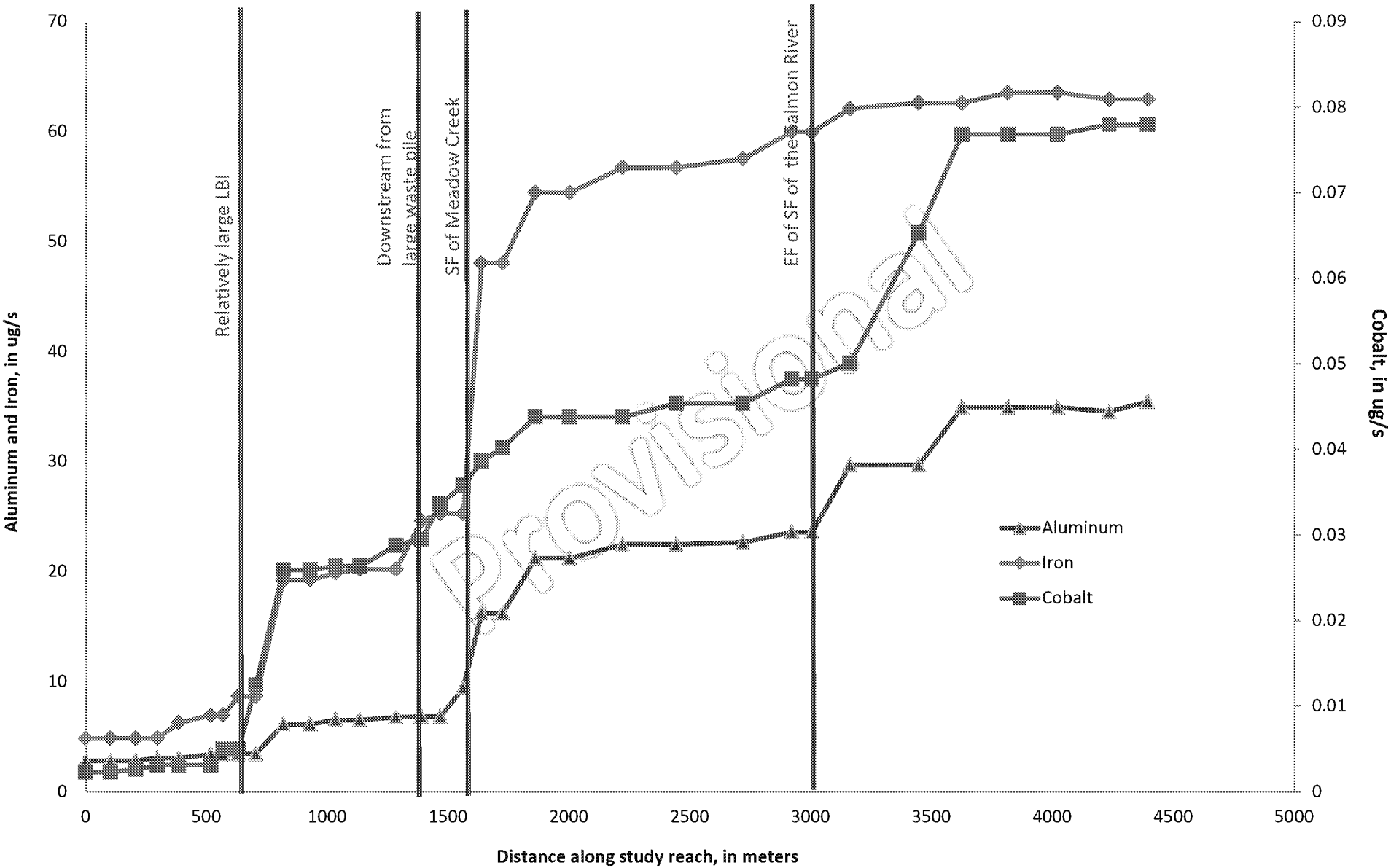
Provisional

Increasing Concentrations downstream from Confluence



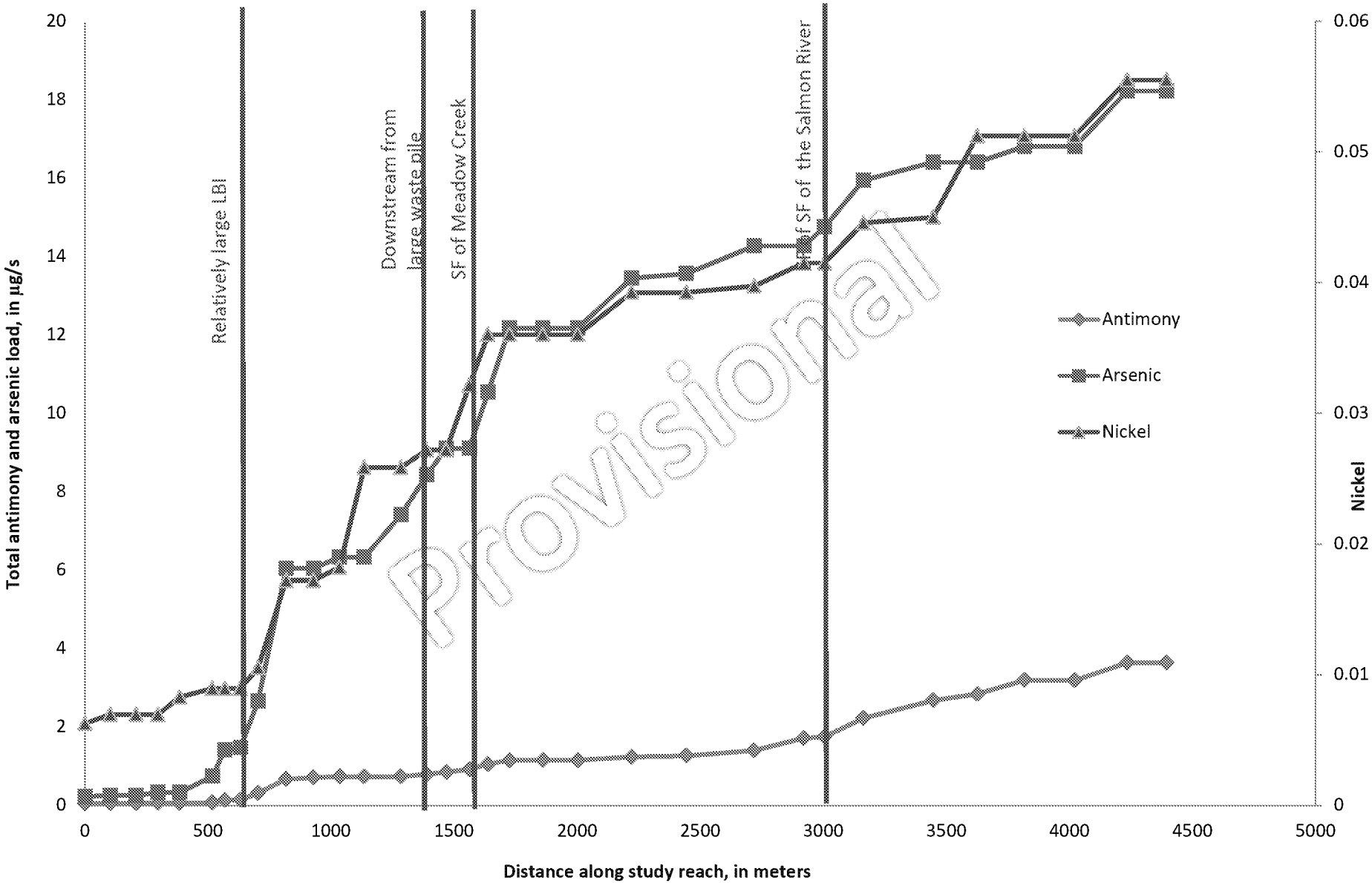
Provisional

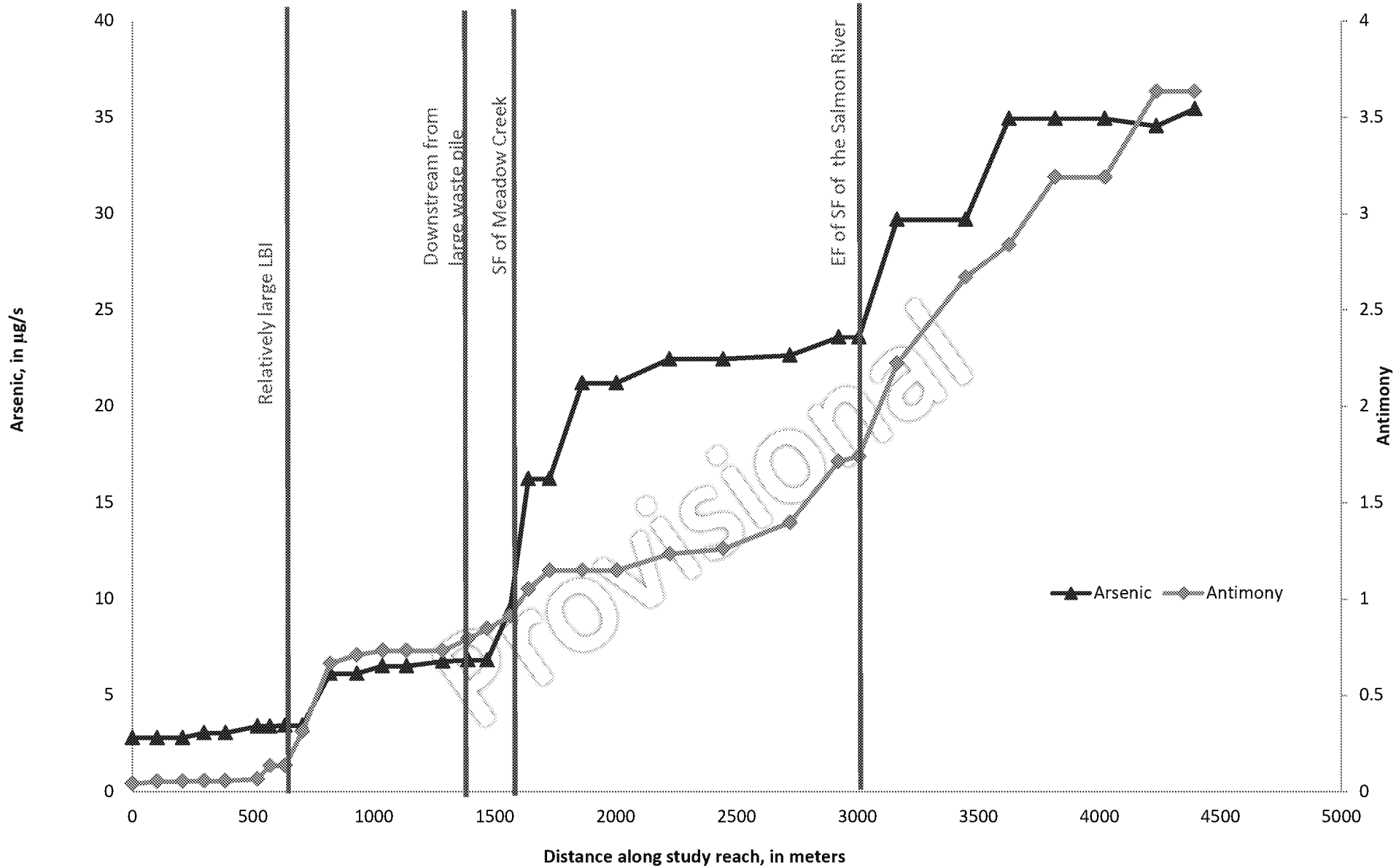
Increasing concentrations not directly associated with surface water inflows



Provisional

Increasing concentrations not directly associated with surface water inflows

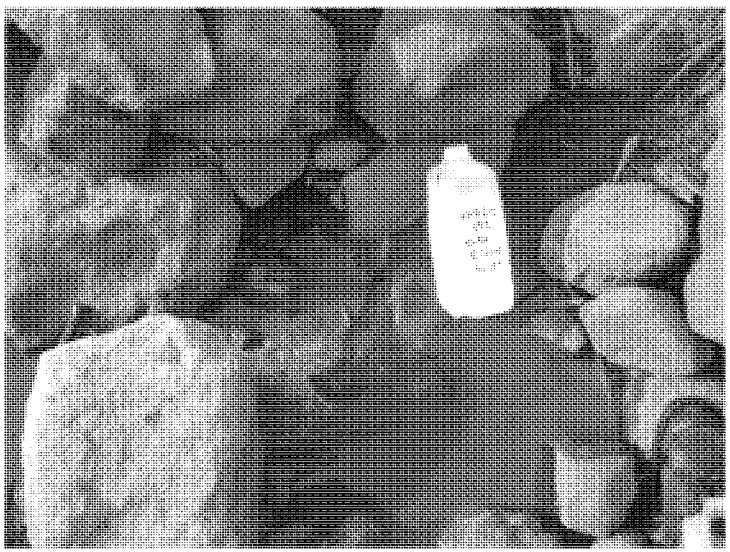




Arsenic loading occurs before SF of Meadow Creek. Antimony loading occurs below EFSF confluence.

Discussion Points

- This synoptic conducted during very low flows—may have not been able to sample important seeps
- Discuss method of delivering data
- Continued work



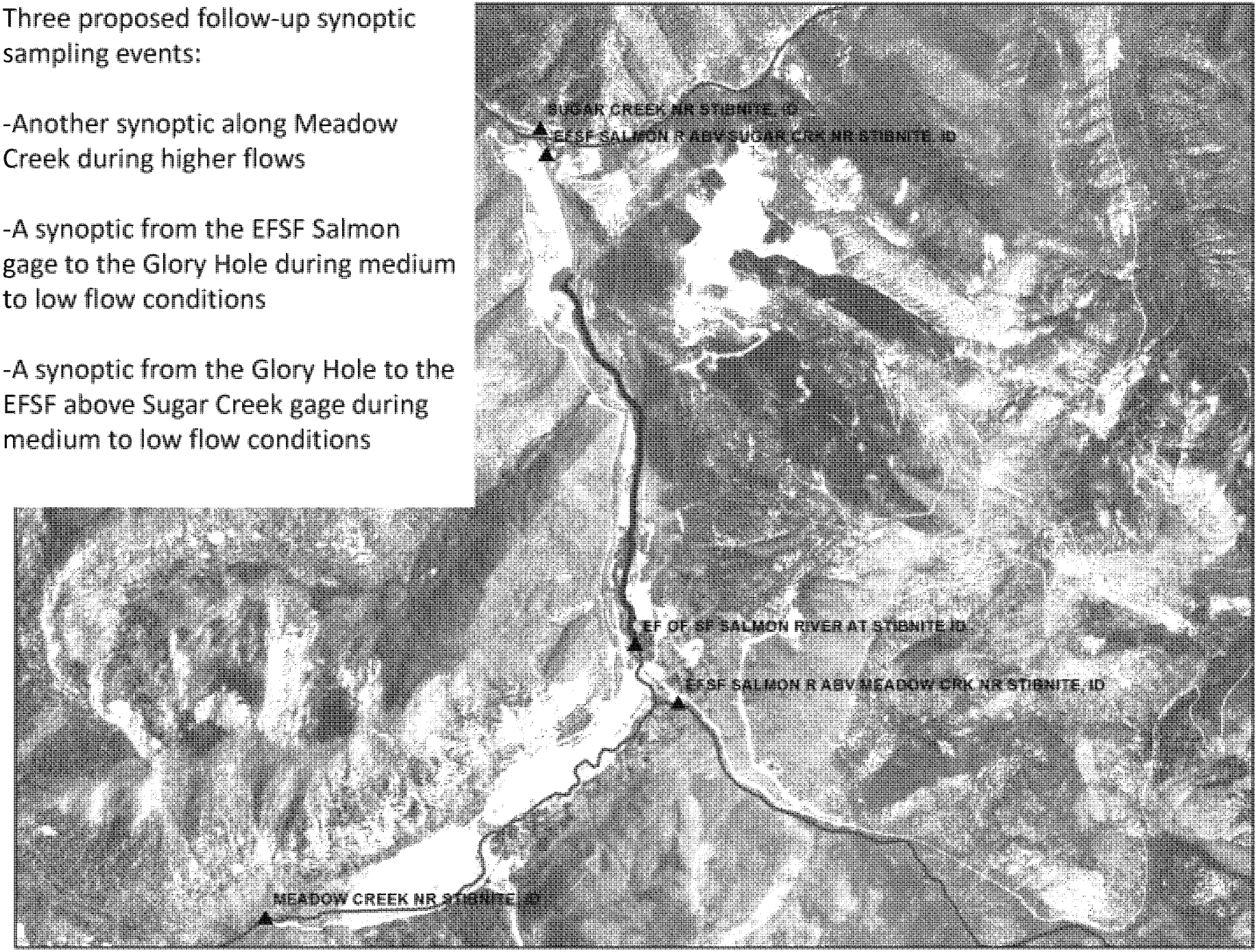
Provisional

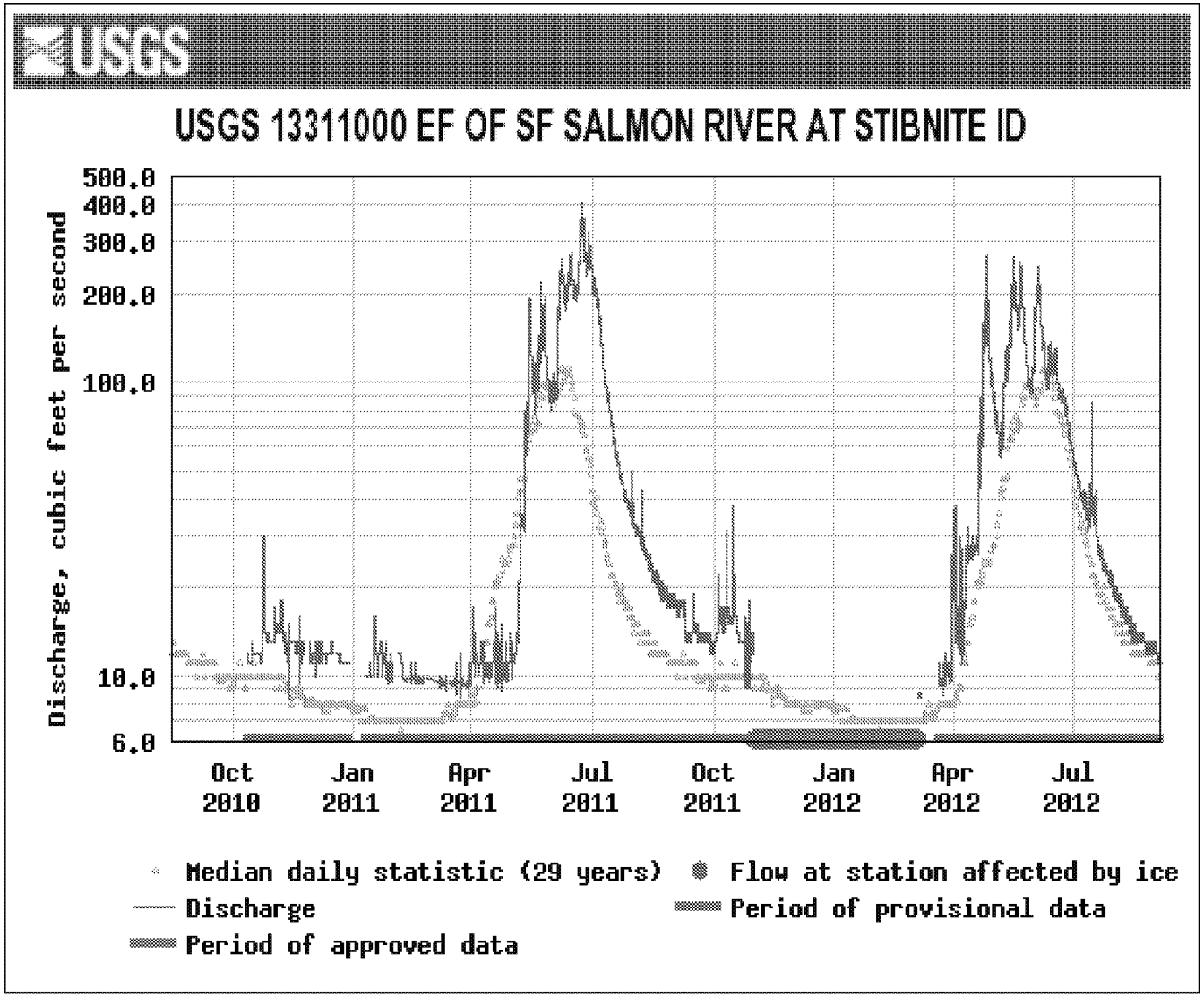
Three proposed follow-up synoptic sampling events:

-Another synoptic along Meadow Creek during higher flows

-A synoptic from the EFSF Salmon gage to the Glory Hole during medium to low flow conditions

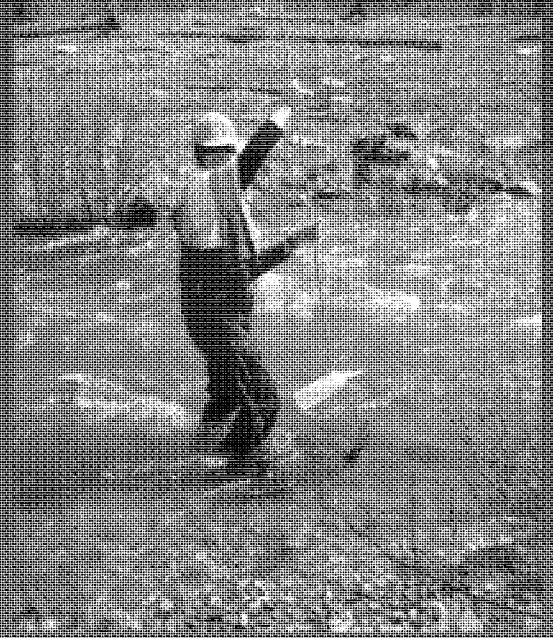
-A synoptic from the Glory Hole to the EFSF above Sugar Creek gage during medium to low flow conditions





- Synoptics can be conducted in up to 50 cfs

Questions?



Water-Quality Monitoring at Stibnite September 2011 – June 2012

September 13, 2012

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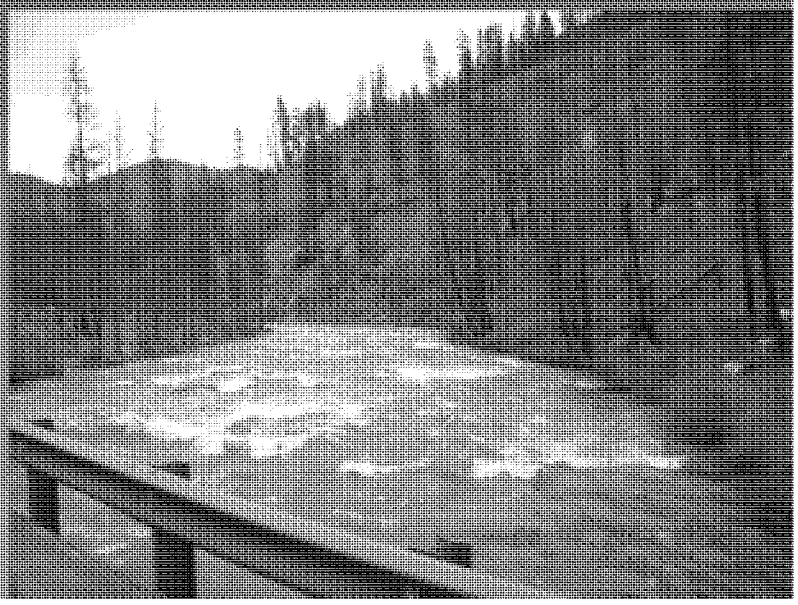
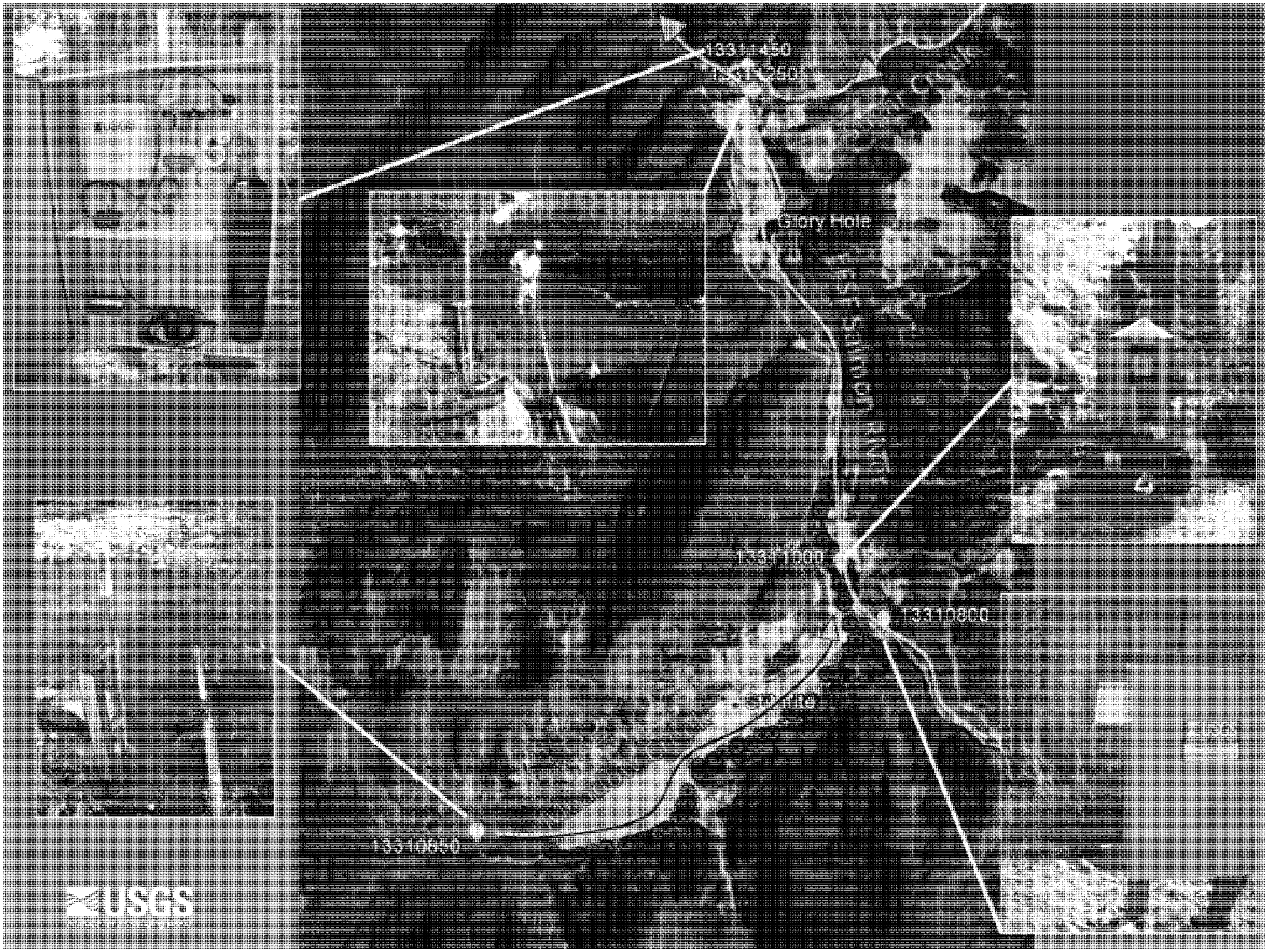
Outline

- Study Area & Data Collection
- Results
- Constituent Loads
- Future Plans



USGS


13311450
13311250
Glory Hole
East Fork Salmon River
13311000
13310800
13310850
USGS

Data Collection

- Five gage sites
- Continuous Stage/Discharge
- Seasonally continuous pH, SC, Temp
- 5 samples per year at each gage site

USGS

Water-Quality Constituents

Filtered & Unfiltered Metals

- Aluminum
- Antimony
- Arsenic
- Barium
- Cadmium
- Calcium
- Chromium
- Cobalt
- Copper
- Mercury (intermittent)
- Iron
- Lead
- Lithium
- Magnesium
- Manganese
- Molybdenum
- Nickel
- Potassium
- Silica
- Sodium
- Strontium
- Uranium
- Vanadium
- Zinc

Total Ions & Water Chemistry

- Acid Neutralizing Capacity
- Bromide
- Calcium
- Chloride
- Fluoride
- Potassium
- Silica
- Sodium
- Sulfate

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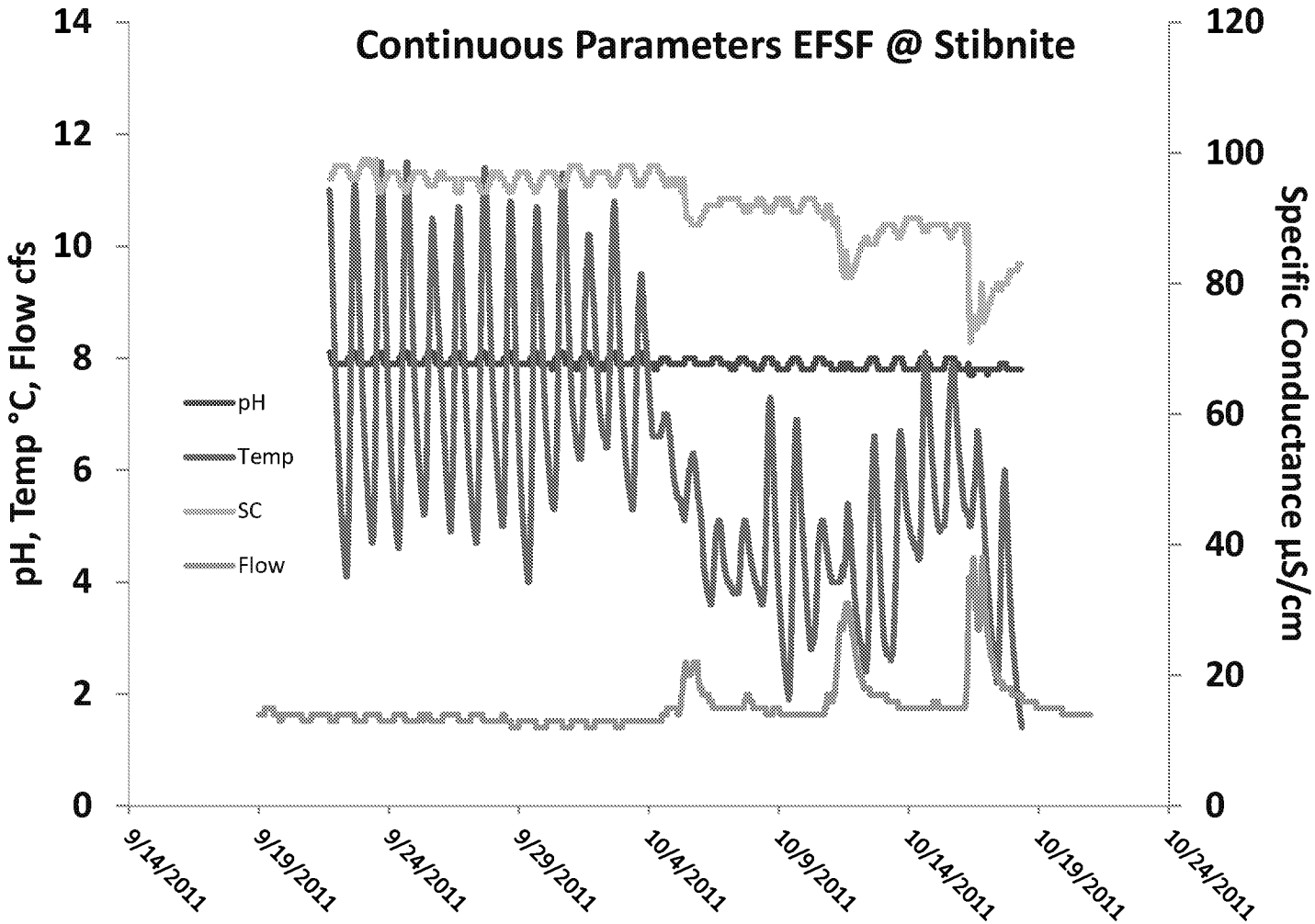
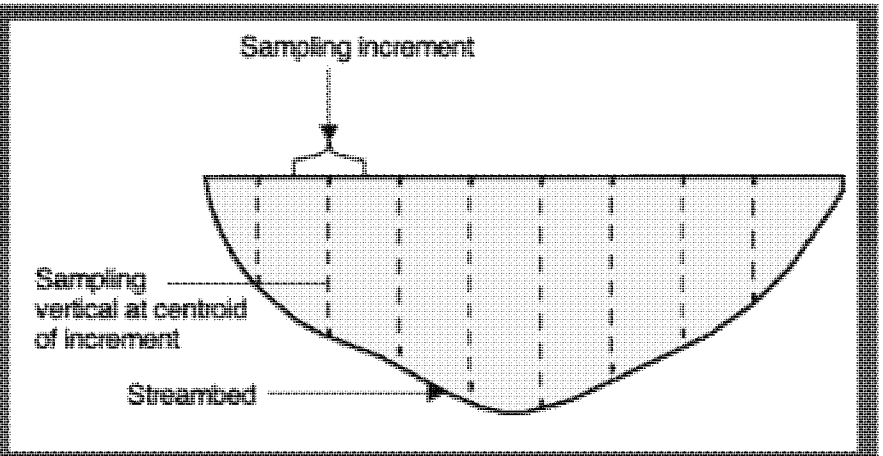
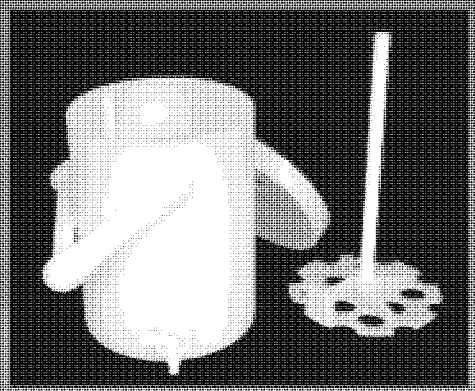
Continuous Water Quality Data



Sampling Methods



- Sample order
- Double-gloved, change b/t collection & process
- Metal-free equipment
- Sheltered processing
- Triple rinse all bottles with sample water
- Triple rinse all equipment with DI water
- Equal width increment at gage sites
- Analyzed grab with EWI - contingency



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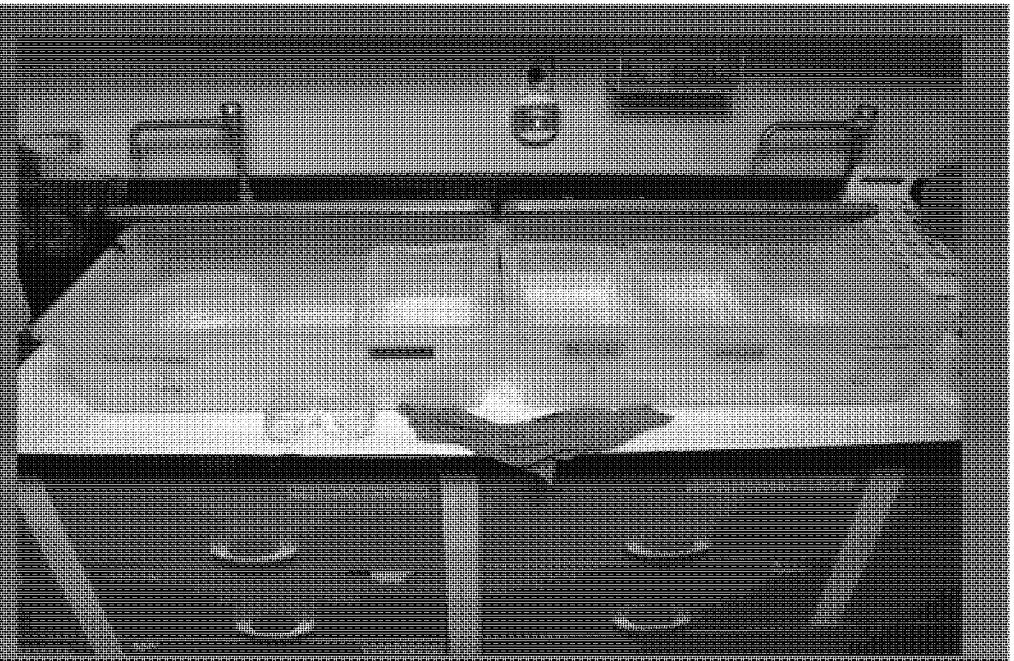
Process Quality Assurance



- Pre-trip acid wash
- Additional churn
- 5 field blanks / year
- 2 to 3 split replicates / year

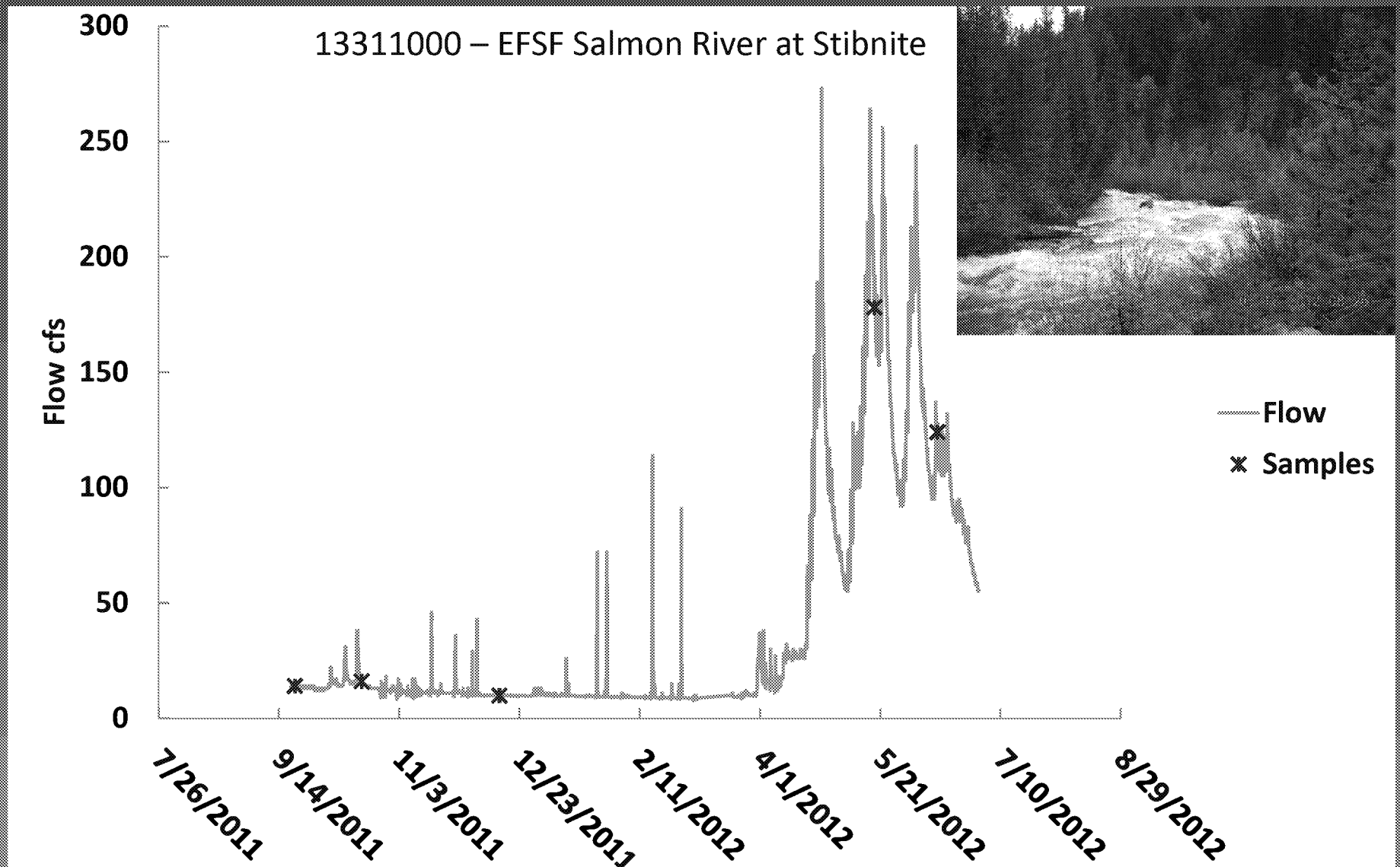
USGS

Quality Assurance Samples FY2012

- Blanks
  - 5 samples collected
  - 260 analytes analyzed
- Splits
  - 2 samples collected

USGS

First Year's Results



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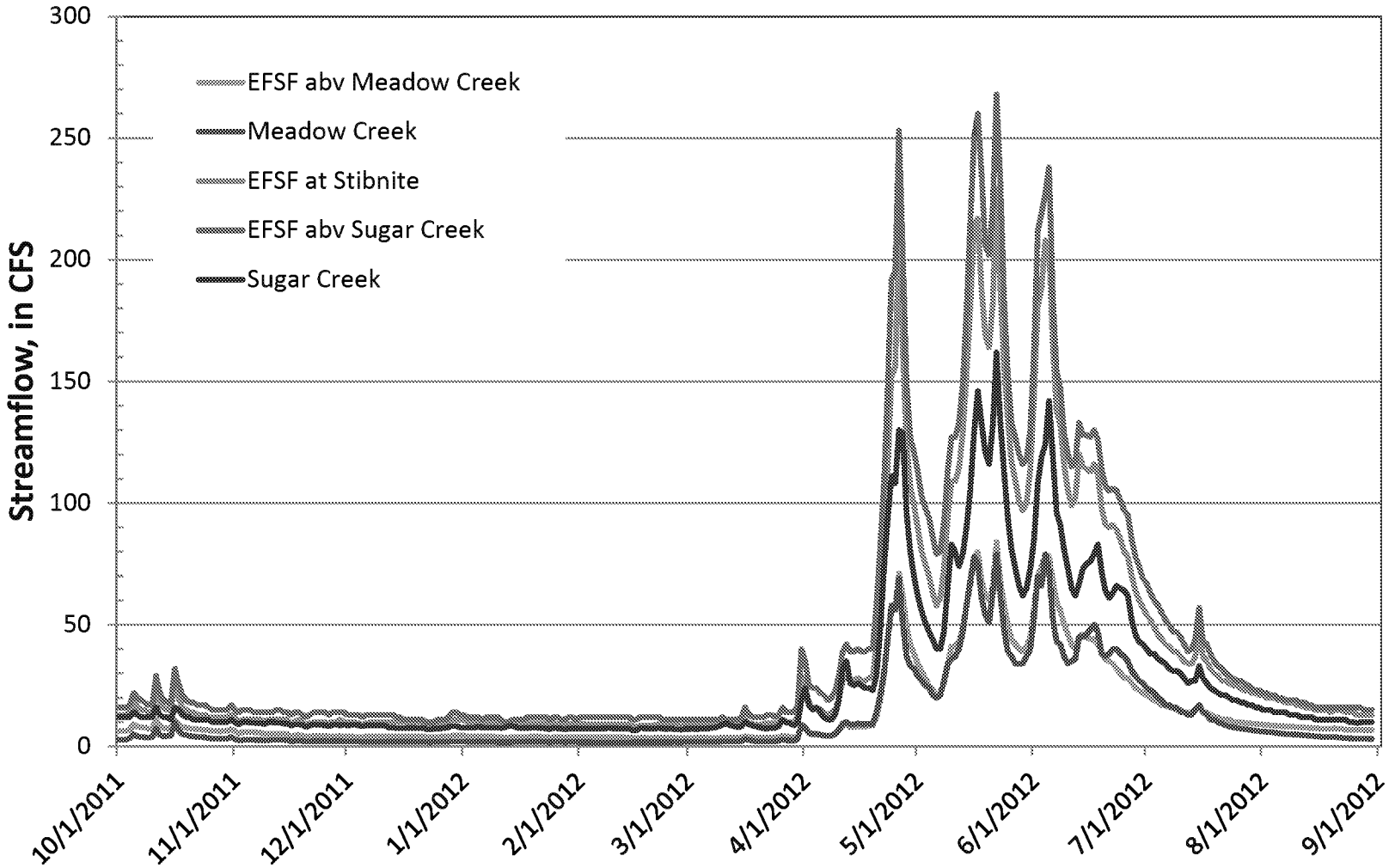
Provisional data – subject to review

Streamflow at Stibnite Mine gaging stations, water year 2012



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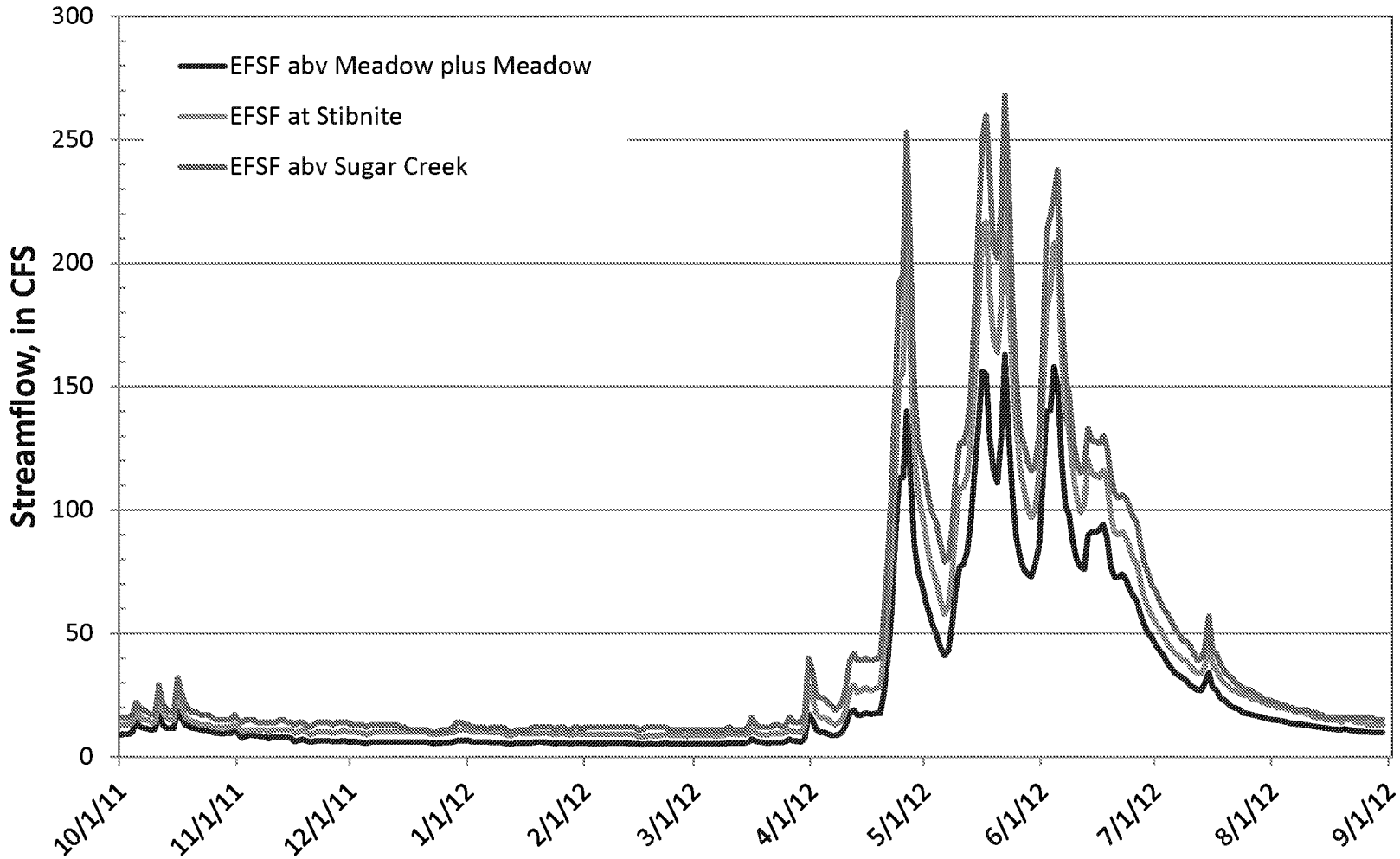
Provisional data – subject to review

Streamflow gains along Meadow Creek and EFSF Salmon River

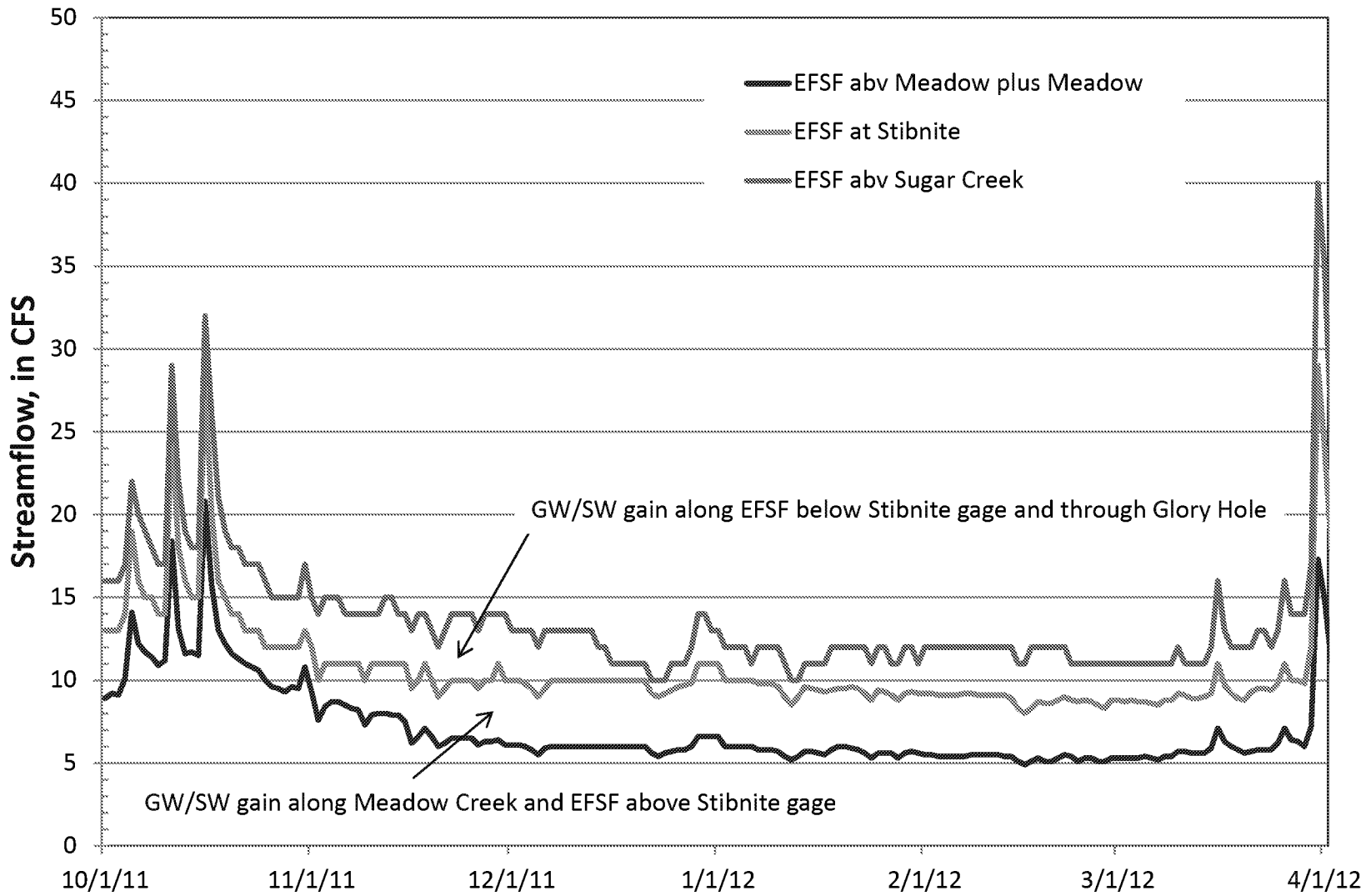


USGS

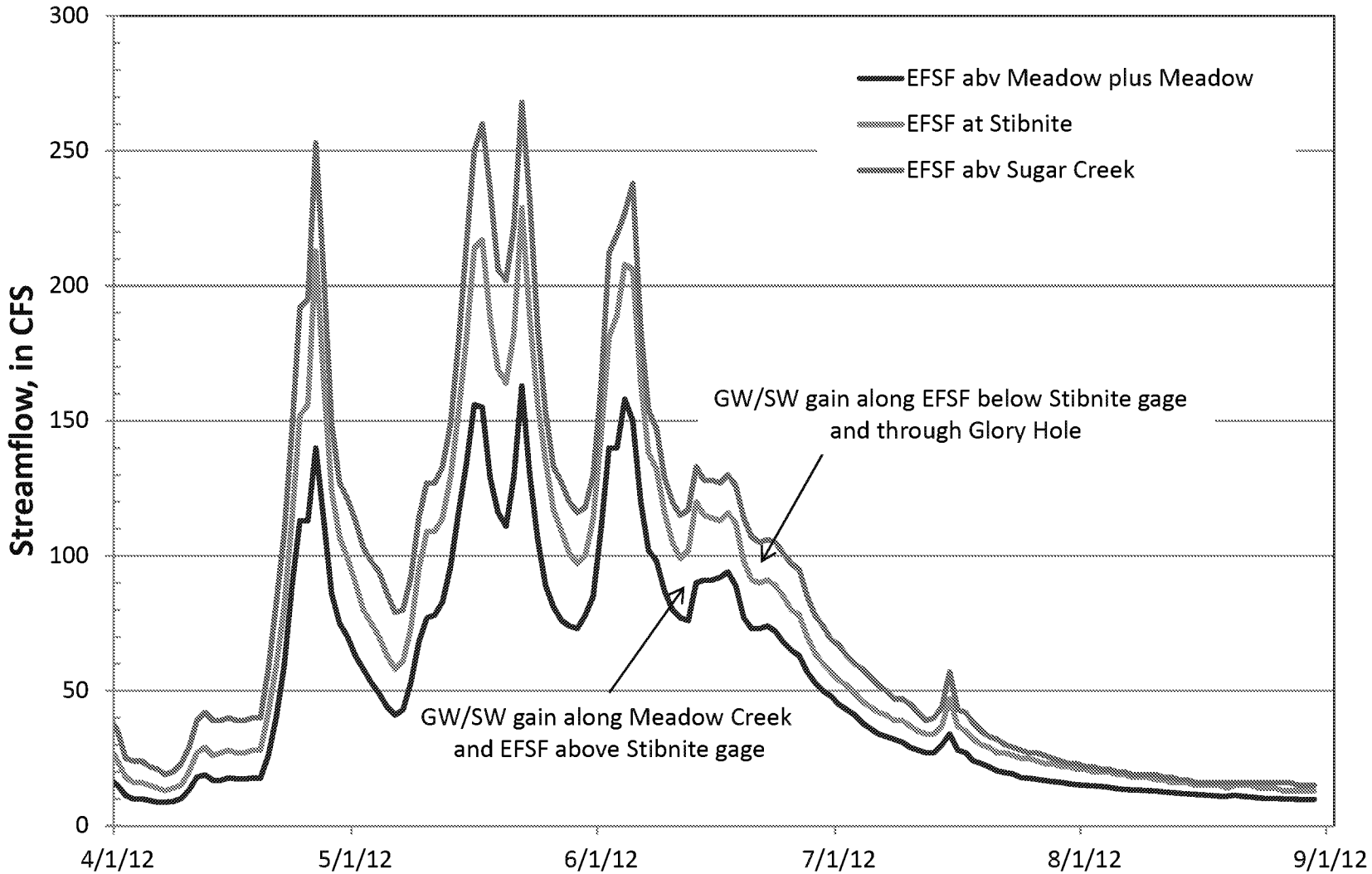
Provisional data – subject to review

Provisional data – subject to review

Streamflow gains along Meadow Creek and EFSF Salmon River, Low Flow

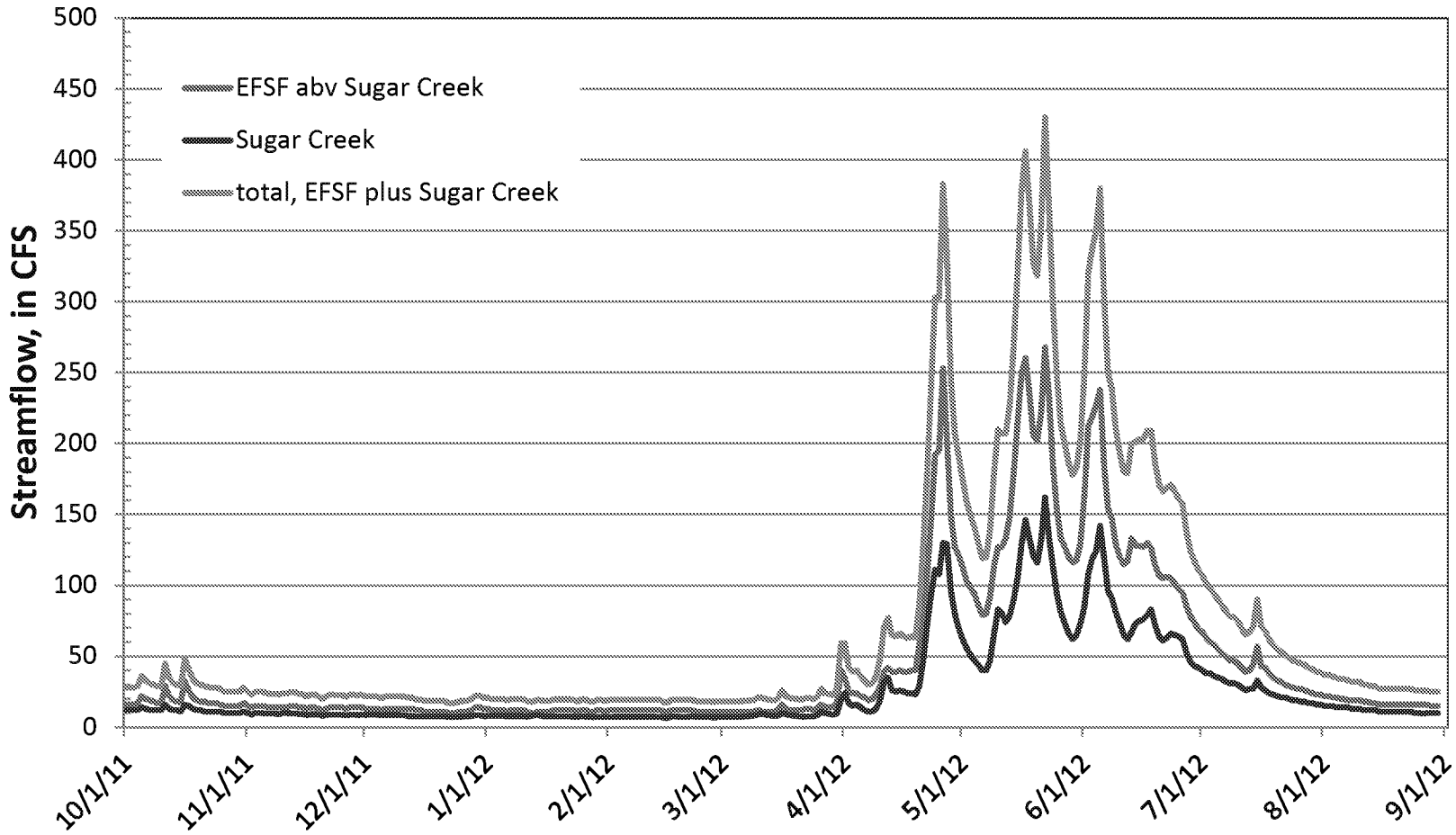


Streamflow gains along Meadow Creek and EFSF Salmon River, High Flow



Provisional data – subject to review

Combined streamflow from EFSF and Sugar Creek exiting mining area



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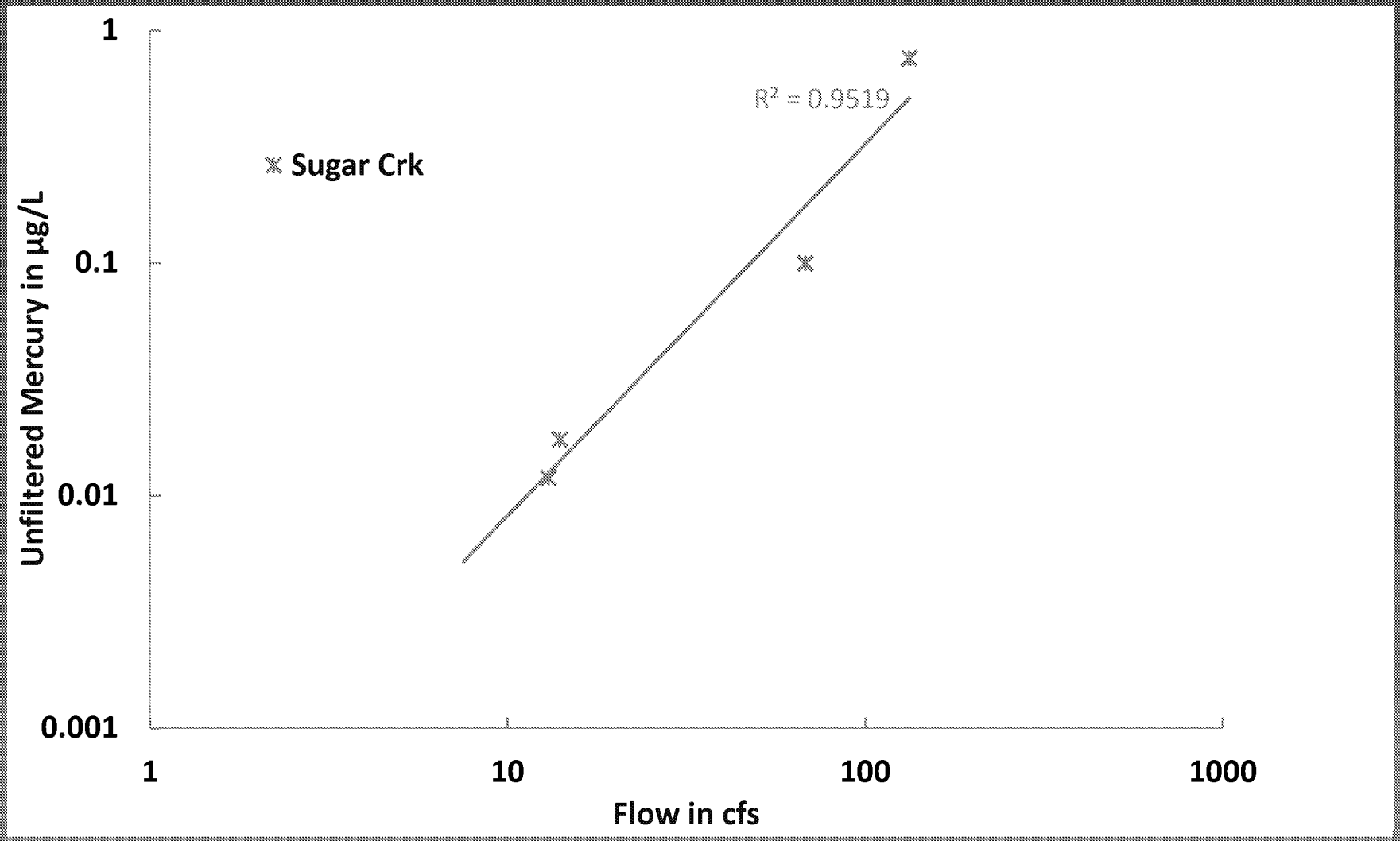
Provisional data – subject to review

Concentration and Flow



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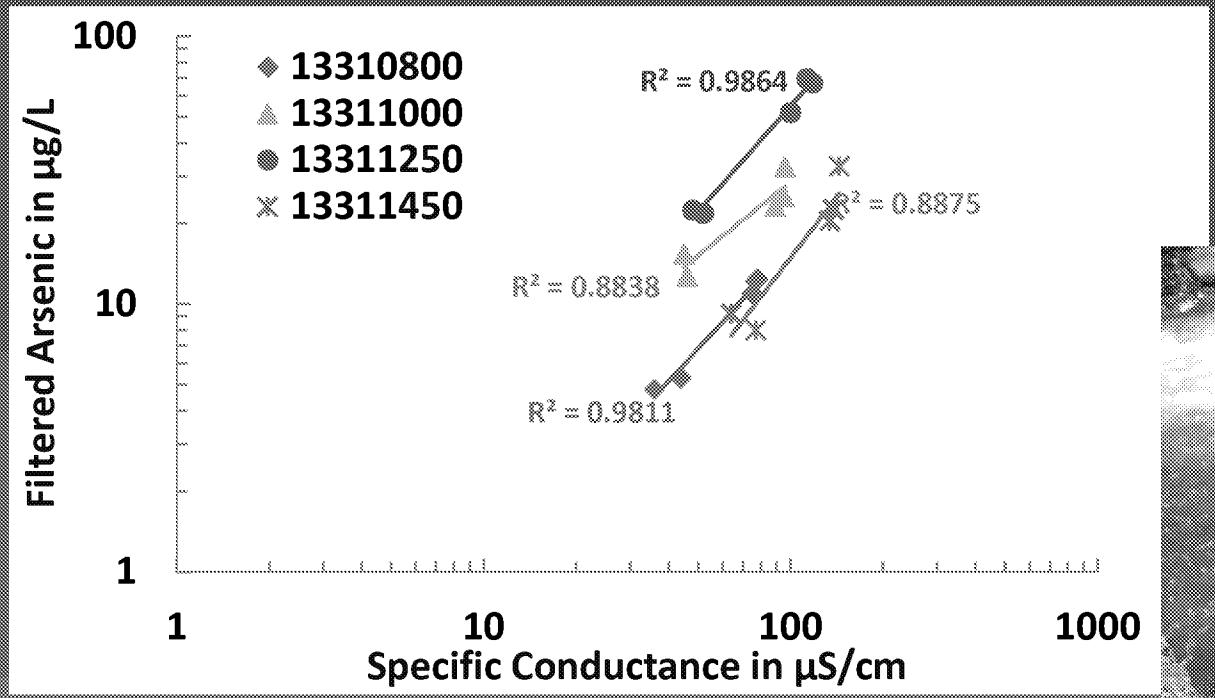
Concentration and Conductance



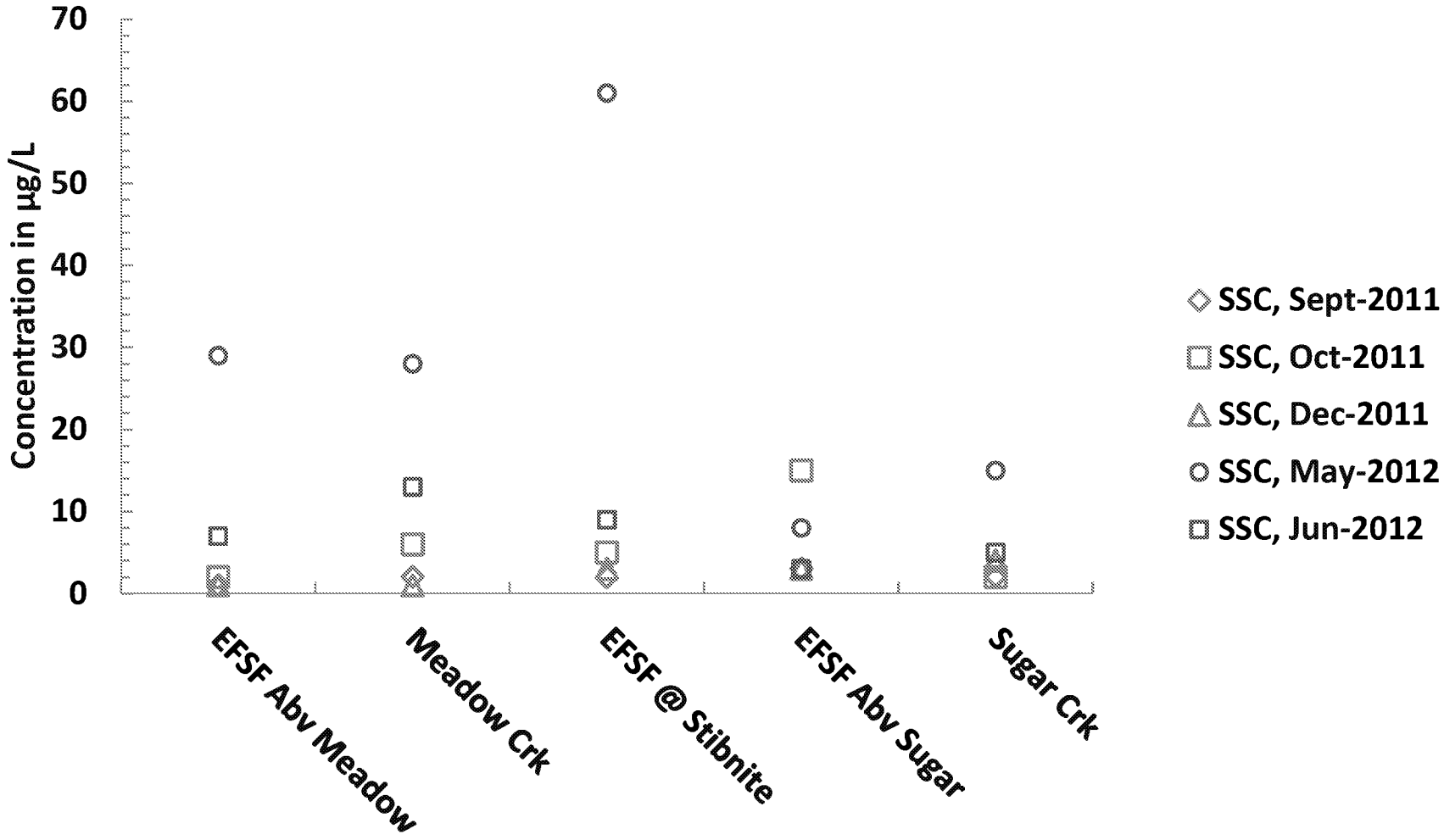
- Sb also promising
  - $R^2 = 0.97 - 0.88$
    - EFSF abv Meadow
    - EFSF abv Sugar
    - Sugar Creek

USGS

Provisional data – subject to review

Provisional data – subject to review

Suspended Sediment Results



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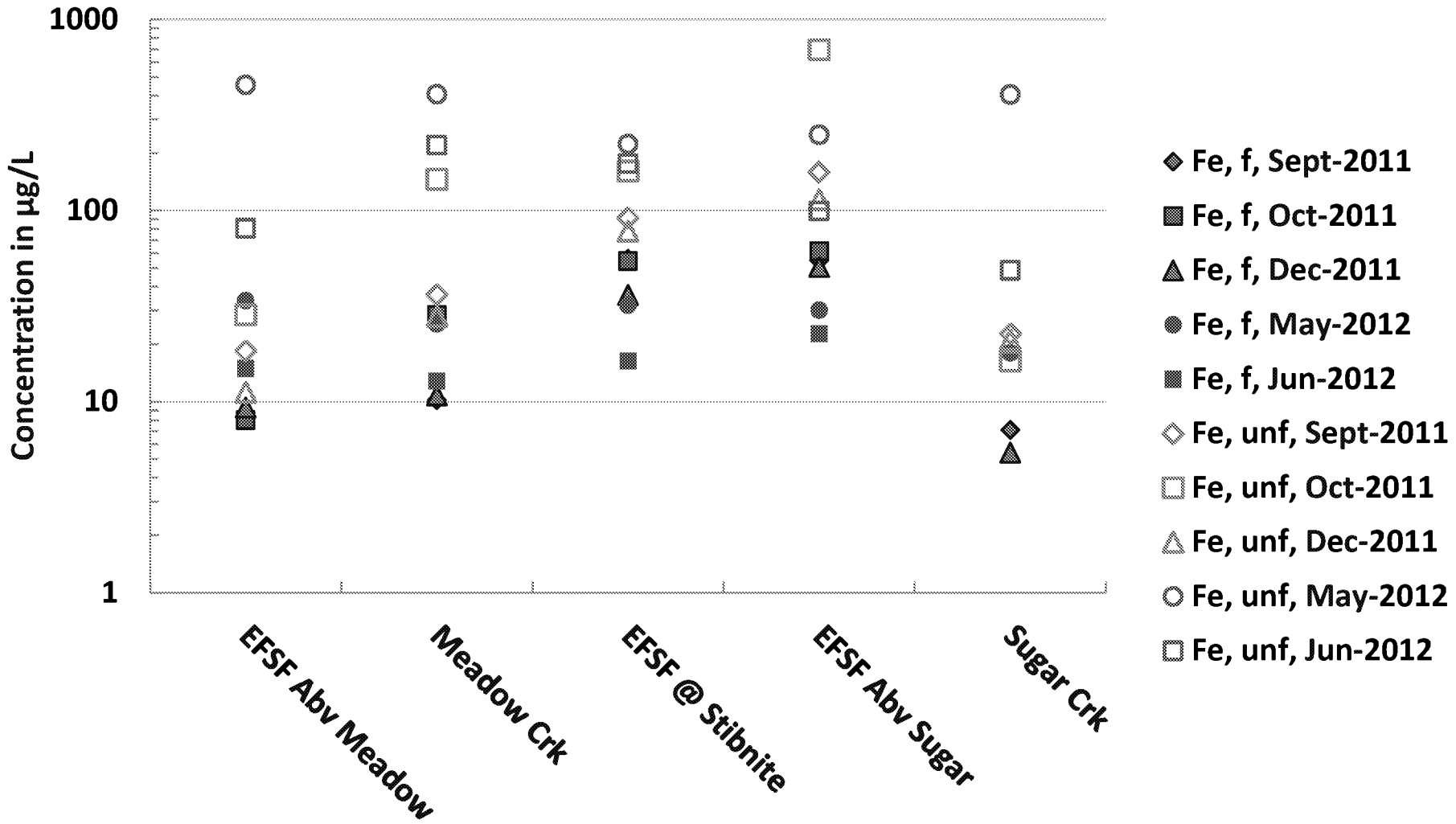
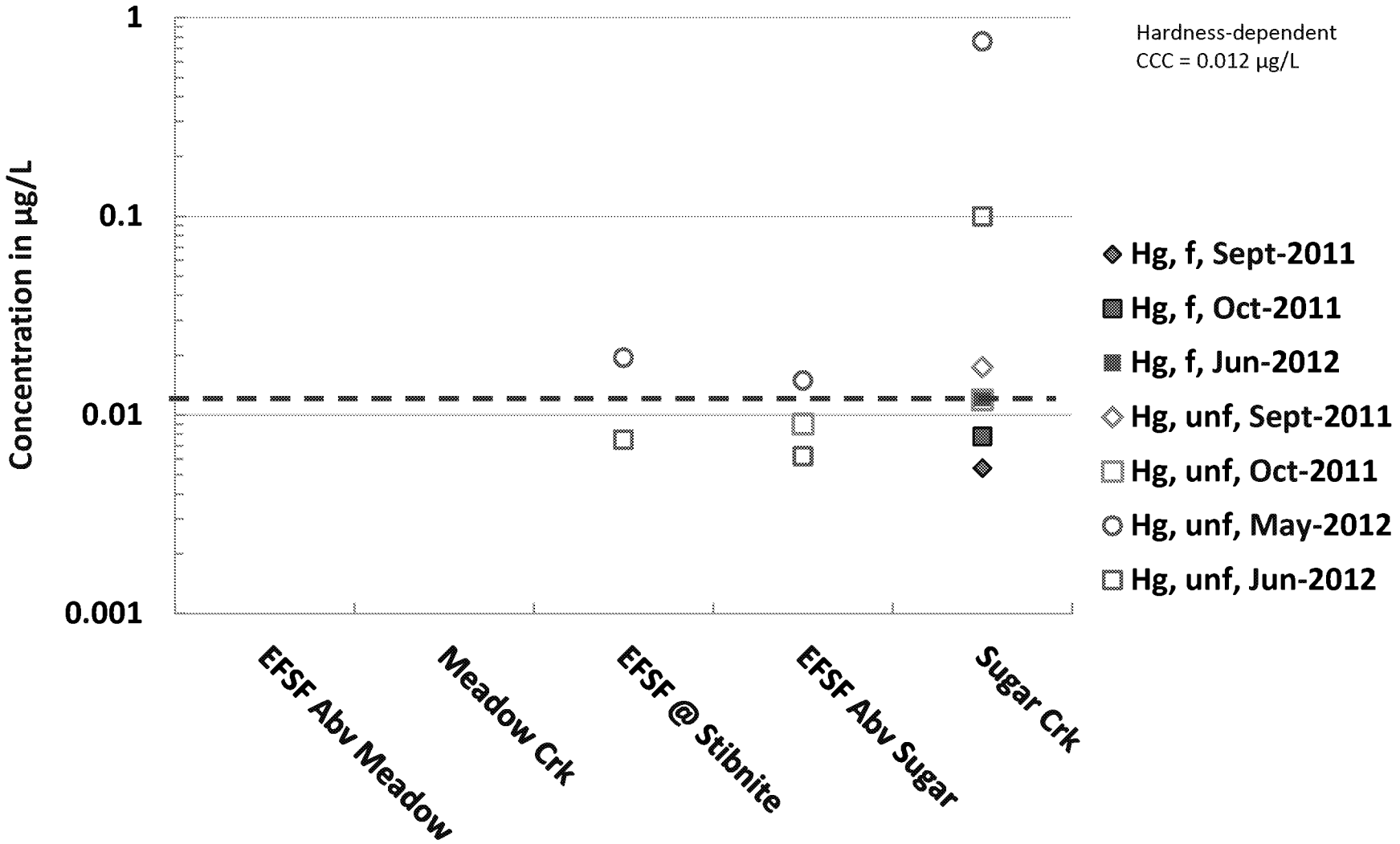
Provisional data – subject to review

Results – Unregulated Metals



Provisional data – subject to review

Results - Regulated Metals



Zinc

- Not detected at any site with the exception of EFSF Abv Meadow Creek
  - 16.8 ug/L unfiltered in June 2012
  - Detection being verified with analytical rerun
  - Hardness-dependent CCC = 36 µg/L

USGS

Water-Quality Constituents

Filtered & Unfiltered Metals

- Aluminum
- Antimony
- Arsenic
- Barium
- Cadmium
- Calcium
- Chromium
- Cobalt
- Copper
- Mercury (intermittent)
- Iron
- Lead
- Lithium
- Magnesium
- Manganese
- Molybdenum
- Nickel
- Potassium
- Silica
- Sodium
- Strontium
- Uranium
- Vanadium
- Zinc

Total Ions & Water Chemistry

- Acid Neutralizing Capacity
- Bromide
- Calcium
- Chloride
- Fluoride
- Potassium
- Silica
- Sodium
- Sulfate

USGS

Loads

USGS

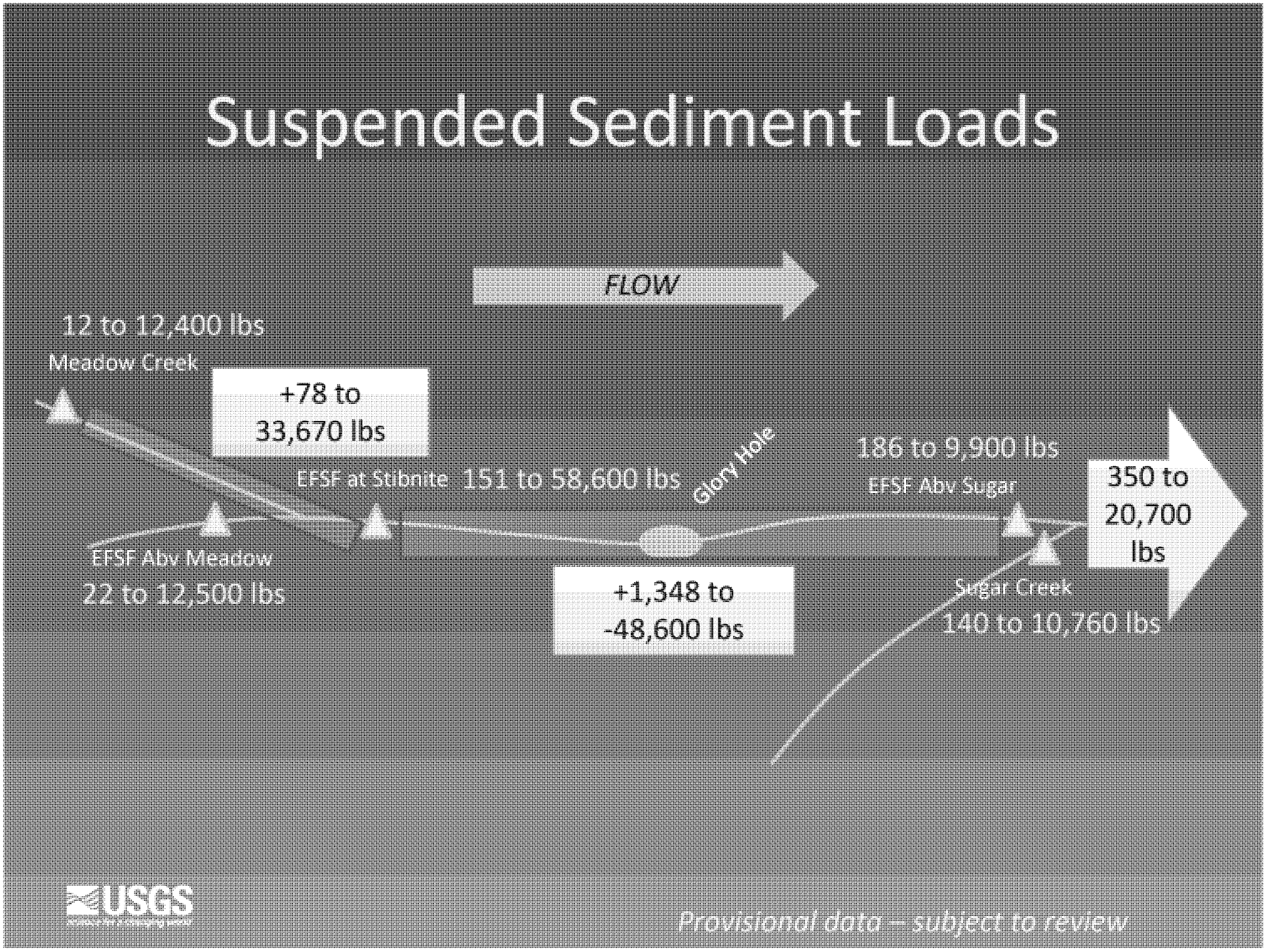
Mass Balance

Glory Hole 10-17-11

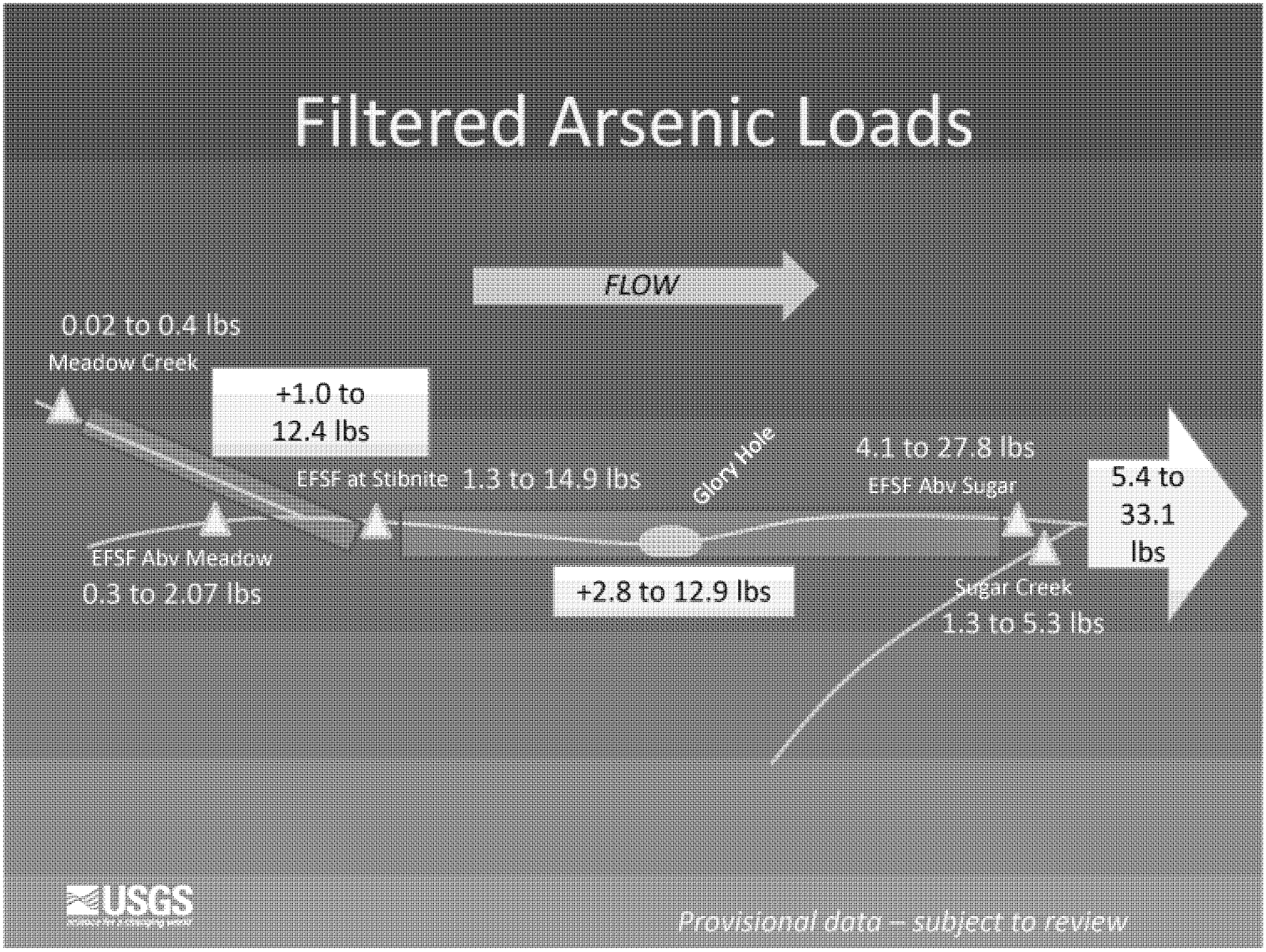
Glory Hole 05-18-12

USGS

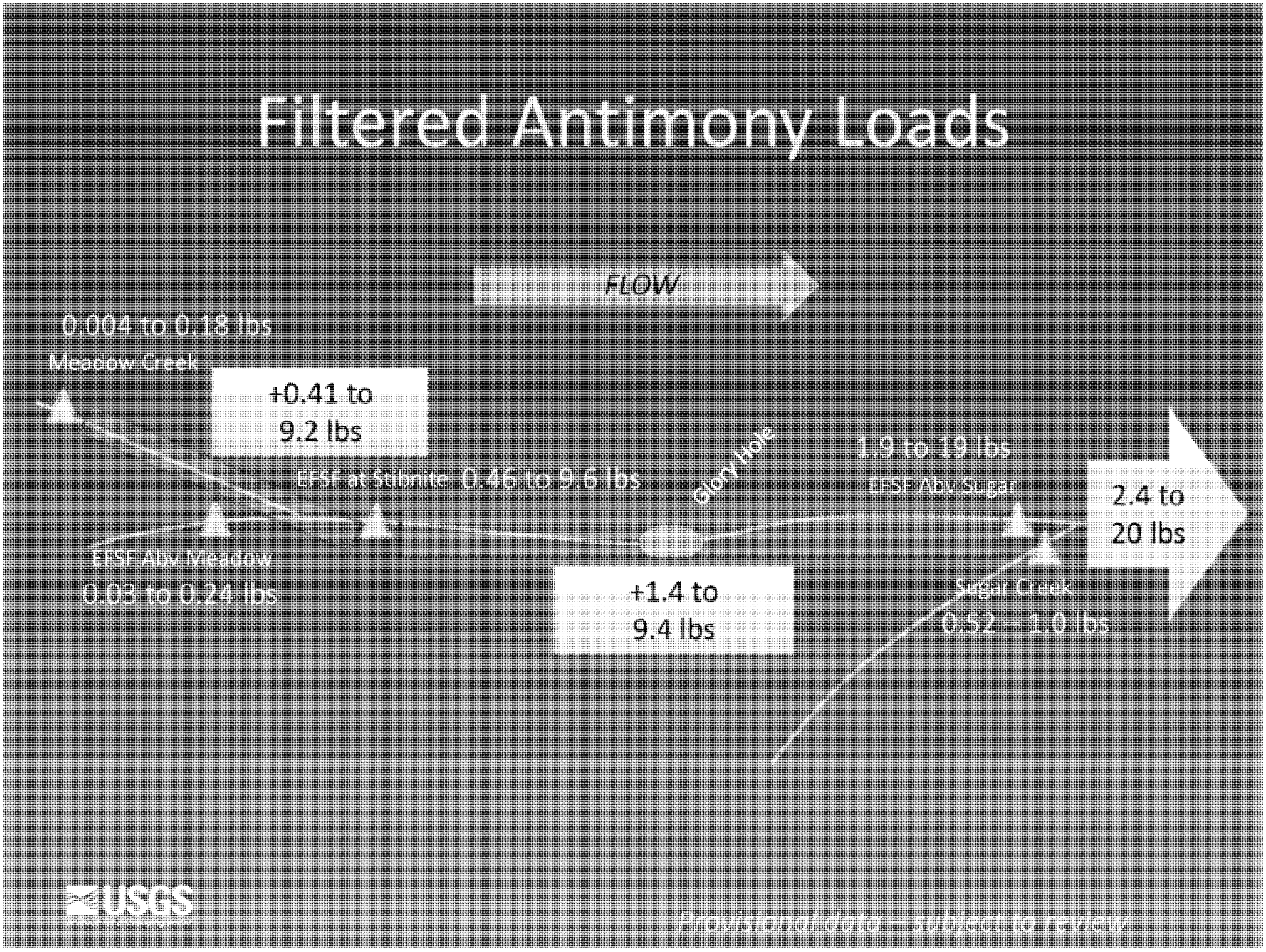
Suspended Sediment Loads



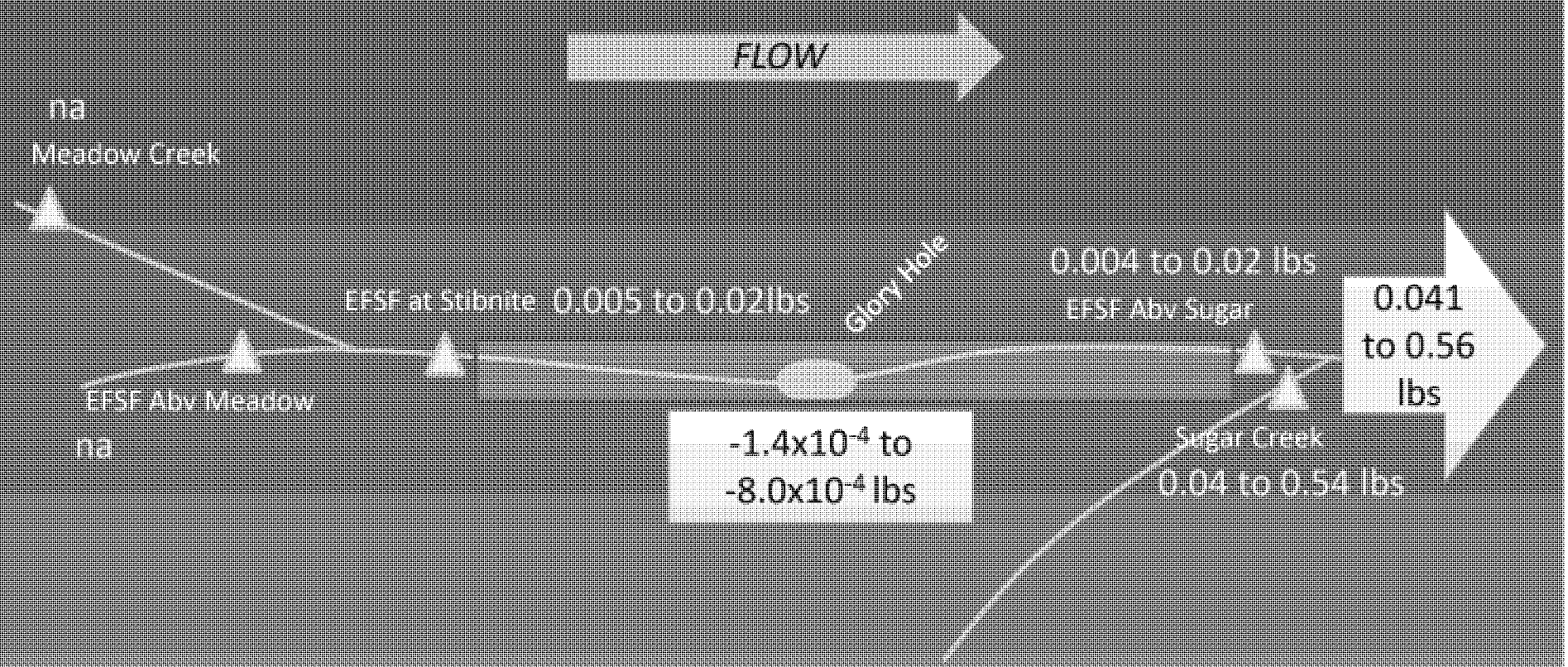
Filtered Arsenic Loads



Filtered Antimony Loads



Unfiltered Mercury Loads



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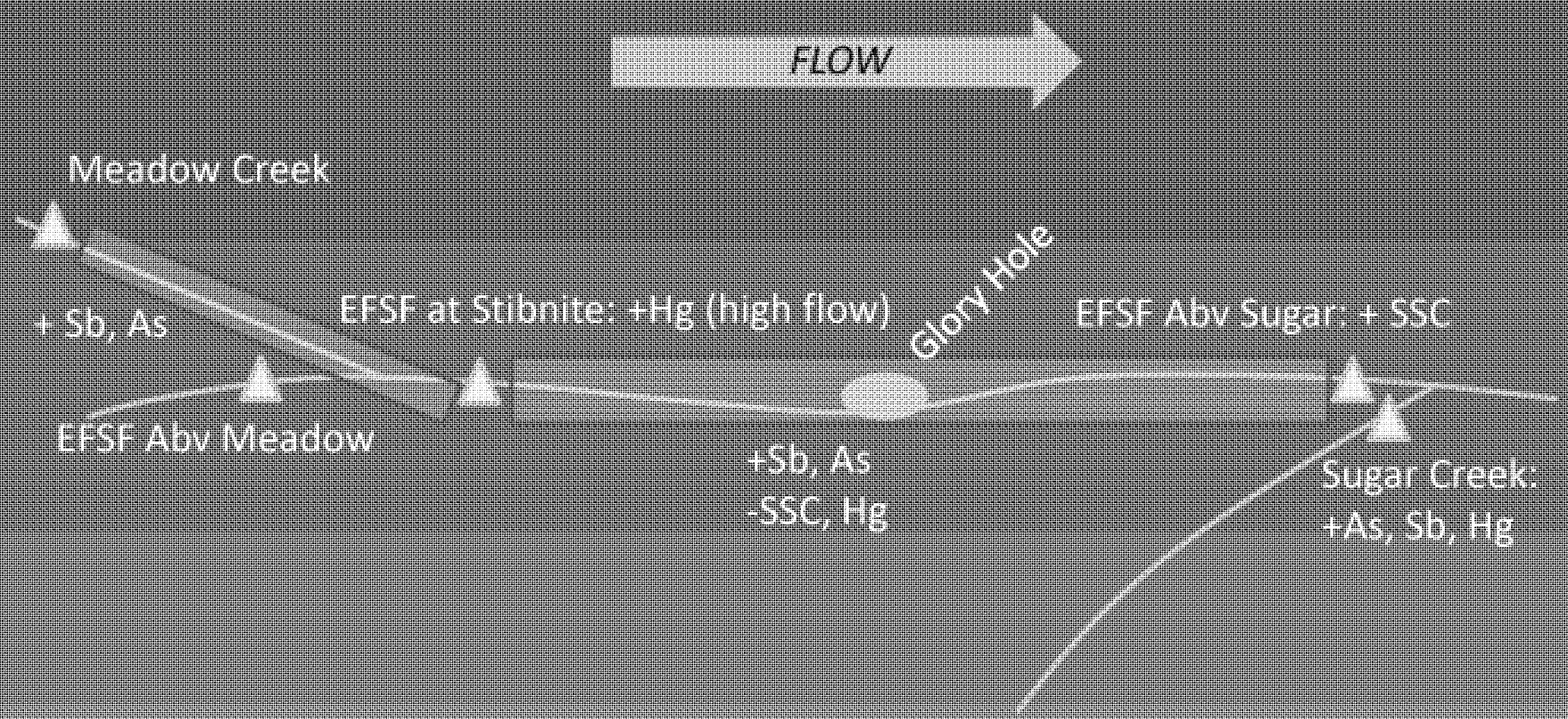
Provisional data – subject to review

Summary



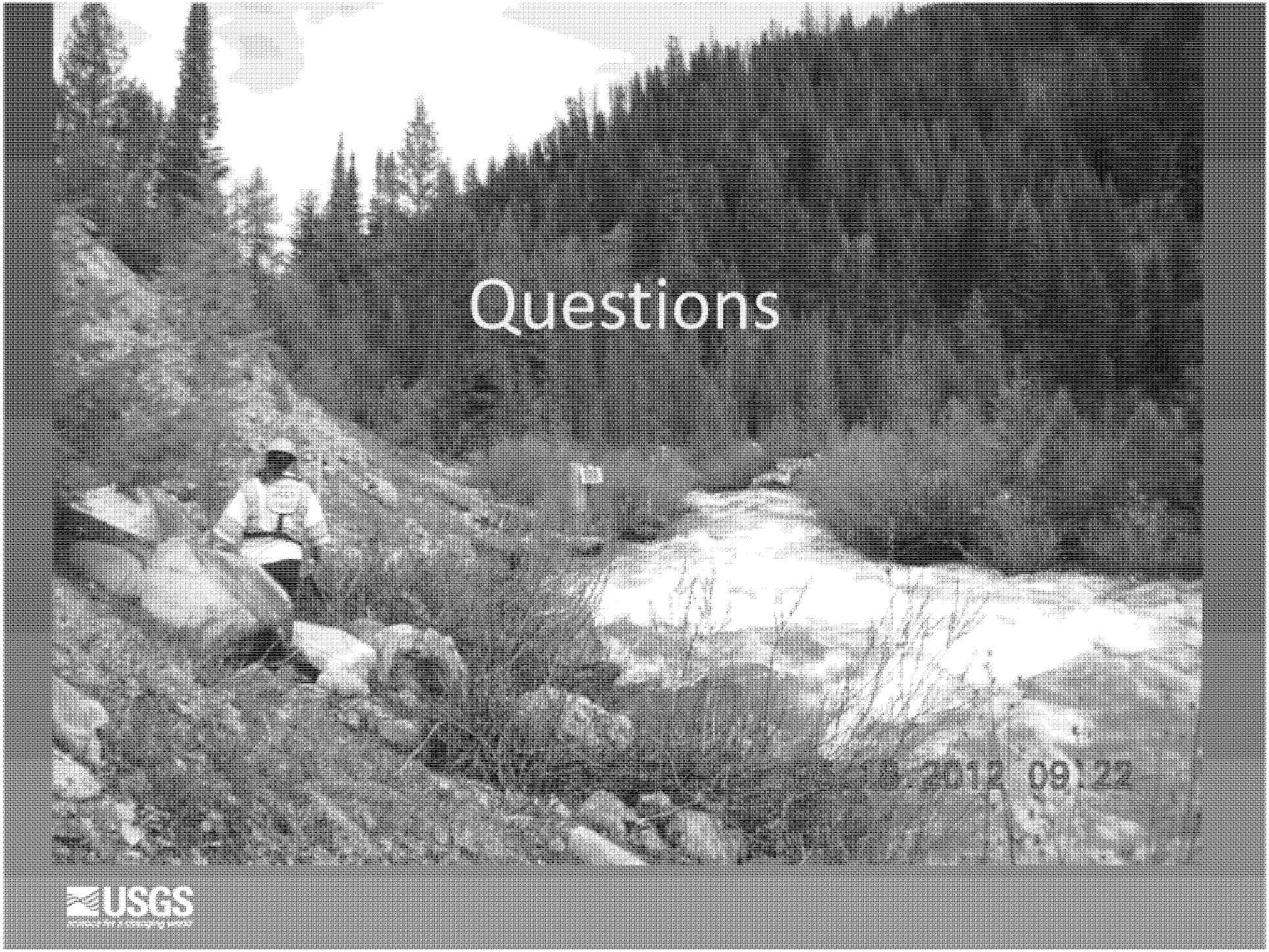
USGS

Provisional data — subject to review

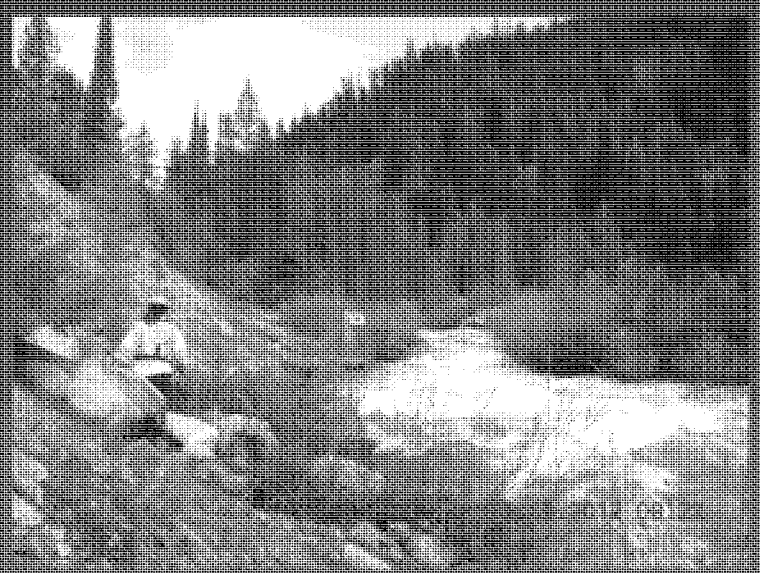
Plans

- Retrieve water-quality monitors early November
- Sample in early November
- Evaluate continuous water-quality data with discrete water-quality data
- Refine analytical suite
- Target specific flows

USGS


Questions
USGS
2012 09 22

Monitoring Results
EFSF Salmon River, Meadow Creek, and Sugar Creek near Stibnite, Idaho
Water Years 2012 - 2013



USGS U.S. Department of the Interior
U.S. Geological Survey

Data Collection

- Five streamgage sites
- Continuous Stage/Discharge
- Seasonally continuous pH, SC, Temp
- 5-7 samples per year at each gage site

Objectives

- Evaluate transport in discrete reaches
- Estimate loading
- Evaluate surrogate measures

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Data Analysis

- Modeling
  - LOADEST
  - Surrogates
- Load Analysis
  - Daily and annual loads
  - Flow-weighted concentrations

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Constituents of Interest

- Arsenic
- Antimony
- Lead
- Cadmium
- Zinc
- Sediment
- Sediment-associated
  - Aluminum
  - Mercury

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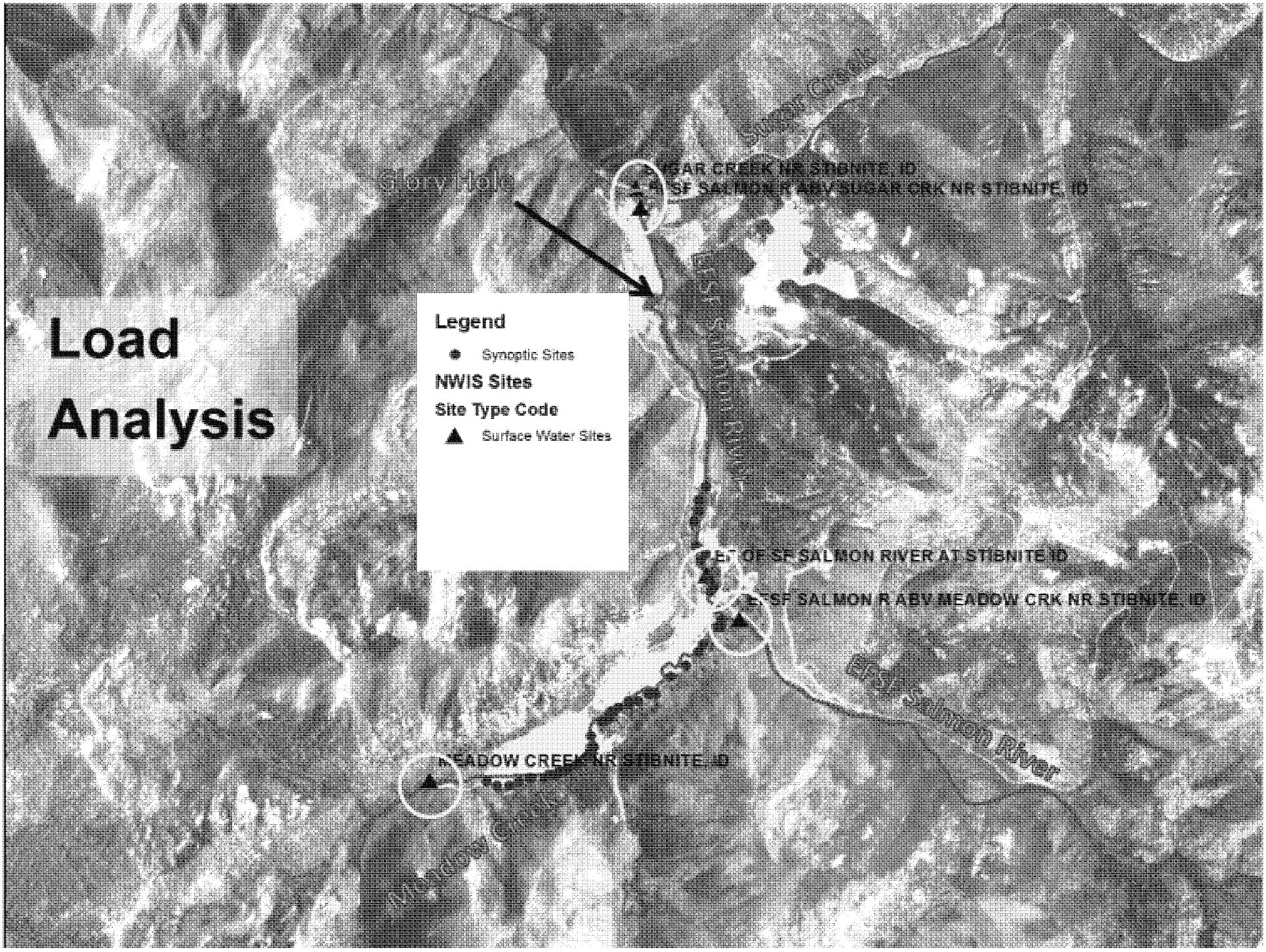
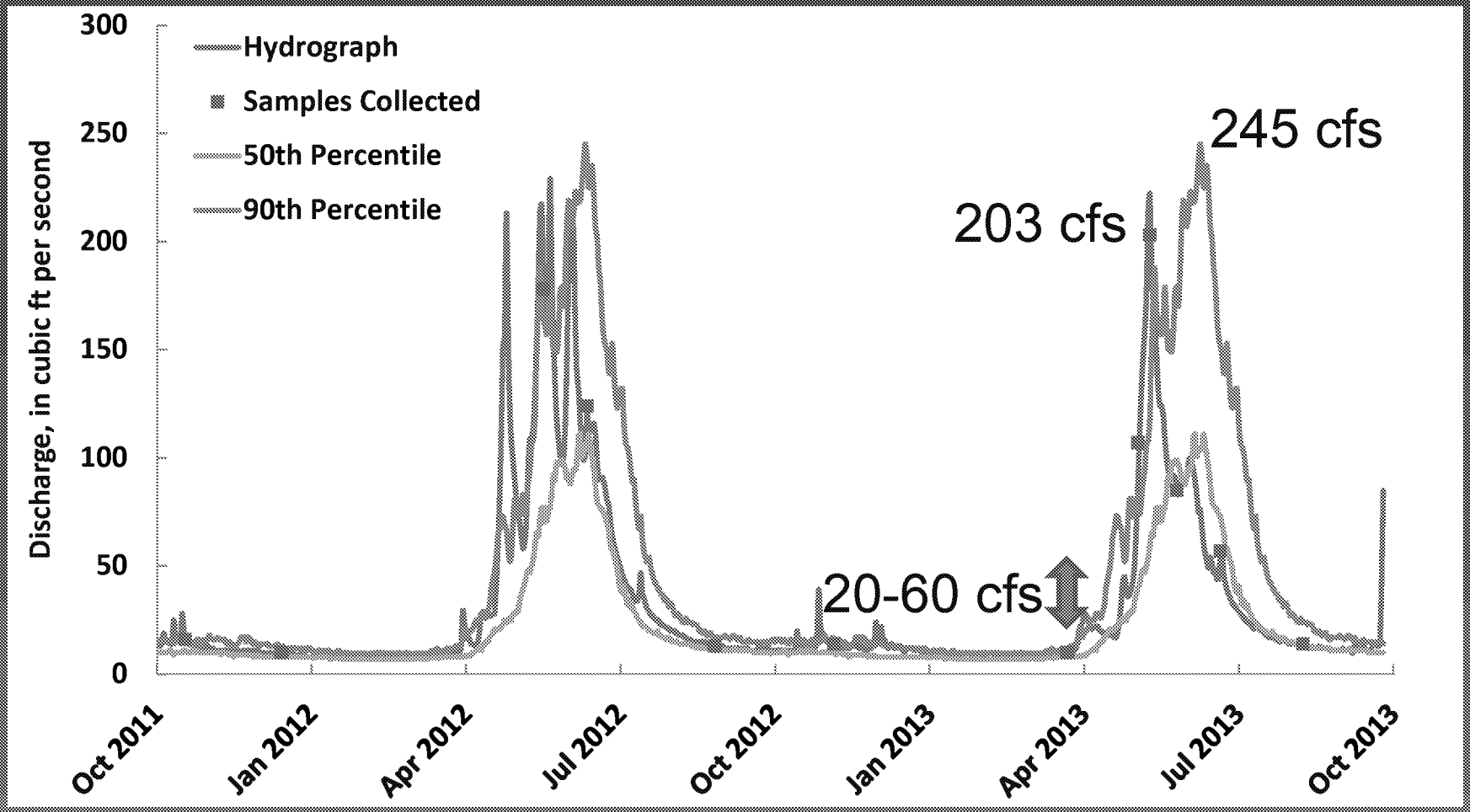
Load Analysis



12 Sampling Events



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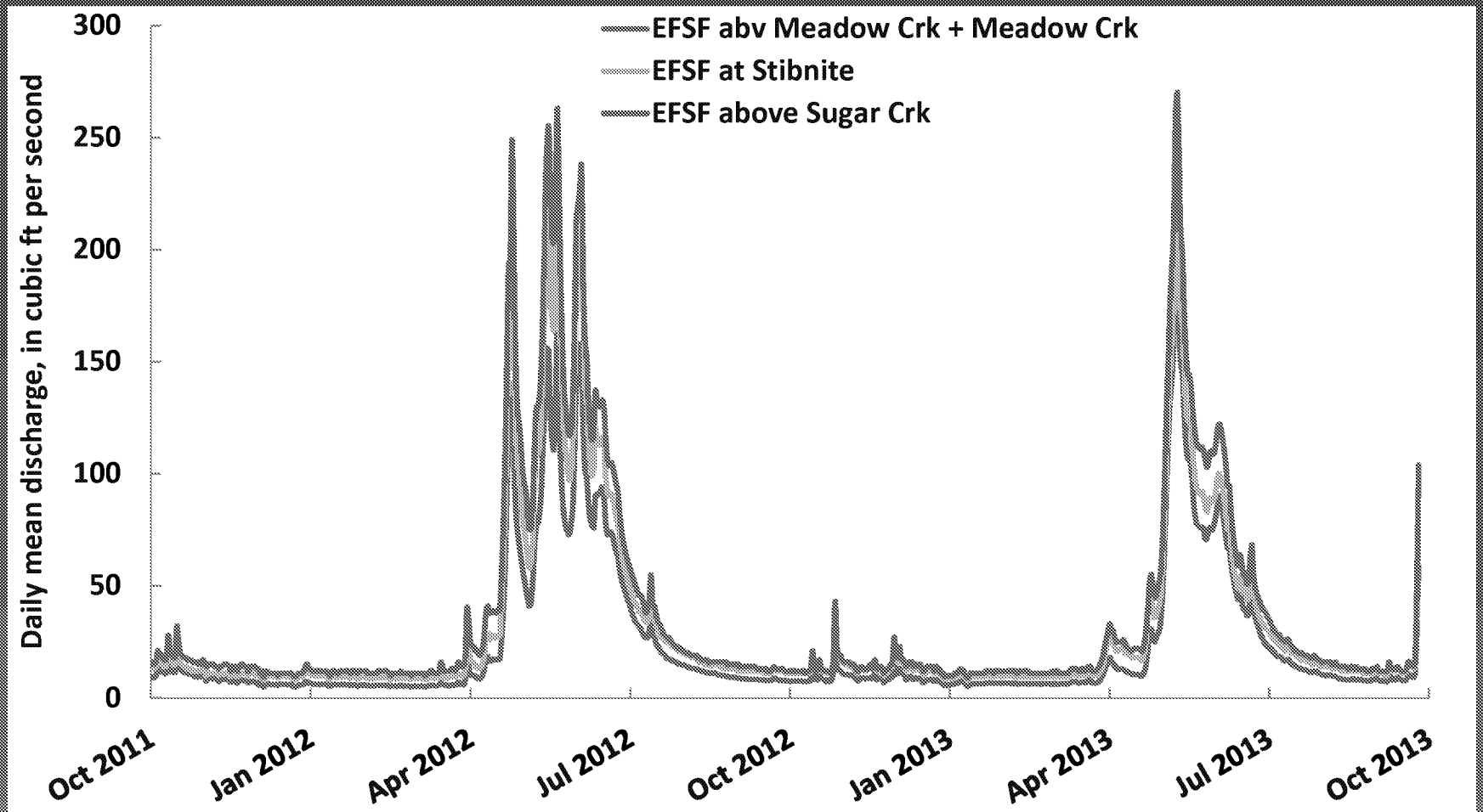
Discharge



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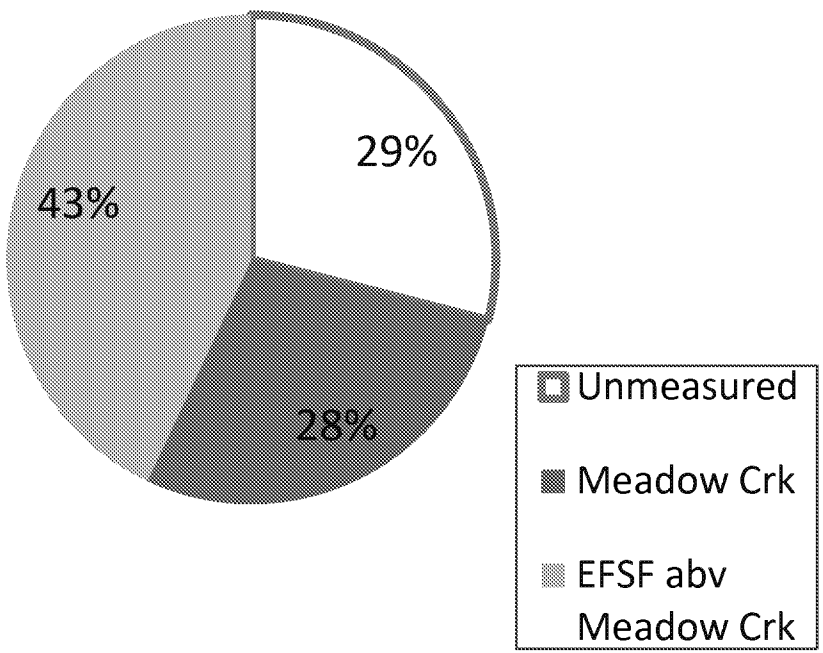
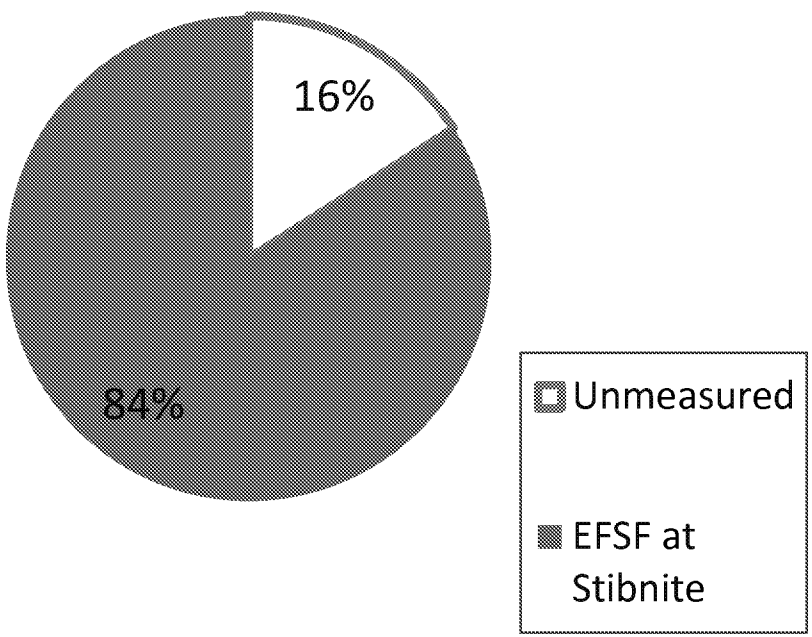
Unmeasured Discharge

Unmeasured Flows - Meadow Creek Reach



Unmeasured Flows - Glory Hole Reach



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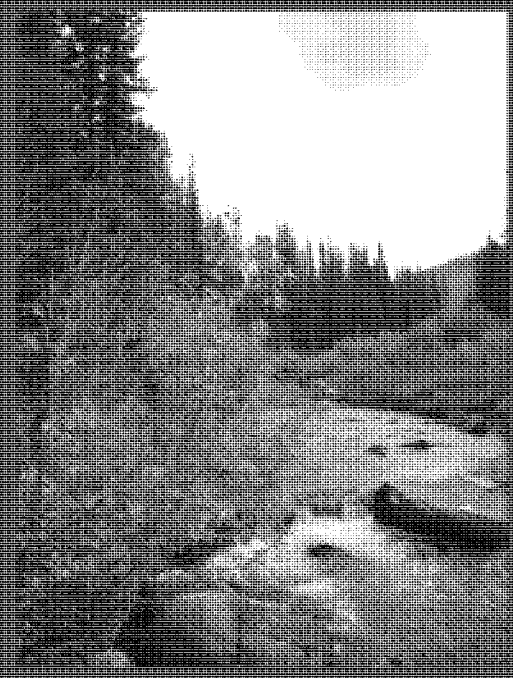
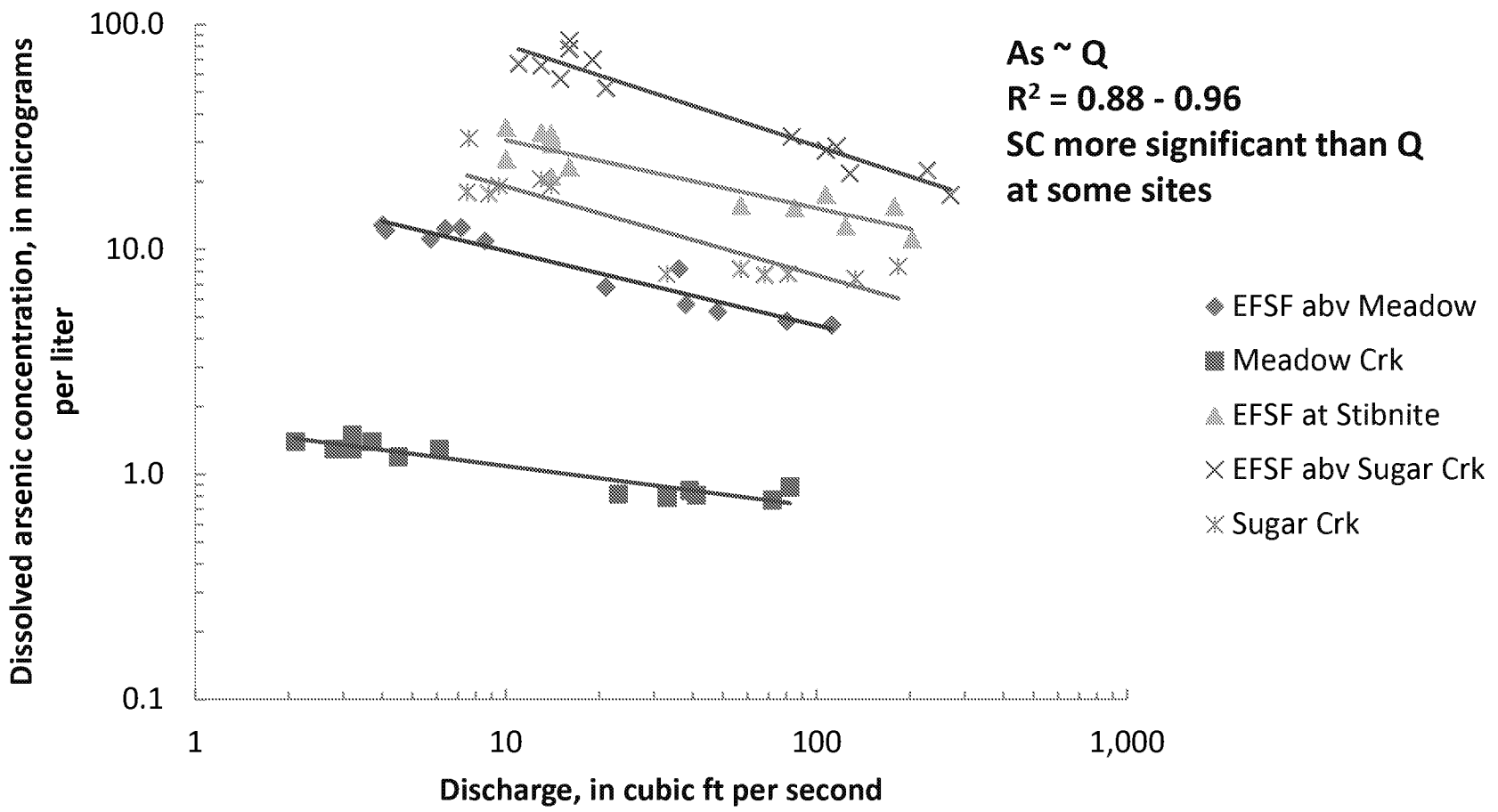
Load Models

- L~ Q + seasonality
  - No trend terms used
  - Seasonality with spring runoff



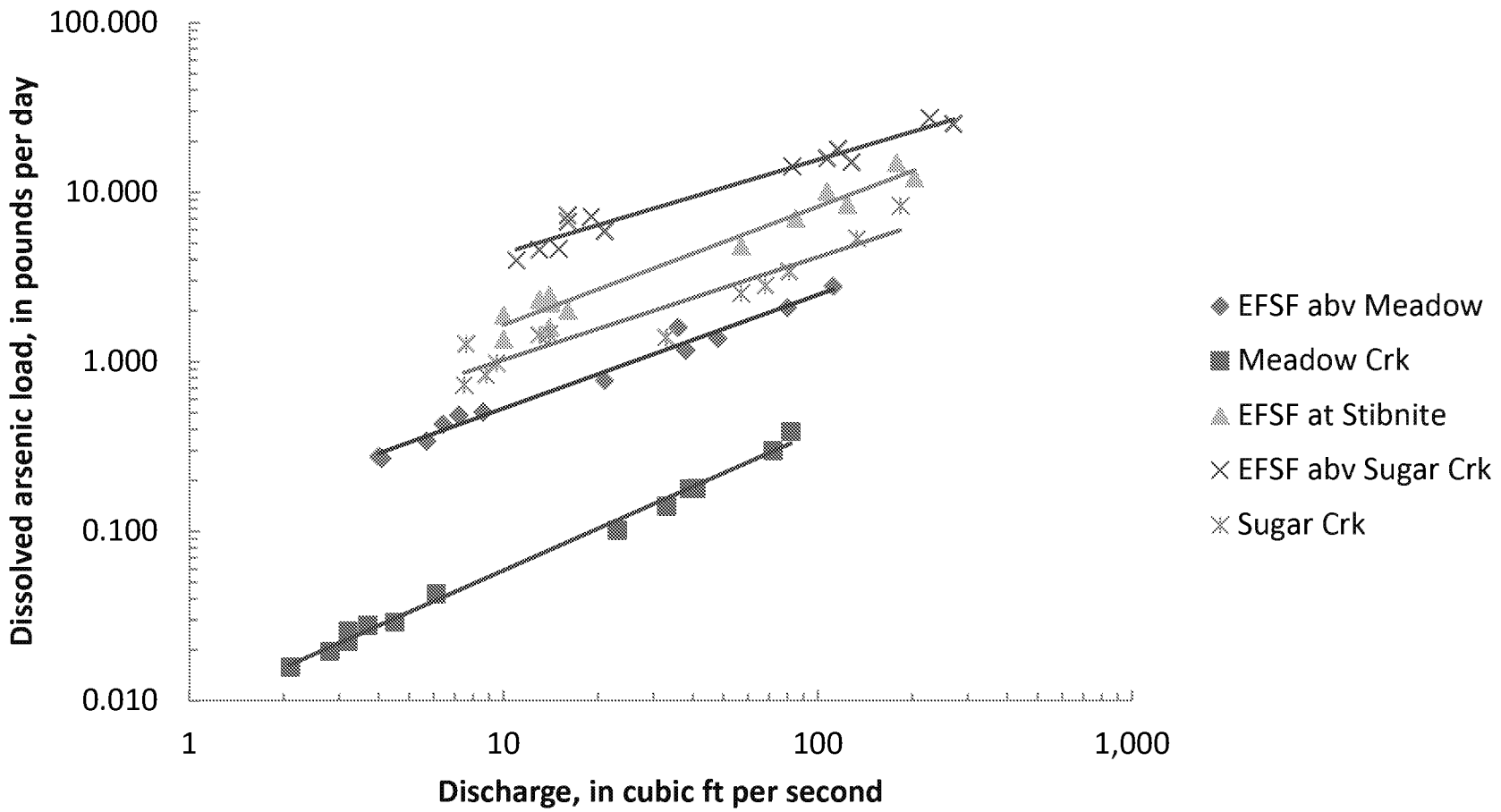
USGS

Dissolved Arsenic Concentrations



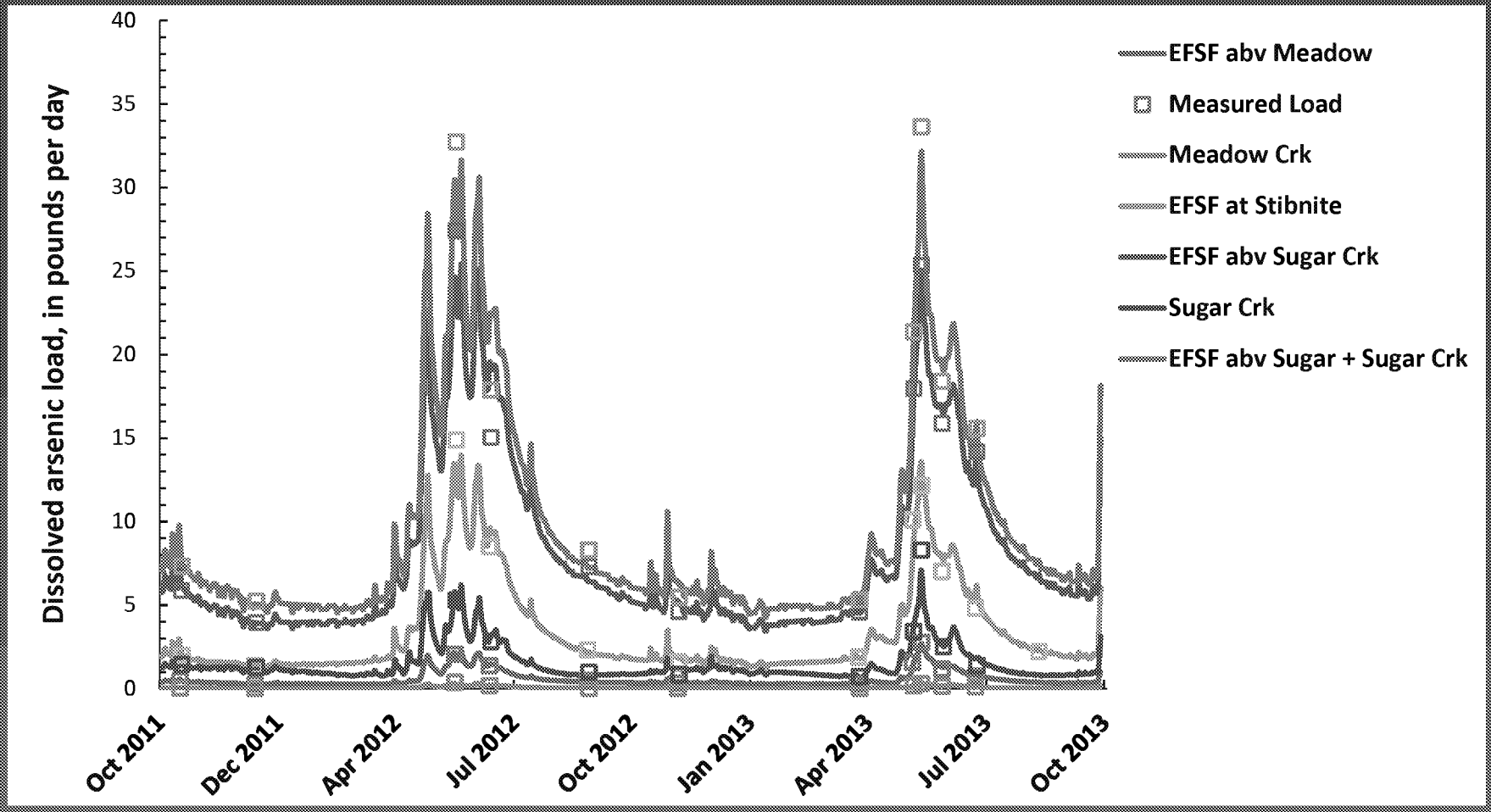
USGS

Dissolved Arsenic Loads



USGS

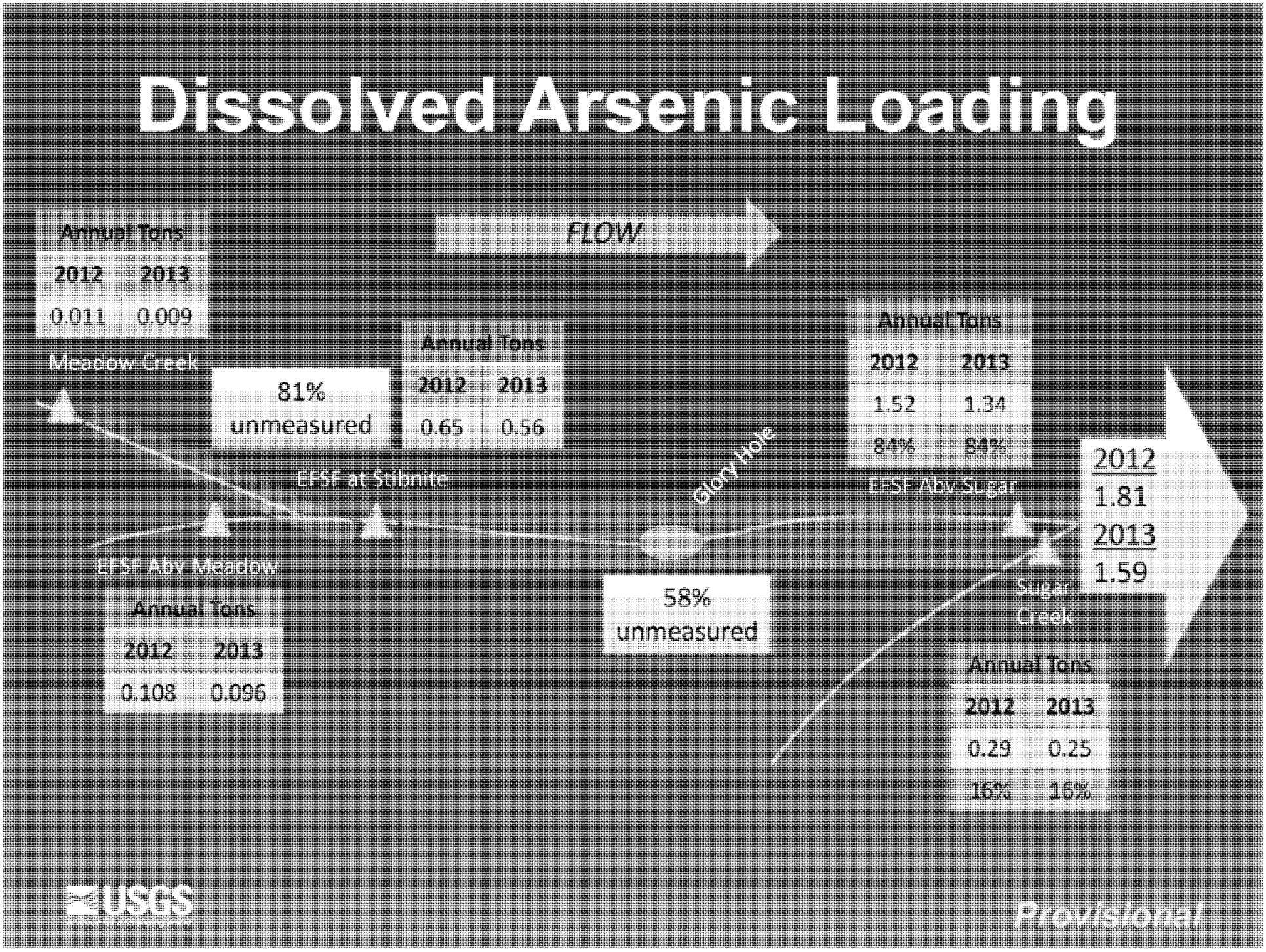
Dissolved Arsenic Loads (lb/d)



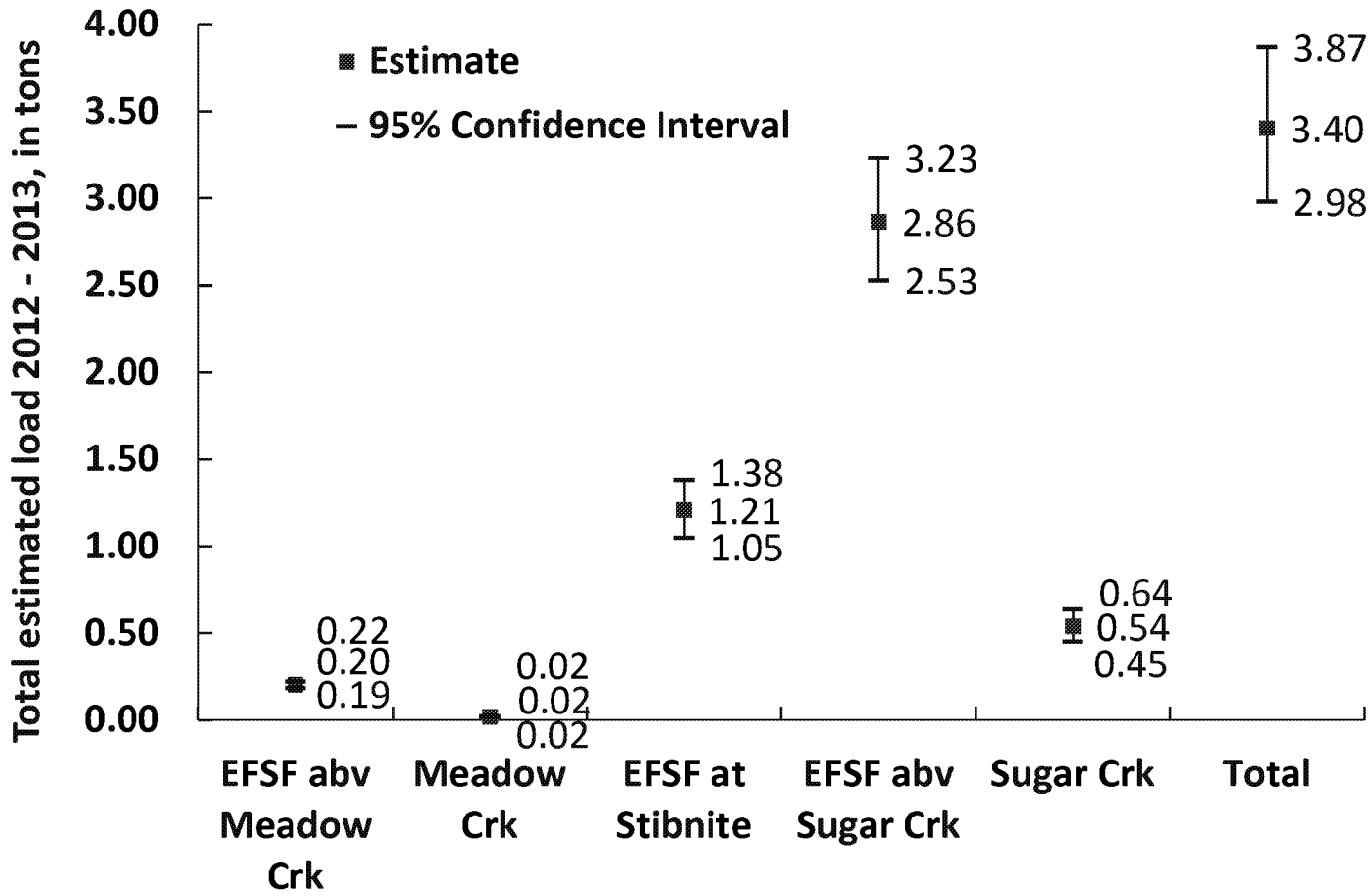
USGS

Provisional

Dissolved Arsenic Loading



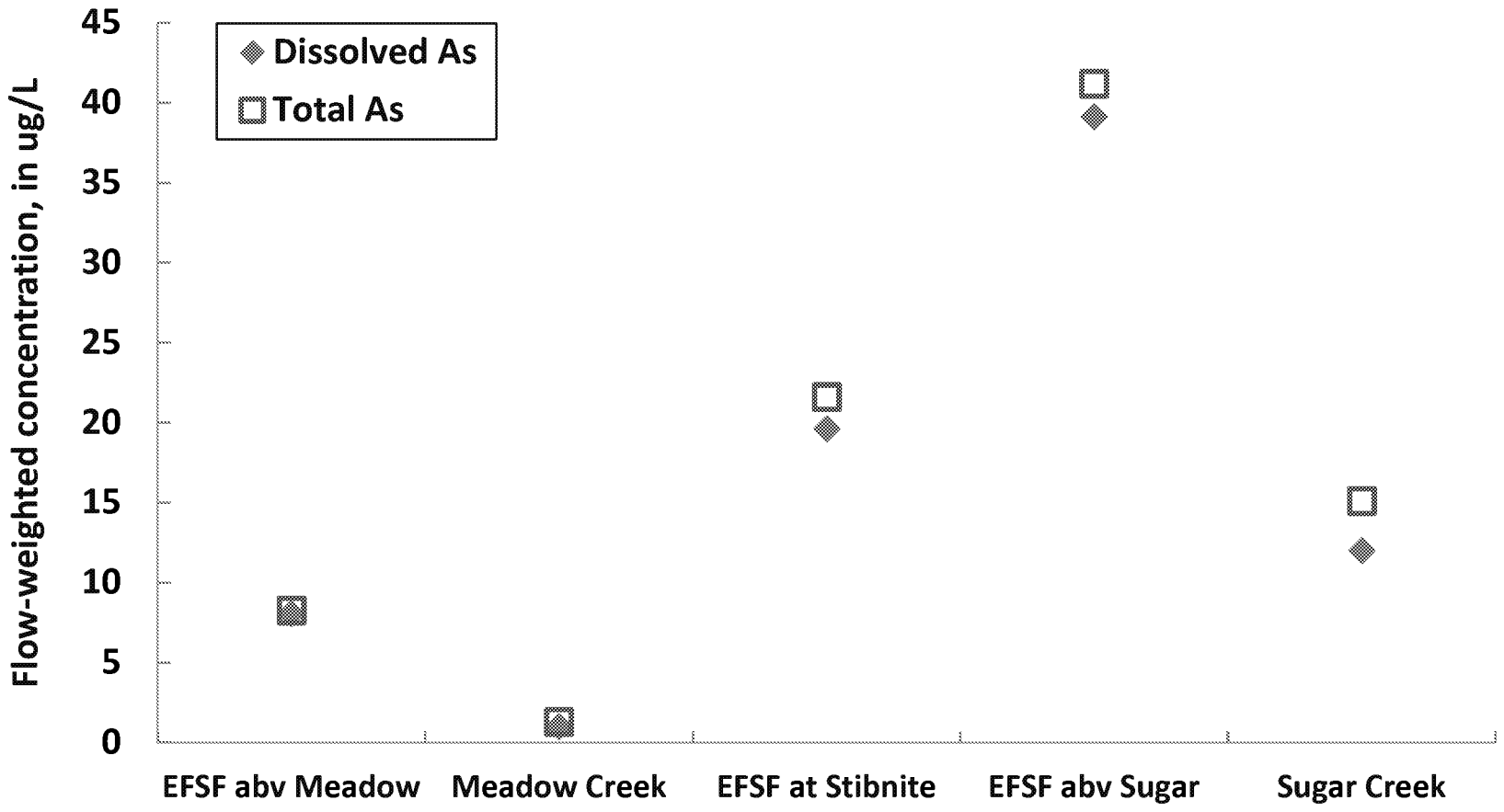
Total Dissolved Arsenic Loads 2012-2013



USGS

Provisional

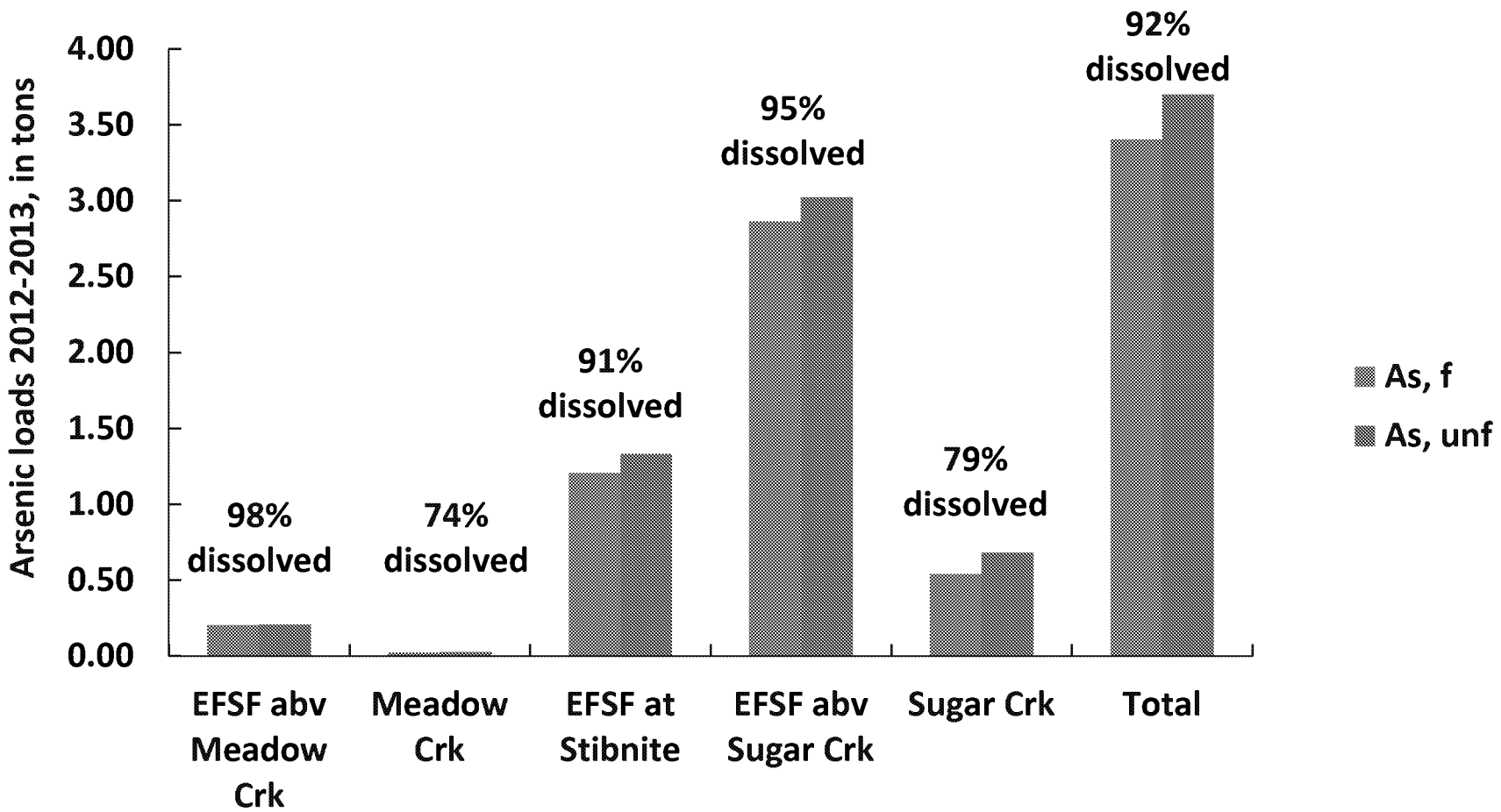
Flow-Weighted Arsenic Concentrations (ug/L)



USGS

Provisional

Comparison – Dissolved & Total As



USGS

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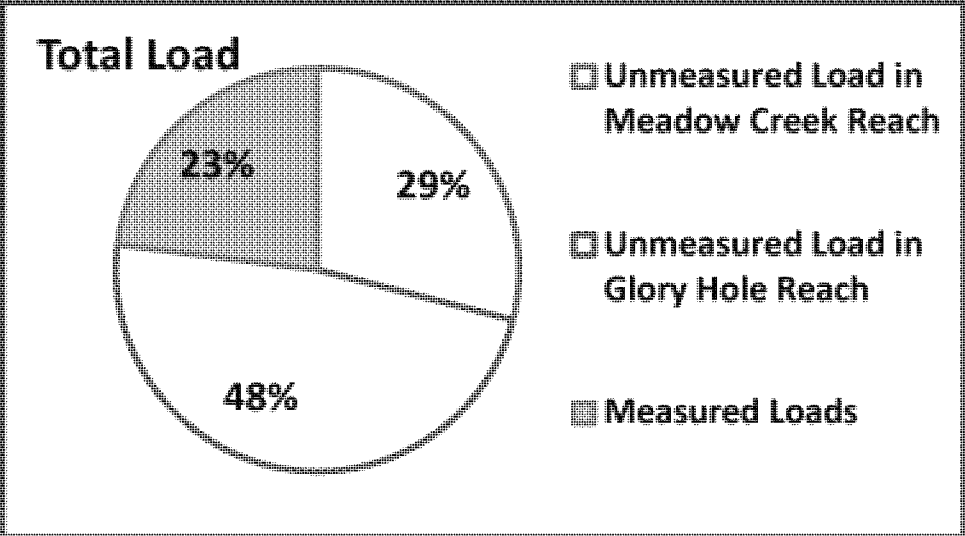
Arsenic Summary

- >90% dissolved in EFSF
- Surrogates for dissolved As concentration:
  - As ~ Q or SC (>88% R^2) all sites
- Unmeasured Loads



- Flow-weighted concentrations
  - Increase downstream EFSF

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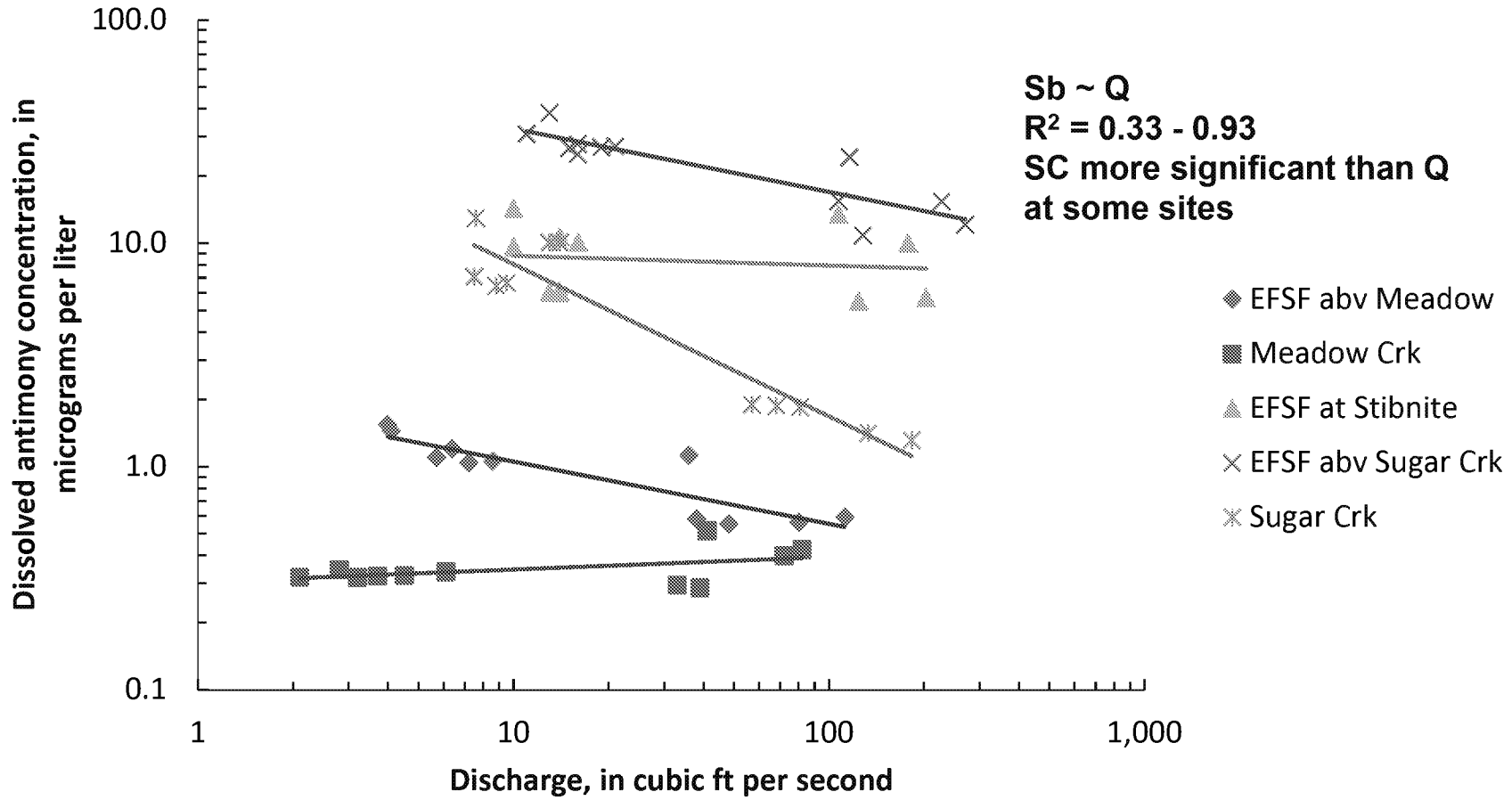
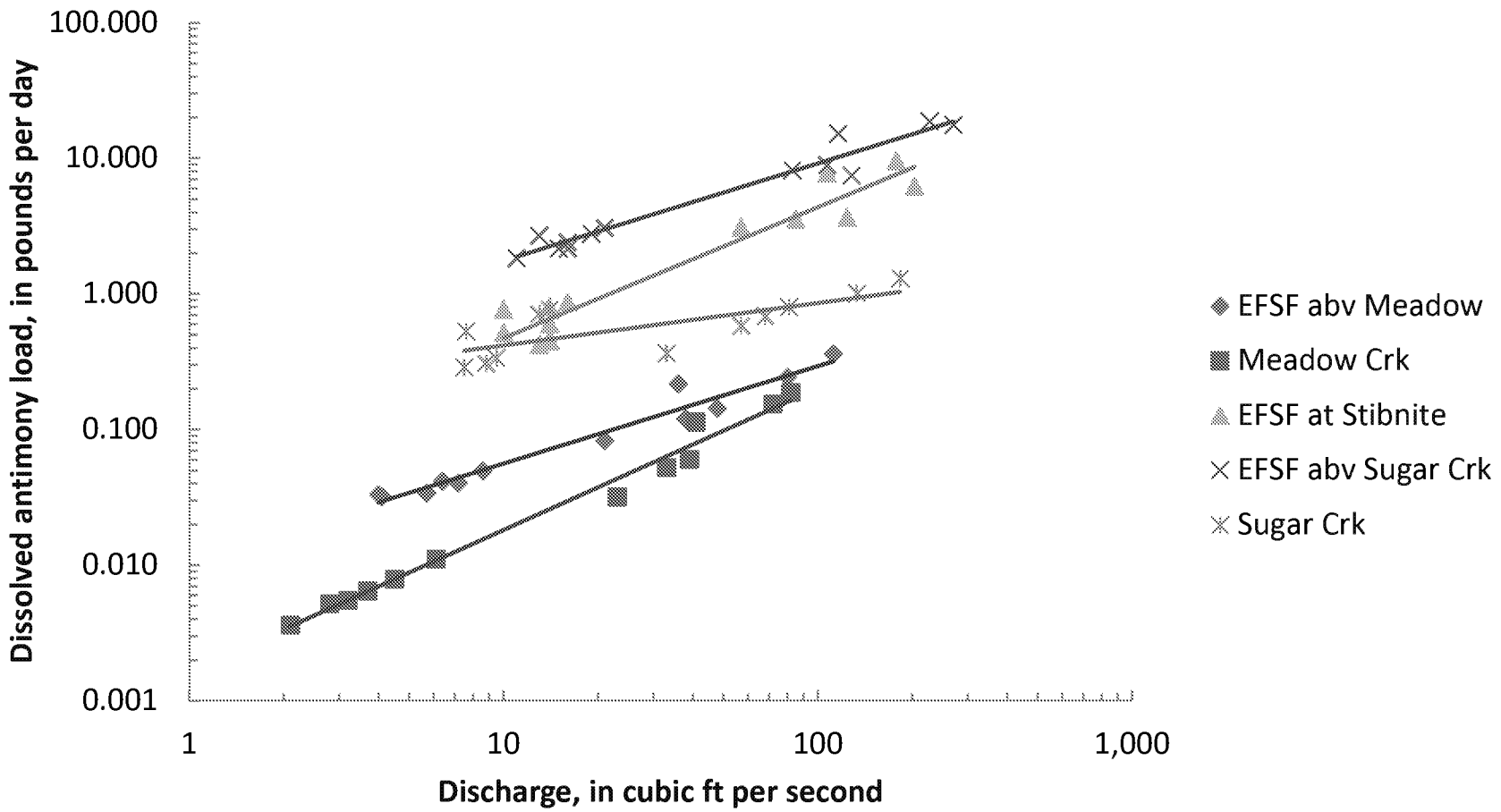
Dissolved Antimony Concentrations



USGS

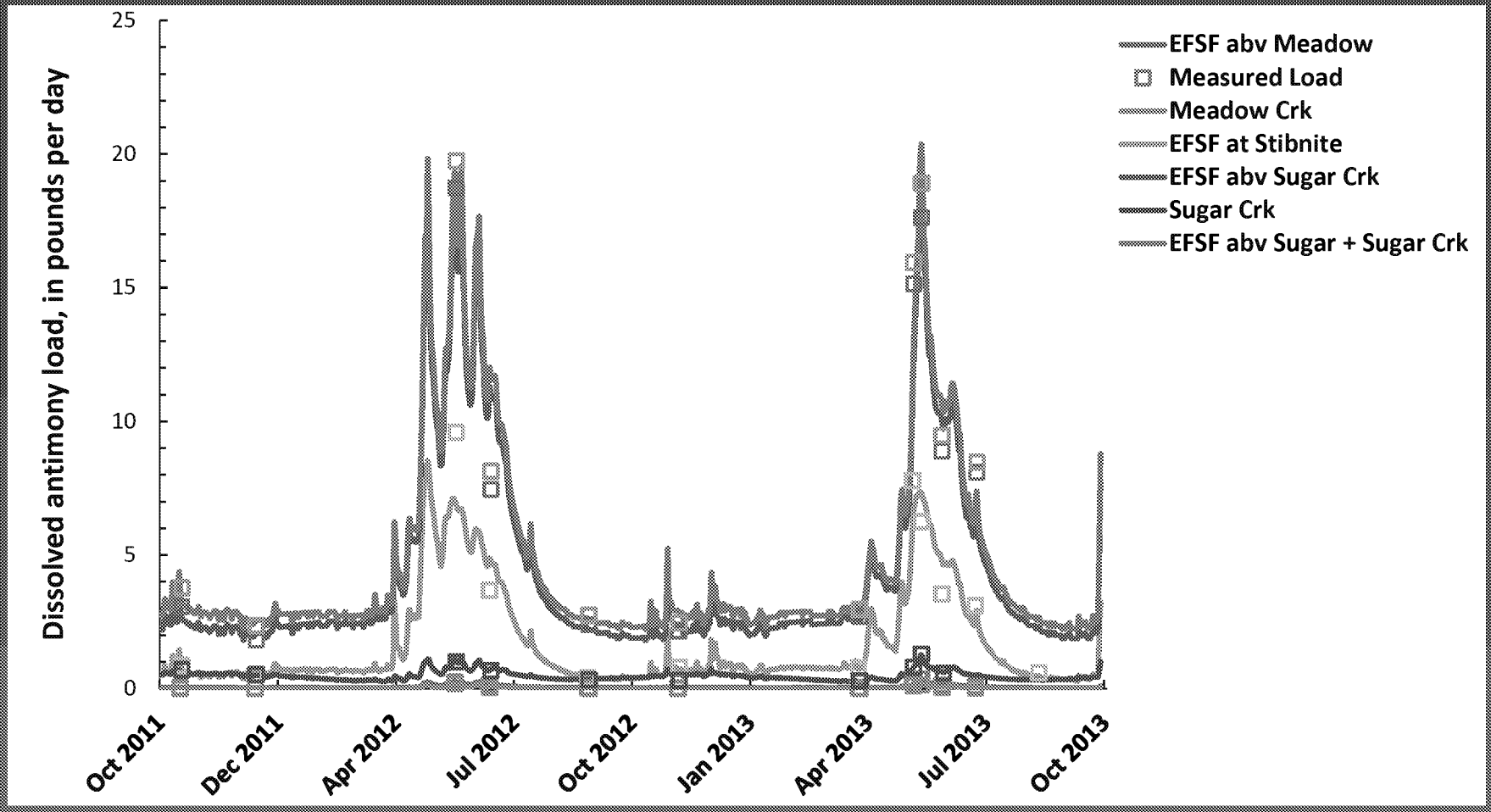
Provisional

Dissolved Antimony Loads



USGS

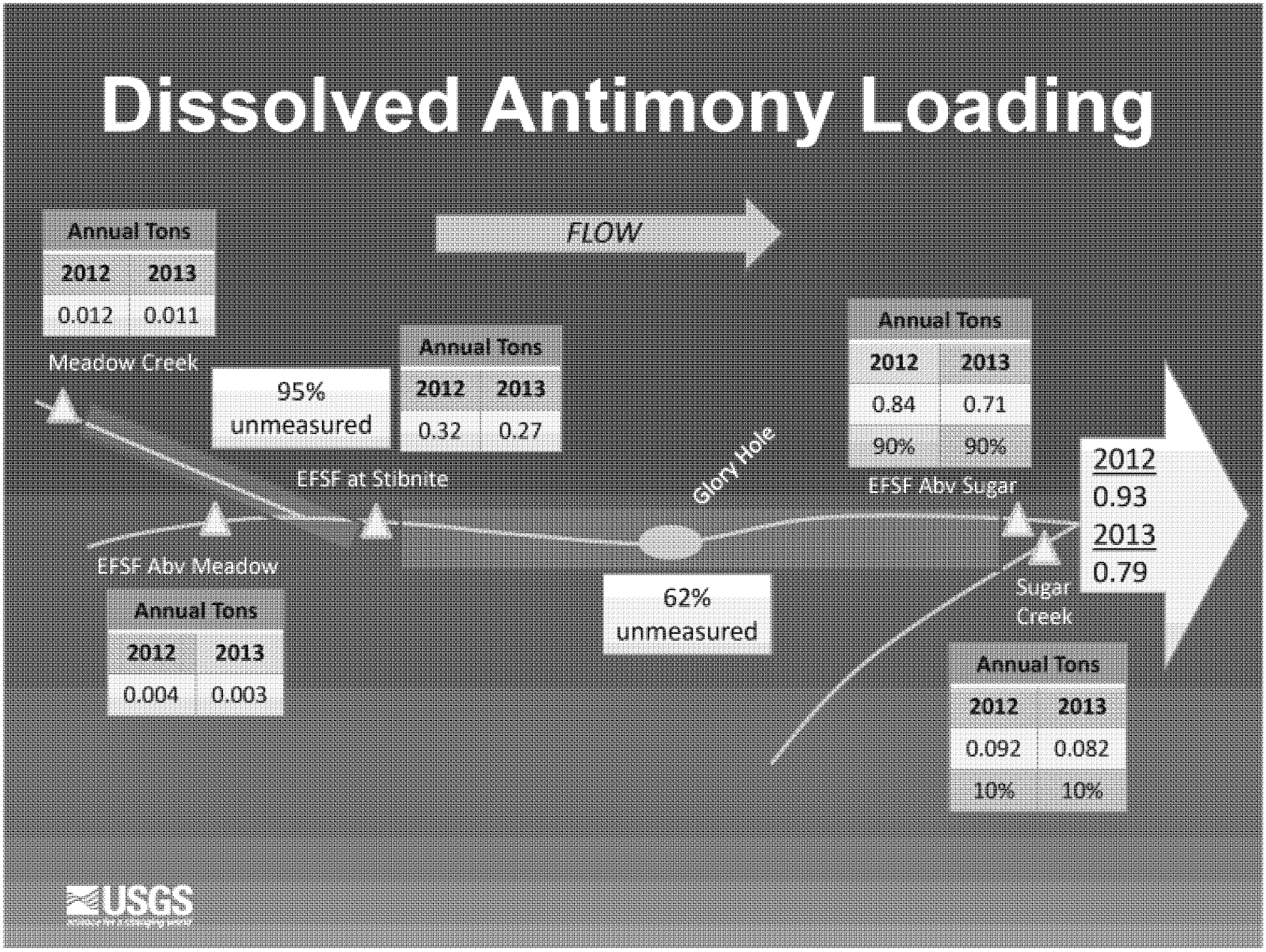
Dissolved Antimony Loads (lb/d)



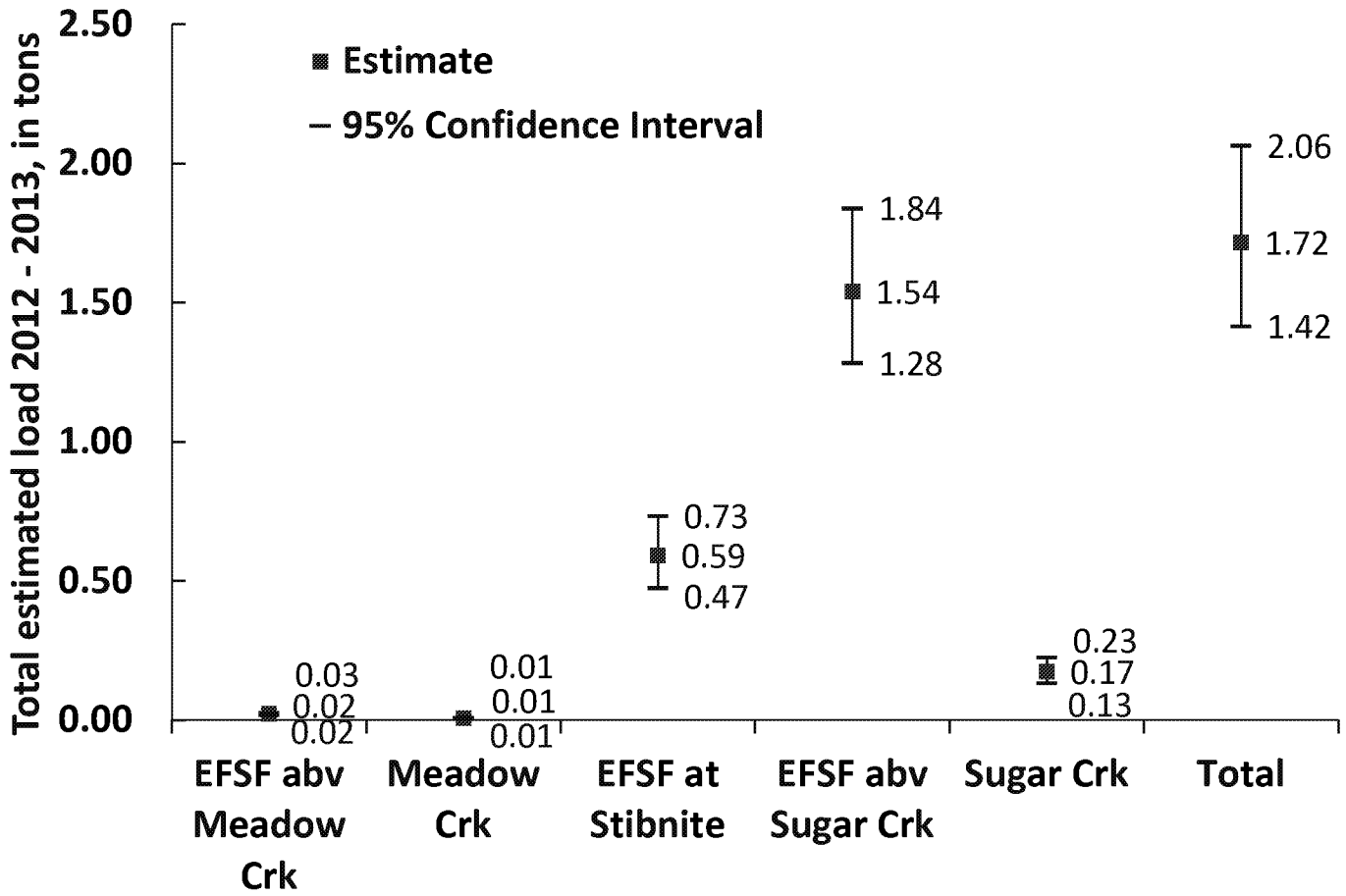
USGS

Provisional

Dissolved Antimony Loading



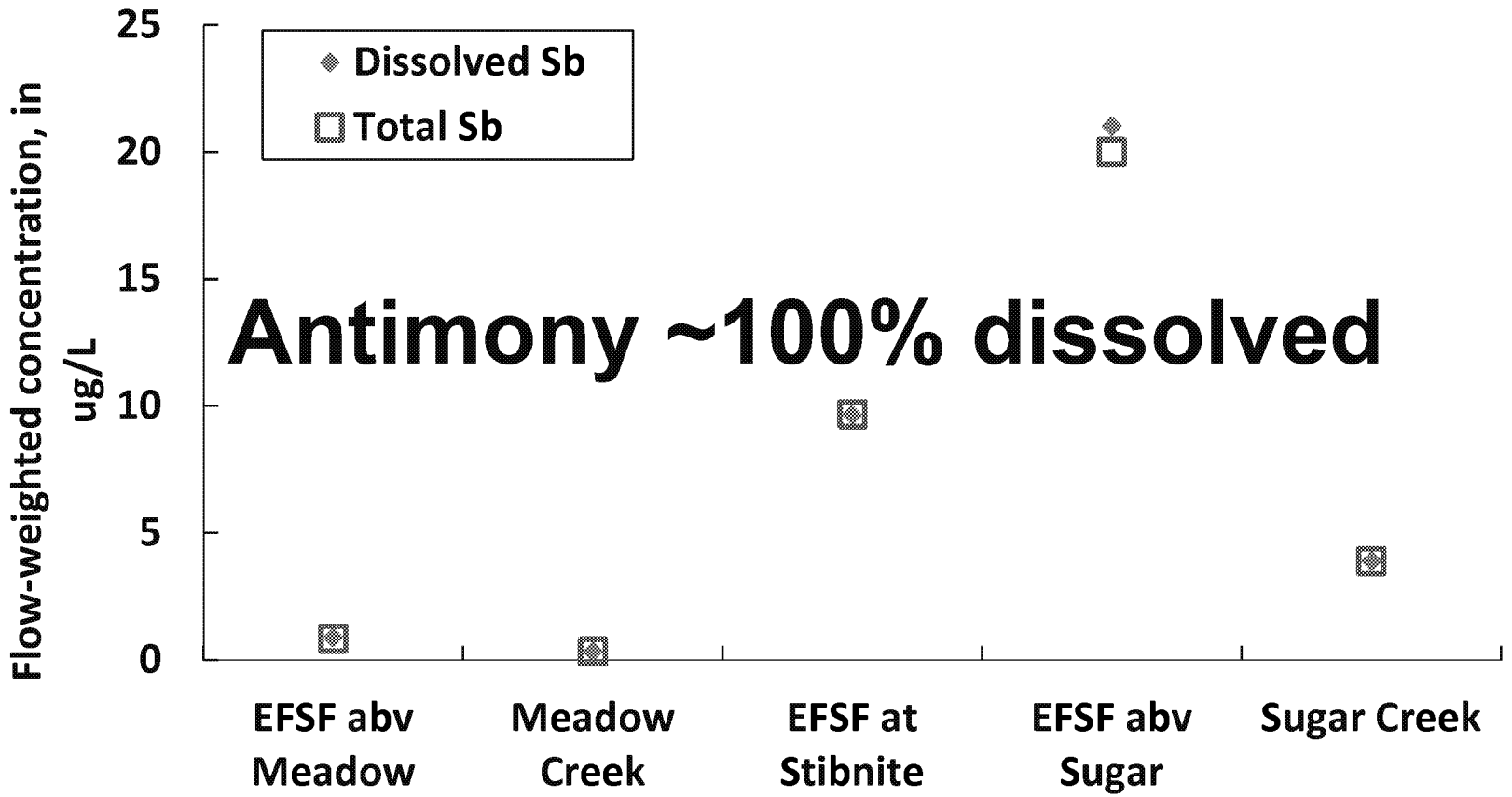
Total Dissolved Antimony Loads 2012-2013



USGS

Provisional

Flow-Weighted Antimony Concentrations



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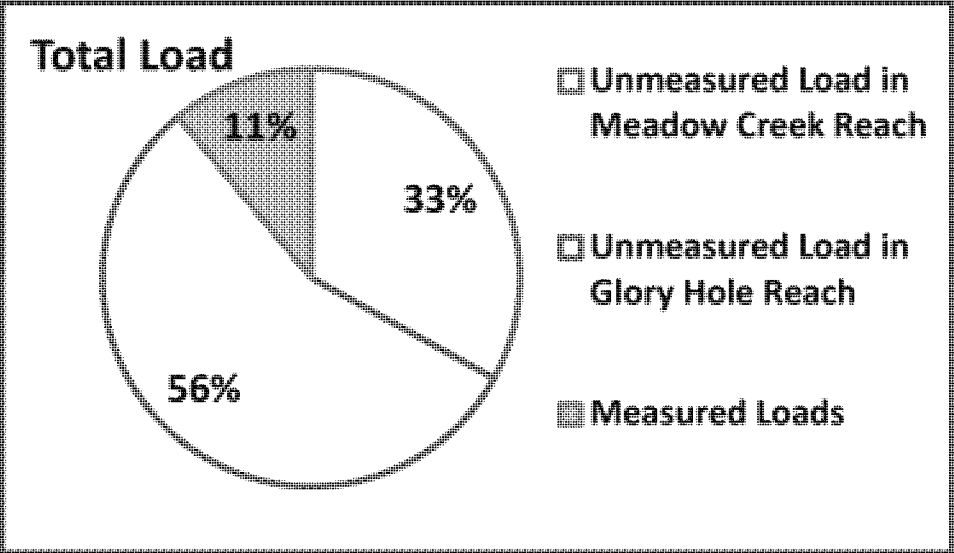
Antimony Summary

- ~100% Dissolved
- Site-specific surrogates for concentration
  - Sb ~ SC
    - 87% R^2 EFSF abv Sugar
    - 90% R^2 Sugar Creek
  - None
    - EFSF at Stibnite
    - Meadow Creek
- Unmeasured Loads

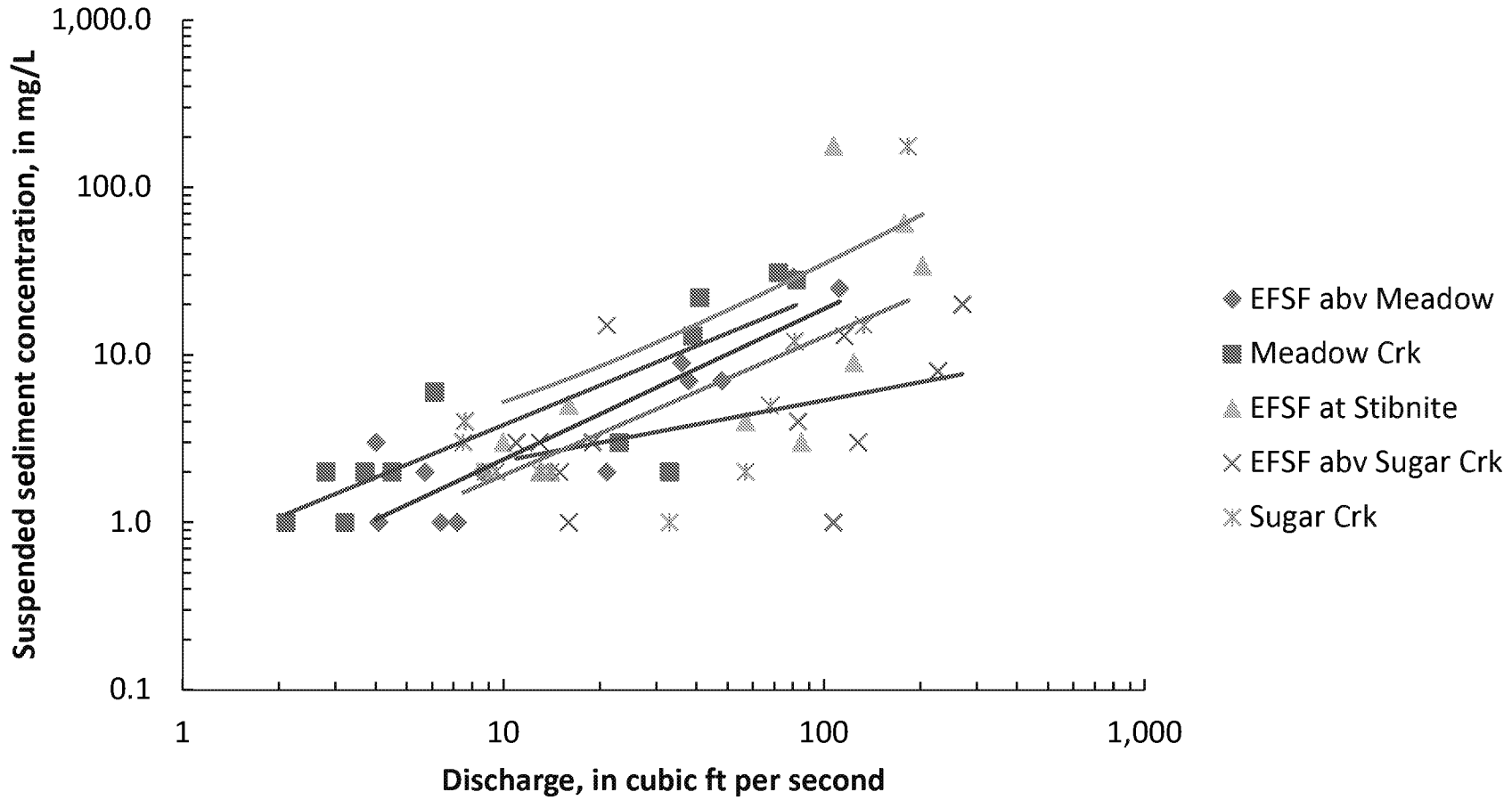


- Flow-weighted concentrations
  - Increase downstream in EFSF

USGS

Provisional

Sediment Concentrations



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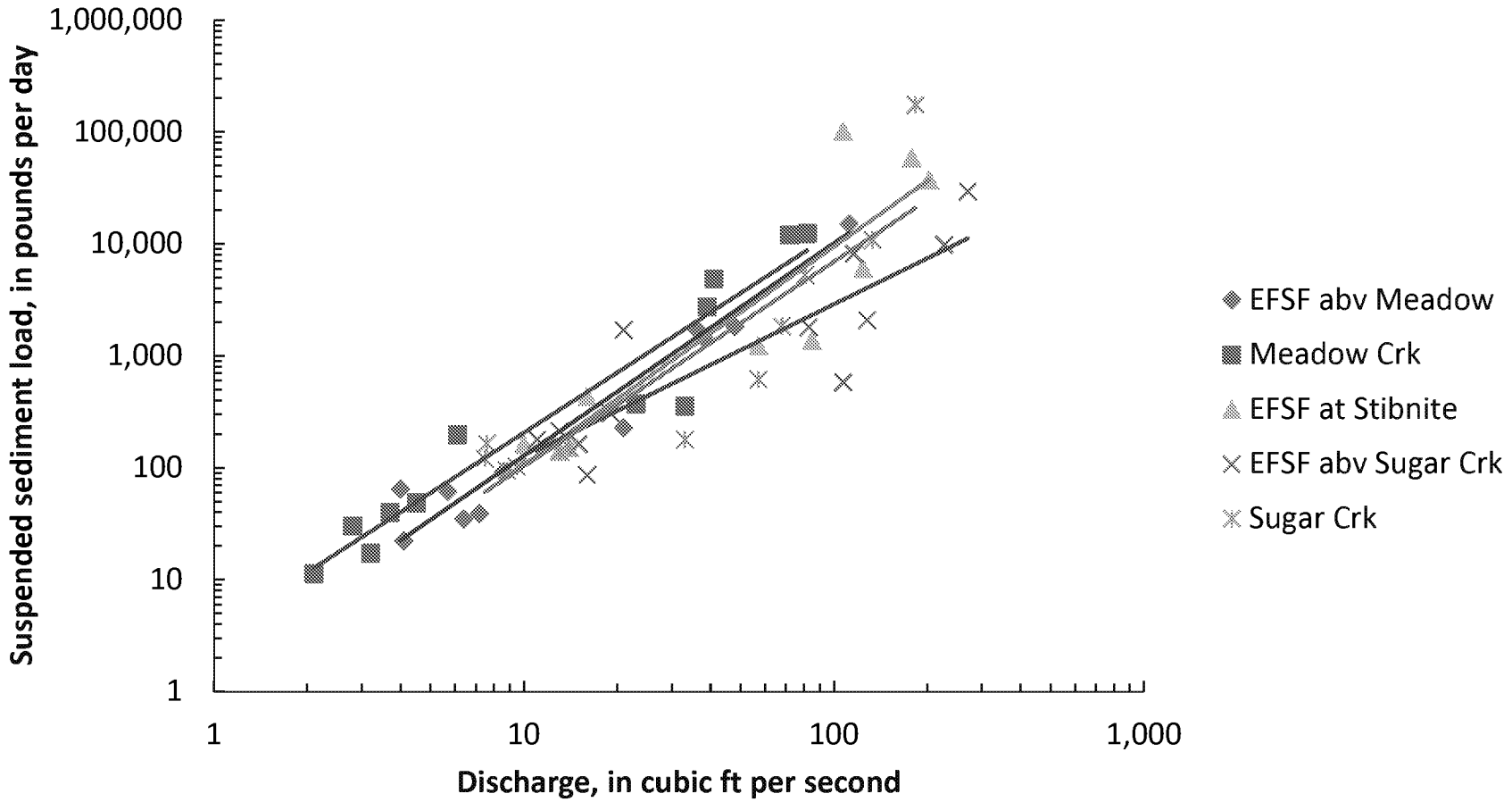
Sediment Loads (lb/d)



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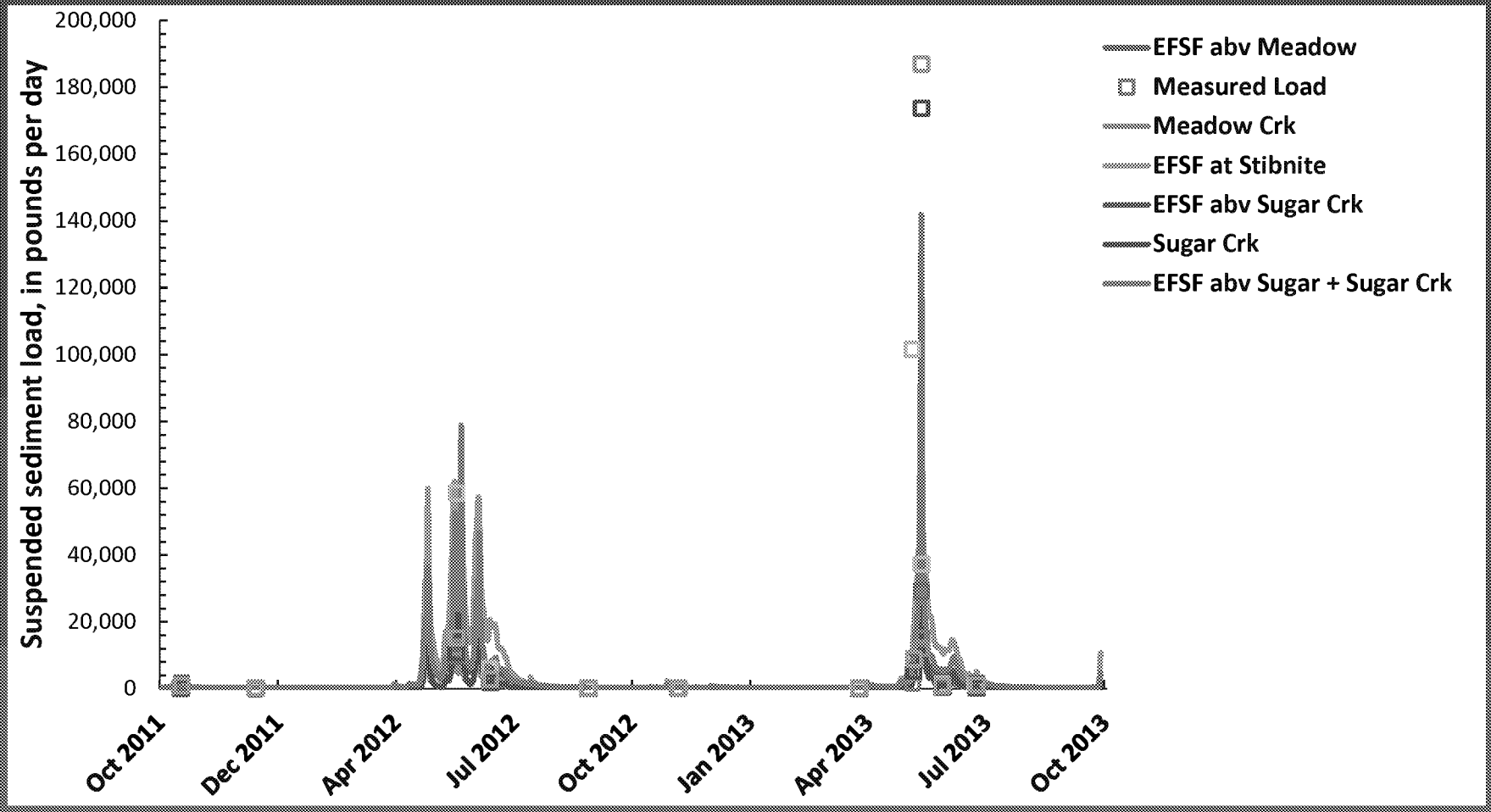
Provisional

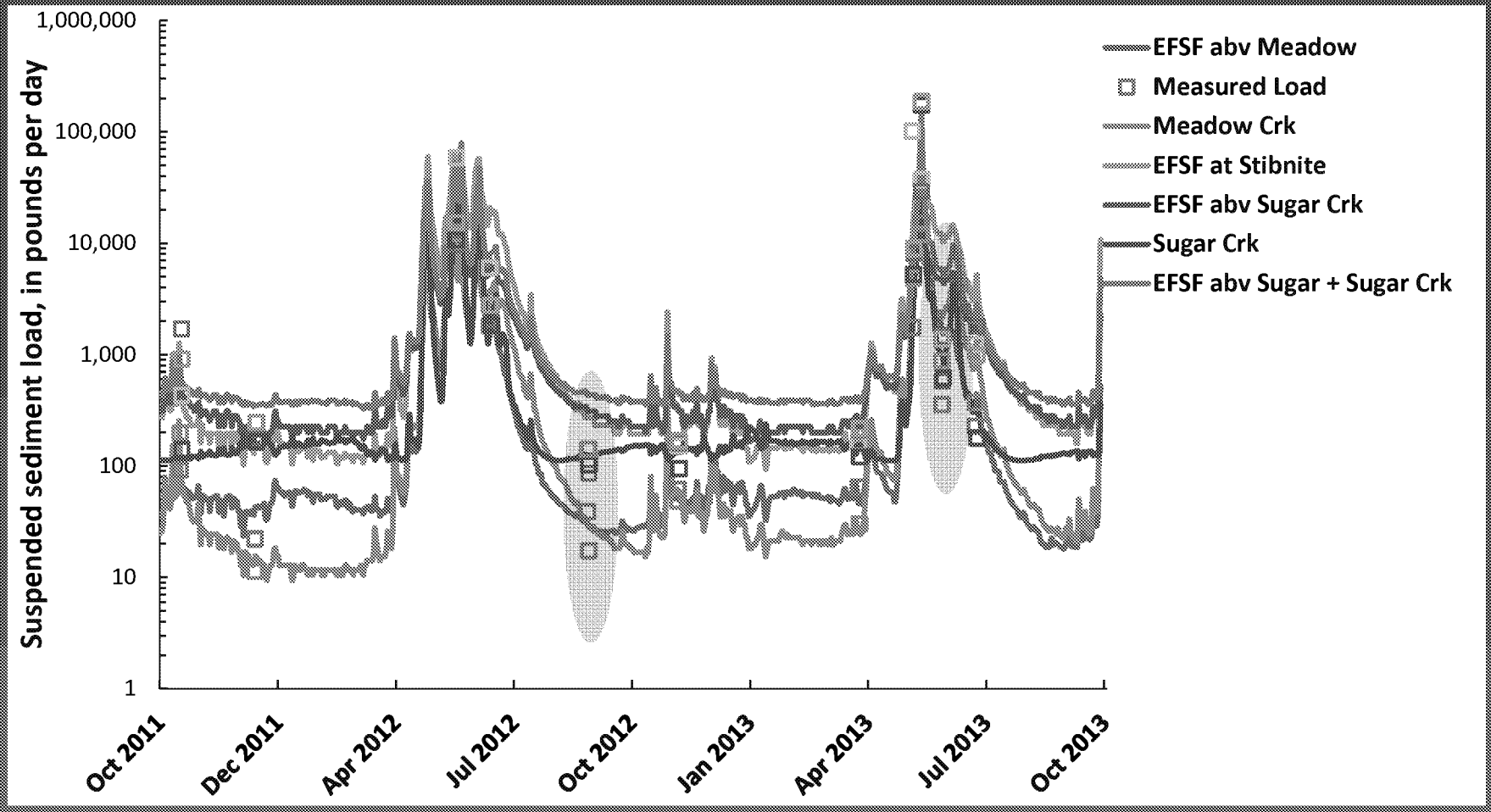
Sediment Loads



USGS

Provisional

Sediment Loads



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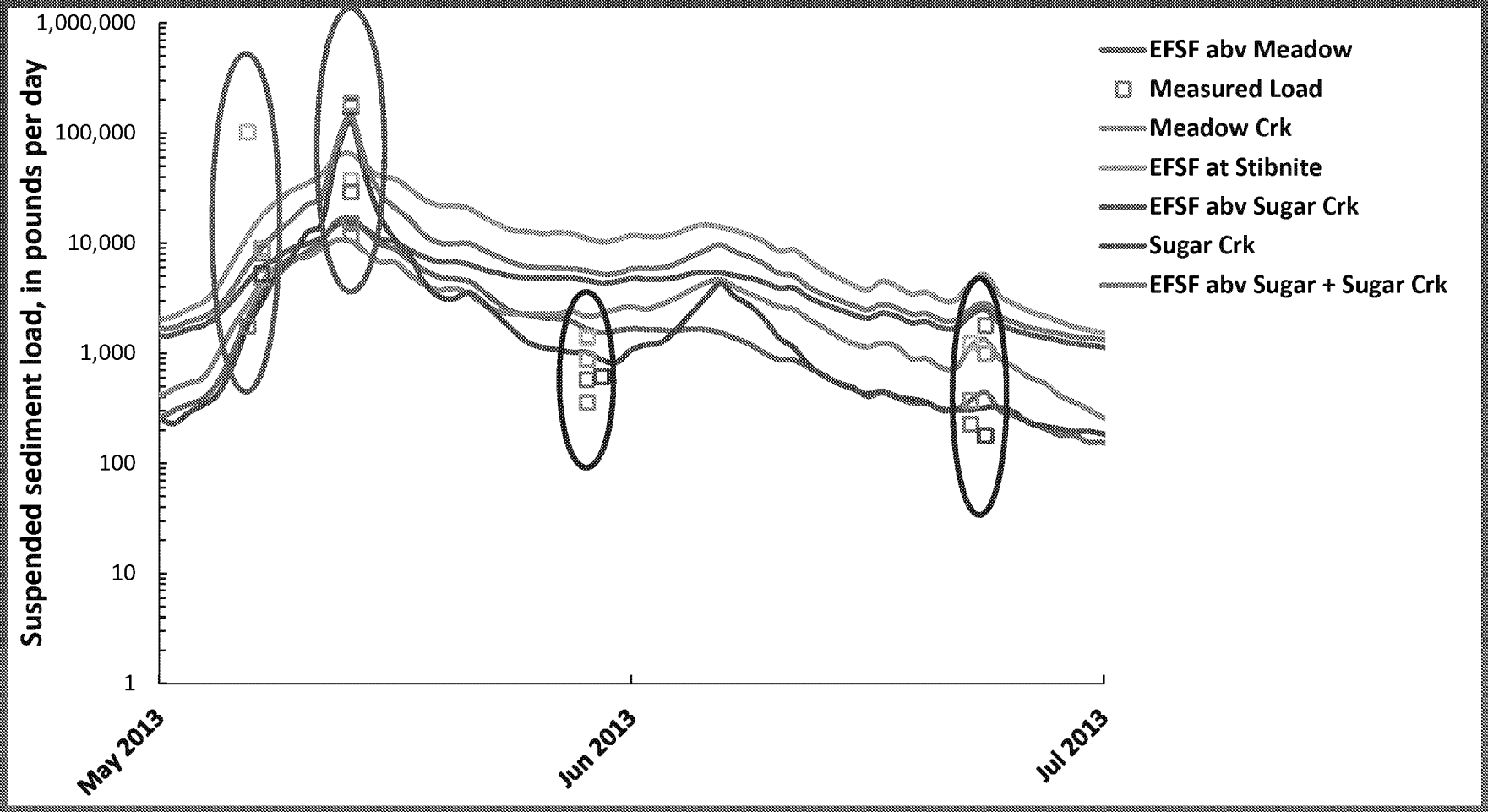
Provisional

Sediment Loads



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Sediment Load Models

- Hysteresis
  - Most sed before peak
- Unique factors
  - EFSF abv Sugar - fines
  - Sugar Creek – pulses

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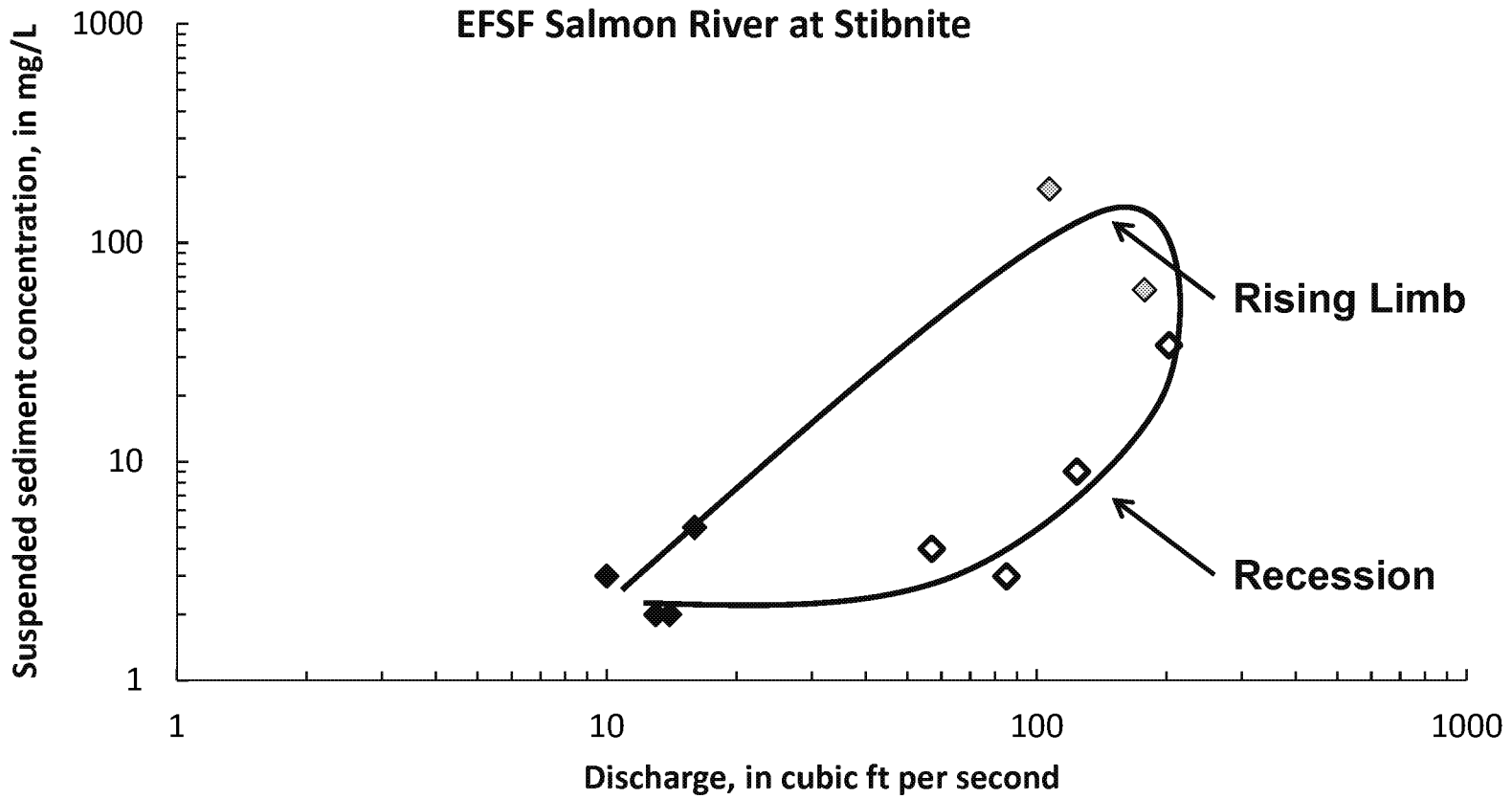
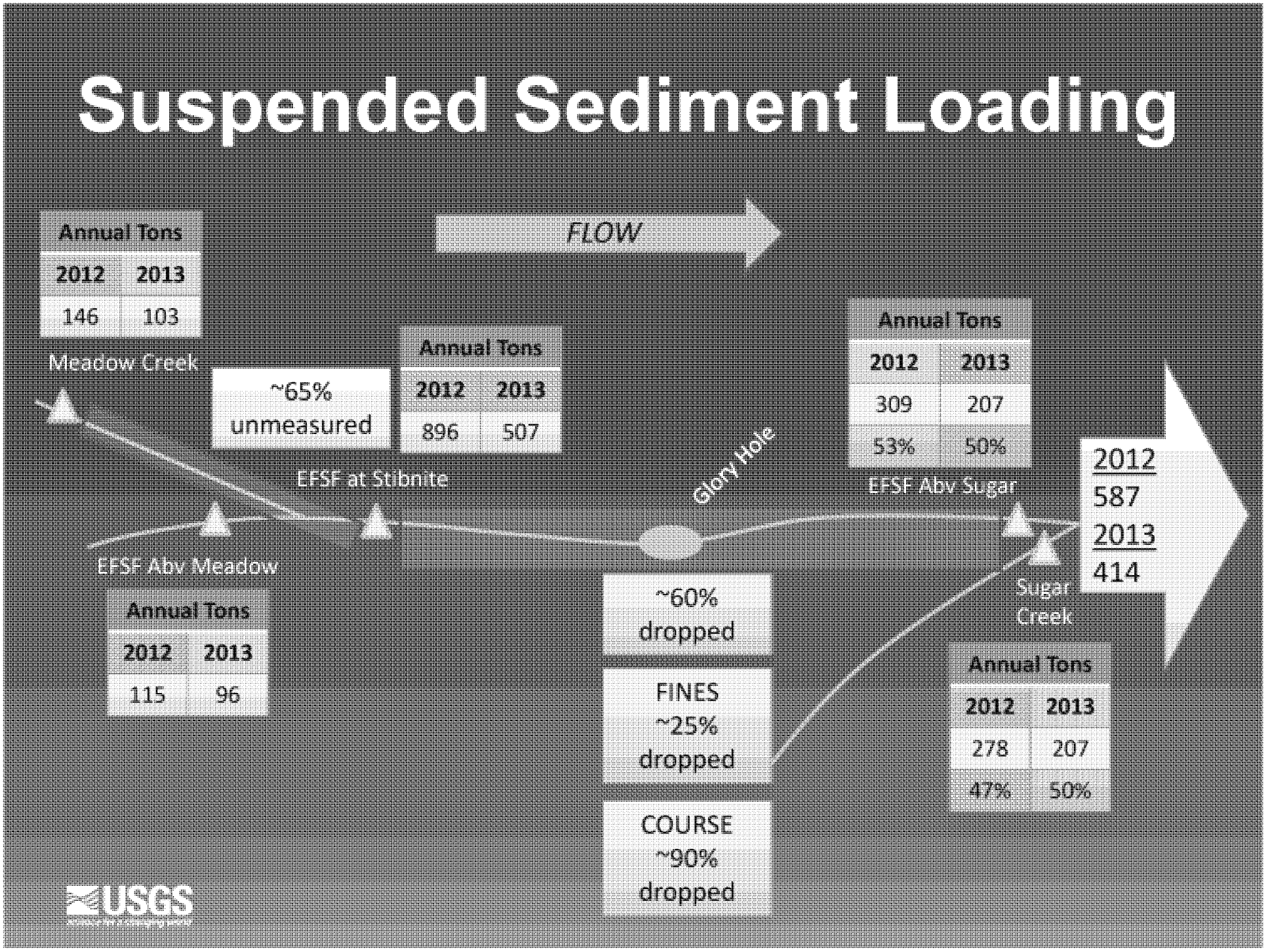
Hysteresis: Sediment ~ flow relation different on rising limb than on falling limb of hydrograph

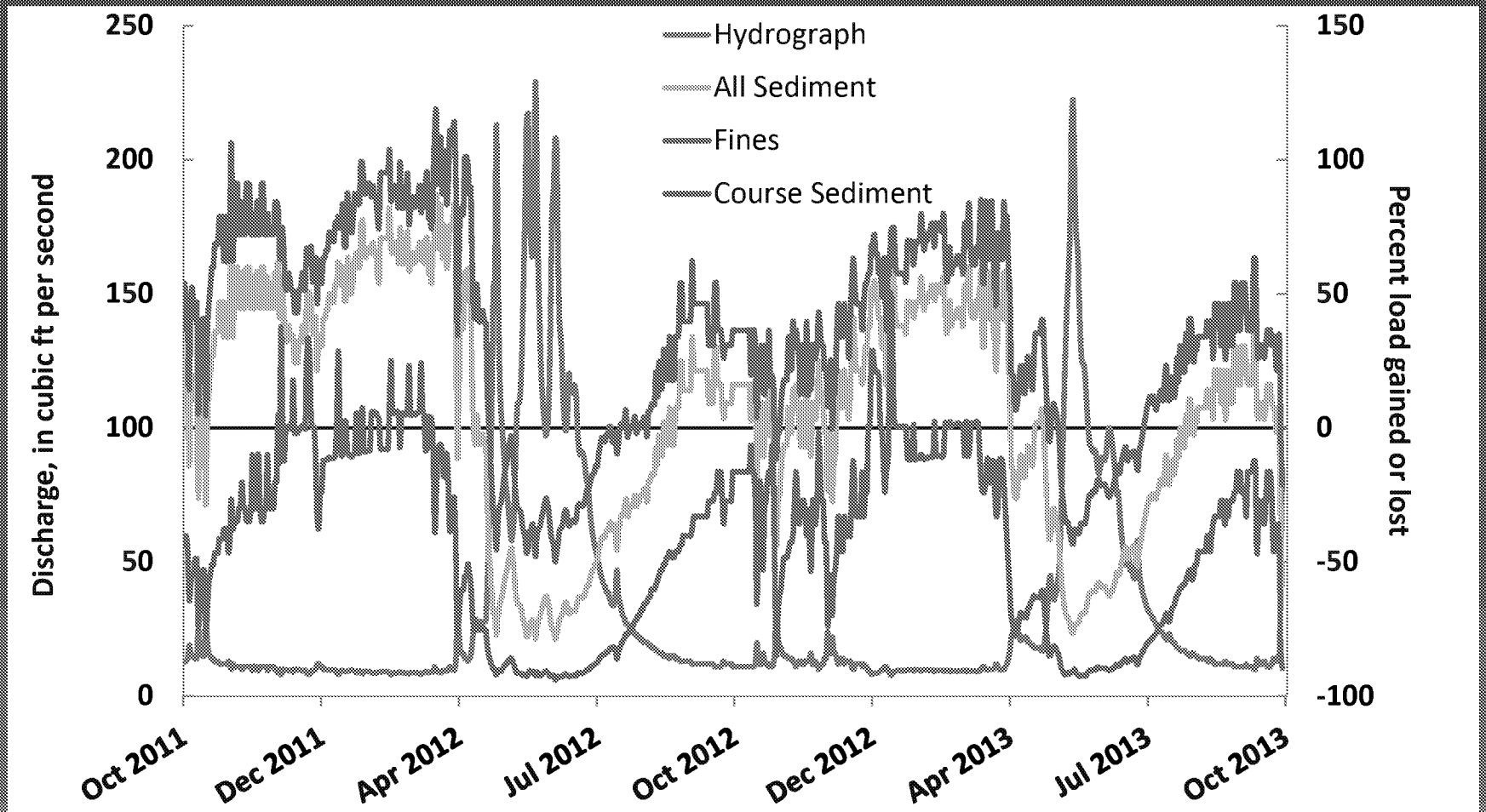


USGS
science for a changing world

Suspended Sediment Loading



Sediment Transport through Glory Hole



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Sediment Summary

- Load models affected by hysteresis
- SSC ~ Q
  - <60% R^2 : EFSF abv Sugar (76% fines), EFSF at Stibnite
  - >90% R^2: EFSF abv Meadow, Sugar
  - 71% R^2 : Meadow Crk
- Unmeasured Loads
  - >100 - 74% of Total gained Meadow Creek reach
  - 100 - 72% of Total dropped Glory Hole reach
- Loads dropped during high flow
- More fines leave Glory Hole reach

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Sediment-Associated Constituents

- Aluminum
- Mercury

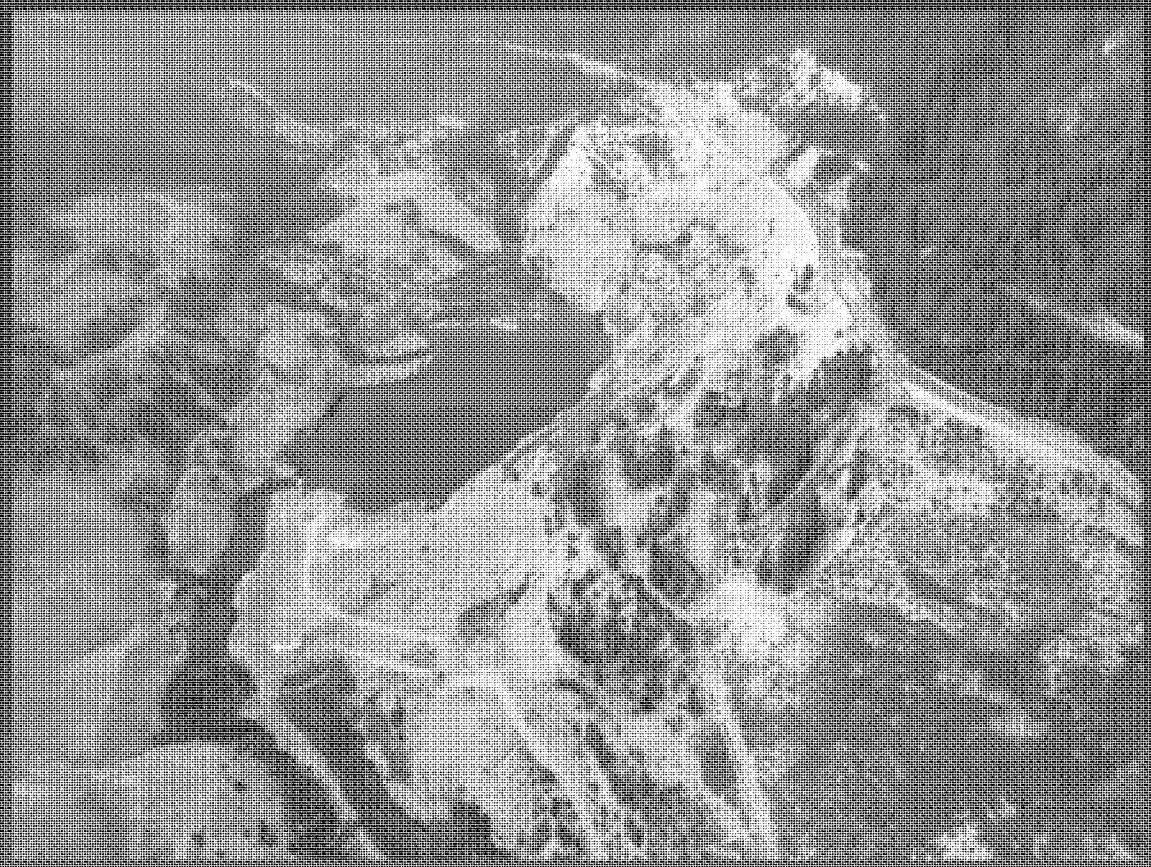

Photo by Midas Gold

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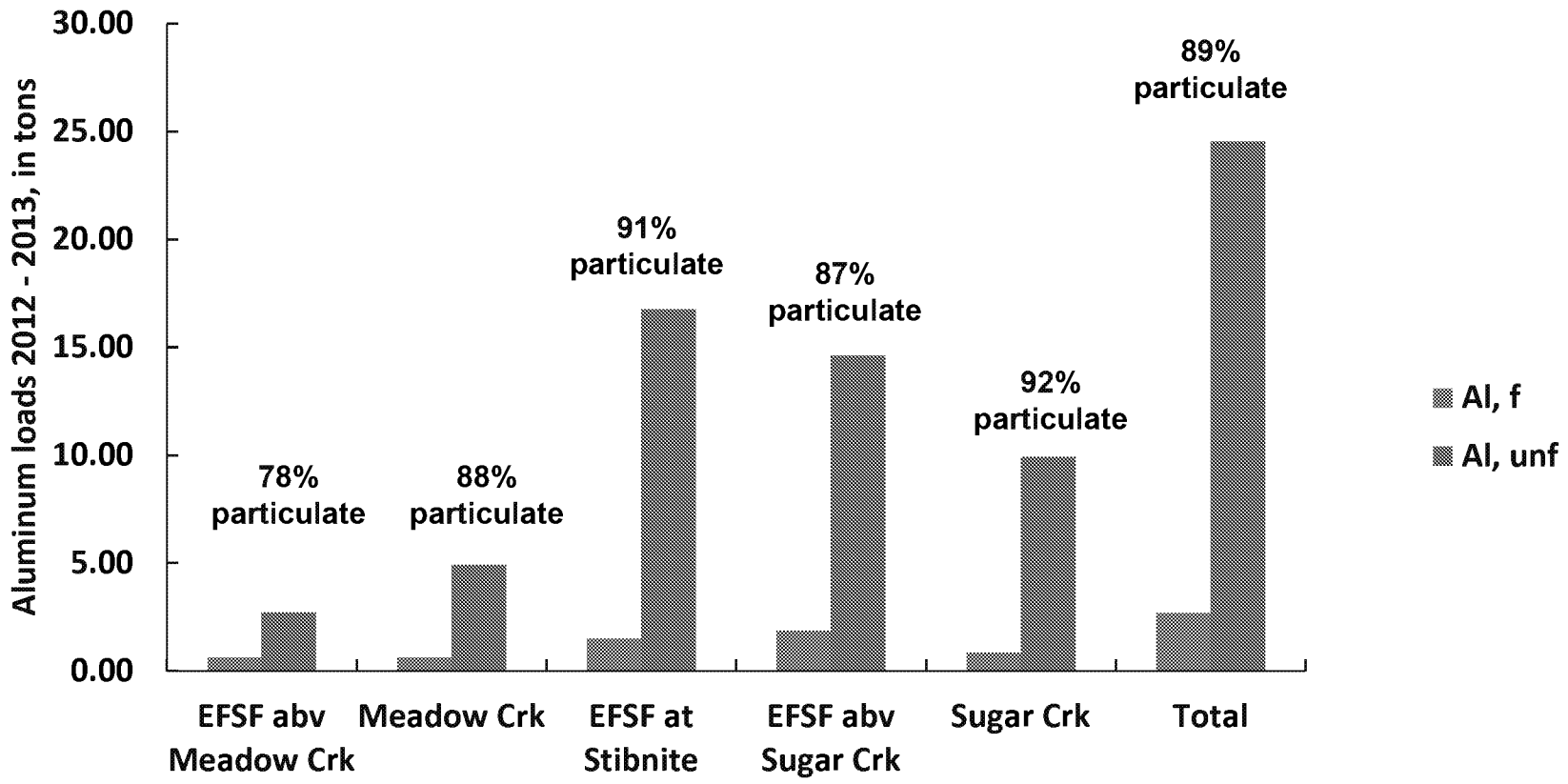
Comparison – Dissolved & Total Al



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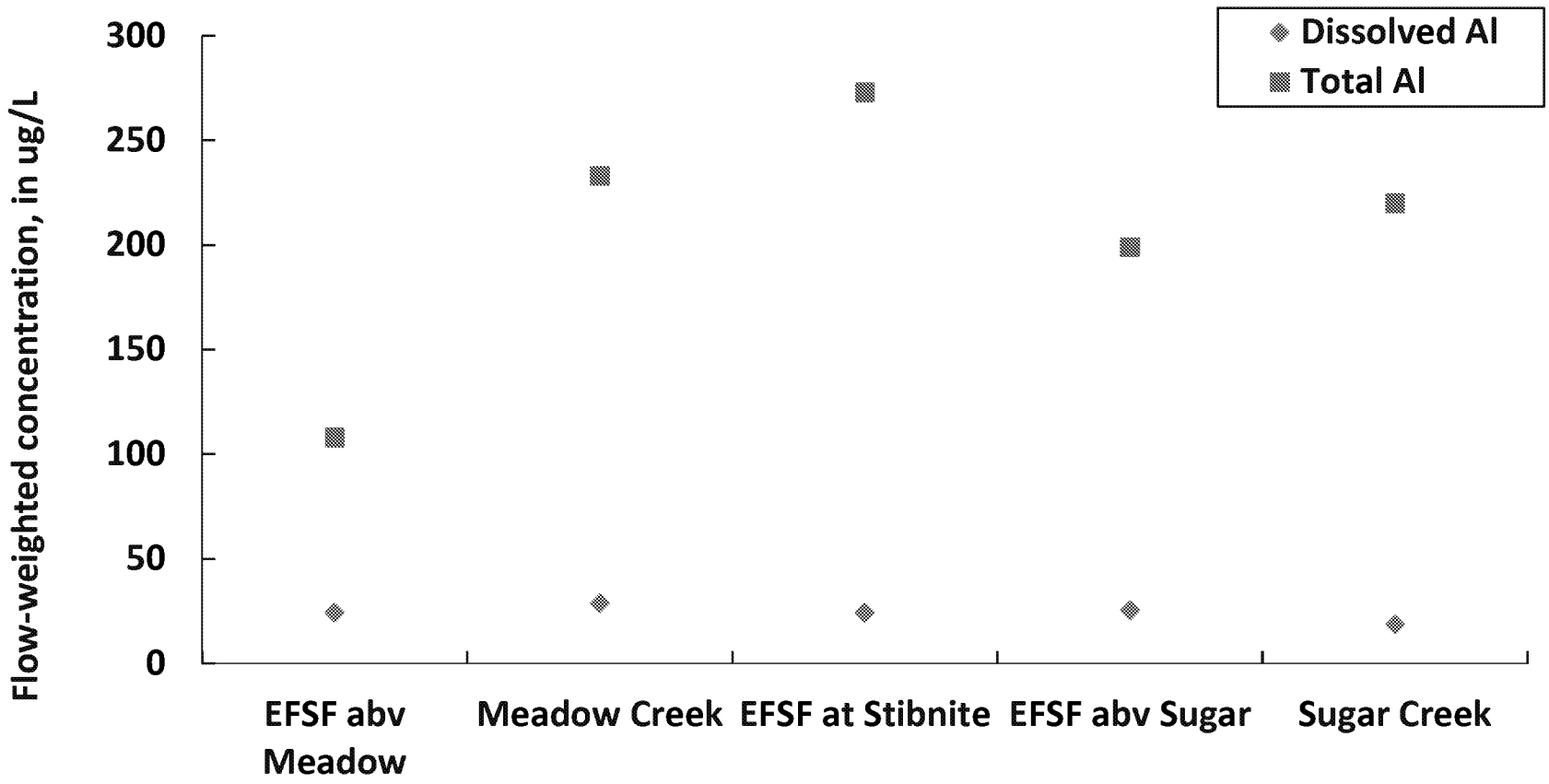
Flow-Weighted Aluminum Concentrations



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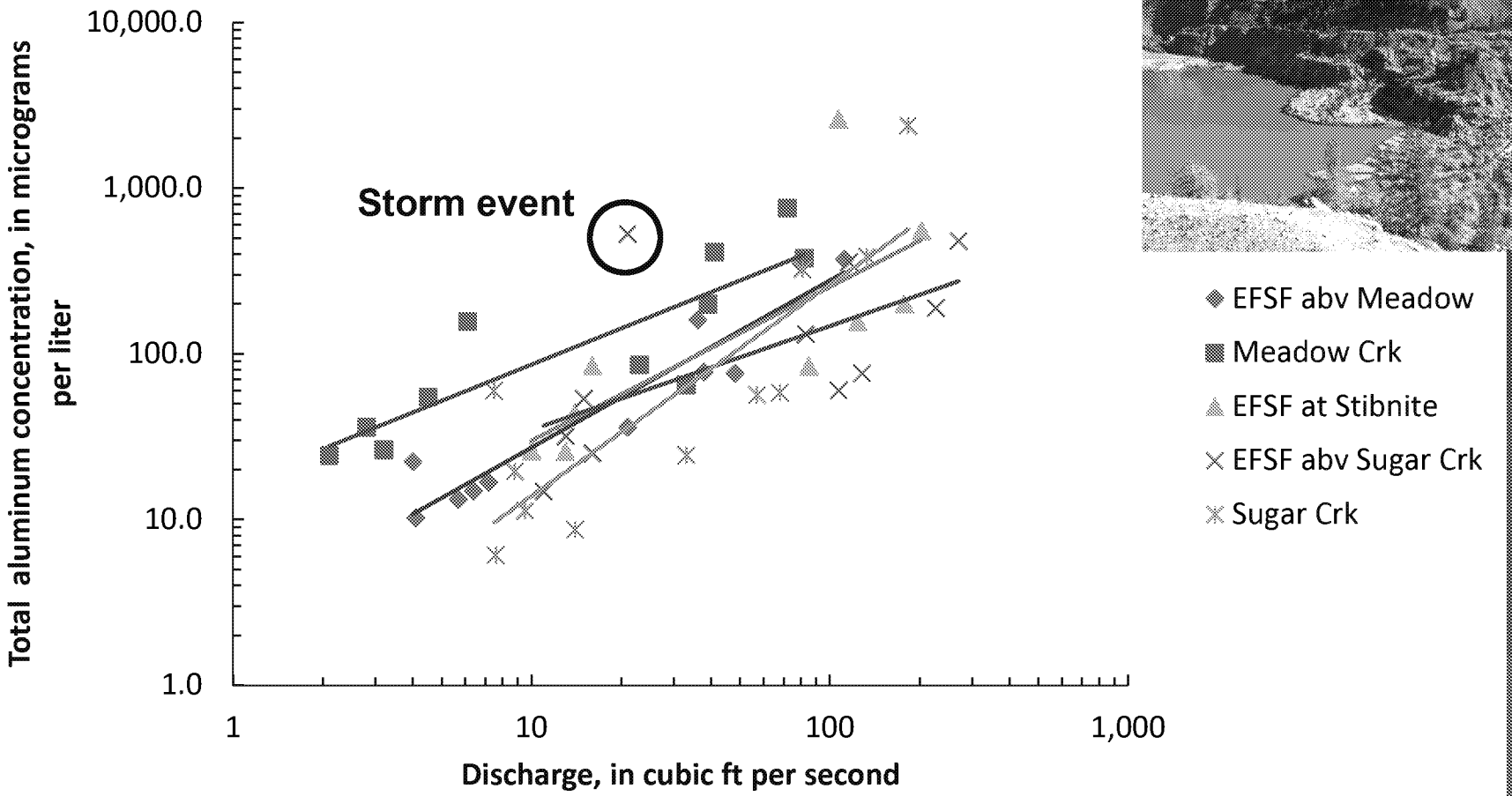
Provisional

Total Aluminum Concentrations



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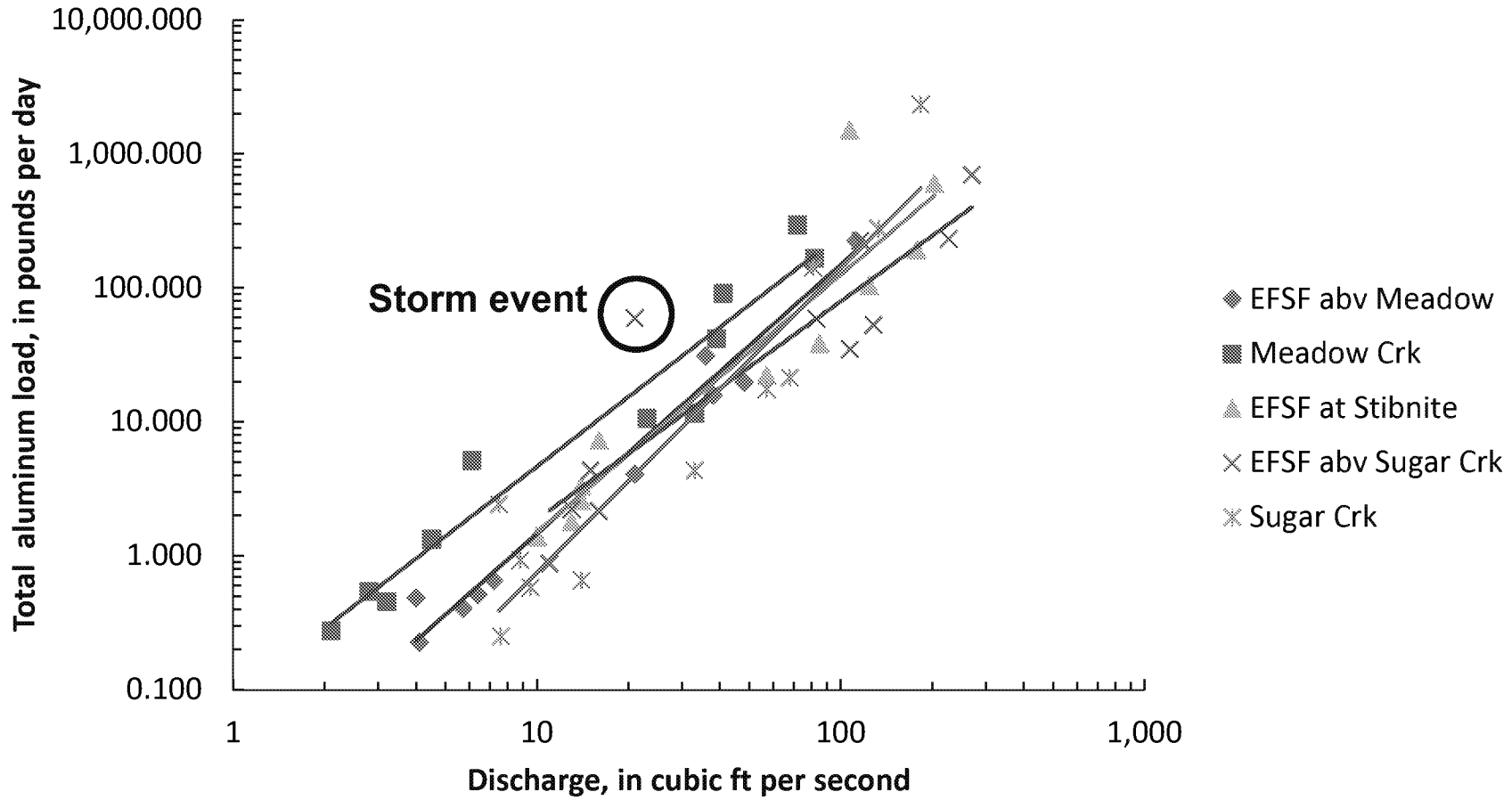
Provisional

Total Aluminum Loads



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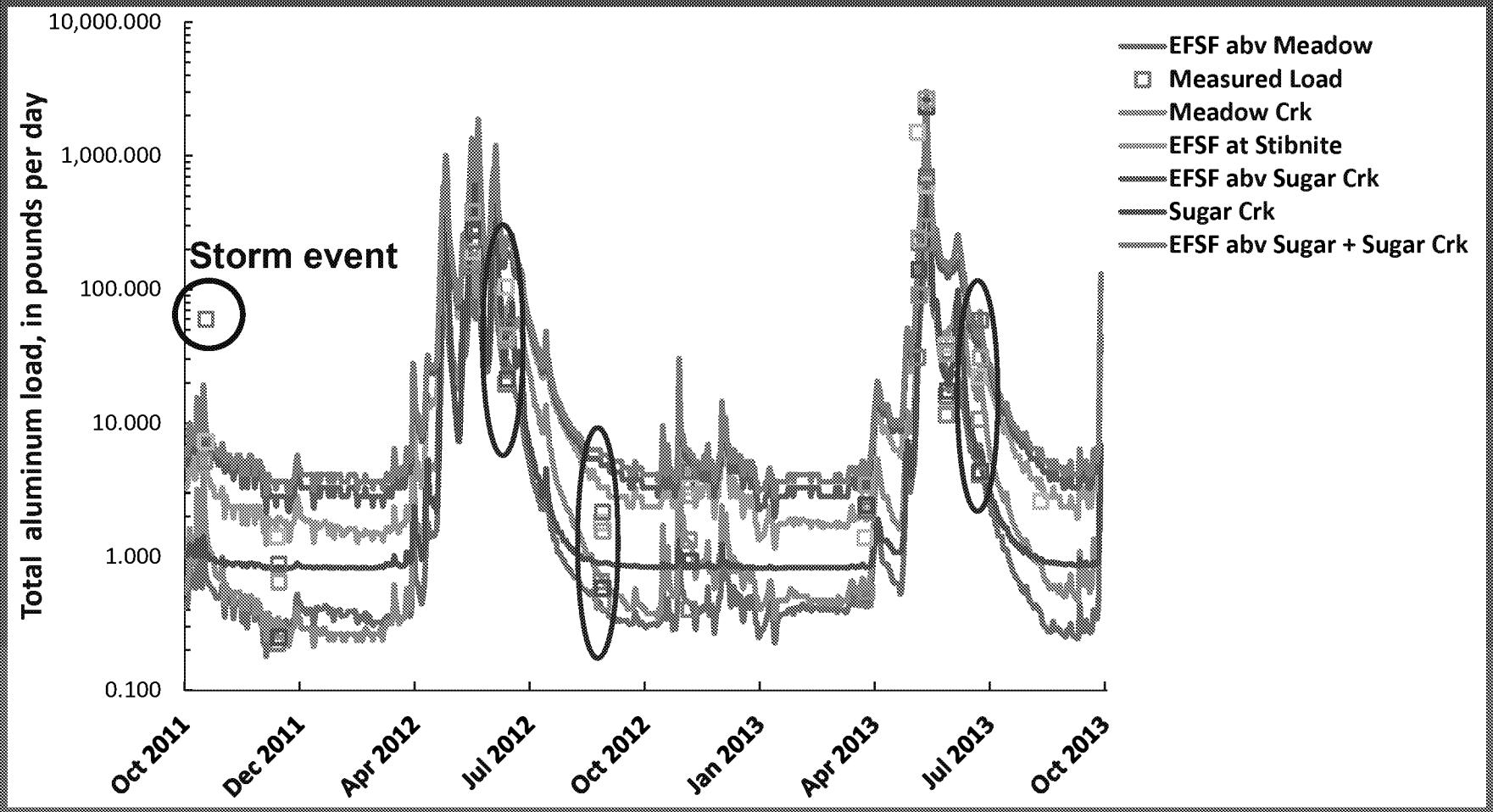
Provisional

Total Aluminum Loads



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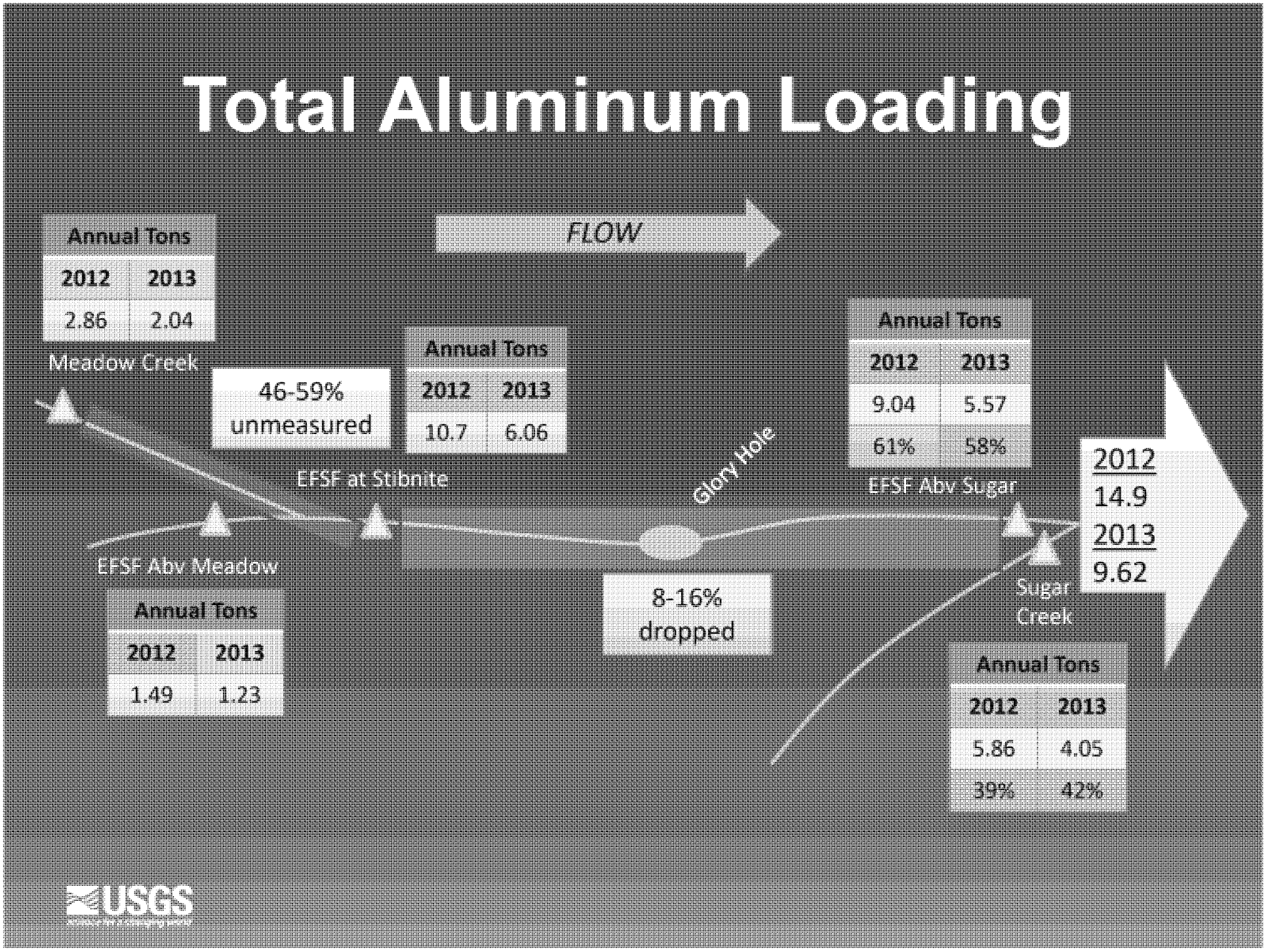
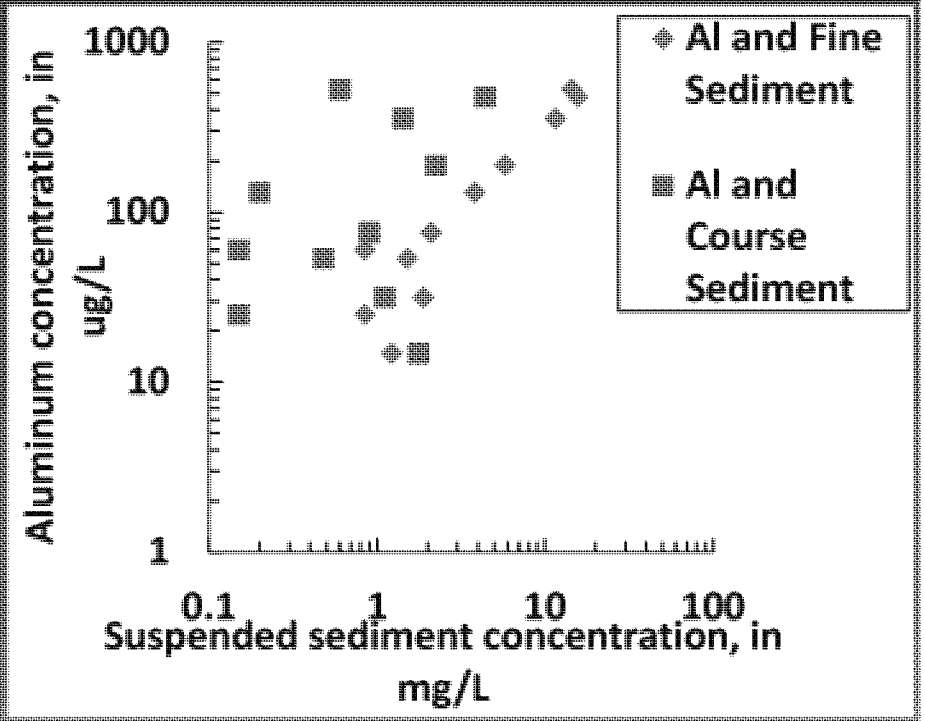
Total Aluminum Loading



Aluminum Summary

- Mostly particulate
- Steady dissolved concentrations
- Hysteresis – total Al
- Total Al concentration ~ Q >70% R^2 EFSF abv Meadow, Meadow Creek, Sugar Creek
- Total Al assoc. with fines
- Glory hole a sink for total Al



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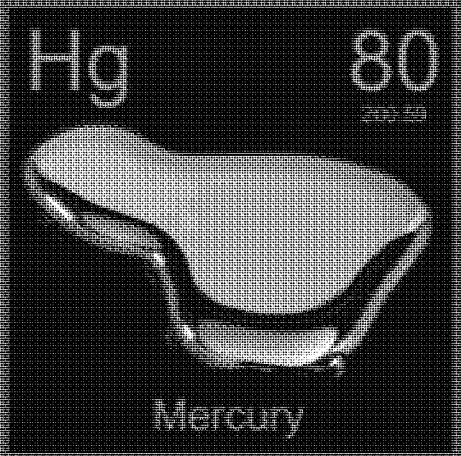
Total Mercury

- Meadow Creek
  - 0 detections, 4 samples
- EFSF abv Meadow
  - 2 detections: 0.008 – 0.040 ug/L
  - 50% detection rate
- EFSF at Stibnite
  - 4 detections: 0.007 – 0.071 ug/L
  - 44% detection rate
- EFSF abv Sugar
  - 5 detections
  - 45% detection rate – 0.006 – 0.037 ug/L



Sugar Creek
12 detections
100% detection rate

USGS

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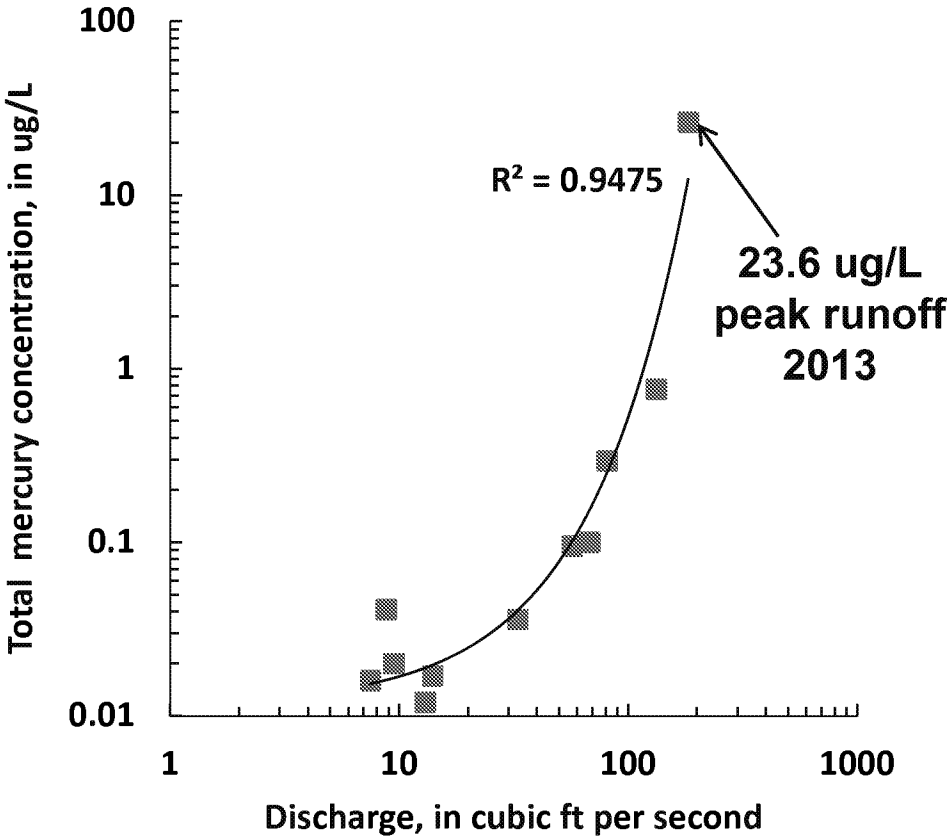
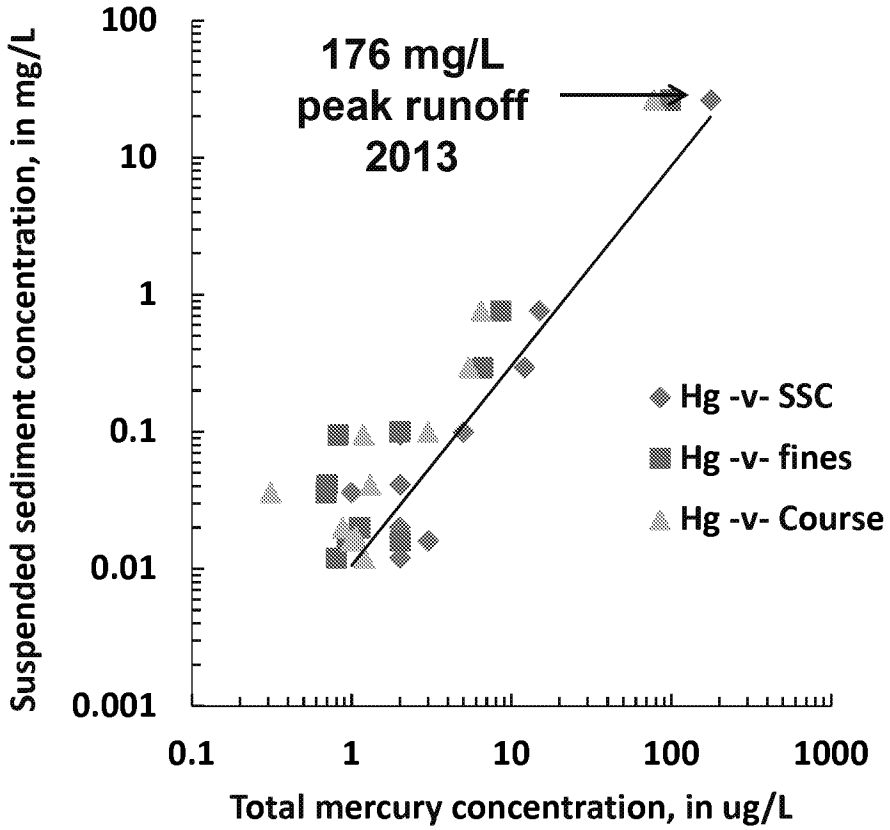
Mercury in Sugar Creek

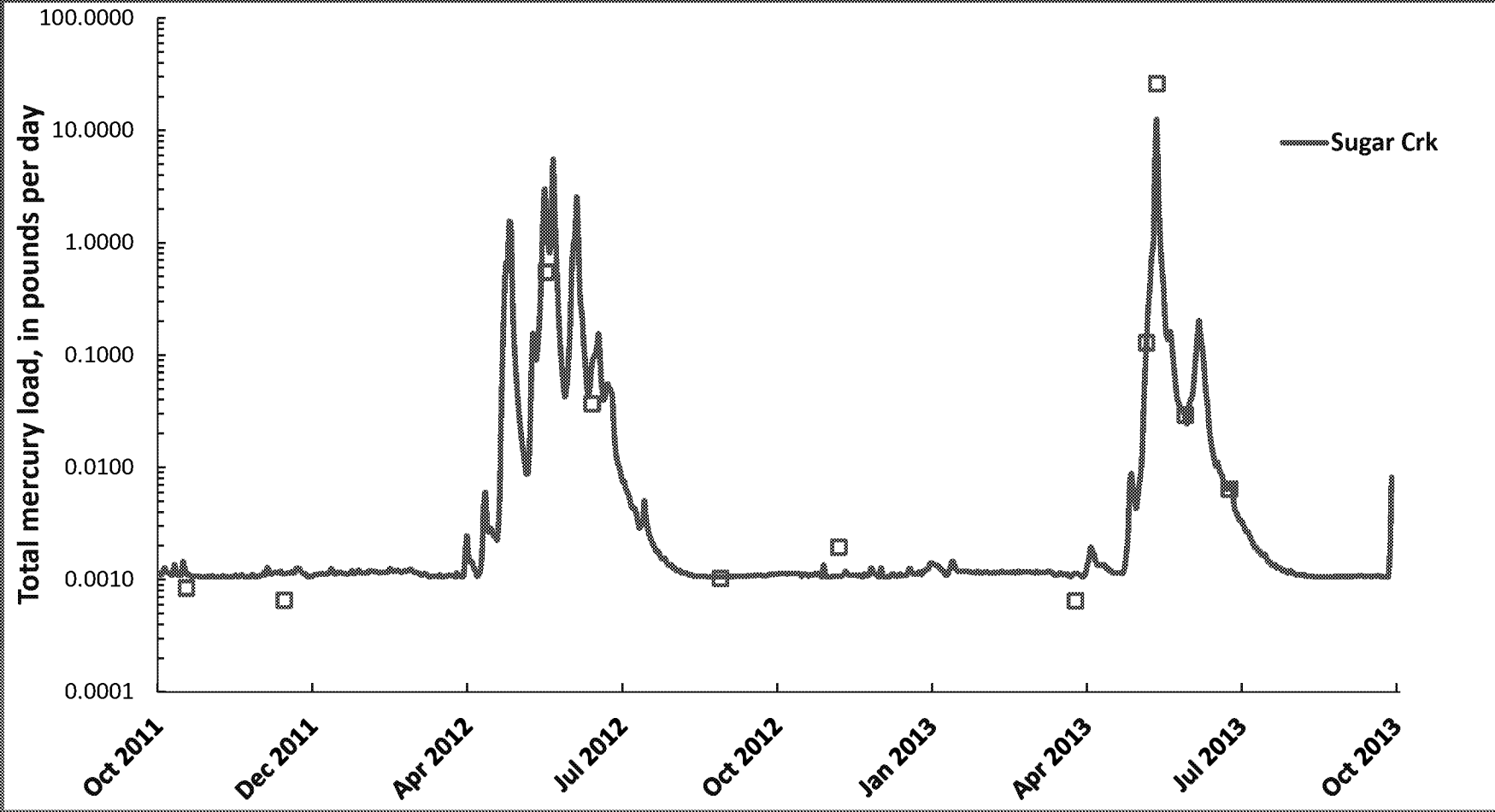




USGS

Provisional

Total Mercury Loads



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Total Mercury Loads

Total Mercury Loads (lb/yr)

	Sugar Creek	Lower 95% CI	Upper 95% CI
2012	34	16	64
2013	28	11	61

Total Mercury Flow-weighted Concentrations (ug/L)

	Sugar Creek	Lower 95% CI	Upper 95% CI
2012	0.668	0.312	1.257
2013	0.714	0.274	1.544

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Mercury Summary

- Sugar Creek
  - Hg ~ Q surrogate in Sugar Creek (94% R^2)
  - 28 – 34 lb/yr estimated load 2012 – 2013
  - Hg mobilizes with sediment
- Need additional sample results EFSF
- 40-50% detection rate EFSF
- Not detected in Meadow Creek

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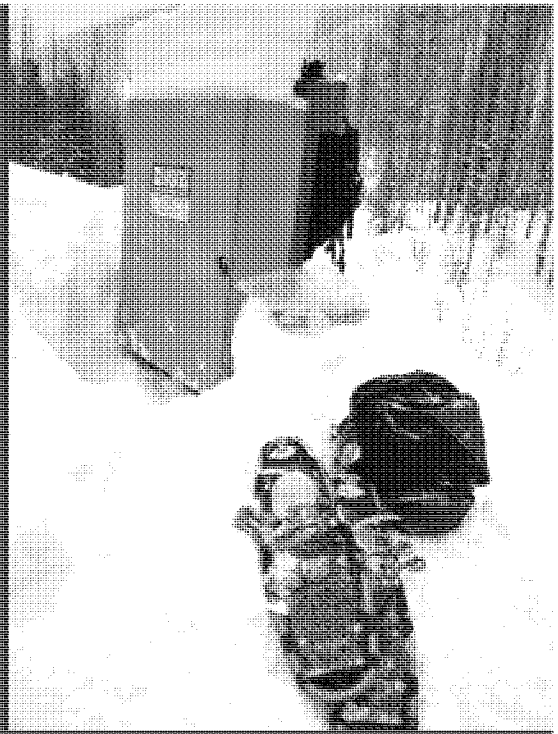
Future Plans



- Ongoing streamgage operation
- Continue sampling in spring
- Fully develop surrogate models
  - Filtered As – all sites
  - Unfiltered Hg – Sugar Creek
- Funding agreement ends 6/30/14

USGS

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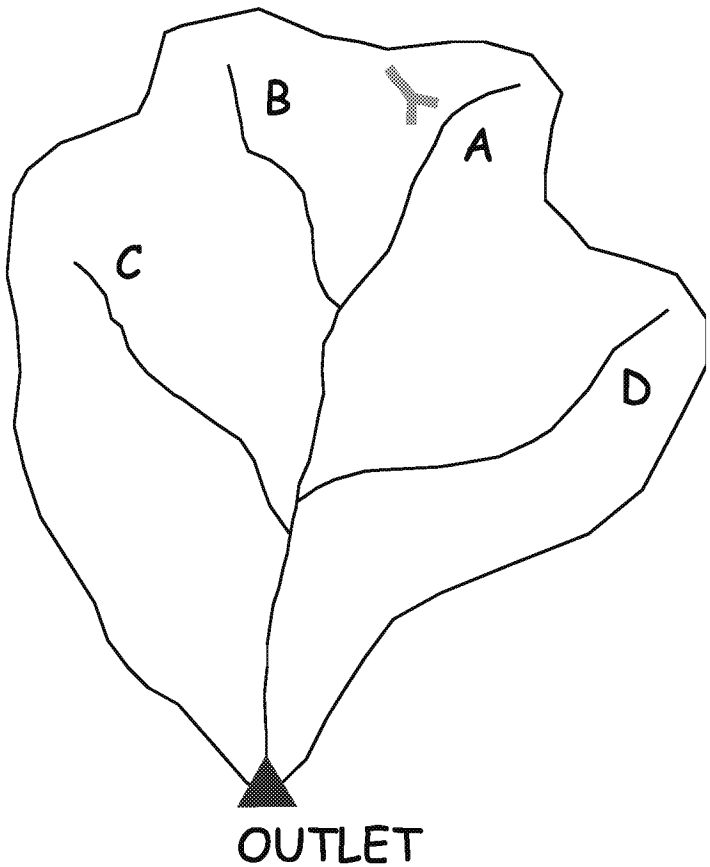
Questions

USGS

Using Tracer-Injection Studies and Synoptic Sampling to Quantify Mass-Loading

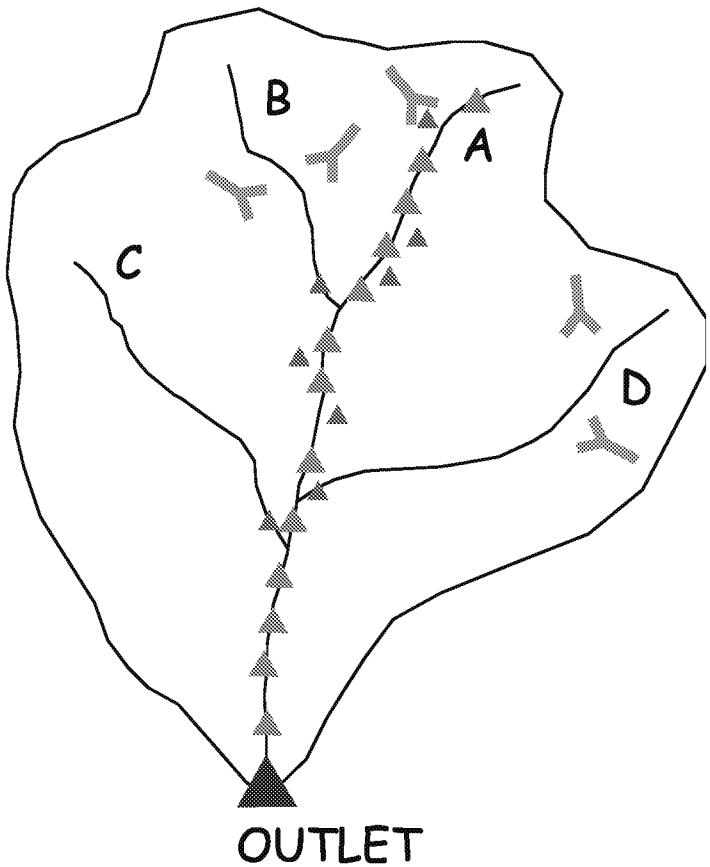
Toxic Substances Hydrology Program

Traditional view of a watershed



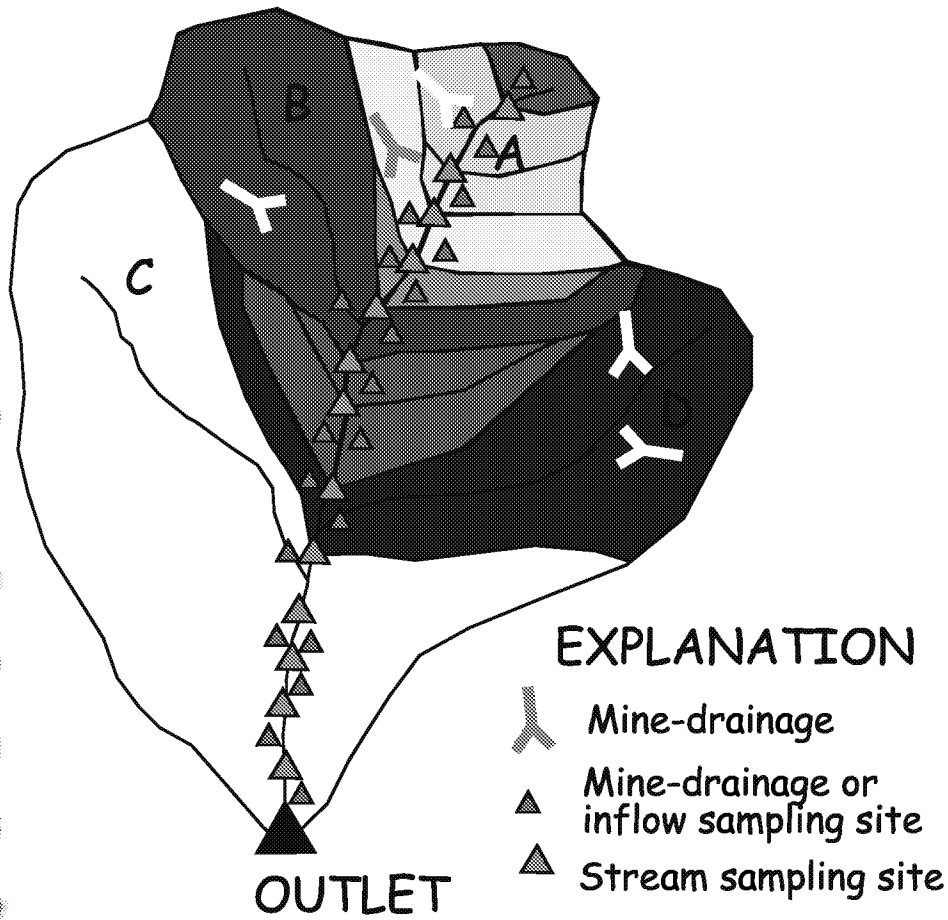
- "Integrator" site
  - Monitoring for trends
  - Loads and seasonal variation - TMDL
  - Chemical Weathering
  - Processes on a watershed scale
- Long-term monitoring
- Trends

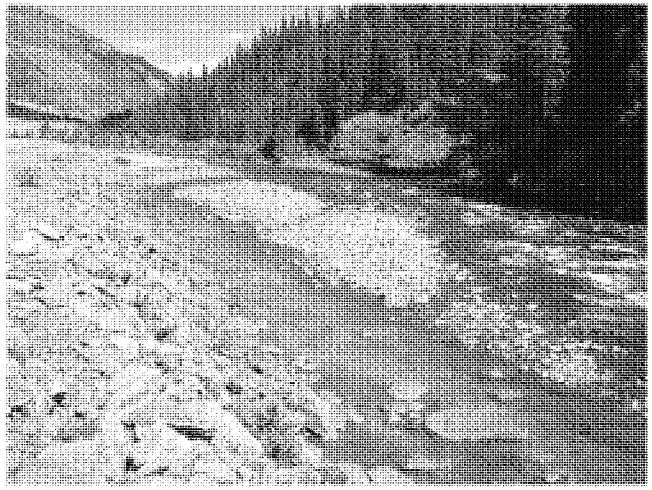
Source Identification and Quantification



- What do we need to know?
  - Which sources of metals are the most significant?
  - What is the effect of the geology?
  - What can we say about specific locations?
- Our approach
  - Divide stream into segments and sample inflows
  - Mass balance around inflows
  - Mass balance at regular intervals
- Characterization of the watershed
  - Geology & structure
  - Ore deposit types
  - Hydrologic context for chemistry

Watershed characterization is integrated in the stream

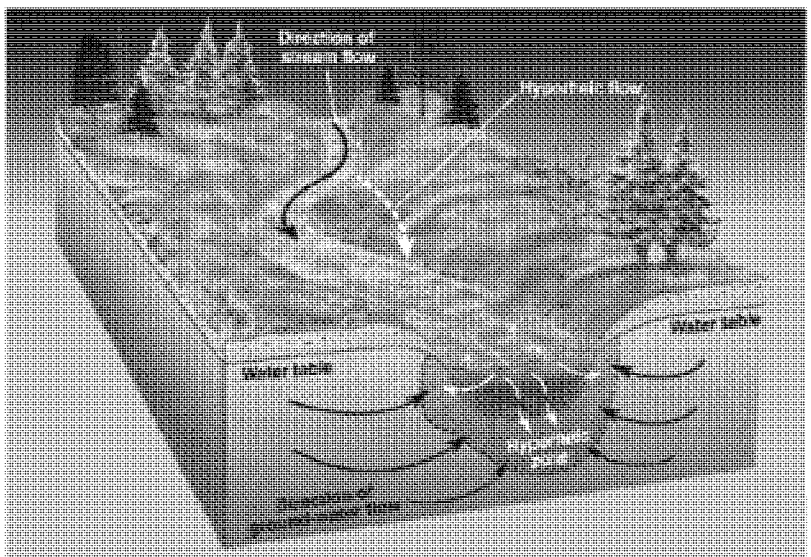




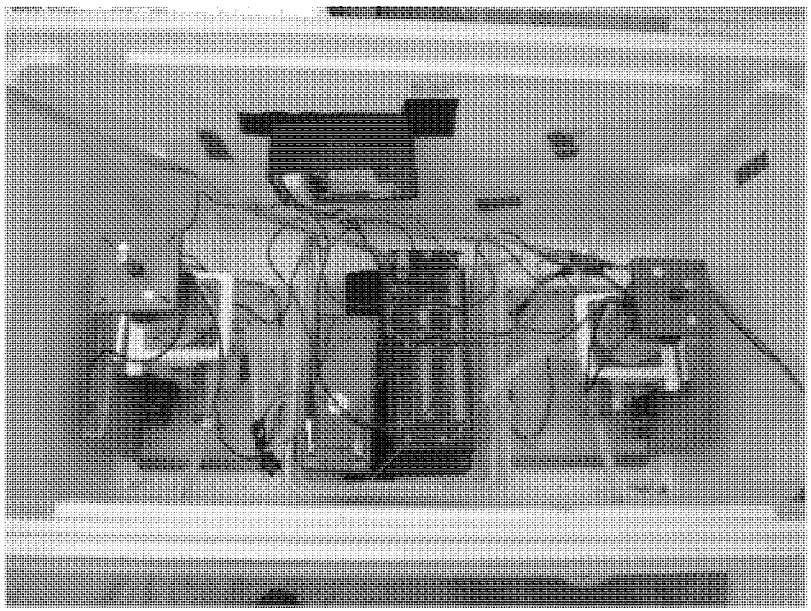
Seepage from mine-waste pile to Animas River

Establish the Hydrologic Context by using Continuous Injection of a Tracer

- Provides total streamflow (stream + hyporheic) for mountain streams
- Allows collection of many samples for watershed-scale synoptic sampling
- Provides data for OTEQ transport simulations
- Supports evaluation of loading and remediation options (TMDL)
- Dilution vs. loss

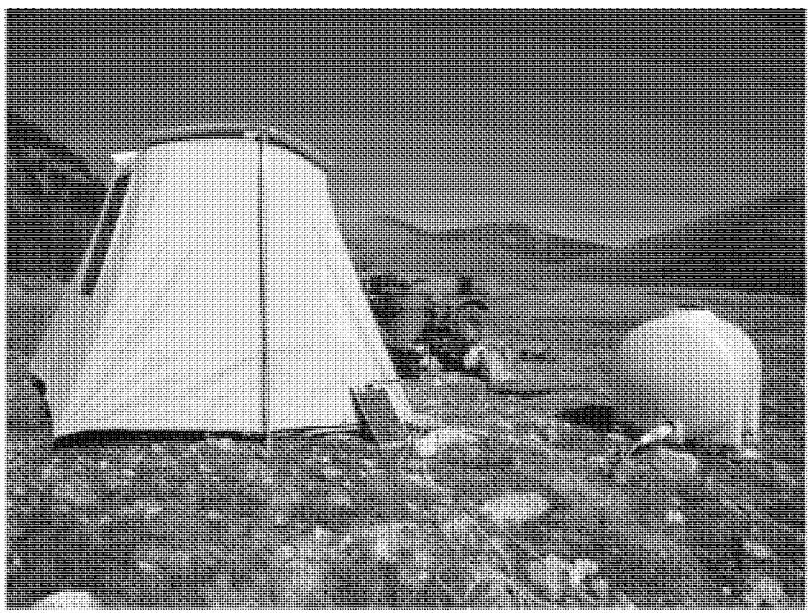


Continuous Injection of Salt



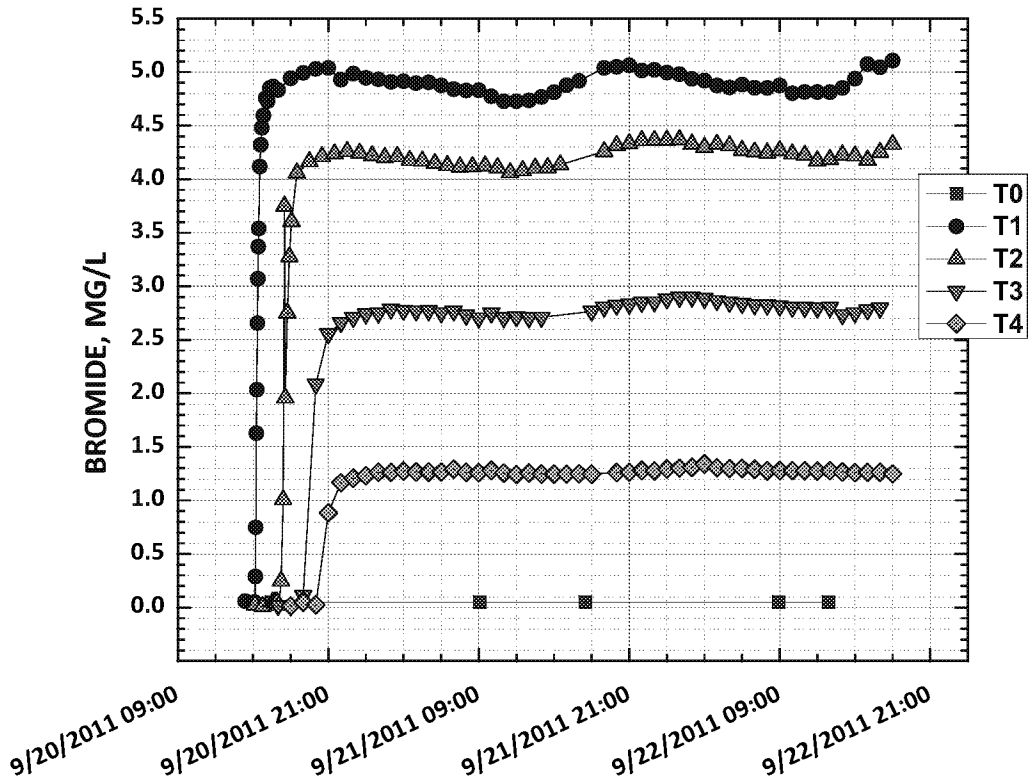
- Continuous injection to reach “saturation of the down-valley flow
- Carefully metered pump
  - Pumps pulse every 6 seconds
  - Data logger counts revolutions; adjusts voltage to pumps
  - Allows for a constant injection rate despite battery change

Injection Site



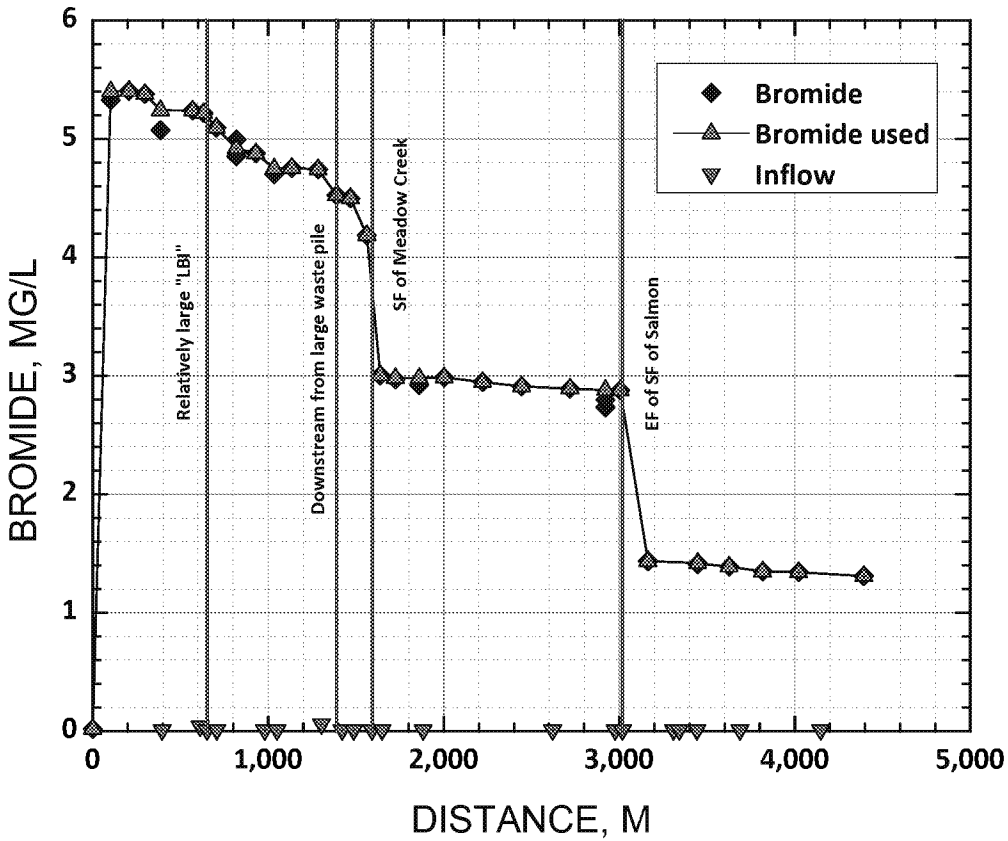
- Injectate from tank
  - Mixed by a recipe
  - Sampled for rate and concentration
- Sampled throughout the injection for:
  - Rate
  - Injectate concentration
- Results from Rob
  - Simple or complex sausage

Quantify stream hydrodynamics



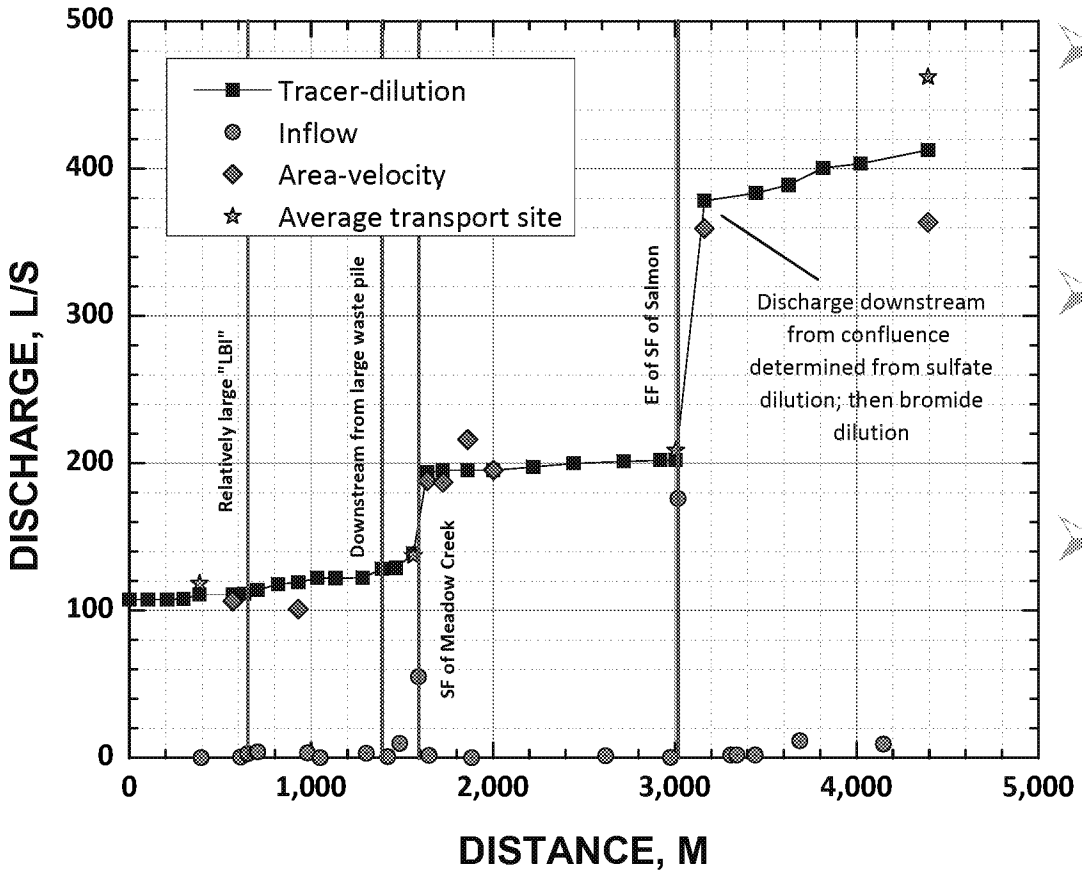
- Magnitude of stream flow, Q, from plateau
- Travel time gives velocity (Q/Area)
- Shape gives mixing (dispersion and transient storage)

Spatial View – Bromide Profile



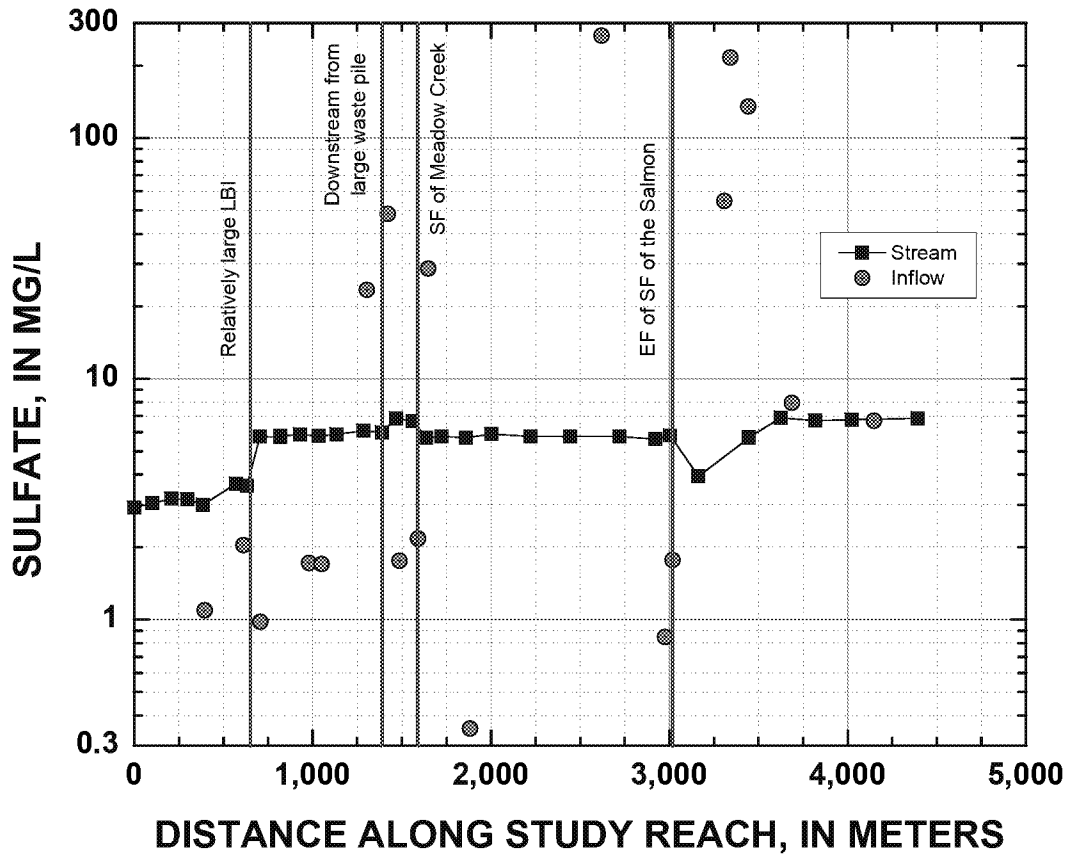
- Clear signal greater than background
- Two larger inflows
  - SF Meadow Crk
  - EF of SF Salmon
- Many smaller inflows along Meadow Creek

Spatial View – Bromide Profile



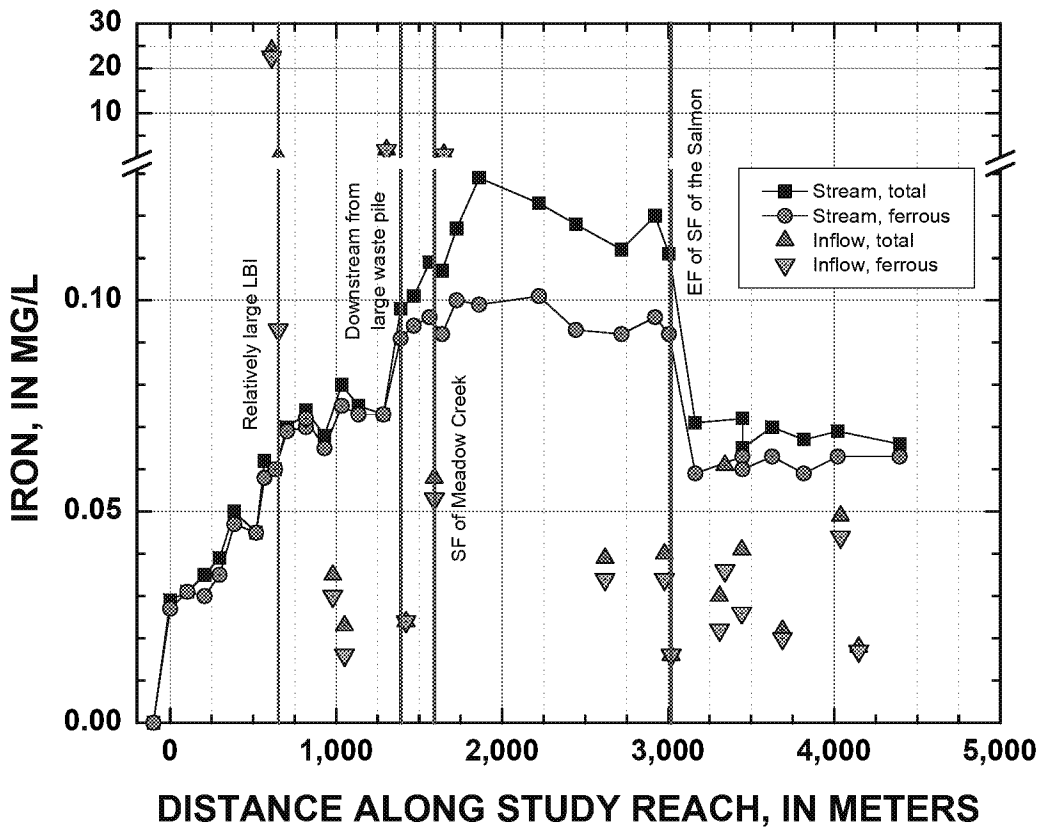
- Clear signal greater than background
- Two larger inflows
  - SF Meadow Crk
  - EF of SF Salmon
- Many smaller inflows along Meadow Creek

Stream and Inflow Chemistry
Sulfate profile



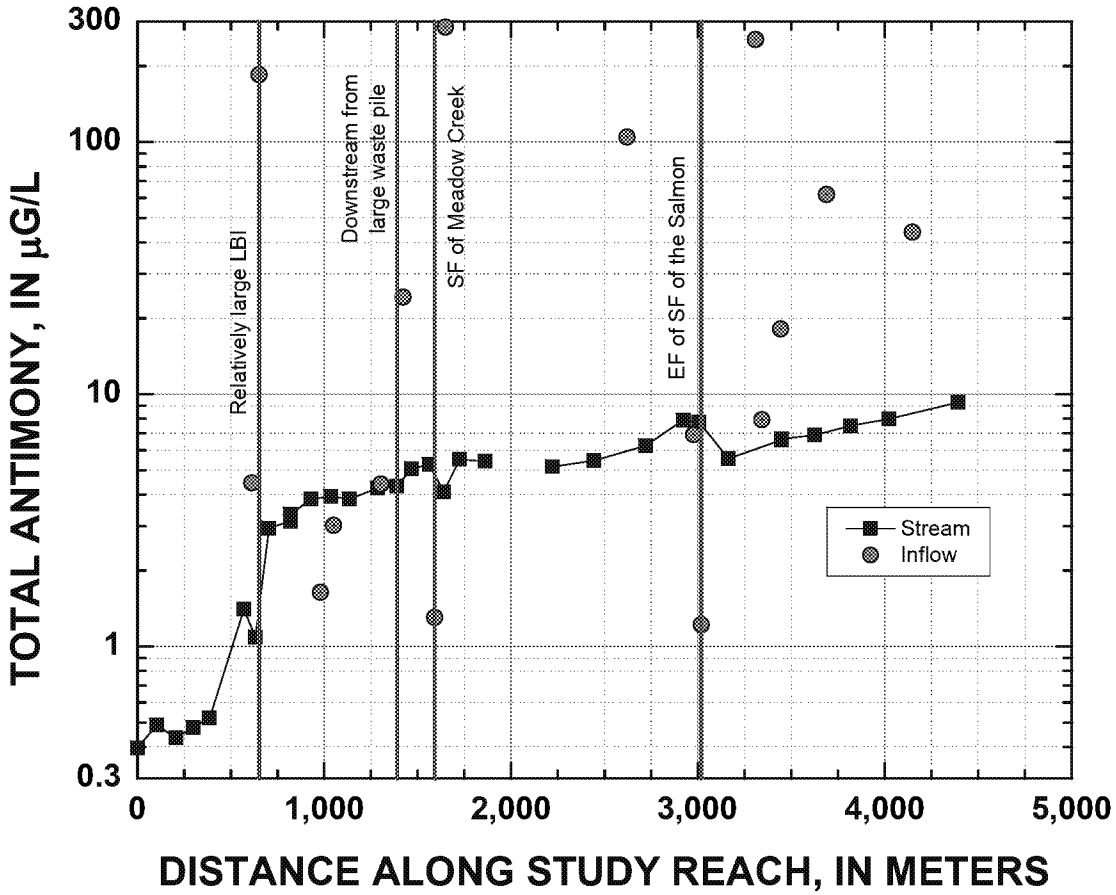
- Wide range of inflow chemistry
- Dilution
  - SF Meadow
  - EF of SF Salmon
- Higher sulfate downstream from confluence

Stream and Inflow Chemistry Ferrous and Total Iron



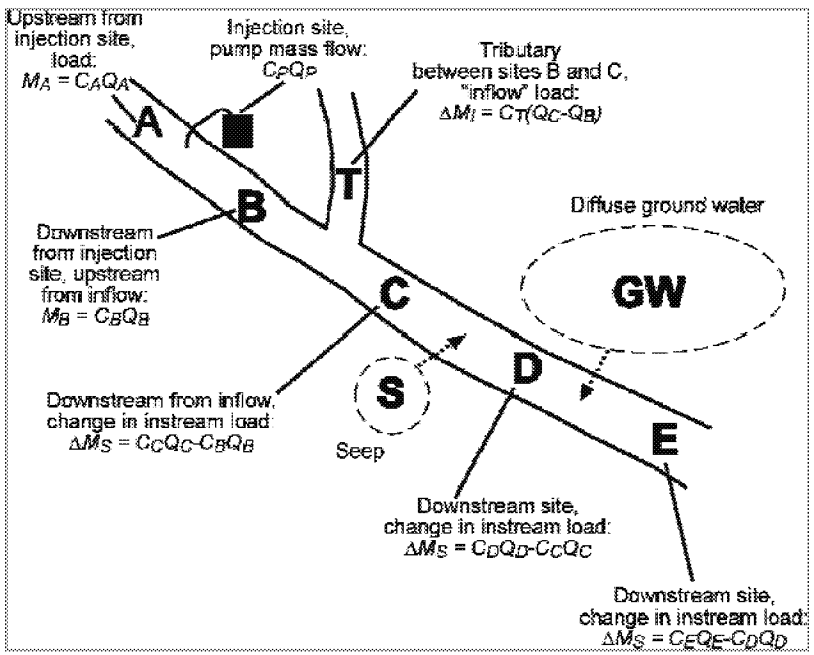
- Mostly reduced iron inflows from waste piles
- Less inflow and dilution downstream

Stream and Inflow Chemistry
Total Antimony

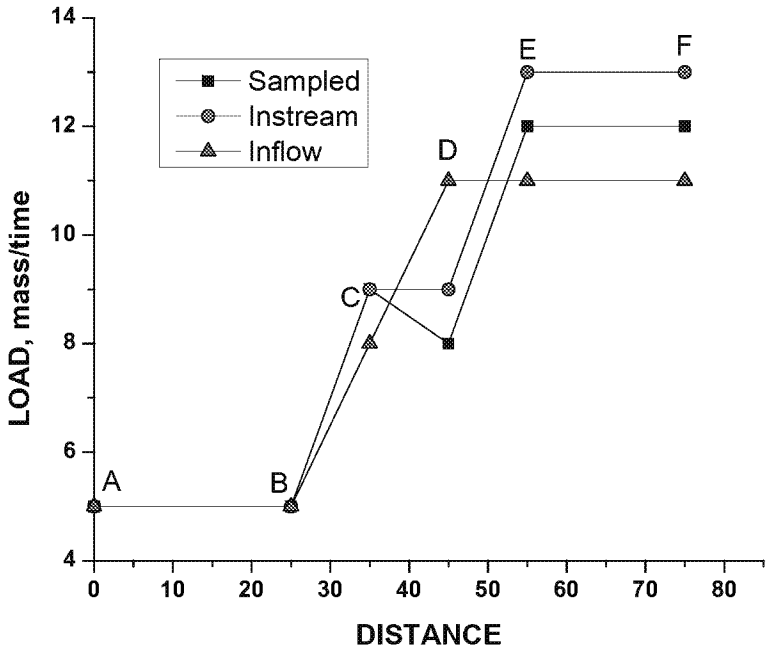


- As(III) concentrations less than detection
- Two areas of increase
  - Waste piles
  - Downstream from EF of SF Salmon
- Corresponds to high inflow concs.

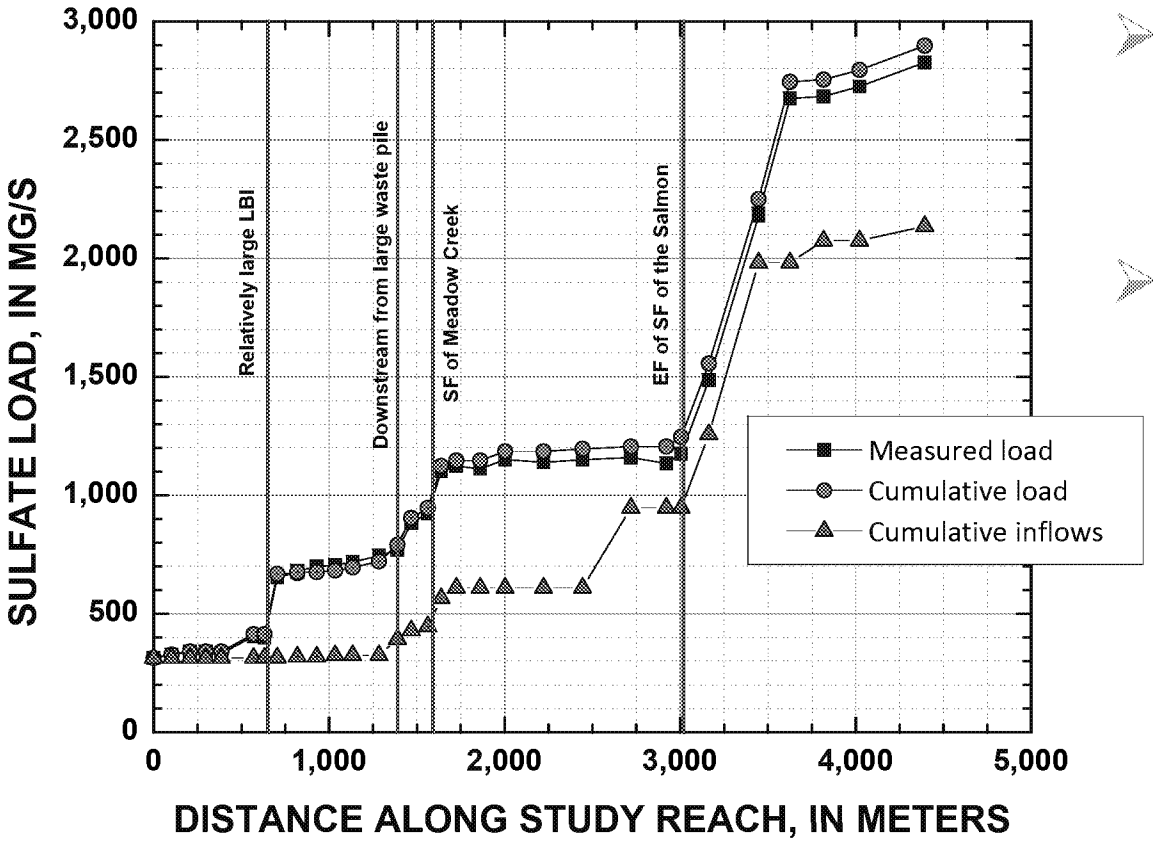
Loading Profiles



- Sampled in-stream
- Cumulative in-stream
- Cumulative inflow

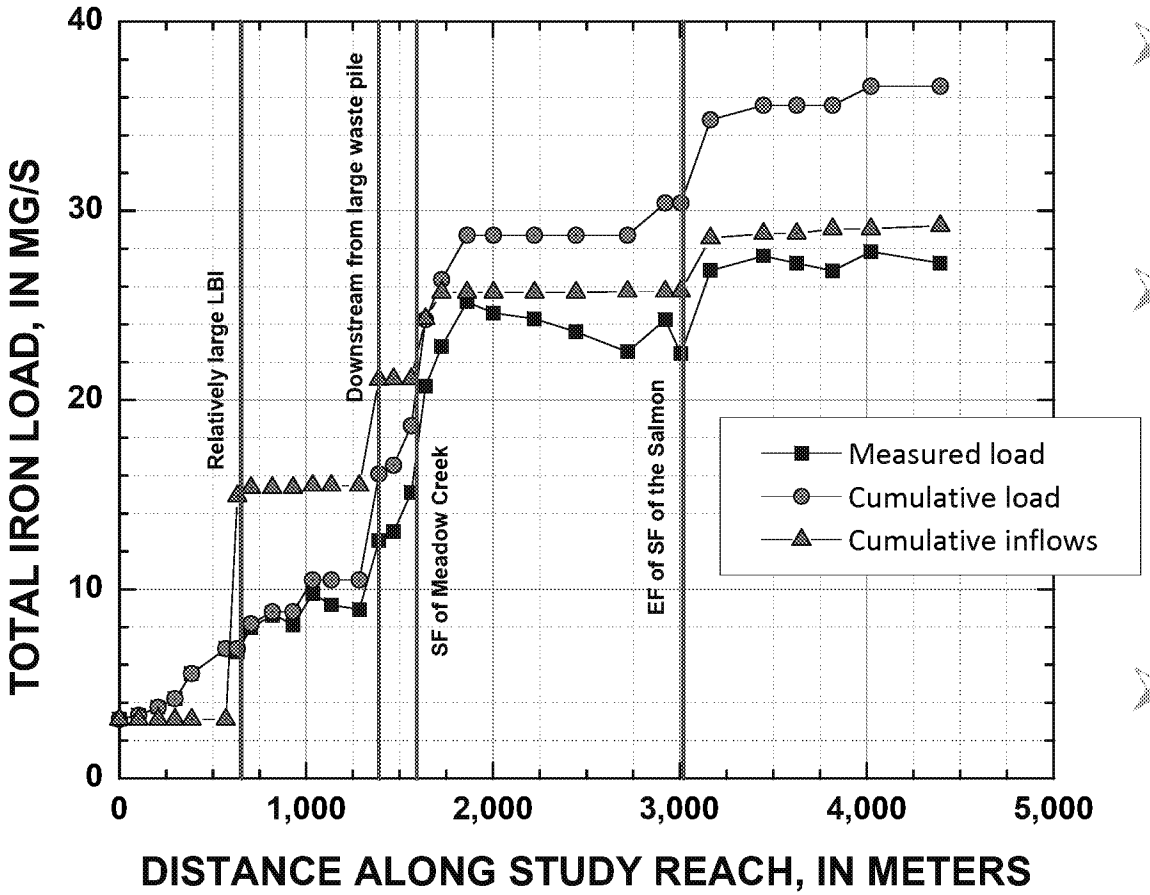


Sulfate Load Profile



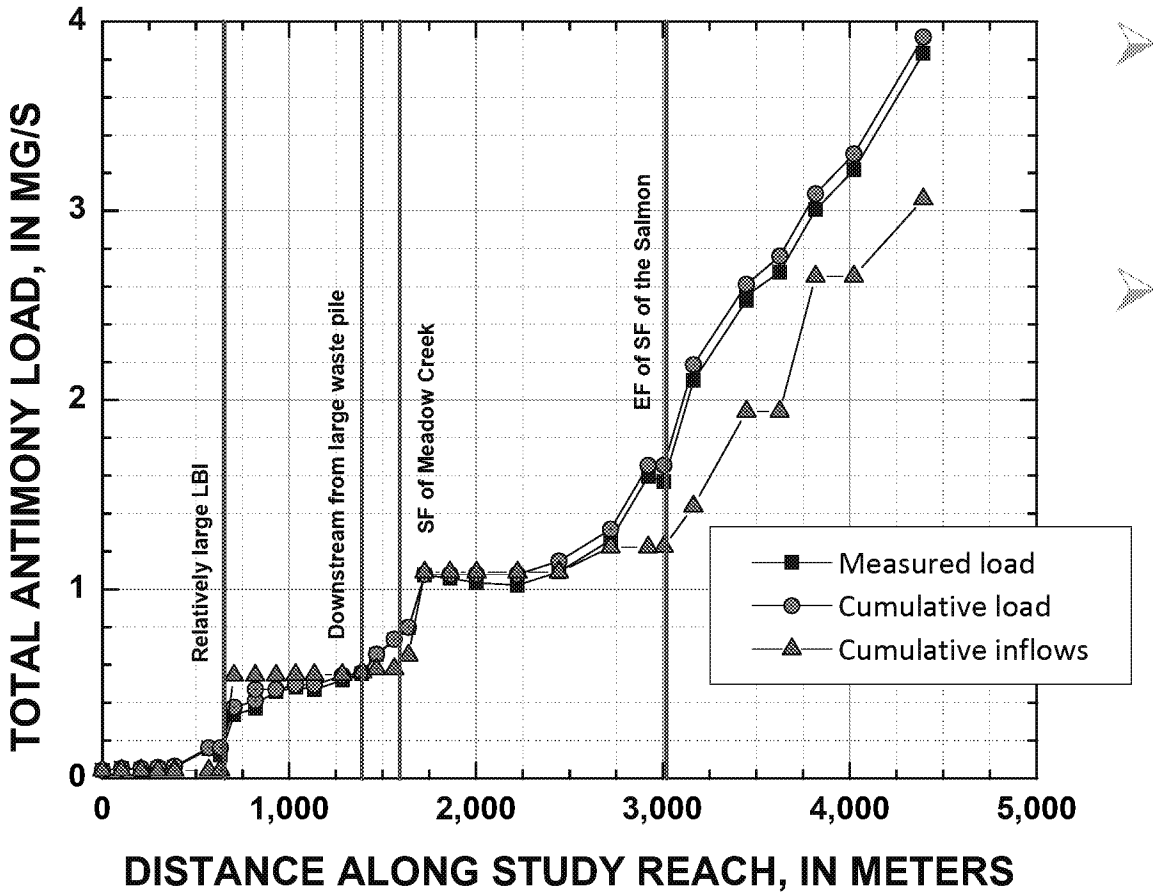
- Initial increases with larger inflows
- Greatest increases downstream from EF or SF Salmon
  - Very little discharge increase there

Total Iron Load Profile



- Substantial increases along waste piles
- Not much increase downstream from EF or SF Salmon
- Reactive nature of iron

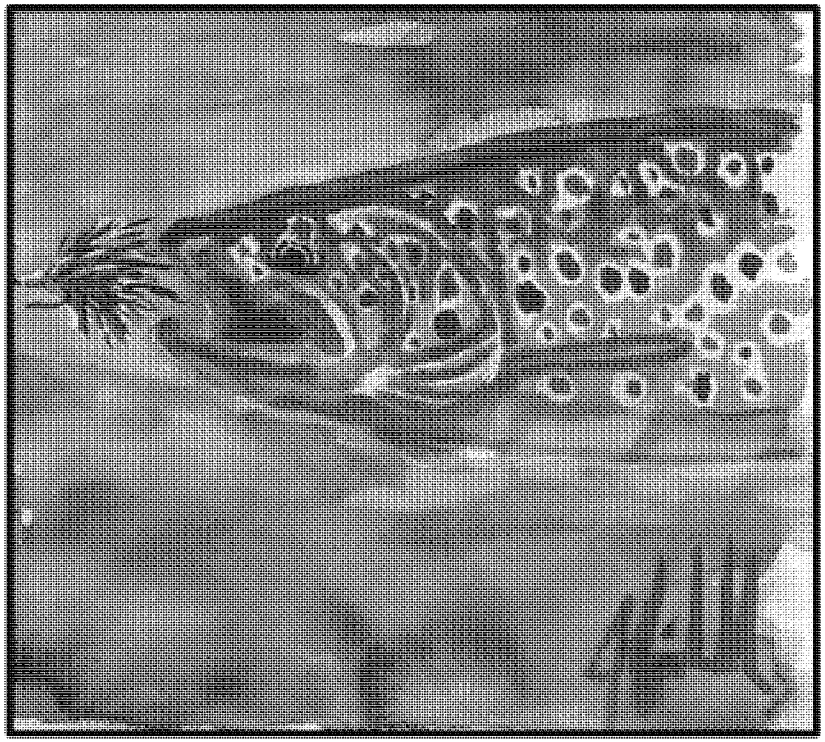
Total Antimony Load Profile



- Some loading from waste piles
- Greatest loading downstream from EF or SF Salmon
  - Corresponds to sulfate loading

What did we get?

- We have a picture of loading from past activity
- Locations and magnitudes of loading
  - Sulfate / antimony
  - Iron / arsenic
  - Metals
- Provides a premining baseline and planning data set



bkimball@usgs.gov - http://toxics.usgs.gov/regional/mining

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Prepared in cooperation with the Idaho Department of Lands and the Midas Gold Corporation

Occurrence and Transport of Selected Constituents in Streams near the Stibnite Mining Area, Central Idaho, 2012–14

Scientific Investigations Report 2015–5166

U.S. Department of the Interior
U.S. Geological Survey

ED_004715_00016332-00001

Cover: Photograph of Glory Hole near Stibnite, Idaho, June 13, 2012.
Photograph by Alexandra Etheridge, U.S. Geological Survey.

Occurrence and Transport of Selected Constituents in Streams near the Stibnite Mining Area, Central Idaho, 2012–14

By Alexandra B. Etheridge

Prepared in cooperation with the Idaho Department of Lands and the Midas Gold Corporation

Scientific Investigations Report 2015–5166

U.S. Department of the Interior
U.S. Geological Survey

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U.S. Department of the Interior
SALLY JEWELL, Secretary

U.S. Geological Survey
Suzette M. Kimball, Acting Director

U.S. Geological Survey, Reston, Virginia: 2015

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Conversion Factors

Inch/Pound to International System of Units

Multiply	By	To obtain
	Length	
inch (in.)	2.54	centimeter (cm)
inch (in.)	25.4	millimeter (mm)
foot (ft)	0.3048	meter (m)
mile (mi)	1.609	kilometer (km)
	Area	
acre	4,047	square meter (m^2)
acre	0.004047	square kilometer (km^2)
square mile (mi^2)	2.590	square kilometer (km^2)
	Volume	
cubic yard (yd^3)	0.7646	cubic meter (m^3)
	Flow rate	
cubic foot per second (ft^3/s)	0.02832	cubic meter per second (m^3/s)
	Mass	
pound per day (lb/d)	0.4536	kilogram per day (kg/d)
pound per year (lb/yr)	0.4536	kilogram per year (kg/yr)
ton per day (ton/d)	0.9072	metric ton per day
ton per year (ton/yr)	0.9072	metric ton per year

International System of Units to Inch/Pound

Multiply	By	To obtain
	Length	
millimeter (mm)	0.03937	inch (in.)
meter (m)	3.281	foot (ft)
meter (m)	1.094	yard (yd)
	Volume	
milliliter (mL)	0.033814	ounce, fluid (fl. oz)
liter (L)	0.2642	gallon (gal)

Temperature in degrees Celsius (°C) may be converted to degrees Fahrenheit (°F) as follows:

°F=(1.8×°C)+32.

Concentrations of chemical constituents in water are given either in milligrams per liter (mg/L) or micrograms per liter (µg/L).

Datums

Vertical coordinate information is referenced to the North American Vertical Datum of 1988 (NAVD 88).

Horizontal coordinate information is referenced to the North American Datum of 1983 (NAD 83).

Elevation, as used in this report, refers to feet above NAVD 88.

Abbreviations

AWQC	ambient water-quality criteria
BFI	base-flow index
CVO	Cascades Volcano Observatory
EFSFSR	East Fork of South Fork of the Salmon River
EPA	U.S. Environmental Protection Agency
FWC	streamflow-weighted concentration
IDEQ	Idaho Department of Environmental Quality
IBSP	Inorganic Blind Sample Project
IDEQ	Idaho Department of Environmental Quality
LOADEST	LOAD ESTimation program
LRL	laboratory reporting level
LT-MDL	long-term method detection level
MDAT	maximum daily average water temperature criterion for cold-water aquatic life
MDAT-SS	maximum daily average water temperature criterion for salmonid spawning
MDMT	maximum daily maximum water temperature (criterion for salmonid spawning)
MWMT	maximum weekly maximum water temperature criterion for bull trout habitat
MGI	Midas Gold, Inc.
MLE	maximum likelihood estimation method
NWIS	National Water Information System
NWQL	National Water Quality Laboratory
QA/QC	quality-assurance/quality-control
QC	quality-control
R^2	coefficient of determination
RMSE	root mean square error
RPD	relative percent difference
SVT	streamflow variability term
USFS	U.S. Forest Service
USGS	U.S. Geological Survey

Occurrence and Transport of Selected Constituents in Streams near the Stibnite Mining Area, Central Idaho, 2012–14

By Alexandra B. Etheridge

Abstract

Mining of stibnite (antimony sulfide), tungsten, gold, silver, and mercury near the town of Stibnite in central Idaho has left a legacy of trace element contamination in local streams. Water-quality and streamflow monitoring data from a network of five streamflow-gaging stations were used to estimate trace-element and suspended-sediment loads and flow-weighted concentrations in the Stibnite mining area between 2012 and 2014. Measured concentrations of arsenic exceeded human health-based water-quality criteria at each streamflow-gaging station, except for Meadow Creek (site 2), which was selected to represent background conditions in the study area. Measured concentrations of antimony exceeded human health-based water-quality criteria at sites 3, 4, and 5.

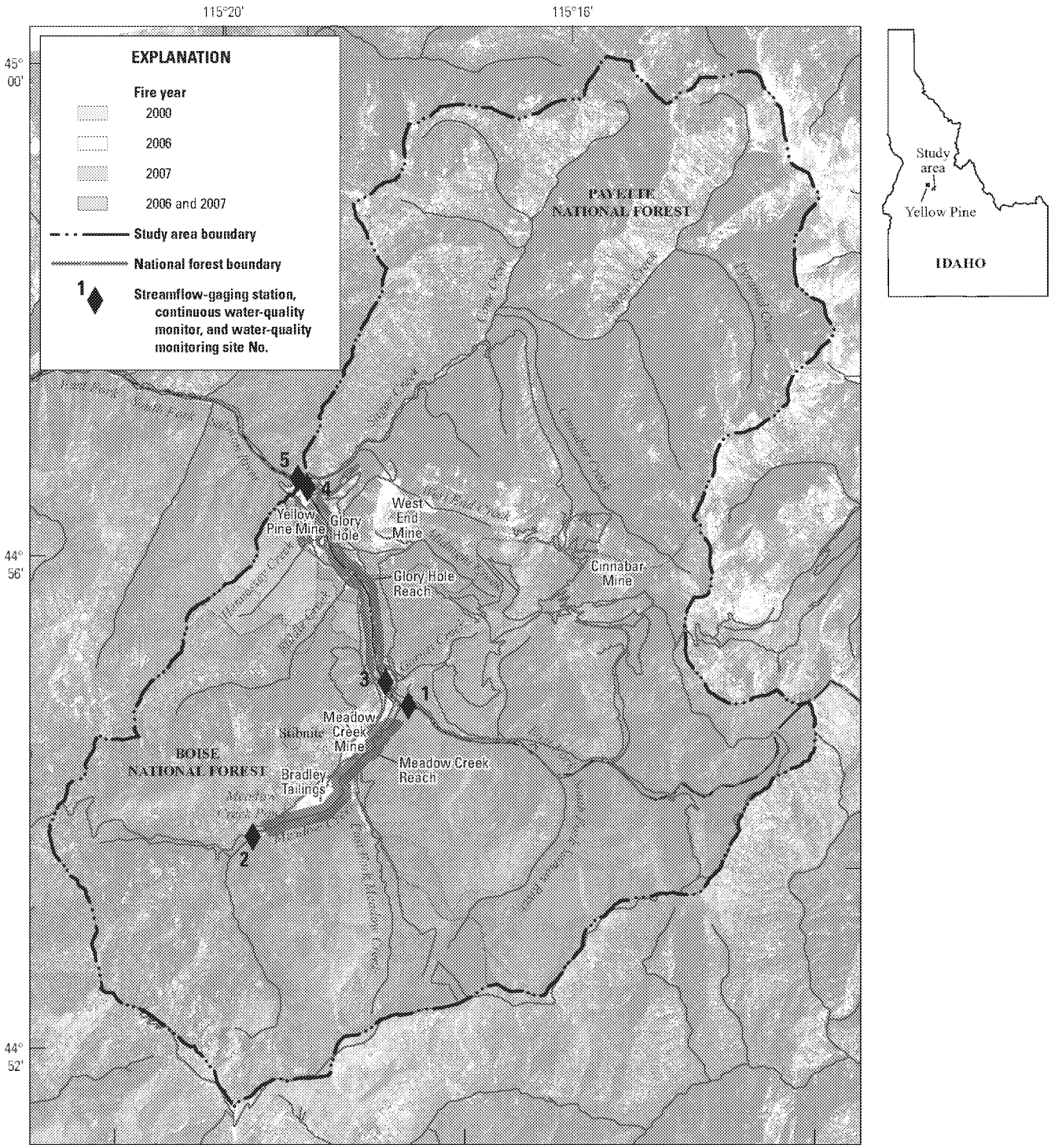
Regression models developed using the U.S. Geological Survey LOAD ESTimation (LOADEST) program showed that concentrated sources of arsenic and antimony are present in specific reaches along Meadow Creek and the East Fork of South Fork of the Salmon River (EFSFSR) between the EFSFSR at Stibnite (site 3) and the EFSFSR above Sugar Creek (site 4). Eighty percent of the arsenic and antimony loads were attributable to discrete reaches that accounted for 25 percent of the total streamflow in the study area. Streamflow was negatively correlated with arsenic and antimony concentrations, indicating groundwater sources. Continuously monitored specific conductance, alone or combined with continuously computed streamflow, was more significant than streamflow alone as a surrogate measure of dissolved arsenic and antimony concentrations. Surrogate regression models (with coefficients of determination ranging from 0.96 to 0.65) can be used to estimate arsenic and antimony concentrations in real time at all five streamflow-gaging stations.

LOADEST model simulation results indicated hysteresis in transport of suspended sediment and sediment-associated constituents. Predictor variables that account for streamflow variability reduced model bias and root mean square error when included in regression models used to estimate concentrations and loads of suspended sediment, total aluminum, total lead, and total mercury.

Ninety-eight percent of the estimated total mercury load transported downstream of the study area is attributable to Sugar Creek. A maximum concentration of 26 micrograms per liter was measured in Sugar Creek during May 2013 when snowmelt runoff occurred during a single peak in the hydrograph. Monitoring and modeling results indicate sediment and sediment-associated constituent concentrations and loads increase along Meadow Creek, likely because of the inflow of the East Fork of Meadow Creek, and decrease between sites 3 and 4 because the Glory Hole is trapping sediments. Sugar Creek (site 5) accounted for most of the sediment and sediment-associated constituent loading leaving the study area because loads from the East Fork of Meadow Creek remained trapped in the Glory Hole. Additionally, total mercury was detected at all five streamflow-gaging stations, and sampled mercury concentrations exceeded Idaho ambient water-quality criteria at all five streamflow-gaging stations.

Introduction

The Stibnite mining area (study area) is in the Boise and Payette National Forests along the East Fork of South Fork of the Salmon River (EFSFSR), 14 mi southeast of Yellow Pine, Idaho (fig. 1). Deposits of gold, silver, mercury, antimony, iron, arsenic, and tungsten occur in the study area. In 2009, Midas Gold, Inc. (MGI) began mineral exploration activities as part of the Golden Meadows Exploration Project to better define the potential of mineral deposits in the area. The exploration project defined a need to evaluate existing water-quality conditions in the study area and to identify potential source areas to target further reclamation efforts to be completed prior to or incorporated into plans for renewed mining activity. In cooperation with the Idaho Department of Lands and MGI, the U.S. Geological Survey (USGS) maintains and collects water-quality samples at five streamflow-gaging and waterquality monitoring -stations (herein referred to as monitoring sites) in the study area (fig. 1, table 1). The monitoring site at the EFSFSR at Stibnite, (site 3, table 1) was installed in 1928 and operated intermittently.



Base map modified from U.S. Geological Survey National Map,
Hydrography data from the National Hydrography Dataset, medium resolution,
Transportation data from the National Transportation Dataset.
Universal Transverse Mercator, Zone 11, North American Datum of 1983.

Figure 1. Streamflow-gaging stations and water-quality monitoring sites near the Stibnite mining area, central Idaho, 2012–14.

Table 1. Streamflow-gaging and water-quality monitoring stations near the Stibnite mining area, central Idaho, 2012–14.

Abbreviated site No.	Streamflow-gaging and water-quality monitoring station	Streamflow-gaging and water-quality monitoring station name	Continuous parameters collected	Number ofwater-quality samples
1	13310800	East Fork of South Fork Salmon River above Meadow Creek, near Stibnite, Idaho	Continuous stage-discharge; seasonally continuous water temperature, specific conductance, pH	20
2	13310850	Meadow Creek near Stibnite, Idaho	Continuous stage-discharge; seasonally continuous water temperature, specific conductance, pH	20
3	13311000	East Fork of South Fork Salmon River at Stibnite, Idaho	Continuous stage-discharge; seasonally continuous water temperature, specific conductance, pH	24
4	13311250	East Fork of South Fork Salmon River above Sugar Creek, near Stibnite, Idaho	Continuous stage-discharge; seasonally continuous water temperature, specific conductance, pH	22
5	13311450	Sugar Creek near Stibnite, Idaho	Continuous stage-discharge; seasonally continuous water temperature, specific conductance, pH	21

During October 2010 the site was reinstated on a continuous basis. The remaining monitoring sites were installed in September 2011 to support the analysis of trace element occurrence and transport in surface water. This report summarizes findings from hydrologic and water-quality monitoring in the network of five monitoring sites in the Stibnite mining area during water years[1] 2012–14.

Gold, antimony, mercury, and tungsten have been mined and processed in the study area since the early 1900s. During World War II, the Stibnite mining area produced 98 percent of the antimony and 60 percent of the tungsten for the Allied war effort. Mining operations took place at Meadow Creek Mine in the Meadow Creek valley between 1919 and 1938; at Yellow Pine Mine in the area surrounding the Glory Hole (a pit lake) between 1937 and 1952; and at West End Mine in areas near West End Creek and Garnet Creek between 1982 and 1999 (fig. 1). Cinnabar Mine was operated intermittently between 1902 and 1966 in the Cinnabar Creek drainage, which is a tributary to Sugar Creek (fig. 1).

Historical mining-related activities altered stream configuration and habitat in the study area. Mill tailings, known as the Bradley tailings, were disposed in impoundments covering 100 acres of the Meadow Creek valley floor during active mining periods. The Meadow Creek stream channel was diverted around tailings and reconstructed several times to mitigate effects on water-quality from tailings. A dam constructed for mining operations in the East Fork of Meadow Creek failed in 1965, which resulted in tailings and debris deposits downstream. Waste rock dumps were generated upstream and downstream of the Glory Hole, and the EFSFSR was diverted around the Glory Hole as it was mined prior to 1955. After 1955, the Glory Hole was allowed to fill with water and remains part of the EFSFSR channel to date. An estimated 3,000 yd^3 of mercury-laden tailings deposited near the Cinnabar Mine on Cinnabar Creek act as a substantial source of mercury in Cinnabar and Sugar Creeks (Trainor, 2003).

[1]A water year is the period from October 1 of any given year to September 30 of the following year. Water year is used almost exclusively throughout this report. To reduce confusion between calendar years and water years, all reference to years and periods in this report is to water years unless specifically referred to as calendar year.

Mining-related activities also have affected surface-water quality in the study area. Water-quality monitoring efforts historically preceded periods of renewed mining exploration and followed the completion of various reclamation efforts. A water-quality trend study conducted from 1979 to 1985 showed large increases in turbidity and concentrations of arsenic, antimony, and iron after a renewed period of mining activity in 1982 (Klahr, 1987). Prior investigations monitoring water quality report concentrations of arsenic, free cyanide, lead, mercury, silver, and zinc exceeding chronic freshwater ambient water-quality criteria (AWQC) established for the protection of aquatic organisms in the study area (Trainor, 1993; URS Corporation, 2000).

Federal agencies implemented remediation efforts in mining-affected areas in the late 1990s. The U.S. Environmental Protection Agency (EPA) oversaw a reconstruction of the upper Meadow Creek stream channel that was completed in 1998 (URS Corporation, 2000). The U.S. Forest Service (USFS) reconstructed 4,300 ft of the lower Meadow Creek channel in 2005. The USFS and the EPA capped or removed mercury-contaminated tailings in the Cinnabar Mine area in 2003, and the EPA has shown renewed interest in remediating the Cinnabar Mine area.

The Federal Water Pollution Control Act (the "Clean Water Act", 33 U.S.C §§1251–1387; see http://www.epa.gov/oecaagct/lcwa.html) requires states to evaluate surface-water quality and periodically update a list of water bodies where beneficial uses are impaired as a result of poor water quality (the 303[d] list). The Idaho Department of Environmental Quality (IDEQ) determined that beneficial uses in the EFSFSR and Sugar Creek included cold-water salmonid spawning and primary-contact recreation. Additional beneficial uses in the EFSFSR include drinking-water supply for the town of Yellow Pine, and "special-resource water," a classification indicating the need for intensive protection to preserve unique characteristics (Idaho Department of Environmental Quality, 2002). Streams in the study area are critical habitat for Chinook salmon (*Oncorhynchus tshawytscha*), steelhead (*Oncorhynchus mykiss*), bull trout (*Salvelinus confluentus*), and westslope cutthroat trout (*Oncorhynchus clarki lewisi*), which are all threatened, endangered, or sensitive species (Idaho Department of Environmental Quality, 2002). The IDEQ listed the EFSFSR as impaired for contamination of metals and sediment in 1998, but removed the EFSFSR from the 303(d) list in 2002 (Idaho Department of Environmental Quality, 2002). In 2012, IDEQ listed the EFSFSR and Sugar Creek as water-quality impaired because of concentrations of arsenic and antimony that exceed human health criteria (Idaho Department of Environmental Quality, 2014). IDEQ also listed Sugar Creek as water-quality impaired because of concentrations of mercury that exceed the Idaho chronic AWQC.

Purpose and Scope

This report summarizes findings from a five-station water-quality and hydrologic monitoring network in the Stibnite mining area during 2012–14. Findings will provide a baseline understanding of surface-water-quality conditions and trace-metals transport in the study area prior to future mining activities. Water-quality models summarized in this report may be used to estimate constituent loads and concentrations with ongoing model validation using discrete samples. The monitoring network was designed to provide interpretable results that meet the following objectives:

- Identify and quantify contributions and transport of selected trace elements in discrete reaches between monitoring sites in the Stibnite mining area;
- Estimate the spatial and temporal variation in trace-metals and suspended-sediment loading and streamflow-weighted concentrations in the Stibnite mining area; and
- Evaluate continuous water-quality parameters and streamflow as surrogates to estimate concentrations of selected constituents.

Description of Study Area

Trace elements and sediment occurrence and transport were evaluated in the EFSFSR from the headwaters to the confluence with Sugar Creek and in the Sugar Creek watershed (fig. 1). The study area includes 42.9 mi^2 of steep mountain terrain ranging from 5,930 to 9,310 ft in elevation. Seventy-one percent of the study area slopes at a gradient greater than 30 percent (U.S. Geological Survey, 2012), resulting in occasional mass wasting and substantial surface erosion during periods of rainfall and snowmelt runoff. Mean annual precipitation is 31 in., falling mostly as snow between October and April. Peak snowmelt and streamflow typically occur between May and July and low flows occur from September to January (Kuzis, 1997). Most of the study area is comprised of USFS public land in the Payette and Boise National Forests. Mining-related activity occurs on both private and public lands. Wildfires in 2000, 2006, and 2007 burned about 40 percent of the forested land in the MGI-proposed exploration area (fig. 1). Recent wildfires likely resulted in increased soil erosion and solar loading to surface-water bodies (U.S. Forest Service, 2012). Streams in the study area are critical habitat for Chinook salmon, steelhead, bull trout, and westslope cutthroat trout, which are all either threatened, endangered, or sensitive species (Idaho Department of Environmental Quality, 2002).

Mineralization and mineral extraction influence hydrogeology and water quality in the study area. The granitic Idaho batholith intruded the region in the Cretaceous

period, leaving a roof of Neoproterozoic to Cambrian age metasedimentary rocks known as a roof pendant in the east side of the study area (Mitchell, 2000). Eocene mineralization occurred in a series of faults that cut through granitic and metasedimentary rocks, and Pleistocene glaciation deposited as much as 60 ft of alluvium in valley floors (Larsen and Livingston, 1920). During low flow conditions, streams in the study area generally gain streamflow from shallow groundwater, which is present in seeps and springs at the surface and ranges to depths of about 20 ft below the alluvial surface (URS Corporation, 2000). Depth to groundwater is deeper where mining waste materials have been placed. Groundwater also is present to a limited extent in fractured bedrock (Mitchell, 2000). Naturally occurring mineralized zones and mine tailings in contact with the water table act as sources of trace elements to both groundwater and surface water (Kuzis, 1997). Concentrations of dissolved metals are typically higher in groundwater than in surface water (Trainor, 1993; URS Corporation, 2000).

Water-quality conditions generally deteriorate in a downstream direction in the EFSFSR. In particular, concentrations of arsenic and antimony increase downstream of the confluence with Meadow Creek and between the confluences with Meadow and Sugar Creeks (URS Corporation, 2000). As streamflow increases in the EFSFSR, concentrations of sediment and sediment-associated metals including aluminum, iron, and mercury also increase. Suspended-sediment concentrations and total concentrations of some trace elements decrease as the EFSFSR flows past the Glory Hole, which acts as a sediment trap (Idaho Department of Environmental Quality, 2002). In May 2014, the Glory Hole was surveyed with a water surface elevation of 6,037.5 ft and a maximum depth of 35.2 ft (K. Fend, Midas Gold, written commun., 2014). Most surface-water-quality samples show similar concentrations of total and dissolved arsenic or antimony, indicating a groundwater source (URS Corporation, 2000). An negative correlation between streamflow and concentrations of arsenic and antimony also implicates groundwater as a source of arsenic and antimony in the study area. Concentrations of suspended sediment and sediment-associated metals such as aluminum and mercury are lower in filtered samples and higher in unfiltered samples, suggesting surface runoff as the largest contributing source. A positive correlation between streamflow and concentrations of suspended sediment, total aluminum, and total mercury also implicates surface runoff as a source of sediment, aluminum, and mercury in the study area. Sugar Creek is also a known source of mercury (Trainor, 1993; URS Corporation, 2000).

Water-quality samples and streamflow data from the five monitoring sites provided information necessary to evaluate the spatial and temporal transport of trace elements and suspended sediment (fig. 1, table 1). The EFSFSR monitoring site upstream of the confluence with Meadow Creek (site 1) quantifies constituent loads in the EFSFSR absent any loading from Meadow Creek. The monitoring site on Meadow Creek (site 2), upstream of the Bradley tailings disposal area, provided data used to quantify background water-quality conditions. Site 3 is on the EFSFSR about 1,300 ft downstream of the confluence of Meadow Creek and the EFSFSR, and is used to quantify source contributions from the East Fork of Meadow Creek (also known as Blowout Creek) and the Bradley tailings disposal area. Site 4 is on the EFSFSR about 2,660 ft downstream of the Glory Hole and about 700 ft upstream of the confluence with Sugar Creek and is used to quantify loads from ungaged tributaries, groundwater exchange along this reach, and the Glory Hole. Site 5, near the mouth of Sugar Creek, quantifies constituent loading from the Sugar Creek watershed including Cinnabar Creek, a known source of mercury contamination. Combined, hydrologic and water-quality data from sites 4 and 5 provide information on trace elements transport to the EFSFSR from the entire study area.

Study Methods

In October 2010 and September 2011, five monitoring sites were established as a network to provide information about trace elements and the occurrence and transport of suspended sediments in the study area (fig. 1). Hydrologic and water-quality data from each monitoring site were used in regression models to estimate constituent loads and concentrations. Estimated loads were compared between stations to identify source areas for trace elements and to quantify constituent loading in discrete reaches.

Hydrologic Monitoring

Streamflow at the five monitoring sites and water-quality sampling sites (fig. 1, table 1) was measured using standard USGS methods as described in Mueller and Wagner (2009) and Turnipseed and Sauer (2010). Continuous streamflow records were computed using methods described in Rantz and others (1982). Streamflow was computed using a continuous record of water stage calibrated to periodic streamflow measurements. Monitoring sites were operated year-round.

Continuous Water-Quality Monitoring

Water temperature, specific conductance, and pH were measured continuously at each of the monitoring sites. Continuous monitors were installed at sites 1–3 in September 2011 and at sites 4 and 5 in April 2012. Continuous monitors were operated and continuous water-quality data were reviewed in accordance with Wagner and others (2006). Continuous water-quality monitors were operated seasonally (April to late October) and removed during the winter because of limited access and to prevent damage during extreme cold conditions.

Water-Quality Sampling and Analysis

Discrete water-quality samples were routinely analyzed for total and dissolved concentrations of aluminum, antimony, arsenic, cadmium, chromium, copper, iron, lead, mercury, and zinc. Discrete water-quality samples were also routinely analyzed for acid neutralizing capacity (hardness) as calcium carbonate, and for major ions including dissolved calcium, magnesium, manganese, potassium, silica, sodium, chloride, fluoride, and sulfate. Water-quality constituents collected in the field included water temperature, specific conductance, and pH.

Although the number of samples collected at each site varied, the approach at each site was designed to allocate samples over the full range of the station hydrograph to develop a robust relation between constituent concentration and streamflow. For example, samples collected at site 3 are plotted on the streamflow duration hydrograph to summarize hydrologic conditions during the sampling periods (fig. 2).

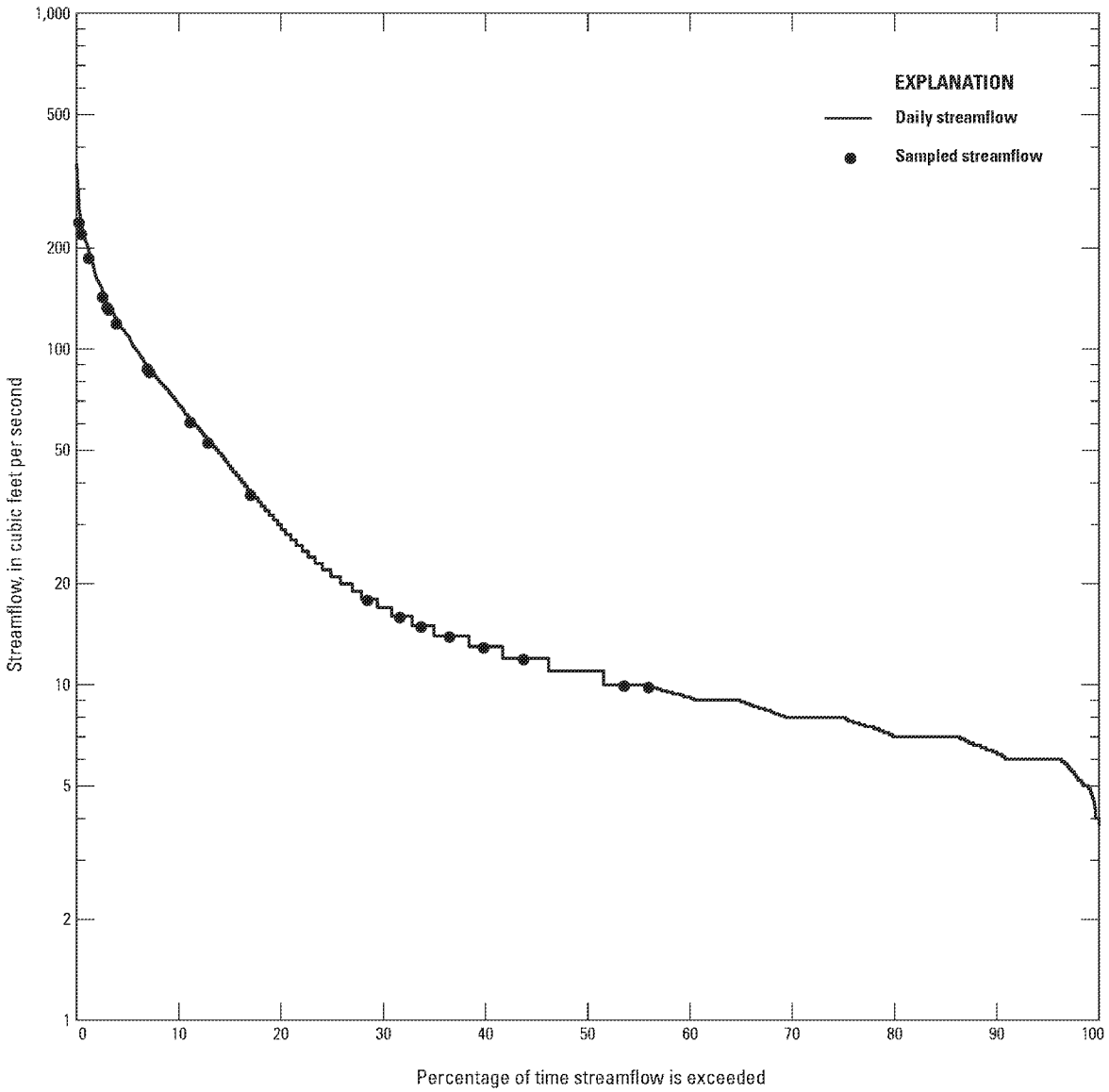


Figure 2. Streamflow duration (1928–2014) and measured streamflow at East Fork of South Fork of the Salmon River at Stibnite, central Idaho, 2012–14.

Although the magnitude of measured streamflow differed among sites, the timing of sample collection over the streamflow hydrograph was similar at each site.

Water-quality samples at all sites were collected using nonmetallic samplers and cross-sectional, depth-integrated sampling procedures (U.S. Geological Survey, various dates). Most samples were collected isokinetically and in equal-width increments. However, low-streamflow conditions with shallow, slow moving water occasionally precluded isokinetic sample collection. Prior to installation of bank-operated cableways in October 2013, samples collected during high streamflow at sites 3 and 4 were collected non-isokinetically using multiple vertical transects. Minor variations in sample collection methods are documented in sample metadata stored in the USGS National Water Information System (U.S. Geological Survey, 2015). Sampling equipment was cleaned and samples were collected according to trace-metal protocols described in the USGS National Field Manual (U.S. Geological Survey, various dates). Samples for laboratory analyses were composited and subsampled using a polyethylene churn splitting device. Samples for whole-water recoverable (total) analyses were withdrawn directly from the splitting device. Samples for dissolved (smaller than 0.45-micrometer [µm] diameter) analyses were withdrawn directly from the churn splitter and filtered through a pre-rinsed, 0.45-µm pore size, disposable capsule filter. Samples to be analyzed for trace elements were preserved with 2 milliliters (mL) of Ultrex® nitric acid. Samples to be analyzed for mercury were preserved with 2 mL of Omni-Trace® hydrochloric acid. Samples were shipped in plastic coolers to the USGS National Water Quality Laboratory (NWQL) in Denver, Colorado.

All water-quality samples (excluding suspended sediment) were analyzed at the NWQL using established analytical techniques. Trace-element concentrations were determined at NWQL by atomic absorption spectrometry in conjunction with a graphite furnace and inductively coupled plasma-mass spectrometry (Fishman and Friedman, 1989; Fishman, 1993; Hoffman and others, 1996; Garbarino and Struzeski, 1998; Garbarino and others, 2005, 2006). Mercury concentrations were determined by atomic fluorescence spectrometry (Garbarino and Damrau, 2001). Suspended-sediment samples were analyzed for concentration and the weight percentage of particles less than 0.0625 mm by the USGS Cascades Volcano Observatory (CVO) Sediment Laboratory using methods described in Guy (1969) and the American Society for Testing and Materials (2002) method D3977-97. Quality-assurance/quality-control (QA/QC) procedures used at the NWQL were documented by Pritt and Raese (1995). The CVO Sediment Laboratory QA/QC procedures are described in Knott and others (1993). All the data collected as part of this study are publicly available from the USGS National Water Information System (U.S Geological Survey, 2015).

Data Quality Assurance and Quality Control

Water-quality sample results were reviewed after receipt of the laboratory analysis. Data validation included use of a relative percent difference (RPD) to evaluate the relation between dissolved concentrations and whole-water concentrations. RPDs were calculated using the absolute value of the difference between the result pair, divided by the mean of the result pair, multiplied by 100. Expressing precision relative to a mean concentration standardizes comparison of precision among individual constituents. Laboratory analyses were rerun and (or) verified when the dissolved fraction exceeded the whole-water fraction with an RPD greater than 10 percent. Suspended-sediment results were reviewed for anomalies in comparison with historical results at the same location.

Analytical data also were validated using results from quality-control (QC) programs in use at the NWQL. The NWQL monitors and evaluates quality of inorganic analytical results through the use of double-blind QC samples as part of the Inorganic Blind Sample Project (IBSP). A "double-blind sample" is a QC sample submitted for analysis for which the identity of the sample and the concentration of the individual constituents within the sample are not known to the analyst. The QC samples typically are not synthetic reference materials; rather, they are derived from snowmelt, surface-water, or groundwater sources (Woodworth and Connor, 2003). Analytical errors settle into two major categories: bias and variability. Bias is systematic error that causes consistently positive or negative deviation in the results relative to the median expected concentration in the reference sample. Variability is random error that affects the ability to reproduce results. Repeated measurements of the IBSP samples over time provide estimates of systematic bias and random variability in the analytical procedures at the laboratory.

Quality-control samples also were collected in the field to evaluate the quality of the analytical results, and were analyzed concurrently in the laboratory with routine samples. Split replicates were collected and submitted at a proportion equivalent to at least 10 percent of the total number of water samples, and one field blank sample was collected during every sampling event.

Replicate data can be obtained in different ways to provide an assessment of precision (reproducibility) of analytical results. All replicate samples collected as part of this study were split replicates representing a single composite sample collected in the field and split into two subsamples for separate analysis. Analyses of split replicates indicate the reproducibility of environmental data that are affected by the combined variability potentially introduced by field and laboratory processes. The precision of the analytical results was determined using the RPD between the split replicates. An RPD of less than 20 percent for chemical analytes was considered acceptable.

Blank samples identify the presence and magnitude of potential contamination that could bias analytical results. Field blanks are aliquots of deionized water that are certified as contaminant free and are processed through the sampling equipment used to collect stream samples. All blanks were collected as field blanks. Field blanks are subjected to the same processing (sample splitting, filtration, preservation, transportation, and laboratory handling) as environmental samples. Field blanks included all sources of contamination associated with source-solution blanks plus any contamination from ambient conditions at sample sites. Field blanks also included any contamination from shipping or delivering the blanks to the analytical laboratory and storing, processing, and analyzing the blanks at the laboratory. Blank samples were analyzed for the same constituents as the environmental samples.

Summarized quality-assurance data analysis (appendix A) shows that dissolved cadmium and lead results from this study should be used with caution. Both analytes commonly were not detected at concentrations greater than the long-term method detection level (LT-MDL). Less frequently, dissolved cadmium and lead were detected near the laboratory LT-MDL at concentrations that did not exceed hardness-based AWQC.

Model Development

Two types of regression models were developed to estimate trace-metal and suspended-sediment transport and occurrence. The USGS LOAD ESTimator (LOADEST) FORTRAN program (Runkel and others, 2004; Runkel, 2013) was used to estimate daily and monthly loads. Estimated annual loads and total annual streamflow were used to compute streamflow-weighted concentrations (FWCs) of selected water-quality constituents. Surrogate regression models were developed using continuously monitored water-quality parameters, and optionally, functions of time and streamflow to estimate 15-minute and daily trace metal concentrations and loads.

LOADEST Models for Estimating Constituent Loads

For this study, loads were estimated for selected constituents using LOADEST. The LOADEST modeling program is based on a rating-curve method (Cohn and others, 1989, 1992; Crawford, 1991) that uses regression to estimate constituent concentrations and loads in relation to several predictor variables related to streamflow and time. This type of model has been used to estimate constituent concentrations for periods when sample data were not available (Gilroy and others, 1990), and to estimate a basin flux of water-quality constituents (Goolsby and others, 1999). Additional predictor variables describing streamflow variability were tested for significance in LOADEST models according to methods described by Garrett (2012).

Streamflow variability terms (SVTs) were defined in one of two ways. The first type of SVT was defined as the difference between mean streamflow (Q) on day i and the mean streamflow of the previous k days, given as:

$$dQk = \sum_{j=i-k}^{i-1} \frac{\ln Qj}{k} \tag{1}$$

This variability term (dQ) with a 1-day time step ($dQ1$) helps describe effects of hysteresis (Wang and Linker, 2008). Hysteresis occurs when the value of a physical property (constituent concentration) changes at a different rate than the effect assumed to be causing it (streamflow). Use of a streamflow variability term eliminates the need to develop a different regression between streamflow and load on the rising compared to the falling limb of the hydrograph. A term with a 30-day step ($dQ30$) helps describe effects of sequential events or prolonged event peaks. In some instances, the absolute value of $dQ1$ ($|dQ1|$) better describes loads in the regression model than $dQ1$, representing cases where the degree of flashiness of the event was the critical element, rather than hysteresis. In some instances, use of the untransformed streamflow also better describes loads in the regression model than the use of $\ln Q$.

The second type of SVT used the base-flow index (BFI) to explain streamflow variability. The BFI describes the amount of streamflow in a river derived from groundwater discharge using a simple ratio of estimated daily runoff to daily mean streamflow. Runoff was estimated using the local minimum method of hydrograph separation (Lim and others, 2005; Gustard and Demuth, 2009).

LOADEST was used for this study to develop regression models for estimating loads of arsenic, antimony, aluminum, manganese, lead, cadmium, zinc, mercury, and suspended sediment for each site. Because of the short duration of the study and to facilitate comparison among sites, predictor variables related to trends over time were not used. Data collected between September 2011 and October 2014 were used to calibrate the regression models, and constituent loads were estimated for 2012–14. The equation for the regression models is:

$$\begin{aligned}\ln L = I + a(\ln Q) + b(\ln Q^2) + c[\sin(2\pi T)] \\ + d[\cos(2\pi \mathrm{T})] + e(\mathrm{SVT}) + \varepsilon\end{aligned} \tag{2}$$

where

- ln is the natural logarithm;
- L is the constituent load, in pounds per day;
- I is the regression intercept;
- Q is the centered streamflow, in cubic feet per second;
- T is the centered decimal time in years from the beginning of the calibration period;

$\sin(2\pi T)$	and
$\cos(2\pi T)$	are periodic time functions that describe seasonal variability;
SVT	is the term describing streamflow variability (dQ_k, $\lvert dQ_k \rvert$, or BFI);
a, b, c, d, e	are regression coefficients that remain constant over time; and
ε	is the unaccounted error associated with the regression model.

For each model, time and streamflow predictor variables in the regression equation were selected on the basis of Akaike Information Criterion (Akaike, 1981; Judge and others, 1985). The criterion is designed to achieve a good compromise between using as many predictor variables as possible to explain the variance in load while minimizing the standard error of the resulting estimates. The streamflow variability predictor variable was selected based on its significance level. Estimates of the daily constituent load for each site were computed using the selected model and daily mean streamflow. Bias introduced by conversion of the logarithm of load into estimates of actual load was corrected using the Bradu-Mundlak method (Bradu and Mundlak, 1970; Cohn and others, 1989; Crawford, 1991).

Surrogate Regression Models for Estimating Constituent Concentrations

Multiple linear regression models were developed using continuously monitored water-quality parameters (surrogates) to estimate concentrations of dissolved arsenic, dissolved antimony, and total mercury at selected sites. Functions of time and discharge also were used as predictor variables in surrogate regression models if determined to be significant. Surrogate models were developed using stepwise linear regression analysis as described in Wood and Etheridge (2011) using the U.S. Geological Survey R statistical programming package "GSqwsr" (DeCicco and Corsi, 2014). The functional form of the surrogate models is:

$$C = I + a(SC) + b(\ln SC) + c(Q) + d(\ln Q) + e\left[\sin(2\pi T)\right] + f\left[\cos(2\pi T)\right] + g(\mathrm{BFI}) \quad (3)$$

where

C	is the constituent concentration, in micrograms per liter;
I	is the y-intercept; and
$a,c,...g$	are regression coefficients.

Surrogate models were calibrated using 15-minute values of continuously monitored streamflow and water-quality parameters in conjunction with laboratory analytical results for environmental samples.

Calculation of Streamflow-Weighted Concentrations using LOADEST Results

Interpretation of concentrations of trace elements in streams is improved by examining the mean FWC spanning a specified time period rather than individual concentrations or statistics based on a dataset of individual concentrations. An FWC is an estimate of the mean concentration in a total volume of water flowing past a site during a specific period, such as a year, or group of years. For this study, a mean FWC at each site was calculated using the LOADEST result for a constituent load during a given water year or water-year span divided by the total streamflow during that water year or water-year span. Loads and FWCs were estimated for each water year (2012–14) and as a mean for the 3-year study period.

Statistical Analysis of Sample Results

Summary statistics are provided for concentrations of all analyzed constituents and are compared with applicable ambient water-quality criteria (AWQC). Concentrations of total and dissolved mercury, cadmium, lead, and zinc, as well as dissolved manganese, were commonly lower than applicable LT-MDLs and LOADEST (which requires 7 detections to compute regression estimates); could not be used to estimate loads; and, thus, mean FWCs could not be determined for these constituents at all sites in the study area. The maximum likelihood estimation (MLE) method was used to estimate summary statistics on censored sample results. Logarithmic transformation was used with MLE as necessary to normalize the distribution of censored results (Helsel, 2012). Summary statistics were calculated from the data when less than 25 percent of the results were censored (Helsel and Hirsch, 2002).

Ambient Water-Quality Criteria

Streamflow-weighted concentrations and (or) summary statistics of constituent concentrations were compared to applicable AWQC. Comparisons of measured AWQC values for trace metals are complicated because criteria change as a function of water hardness. For this assessment, chronic freshwater AWQC concentrations were based on the applicable State of Idaho criteria for the protection of aquatic life (Idaho Department of Environmental Quality, various dates). Representative chronic criteria values were calculated using the minimum hardness value measured in samples collected from each site. The statewide cadmium criterion is from Mebane (2006) and the statewide zinc criterion is from U.S. Environmental Protection Agency (2002).

Streamflow and Water-Quality Monitoring

Monitoring sites in the study area were established in September 2011 except for site 3, operated from 1928–42, 1983–97, and 2011–14. Statistics for the 50th and 90th percentiles of streamflow over 32 years of record at site 3 show that peak snowmelt runoff occurred earlier in the water year during the study period (fig. 3). Sample-collection timing shown on the hydrograph for site 3 suggests that streamflows at all sites likely included the 90th percentile of streamflow (figs. 2 and 3). Concentrations of suspended sediment and sediment-associated constituents generally were highest in the samples collected during peak streamflows in May 2013, possibly because snowmelt runoff in 2013 occurred as a single peak with higher capacity to mobilize, transport, and concentrate sediment near the peak of snowmelt runoff. Samples were collected after relatively short-duration rainfall runoff events in October 2011 and August 2014, but were not collected on the rising limb of the hydrograph for any rainfall runoff event.

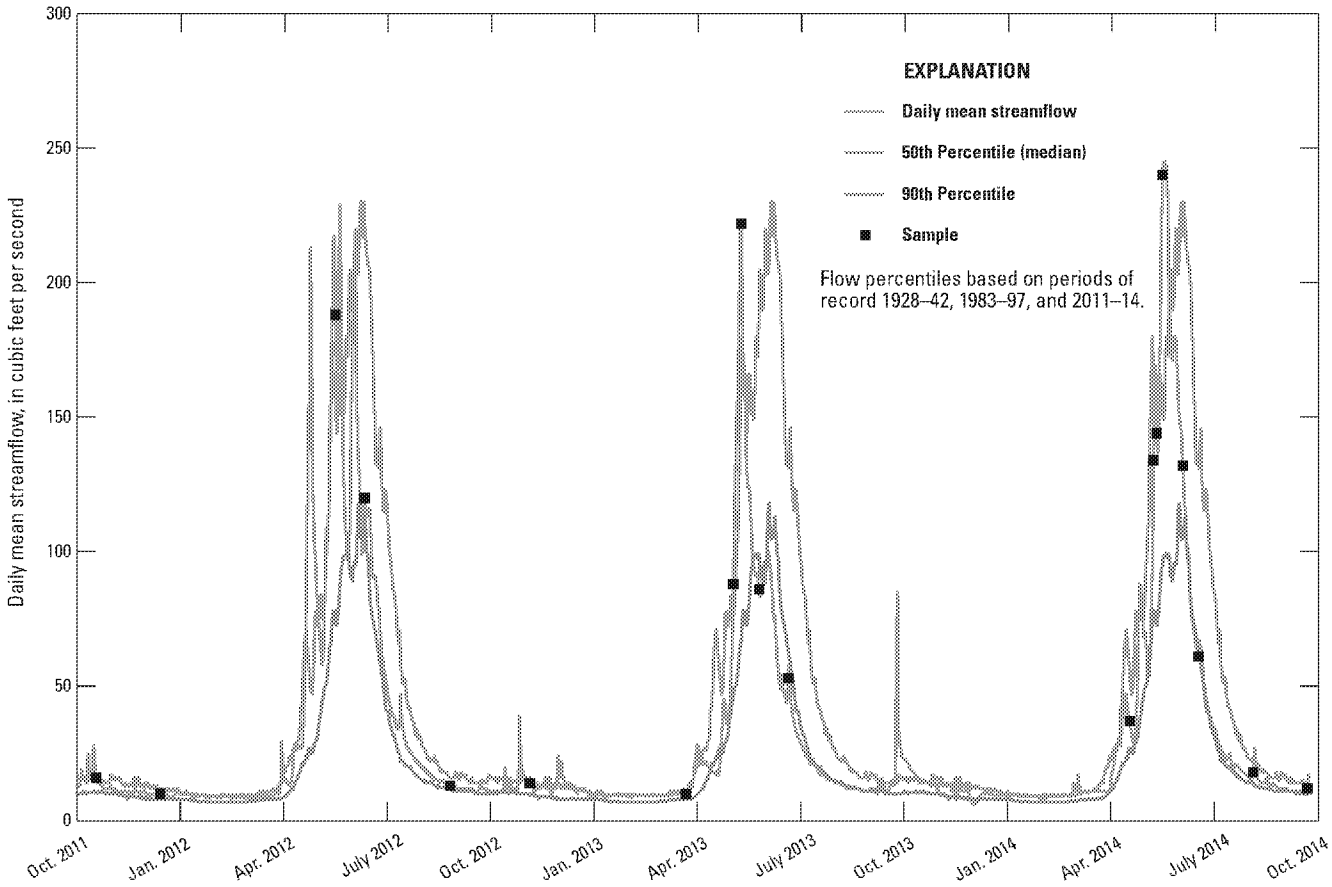


Figure 3. 50th and 90th streamflow percentiles for the periods of record, daily mean streamflow, and timing of water-quality sample collection at East Fork of South Fork of the Salmon River at Stibnite, central Idaho, 2012–14.

Except for arsenic, antimony, and mercury, concentrations of trace elements in streams in the EFSFSR (sites 1, 3, and 4), Meadow Creek (site 2), and Sugar Creek (site 5) did not exceed applicable AWQC or human-health criteria (appendix B, table 2). Arsenic concentrations exceeded the human-health-based criterion of 10 µg/L in all samples collected in the EFSFSR at stations 3 and 4 downstream of the confluence with Meadow Creek. Antimony concentrations exceeded the human-health based criterion of 5.6 µg/L in 87 percent of the samples collected from site 3 and 100 percent of the samples collected from site 4. Every site had at least one exceedance of the 0.012-µg/L chronic AWQC for total mercury, and two samples from site 5 exceeded the 2.1-µg/L acute AWQC for total mercury (table 2, fig. 4, appendix A). Concentrations of regulated trace elements, including cadmium, copper, and zinc, were detected infrequently and did not exceed the AWQC. Water-quality sample results for chromium were not speciated, but dissolved and total chromium were not detected at concentrations higher than hardness-dependent AWQC for hexavalent chromium.

Table 2. Exceedances of water-quality criteria in samples collected from five streamflow and water-quality monitoring sites in the Stibnite mining area, central Idaho, 2012–14.

[Site names and locations are shown in table 1 and figure 1, respectively. **Applicable criteria:** Criteria shown are not hardness-dependent. MDAT, maximum daily average water-temperature criterion for coldwater aquatic life; MDAT-SS, maximum daily average water-temperature criterion for salmonid spawning; MDMT, maximum daily maximum water-temperature criterion for salmonid spawning; MWMT, maximum weekly maximum water-temperature criterion for bull trout habitat. **Criterion type:** HHB, human-health based criterion; CCC, criterion continuous concentration or "chronic" aquatic-life criterion; CMC, criterion maximum concentration or "acute" aquatic-life criterion; CW, coldwater; SS, salmonid spawning; BT, bull trout. **Abbreviations:** µg/L, microgram per liter; °C, degrees Celcius; <, less than; NA, not applicable]

Constituent	Applicable criteria	Criterion type	Site 1	Site 2	Site 3	Site 4	Site 5
			Frequency of exceedance, in percent				
Dissolved arsenic	Minimum: 10 µg/L	HHB	45	0	100	100	48
	Maximum: 150 µg/L	CCC	0	0	0	0	0
	Number of samples	NA	20	21	24	22	21
Dissolved antimony	Miniumum: 5.6 µg/L	HHB	0	0	87	100	30
	Maximum: NA	NA	NA	NA	NA	NA	NA
	Number of samples	NA	20	18	23	21	20
Total mercury	Miniumum: 0.012 µg/L	CCC	43	14	46	33	95
	Maximum: 2.1 µg/L	CMC	0	0	0	0	11
	Number of samples	NA	7	7	13	15	19
Water temperature[1]	MDAT: 19 °C	CW	0	0	0	0	0
	MDAT-SS: 9 °C	SS	29	32	37	47	47
	MDMT: 13 °C	SS	< 1	< 1	9	9	4
	MWMT: 13 °C	BT	0	0	0	1	11
	Number of 15-minute values assessed	NA	53,731	51,727	52,674	51,534	49,126

[1]Water-temperature data collected seasonally (April–October) every 15 minutes from each site were assessed with applicable criteria. A 7-day average was computed from 15-minute values and used to assess the MWMT. A daily average was computed from 15-minute values and used to assess the MDAT and MDAT-SS.

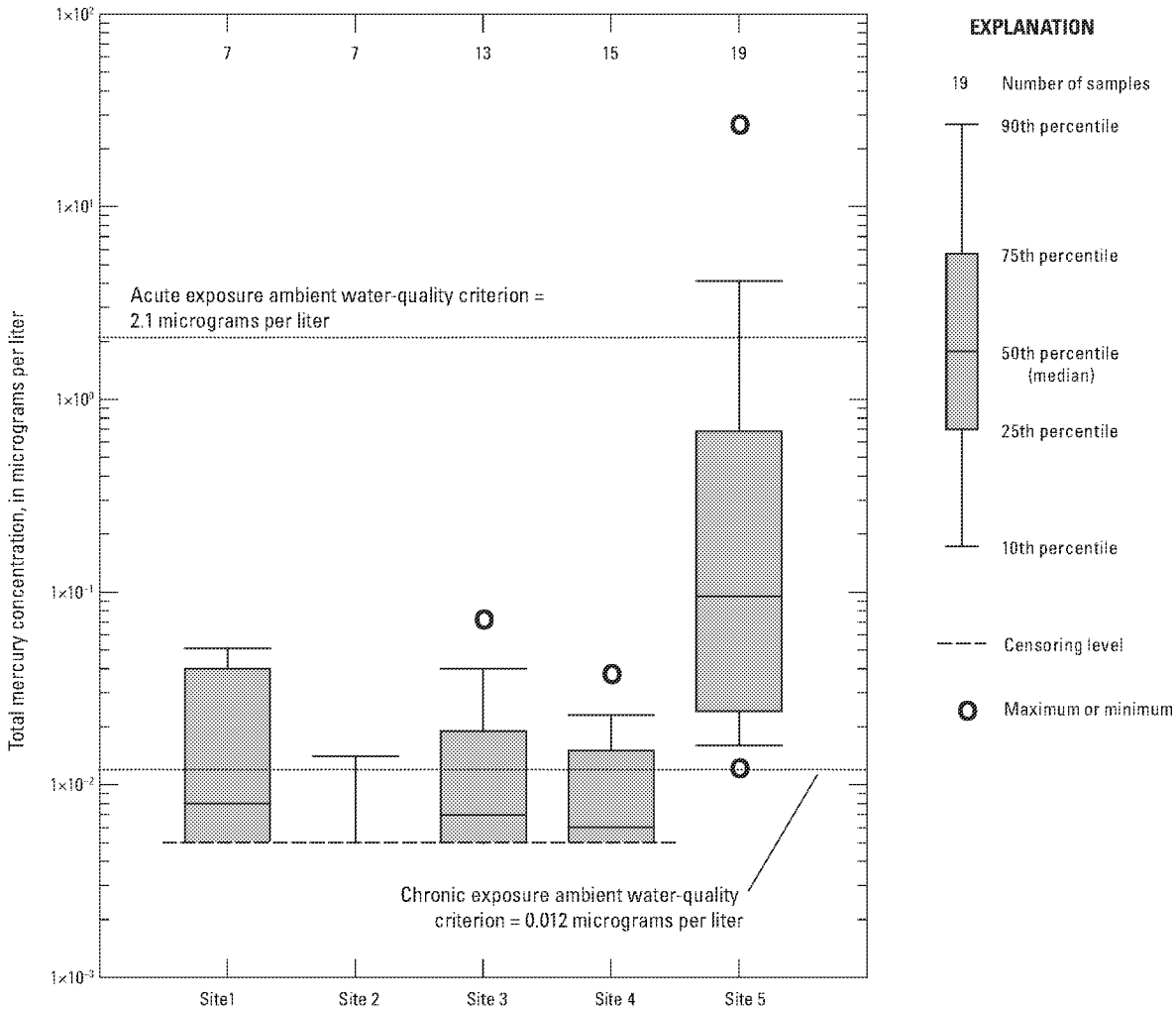


Figure 4. Total mercury concentrations in five streamflow and water-quality monitoring sites in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

Continuous measurements of stream temperature and pH showed few exceedances of applicable State-of-Idaho general water-quality criteria (Idaho Department of Environmental Quality, various dates). pH was greater than the general minimum criterion of 6.5 and less than the general maximum criterion of 9.0 at all of the sites.

Applicable salmonid spawning criteria in the South Fork of the Salmon River and its tributaries apply to seasonal periods between March 15 and July 1 for spring spawning salmonids (steelhead), and between August 15 and June 1 of the following year for autumn-spawning salmonids (Chinook salmon) (Idaho Department of Environmental Quality, 2012). Therefore, seasonal salmonid spawning criteria apply during a substantial part of the year because of the presence of both spring and autumn salmonid spawners. Continuous water-temperature data collected from late April to late October during 2012–14 showed that water temperature exceeded the 9 °C maximum daily average temperature criterion for salmonid spawning (MDAT-SS) at least 29 percent of the time at all sites (table 2, fig. 5). Water temperature at sites 3 and 4 in the EFSFSR and site 5 in Sugar Creek exceeded the 13 °C maximum daily maximum temperature (MDMT) criterion for salmonid spawning between 4 and 9 percent of the time (table 2, fig. 5).

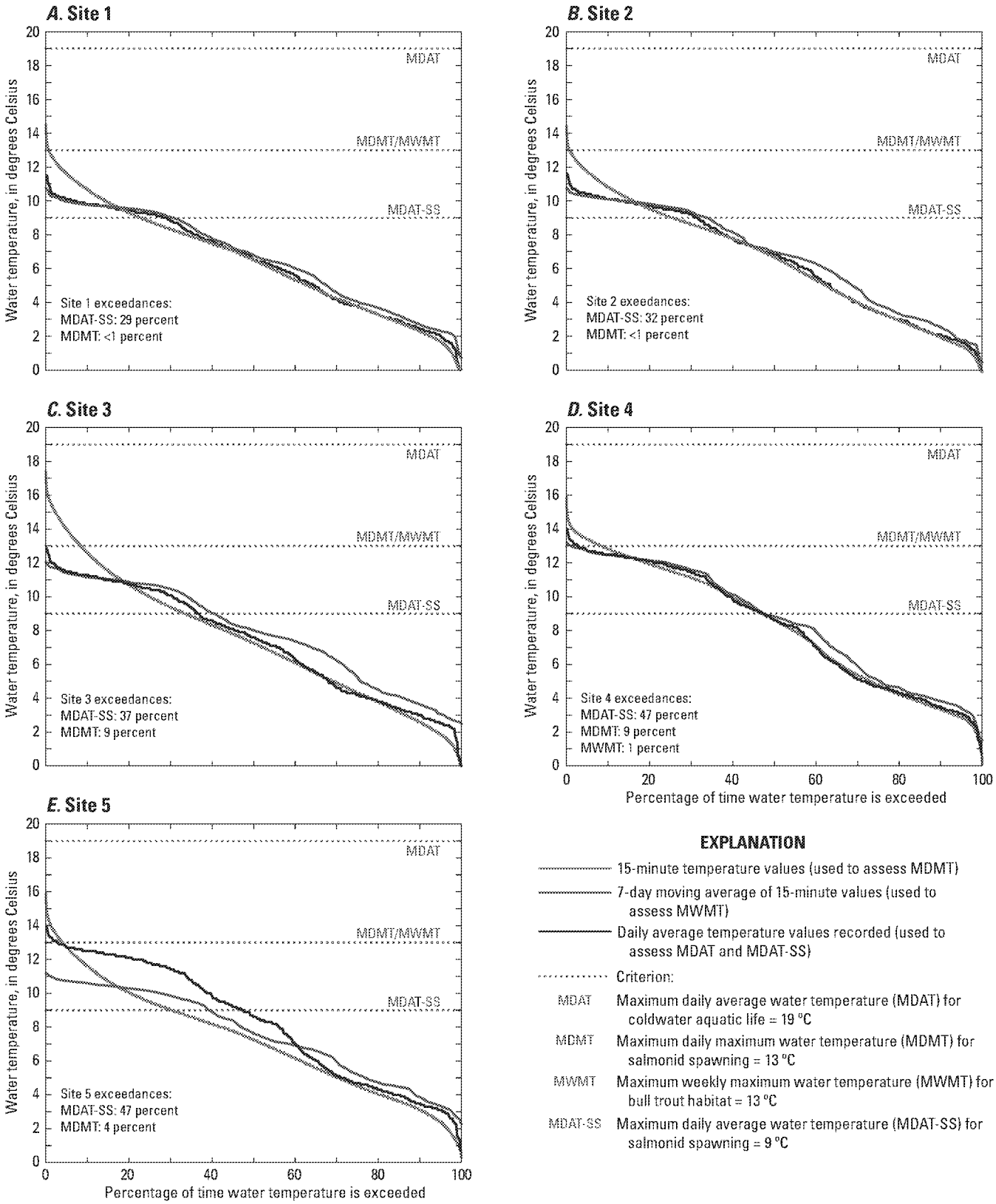


Figure 5. Temperature exceedance for five streamflow and water-quality monitoring sites in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

Occurrence, Transport, and Deposition of Selected Constituents

Occurrence and transport of trace elements and suspended sediment in the Stibnite mining area depend on constituent source. Groundwater sources seem to control concentrations and loading of dissolved and total arsenic, dissolved and total antimony, dissolved manganese, and dissolved iron, whereas erosion and overland runoff control concentrations and loading of suspended sediment and sediment-associated constituents including aluminum, lead, and mercury. Ratios of dissolved to total estimated FWCs of arsenic and antimony are close to 1 in the EFSFSR, indicating that they are primarily in the dissolved phase, and probably are derived from groundwater sources (table 3). Negative correlations between streamflow and concentrations of total and dissolved arsenic, total and dissolved antimony, dissolved manganese, and dissolved iron also suggest groundwater sources for these constituents in the Meadow Creek and (or) Glory Hole reaches (figs. 1 and 6). Ratios of dissolved to total estimated FWCs of lead and aluminum are relatively low, and concentrations of aluminum, lead, mercury, total iron, and suspended sediment are positively correlated with streamflow, indicating surface and stream channel erosion as sources (table 3, fig. 6). LOADEST models were not used to estimate annual loads or FWCs of cadmium, chromium, copper, and zinc because of a low rate of detection throughout the study area and the requirement of at least seven uncensored values to calibrate LOADEST models (appendix A). Laboratory analytical results for dissolved antimony often were slightly higher than for total antimony, resulting in ratios of greater than 1 for FWCs of dissolved to total antimony. When this occurred, ratios were rounded down to 1 in table 3. Total manganese was not analyzed in water-quality samples.

Estimated annual loads and FWCs for each site indicate that the Glory Hole reach between sites 3 and 4 (fig. 1) is the primary source of arsenic, antimony, and dissolved manganese in the study area (figs. 7–11, tables 4 and 5). On average, the Glory Hole reach contributed only 10 percent of the streamflow, but contributed 52 percent of total arsenic, 53 percent of total antimony, and 42 percent of the dissolved manganese loads attributable to streams in the study area (fig. 7). The Meadow Creek reach was the second largest source of arsenic, antimony, and dissolved manganese. On average, the Meadow Creek reach contributed only 15 percent of the streamflow, but 28 percent of total arsenic, 37 percent of total antimony, and 44 percent of the dissolved manganese loads attributable to streams in the study area (fig. 7). Mean estimated FWCs exceed human-health criteria for arsenic at sites 3, 4 and 5 and antimony at sites 3 and 4. Based on incremental changes in the streamflow between sites and the loads of arsenic, antimony, and dissolved manganese between sites, a mean FWC of sources to the reach can be estimated. Estimated FWCs from the Glory Hole reach and the Meadow Creek reach indicate that those reaches have much higher concentrations compared to the monitoring sites immediately downstream (fig. 11). Water-quality samples were collected at numerous locations along the Meadow Creek reach between sites 2 and 3 on September 22, 2011, in an effort to identify sources of arsenic and antimony to Meadow Creek. Five samples collected at discrete sampling sites on September 22, 2011 (as opposed to regularly collected samples from monitoring sites) showed substantially higher concentrations and loads of arsenic or antimony relative to concentrations and loads measured at the adjacent upstream location (table 6, fig. 12). Results from all samples collected along Meadow Creek on September 22, 2011, are available from the USGS National Water Information System (U.S. Geological Survey, 2015).

Estimated annual loads and FWCs of suspended sediment, total aluminum, and total lead generally increased between sites 1 and 3 and decreased between sites 3 and 4, with the Glory Hole acting as a sediment trap (figs. 7, 13, 14, and 16; tables 4 and 5; appendix B). Although not sampled as part of this study, the East Fork Meadow Creek (fig. 1) likely is the source of suspended sediment and total aluminum load entering the Meadow Creek reach. The East Fork Meadow Creek is the only surface-water tributary to Meadow Creek capable of carrying a sediment (and sediment-associated constituent) load. The Meadow Creek reach contributed more sediment than Sugar Creek (site 5), but most of the sediment load discharged from the Meadow Creek reach was deposited in the Glory Hole (figs. 7 and 13). The FWCs of suspended sediment at sites 1 and 2 were less than 10 mg/L. However, the incremental gain between sites 1 and 2 downstream to site 3 indicates that the sources of suspended sediment to the Meadow Creek reach had a mean FWC of 78 mg/L (fig. 16C). The mean FWC of suspended sediment for 2012–14 at site 3 was nearly 4 times higher than the corresponding FWC of suspended sediment at site 4 (table 5). Load models show that about 90 percent of the coarse-grained sediment (>0.0625 mm in diameter) load at site 3 was deposited in the Glory Hole; however, about 82 percent of the fine-grained sediment (<0.0625 mm in diameter) load at site 3 was transported through the Glory Hole downstream to site 4 (table 4).

Table 3. Ratio of dissolved to total mean streamflow-weighted concentrations for selected constituents at five streamflow and water-quality monitoring sites in the Stibnite mining area, central Idaho, 2012–14.

[Site names and locations are shown in table 1 and figure 1, respectively. Ratios are unitless. **Abbreviations:** FWC, streamflow-weighted concentration; NA, not applicable]

Constituent	Ratio of dissolved to total mean FWC 2012–14				
	Site 1	Site 2	Site 3	Site 4	Site 5
Arsenic	0.96	0.67	0.97	0.93	0.88
Antimony	1.00	1.00	0.97	1.00	1.00
Lead	NA	NA	0.11	0.30	0.20
Aluminum	0.23	0.12	0.08	0.13	0.08

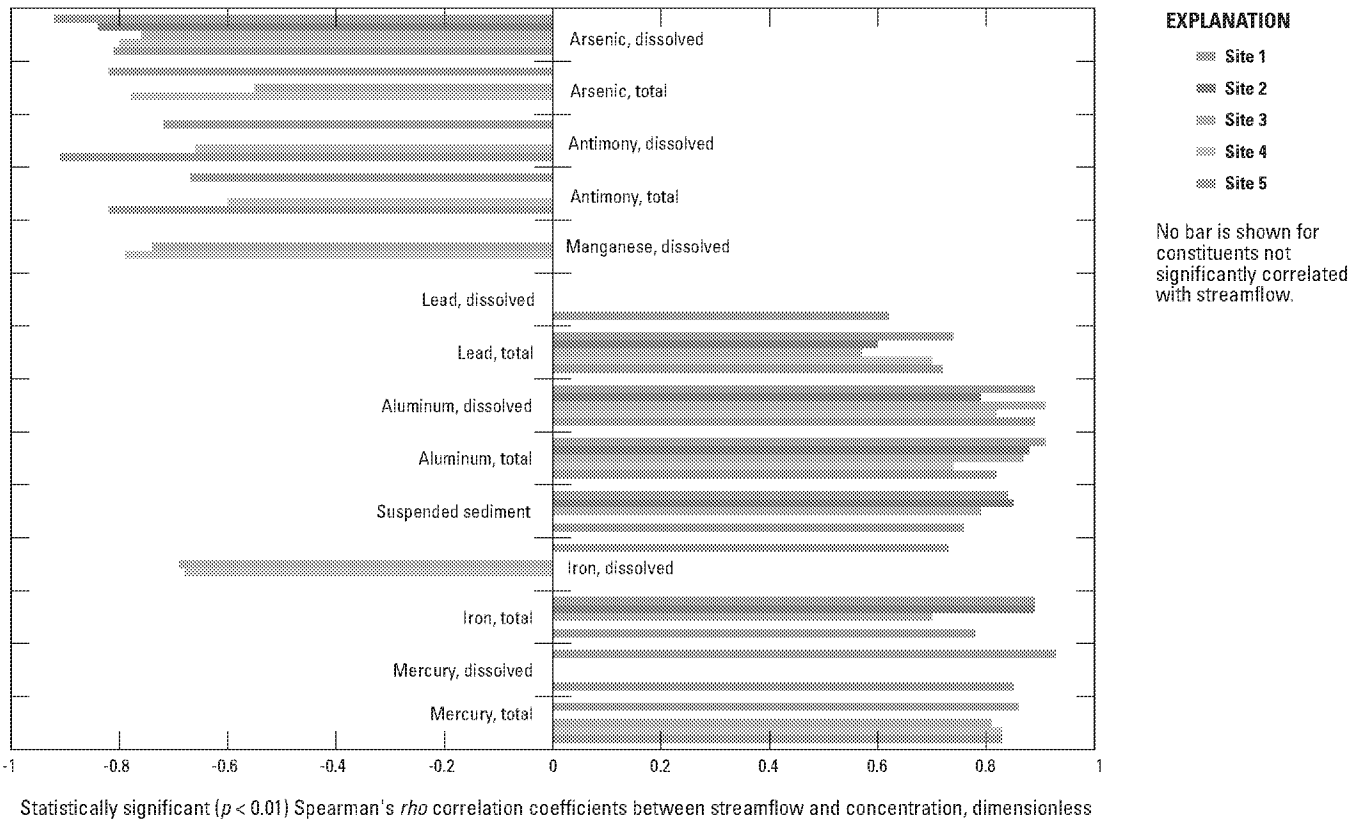


Figure 6. Correlation between streamflow and constituent concentrations for trace elements and suspended sediment in streams in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

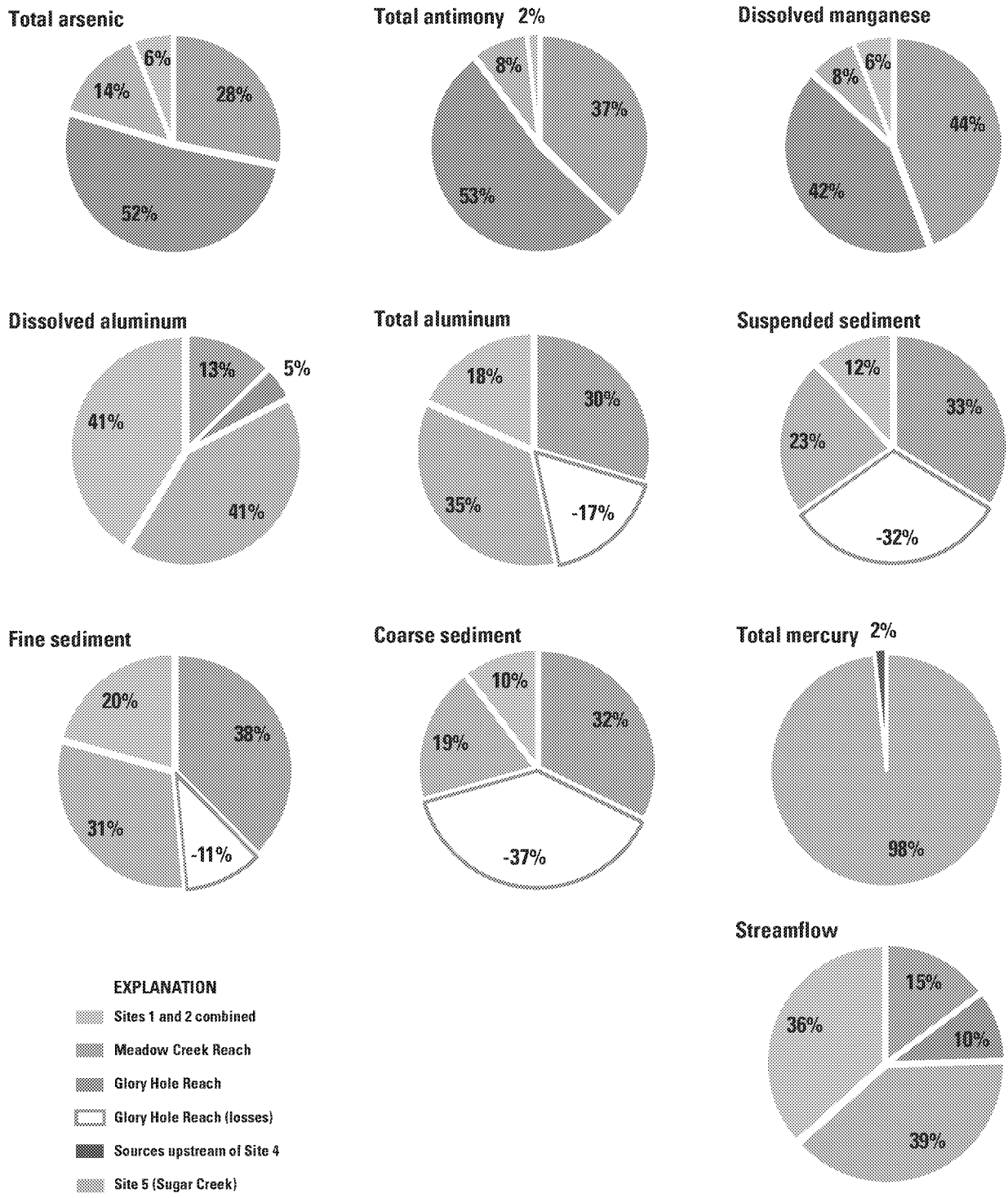


Figure 7. Streamflow and load contributions from discrete reaches as a percentage of total estimated streamflow and loads attributable to streams in the Stibnite mining area, central Idaho, 2012–14.

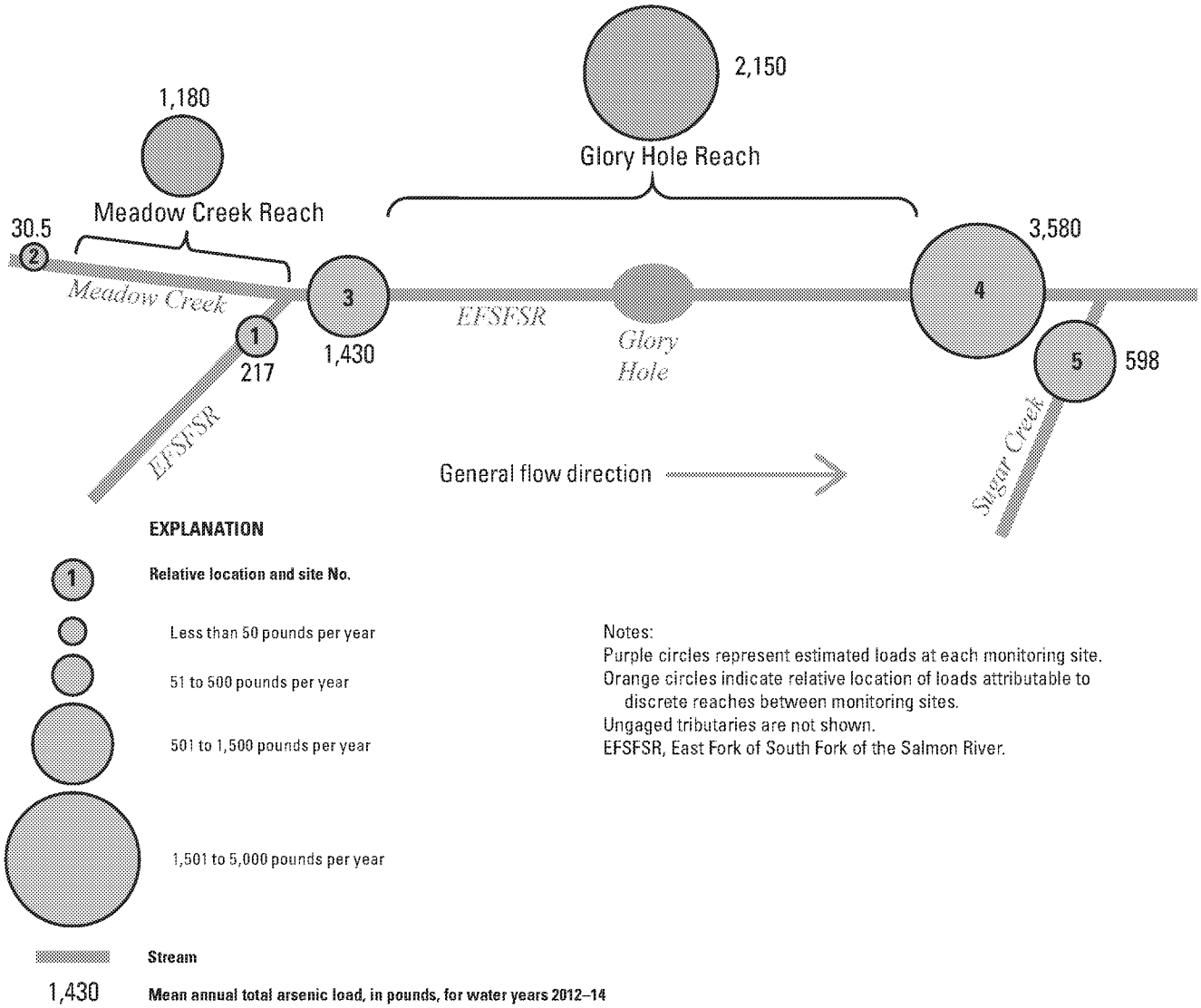


Figure 8. Estimated mean annual total arsenic loads in streams in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

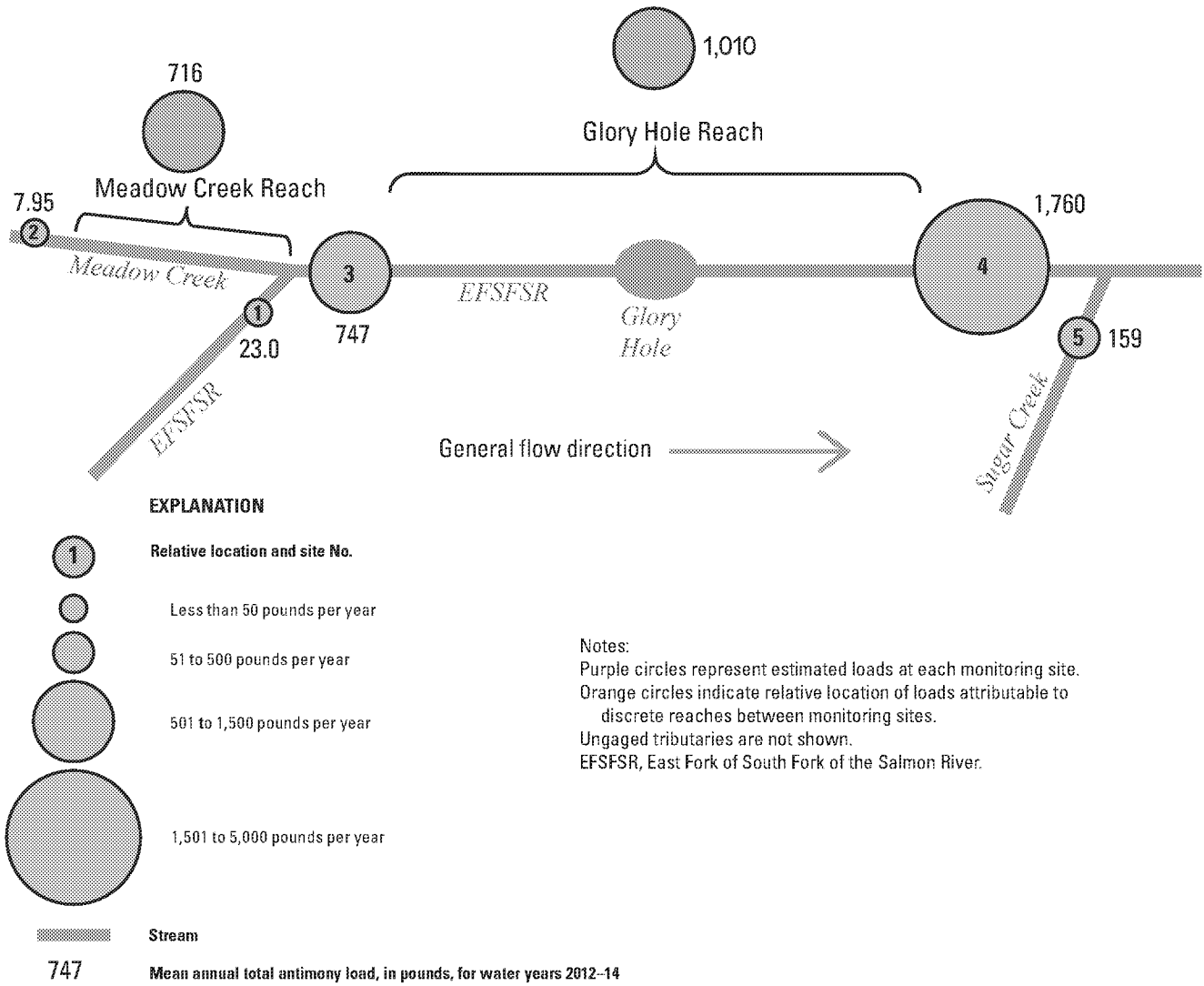


Figure 9. Estimated mean annual total antimony loads in streams in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

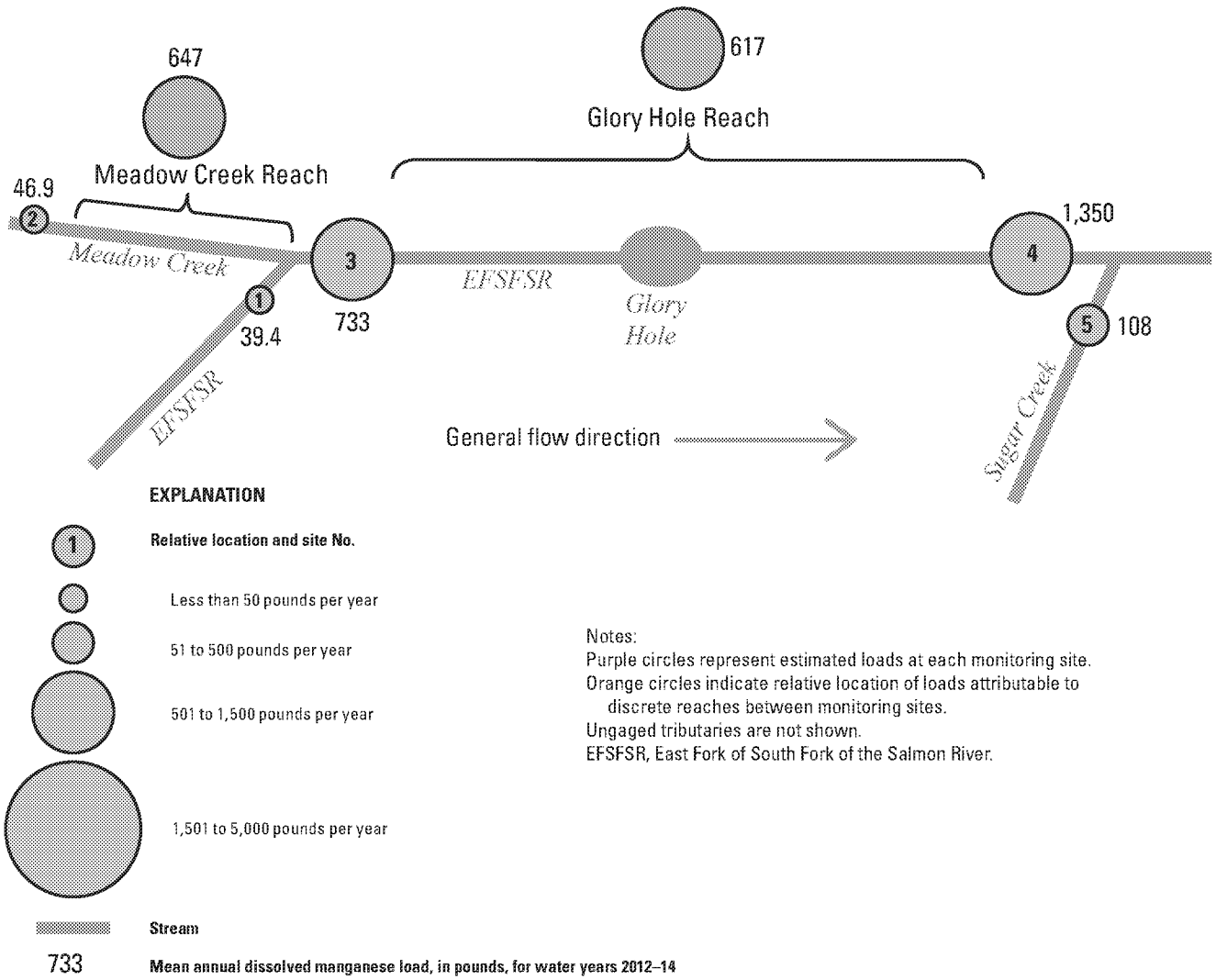


Figure 10. Estimated mean annual dissolved manganese loads in streams in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

Table 4. Estimated annual loads of selected trace elements and suspended sediment at five streamflow and water-quality monitoring sites in the Stibnite mining area, central Idaho, 2012–14.

[Site names and locations are shown in table 1 and figure 1, respectively. **Abbreviations:** L95, lower 95-percent confidence interval; U95, upper 95-percent confidence interval; lb/yr, pound per year; ton/yr, ton per year]

Constituent	Water year											
	2012			2013			2014			2012–14 mean		
	Annual load	L95	U95	Annual load	L95	U95	Annual load	L95	U95	Annual load	L95	U95
Site 1												
Arsenic, dissolved (lb/yr)	223	208	238	197	183	211	206	193	220	209	195	223
Arsenic, total (lb/yr)	233	215	253	203	187	220	214	198	232	217	200	235
Antimony, dissolved (lb/yr)	26.1	23.3	29.1	22.9	20.3	25.8	23.4	20.8	26.2	24.1	21.5	27.0
Antimony, total (lb/yr)	24.7	21.8	27.9	21.7	19.0	24.7	22.6	19.9	25.6	23.0	20.2	26.1
Manganese, dissolved (lb/yr)	43.7	29.5	62.4	34.8	23.6	49.7	39.6	26.4	57.2	39.4	26.5	56.5
Lead, dissolved (lb/yr)	no suitable LOADEST model											
Lead, total (lb/yr)	no suitable LOADEST model											
Aluminum, dissolved (ton/yr)	0.36	0.27	0.46	0.27	0.20	0.35	0.32	0.24	0.42	0.32	0.24	0.41
Aluminum, total (ton/yr)	1.54	1.19	1.97	1.28	0.95	1.68	1.37	1.02	1.81	1.40	1.05	1.82
Suspended sediment (ton/yr)	103	76.6	136	87.6	61.8	121	87.0	62.9	117	92.6	67.1	125
Fine sediment (ton/yr)	35.2	26.1	46.4	30.2	21.1	41.9	29.0	21.3	38.5	31.5	22.9	42.3
Coarse sediment (ton/yr)	68.9	41.7	107	58.6	32.2	98.3	58.1	33.4	94.5	61.9	35.8	100
Site 2												
Arsenic, dissolved (lb/yr)	21.2	20.3	22.2	18.2	17.4	19.0	21.9	21.0	23.0	20.5	19.6	21.4
Arsenic, total (lb/yr)	32.2	27.5	37.5	25.7	22.0	29.8	33.6	28.4	39.3	30.5	26.0	35.5
Antimony, dissolved (lb/yr)	8.69	7.78	9.68	7.28	6.45	8.18	8.96	8.00	10.0	8.31	7.41	9.29
Antimony, total (lb/yr)	8.46	7.11	9.98	6.74	5.71	7.90	8.65	7.28	10.21	7.95	6.70	9.36
Manganese, dissolved (lb/yr)	49.0	36.2	64.9	41.1	31.0	53.5	50.5	37.5	66.6	46.9	34.9	61.7
Lead, dissolved (lb/yr)	no suitable LOADEST model											
Lead, total (lb/yr)	no suitable LOADEST model											
Aluminum, dissolved (ton/yr)	0.32	0.27	0.39	0.25	0.21	0.30	0.33	0.27	0.39	0.30	0.25	0.36
Aluminum, total (ton/yr)	2.98	1.74	4.80	1.98	1.17	3.13	2.45	1.50	3.78	2.47	1.47	3.90
Suspended sediment (ton/yr)	162	84.0	285	83.1	49.7	131	120	65.2	204	122	66.3	206
Fine sediment (ton/yr)	75.1	32.1	150	37.3	19.4	65.3	54.0	24.0	105	55.5	25.2	107
Coarse sediment (ton/yr)	85.6	44.6	149	46.4	27.2	74.2	65.0	35.9	109	65.7	35.9	111
Site 3												
Arsenic, dissolved (lb/yr)	1,460	1,300	1,640	1,270	1,120	1,430	1,400	1,250	1,560	1,380	1,220	1,540
Arsenic, total (lb/yr)	1,540	1,350	1,760	1,280	1,110	1,450	1,460	1,280	1,670	1,430	1,250	1,630
Antimony, dissolved (lb/yr)	784	618	981	673	517	862	720	566	902	726	567	915
Antimony, total (lb/yr)	815	641	1020	682	524	873	743	586	929	747	584	941
Manganese, dissolved (lb/yr)	763	669	867	701	619	790	735	647	832	733	645	830
Lead, dissolved (lb/yr)	2.44	1.79	3.25	1.73	1.29	2.26	2.26	1.65	3.01	2.14	1.58	2.84
Lead, total (lb/yr)	23.2	2.15	97.3	20.0	1.63	87.7	11.7	3.17	31.0	18.3	2.32	72.0
Aluminum, dissolved (ton/yr)	0.95	0.77	1.16	0.57	0.47	0.69	0.89	0.71	1.09	0.80	0.65	0.98
Aluminum, total (ton/yr)	12.8	5.26	26.2	9.97	3.45	22.8	7.75	4.17	13.2	10.2	4.29	20.8
Suspended sediment (ton/yr)	1,100	342	2,670	545	222	1,130	835	347	1,700	825	304	1,830
Fine sediment (ton/yr)	339	120	767	174	76	343	223	103	422	245	100	511
Coarse sediment (ton/yr)	657	257	1,400	349	135	745	568	216	1,230	525	203	1,120

Table 4. Estimated annual loads of selected trace elements and suspended sediment at five streamflow and water-quality monitoring sites in the Stibnite mining area, central Idaho, 2012–14.—Continued

[Site names and locations are shown in table 1 and figure 1, respectively. **Abbreviations:** L95, lower 95 percent confidence interval; U95, upper 95 percent confidence interval; lb/yr, pound per year; ton/yr, ton per year]

Constituent	Water year											
	2012			2013			2014			2012–14 mean		
	Annual load	L95	U95	Annual load	L95	U95	Annual load	L95	U95	Annual load	L95	U95
Site 4												
Arsenic, dissolved (lb/yr)	3,520	3,150	3,910	3,070	2,740	3,430	3,380	3,030	3,760	3,320	2,970	3,700
Arsenic, total (lb/yr)	3,800	3,340	4,310	3,280	2,870	3,740	3,650	3,200	4,140	3,580	3,140	4,060
Antimony, dissolved (lb/yr)	2,050	1,690	2,460	1,750	1,410	2,150	1,940	1,600	2,330	1,910	1,570	2,310
Antimony, total (lb/yr)	1,910	1,600	2,270	1,560	1,300	1,850	1,810	1,510	2,150	1,760	1,470	2,090
Manganese, dissolved (lb/yr)	1,410	1,260	1,570	1,280	1,140	1,430	1,370	1,220	1,520	1,350	1,210	1,510
Lead, dissolved (lb/yr)	3.11	2.11	4.44	2.25	1.55	3.15	2.89	1.96	4.12	2.75	1.87	3.90
Lead, total (lb/yr)	11.0	6.77	16.9	6.52	4.09	9.90	10.4	6.16	16.5	9.30	5.67	14.4
Aluminum, dissolved (ton/yr)	1.03	0.76	1.36	0.64	0.48	0.84	0.96	0.70	1.28	0.88	0.65	1.16
Aluminum, total (ton/yr)	7.75	3.93	13.8	4.70	2.44	8.21	7.22	3.56	13.1	6.55	3.31	11.7
Suspended sediment (ton/yr)	284	162	463	175	103	277	292	152	508	250	139	416
Fine sediment (ton/yr)	229	121	397	140	76	235	231	111	426	200	103	353
Coarse sediment (ton/yr)	61.9	32.9	106	36.0	21.7	56.4	58.5	33.1	96.0	52.1	29.2	86.2
Mercury, total (lb/yr)	0.85	0.59	1.19	0.51	0.36	0.70	0.87	0.58	1.25	0.74	0.51	1.05
Site 5												
Arsenic, dissolved (lb/yr)	568	511	629	477	425	534	545	492	602	530	476	588
Arsenic, total (lb/yr)	597	469	753	552	481	630	644	564	732	598	505	705
Antimony, dissolved (lb/yr)	176	143	214	158	126	195	169	138	205	168	136	205
Antimony, total (lb/yr)	166	109	244	150	121	185	162	133	196	159	121	208
Manganese, dissolved (lb/yr)	112	69.8	171	88.5	56.0	133	123	69.3	202	108	65.0	169
Lead, dissolved (lb/yr)	2.30	1.84	2.84	1.68	1.34	2.09	2.25	1.77	2.82	2.08	1.65	2.58
Lead, total (lb/yr)	8.60	2.35	22.7	8.33	2.16	22.5	14.1	4.50	33.8	10.3	3.00	26.3
Aluminum, dissolved (ton/yr)	0.69	0.48	0.95	0.45	0.31	0.62	0.73	0.50	1.02	0.62	0.43	0.86
Aluminum, total (ton/yr)	7.47	2.88	16.0	4.61	1.51	10.9	10.3	3.12	25.5	7.46	2.50	17.5
Suspended sediment (ton/yr)	379	204	644	255	118	485	612	267	1208	415	197	779
Fine sediment (ton/yr)	92.0	43.6	174	129	49.6	277	168	84.6	299	129	59.2	250
Coarse sediment (ton/yr)	223	105	416	187	58	456	290	114	616	233	92	496
Mercury, total (lb/yr)	28.7	8.37	72.5	62.0	10.1	209	41.6	10.1	116	44.1	9.51	133

Table 5. Estimated streamflow-weighted concentrations of selected constituents at five streamflow and water-quality monitoring sites in the Stibnite mining area, central Idaho, 2012–14.

[Site names and locations are shown in table 1 and figure 1, respectively. **Abbreviations:** FWC, streamflow-weighted concentration; L95, lower 95-percent confidence interval; U95, upper 95-percent confidence interval; µg/L, microgram per liter; mg/L, milligram per liter]

Constituent	Water years											
	2012			2013			2014			2012–14 mean		
	FWC	L95	U95	FWC	L95	U95	FWC	L95	U95	FWC	L95	U95
Site 1												
Arsenic, dissolved (µg/L)	8.11	7.58	8.66	8.59	8.01	9.20	8.25	7.71	8.83	8.32	7.77	8.90
Arsenic, total (µg/L)	8.48	7.82	9.19	8.82	8.12	9.57	8.58	7.90	9.29	8.63	7.95	9.35
Antimony, dissolved (µg/L)	0.95	0.85	1.06	1.00	0.88	1.12	0.94	0.83	1.05	0.96	0.85	1.08
Antimony, total (µg/L)	0.90	0.79	1.01	0.94	0.83	1.07	0.90	0.80	1.02	0.92	0.80	1.04
Manganese, dissolved (µg/L)	1.59	1.07	2.27	1.52	1.03	2.16	1.59	1.06	2.29	1.56	1.05	2.24
Lead, dissolved (µg/L)	no suitable LOADEST model											
Lead, total (µg/L)	no suitable LOADEST model											
Aluminum, dissolved (µg/L)	25.9	19.8	33.3	23.5	17.7	30.6	25.7	19.3	33.5	25.0	18.9	32.5
Aluminum, total (µg/L)	112	86.4	143	111	82.9	147	110	81.8	145	111	83.7	145
Suspended sediment (mg/L)	7.51	5.57	9.91	7.63	5.38	10.51	6.96	5.04	9.39	7.37	5.33	9.93
Fine sediment (mg/L)	2.56	1.90	3.37	2.63	1.84	3.65	2.32	1.70	3.08	2.50	1.81	3.37
Coarse sediment (mg/L)	5.01	3.03	7.80	5.10	2.80	8.56	4.65	2.67	7.56	4.92	2.83	7.97
Site 2												
Arsenic, dissolved (µg/L)	0.92	0.88	0.96	0.96	0.92	1.00	0.92	0.88	0.96	0.93	0.89	0.97
Arsenic, total (µg/L)	1.39	1.19	1.62	1.35	1.16	1.57	1.41	1.20	1.65	1.38	1.18	1.61
Antimony, dissolved (µg/L)	0.38	0.34	0.42	0.38	0.34	0.43	0.38	0.34	0.42	0.38	0.34	0.42
Antimony, total (µg/L)	0.36	0.31	0.43	0.35	0.30	0.42	0.36	0.31	0.43	0.36	0.30	0.43
Manganese, dissolved (µg/L)	2.11	1.56	2.80	2.16	1.63	2.81	2.12	1.57	2.80	2.13	1.59	2.80
Lead, dissolved (µg/L)	no suitable LOADEST model											
Lead, total (µg/L)	no suitable LOADEST model											
Aluminum, dissolved (µg/L)	27.9	23.1	33.4	26.3	21.9	31.4	27.6	22.8	33.0	27.2	22.6	32.6
Aluminum, total (µg/L)	258	150	414	208	124	329	206	126	318	224	133	354
Suspended sediment (mg/L)	11.8	6.10	20.7	7.23	4.33	11.4	9.64	5.22	16.3	9.55	5.22	16.1
Fine sediment (mg/L)	5.45	2.34	10.91	3.25	1.69	5.68	4.32	1.92	8.43	4.34	1.98	8.34
Coarse sediment (mg/L)	6.22	3.24	10.86	4.04	2.37	6.46	5.20	2.87	8.69	5.15	2.83	8.67
Site 3												
Arsenic, dissolved (µg/L)	21.0	18.7	23.4	23.7	20.9	26.9	21.4	19.1	24.0	22.1	19.6	24.8
Arsenic, total (µg/L)	22.1	19.3	25.3	23.9	20.9	27.2	22.4	19.6	25.6	22.8	19.9	26.0
Antimony, dissolved (µg/L)	11.2	8.85	14.1	12.6	9.68	16.1	11.0	8.68	13.8	11.6	9.07	14.7
Antimony, total (µg/L)	11.7	9.19	14.6	12.8	9.81	16.4	11.4	8.98	14.2	11.9	9.33	15.1
Manganese, dissolved (µg/L)	10.9	9.6	12.4	13.1	11.6	14.8	11.3	9.9	12.8	11.8	10.4	13.3
Lead, dissolved (µg/L)	0.03	0.03	0.05	0.03	0.02	0.04	0.03	0.03	0.05	0.03	0.03	0.05
Lead, total (µg/L)	0.33	0.03	1.39	0.38	0.03	1.64	0.18	0.05	0.48	0.30	0.04	1.17
Aluminum, dissolved (µg/L)	27.3	22.2	33.3	21.4	17.7	25.7	27.2	21.9	33.5	25.3	20.6	30.8
Aluminum, total (µg/L)	366	151	750	373	129	856	238	128	405	326	136	670
Suspended sediment (mg/L)	31.4	9.80	76.4	20.4	8.32	42.2	25.6	10.65	52.2	25.8	9.59	56.9
Fine sediment (mg/L)	9.72	3.44	22.0	6.50	2.83	12.9	6.83	3.17	13.0	7.69	3.15	15.9
Coarse sediment (mg/L)	18.8	7.37	39.9	13.1	5.06	27.9	17.4	6.62	37.7	16.4	6.35	35.2

Table 5. Estimated streamflow-weighted concentrations of selected constituents at five streamflow and water-quality monitoring sites in the Stibnite mining area, central Idaho, 2012–14.—Continued

[Site names and locations are shown in table 1 and figure 1, respectively. **Abbreviations:** FWC, streamflow-weighted concentration; L95, lower 95-percent confidence interval; U95, upper 95-percent confidence interval; µg/L, microgram per liter; mg/L, milligram per liter]

Constituent	Water years											
	2012			2013			2014			2012–14 mean		
	FWC	L95	U95	FWC	L95	U95	FWC	L95	U95	FWC	L95	U95
Site 4												
Arsenic, dissolved (µg/L)	42.0	37.6	46.7	48.6	43.3	54.3	43.2	38.7	48.1	44.6	39.9	49.7
Arsenic, total (µg/L)	45.4	39.9	51.5	51.9	45.3	59.1	46.6	40.9	52.9	48.0	42.1	54.5
Antimony, dissolved (µg/L)	24.5	20.2	29.4	27.7	22.3	34.0	24.8	20.4	29.7	25.6	21.0	31.0
Antimony, total (µg/L)	22.8	19.1	27.1	24.6	20.6	29.3	23.1	19.3	27.4	23.5	19.7	27.9
Manganese, dissolved (µg/L)	16.8	15.1	18.7	20.3	18.1	22.7	17.5	15.6	19.5	18.2	16.3	20.3
Lead, dissolved (µg/L)	0.04	0.03	0.05	0.04	0.02	0.05	0.04	0.02	0.05	0.04	0.02	0.05
Lead, total (µg/L)	0.13	0.08	0.20	0.10	0.06	0.16	0.13	0.08	0.21	0.12	0.07	0.19
Aluminum, dissolved (µg/L)	24.6	18.1	32.6	20.4	15.3	26.6	24.4	17.8	32.7	23.1	17.1	30.6
Aluminum, total (µg/L)	185	93.8	329	149	77.4	260	184	90.9	335	173	87.4	308
Suspended sediment (mg/L)	6.78	3.86	11.1	5.53	3.27	8.77	7.45	3.89	13.0	6.59	3.67	10.9
Fine sediment (mg/L)	5.48	2.89	9.49	4.42	2.42	7.43	5.89	2.84	10.9	5.26	2.71	9.27
Coarse sediment (mg/L)	1.48	0.79	2.54	1.14	0.69	1.79	1.49	0.85	2.45	1.37	0.77	2.26
Mercury (total) (µg/L)	0.010	0.007	0.014	0.008	0.006	0.011	0.011	0.007	0.016	0.010	0.007	0.014
Site 5												
Arsenic, dissolved (µg/L)	11.2	10.1	12.4	12.1	10.8	13.5	10.9	9.9	12.1	11.4	10.2	12.7
Arsenic, total (µg/L)	11.8	9.27	14.9	14.0	12.2	16.0	12.9	11.3	14.7	12.9	10.9	15.2
Antimony, dissolved (µg/L)	3.48	2.83	4.23	4.00	3.20	4.95	3.38	2.76	4.11	3.62	2.93	4.43
Antimony, total (µg/L)	3.27	2.16	4.82	3.80	3.05	4.68	3.26	2.67	3.94	3.45	2.63	4.48
Manganese, dissolved (µg/L)	2.21	1.38	3.37	2.24	1.42	3.37	2.47	1.39	4.06	2.31	1.40	3.60
Lead, dissolved (µg/L)	0.05	0.04	0.06	0.04	0.03	0.05	0.05	0.04	0.06	0.04	0.04	0.06
Lead, total (µg/L)	0.17	0.05	0.45	0.21	0.05	0.57	0.28	0.09	0.68	0.22	0.06	0.57
Aluminum, dissolved (µg/L)	16.5	11.6	22.7	14.2	9.91	19.7	18.6	12.8	26.1	16.4	11.4	22.8
Aluminum, total (µg/L)	179	68.7	383	146	47.8	346	263	79.7	651	196	65.4	460
Suspended sediment (mg/L)	15.0	8.07	25.4	12.9	5.98	24.6	24.6	10.7	48.5	17.5	8.26	32.8
Fine sediment (mg/L)	3.63	1.72	6.85	6.53	2.51	14.0	6.72	3.40	12.0	5.63	2.54	11.0
Coarse sediment (mg/L)	8.80	4.16	16.4	9.49	2.96	23.1	11.6	4.55	24.7	9.98	3.89	21.4
Mercury (total) (µg/L)	0.57	0.17	1.43	1.57	0.26	5.30	0.83	0.20	2.33	0.99	0.21	3.02

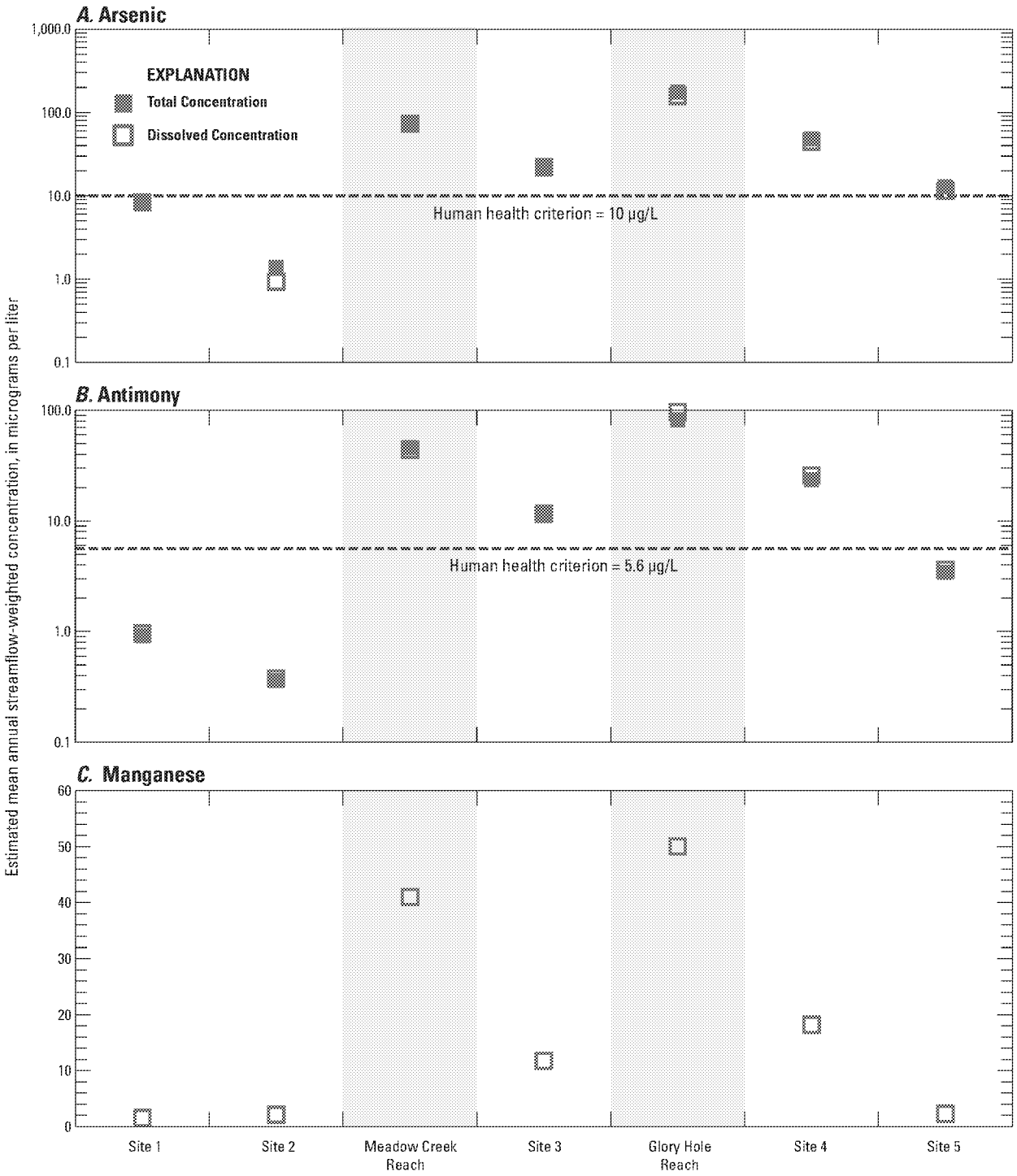


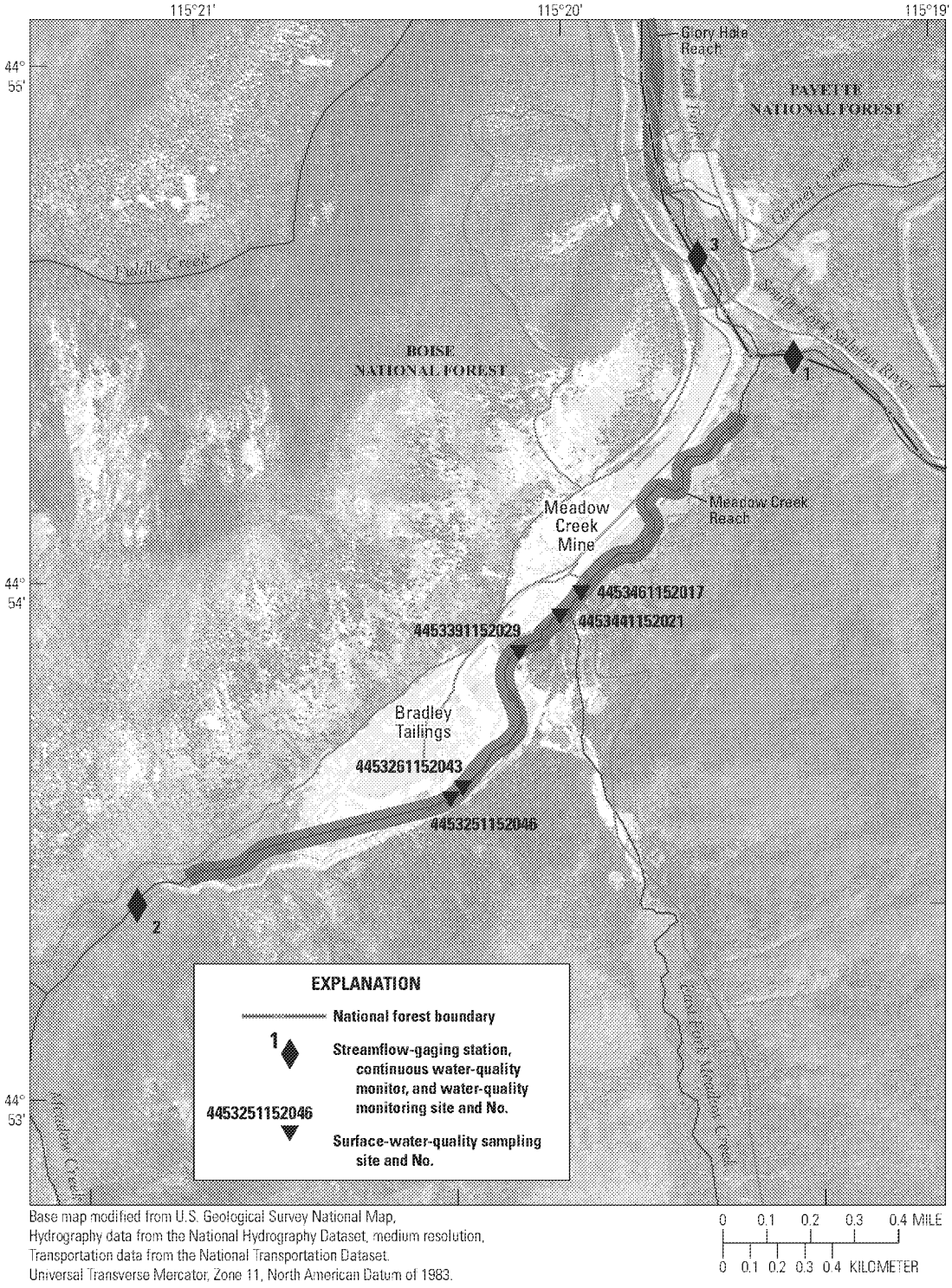
Figure 11. Estimated mean annual streamflow-weighted concentrations of (*A*) arsenic, (*B*) antimony, and (*C*) manganese in streams in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

Table 6. Substantial sources of arsenic and antimony identified at selected sites along Meadow Creek, Stibnite mining area, central Idaho, September 22, 2011.

[Site locations are shown in figure 12. Blowout Creek is officially named East Fork Meadow Creek in figure 1. **Abbreviations:** µg/L, microgram per liter; lb/d, pound per day; m, meter]

Site No.	Site name	Streamflow	Dissolved antimony		
			Concentration (µg/L)	Instantaneous load (lb/d)	Increase in load relative to adjacent upstream site (percent)
4453251152046	Meadow Creek inflow, 280 m upstream of bend in road	0.095	173	8.86E-2	390
4453261152043	Meadow Creek inflow, 240 m upstream of bend in road	0.142	26.1	2.00E-2	36
4453391152029	Meadow Creek inflow, below extent of cascading section	0.105	3.45	1.95E-3	2.4
4453441152021	Blowout Creek at Meadow Creek	1.94	1.30	1.36E-2	13
4453461152017	Meadow Creek inflow, near runway entrance	0.054	269	7.84E-2	57

Site No.	Site name	Dissolved arsenic		
		Concentration (µg/L)	Instantaneous load (lb/d)	Increase in load relative to adjacent upstream site (percent)
4453251152046	Meadow Creek inflow, 280 m upstream of bend in road	1,340	6.87E-1	257
4453261152043	Meadow Creek inflow, 240 m upstream of bend in road	21.4	1.64E-2	2.7
4453391152029	Meadow Creek inflow, below extent of cascading section	526	2.98E-1	36
4453441152021	Blowout Creek at Meadow Creek	7.32	7.66E-2	7.0
4453461152017	Meadow Creek inflow, near runway entrance	1,300	3.79E-1	29



Base map modified from U.S. Geological Survey National Map,
Hydrography data from the National Hydrography Dataset, medium resolution,
Transportation data from the National Transportation Dataset.
Universal Transverse Mercator, Zone 11, North American Datum of 1983.

Figure 12. Locations of substantial sources of arsenic and antimony identified along Meadow Creek, Stibnite mining area, central Idaho, September 22, 2011.

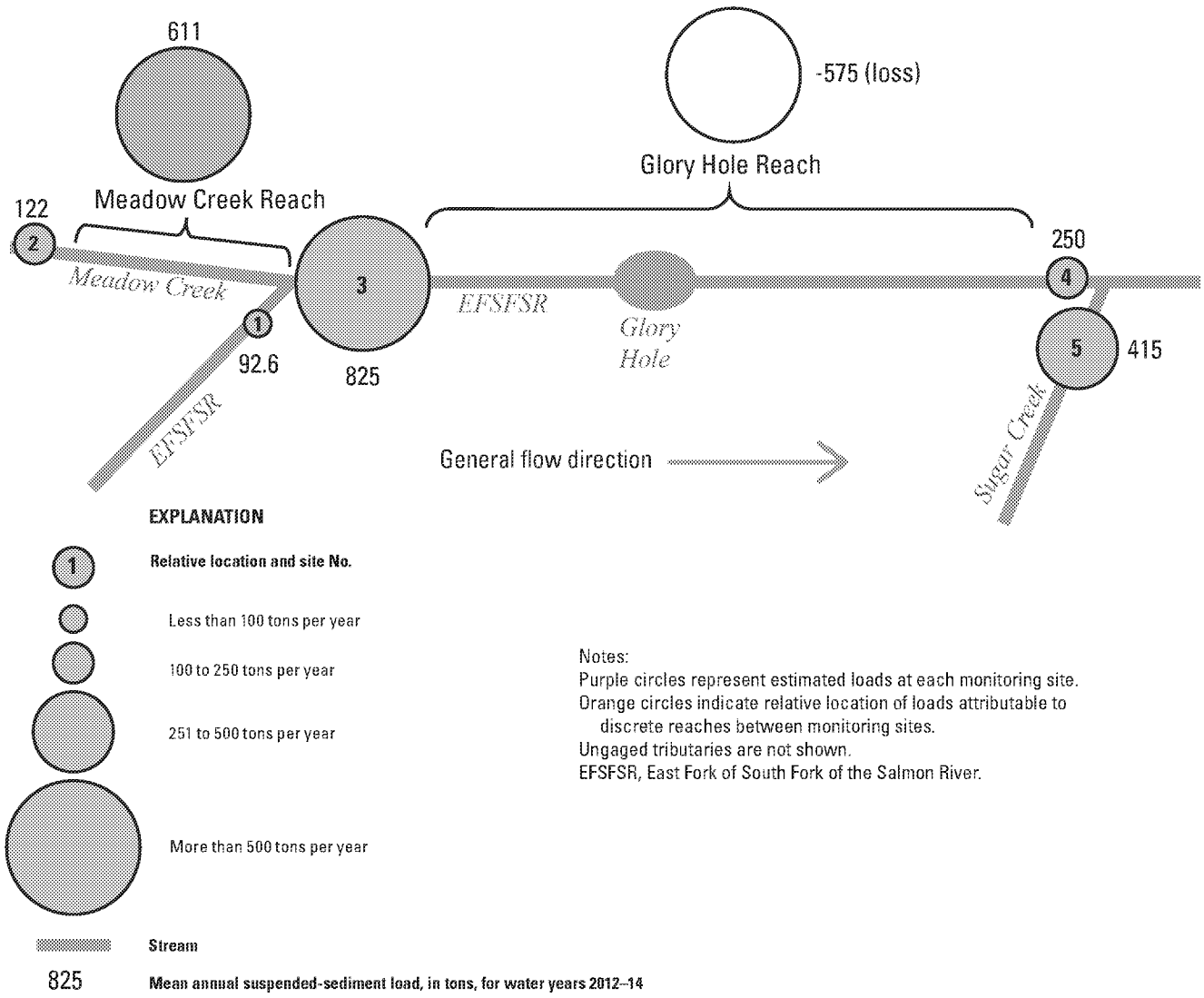


Figure 13. Estimated mean annual suspended sediment loads at monitoring sites in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

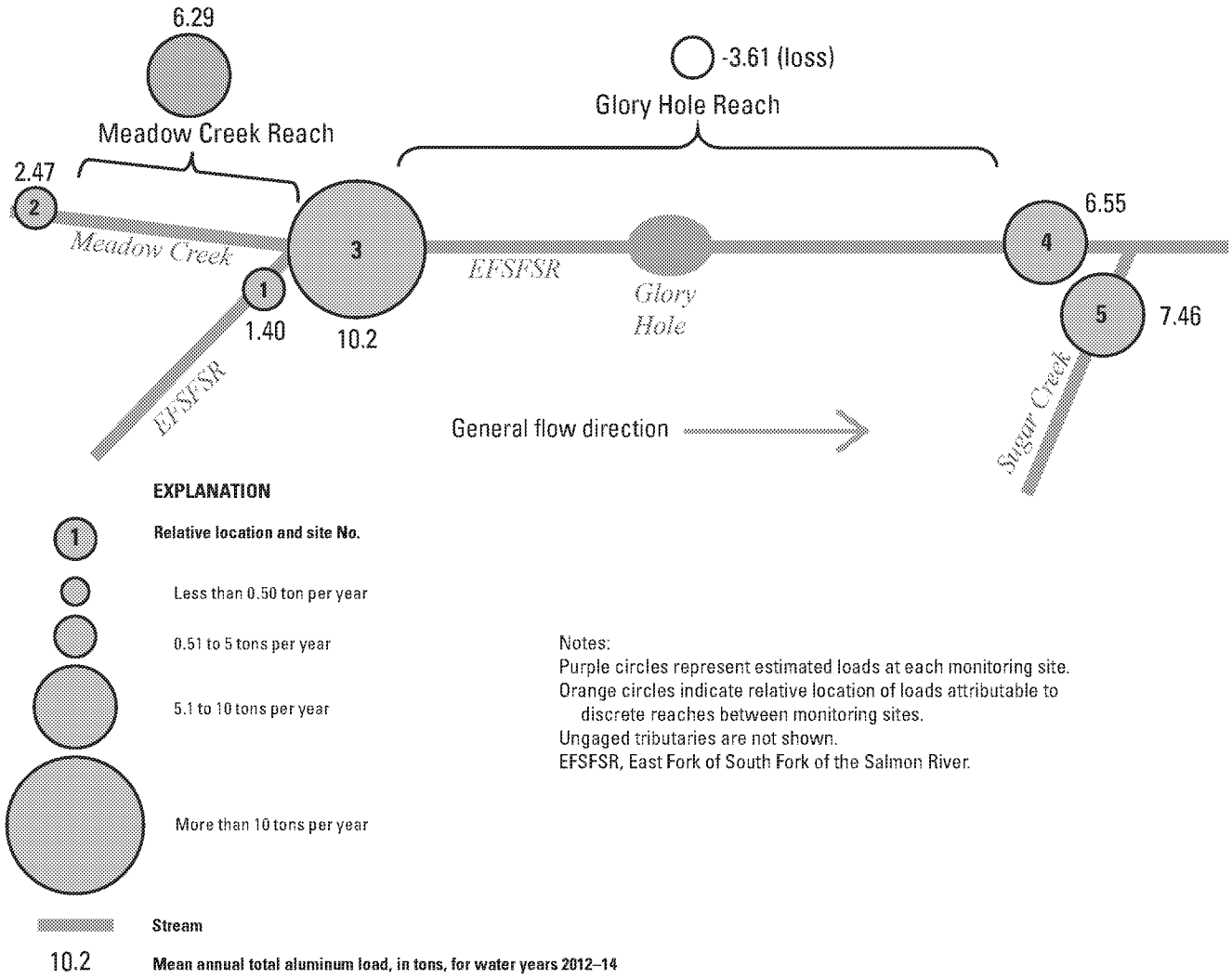


Figure 14. Estimated mean annual total aluminum loads at monitoring sites in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

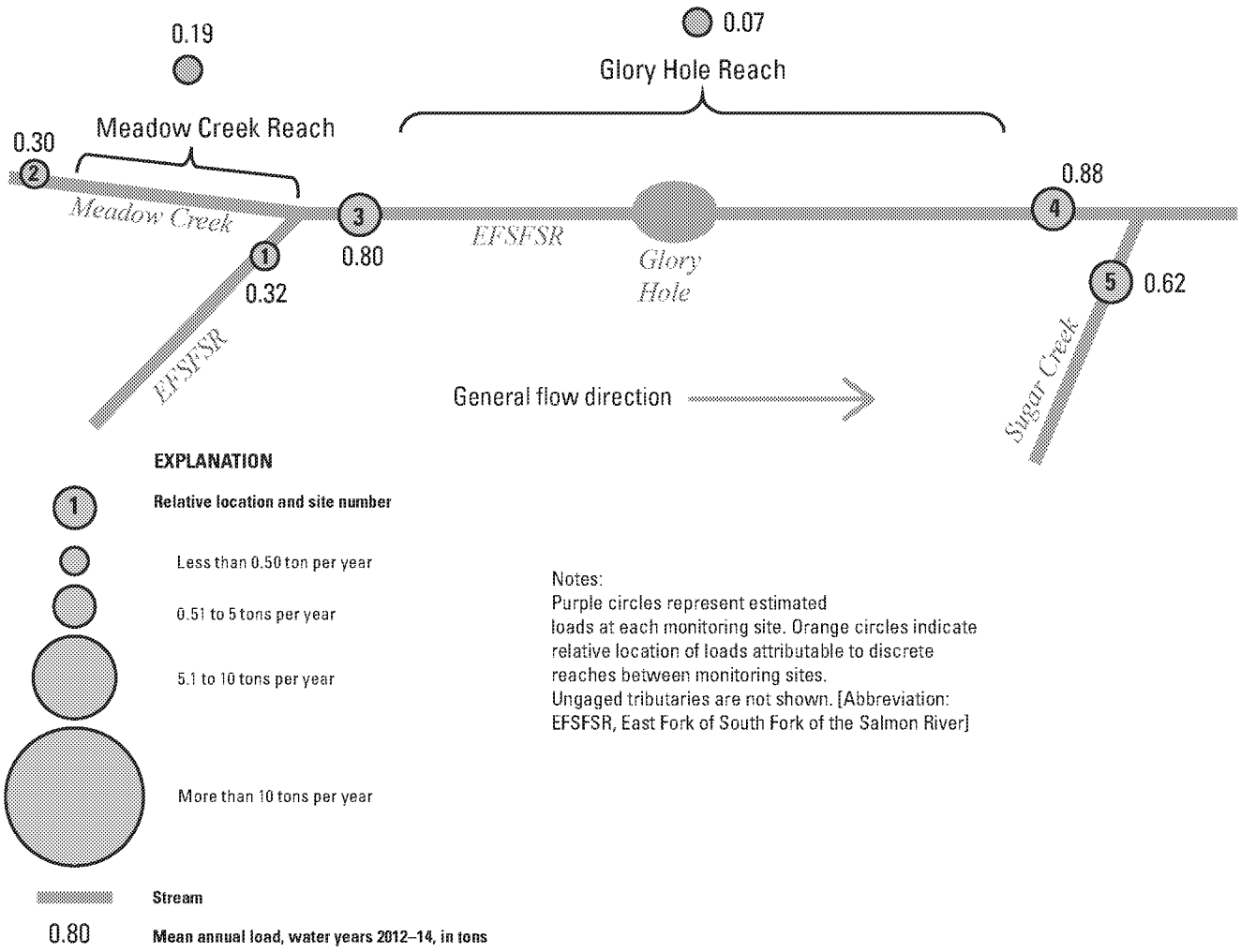


Figure 15. Estimated mean annual dissolved aluminum loads at monitoring sites in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

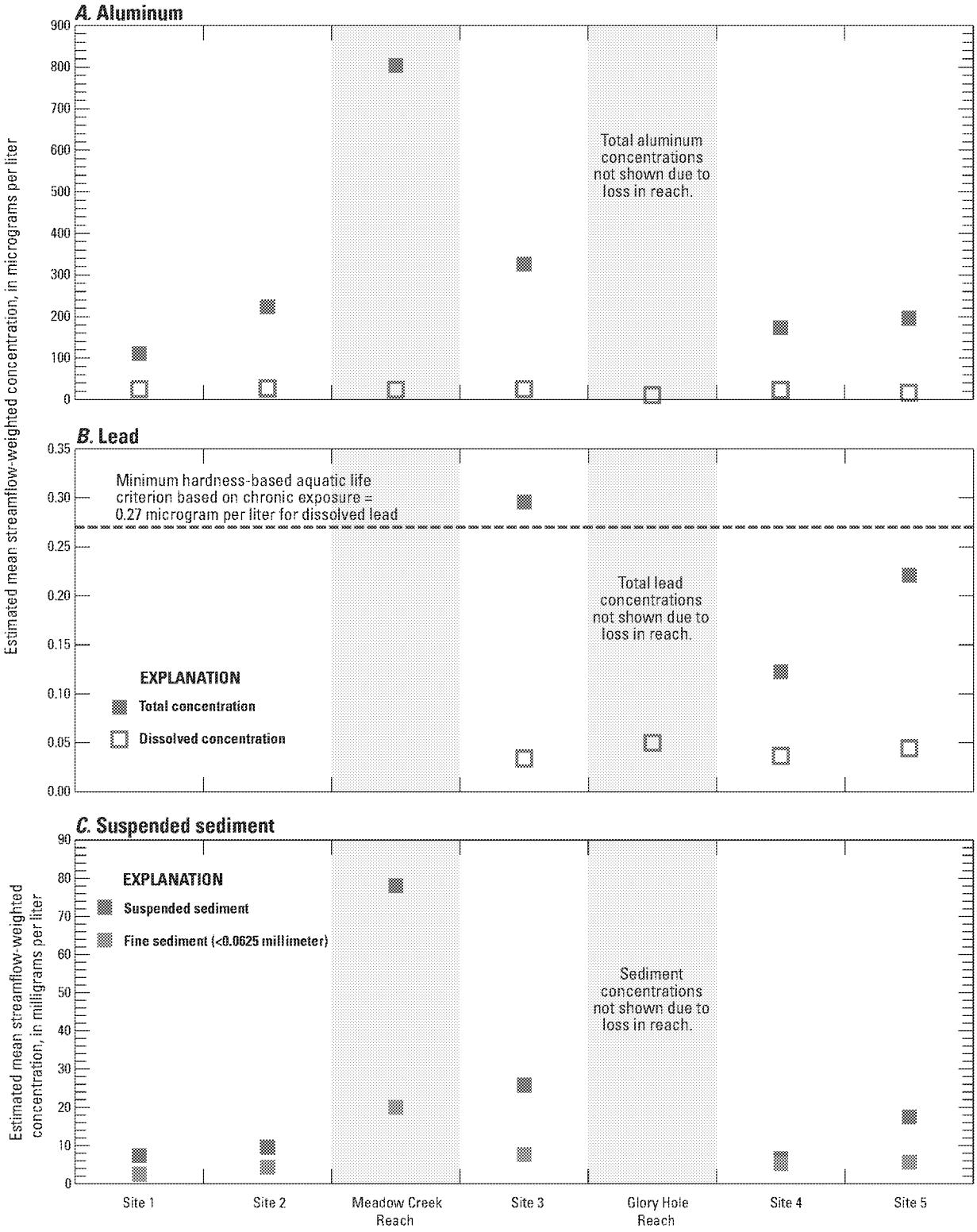


Figure 16. Estimated mean annual streamflow-weighted concentrations of (*A*) aluminum, (*B*) lead, and (*C*) suspended sediment at monitoring sites in the Stibnite mining area, central Idaho, 2012–14. Site names and locations are shown in table 1 and figure 1, respectively.

Loading and transport of total aluminum and total lead were similar to the loading and transport of suspended sediment. On average, the estimated annual total aluminum load in Sugar Creek (site 5) was about 1 ton higher than the annual total aluminum load discharged from the Meadow Creek reach. As compared to the EFSFSR at site 4, Sugar Creek (site 5) accounted for a slightly larger amount of the total aluminum load transported downstream of the study area (fig. 14). The estimated mean annual FWC of total aluminum in sources to the Meadow Creek reach was 4 times as high as the mean annual FWC of total aluminum in Sugar Creek at site 5, suggesting that the East Fork Meadow Creek is a concentrated source of total aluminum (fig. 16). With the exception of the East Fork Meadow Creek, total aluminum was not measured in the inflows shown in table 6 during intensive sampling in the Meadow Creek reach on September 22, 2011. However, the total aluminum concentration in the East Fork Meadow Creek was 53 µg/L, compared to an average concentration of 21 µg/L measured in Meadow Creek upstream of East Fork Meadow Creek on September 22, 2011. The total aluminum load in Meadow Creek doubled as a result of the total aluminum source from East Fork Meadow Creek and did not substantially increase in any additional samples collected downstream of East Fork Meadow Creek on September 22, 2011. Results from all samples collected along Meadow Creek on September 22, 2011, are available from the USGS National Water Information System (U.S. Geological Survey, 2015).

Because detections of total and dissolved lead were infrequent at sites 1 and 2, loads for lead upstream of site 3 were not estimated. About one-half of the total lead and one third of the total aluminum loads at site 3 were deposited in the Glory Hole (table 4, fig. 14). FWCs of total lead and total aluminum at site 3 were twice as high as those at site 4 because of losses of total lead and total aluminum loads in the Glory Hole (fig. 16). The mean annual load of total lead for 2012–14 at site 4 was 9.30 lb/yr compared to 10.3 lb/yr at site 5 (Sugar Creek), suggesting that Sugar Creek contributes more than one-half of the total lead transported downstream of the study area in the EFSFSR (table 4). Dissolved FWCs of lead and aluminum changed little from upstream to downstream, with the largest sources attributable to background loads at sites 1, 2, and 5 (tables 4 and 5; figs. 7, 15, and 16).

A limited number of samples and (or) detections of total mercury prevented the use of load models to estimate annual FWCs and loads of total mercury at sites 1–3. Total mercury load models for sites 4 and 5 indicate that 98 percent of the mercury load transported downstream of the study area is attributable to Sugar Creek (fig. 7, table 4). Estimated annual FWCs of total mercury were 0.010 µg/L at site 4 on the EFSFWR, which is close to the State of Idaho 0.012-µg/L chronic exposure AWQC. However, the mean annual FWC estimated for total mercury at site 5 on Sugar Creek was 0.99 µg/L, nearly two orders of magnitude higher than the FWC at site 4 (table 5).

LOAD ESTimation (LOADEST) Model Results

Significant correlations ($p < 0.01$) between streamflow and concentrations of modeled constituents generally resulted in favorable LOADEST models (fig. 6, table 7). Ninety-five percent confidence intervals around estimated mean annual loads and FWCs quantify uncertainty around estimates and generally were larger for constituents with greater variability in measured loads (tables 4 and 5). Recent research has shown that LOADEST models can produce biased estimates of long-term average constituent loads (Stenback and others, 2011; Garrett, 2012; Hirsch, 2014), and LOADEST has since been modified to facilitate residual analysis and bias identification (Runkel, 2013). Long-term bias in model estimates was less of a concern because the modeling period was only 3 years and predictor variables describing trends in time were not used. High model bias often indicated hysteresis in transport of sediment and sediment-associated constituents in the study area. Bias diagnostics described by Runkel (2013) were used as an indication that an additional predictor variable may be necessary to account for hysteresis in constituent transport. Use of a predictor variable describing variation in streamflow frequently resulted in large reductions in overall model bias where hysteresis in constituent transport was evident.

Streamflow Variability and Hysteresis in Particulate Constituent Transport

Various stream basin characteristics may have affected the significance of a particular streamflow variability term at each site. Moving averages of the previous 1, 3, 7, and 30 days were compared to daily mean streamflow and tested for significance as predictor variables describing particulate constituent transport. The ratio of estimated daily surface runoff in cubic feet per second to daily mean streamflow in cubic feet per second (the base flow index [BFI]) also was tested as a predictor variable to account for hysteresis. A streamflow variability term with a longer daily time-step helps describe the effects of sequential events or prolonged peaks, whereas absolute values of variability terms help describe the degree of flashiness of increased streamflow events (Wang and Linker, 2008). Snowmelt runoff controls particulate constituent transport in the study area, and most samples used to calibrate LOADEST models were collected during snowmelt runoff (fig. 3).

Table 7. Regression coefficients and coefficients of determination (R^2) for models used to estimate loads of selected constituents at monitoring sites in the Stibnite mining area, central Idaho, 2012–14.

[Site names and locations are shown in table 1 and figure 1, respectively. Each regression model was calibrated using the available data collected at each station for water years 2012–14. The regression equation is $\ln L = I + a(\ln Q) + b(\ln Q^2) + c[\sin(2\pi T)] + d[\cos(2\pi T)] + e(\mathrm{SVT}) + \varepsilon$, where ln is the natural logarithm; L is the constituent load, in pounds per day; I is the regression intercept; Q is the centered streamflow, in cubic feet per second; T is the centered decimal time in years from the beginning of the calibration period; sin ($2\pi T$) and cos ($2\pi T$) are periodic time functions that describe seasonal variability; SVT is the term describing streamflow variability; a, b, c, d, and e are regression coefficients that remain constant over time; and ε is the unaccounted error associated with the regression model. R^2 (coefficient of determination) represents the amount of variance explained by the model. **Abbreviations:** RMSE, root mean square error; lb/d, pound per day; –, no regression coefficient]

Constituent	Number of samples	Regression coefficient						R^2	RMSE (lb/d)	Load bias (percent)
		I	*a*	*b*	*c*	*d*	*e*			
Site 1										
Arsenic, dissolved	20	-0.140	0.696	–	–	–	–	97	1.15	0.04
Arsenic, total	20	-0.091	0.788	–	–	–	–	96	1.19	1.68
Antimony, dissolved	20	-2.132	0.748	-0.090	0.279	0.312	–	95	1.24	-1.08
Antimony, total	20	-2.357	0.752	–	0.253	0.135	–	94	1.28	-0.16
Manganese, dissolved	15	-2.084	1.356	–	–	–	–	89	1.70	-2.31
Lead, dissolved	19	no suitable LOADEST model								
Lead, total	20	no suitable LOADEST model								
Aluminum, dissolved	20	0.642	1.855	-0.166	–	–	–	97	1.51	0.11
Aluminum, total	19	-3.789	1.842	–	0.521	0.136	[1]0.018	98	1.40	-3.15
Suspended sediment	19	0.895	1.767	–	0.448	0.508	[1]0.030	97	1.49	-1.00
Fine sediment	19	0.606	1.504	–	0.395	0.339	[1]0.047	97	1.52	1.79
Coarse sediment	19	-0.104	1.943	–	0.484	0.710	[1]0.024	95	1.82	2.03
Site 2										
Arsenic, dissolved	21	-2.677	0.821	0.037	–	–	–	99	1.10	-0.40
Arsenic, total	21	-2.641	1.019	0.180	–	–	–	96	1.35	-8.20
Antimony, dissolved	18	-3.377	1.133	–	0.221	0.557	–	98	1.22	-0.18
Antimony, total	21	-3.749	1.112	–	–	–	–	96	1.38	-2.61
Manganese, dissolved	16	-1.977	0.923	–	–	–	–	88	1.60	-5.76
Lead, dissolved		no suitable LOADEST model								
Lead, total		no suitable LOADEST model								
Aluminum, dissolved	21	0.551	1.341	–	0.123	0.315	–	97	1.38	1.47
Aluminum, total	19	-2.587	1.742	–	-0.048	0.546	[2]0.043	95	1.81	-15.0
Suspended sediment	20	1.749	1.424	–	–	–	[1]0.101	95	1.83	-8.23
Fine sediment	20	1.243	1.284	–	–	–	[1]0.116	92	2.03	-15.6
Coarse sediment	20	0.929	1.540	–	0.333	0.290	[1]0.082	95	1.88	-3.06
Site 3										
Arsenic, dissolved	23	1.557	0.589	–	0.210	-0.150	–	94	1.26	-0.50
Arsenic, total	23	1.695	0.798	–	–	–	–	91	1.35	0.07
Antimony, dissolved	22	1.327	0.874	-0.271	0.625	0.542	–	92	1.50	-4.71
Antimony, total	22	1.266	0.914	-0.188	0.603	0.550	–	92	1.50	-3.87
Manganese, dissolved	17	0.417	–	–	–	–	[3]0.338	87	1.27	-1.63
Lead, dissolved	20	-4.945	1.207	–	–	–	–	80	1.66	3.10
Lead, total	23	-5.710	1.400	–	–	–	[4]-4.512	71	3.36	15.5
Aluminum, dissolved	23	1.370	1.691	–	–	–	–	97	1.39	-0.72
Aluminum, total	22	-0.939	1.772	–	–	–	[4]-3.224	92	2.05	17.4
Suspended sediment	20	-0.620	2.245	–	0.433	1.201	[5]0.0215	91	2.41	-5.93
Fine sediment	20	1.052	1.418	–	0.448	0.362	[2]0.022	91	2.21	-1.45
Coarse sediment	20	7.424	2.506	–	0.421	1.411	–	90	2.63	-6.82

Table 7. Regression coefficients and coefficients of determination (R^2) for models used to estimate loads of selected constituents at monitoring sites in the Stibnite mining area, central Idaho, 2012–14.—Continued

[Site names and locations are shown in table 1 and figure 1, respectively. Each regression model was calibrated using the available data collected at each station for water years 2012–14. The regression equation is $\ln L = I + a(\ln Q) + b(\ln Q^2) + c[\sin(2\pi T)] + d[\cos(2\pi T)] + e(\mathrm{SVT}) + \varepsilon$, where ln is the natural logarithm; L is the constituent load, in pounds per day; I is the regression intercept; Q is the centered streamflow, in cubic feet per second; T is the centered decimal time in years from the beginning of the calibration period; sin ($2\pi T$) and cos ($2\pi T$) are periodic time functions that describe seasonal variability; SVT is the term describing streamflow variability; a, b, c, d, and e are regression coefficients that remain constant over time; and ε is the unaccounted error associated with the regression model. R^2 (coefficient of determination) represents the amount of variance explained by the model. **Abbreviations:** RMSE, root mean square error; lb/d, pound per day; –, no regression coefficient]

Constituent	Regression coefficient							R^2	RMSE (lb/d)	Load bias (percent)
	Number of samples	*I*	*a*	*b*	*c*	*d*	*e*			
Site 4										
Arsenic, dissolved	22	2.514	0.575	–	–	–	–	89	1.27	0.49
Arsenic, total	22	2.587	0.614	–	–	–	–	87	1.33	0.53
Antimony, dissolved	21	1.888	0.611	–	0.327	0.050	–	88	1.42	-0.93
Antimony, total	21	1.868	0.787	–	–	–	–	87	1.45	-0.25
Manganese, dissolved	16	1.717	0.467	-0.133	–	–	–	88	1.24	0.61
Lead, dissolved	19	-4.762	1.126	–	–	–	–	65	1.89	4.46
Lead, total	21	-3.541	2.000	–	-0.545	0.620	–	88	1.94	-6.36
Aluminum, dissolved	22	1.473	1.578	–	–	–	–	94	1.62	2.50
Aluminum, total	21	3.124	1.709	–	–	–	–	84	2.44	6.45
Suspended sediment	20	6.370	1.358	0.522	–	–	–	84	2.14	3.78
Fine sediment	20	6.198	1.424	0.430	–	–	–	82	2.31	3.08
Coarse sediment	20	4.211	1.125	0.822	–	–	[6]0.020	89	1.90	5.49
Mercury, total	15	-6.777	1.521	0.411	–	–	–	90	1.64	3.06
Site 5										
Arsenic, dissolved	21	0.862	0.796	–	0.021	0.367	–	95	1.23	0.26
Arsenic, total	20	-0.915	0.377	–	–	–	[7]0.015	94	1.31	4.52
Antimony, dissolved	20	-0.358	0.587	–	-0.031	0.579	–	72	1.38	1.72
Antimony, total	19	-2.288	0.483	–	0.004	0.561	[7]0.007	84	1.37	-1.30
Manganese, dissolved	15	-1.710	0.928	0.455	–	–	–	76	1.95	-7.03
Lead, dissolved	20	-9.042	1.069	–	–	–	[8]0.018	88	1.04	10.0
Lead, total	20	-11.347	1.776	–	–	–	[7]0.019	84	2.60	10.0
Aluminum, dissolved	21	0.815	1.780	–	0.409	-0.030	–	96	1.68	3.86
Aluminum, total	21	2.146	2.339	0.333	–	–	–	89	2.81	9.77
Suspended sediment	20	6.140	1.979	0.724	–	–	–	92	2.12	-6.41
Fine sediment	19	4.841	1.226	0.439	–	–	[7]1.756	95	1.83	-3.95
Coarse sediment	20	4.802	1.860	0.827	–	–	[6]5.341	95	1.90	-3.51
Mercury, total	19	1.868	1.685	0.223	–	–	[4]-7.106	91	2.71	-0.79

[1]Moving average of streamflow for the previous 3 days compared to each daily streamflow.

[2]Moving average of streamflow for the previous 7 days compared to each daily streamflow.

[3]Absolute value of the moving average of streamflow for the previous 7 days compared to each daily streamflow.

[4]Ratio of estimated daily mean runoff to daily mean streamflow in cubic feet per second (known as the base flow index [BFI]).

[5]Moving average of streamflow for the previous 1 day compared to each daily streamflow.

[6]Absolute value of the moving average of streamflow for the previous 1 day compared to each daily streamflow.

[7]Absolute value of the moving average of streamflow for the previous 30 days compared to each daily streamflow.

[8]Absolute value of the moving average of streamflow for the previous 7 days compared to each daily streamflow.

The shape of the hydrograph may affect the significance of streamflow terms in the LOADEST models. Sample results from Sugar Creek (site 5) show that the way the snowpack melts affects particulate constituent transport (fig. 3, fig. 17). Snowmelt runoff was similar in 2012 and 2014, with numerous spring increases in the hydrograph as the snowpack melted. In contrast, most of the snowpack melted in one event in 2013, which also produced the highest concentration of mercury in Sugar Creek (site 5) at 26 µg/L. Although a sample from Sugar Creek was collected at the peak-of-record streamflow in May 2014, the total mercury concentration was only 2.8 µg/L, likely because several smaller-magnitude snowmelt events prior to the 2014 peak had already transported much of the sediment that had accumulated during the winter months of 2013–14 (fig. 17).

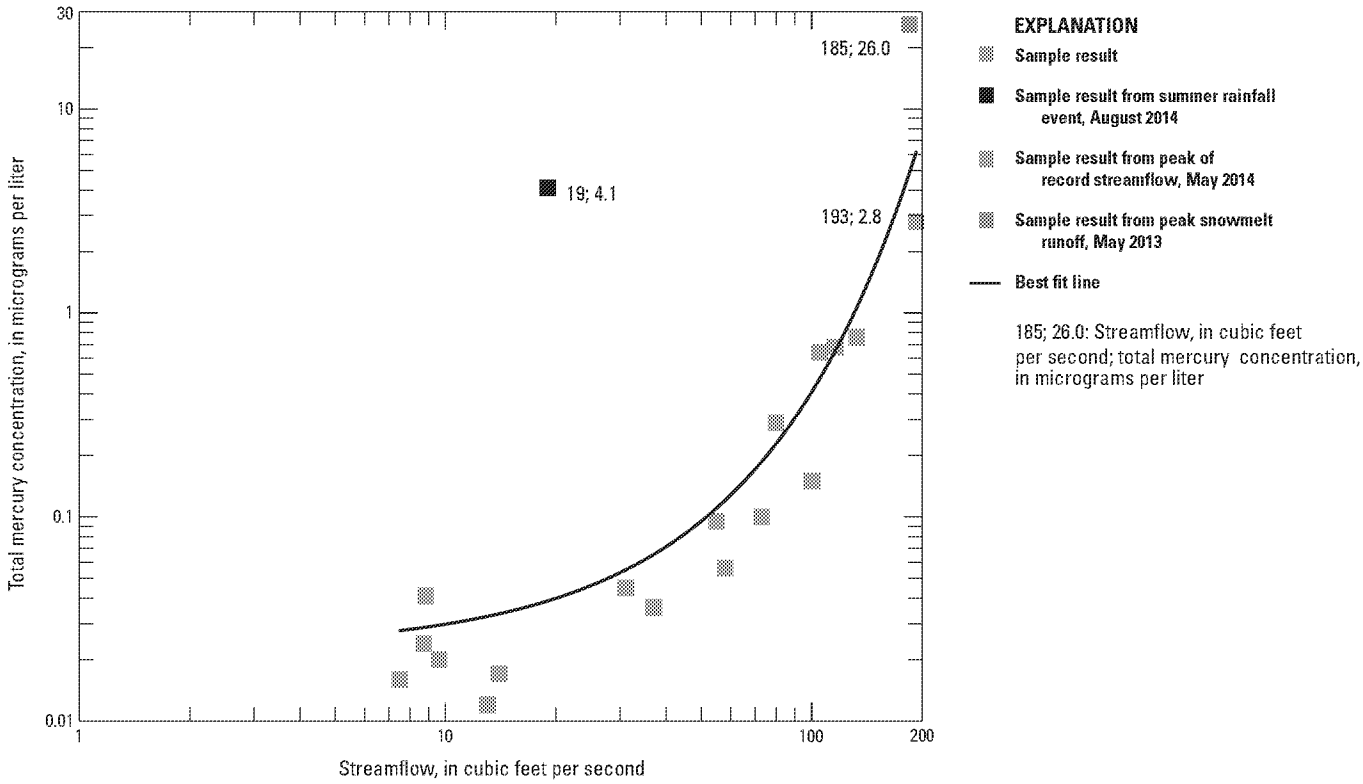


Figure 17. Sampled streamflow and total mercury concentrations in Sugar Creek near Stibnite, central Idaho, 2012–14.

Runoff and interflow (lateral flow in the unsaturated zone) associated with the first flow-inducing event of the snowmelt season tend to pick up unconsolidated, fine sediment that has accumulated on or just below the land surface and in the stream channel of the watershed (Wang and others, 2010). Because snowpack and snowmelt runoff vary from year to year, simple linear or periodic time functions probably do not adequately characterize hysteresis in constituent transport. Changes in particle-size distribution during prolonged streamflow events also have contributed to hysteresis in sediment and sediment-associated constituent transport (Landers and Sturm, 2013). Changes in sediment source during snowmelt runoff may be affected by antecedent conditions, including air temperature, soil moisture, and ground temperature. Forest fires burned much of the study area in 2000, 2006, and 2007 (fig. 1), and sediment transport in the study area may change as areas become re-vegetated and the sediment sources vary.

Rainfall runoff events occurred each autumn in the study area, and samples were collected during one late-summer rainfall event in August 2014 (fig. 3). Changes in sediment source during rainfall runoff events may be affected by antecedent conditions and also can result from localized mass wasting. The relation between total mercury concentration and streamflow in the sample collected from Sugar Creek in August 2014 was substantially different as compared to all the other samples collected from Sugar Creek (fig. 17), likely because of conditions preceding the August rainfall event. The suspended-sediment concentration in the August 2014 sample was 13 mg/L and the streamflow was 19 ft^3/s. The suspended-sediment concentration in the August 2014 sample was in the range of suspended-sediment concentrations from other samples collected at streamflows between 80 and 133 ft^3/s on the rising or falling limb of the hydrograph during periods of sustained snowmelt runoff. The relatively high sediment and mercury concentration associated with a relatively low flow in August 2014 shows that sediment (and mercury) transport during a rainfall event preceded by a dry period is greater relative to sediment and mercury transport during a period of sustained high flows.

In general, use of the untransformed streamflow (rather than $\ln Q$) to generate the streamflow variability term in load models resulted in greater significance of SVT as a predictor variable. Except for site 3, a specific streamflow variability term typically was more significant than other streamflow variability terms tested for significance in load models at a given site (table 7). At sites 1 and 2, which represent the headwaters of EFSFSR and Meadow Creek, a moving average of the previous 3 days compared to the daily mean streamflow generally was most significant as a term to account for hysteresis in constituent transport (table 7). Streamflow variability terms generally were insignificant in load models developed for site 4 (downstream of the Glory Hole), likely because most sediment and sediment-associated constituents were captured in the Glory Hole. A moving average of the previous 30 days compared to the daily mean streamflow generally was most significant as a term to account for hysteresis in constituent transport at site 5 (table 7). Mean slope in the watershed upstream of each monitoring site was similar (37–38 percent) at sites 1–4, but was 50 percent at site 5 (U.S. Geological Survey, 2012). Each monitoring site, with the exception of site 5, also showed a diurnal variation in streamflow during snowmelt runoff periods. A more detailed analysis of watershed characteristics that control sediment sources and transport is beyond the scope of this study.

Surrogate Regression Modeling of Constituent Concentrations

Results of surrogate regression modeling indicate the value of continuously measured specific conductance for estimating constituent concentrations. Specific conductance was used as a predictor variable in surrogate models developed to estimate concentrations of dissolved arsenic and antimony at all five monitoring sites (table 8). Continuous specific conductance was a more significant predictor than streamflow in four of five surrogate regression models for dissolved arsenic concentrations, and two of five surrogate regression models for dissolved antimony concentrations (table 8). Streamflow and specific conductance were both significant in models of dissolved arsenic and antimony concentrations at the remaining sites.

Unlike LOADEST regression models, which were used to estimate and evaluate constituent transport in the study area on annual time scales, surrogate regression models were developed for the purpose of using real-time data from monitoring sites to generate a 15-minute time-series record of estimated constituent concentrations. LOADEST models also output estimated daily concentrations in addition to loads, and estimated LOADEST concentrations were compared to estimated daily concentrations from surrogate regression models. Surrogate regression models generally explained more variability in measured arsenic and antimony concentrations than LOADEST models, but specific conductance was not used as a predictor variable in the LOADEST models (tables 7 and 8). Results of surrogate regression modeling show that continuous water-quality and streamflow data at each study-area monitoring site can be used to estimate concentrations of dissolved arsenic and antimony in real time. Further, in conjunction with real-time streamflow data, the estimated concentrations can be used to calculate loads in real time.

Specific conductance was not a significant predictor for estimating real-time concentrations of total mercury (table 8). Surrogate regression model results show that streamflow and the BFI calculated from the local minimum method of hydrograph separation (Lim and others, 2005) can be used to estimate concentrations and loads of total mercury in real time at sites 4 and 5. Additional total mercury samples are necessary to develop regression estimates of total mercury concentrations and loads at the remaining study sites. Sample results for total mercury from site 5 (Sugar Creek) suggest that summer storms can generate high concentrations of mercury at moderate streamflow (fig. 17). Substantial variance in sample results for total mercury at site 5 resulted in a large root mean square error for the surrogate regression model estimating total mercury concentrations at site 5. Additional samples collected during summer storms would provide valuable information towards understanding how mercury is transported to streams in the Stibnite area and would help to calibrate models for estimating mercury concentration and loading.

Table 8. Regression coefficients and model diagnostics for surrogate models used to estimate concentrations of selected constituents at monitoring sites in the Stibnite mining area, central Idaho, 2012–14.

[Site names and locations are shown in table 1 and figure 1, respectively. Each regression model was calibrated using the available data collected at each station for water years 2012–14. The regression equation is $\ln C = I + a\,(SC) + b\,(\ln SC) + c\,(Q) + d\,(\ln Q)) + e\,[\sin(2\pi T)] + f\,[\cos(2\pi T)] + g(\mathrm{BFI})$, where C is the constituent concentration, in micrograms per liter; I is the regression intercept; Q is the centered streamflow, in cubic feet per second; sin $(2\pi T)$ and cos $(2\pi T)$ are periodic time functions that describe seasonal variability; BFI is the term describing streamflow variability; ln is the natural logarithm transformation; and a, b, c, d, e, f, and g are regression coefficients that remain constant over time. R^2 (coefficient of determination), represents the amount of variance explained by the model in percent. **Abbreviations:** BCF, bias correction factor; RMSE, root mean square error; –, no regression coefficient]

Constituent	Regression coefficient									BCF	RMSE (percent)	Surrogate concentration model R^2	LOADEST concentration model R^2
	N	*I*	*a*	*b*	*c*	*d*	*e*	*f*	*g*				
Site 1													
Arsenic, dissolved	20	0.614	0.025	–	–	–	0.107	0.007	–	1.003	8.34	96	86
Antimony, dissolved	20	-5.359	–	1.313	–	–	0.314	0.175	–	1.009	15.2	86	72
Site 2													
Arsenic, dissolved	21	-0.758	0.014	–	–	–	–	–	–	1.004	9.65	87	89
Antimony, dissolved	18	14.457	–	2.920	–	0.816	0.375	0.583	–	1.012	18.1	72	62
Site 3													
Arsenic, dissolved	23	2.273	–	1.126	–	–	0.127	-0.106	–	1.020	20.8	76	58
Antimony, dissolved	22	-9.525	–	2.377	–	0.503	0.532	0.303	–	1.055	37.3	65	54
Site 4													
Arsenic, dissolved	21	-3.072	–	1.561	–	–	-0.044	-0.180	–	1.007	13.6	95	72
Antimony, dissolved	21	-11.776	–	2.888	–	0.615	0.182	0.156	–	1.010	16.1	91	32
Mercury, total	15	-3.957	–	–	0.003	–	–	–	-1.755	1.030	35.0	85	76
Site 5													
Arsenic, dissolved	21	1.407	0.011	–	–	–	0.119	0.274	–	1.013	18.2	86	77
Antimony, dissolved	20	-0.867	0.021	–	–	–	0.151	0.410	–	1.032	29.1	90	75
Mercury, total	19	3.045	–	–	0.010	–	-0.369	-1.194	-7.644	1.367	109	87	82

Areas of Further Study

Additional samples collected on the rising and falling limbs of the streamflow hydrograph during summer storms would help validate all regression models presented in this report. Given the remote location of the study area and the flashiness of storm events, obtaining storm samples may require installation of auto-samplers. However, because concentrations of sediment and sediment-associated constituents may not be evenly distributed in the stream cross section, auto-samplers, which are point samplers, may not provide an adequate representation of stream concentrations. A continuous physical measure of sediment in the water column, or a surrogate such as turbidity, is not appropriate for the study area because most sediment transported is coarse (>0.0625 mm in diameter) and does not necessarily cause increases in turbidity. Acoustic backscatter may or may not be a significant predictor of sediment concentration at study-area sites and would require further investigation of feasibility. The steep gradient in the study area may contribute to bedload transport of coarse sediment and sediment-associated metals. Bedloads are not well characterized by surrogate measures of sediment concentrations in the water column.

MGI-directed sample collection at various surface-water sites within the study area in addition to the five USGS monitoring sites operated and sampled during this study. Measured discrete loads at additional sites in the study area could be compared to load estimates in the Meadow Creek reach and the Glory Hole reach that are summarized in this report. Such comparisons may identify more specific source areas and validate LOADEST modeling results.

Tracer-injection methods also can be used to validate findings in this report and to identify more specific sources of contaminants. Tracer injection in discrete reaches of interest (such as the Glory Hole reach) can provide reliable streamflow measurements on a watershed scale in addition to spatially detailed concentration information when combined with synoptic sampling. Streamflow and concentration data then can be used to develop mass-loading profiles for metals of interest. Streamflow and loading profiles identify the primary sources in spatial detail and demonstrate the importance of unsampled, dispersed subsurface inflows and attenuation (Kimball and others, 2004). Longitudinal loading profiles generated from tracer injection studies, therefore, are useful for targeting remediation efforts.

With continued operation of continuous stream stage and specific conductance sensors at monitoring sites, real time estimates of arsenic, antimony, and mercury concentrations can be made publicly available on the USGS National Water Information System (U.S. Geological Survey, 2015). Changes in land use associated with mining activities may be detected with subsequent evaluation of regression model coefficients and inclusion of a predictor variable that accounts for trends.

Summary

Water-quality and streamflow monitoring during 2012–2014 showed that concentrations of trace elements, except for mercury, generally do not exceed ambient water-quality criteria applicable in streams in the Stibnite mining area of central Idaho. Total mercury was detected at concentrations greater than the State of Idaho 0.012-microgram per liter (µg/L) chronic exposure limit for freshwater aquatic life at five monitoring sites used for the study. Arsenic and antimony concentrations exceeded human-health based water-quality criteria in Sugar Creek (site 5) and both monitoring sites located on the East Fork of the South Fork of the Salmon River (EFSFSR) downstream of the confluence with Meadow Creek. Arsenic concentrations exceeded the 10-µg/L human-health-based standard about one-half the time in the EFSFSR upstream of the confluence with Meadow Creek (site 1), but did not exceed 10 µg/L at Meadow Creek (site 2). Site 2 was selected to represent background conditions, and the median total arsenic concentration in samples collected from site 2 was 1.3 µg/L. Water temperature exceeded the 9 °C maximum daily average temperature criterion for salmonid spawning at least 29 percent of the time at each site. Water temperature at sites 3 and 4 in the EFSFSR and site 5 in Sugar Creek exceeded the 13 °C maximum daily maximum temperature criterion for salmonid spawning between 4 and 9 percent of the time.

Two distinct constituent sources are present in the study area. Significant positive correlations between streamflow and concentrations of suspended sediment and sediment-associated constituents (total aluminum, total lead, and total mercury) indicate that surface runoff and stream-channel erosion deliver these constituents to streams during rainfall or snowmelt runoff. Significant negative correlations between streamflow and concentrations of arsenic, antimony, and dissolved iron and magnesium indicate that groundwater is the source for these constituents. Significant correlation between constituent concentrations and streamflow also showed that the U.S. Geological Survey LOAD ESTimation (LOADEST) program is a useful tool for estimating mean annual loads and streamflow-weighted concentrations (FWCs) of selected constituents in streams in the study area.

Mass balance estimates show that concentrated sources of arsenic, antimony, and dissolved manganese are present in discrete reaches along Meadow Creek and between sites 3 and 4 along the EFSFSR. Although they accounted for only 25 percent of the total streamflow, the reaches along Meadow Creek (the Meadow Creek reach) and between sites 3 and 4 (the Glory Hole reach) accounted for 80 percent of the total arsenic and antimony loads and 86 percent of the dissolved manganese load transported downstream of the study area. Estimated FWCs exceeded human-health based water-quality criteria for arsenic and antimony at sites 3 and 4 in the EFSFSR and for arsenic at site 5 in Sugar Creek.

Continuously monitored specific conductance was statistically significant as a predictor (surrogate) for concentrations of dissolved arsenic and antimony at all study-area sites. Surrogate regression models using continuous stage and specific conductance, and, in some cases, functions of streamflow and time, can be used to estimate concentrations and loads of dissolved arsenic and antimony at all five study-area sites.

The East Fork of Meadow Creek was not monitored as part of this study, but LOADEST model results indicate that the East Fork Meadow Creek, the only tributary stream in the Meadow Creek reach, likely accounts for most of the suspended sediment loading in the study area. Sediment and sediment-associated constituent loads from the East Fork of Meadow Creek are trapped in the Glory Hole between sites 3 and 4. FWCs of suspended sediment, total aluminum, and total lead decrease in the Glory Hole reach between sites 3 and 4. The Meadow Creek reach was the largest contributor of suspended sediment and the second largest contributor of total aluminum in the study area. The East Fork Meadow Creek in the Meadow Creek reach was not sampled, but likely contributes most of the sediment and aluminum attributed to the Meadow Creek reach. Because sediment and sediment-associated constituents from sources upstream of the Glory Hole are trapped in the Glory Hole, Sugar Creek accounts for most of the sediment and sediment-associated constituent loading transported downstream of the study area. Sugar Creek (site 5) is the second largest contributor of suspended sediment and the largest contributor of total aluminum in the study area. Sugar Creek accounted for 98 percent of the total mercury load transported downstream of the study area.

LOADEST model results indicated hysteresis in transport of suspended sediment and sediment-associated constituents within the study area. Biases in estimated loads were reduced using an additional predictor variable to describe streamflow variability relative to an n-day average streamflow. The ratio of estimated surface runoff to streamflow, known as the base-flow index, was tested for significance as another predictor variable to account for streamflow variability. Different streamflow variability terms were significant as predictor variables in different sub-watersheds, indicating that watershed characteristics and (or) conditions preceding erosional events may influence sediment transport in the study area. Results from samples collected during a summer storm in August 2014 showed that LOADEST and surrogate regression models may not produce reliable estimates of sediment and sediment-associated constituent concentrations and loads during rainfall runoff events. Regression models using streamflow and the base-flow index as predictor variables accounted for at least 80 percent of the variability in sampled concentrations of total mercury at sites 4 (EFSFSR above Sugar Creek) and 5 (Sugar Creek). With continued operation of continuous stage sensors, concentrations and loads of total mercury can be estimated in real time at sites 4 and 5. Additional sample results are necessary to evaluate LOADEST and surrogate models for total mercury concentrations and loads at remaining study area sites and during summer storms at sites 4 and 5.

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Appendix A. Analysis of Quality-Assurance and Quality-Control Data from Field Samples in Streams in the Stibnite Mining Area, Central Idaho, and Laboratory Samples from the National Water-Quality Laboratory, 2012–14

Results from the National Water Quality Laboratory's (NWQL) inorganic blind sampling project (IBSP) showed a positive bias for dissolved analyses of cadmium and lead. Wilcoxon signed-rank tests were used to assess bias relative to the median expected concentration in the reference sample (Woodworth and Connor, 2003; T. Struzenski, U.S. Geological Survey, written commun., 2013). Positive biases in dissolved cadmium and lead results were known to occur starting in October 2011 and January 2012, respectively, and were corrected by the end of water year 2013. Positive bias in dissolved cadmium results ranged from 13 to less than 6 percent, and positive bias in dissolved lead results ranged from 7.4 to 5.8 percent (T. Struzenski, U.S. Geological Survey, written commun., 2013).

Positive bias in dissolved concentrations of cadmium and lead affected the quality of analytical results. Uncensored dissolved concentrations were greater than whole-water concentrations in 86 percent of cadmium results and 24 percent of lead results (table A1). Consistent positive or negative bias in dissolved or whole-water results for zinc, copper, antimony, and arsenic was not documented. However, dissolved concentrations of zinc, copper, antimony, and arsenic also commonly exceeded concentrations from whole-water samples (table A1. Dissolved antimony concentrations that were commonly higher than total antimony concentrations resulted in model results with larger loads and streamflow-weighted concentrations for dissolved antimony than total antimony in some cases. However, this did not affect the interpretive results in the report because analytical data indicate that most of the antimony on site is dissolved. Numerous dissolved results were flagged in the National Water Information System (NWIS) database based on:

1. The known positive bias shown in IBSP analytical results for dissolved cadmium and lead,

2. The relative percent difference (RPD) between uncensored dissolved concentrations and censored or uncensored whole-water concentrations, and

3. The 2014 long-term method detection level (LT-MDL) for the dissolved constituent. The LT-MDL is determined based on the standard deviation of a minimum of 24 method-detection-limit spike sample measurements over an extended period of time (Oblinger Childress and others, 1999).

The NWQL collects quality-control data on a continuous basis to assess variations in LT–MDLs and to determine or revise LT–MDLs from year to year. Several LT-MDLs changed during the study period (table A1). Dissolved concentrations were flagged as "estimated" in the NWIS database if they were reported as uncensored at a concentration lower than the latest LT-MDL regardless of the RPD compared to the whole-water concentration in the same sample. Uncensored dissolved constituents detected at higher concentrations than whole-water constituents were flagged as "reviewed and rejected" in the NWIS database if the RPD compared to the censored or uncensored whole-water concentration in the same sample was greater than 20 percent. In most of these cases, repeated laboratory analysis for dissolved and total constituents confirmed original results. Analysis of the quality-control dataset collected for this study includes rejected results, but they are not otherwise used, interpreted, or provided to the public. Estimated results are used, interpreted, and provided to the public.

During water years 2012–14, 11 split replicate samples were collected on a rotating basis between the five study sites. Split-replicate RPDs greater than 20 percent for individual sets of samples generally occurred with rarely detected trace elements or trace elements detected near the applicable LT-MDL. Relatively large RPDs also occurred with concentrations of total iron, total aluminum, and suspended sediment in split-replicates collected at site 3 near the peak runoff event in May 2012 (table A2).

Results from the field blanks indicate overall acceptable quality (table A2). Four field blanks collected between May 17 and June 23, 2012, contained 29 out of a total of 41 detections (table A3). Field equipment cleaning practices between May and June of 2012 may have been ineffective in removing residual contamination, which may have resulted in positive bias to sample results, but other sources of bias also were present during the period. Forty-eight percent of the field blank detections between May and June 2012 were associated with cadmium, lead, and manganese. Positive laboratory bias in dissolved cadmium and lead was confirmed in laboratory quality-assurance testing (T. Struzenski, U.S. Geological Survey, written commun., 2013). Eight detections of dissolved manganese out of 15 blanks probably resulted from bias introduced during filtration (S. Skrobialowski, U.S. Geological Survey, written commun., 2015).

Table A1. Quality-assurance summary for selected constituent analyses from streams in the Stibnite mining area, central Idaho, 2012–14.

[**Abbreviations:** QA, quality assurance; QC quality control; RPD, relative percent difference; >, greater than; µg/L, micrograms per liter; NWIS, National Water Information System; LT-MDL, long-term method detection limit. Dissolved concentrations are determined from filtered samples and whole-water concentrations are determined from unfiltered samples]

	Cadmium	Copper	Lead	Zinc	Antimony	Arsenic
Number of environmental samples (including split replicate QA/QC samples)	118	115	118	118	115	118
Number of uncensored dissloved results	36	17	68	11	115	118
Number of uncensored dissolved concentrations > whole-water concentrations (censored or uncensored)	31	8	16	4	64	32
Percentage of uncensored dissolved concentrations > whole-water concentrations (censored or uncensored)	86	47	24	36	56	27
Average RPD between uncensored dissolved concentrations > whole-water concentrations (censored or uncensored)	91.1	42.3	32.9	63.2	8.15	5.58
Number of dissolved results flagged as "rejected" in the NWIS database	22	6	10	0	3	0
Long-term method detection limit October 1, 2011 to September 30, 2013, µg/L (dissolved; whole-water)	0.016; 0.016	0.80; 0.70	0.025; 0.04	1.4; 3.0	0.027; 0.18	[1]0.04; 0.28
Long-term method detection limit as of October 1, 2013, µg/L (dissolved; whole-water)	0.03; 0.03	0.80; 0.80	0.04; 0.04	2.0; 2.0	0.027; 0.18	0.10; 0.20
Number of dissolved results flagged as "estimated" because of increased LT-MDL	6	0	0	0	0	0

[1]The LT-MDL for dissolved arsenic was 0.03 µg/L from October 1, 2011 to September 30, 2012 and increased to 0.04 µg/L until September 30, 2013.

Blank sample detections did not indicate consistent positive bias from sampling equipment cleaning procedures or ambient conditions during sample processing, but did indicate occasional contamination bias from the source blank solution, shipping, storing, or analytical procedures. Blank detections that exceeded the minimum detections in environmental samples from the same trip are further summarized in table A3. In some cases, the blank detection exceeded the maximum detected concentration in environmental samples collected during the same trip, ruling out contamination bias from ambient processing conditions or equipment. In other cases, the dissolved constituent was detected and the total constituent was not detected in the same blank sample, suggesting positive bias in analytical procedures for the dissolved constituent. One detection each of dissolved cadmium, total lead, and total aluminum were within the range of detections for the same analyte during the same sampling trip, suggesting possible field equipment contamination.

Overall, split replicate, field blank, and IBSP quality-assurance sample results indicate that detections of dissolved cadmium and lead in environmental sample results should be used with caution. Blank results also suggest possible positive laboratory bias in dissolved chromium during May 2012. Manganese concentrations in environmental samples collected with potentially contaminated capsule filters were compared with environmental samples collected at similar streamflows at each site using uncontaminated capsule filters. The comparison showed that dissolved manganese introduced during sample filtration and quantified in blank results did not consistently bias environmental sample results for dissolved manganese.

Table A2. Results from quality-control samples collected in the Stibnite mining area, central Idaho, 2012–14.

[Bold type indicates a relative percent difference of greater than 20 percent. Shaded cells indicate that the maximum field blank detection was higher than the minimum detection for an analyte in environmental samples. **Abbreviations:** $CaCO_3$, carbonate; RPD, relative percent difference; mg/L, milligrams per liter; µg/L, micrograms per liter; (f), filtered; (unf), unfiltered; >, greater than; <, less than; mm, millimeter; NA, not applicable; N, no; Y, yes; 2×LT-MDL long-term method detection level multiplied by 2 (also known as the laboratory reporting level or LRL)]

Constituent	Number of field blank samples	Number of field blank detections	Number of field blank detections > 2×LT-MDL	Median detected field blank concentration (µg/L)	Maximum detected field blank concentration (µg/L)	Minimum detected concentration in environmental samples (µg/L)	Number of split replicate pairs	Split replicate minimum RPD	Split replicate 75th percentile RPD	Split replicate maximum RPD
Hardness as $CaCO_3$, mg/L	15	0	0	NA	NA	13.5	9	0.00	1.66	6.67
Calcium (f), mg/L	15	2	0	NA	0.034	4.2	9	0.52	1.73	6.78
Magnesium, (f), mg/L	15	0	0	NA	NA	0.72	9	0.00	1.95	7.55
Magnesium, (unf), mg/L	20	1	0	NA	0.009	0.72	11	0.37	5.00	8.40
Sodium, (f), mg/L	15	0	0	NA	NA	1.25	9	0.00	4.46	7.96
Potassium, (f), mg/L	15	1	0	NA	0.008	0.46	9	0.30	4.15	**29.1**
Chloride, (f), mg/L	15	1	1	NA	6.07	0.10	9	0.00	3.07	3.82
Sulfate, (f), mg/L	15	1	1	NA	0.10	0.93	9	0.00	2.02	**35.3**
Fluoride, (f), mg/L	15	0	0	NA	NA	0.03	8	0.00	5.17	**22.2**
Silica, (f), mg/L	15	2	0	NA	0.07	8.45	9	0.00	3.23	4.08
Arsenic, (f), µg/L	20	3	0	0.05	0.06	0.61	11	0.00	4.55	8.00
Arsenic, (unf), µg/L	20	0	0	NA	NA	0.81	11	0.50	6.63	8.70
Cadmium, (f), µg/L	20	5	4	0.303	1.22	0.033	11	0.00	**36.1**	**63.6**
Cadmium, (unf), µg/L	20	4	1	0.036	0.101	0.016	11	0.00	**30.3**	**119**
Chromium, (f), µg/L	20	2	0	NA	0.09	0.052	11	0.00	16.7	**57.8**
Chromium, (unf), µg/L	20	0	0	NA	NA	0.05	11	0.00	0.00	18.2
Copper, (f), µg/L	20	1	1	NA	2.00	0.117	11	0.00	0.00	**40.0**
Copper, (unf), µg/L	20	0	0	NA	NA	0.30	11	0.00	0.00	**117**
Iron, (f), µg/L	20	1	0	NA	6.00	4.1	11	0.81	16.4	**23.4**
Iron, (unf), µg/L	20	0	0	NA	NA	11.2	10	0.00	16.0	**54.7**
Lead, (f), µg/L	20	4	0	0.046	0.069	0.008	10	0.00	**72.6**	**93.0**
Lead, (unf), µg/L	20	1	0	NA	0.06	0.01	11	0.00	18.2	**76.9**
Manganese, (f), µg/L	15	8	1	0.21	0.59	0.36	9	1.28	**23.5**	**54.8**
Zinc, (f), µg/L	20	1	0	NA	3.30	1.4	10	0.00	0.00	**38.2**
Zinc, (unf), µg/L	20	1	1	NA	4.50	2.1	11	0.00	0.00	**158**
Antimony, (f), µg/L	20	1	0	NA	0.027	0.23	11	0.00	3.74	4.34
Antimony, (unf), µg/L	20	0	0	NA	NA	0.21	11	0.00	4.58	7.23
Aluminum, (f), µg/L	20	0	0	NA	NA	2.9	11	1.16	18.4	**66.7**
Aluminum, (unf), µg/L	20	1	1	NA	8.20	4.7	10	0.87	13.9	**45.9**
Suspended sediment, percent fines (<0.0625 mm)	0	0	0	NA	NA	11	6	1.40	**41.6**	**63.4**
Mercury, (f), µg/L	8	0	0	NA	NA	0.005	2	13.3	NA	18.2
Mercury, (unf), µg/L	11	0	0	NA	NA	0.005	2	7.41	NA	**22.2**
Suspended sediment concentration, mg/L	0	0	0	NA	NA	1	6	0.00	**65.6**	**66.7**
Sum	549	41	11	NA	NA	NA	310	NA	NA	NA

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Table A3. Blank sample detections exceeding minimum detections in environmental samples collected in the Stibnite mining area, central Idaho, 2012–14.

[**Likely source of contamination:** Handling, likely contamination bias from any of the following sources—source blank solution, shipping, storing, or analytical procedures; Equipment, contamination bias from sampling equipment; Filter, likely contamination bias from a capsule filter. **Abbreviations:** mg/L, milligrams per liter; µg/L, micrograms per liter; (f), filtered; (unf), unfiltered; <, less than; NA, not applicable]

Constituent	Blank detection date	Blank	Detected in dissolved and total results?	Environmental range during sampling event	Likely source of contamination
Chloride (f), mg/L	05-23-12	6.07	NA	0.23–0.38	Handling
Aluminum (unf), µg/L	06-13-12	8.2	No	58.2–199	Equipment
Cadmium (f), µg/L	05-17-12	0.434	Yes	0.088–0.371	Handling
Cadmium (f), µg/L	05-18-12	1.22	Yes	0.088–0.371	Handling
Cadmium (f), µg/L	05-23-12	0.251	Yes	0.088–0.371	Handling
Cadmium (f), µg/L	11-06-12	0.017	No	<0.016–0.056	Handling
Cadmium (f), µg/L	10-01-14	0.303	No	<0.030–0.194	Handling
Cadmium (unf), µg/L	05-17-12	0.025	Yes	0.017–0.037	Equipment
Cadmium (unf), µg/L	05-18-12	0.046	Yes	0.017–0.037	Handling
Cadmium (unf), µg/L	05-23-12	0.101	Yes	0.017–0.037	Handling
Cadmium (unf), µg/L	06-13-12	0.021	No	<0.016–0.156	Handling
Chromium (f), µg/L	05-17-12	0.09	No	0.17–0.36	Handling
Chromium (f), µg/L	05-18-12	0.09	No	0.17–0.36	Handling
Copper (f), µg/L	05-23-12	2.00	No	<0.80	Handling
Iron (f), µg/L	05-23-12	6.00	No	18.0–33.6	Handling
Lead (f), µg/L	05-18-12	0.029	No	0.027–0.063	Handling
Lead (f), µg/L	05-23-12	0.069	No	0.027–0.063	Handling
Lead (f), µg/L	06-14-12	0.027	No	0.027–0.105	Handling
Lead (f), µg/L	05-19-14	0.062	No	<0.040–0.048	Handling
Lead (unf), µg/L	06-13-12	0.06	No	0.04–0.10	Equipment
Manganese (f), µg/L	05-17-12	0.38	NA	1.16–6.29	Filter
Manganese (f), µg/L	05-18-12	0.59	NA	1.16–6.29	Filter
Manganese (f), µg/L	05-23-12	0.17	NA	1.16–6.29	Filter
Manganese (f), µg/L	06-13-12	0.14	NA	1.28–9.08	Filter
Manganese (f), µg/L	11-06-12	0.17	NA	0.57–37.5	Filter
Manganese (f), µg/L	03-26-13	0.25	NA	1.56–28.8	Filter
Manganese (f), µg/L	06-25-13	0.17	NA	0.83–18.5	Filter
Manganese (f), µg/L	04-25-14	0.29	NA	0.77–20.5	Filter
Zinc (f), µg/L	05-23-12	3.3	No	<1.4–1.5	Handling
Zinc (unf), µg/L	08-28-12	4.5	No	<3.0	Handling

Appendix B. Statistical Summary of Constituent Concentrations in Water-Quality Samples Collected at Streamflow-Gaging Stations in the Stibnite Mining Area, Central Idaho, 2012–14

Appendix B is a Microsoft Excel® file and is available for download at http://dx.doi.org/10.3133/sir20155166.

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For more information concerning the research in this report, contact the
Director, Idaho Water Science Center
U.S. Geological Survey
230 Collins Road
Boise, Idaho 83702
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ED_004715_00016332-00059

Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 10/16/2019 12:21:58 AM
To: Bradley M. Marten [bmarten@martenlaw.com]
CC: Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Lisa.O'Hara@deq.idaho.gov; Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: RE: Midas Aquifer Testing at Stibnite Mine Site
Attachments: 10-15-2019 Stibnite Aquifer Testing EPA Response.pdf

Hello, Brad Attached please find my response to your October 7th email.

- Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, October 07, 2019 1:23 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: Cerise, Kathy <Cerise.Kathryn@epa.gov>; Chris Dail <Dail@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Alan Haslam <ahaslam@midasgoldinc.com>; 'Michael Bogert' <mbogert@midasgoldinc.com>; Terry T. Uhling <tuhling@martenlaw.com>; Lisa.O'Hara@deq.idaho.gov
Subject: FW: Midas Aquifer Testing at Stibnite Mine Site
Importance: High

Elizabeth:

On August 21, 2019, I forwarded a work plan for aquifer testing at the Hanger Flats and Yellow Pine pit locations at the Stibnite site on behalf of Midas Gold, consistent with its status as a bona fide prospective purchaser under the 2002 Brownfield Amendments (set out below). I asked whether you or EPA Project Manager Kathy Cerise had any concerns with the work proposed. Having heard none, I am writing to let you know that IDEQ approved the work plan on September 25, 2019 and that the work will proceed this fall. If you have any questions or concerns, please let me know immediately. I'll be in the office all week. Thank you.

Bradley M. Marten
Partner

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MARTEN LAW

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From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Wednesday, August 21, 2019 6:27 PM
To: 'Elizabeth McKenna' <mckenna.elizabeth@epamail.epa.gov>
Cc: Cerise, Kathy <Cerise.Kathryn@epa.gov>; Alan Haslam <ahaslam@midasgoldinc.com>; Chris Dail <Dail@midasgoldinc.com>; 'Christopher H. Meyer' <chrismeyer@givenspursley.com>; L. Michael Bogert <mbogert@midasgoldinc.com>
Subject: Midas Aquifer Testing at Stibnite Mine Site
Importance: High

Elizabeth:

Midas Gold is planning two 21-day aquifer tests, one at the Hangar Flats pit location and one at the Yellow Pine pit location. The aquifer tests are being performed to evaluate the hydraulic effects of pumping on the alluvial and bedrock aquifers. This work is being conducted under the supervision of Idaho DEQ, pursuant to a Work Plan submitted to IDEQ on June 6. 2019 and incorporates IDEQ's responses to that Work Plan received on June 28, 2019 and July 9, 2019. Consistent with its status as a bona fide prospective purchaser under the 2002 Brownfield Amendments, Midas is providing this notice of the planned aquifer testing to EPA. If you or the Remedial Project Manager for the Site, Kathy Cerise, have any concerns about the testing, please let me know. Midas technical staff is touring the site with Kathy (copied here) tomorrow, and will use that opportunity to brief Kathy and respond to any questions she may have about the planned work. Thanks

Bradley M. Marten
Partner

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MARTEN LAW

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
REGIONAL COUNSEL

October 15, 2019

Brad Marten, Esq.
Marten Law
1191 Second Avenue, Suite 2200
Seattle, WA 98101

Dear Brad:

I am writing in response to your October 7, 2019 email to me regarding a work plan developed by Midas Gold for aquifer testing at the Hangar Flats and Yellow Pine pit locations at the Stibnite Mine Site. EPA did not provide comments, approval, or disapproval of that work plan because the work Midas is performing is not being done pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Midas should be aware that any releases of hazardous substances occuring as a result of its aquifer testing activities may subject Midas to liability separate and apart from any liability that Midas may already have had under CERCLA.

Midas and EPA have had several discussions regarding Midas' claim that it is a bona fide prospective purchaser (BFPP) under CERCLA. Based on information that EPA currently has, EPA does not agree that Midas would qualify as a BFPP. EPA has invited Midas to provide information supporting its claim that it is a BFPP and would be willing to review such information if Midas wishes to continue asserting that it is a BFPP.

Please feel free to call me if you would like to discuss this matter further.

Sincerely,

Elizabeth McKenna
Assistant Regional Counsel

cc: Lisa O'Hara, DEQ Deputy Attorney General
Gary Fremerman, Senior Counsel, USDA

Message

From: no-reply@sharepointonline.com [no-reply@sharepointonline.com]
Sent: 11/7/2019 10:51:15 PM
To: Cerise, Kathy [Cerise.Kathryn@epa.gov]
CC: kmerkley@midasgoldinc.com
Subject: Koda Merkley wants to share Stibnite Mining District RIFS

Office 365

Hello,

Go To Stibnite Mining District RIFS

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98052-6399 USA

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Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 7/3/2019 6:20:51 PM
To: Merissa A. Moeller [mmoeller@martenlaw.com]; Bradley M. Marten [bmarten@martenlaw.com]; Uhling, Terry [Terry.Uhling@simplot.com]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: EPA Draft SOW for the Stibnite Mine Site
Attachments: DraftStibniteSOW 7_3_19.pdf

Hello, everyone. I have attached EPA's first draft of the statement of work for the Stibnite Mine RI/FS. The USFS, EPA and IDEQ have not yet worked out the details of the agencies' roles at the Site. The current draft (with the exception of the "Oversight" section) reads as if EPA is the sole agency involved. The SOW will be modified to reflect IDEQ and USFS' roles and decision making authority once the agencies have come to agreement on how we will work together and with Midas. Also, IDEQ may want to edit the "Oversight" section language. I drafted language on federal and state authorities as a place holder.

Enjoy the holiday!

- Elizabeth

Elizabeth McKenna
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Appendix 1

STATEMENT OF WORK FOR THE STIBNITE MINE REMEDIAL INVESTIGATION / FEASIBILITY STUDY Valley County ID near Yellow Pine, ID

Purpose

This Statement of Work (SOW) sets forth the requirements for conducting a Remedial Investigation and Feasibility Study (RI/FS) at the Stibnite Mine Site (Site) located in northwest Idaho approximately 14 miles from Yellow Pine. The purpose of the RI/FS is to investigate the nature and extent of contamination at the Site and to develop and evaluate remedial alternatives, as appropriate. This SOW provides an overview of Work that will be carried out by Midas Gold Corporation (Respondent) as it implements the RI/FS at the Site.

This RI/FS SOW is attached to and is incorporated into the Settlement Agreement and Administrative Order on Consent (AOC) for the Site. Technical work described in this SOW is intended to provide more information to the Respondent for the purpose of implementing the AOC and is not intended to change the meaning of any AOC language. This SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan, commonly called the National Contingency Plan (NCP), 40 CFR 300. The AOC and this SOW are hereafter referred to interchangeably as the "AOC." Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the AOC will control any interpretive disputes.

Scope

The specific RI/FS activities to be conducted at the Site are set forth in seven separate tasks.

Task 1 - Scoping
Task 2 - Community Relations
Task 3 - Site characterization
Task 4 - Treatability Studies
Task 5 - Feasibility Study
Task 6 - Detailed Analysis of Remedial Alternatives

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Oversight

Work conducted under the AOC is intended to satisfy the legal requirements for the RI/FS established under both Section 104(a)(l) of CERCLA and Idaho's Environmental Protection & Health Act, Idaho Code§§ 39-101 to 39-130; the Hazardous Waste Management Act of ldaho, Idaho Code§§ 39-4401 to 39-4432; and Idaho's Water Quality Act, Idaho Code§§ 39-3601 et seq. As such, oversight of the Respondent's Work conducted under the SOW will be carried out by EPA, the USFS, and the IDEQ (the Agencies) in a manner to assure the satisfaction of all federal and state requirements. The Respondent shall support the Agencies' initiation and conduct of activities related to the implementation of oversight activities.

Respondent shall submit all documents or deliverables required as part of this SOW to EPA, for EPA's review and approval. All work products submitted to EPA are subject to EPA approval, including but not limited to, submissions specified in the Work Plan(s) or Settlement Agreement and additional work products that may be required under Work Plan modifications. Respondent shall ensure that all plans, reports, and records are comprehensive, accurate, and consistent in content and format with the NCP and relevant EPA guidance.

Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA to aid in project planning. These reports must document the status of all work products under development. These reports shall describe the actions and decisions taken, and problems encountered during the previous quarter, and activities scheduled during the upcoming reporting period. Progress reports shall also summarize the extent to which the procedures and dates set forth in the AOC and the Work Plan are being met. These reports shall be submitted according to the Schedule included as Attachment E.

Schedule

Refer to Attachment E for the primary and potential secondary deliverables and associated schedules.

Guidance

The Respondent shall conduct the RI/FS, and produce technical reports that are in accordance with the AOC, SOW, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (RI/FS Guidance) (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance relevant to conducting an RI/FS. A list of the pertinent guidance documents is included at the end on this SOW. Attachments A, B, C, and D include suggested document formats for the Work Plan, Sampling and Analysis Plan, RI Report, and FS Report, respectively. The RI/FS guidance describes the required report contents.

Roles and Responsibilities

The Respondent shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the RI/FS, except as otherwise specified in the AOC. At the

completion of the RI/FS, EPA will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision (ROD).

Remedy Requirements

The remedial action alternative selected by the EPA will meet the cleanup standards specified in Section 121 of CERCLA. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements (ARARs) of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS report including the baseline risk assessment (BLRA), as adopted by the EPA, will, with the administrative record, form the basis for the selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

TASK 1 - SCOPING

Scoping is the initial planning process of the RI/FS. Respondent shall document the specific project scope in the RI/FS Work Plan. During the scoping process, the Site-specific objectives of the RI/FS, including the identification of potential preliminary remediation goals (PRGs) will be proposed by the Respondent and approved by EPA. In addition to developing the Site-specific objectives of the RI/FS, Respondent shall define a general project management approach for the Site, which shall be documented by the Respondent in a draft Work Plan. Because the Work required to perform an RI/FS is not fully known at the outset and is phased in accordance with a Site's complexity and the amount of available information, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study. When scoping the specific aspects of this project, Respondent shall meet with EPA either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site.

The following activities shall be performed by the Respondent as a function of the project planning process.

a. Site Background

The Respondent shall gather, analyze, and present existing Site background information and shall conduct a work session to assist in planning the scope of the RI/FS.

<u>Collect and analyze existing data and document the need for additional data</u>

Before planning RI/FS activities, all existing Site data shall be thoroughly compiled and reviewed by the Respondent. Historical data shall be submitted electronically according to EPA Region 10 specifications. The Respondent shall refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources. Specifically, this must include presently available data relating to the varieties and quantities of hazardous substances at the Site, and past disposal practices. This must also include results from any previous sampling events that

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may have been conducted. Only data that is determined by EPA to be of appropriate type and quality to support specific intended uses shall be utilized in the RI/FS. This includes data utilized to develop the BLRA, to identify additional data needs to better characterize the Site, to better define potential applicable or relevant and appropriate requirements (ARARs), and to develop a range of preliminarily identified remedial alternatives. Data Quality Objectives (DQOs) shall be established, subject to EPA's approval, which shall be used to assess the usefulness of existing data and to direct future data gathering efforts. Decisions regarding the necessary data needs and DQOs will be made by EPA.

Conduct Site Visit

The Respondent and EPA shall conduct a Site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of contamination as well as potential exposure pathways and receptors at the Site. During the Site visit the Respondent shall observe the Site's physiography, hydrology, geology, and demographics, as well as natural resource, ecological, and cultural resources. This information shall be utilized to better scope the project and to determine the extent of additional data necessary to characterize the Site, better define potential ARARs, and assist in identifying potential remedial alternatives.

b. *Project Planning*

Once the Respondent has collected and analyzed existing data and conducted a Site visit, the specific project scope shall be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols. The Respondent shall meet with EPA's Remedial Project Manager (RPM) regarding the following activities and before drafting the scoping deliverables listed below.

Preliminary Conceptual Site Model

Information on the waste sources, pathways, receptors, cultural resources, and other information concerning the Site is used to develop a conceptual understanding of the Site which helps to evaluate potential risks to human health and the environment. The Conceptual Site Model (CSM) should include known and suspected sources of contamination, types of contamination and affected media/resources, known and potential routes of migration, and known or potential human and environmental receptors. This effort, in addition to assisting in identification of locations where sampling is necessary, will also assist in the identification of potential remedial technologies. Additional information for evaluating exposure concerns through the use of a CSM is provided in the DQO Guidance. The CSM must be updated as new information becomes available.

The preliminary CSM associated with the ecological risk assessment (ERA) must include species and their habitats that could be impacted by Site-related contamination based on information generated from a historical review and a

cultural resource audit and will show the relationships among species and potential exposure pathways. The Respondent shall provide assistance to the RPM in collecting this information as requested. If information is not provided to the Respondent within the timeframe specified by EPA, the RPM will notify the Respondent in writing either to proceed with the preparation of the RI/FS Work Plan without the information or to delay its submittal pending receipt of the information. The preliminary CSM for the human health risk assessment (HHRA) must identify potential receptor populations and potential exposure pathways.

Refine and document preliminary remedial action objectives and alternatives

Once existing Site information has been analyzed and an understanding of the potential Site risks have been determined, the Respondent shall review and, if necessary, refine the Remedial Action Objectives (RAOs) that have been identified by EPA for each actually or potentially contaminated medium. The revised RAOs must be documented in a technical memorandum and subject to EPA's approval. The Respondent shall then identify a preliminary comprehensive range of potential remedial action alternatives and associated technologies. The range of potential alternatives shall encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative.

Document the need for treatability studies

Respondent shall conduct bench and/or pilot studies as necessary to determine the suitability of various remedial technologies to Site conditions and problems. Technologies that may be suitable to the Site should be identified as early as possible to determine whether there is a need to conduct treatability studies to better estimate costs and performance capabilities. Should treatability studies be determined to be necessary, a testing plan identifying the types and goals of the studies, the level of effort needed, a schedule for completion, and the data management guidelines should be submitted to EPA for review and approval. Upon EPA approval, a test facility and any necessary equipment, vendors, and analytical services will be procured by the contractor.

When the treatability studies are completed, Respondent shall evaluate the results to assess the technologies with respect to the goals identified in the test plan. A report summarizing the testing program and its results shall be prepared by the Respondent and presented in the final RI/FS report. The Respondent shalll implement all management and quality control review activities for this task. If remedial actions involving treatment have been identified by the Respondent or EPA, treatability studies shall be required, except where the Respondent can demonstrate to the satisfaction of EPA that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) should be planned to occur concurrently with Site characterization activities.

Begin preliminary identification of potential ARARs

The Respondent shall conduct a preliminary identification of potential ARARs (chemical-specific, location-specific, and action-specific) to assist in the refinement of the RAOs and the initial identification of remedial alternatives. ARAR identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.

c. *Scoping Deliverables*

At the conclusion of the project planning phase, the Respondent shall submit an RI/FS Work Plan, a Sampling and Analysis Plan (SAP) consisting of a Field Sampling Plan (FSP) and Quality Assurance Project Plan (QAPP), and a Site Health and Safety Plan (HASP). These plans must be reviewed and approved by EPA prior to the initiation of field activities.

RI/FS Work Plan

A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM for review and approval. The Work Plan shall be developed in conjunction with the SAP and the Site HASP, although each plan may be delivered under separate cover. The Work Plan shall include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan shall include the rationale for performing the required activities. Specifically, the Work Plan must present a statement of the problem(s) and potential problem(s) posed by the Site and the objectives of the RI/FS. Furthermore, the plan must include a Site background summary setting forth the Site description including the geographic location of the Site, and to the extent possible, a description of the Site's physiography, hydrology, hydrogeology, geology, demographics, ecological, cultural, and natural resource features; a synopsis of the Site history and a description of previous responses that have been conducted at the Site by local, state, federal, or private parties; and a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified, and their distribution among the environmental media at the Site. In addition, the plan must include a description of the Respondent's Site management strategy developed during scoping and a preliminary identification of remedial alternatives and data needs for evaluation of remedial alternatives. The plan must reflect coordination with treatability study requirements, if treatability studies are initiated. It must include a process for and manner of identifying potential ARARs (chemical-specific, location-specific, and action-specific).

Finally, the major part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task and for the BLRA, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the RPM. This includes the deliverables set forth in the remainder of this SOW; a schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a

data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to the RPM and meetings and presentations to EPA and the Support Agencies at the conclusion of each major phase of the RI/FS. The Respondent must refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required Work Plan, and a suggested format can be found in Attachment A.

Sampling and Analysis Plan

The Respondent shall prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a FSP and a QAPP. A suggested format for the SAP (inclusive of the FSP and QAPP) is provided in Attachment B. The SAP, FSP, and QAPP shall be prepared in accordance with EPA DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006).

The FSP must define in detail the sampling and data-gathering methods that will be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytic methods to identify contamination and remediate contamination consistent with the levels for remedial action objectives identified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), pages 51425-26 and 51433 (December 21, 1988). The QAPP shall be prepared in accordance with requirements in EPA QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision), EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Investigations, and EPA QA/G-4 Guidance for the Data Quality Objective Process. All sampling and analyses performed pursuant to this SOW shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain-of-custody procedures. In addition, the QAPP must address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

Field personnel must be trained and conduct work in accordance with EPA and OSHA requirements and guidance. The Respondent shall demonstrate, in advance and to the satisfaction of EPA, that each laboratory they may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA. The laboratory must have and follow an approved

QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by EPA will be used. If the laboratory is not in the CLP program, a laboratory QA program must be submitted for EPA's review and approval. EPA may require that the Respondent submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment, and material specifications. The Respondent shall provide assurances that EPA has access to laboratory personnel, equipment, and records for sample collection, transportation, and analysis.

Potential Target Analytes

The following list of chemicals include the initial Chemicals of Potential Concern (COPCs). The initial COPC list includes, but is not limited to, the analytes listed below. The Respondent shall review this list for surface water, groundwater, sediments, soils, and vegetation analytes relative to ARARs, preliminary remediation goals (PRGs), screening levels, Site-specific risk assessment data needs, treatability study data needs, feasibility study data needs, and other potential performance standards. All metal analytes (aqueous) shall be analyzed for total and dissolved constituents unless otherwise approved by EPA. Analytes may be added and/or removed from further consideration or monitored at varying frequencies based upon Site-specific factors such as dry or wet year hydrologic cycles as approved or otherwise directed by EPA.

Chemicals/Analytes of Potential Concern for Surface Water

The following COPCs shall be included in the analyses for all surface water sampling stations during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph. A minimum of two storm event sampling events shall be conducted.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Boron
- Cadmium
- Calcium
- Chloride
- Chromium (III)
- Chromium (VI)

- Cobalt
- Copper
- Hardness
- Iron
- Lead
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrogen, total Kjeldahl
- Phosphorus
- Potassium
- Selenium
- Silver
- Sodium
- Sulphate
- Thallium
- Tungsten
- Total Dissolved Solids
- Total Organic Carbon
- Total Suspended Solids
- Uranium
- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen
- Flow
- pH
- Temperature

The Respondent shall review the results of the first year's surface water sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent surface water sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent surface water sampling events.

Chemicals/Analytes of Potential Concern for Sediments:

The following COPCs shall be included in the analyses for all sediment sampling stations:

Laboratory Analyses

- Antimony
- Arsenic
- Cadmium
- Chromium
- Copper
- Lead
- Manganese
- Mercury
- Nickel
- Selenium
- Silver
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Soils/Waste Rock:

The following COPCs shall be included in the analyses for all soils/waste rock sampling:

Laboratory Analyses

- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thalium
- Tungsten
- Uranium
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Vegetation:

The following COPCs shall be included in the analyses for all vegetation sampling stations

Laboratory Analyses

- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Groundwater

The COPCs listed below shall be included in the analyses for all groundwater sampling stations and shall be sampled at a minimum during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph and the low flow sampling shall be conducted at all groundwater sampling stations as close as possible to the low point of the surface water flow hydrograph.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Calcium
- Chloride
- Chromium III
- Chromium VI
- Cobalt
- Copper
- Hardness

- Iron
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrate/nitrite as N
- Nitrogen (TKN)
- Orthophosphate
- Potassium
- Selenium
- Silver
- Sodium
- Sulfate
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Total Organic Carbon
- Tungsten
- Uranium
- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen or ORP
- Ferric Iron
- Ferrous Iron
- Nitrite
- pH
- Temperature

The Respondent shall review the results of the first year's groundwater sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent groundwater sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent groundwater sampling events.

Site Health and Safety Plan

A HASP shall be prepared in conformance with the Respondent's health and safety program, and in compliance with OSHA regulations and protocols. It should be noted that EPA does not "approve" the Respondent's health and safety plan, but

rather EPA reviews it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

TASK 2 - COMMUNITY RELATIONS

The development and implementation of community relations activities are the responsibility of EPA. The critical community relations planning steps performed by EPA include conducting community interviews and developing a community relations plan. Although implementation of the community relations plan is the responsibility of EPA, the Respondent may assist by providing information regarding the Site's history, participating in public meetings, and preparing fact sheets for distribution to the general public. In addition, the Respondent shall establish a community information repository, at or near the City of McCall, to house one copy of the administrative record. The extent of community relations activities involvement by potentially responsible parties (PRPs) is left to the discretion of EPA. The Respondent's community relations responsibilities, if any, are specified in the community relations plan. Any PRP-conducted community relations activities will be subject to oversight by EPA.

TASK 3 - SITE CHARACTERIZATION

As part of the RI, the Respondent shall perform the activities described in this task, including the preparation of a Site characterization summary and a RI report. The overall objective of Site characterization is to describe areas of a Site that may pose a threat to human health or the environment. This is accomplished by first determining a Site's physiography, geology, and hydrology/hydrogeology. Surface and subsurface pathways of migration must be defined. The Respondent shall identify the sources of contamination and define the nature, extent, and volume of the sources of contamination, including their physical and chemical constituents as well as their background concentrations at incremental locations in the affected media. The Respondent shall also investigate the extent of migration of this contamination as well as its volume and any changes in its physical or chemical characteristics, to provide for a comprehensive understanding of the nature and extent of contamination at the Site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the Work Plan, SAP, and HASP are implemented. Field data are collected and analyzed to provide the information required to accomplish the objectives of the study. The Respondent shall notify the RPM at least two weeks in advance of the field work regarding the planned dates for field activities, including ecological field surveys, field layout of the sampling grid, excavation, installation of wells, initiating sampling, installation and calibration of equipment, pump tests, and initiation of analysis and other field investigation activities. The Respondent shall demonstrate that the laboratory and type of laboratory analyses that will be utilized during Site characterization meet the specific QA/QC requirements and the DQOs of the Site investigation as specified in the SAP. In view of the unknown Site conditions, activities are often iterative, and to satisfy the objectives of the RI/FS, it may be necessary for the Respondent to supplement the work specified in the initial Work Plan. In addition to the deliverables below, the

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Respondent shall provide a monthly progress report and participate in weekly meetings or conference calls at major points in the RI/FS.

a. *Field Investigation*

The field investigation shall include the gathering of data to define Site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. These activities shall be performed by the Respondent in accordance with the Work Plan and SAP. At a minimum, this shall address the following:

Implement and document field support activities

The Respondent shall initiate field support activities following approval of the Work Plan and SAP. Field support activities may include obtaining access to the Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondent shall notify the RPM at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM upon completion of field support activities.

Investigate and define site physical and biological characteristics

The Respondent shall collect data on the physical and biological characteristics of the Site and its surrounding areas, including the physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information must be ascertained through a combination of physical measurements, observations, and sampling efforts, and will be utilized to define potential transport pathways and human, cultural, and ecological receptor populations. In defining the Site's physical characteristics, the Respondent shall also obtain sufficient engineering data (such as the effects of contaminated media weathering and ground and surface water contaminant loading) to aid in the projection of contaminant fate and transport, and the development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination

The Respondent shall locate each source of contamination and define the areal extent and depth of contamination associated with each source in all media. The physical characteristics and chemical constituents and their concentrations must be determined for all known and discovered sources of contamination. The Respondent shall conduct sufficient sampling to define the boundaries of the contaminant sources consistent with the QAPP and DQOs.

Defining the source of contamination must include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence over time, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

Describe the nature and extent of contamination

The Respondent shall gather information to describe the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondent must utilize the information and site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondent shall then implement an iterative monitoring program and any study program identified in the work plan or SAP such that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration of contaminants through the various media at the Site can be determined. In addition, the Respondent shall gather data for calculations of contaminant fate and transport. This process must be continued until the area and depth of contamination are known. This information will be used to determine the level of risk presented by the Site and to help develop appropriate remedial action alternatives for evaluation.

b. Data Analyses

Evaluate Site characteristics

The Respondent shall analyze and evaluate the data to describe: (1) Site physical and biological characteristics; (2) contaminant source characteristics; (3) nature and extent of contamination; and (4) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The evaluation must include the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to EPA together with a sensitivity analysis. The RI data shall be presented in a format (i.e., computer disc or equivalent) to facilitate the preparation of the BLRA. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. The Respondent shall then collect any data required to address data gaps identified by EPA as needed to complete the BLRA. This evaluation shall also provide information relevant to Site characteristics necessary to evaluate the need for remedial action in the BLRA and to aid in the development and evaluation of remedial alternatives. Analyses of data collected for Site characterization must meet the DQOs developed in the QA/QC plan stated in the SAP (or as revised during the RI).

c. Data Management Procedures

The Respondent shall consistently document the quality and validity of field and laboratory data compiled during the RI.

Document field activities

Information gathered during Site characterization shall be consistently documented and adequately recorded by the Respondent in well-maintained field logs and laboratory reports. The method(s) of documentation must be specified in the work plan and/or the SAP. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document sample custody, analytical responsibility, analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking

The Respondent shall maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that only validated analytical data are reported and utilized in the development and evaluation of remedial alternatives. Analytical results developed under the Work Plan must not be included in any Site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, the Respondent shall establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

Data Validation Management

All validated data shall be made available to EPA in electronic format. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. Field and validated analytical data results for all media sampled shall be submitted to EPA by uploading the data to the Water Quality Exchange (WQX) using the Central Data Exchange (CDX). Field and laboratory samples must include information on the sampling locations which will also be submitted to WQX via CDX. (See www.epa.gov/storet/wqx.hmtl)

d. Site Characterization Deliverables

The Respondent shall prepare the preliminary Site characterization summary and the RI report.

Data Summary Reports

After completing each annual field season's sampling and analysis (i.e., at the end of the field season each calendar year), the Respondent shall prepare a concise Site characterization Data Summary Report (DSR). This report must review the investigative activities that have taken place and describe and display Site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, including the affected media, locations, types, physical state, concentrations of contaminants and quantities. In addition, reports shall document the location, dimensions, physical condition and varying concentrations of each contaminant for each source and the extent of contaminant migration

through each of the affected media. Each DSR must also evaluate data gaps and identify additional and/or modified sampling and analysis that shall be included in modifications to the SAP for each subsequent field season. If acceptable to EPA, the DSR following the final field season of data collection can be eliminated as a separate deliverable, and the information collected during the final field season can be presented in the RI report.

Remedial Investigation Report (RI)

The Respondent shall prepare and submit a draft RI report to the RPM for review and approval. This report shall summarize results of field activities to characterize the Site, sources of contamination, nature and extent of contamination, and the fate and transport of contaminants. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and contents, and a suggested format for the RI report can be found in Attachment C. Following comment by EPA, the Respondent shall prepare a final RI report satisfactorily addressing the comments.

Baseline Risk Assessment (BLRA)

The Respondent shall conduct a BLRA to assess the potential human health, and environmental risks posed by the Site in the absence of any remedial action. This effort will involve four components: contaminant identification, exposure assessment, toxicity assessment, and risk characterization.

Contaminant Identification – The Respondent shall review available information on all hazardous substances present at the Site and identify the major contaminants of concern. Contaminants of concern should be selected based on their intrinsic toxicological properties because they are present in large quantities, and/or because they are currently in, or potentially may migrate into, critical exposure pathways (e.g., drinking water).

Exposure Assessment – The Respondent shall identify actual or potential exposure pathways, characterize potentially exposed populations, and evaluate the actual or potential extent of exposure.

Toxicity Assessment – The Respondent shall provide a toxicity assessment of those chemicals found to be of concern during Site investigation activities. This will involve an assessment of the types of adverse health or environmental effects associated with chemical exposures, the relationship between magnitude of exposures and adverse effects, and the related uncertainties for contaminant toxicity, (e.g., weight of evidence for a chemical's carcinogenicity).

Risk Characterization – The Respondent shall integrate information developed during the exposure and toxicity assessments to characterize the current or potential risk to human health and/or the environment posed by the Site. This characterization should identify the potential for adverse health or environmental effects for the chemicals of concern and identify any uncertainties associated with contaminant(s), toxicity(ies), and /or exposure assumptions.

TASK 4 - TREATABILITY STUDIES

If potential remedial actions involving treatment have been identified by Respondent or EPA, Respondent shall conduct treatability studies except where Respondent can demonstrate to the satisfaction of EPA that they are not needed. The following activities shall be performed by the Respondent to support all treatability studies.

a. Determination of Candidate Technologies and of Need for Testing

The Respondent shall identify in a technical memorandum, subject to EPA review and approval, candidate technologies for a treatability studies program during project planning (Task 1). The listing of candidate technologies must cover the range of technologies required for the development and analysis of alternatives (Task 5 and 6) The specific data requirements for the testing program will be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 3, 5, and 6).

Conduct literature survey and determine the need for treatability testing

The Respondent shall conduct a literature survey to gather information of performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. If practical candidate technologies have not been sufficiently demonstrated or cannot be adequately evaluated for this Site based on available information, treatability testing must be conducted. Where it is determined by EPA that treatability testing is required, and unless the Respondent can demonstrate to EPA's satisfaction that it is not needed, the Respondent shall submit a SOW to the RPM outlining the steps and data necessary to evaluate and initiate the treatability testing program.

Evaluation of treatability studies

Once a decision has been made to perform treatability studies, the Respondent and EPA will decide the types of treatability testing to utilize (e.g., bench and/or pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing should be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, the Respondent shall either submit to the RPM a treatability testing work plan or an amendment to the original Site work plan for EPA's review and approval.

b. Treatability Testing and Deliverables

The deliverables that are required, in addition to the memorandum identifying candidate technologies, where treatability testing is conducted, include a work plan, a sampling and analysis plan, and a final treatability evaluation report. EPA may also require a treatability study health and safety plan, where appropriate.

Treatability testing work plan

The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's review and approval, describing the Site background, remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The DQOs for treatability testing must be documented as well. If pilot scale treatability testing is to be performed, the pilot scale work plan will describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-site, permitting requirements must be addressed.

Treatability study SAP

If the original QAPP or FSP does not address activities to be performed during the treatability tests, a separate treatability study SAP or amendment to the original Site SAP must be prepared by the Respondent for EPA's review and approval. Task 1, Item c. of this statement of work provides additional information on the requirements of the SAP.

Treatability study HASP

If the original HASP is not adequate for defining the activities to be performed during the treatment tests, a separate or amended HASP must be developed by the Respondent. Task 1, Item c, of this SOW provides additional information on the requirements of the health and safety plan. EPA does not "approve" the treatability study HASP.

Treatability study evaluation report

Following completion of treatability testing, the Respondent shall analyze and interpret the testing results in a technical report to EPA. Depending on the sequence of activities, this report may be a part of the RI/FS report or a separate deliverable. The report must evaluate each technology's effectiveness, implementability, cost, and actual results as compared with predicted results. The report must also evaluate full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 5 - FEASIBILITY STUDY

The Feasibility Study is comprised of two primary activities: (1) the development and screening of alternatives, and (2) the detailed analysis of alternatives. The alternatives surviving the screening process will be subject to the detailed analysis process. The FS Report must document the results of these two components of FS. Interim deliverables associated with these activities will be identified in the RI/FS Work Plan. The RI and FS are interactive and will be conducted concurrently, to the extent practicable, in a manner that allows information and data collected during the RI to influence the development of

remedial alternatives during the FS, which in turn affect additional information and data needs and the scope of any necessary treatability studies and risk assessments.

a. *Remedial Alternative Development*

The Respondent shall develop and evaluate a range of appropriate waste management options that, at a minimum, will remediate or control any contaminated media (soil, surface water, ground water, sediments) remaining at the Site, as deemed necessary in the RI to ensure protection of human health and the environment and comply with ARARs, concurrent with the RI site characterization task.

A range of remedial alternatives must be developed to identify and provide a variety of waste management options which then can be evaluated. This range of alternatives must include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which varies in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed. Options involving containment with little or no treatment must be included, as well as options involving both treatment and containment, and a no-action alternative. The following activities shall be performed by the Respondent during the development of remedial alternatives.

Refine and document remedial action objectives

Based on the BLRA, the Respondent shall review, and if necessary, modify the Site-specific remedial action objectives (RAOs) and the list of applicable preliminary remediation goals (PRGs). The modified PRGs shall be documented in a technical memorandum that will be reviewed and approved by EPA. These modified PRGs must specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

Develop general response actions

The Respondent shall develop a range of general response actions for each medium of interest addressing containment, treatment, excavation, pumping, or any other actions, singly or in combination, that may be utilized to satisfy the remedial action objectives for the Site.

Identify areas or volumes of media

The Respondent shall identify volumes and/or areas of media to which general response actions might be applied, taking into account the requirements for protectiveness as identified in the RAOs and the chemical and physical characterization of the Site.

Identify, screen, and document remedial technologies

The Respondent shall identify and evaluate potential remedial technologies applicable to each general response action. The Respondent shall identify various

alternatives for implementing each remedial technology. These alternatives must be evaluated and screened based upon their effectiveness, implementability, and cost factors. Generally, this screening is only necessary when there are many feasible alternatives available for detailed analysis. If necessary, the screening of alternatives shall be conducted to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening must preserve the range of treatment and containment alternatives that was initially developed insuring that the alternatives will meet RAOs, ARARs and all other identified performance standards. The range of remaining alternatives must include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondent shall prepare a technical memorandum summarizing the results and reasoning employed in screening and arraying alternatives that remain after screening. In addition, a description of the remedial technology alternatives which were eliminated from further consideration as well as the reasons for eliminating the alternatives must be included in the memorandum.

Assemble and document alternatives

The Respondent shall assemble selected representative technologies into a range of alternatives for each affected medium or operable unit. Together, all of the alternatives will represent treatment and containment combinations that will address either all of the Site or operable units. A summary of the assembled alternatives and their related action-specific ARARs must be prepared for EPA by the Respondent for inclusion in a technical memorandum.

TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES

The detailed analysis of alternatives shall be conducted by the Respondent to provide EPA with the information needed to allow for the selection of a Site remedy. This analysis is the final task to be performed by the Respondent during the FS.

a. Detailed Analysis of Alternatives

The Respondent shall conduct a detailed analysis of alternatives which must consist of an analysis of each option against a set of nine evaluation criteria and a comparative analysis of all options using the same evaluation criteria as a basis for comparison. EPA has developed the nine evaluation criteria to address the statutory requirements and preferences of CERCLA

Apply nine criteria and document analysis

The Respondent shall apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health

and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) costs; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: Criteria 8 and 9 are considered after the RI/FS report has been released to the general public). For each alternative, the Respondent must provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative; and (2) a discussion of the individual criterion assessment.

Compare alternatives against each other and document the comparison of alternatives

The Respondent shall perform a comparative analysis between the remedial alternatives. That is, each alternative must be compared against the others using the evaluation criteria as a basis of comparison. Identification and selection of the preferred alternative are reserved by EPA. The Respondent shall prepare a technical memorandum summarizing the results of the comparative analysis.

b. *Detailed Analysis Deliverables*

In addition to the technical memorandum summarizing the results of the comparative analysis, the Respondent shall submit a draft FS report to the RPM for review and approval. Once EPA's comments have been addressed by the Respondent to the satisfaction of EPA, the final FS report may be bound with the final RI report.

Feasibility Study report

The Respondent shall submit a draft FS report for EPA and the Support Agencies' review and comment. This report, as ultimately adopted or amended by EPA, provides a basis for remedy selection by EPA, and documents the development and analysis of remedial alternatives. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and the required report content, and a suggested format for the report can be found in Attachment D. The Respondent shall prepare a final FS report which satisfactorily addresses the comments.

REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process.

The (revised) National Oil and Hazardous Substance Pollution Contingency Plan (NCP).

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA", U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3.

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"A Compendium of Superfund Field Operations Methods", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.

U.S. EPA, NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA -330/9-78-991-R.

"Data Quality Objectives for Remedial Response Activities", U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.

"Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Research and Development, Cincinnati, Ohio, QAMS-004/80, December 29, 1980.

"QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision), EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Studies, and EPA QA/G-4 Guidance for the Data Quality Objective Process"

"Interim Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.

"Users Guide to the Lead Agency(ies) Contract Laboratory Program:, U.S. EPA, Sample Management Office, August 1982.

"Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements", U.S. EPA, Office of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.

"CERCLA Compliance with Other Laws Manual", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.

"Guidance on Remedial Actions for Contaminated Groundwater at Superfund Sites", U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.

"Draft Guidance on the Lead Agency(ies) Superfund Decision Documents", U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02.

"Risk Assessment Guidance for Superfund--Volume I, Human Health Evaluation Manual (Part A)", December 1989, EPA/540/1-89/002.

"Risk Assessment Guidance for Superfund--Volume II Environmental Evaluation Manual", March 1989, EPA /540/1-89/001.

"Guidance for Data Usability in Risk Assessment", October 1990, EPA /540/G-90/008.

"Performance of Risk Assessments in Remedial Investigation/ Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)", August 28, 1990, OSWER Directive No. 9835.15.

"Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions", April 22, 1991, OSWER Directive No. 9355.0-30.

"Health and Safety Requirements of Employees Employed in Field Activities", U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

"Interim guidance on Administrative Records for Selection of CERCLA Response Actions", U.S. EPA, Office of Waste Programs Enforcement, March 1, 1989, OSWER Directive No. 9833.3A.

"Community Relations in Superfund: A Handbook", U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9320.0-03B.

"Community Relations During Enforcement Activities and Development of the Administrative Record", U.S. EPA, Office of Waste Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1A.

Attachments

Attachment A

Suggested RI/FS Work Plan Format

Executive Summary

1. Introduction

2. Site Background and Setting

3. Initial Evaluation
   - Types and volumes of waste present
   - Potential pathways of contaminant migration/preliminary public health and environmental impacts
   - Preliminary identification of operable units
   - Preliminary identification of response objectives and remedial action alternatives

4. Work Plan Rationale
   - DQO needs
   - Work Plan approach

5. RI/FS Tasks

6. Cost and Key Assumptions

7. Schedule

8. Project Management
   - Staffing
   - Coordination

9. References

Appendices

Attachment B

Suggested Format for SAP (FSP and QAPP)

FSP

1. Site Background
2. Sampling Objectives
3. Sample Location and Frequency
4. Sample Designation
5. Sampling Equipment and Procedures
6. Sample Handling and Analysis

QAPP

Title Page

Table of Contents

1. Project Description
2. Project Organization and Responsibilities
3. QA Objectives for Measurement
4. Sampling Procedures
5. Sample Custody
6. Calibration Procedures
7. Analytical Procedures
8. Data Reduction, Validation, and Reporting
9. Internal Quality Control
10. Performance and Systems Audits
11. Preventative Maintenance
12. Data Assessment Procedures

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13. Corrective Actions

14. Quality Assurance Reports

Attachment C

Suggested RI Report Format

Executive Summary

1. Introduction
    - 1.1 Purpose of Report
    - 1.2 Site Background
        - 1.2.1 Site Description
        - 1.2.2 Site History
        - 1.2.3 Previous Investigations
    - 1.3 Report Organization

2. Study Area Investigation
    - 2.1 Includes field activities associated with site characterization. These may include physical and chemical monitoring of some, but not necessarily all, of the following:
        - 2.1.1 Surface Features (topographic mapping, etc.) (natural and manmade features)
        - 2.1.2 Contaminant Source Investigations
        - 2.1.3 Meteorological Investigations
        - 2.1.4 Surface-Water and Sediment Investigations
        - 2.1.5 Geological Investigations
        - 2.1.6 Soil and Vadose Zone Investigations
        - 2.1.7 Ground-Water Investigations
        - 2.1.8 Human Population Surveys
        - 2.1.9 Ecological Investigations
    - 2.2 If technical memoranda documenting field activities were prepared, they may be included in an appendix and summarized in this report chapter.

3. Physical Characteristics of the Study Area
    - 3.1 Includes results of field activities to determine physical characteristics. These may include some, but not necessarily all, of the following:
        - 3.1.1 Surface Features
        - 3.1.2 Meteorology
        - 3.1.3 Surface-Water Hydrology
        - 3.1.4 Geology
        - 3.1.5 Soils
        - 3.1.6 Hydrogeology
        - 3.1.7 Demography and Land Use
        - 3.1.8 Ecology

4. Nature and Extent of Contamination
    - 4.1 Presents the results of Site characterization, both natural and chemical components and contaminants in some, but not necessarily all, of the following media:

4.1.1 Sources (lagoons, sludges, tanks, etc.)
4.1.2 Soils and Vadose Zone
4.1.3 Ground Water
4.1.4 Surface Water and Sediments
4.1.5 Air

5. Contaminant Fate and Transport
5.1 Potential Routes of Migration (i.e., air, groundwater, etc.)
5.2 Contaminant Persistence
5.2.1 If they are applicable (i.e., for organic contaminants), describe estimated persistence in the study area environment and physical, chemical, and/or biological factors of importance for the media of interest.
5.3 Contaminant Migration
5.3.1 Discuss factors affecting contaminant migration for the media of important (e.g., sorption onto soils, solubility in water, movement of ground water, etc.)
5.3.2 Discuss modeling methods and results, if applicable.

6. Baseline Risk Assessment
6.1 Human Health Evaluation
6.1.1 Exposure Assessment
6.1.2 Toxicity Assessment
6.1.3 Risk Characterization
6.2 Environmental Evaluation

7. Summary and Conclusions
7.1 Summary
7.1.1 Nature and Extent of Contamination
7.1.2 Fate and Transport
7.1.3 Risk Assessment
7.2 Conclusions
7.2.1 Data Limitations and Recommendations for Future Work
7.2.2 Recommended Remedial Action Objectives

Appendices

A. Technical Memorandum on Field Activities (if available)
B. Analytical Data and QA/QC Evaluation Results
C. Risk Assessment Methods

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Attachment D

Suggested Format for Feasibility Study Report

Executive Summary

1. Introduction
1.1 Purpose and Organization Report
1.2 Background Information (Summarized from RI Report)
    1.2.1 Site Description
    1.2.2 Site History
    1.2.3 Nature and Extent of Contamination
    1.2.4 Contaminant Fate and Transport
    1.2.5 Baseline Risk Assessment

2. Identification and Screening of Technologies
    2.1 Introduction
    2.2 Remedial Action Objectives – Presents the development of remedial action objectives for each medium of interest (i.e., ground water, soil, surface water, air, etc.) For each medium, the following should be discussed:
        Contaminants of interest
        Allowable exposure based on risk assessment (including ARARs)
        Development of remediation goals
    2.3 General Response Actions – For each medium of interest, describes the estimation of areas or volumes to which treatment, containment, or exposure technologies may be applied.
    2.4 Identification and Screening of Technology Types and Process Options – For each medium of interest, describe:
        2.4.1 Identification and Screening of Technologies
        2.4.2 Evaluation of Technologies and Selection of Representative Technologies

3. Development and Screening of Alternatives
    3.1 Development of Alternatives – Describes rationale for combination of technologies/media into alternatives. Note: This discussion may be by medium or for the Site as a whole.
    3.2 Screening of Alternatives (if conducted)
        3.2.1 Introduction
        3.2.2 Alternative 1
            3.2.2.1 Description
            3.2.2.2 Evaluation
        3.2.2 Alternative 2
            3.2.2.1 Description
        3.2.2.2 Evaluation
        3.2.3 Alternative 3
        3.2.3.1 Description
        3.2.3.2 Evaluation

4. Detailed Analysis of Alternatives
    - 4.1 Introduction
    - 4.2 Individual Analysis of Alternatives
        - 4.2.1 Alternative 1
            - 4.2.1.1 Description
            - 4.2.1.2 Evaluation
        - 4.2.2 Alternative 2
            - 4.2.2.1 Description
        - 4.2.2.2 Evaluation
        - 4.2.3 Alternative 3
        - 4.2.3.1 Description
        - 4.2.3.2 Evaluation
    - 4.3 Comparative Analysis

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Attachment E

Stibnite Mine Remedial Investigation and Feasibility Study (RI/FS) Statement of Work (SOW) Schedule

RI/FS Work Plan/Sampling and Analysis Plan (WP/SAP):

- Draft due within 120 days after the Effective Date of the Settlement Agreement/CO.
- Final Work Plan due within 90 days of receipt of consolidated Agency comments.

Data Summary Reports (DSRs):

- Draft DSRs due within 120 days completion of each season's field work or within 90 days of the receipt of final laboratory data, whichever is earlier. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the completion date. Within 5 days of the receipt of final laboratory data for the preceding field season, Respondent shall provide written notification to EPA identifying the receipt date of final laboratory data.
- Final DSRs due within 30 days of receipt of consolidated Agency comments.

Remedial Investigation Report (RI):

- Submit draft RI within 120 days after receipt of laboratory data from the final field season. Within 5 days of receipt of final laboratory data, Respondent shall provide written notification to EPA identifying receipt date of final laboratory data.
- Final RI due within 60 days of receipt of consolidated Agency comments.

Baseline Risk Assessment Report (BLRA):

- Submit draft BLRA within 60 days after submittal of Final RI.
- Final BLRA due within 60 days of receipt of consolidated Agency comments.

Feasibility Study (FS):

- Submit draft FS within 120 days after submittal of BLRA Report.
- Final FS due within 90 days of receipt of consolidated Agency comments.

Data Validation Summaries (DVSs):

- DVSs due within 120 days from the date of collection of the last sample from each sampling event. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the date of collection of the last sample from each sampling event.

Interim Deliverables

- Draft Interim Deliverables (i.e., Technical Memoranda for Treatability Studies Preliminary Remedial Goals, Remedial Action Objectives, etc.) as identified in the SOW, or as required by EPA, shall be due within 30 days receipt of notice by Respondent that said Deliverable is required.

- Final Interim Deliverables due within 60 days of receipt of consolidated Agency comments.

Quarterly Progress Reports

- Quarterly Progress Reports shall be due 15 days after the end of the previous calendar quarter.

[1]Documents may initially be released as "draft final" pending final resolution of issues

Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 11/16/2019 10:21:29 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jill Grant [jgrant@jillgrantlaw.com]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: Stibnite Mine AOC Draft
Attachments: Draft #1 11-15-2019.docx

Attached is a rough first draft of the Settlement Agreement. Given my workload this past two weeks, I did not have time to provide a draft to the other governmental agencies before I sent it to Midas. As a result, there will need to be adjustments in certain sections such as cost reimbursement of the various parties, and sections where I did not have needed information from the other Parties. I have written the settlement agreement with EPA as the lead agency/decision maker and IDEQ and the Tribes as the support agencies. EPA and USFS need to work out where to use "EPA determines that…" versus "EPA and USFS determine…", or "the United States determine…" because USFS retains its decision making authority on USFS land. For example, there is a statement in the agreement that says, "Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law." USFS and EPA will discuss whether this statement will read, "The United States (or EPA and the USFS) retain all authority…). The Support Agencies and the Federal agencies will need to talk about editing the document to adequately describe the involvement of the Support Agencies. We need to work out with the Support Agencies the best way to communicate their role. I think it is too cumbersome to say "in consultation with the Support Agencies" each time EPA or EPA/USFS makes a decision. I would prefer to have one statement in the beginning of the document that says EPA or EPA/USFS will consult with the Support Agencies when making decisions pursuant to this agreement. I have made an attempt at that language in the attached draft.

There are gaps in the Findings of Fact that EPA is working to fill. I have taken information from different sources/authors to fill that section in, so feel free to make suggestions/corrections.

The draft currently has Midas submitting documents only to EPA. The next draft will be modified to have documents sent to all of the parties so that EPA does not have to distribute them. I don't currently have all of the contact information I need to make that change, so we can do that in the next draft.

There may be a need to add language to the agreement to reflect modifications that are made to the SOW.

Again, this is a rough draft and I expect that there will be many corrections. EPA reserves the right to make changes to the document proposed and encourages all of the Parties to comment and suggest corrections and modifications.

Please forward my email to your respective teams.

Thank you.

- Elizabeth

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Seattle, WA 98101
(206) 553-0016

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ___

IN THE MATTER OF: [Site Name and Location] [Names of Respondents (if many, reference attached list)], Respondents Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622.	CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

MODEL ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION / FEASIBILITY STUDY

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), the United States Department of Agriculture Forest Service (USFS), the Idaho Department of Environmental Quality (IDEQ), the Shoshone-Bannock Tribes, and Midas Gold Corp., a Canadian corporation, and related Respondents Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc. (hereinafter collectively referred to as Respondents). The EPA, USFS, IDEQ, the Shoshone Bannock Tribes (Tribes), and Respondents are collectively referred to as the "Parties" and may be singularly referred to as a "Party." This Settlement provides for the performance of a remedial investigation and feasibility study (RI/FS) by Respondents and the payment of certain response costs incurred by EPA and USFS, IDEQ, and the Shoshone Bannock Tribes at or in connection with the Stibnite Mine Site (the "Site") generally located about fourteen (14) miles east of the town of Yellow Pine in Valley County, Idaho.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923-26 (1987), and the Secretary of the United States Department of Agriculture ("Secretary") by Executive Order 12580, 52 Fed. Reg. 2926 (January 23, 1987),3 C.F.R., 1987 Compilation, p. 193. The authority was further delegated to the EPA Regional Administrators on September 13, 1987, by EPA Delegation Nos. 14-14-A, 14-14-B, 14-14-C and 14-14-D. This authority has been redelegated by the Regional Administrator, EPA Region 10, and to the Office of Superfund Environmental Management Division Director. The Secretary's authority was further delegated to the Chief of the USFS by 7 C.F.R. § 2.60(a)(39). The Secretary's authority was re-delegated by the Chief of the FS to the FS Region 4 Regional Forester.

3. Consistent with EO 12580 and the NCP, EPA will be the lead agency for response actions involving the private portions of the Site, and the Forest Service will be the lead for response actions involving the NFS portions of the Site. Nevertheless, the parties have agreed that it is appropriate, for fiscal and efficiency reasons, for EPA to take the principal responsibility for implementation of the response action as a whole.

4. The State enters into this Settlement pursuant to Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. §§ 9620(f) and 9621(f) and will serve as Support Agency under this Settlement and will review response data and documents and consult with EPA and the USFS on decisions and approvals made under the Settlement.

5. The Tribes are a federally-recognized Indian Tribe with a governing body known as the Fort Hall Business Council. The Tribes assert that they are exercising their authorities pursuant to their inherent sovereign powers, the Fort Bridger Treaty (15 Stat. 673) the Fort Bridger Treaty (15 Stat. 673), and the Constitution and By-Laws of 1936. The Tribes will serve as a support agency under this Settlement and will review response data and documents and consult with EPA and the USFS on decisions approvals made under the Settlement.

6. The EPA RPM and the other governmental parties' Project Coordinators shall coordinate with each other to implement response actions at the Site. This coordination shall include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings with contractors, consultants, the state, trustees, or other participating third parties related to the Site, or any significant on-Site activities. In most cases, reasonable prior notice shall be considered seven (7) days. In the event that a meeting needs to be scheduled on shorter notice, the EPA RPM shall use their best efforts to contact their governmental parties' counterparts and shall determine the counterparts availability prior to scheduling the meeting.

7. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Section IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

8. This Settlement is binding upon EPA, the USFS, IDEQ, the Shoshone Bannock Tribe and upon Respondents and their heirs, successors and assigns. Any change in ownership or corporate status of a Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Settlement.

9. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

10. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

11. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into under this Settlement upon performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

12. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have

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the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXXV.

"Engineering Controls" shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. §9507.

"IDEQ" shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the Support Agencies incur in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XI (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XV (Emergency Response and Notification of Releases), Paragraph 89 (Work Takeover), Paragraph 114 (Access to Financial Assurance)], Paragraph 27.c (Community Involvement Plan), including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)], Section XVIII (Dispute Resolution), the costs of any cooperative agreements under Section 104(d)(1), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site, and all Interest on Past Response Costs.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other

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resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action pursuant to this Settlement; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at https://www.epa.gov/superfund/superfund-interest-rates.

"Stibnite Mine Site Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site from [x date] to the Effective Date of the Settlement, plus Interest on all such costs through such date.]

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Respondents" shall mean Midas Gold Corp., a Canadian corporation, and related Respondents Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc.

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXXIII (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean all area within the Stibnite Mining District in which Respondent has ownership interest in land or mining claims, and/or has conducted mine exploration drilling activities.

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"State" shall mean the State of Idaho

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to develop the RI/FS for the Site, as set forth in Appendix __ to this Settlement. The Statement of Work is incorporated into this Settlement and is an enforceable part of this Settlement as are any modifications made thereto in accordance with this Settlement.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"Tribe" shall mean the Shoshone Bannock Tribes.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any hazardous wastes as defined in the Idaho Hazardous Waste Management Act, Idaho Code 39-4403(8); (e) "pollutants" as defined in IDAPA 58.01.02.010.731; (f) "contaminants" as defined in IDAPA 58.01.11.007.10; (g) "hazardous materials" as defined in IDAPA58.01.02.010.40; or "deleterious materials" as defined in IDAPA 58.01.02.010.16.

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section XIII (Record Retention).

IV. FINDINGS OF FACT

13. The Stibnite Mining Site ("Site") is about fourteen (14) miles east of the town of Yellow Pine in Valley County, Idaho. The Site includes both National Forest Service lands and private lands, although most of the mining and processing areas are on patented (private) claims. The Site comprises a number of hazardous substances source areas resulting from mining along Meadow Creek and East Fork South Fork ("EFSF') Salmon River.

14. The Site is comprised of private, federal, and state land. Approximately 2,932 acres are under USFFS jurisdiction, 895 acres are private lands including lands owned by Midas Gold, 25 acres are administered by the Bureau of Reclamation, and 37 acres are administered by the State of Idaho.

15. The Site is located within the historic Stibnite Mining District (District). Mining operations began in the District in the 1920s and continued through the 1990s. Historical mining in the District mostly occurred in three general areas named Hangar Flats, Yellow Pine, and West End. Mining operations in the 1920s through the 1950s focused in the area of the proposed Hangar Flats and Yellow Pine pits. Mining operations in the late 1970s through mid-1990s were focused in the West End deposit and a pit known as the Homestake pit located within the area of

disturbance for Midas Gold's proposed Yellow Pine pit. Past mining, development, and reclamation activities in the District include: exploration, road construction, underground and surface mining, milling, tailings disposal, smelting, ore heap leaching, spent ore disposal, waste rock disposal, hydro-power development, water retention dam construction, saw mill, housing camps, a townsite, transmission line, and other associated infrastructure.

16. Antimony, tungsten and gold were mined at the Site. Most ore was mined by Bradley Mining Company using open-pit methods, although underground methods were used from 1927 to 1943. During World War II the mining area gained significance as the largest producer of strategic metals, specifically antimony and tungsten, which had many uses during the war. Early mining involved hauling ore rock from the underground workings to a mill site at the town of Stibnite where antimony and tungsten concentrates were separated from the pit-run ore in a mill using a selective flotation process. In 1943, Bradley Mining abandoned the underground workings and began the Yellow Pine Pit Mine. Waste tailings produced in the milling process were deposited in Meadow Creek above the mill site at the south end of the valley, using the upstream method tailings dam, and in areas along the creek downstream of the main tailings deposition area. A smelter was constructed at Stibnite in 1948 to process low grade gold and gold-antimony ore. The smelter existed at the site until 1955, when it was dismantled and moved to another mine.

17. Exploration of gold reserves in the area resumed in 1970. Mining operations in the late 1970s through mid-1990s were focused in the West End deposit and a pit known as the Homestake pit located adjacent to the historical Yellow Pine pit within the area of disturbance for Midas Gold's proposed Yellow Pine pit. Processing occurred primarily by heap leaching using both one-time use pads and on/off pads where the ore was loaded on, leached and then removed to allow the next load of ore to be placed. The leaching occurred primarily in the Meadow Creek valley. The use of a cyanide heap-leaching process to recover gold from low-grade ore was initiated and full-scale operation began in 1982. Heap-leach facilities were constructed along the north side of Meadow Creek to recover gold from low-grade ore.

18. There are several contaminant sources in the area including mill and smelter tailings, spent ore from heap leaching operations, contaminated soils in the smelter area, open pit mines, abandoned adits, tailings, and waste rock dumps.

19. [Place holder: insert hazardous substances at the Site. EPA reviewing information to summarize.]

20. A Preliminary Assessment/Site Investigation was conducted on public lands administered by the USFS in 2001. The Site was proposed for listing on the National Priorities List in 2001 (Federal Register, Vol. 66, No. 178, Thursday, September 13, 2001). There has been no change in the status since 2001, and the Stibnite/Yellow Pine Mining area, which includes the mine site, remains as "proposed" status on the NPL.

21. [Identification of the populations at risk, both human and non-human.]

22. [Health/environmental effects of some major contaminants.]

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23. [Whether the Site is on the [proposed] National Priorities List. Sample language follows:

24. Beginning in 1982, the IDEQ began monitoring the Site. The IDEQ sampled surface water and groundwater for hazardous substances generated by mining operations. Sampling results showed exceedances of cyanide for the EPA quality criteria for water for fresh water aquatic organisms.

25. On September 25, 1991, the EPA placed the Yellow Pine Mine Area on the Federal Facilities Docket. The Forest Service initiated a CERCLA Section 104 and 107 response and enforcement action at the Site.

26. In 1995, former owner/operator Stibnite Mine, Inc. entered into an Administrative Order on Consent (AOC) with the EPA Region 10 to mitigate environmental problems associated with the historic Bradley tailings in the upper Meadow Creek Valley. The AOC required Stibnite Mine, Inc. to stabilize the upper Meadow Creek Diversion Channel and to treat the flow exiting the diversion to meet water quality standards.

27. In 1999, the Forest Service completed a time-critical removal action at the pilot plant. The action consisted of covering and capping ponds constructed by Canadian Superior Mining (U.S.) Limited in 1979 and were used as a pilot test for processing gold. The pilot test used cyanide-leaching technology for ore extracted from the site (Forest Service 2004).

28. By the end of 1999, most of the SMI facilities and haul roads were reclaimed under a reclamation plan approved by IDEQ, IDL, and the Forest Service and implemented by IDL. Reclamation and closure continued in 2000.

29. In 2002, the Forest Service completed two time-critical removal actions (TCR). The first was to remove tailings from the Poison Pond area. The Poison Ponds were located along Meadow Creek south of Hecla's heap leach pad. Approximately 2,500 cubic yards were removed and placed in a repository cell located on the northwest Bradley waste dump. The second TCR was in the smelter stack area. This action consisted of removing the wood flume and ash to an off-site EPA approved facility. This TCR also included removal and placement of 400 cubic yards of soil in the same repository cell located on the northwest Bradley waste dump. The soil was removed from below the smelter stack flume.

30. The Forest Service, IDL, IDEQ, and EPA have performed several removal actions in the Stibnite/Yellow Pine Mining Area including removal of minor quantities of legacy tailings and the smelter stack in 2003, re-channelization of lower Meadow Creek in 2005, and covering certain legacy tailings-related impoundments with clean fill in 2009.

31. In the summer of 2003, the USFS and IDEQ found mine wastes containing very high levels of arsenic at the Stibnite Mine. These arsenic "hot spots" were in the northwest Bradley waste dump, which was an unsecured area with unrestricted public access. In 2004, EPA through its contractor, Environmental Quality Management (EQM), implemented a removal of the contaminated waste, regrading of the removal area, and soil placed on top. The area was later seeded with native plants and covered with straw. Excavated waste was placed in the on-site

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Forest Service "repository cell", an area designed to safely store the waste and prevent exposure to the public.

32. In 2004, a Meadow Creek Engineering Evaluation/Cost Analysis (EE/CA) was completed under a Forest Service contract by Science Applications International Corporation (SAIC), including specifications and design of the recommended alternative. Also, in 2004, a Biological Assessment (BA) was completed, as required by the Endangered Species Act (ESA), and submitted to the USFWS and National Marine Fisheries Service.

33. In 2005, the Forest Service and EPA completed a CERCLA removal action in Meadow Creek between Blowout Creek and its confluence with the EFSFSR. Legacy tailings that were contributing elevated levels of arsenic to the stream were excavated from a 19-acre area and placed in an engineered repository in the SODA and 3,500 feet of stream channel was reconstructed, providing habitat suitable for salmonid spawning.

34. In 2009, Respondents began acquiring land and mineral interests at the Site and is currently has ownership and operational control over the lands and mining claim(s) at the Site. Midas Gold has conducted exploratory drilling and is currently seeking a mine operating permit through the National Environmental Policy Act process.

35. Respondent proposes to develop and operate a mining operation that produces gold and silver doré, and antimony concentrates from ore deposits associated with Midas Gold's mining claims and rights in the project area. In addition, Respondents' proposed mining plan states that Respondents will undertake cleanup and reclamation at the Site before, during, and after the proposed mining.

36. In general, Midas Gold's proposed development of the mineral resources would include construction of access and haul roads within the mine site; construction of supporting infrastructure for the mine site (e.g., worker housing and support facilities); open pit mining; ore processing at the mine site for the recovery of gold, silver, and antimony; placement of tailings in a composite-lined TSF; and placement of development rock in engineered and designed facilities.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

37. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Stibnite Mine Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondents ares "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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d. Respondents are responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondents are the "owners" and/or "operators" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in Paragraphs ___ of the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The actions required by this Settlement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

g. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement.

VI. SETTLEMENT AGREEMENT AND ORDER

38. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

39. **Selection of Contractors, Personnel**. All Work performed under this Settlement shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of Work, Respondents retain additional contractors or subcontractors, Respondents shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least __ days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within ___ days after EPA's disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-

2)," EPA/240/B-01/002 (Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

40. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph 20 (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within ___ days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to all Respondents.

41. EPA has designated Kathy Cerise of the Superfund Emergency Management Division in EPA Region 10 as its Remedial Project Manager (RPM). EPA will notify Respondents of a change of its RPM. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Settlement, shall be directed to the EPA RPM in accordance with Paragraph 33.a.

42. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's RPM shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the EPA RPM from the area under study pursuant to this Settlement shall not be cause for stoppage or delay of Work.

VIII. WORK TO BE PERFORMED

43. Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at https://semspub.epa.gov/src/document/11/128301, "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at http://semspub.epa.gov/src/document/11/156756, and guidance referenced therein, and guidance referenced in the SOW. If a mine operating permit is not issued and/or mining does not occur at the Site, Respondents remain obligated to perform the Work. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, evaluating and proposing early actions based on the results of the human health and ecological risk assessments, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being

considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

44. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section IX (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section IX (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

45. **Activities and Deliverables**

a. Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at https://semspub.epa.gov/src/document/11/128301, "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at http://semspub.epa.gov/src/document/11/156756, and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

46. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section IX (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section IX (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

47. **Modification of the RI/FS Work Plan**

a. If at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to EPA's Project Coordinator within [redacted] days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify EPA's RPM by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall modify the RI/FS Work Plan in writing accordingly or direct Respondents to modify and submit the modified RI/FS Work Plan to EPA for approval. Respondents shall perform the RI/FS Work Plan as modified.

c. EPA may determine that, in addition to tasks defined in the initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Respondents shall perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a thorough RI/FS.

d. Respondents shall confirm their willingness to perform the additional work in writing to EPA within 7 days after receipt of the EPA request. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondents shall complete the additional work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the work itself, to seek reimbursement from Respondents for the costs incurred in performing the work, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

48. **Off-Site Shipments**

a. Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project

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Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the RI/FS and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

49. **Meetings**. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the preparation of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

50. **Progress Reports**. In addition to the deliverables set forth in this Settlement, Respondents shall submit written monthly progress reports to EPA by the ___ day of the following month. At a minimum, with respect to the preceding month, these progress reports shall:

a. describe the actions that have been taken to comply with this Settlement;

b. include all results of sampling and tests and all other data received by Respondents;

c. describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion; and

d. describe all problems encountered in complying with the requirements of this Settlement and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

IX. SUBMISSION AND APPROVAL OF DELIVERABLES

51. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to EPA's RPM at1200 6th

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Avenue, Seattle, Washington 98101, (206) 553-2589, cerise.kathy@epa.gov and to the State at **[insert contact information]**. Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 33.b. All other deliverables shall be submitted in the electronic form specified by EPA's RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (i) in the ESRI File Geodatabase format; and (ii) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://edg.epa.gov/EME/.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

52. **Approval of Deliverables**

a. **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Settlement EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmissions**. Upon receipt of a notice of disapproval under Paragraph 34.a(1) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 34.a(1), Respondents shall, within __ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation**. Upon approval, approval upon conditions, or modification by EPA under Paragraph 34.a (Initial Submissions) or Paragraph 34.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (ii) Respondents shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section XX (Stipulated Penalties) for violations of this Settlement.

53. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

54. In the event that EPA takes over some of the tasks, but not the preparation of the Remedial Investigation Report ("RI Report") or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into those reports.

55. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: RI/FS Work Plan; Sampling and Analysis Plan; draft RI Report; Treatability Testing Work Plan; Treatability Testing Sampling and Analysis Plan; Treatability Testing Health and Safety Plan; and draft FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement.

56. For all remaining deliverables not listed in Paragraph 37, Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

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57. **Material Defects**. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 34.a (Initial Submissions) or 34.b (Resubmissions) due to such material defect, Respondents shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section XX (Stipulated Penalties).

58. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

59. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

60. **Laboratories**

a. Respondents shall ensure that EPA, the USFS, IDEQ, and the Shoshone Bannock Tribes' personnel and its their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements, and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (https://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (https://www.epa.gov/ttnamti1/airtox.html).

b. Upon approval by EPA, after a reasonable opportunity for review and comment by the USFS, the State, and the Shoshone Bannock Tribes, Respondents may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical

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methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the approved QAPP.

61. **Sampling**

a. Upon request, Respondents shall provide split or duplicate samples to EPA. Respondents shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondents split or duplicate samples of any samples they take as part of EPA's oversight of Respondents' implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. Respondents shall submit to EPA, in the next monthly progress report as described in Paragraph 32 (Progress Reports) the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

c. Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

XI. PROPERTY REQUIREMENTS

62. **Agreements Regarding Access and Non-Interference**. If the Site, or any other property where access is needed to implement this Settlement, is owned or controlled by Respondents, Respondents shall, commencing on the Effective Date, provide EPA, USFS, IDEQ,

and the Shoshone Bannock Tribes, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, as may be needed to implement this Settlement. Beginning on the Effective Date of this Settlement, USFS shall permit access to the portions of the Site located on federally managed land to Respondents and its authorized representatives, as necessary to perform the Work required under this Settlement.

63. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents (other than the Parties), Respondents shall use best efforts to secure an agreement, enforceable by Respondents and the United States, providing that such owner shall (i) provide EPA, USFS, IDEQ, the Shoshone Bannock Tribes and Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Settlement; and refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or] interfere with or adversely affect the implementation or integrity of the Work. Respondents shall provide a copy of such access agreement(s) to EPA.

64. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XVI (Payment of Response Costs).

65. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's efforts to secure and ensure compliance with such Institutional Controls.

XII. ACCESS TO INFORMATION

66. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

67. **Privileged and Protected Claims**

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a. Respondents may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 51.b, and except as provided in Paragraph 51.c.

b. If Respondents assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

68. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA under this Section or Section XIII (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA [and the State], or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

69. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION

70. Until 10 years after EPA provides Respondents with notice, pursuant to Section XXX (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the

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last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

71. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 51 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

72. Each Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA, USFS, or the State and that it has fully complied with any and all EPA, USFS, and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIV. COMPLIANCE WITH OTHER LAWS

73. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XIX (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

74. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify EPA's RPM or, in the event of

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his/her unavailability, the Regional Duty Officer at (206) 553-1263 and the National Response Center at (800) 424-8802 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XVI (Payment of Response Costs).

75. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify EPA's RPM or, in the event of his/her unavailability, the Regional Duty Officer at (206) 553-1263, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

76. For any event covered under this Section, Respondents shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XVI. PAYMENT OF EPA, USFS, IDEQ, and TRIBES' RESPONSE COSTS

77. Payment for EPA Past Response Costs

a. Within 30 days after the Effective Date, Respondents shall pay to EPA $___ for Past Response Costs. Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

For ACH payment:

Respondents shall make payment to EPA by Automated Clearinghouse (ACH) to:

500 Rivertech Court
Riverdale, Maryland 20737
Contact – John Schmid 202-874-7026 or REX, 1-866-234-5681
ABA = 051036706

Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

For online payment:

Respondents shall make payment at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.]

b. At the time of payment, Respondents shall send notice that payment has been made to Kathy Cerise, 1200 Sixth Avenue, MC___, Seattle, WA 98101, and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

c. **Deposit of EPA Past Response Costs Payments**. The total amount to be paid by Respondents pursuant to Paragraph 61.a shall be deposited by EPA in the Stibnite Mine Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. **Payments for EPA Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis EPA will send Respondents a bill requiring payment that includes a cost summary. Respondents shall make all payments within thirty (30) days of receipt of each bill requiring payment. Respondents shall make all payments required by this Paragraph in the manner required by Paragraph 76, with notice as required by Subparagraph 76.b. The total amount paid will be deposited by EPA in the Stibnite Mine Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

78. **Interest**. In the event that any payment for Past Response Costs or Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States

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by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XX (Stipulated Penalties).

79. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section XVIII (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 62 (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such a dispute, Respondents shall submit a Notice of Dispute in writing to EPA's Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 62, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to EPA's Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 62. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 62. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVII. NATURAL RESOURCE DAMAGES

80. For the purposes of Section 113(g)(1) of CERCLA, the Parties agree that, upon the Effective Date of this Settlement for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action.

XVIII. DISPUTE RESOLUTION

81. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

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82. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, or, in the case of disputes between Settling Defendant and the USFS, IDEQ, or the Tribes under Paragraphs [payment of costs]__, they shall send EPA, or if applicable, another Party, a written Notice of Dispute describing the objection(s) within 20 days after such action. Respondents shall have 20 days from EPA's or another Party's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period maybe extended at the sole discretion of the Party with whom Respondents raised the dispute. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

83. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 30 days after the end of the Negotiation Period, submit a statement of position to EPA's RPM, or if applicable, to another Party's Project Manager. The Party with whom Respondents raised the dispute may, within 30 days thereafter, submit a statement of position. Thereafter, a management official at the appropriate supervisory level will issue a written decision on the dispute to Respondents. EPA's or another Party's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's or another Party's decision, whichever occurs.

84. Except as provided in Paragraph 64 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph 79, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XIX. FORCE MAJEURE

85. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

86. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondents shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Emergency Management Division, EPA Region 10,

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within 24 hours of when Respondents first knew that the event might cause a delay. Within 5 days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 70 and whether Respondents have exercised their best efforts under Paragraph 70, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

87. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

88. If Respondents elect to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 70 and 71. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

89. The failure by EPA, USFS, IDEQ, or the Tribes to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XX. STIPULATED PENALTIES

90. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 76.a and 77 for failure to comply with the obligations specified in Paragraphs 76.b

and 77, unless excused under Section XIX (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

91. **Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones**

Penalty Per Violation Per Day	**Period of Noncompliance**
$ 5,000	1st through 14th day
$ 7,500	15th through 30th day
$ 10,000	31st day and beyond

a. **Obligations**

(1) Payment of any amount due under Section XVI (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXVIII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 64 (Contesting Future Response Costs).

(4) [Will insert list of major deliverables and milestones when SOW is finalized.]

92. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in Paragraph 76.b:

Penalty Per Violation Per Day	**Period of Noncompliance**
$ 2,500_____	1st through 14th day
$ 5,000_____	15th through 30th day
$ 7,500_____	31st day and beyond

93. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of _____. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 89 (Work Takeover) and 114 (Access to Financial Assurance).]

94. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section IX (Submission and Approval of Deliverables), during the period, if

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any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the appropriate EPA Management Official, under Paragraph 68 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

95. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

96. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XVIII (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 62 (Payments for Future Response Costs).

97. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 79 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 81 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

98. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement.

99. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover).

100. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

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XXI. COVENANTS BY THE UNITED STATES

101. Except as provided in Section XXII (Reservations of Rights by the United States), the United States covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work , Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XXII. RESERVATIONS OF RIGHTS BY THE UNITED STATES

102. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

103. The covenant not to sue set forth in Section XXI (Covenants by the United States) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement;

b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

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104. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph 89.a, Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 89.b. Funding of Work Takeover costs is addressed under Paragraph 114 (Access to Financial Assurance).]

c. Respondents may invoke the procedures set forth in Section XVIII (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 89.b. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 89.b until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 68 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY RESPONDENTS

105. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Past Response Costs, Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Idaho Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law;

106. Except as provided in Paragraph 95 (Waiver of Claims by Respondents) these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XXII (Reservations of Rights by EPA), other than in Paragraph 88.a (liability for failure to meet a requirement of the Settlement), 88.d (criminal liability), or 88.e (liability for violations of federal or state law), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

107. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

108. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

109. **Waiver of Claims by Respondents**

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver**. For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

b. **Exception to Waiver**

The waiver under this Paragraph 108 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.

XXIV. OTHER CLAIMS

110. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

111. Except as expressly provided in Paragraphs 95 (Waiver of Claims by Respondents) and Section XXI (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

112. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXV. EFFECT OF SETTLEMENT/CONTRIBUTION

113. Except as provided in Paragraphs 95 (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XXIII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

114. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, Past Response Costs, and Future Response Costs.

115. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

116. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it

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for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

117. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA and/or the USFS, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XXI (Covenants By the United States).

118. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from such Respondent the payments required by Paragraphs 61 (Payment for Past Response Costs) and, if any, Section XX (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 100 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the United States gives notice to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by the United States.

XXVI. INDEMNIFICATION

119. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA and the USFS's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

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120. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

121. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVII. INSURANCE

122. No later than 30 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXX (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming the EPA and USFS as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA and the USFS that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to the contractor or subcontractor, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Stibnite Mine Site, Idaho and the EPA docket number for this action.

XXVIII. FINANCIAL ASSURANCE

123. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $ [ ] ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to

EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

124. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of Paragraph 115 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

[NOTE REGARDING PARAGRAPH 114 (Access to Financial Assurance): Case teams should make sure that the "trigger" for obtaining funds and/or work under the financial assurance mechanism is consistent with the trigger in the Settlement, e.g., if the Settlement allows EPA to access the funds in the event of a Work Takeover or a Respondent's failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.]

125. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 89.b, then, in accordance with any applicable financial assurance mechanism, EPA is

entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 114.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 114.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 89.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraphs 109.e or 109.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within __ days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 114 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Stibnite Mine Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 114 must be reimbursed as Future Response Costs under Section XVI (Payment of Response Costs).

126. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 110, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XVIII (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested

modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 110.

127. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXX (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XVIII (Dispute Resolution).

XXIX. MODIFICATION

128. EPA's RPM may modify any plan or schedule or the SOW]in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of EPA's RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

129. If Respondents seek permission to deviate from any approved work plan or schedule or the SOW, Respondents' RPM shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph 117.

130. No informal advice, guidance, suggestion, or comment by EPA's RPM or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXX. NOTICE OF COMPLETION OF WORK

131. When EPA determines that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of Future Response Costs and Record Retention, EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Work Plan, if appropriate, in order to correct such deficiencies. Respondents shall implement the modified and approved RI/FS Work Plan and shall submit a modified draft RI Report and/or FS Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Settlement.

XXXI. INTEGRATION/APPENDICES

132. This Settlement [and its appendices] constitute[s] the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations,

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agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. [The following appendices are attached to and incorporated into this Settlement:

a. "Appendix _" is the description and/or map of the Site

b. "Appendix _" is the SOW.

XXXII. ADMINISTRATIVE RECORD

133. EPA and the USFS will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of the RI/FS upon which selection of the remedial action may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the remedial action, and all communications between Respondents and state, local, or other federal authorities concerning selection of the remedial action.

XXXIII. EFFECTIVE DATE

134. This Settlement shall be effective on the date that it has been signed by all of the Parties [and concurred on by the United States Attorney General].

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____ _____

Dated [Name]
Regional Administrator (or designee/delegatee), Region __

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Signature Page for Settlement Regarding _____ Superfund Site

FOR _____:
[Print name of Respondent]

_____
Dated

_____
[Name]
[Title]
[Company]
[Address]

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Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 11/16/2019 12:08:22 AM
To: Lisa.O'Hara@deq.idaho.gov; Bradley M. Marten [bmarten@martenlaw.com]; Jill Grant [jgrant@jillgrantlaw.com]
CC: Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: Stibnite Mine Site
Attachments: Fremerman 10-29-2019 comments on 2019-07-25 Draft Stibnite SOW (004).docx

Hi Brad, Jill, and Lisa. I'm not sure I ever sent you Gary's comments from October 29th on the SOW. Here you go…

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Appendix 1

STATEMENT OF WORK FOR THE
STIBNITE MINE REMEDIAL INVESTIGATION / FEASIBILITY STUDY
Valley County ID near Yellow Pine, ID

Purpose

This Statement of Work (SOW) sets forth the requirements for conducting a Remedial Investigation and Feasibility Study (RI/FS) at the Stibnite Mine Site ("Site") located in northwest Idaho approximately 14 miles from the town of Yellow Pine (see Figure 1). The purpose of the RI/FS is to investigate the nature and extent of contamination at the Site and to develop and evaluate remedial alternatives, as appropriate. This SOW provides an overview of Work that will be carried out by Midas Gold Idaho, Inc. ("Midas Gold" or "Respondent") as it implements the RI/FS at the Site.

In September 2016, Midas Gold filed a Plan of Restoration and Operations ("PRO") with the United States Forest Service ("USFS") for the redevelopment of Stibnite, and plans to undertake mining, mineral processing and restoration activities on portions of the Site that will result in landscape-scale changes to many of the existing Site features. As such, the scope and timing of sampling and other elements of the RI/FS will consider potential mining activies in the PRO, any modifications and subsequent remediation ~~must be consistent with the PRO and the subsequent restoration~~. This will require flexibility in the RI/FS and could require a phased approach to accelerate certain activities.

The Site is defined as the ~~features~~ areas described below (general locations summarized on Figure 2) and the areal extent of contamination from those features and all suitable areas in ~~very~~ close proximity to the contamination necessary for response action implementation:

1. **Yellow Pine Pit (Figure 3)** – The Yellow Pine Pit (formerly known as "The Glory Hole") was actively mined during the 1930s through the 1950s for antimony, tungsten, gold and silver. The pit is located on Midas Gold patented land, and most of the waste rock dumps associated with the pit are adjacent to the pit; some of the waste rock dumps are located on areas subject to unpatented mining claims owned by Midas Gold on USFS managed land. During active mining, the East Fork of the South Fork of the Salmon River (EFSFSR) was routed around the pit through the Bailey Tunnel but was allowed to return to its natural course through the pit after the Bailey Tunnel was abandoned in the mid-1950s. The EFSFSR now runs through the pit, but does not currently support fish passage to the headwaters. The Yellow Pine Pit, and the majority of waste rock dumps associated with it, are within the footprint of Midas Gold's proposed PRO.

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2. **Bradley Tailings Pile (Figure 4)** – The Bradley Tailings Pile, also known as the Historical Tailings and Spent Ore Disposal Area, is located on Midas Gold patented land. Approximately 3 million tons of mine tailings generated during the 1940s and 1950s are stored in this area, and they are overlain by approximately 6 million tons of spent heap leach ore placed in the 1980s and 1990s. The downstream end of the Tailings Pile is constrained by a structure known as the Keyway Dam, and a wetland exists downgradient of the Keyway Dam, which is also referred to as the Keyway Marsh. Meadow Creek is diverted around the south side of the Tailings Pile. The Bradley Tailings Pile is within the footprint of Midas Gold's proposed PRO.

3. **Hangar Flats Tailings Pile (Figure 5)** – The Hangar Flats Tailings Pile, also known as the Hecla Heap Leach Facility, is a reclaimed heap-leach facility which was built and operated in the 1990s to extract oxide gold and silver. The facility is located on Midas Gold controlled patented land, and is within the footprint of Midas Gold's proposed PRO.

4. **Bailey Tunnel (Figure 6)** – The Bailey Tunnel was constructed in the early 1940s to divert the EFSFSR around the Yellow Pine Pit and into Sugar Creek to facilitate open pit mining operations. The tunnel was no longer used after the mid-1950s, following cessation of open pit mining activities. The Bailey Tunnel is on Midas Gold patented land, and is within the footprint of Midas Gold's proposed PRO.

5. **DMEA Adit and Waste Rock Dump (Figure 7)** – The Defense Minerals Exploration Administration (DMEA) Adit and Waste Rock Dump are mining-related disturbances resulting from underground exploration activities during the 1950s. The adit and dump are located on areas subject to unpatented mining claims owned by Midas Gold on USFS managed land, and are not within the footprint of the Midas Gold PRO.

6. **Bonanza Adit (Figure 8)** – The Bonanza Adit area is a mining-related disturbance in the Sugar Creek drainage resulting from underground exploration activities during the 1930s and 1940s. The Bonanza Adit area is subject to unpatented mining claims owned by Midas Gold located on USFS managed land, and is not within the footprint of the Midas Gold PRO.

7. **Cinnabar Tunnel (Figure 9)** – The Cinnabar Tunnel is a mining-related disturbance resulting from underground exploration activities during the late 1920s and early 1930s. The Tunnel is located on areas subject to unpatented mining claims on USFS managed land; the tunnel portal is within the footprint of the Midas Gold PRO.

8. **Meadow Creek Adit (Figure 10)** – The Meadow Creek Adit and associated waste rock dumps are mining-related disturbances that resulted from underground mining activities from the 1920s through the 1940s. The adit and waste rock dumps are located on Midas Gold controlled patented land, and are within the footprint of Midas Gold's proposed PRO.

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This RI/FS SOW is attached to and is incorporated into the Settlement Agreement and Administrative Order on Consent (AOC) for the Site. Technical work described in this SOW is intended to provide more information to the Respondent for the purpose of implementing the AOC and is not intended to change the meaning of any AOC language. This SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the [HYPERLINK "http://www.epa.gov/oilspill/pdfs/40cfr300.pdf" \h] [HYPERLINK "http://www.epa.gov/oilspill/pdfs/40cfr300.pdf" \h]commonly called the National Contingency Plan (NCP), 40 CFR 300. The AOC and this SOW are hereafter referred to interchangeably as the "AOC." Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the AOC will control any interpretive disputes.

Scope

The specific RI/FS activities to be conducted at the Site are set forth in ~~seven~~ six separate tasks.

Task 1 – Scoping
Task 2 – Community Relations
Task 3 – Site Characterization
Task 4 – Treatability Studies
Task 5 – Feasibility Study
Task 6 – Detailed Analysis of Remedial Alternatives

Oversight

Work conducted under the AOC is intended to satisfy the legal requirements for the RI/FS established under both Section 104(a)(l) of CERCLA and Idaho's Environmental Protection & Health Act, Idaho Code§§ 39-101 to 39-130; the Hazardous Waste Management Act of Idaho, Idaho Code§§ 39-4401 to 39-4432; and Idaho's Water Quality Act, Idaho Code§§ 39-3601 et seq. As such, oversight of the Respondent's Work conducted under the SOW will be carried out by EPA, the USFS, and the IDEQ (the Agencies) in a manner to assure the satisfaction of all federal and state requirements. The Respondent shall support the Agencies' initiation and conduct of activities related to the implementation of oversight activities.

Respondent shall submit all documents or deliverables required as part of this SOW to EPA, for EPA's review and approval. All work products submitted to EPA are subject to EPA approval, including but not limited to, submissions specified in the Work Plan(s) or Settlement Agreement and additional work products that may be required under Work Plan modifications. Respondent shall ensure that all plans, reports, and records are comprehensive, accurate, and consistent in content and format with the NCP and relevant EPA guidance.

Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA to aid in project planning. These reports must document

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the status of all work products under development. These reports shall describe the actions and decisions taken, and problems encountered during the previous quarter, and activities scheduled during the upcoming reporting period. Progress reports shall also summarize the extent to which the procedures and dates set forth in the AOC and the Work Plan are being met. These reports shall be submitted according to the Schedule included as Attachment E.

Schedule

Refer to Attachment E for the primary and potential secondary deliverables and associated schedules.

Guidance

The Respondent shall conduct the RI/FS, and produce technical reports that are in accordance with the AOC, SOW, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (RI/FS Guidance) (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance relevant to conducting an RI/FS. A list of the pertinent guidance documents is included at the end on this SOW. Attachments A, B, C, and D include suggested document formats for the Work Plan, Sampling and Analysis Plan, RI Report, and FS Report, respectively. The RI/FS guidance describes the required report contents.

Roles and Responsibilities

The Respondent shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the RI/FS, except as otherwise specified in the AOC. At the completion of the RI/FS, EPA will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision (ROD).

Remedy Requirements

The remedial action alternative selected by the EPA will meet the cleanup standards specified in Section 121 of CERCLA. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements (ARARs) of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS report including the baseline risk assessment (BLRA), as adopted by the EPA, will, with the administrative record, form the basis for the selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

TASK 1 - SCOPING

Scoping is the initial planning process of the RI/FS. Respondent shall document the specific project scope in the RI/FS Work Plan. During the scoping process, the Site-

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specific objectives of the RI/FS, including the identification of potential preliminary remediation goals (PRGs) will be proposed by the Respondent and approved by EPA. In addition to developing the Site-specific objectives of the RI/FS, Respondent shall define a general project management approach for the Site, which shall be documented by the Respondent in a draft Work Plan. Because the Work required to perform an RI/FS is not fully known at the outset and is phased in accordance with a Site's complexity and the amount of available information, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study. When scoping the specific aspects of this project, Respondent shall meet with EPA either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site.

The following activities shall be performed by the Respondent as a function of the project planning process.

a. Site Background

The Respondent shall gather, analyze, and present existing Site background information and shall conduct a work session to assist in planning the scope of the RI/FS.

Collect and analyze existing data and document the need for additional data

Before planning RI/FS activities, all existing Site data shall be thoroughly compiled and reviewed by the Respondent. Historical data shall be submitted electronically according to EPA Region 10 specifications. The Respondent shall refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources. Specifically, this must include presently available data relating to the varieties and quantities of hazardous substances at the Site, and past disposal practices. This must also include results from any previous sampling events that may have been conducted. Only data that is determined by EPA to be of appropriate type and quality to support specific intended uses shall be utilized in the RI/FS. This includes data utilized to develop the BLRA, to identify additional data needs to better characterize the Site, to better define potential applicable or relevant and appropriate requirements (ARARs), and to develop a range of preliminarily identified remedial alternatives. Data Quality Objectives (DQOs) shall be established, subject to EPA's approval, which shall be used to assess the usefulness of existing data and to direct future data gathering efforts. Decisions regarding the necessary data needs and DQOs will be made by EPA. Guidance on systematic planning using the data quality objectives process (EPA QA/G-4). Washington, D.C.: 121. [HYPERLINK "http://www.epa.gov/quality/qs-docs/g4-final.pdf"], U.S. EPA (2006)

Conduct site visit

The Respondent and EPA shall conduct a Site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of contamination as well as potential exposure pathways and receptors at the Site. During the Site visit the Respondent shall observe the Site's physiography, hydrology, geology, and demographics, as well as natural resource, ecological, and

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cultural resources. This information shall be utilized to better scope the project and to determine the extent of additional data necessary to characterize the Site, better define potential ARARs, and assist in identifying potential remedial alternatives.

b. *Project Planning*

Once the Respondent has collected and analyzed existing data and conducted a Site visit, the specific project scope shall be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols. The Respondent shall meet with EPA's Remedial Project Manager (RPM) regarding the following activities and before drafting the scoping deliverables listed below.

Preliminary conceptual site model

Information on the waste sources, pathways, receptors, cultural resources, and other information concerning the Site is used to develop a conceptual understanding of the Site which helps to evaluate potential risks to human health and the environment. The Conceptual Site Model (CSM) should include known and suspected sources of contamination, types of contamination and affected media/resources, known and potential routes of migration, and known or potential human and environmental receptors. This effort, in addition to assisting in identification of locations where sampling is necessary, will also assist in the identification of potential remedial technologies. Additional information for evaluating exposure concerns through the use of a CSM is provided in the DQO Guidance. The CSM must be updated as new information becomes available.

The preliminary CSM associated with the ecological risk assessment (ERA) must include species and their habitats that could be impacted by Site-related contamination based on information generated from a historical review and a cultural resource audit and will show the relationships among species and potential exposure pathways. The Respondent shall provide assistance to the RPM in collecting this information as requested. If information is not provided to the Respondent within the timeframe specified by EPA, the RPM will notify the Respondent in writing either to proceed with the preparation of the RI/FS Work Plan without the information or to delay its submittal pending receipt of the information. The preliminary CSM for the human health risk assessment (HHRA) must identify potential receptor populations and potential exposure pathways.

Refine and document preliminary remedial action objectives and alternatives

Once existing Site information has been analyzed and an understanding of the potential Site risks have been determined, the Respondent shall review and, if necessary, refine the Remedial Action Objectives (RAOs) that have been identified by EPA for each actually or potentially contaminated medium. The revised RAOs

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must be documented in a technical memorandum and subject to EPA's approval. The Respondent shall then identify a preliminary comprehensive range of potential remedial action alternatives and associated technologies. The range of potential alternatives shall encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative.

Document the need for treatability studies

Respondent shall conduct bench and/or pilot studies as necessary to determine the suitability of various remedial technologies to Site conditions and problems. Technologies that may be suitable to the Site should be identified as early as possible to determine whether there is a need to conduct treatability studies to better estimate costs and performance capabilities. Should treatability studies be determined to be necessary, a testing plan identifying the types and goals of the studies, the level of effort needed, a schedule for completion, and the data management guidelines should be submitted to EPA for review and approval. Upon EPA approval, a test facility and any necessary equipment, vendors, and analytical services will be procured by the contractor.

When the treatability studies are completed, Respondent shall evaluate the results to assess the technologies with respect to the goals identified in the test plan. A report summarizing the testing program and its results shall be prepared by the Respondent and presented in the final RI/FS report. The Respondent shall implement all management and quality control review activities for this task. If remedial actions involving treatment have been identified by the Respondent or EPA, treatability studies shall be required, except where the Respondent can demonstrate to the satisfaction of EPA that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) should be planned to occur concurrently with Site characterization activities.

Begin preliminary identification of potential ARARs

The Respondent shall conduct a preliminary identification of potential ARARs (chemical-specific, location-specific, and action-specific) to assist in the refinement of the RAOs and the initial identification of remedial alternatives. ARAR identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.

c. *Scoping Deliverables*

At the conclusion of the project planning phase, the Respondent shall submit an RI/FS Work Plan, a Sampling and Analysis Plan (SAP) consisting of a Field Sampling Plan (FSP) and Quality Assurance Project Plan (QAPP), and a Site Health and Safety Plan (HASP). These plans must be reviewed and approved by EPA prior to the initiation of field activities.

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RI/FS Work Plan

A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM for review and approval. The Work Plan will ~~fully account~~ take in to consideration for the timing and scope of potential mining and processing activities associated with the PRO. This could include a phased approach to focus on issues of most concern or requiring early action. The Work Plan shall be developed in conjunction with the SAP and the Site HASP, although each plan may be delivered under separate cover. The Work Plan shall include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan shall include the rationale for performing the required activities. Specifically, the Work Plan must present a statement of the problem(s) and potential problem(s) posed by the Site and the objectives of the RI/FS. Furthermore, the plan must include a Site background summary setting forth the Site description including the geographic location of the Site, and to the extent possible, a description of the Site's physiography, hydrology, hydrogeology, geology, demographics, ecological, cultural, and natural resource features; a synopsis of the Site history and a description of previous responses that have been conducted at the Site by local, state, federal, or private parties; and a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified, and their distribution among the environmental media at the Site. In addition, the plan must include a description of the Respondent's Site management strategy developed during scoping and a preliminary identification of remedial alternatives and data needs for evaluation of remedial alternatives. The plan must reflect coordination with treatability study requirements, if treatability studies are initiated. It must include a process for and manner of identifying potential ARARs (chemical-specific, location-specific, and action-specific).

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Finally, the major part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task and for the BLRA, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the RPM. This includes the deliverables set forth in the remainder of this SOW; a schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to the RPM and meetings and presentations to EPA and the Support Agencies at the conclusion of each major phase of the RI/FS. The Respondent must refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required Work Plan, and a suggested format can be found in Attachment A.

Sampling and Analysis Plan

The Respondent shall prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and

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that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a FSP and a QAPP. A suggested format for the SAP (inclusive of the FSP and QAPP) is provided in Attachment B. The SAP, FSP,and QAPP shall be prepared in accordance with EPA DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006).

The FSP must define in detail the sampling and data-gathering methods that will be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytic methods to identify contamination and remediate contamination consistent with the levels for remedial action objectives identified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), pages 51425-26 and 51433 (December 21, 1988). The QAPP shall be prepared in accordance with requirements in EPA QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision) and specifically should contain the twenty-four elements specified in Table 11 – List of QA Project Plan Elements, EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Investigations, and EPA QA/G-4 Guidance for the Data Quality Objective Process. All sampling and analyses performed pursuant to this SOW shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain-of-custody procedures. In addition, the QAPP must address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

Field personnel must be trained and conduct work in accordance with EPA and OSHA requirements and guidance. The Respondent shall demonstrate, in advance and to the satisfaction of EPA, that each laboratory they may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by EPA will be used. If the laboratory is not in the CLP program, a laboratory QA program must be submitted for EPA's review and approval. EPA may require that the Respondent submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment, and material specifications. The Respondent shall provide assurances that EPA has access to laboratory personnel, equipment, and records for sample collection, transportation, and analysis.

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Potential Target Analytes

The following list of chemicals include the initial Chemicals of Potential Concern (COPCs). The initial COPC list includes, but is not limited to, the analytes listed below. The Respondent shall review this list for surface water, groundwater, sediments, soils, and vegetation analytes relative to ARARs, preliminary remediation goals (PRGs), screening levels, Site-specific risk assessment data needs, treatability study data needs, feasibility study data needs, and other potential performance standards. All metal analytes (aqueous) shall be analyzed for total and dissolved constituents unless otherwise approved by EPA. Analytes may be added and/or removed from further consideration or monitored at varying frequencies based upon Site-specific factors such as dry or wet year hydrologic cycles as approved or otherwise directed by EPA.

Chemicals/Analytes of Potential Concern for Surface Water

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for surface water sampling stations during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph. A minimum of two storm event sampling events shall be conducted.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Boron
- Cadmium
- Calcium
- Chloride
- Chromium (III)
- Chromium (VI)
- Cobalt
- Copper
- Hardness
- Iron
- Lead
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel

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- Nitrogen, total Kjeldahl
- Phosphorus
- Potassium
- Selenium
- Silver
- Sodium
- Sulphate
- Thallium
- Tungsten
- Total Dissolved Solids
- Total Organic Carbon
- Total Suspended Solids
- Uranium
- Vanadium
- Zinc

Field Analyses
- Conductivity
- Dissolved Oxygen
- Flow
- pH
- Temperature

The Respondent shall review the results of the first year's surface water sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent surface water sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent surface water sampling events.

Chemicals/Analytes of Potential Concern for Sediments:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for sediment sampling stations.

Laboratory Analyses
- Antimony
- Arsenic
- Cadmium
- Chromium
- Copper
- Lead
- Manganese
- Mercury
- Nickel
- Selenium

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- Silver
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Soils/Waste Rock:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for soils/waste rock sampling.

Laboratory Analyses
- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Uranium
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Vegetation:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for vegetation sampling stations.

Laboratory Analyses
- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead

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- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Groundwater

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for groundwater sampling stations and shall be sampled at a minimum during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph and the low flow sampling shall be conducted at all groundwater sampling stations as close as possible to the low point of the surface water flow hydrograph.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Calcium
- Chloride
- Chromium III
- Chromium VI
- Cobalt
- Copper
- Hardness
- Iron
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrate/nitrite as N
- Nitrogen (TKN)
- Orthophosphate
- Potassium

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- Selenium
- Silver
- Sodium
- Sulfate
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Total Organic Carbon
- Tungsten
- Uranium
- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen or ORP
- Ferric Iron
- Ferrous Iron
- Nitrite
- pH
- Temperature

The Respondent shall review the results of the first year's groundwater sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent groundwater sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent groundwater sampling events.

Site Health and Safety Plan

A HASP shall be prepared in conformance with the Respondent's health and safety program, and in compliance with OSHA regulations and protocols. It should be noted that EPA does not "approve" the Respondent's health and safety plan, but rather EPA reviews it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

TASK 2 - COMMUNITY RELATIONS

The development and implementation of community relations activities are the responsibility of EPA. The critical community relations planning steps performed by EPA include conducting community interviews and developing a community relations plan. Although implementation of the community relations plan is the responsibility of EPA, the Respondent may assist by providing information regarding the Site's history, participating in public meetings, and preparing fact sheets for distribution to the general public. In addition, the Respondent shall establish a community information repository, at or near the City of McCall, to house one copy of the administrative record. The extent of community

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relations activities involvement by potentially responsible parties (PRPs) is left to the discretion of EPA. The Respondent's community relations responsibilities, if any, are specified in the community relations plan. Any PRP-conducted community relations activities will be subject to oversight by EPA.

TASK 3 - SITE CHARACTERIZATION

As part of the RI, the Respondent shall perform the activities described in this task, including the preparation of a Site characterization summary and a RI report. The overall objective of Site characterization is to describe areas of a Site that may pose a threat to human health or the environment. This is accomplished by first determining a Site's physiography, geology, and hydrology/hydrogeology. Surface and subsurface pathways of migration must be defined. The Respondent shall identify the sources of contamination and define the nature, extent, and volume of the sources of contamination, including their physical and chemical constituents as well as their background concentrations at incremental locations in the affected media. The Respondent shall also investigate the extent of migration of this contamination as well as its volume and any changes in its physical or chemical characteristics, to provide for a comprehensive understanding of the nature and extent of contamination at the Site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the Work Plan, SAP, and HASP are implemented. Field data are collected and analyzed to provide the information required to accomplish the objectives of the study. The Respondent shall notify the RPM at least two weeks in advance of the field work regarding the planned dates for field activities, including ecological field surveys, field layout of the sampling grid, excavation, installation of wells, initiating sampling, installation and calibration of equipment, pump tests, and initiation of analysis and other field investigation activities. The Respondent shall demonstrate that the laboratory and type of laboratory analyses that will be utilized during Site characterization meet the specific QA/QC requirements and the DQOs of the Site investigation as specified in the SAP. In view of the unknown Site conditions, activities are often iterative, and to satisfy the objectives of the RI/FS, it may be necessary for the Respondent to supplement the work specified in the initial Work Plan. In addition to the deliverables below, the Respondent shall provide a monthly progress report and participate in weekly meetings or conference calls at major points in the RI/FS.

a. Field Investigation

The field investigation shall include the gathering of data to define Site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. These activities shall be performed by the Respondent in accordance with the Work Plan and SAP. At a minimum, this shall address the following:

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Implement and document field support activities

The Respondent shall initiate field support activities following approval of the Work Plan and SAP. Field support activities may include obtaining access to the Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondent shall notify the RPM at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM upon completion of field support activities.

Investigate and define site physical and biological characteristics

The Respondent shall collect data on the physical and biological characteristics of the Site and its surrounding areas, including the physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information must be ascertained through a combination of physical measurements, observations, and sampling efforts, and will be utilized to define potential transport pathways and human, cultural, and ecological receptor populations. In defining the Site's physical characteristics, the Respondent shall also obtain sufficient engineering data (such as the effects of contaminated media weathering and ground and surface water contaminant loading) to aid in the projection of contaminant fate and transport, and the development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination

The Respondent shall locate each source of contamination and define the areal extent and depth of contamination associated with each source in all media. The physical characteristics and chemical constituents and their concentrations must be determined for all known and discovered sources of contamination. The Respondent shall conduct sufficient sampling to define the boundaries of the contaminant sources consistent with the QAPP and DQOs.

Defining the source of contamination must include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence over time, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

~~Describe~~ Delineate the nature and extent of contamination

The Respondent shall gather information to ~~describe~~ delineate the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondent must utilize the information and site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondent shall then implement an iterative monitoring program and any study program identified in the work plan or SAP such that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration

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of contaminants through the various media at the Site can be determined. In addition, the Respondent shall gather data for calculations of contaminant fate and transport. This process must be continued until the area and depth of contamination are known. This information will be used to determine the level of risk presented by the Site and to help develop appropriate remedial action alternatives for evaluation.

b. Data Analyses

Evaluate Site characteristics

The Respondent shall analyze and evaluate the data to describe: (1) Site physical and biological characteristics; (2) contaminant source characteristics; (3) nature and extent of contamination; and (4) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The evaluation must include the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to EPA together with a sensitivity analysis. The RI data shall be presented in a format (i.e., computer disc or equivalent) to facilitate the preparation of the BLRA. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. The Respondent shall then collect any data required to address data gaps identified by EPA as needed to complete the BLRA. This evaluation shall also provide information relevant to Site characteristics necessary to evaluate the need for remedial action in the BLRA and to aid in the development and evaluation of remedial alternatives. Analyses of data collected for Site characterization must meet the DQOs developed in the QA/QC plan stated in the SAP (or as revised during the RI).

c. Data Management Procedures

The Respondent shall consistently document the quality and validity of field and laboratory data compiled during the RI.

Document field activities

Information gathered during Site characterization shall be consistently documented and adequately recorded by the Respondent in well-maintained field logs and laboratory reports. The method(s) of documentation must be specified in the work plan and/or the SAP. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document sample custody, analytical responsibility,

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analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking

The Respondent shall maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that only validated analytical data are reported and utilized in the development and evaluation of remedial alternatives. Analytical results developed under the Work Plan must not be included in any Site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, the Respondent shall establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

Data validation management

All validated data shall be made available to EPA in electronic format. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. Field and validated analytical data results for all media sampled shall be submitted to EPA by uploading the data to the Water Quality Exchange (WQX) using the Central Data Exchange (CDX). Field and laboratory samples must include information on the sampling locations which will also be submitted to WQX via CDX. (See [HYPERLINK "http://www.epa.gov/storet/wqx.hmtl)" \h]

d. Site Characterization Deliverables

The Respondent shall prepare the preliminary Site characterization summary and the RI report.

Data Summary Reports

After completing each annual field season's sampling and analysis (i.e., at the end of the field season each calendar year), the Respondent shall prepare a concise Site characterization Data Summary Report (DSR). This report must review the investigative activities that have taken place and describe and display Site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, including the affected media, locations, types, physical state, concentrations of contaminants and quantities. In addition, reports shall document the location, dimensions, physical condition and varying concentrations of each contaminant for each source and the extent of contaminant migration through each of the affected media. Each DSR must also evaluate data gaps and identify additional and/or modified sampling and analysis that shall be included in modifications to the SAP for each subsequent field season. If acceptable to EPA, the DSR following the final field season of data collection can be eliminated as a separate deliverable, and the information collected during the final field season can be presented in the RI report.

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Remedial Investigation Report (RI)

The Respondent shall prepare and submit a draft RI report to the RPM for review and approval. This report shall summarize results of field activities to characterize the Site, sources of contamination, nature and extent of contamination, and the fate and transport of contaminants. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and contents, and a suggested format for the RI report can be found in Attachment C. Following comment by EPA, the Respondent shall prepare a final RI report satisfactorily addressing the comments.

Baseline Risk Assessment (BLRA)

The Respondent shall conduct a BLRA to assess the potential human health, and environmental risks posed by the Site in the absence of any remedial action, but will consider implementation of the PRO. This effort will involve four components: contaminant identification, exposure assessment, toxicity assessment, and risk characterization.

Contaminant Identification – The Respondent shall review available information on all hazardous substances present at the Site and identify the major contaminants of concern. Contaminants of concern should be selected based on their intrinsic toxicological properties because they are present in large quantities, and/or because they are currently in, or potentially may migrate into, critical exposure pathways (e.g., drinking water).

Exposure Assessment – The Respondent shall identify actual or potential exposure pathways, characterize potentially exposed populations, and evaluate the actual or potential extent of exposure.

Toxicity Assessment – The Respondent shall provide a toxicity assessment of those chemicals found to be of concern during Site investigation activities. This will involve an assessment of the types of adverse health or environmental effects associated with chemical exposures, the relationship between magnitude of exposures and adverse effects, and the related uncertainties for contaminant toxicity, (e.g., weight of evidence for a chemical's carcinogenicity). EPA has prepared chemical screening tables with updated toxicity values and Preliminary Remediation Goals for various land uses available from: [HYPERLINK "https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables"]

Risk Characterization – The Respondent shall integrate information developed during the exposure and toxicity assessments to characterize the current or potential risk to human health and/or the environment posed by the Site. This characterization should identify the potential for adverse health or environmental effects for the chemicals of concern and identify any uncertainties associated with contaminant(s), toxicity(ies), and /or exposure assumptions.

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TASK 4 - TREATABILITY STUDIES

If potential remedial actions involving treatment have been identified by Respondent or EPA, Respondent shall conduct treatability studies except where Respondent can demonstrate to the satisfaction of EPA that they are not needed. The following activities shall be performed by the Respondent to support all treatability studies.

a. Determination of Candidate Technologies and of Need for Testing

The Respondent shall identify in a technical memorandum, subject to EPA review and approval, candidate technologies for a treatability studies program during project planning (Task 1). The listing of candidate technologies must cover the range of technologies required for the development and analysis of alternatives (Task 5 and 6) The specific data requirements for the testing program will be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 3, 5, and 6).

Conduct literature survey and determine the need for treatability testing

The Respondent shall conduct a literature survey to gather information of performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. If practical candidate technologies have not been sufficiently demonstrated or cannot be adequately evaluated for this Site based on available information, treatability testing must be conducted. Where it is determined by EPA that treatability testing is required, and unless the Respondent can demonstrate to EPA's satisfaction that it is not needed, the Respondent shall submit a SOW to the RPM outlining the steps and data necessary to evaluate and initiate the treatability testing program.

Evaluation of treatability studies

Once a decision has been made to perform treatability studies, the Respondent and EPA will decide the types of treatability testing to utilize (e.g., bench and/or pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing should be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, the Respondent shall either submit to the RPM a treatability testing work plan or an amendment to the original Site work plan for EPA's review and approval.

b. Treatability Testing and Deliverables

The deliverables that are required, in addition to the memorandum identifying candidate technologies, where treatability testing is conducted, include a work plan, a sampling and analysis plan, and a final treatability evaluation report. EPA may also require a treatability study health and safety plan, where appropriate.

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Treatability testing work plan

The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's review and approval, describing the Site background, remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The DQOs for treatability testing must be documented as well. If pilot scale treatability testing is to be performed, the pilot scale work plan will describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-site, permitting requirements must be addressed.

Treatability study SAP

If the original QAPP or FSP does not address activities to be performed during the treatability tests, a separate treatability study SAP or amendment to the original Site SAP must be prepared by the Respondent for EPA's review and approval. Task 1, Item c. of this statement of work provides additional information on the requirements of the SAP.

Treatability study HASP

If the original HASP is not adequate for defining the activities to be performed during the treatment tests, a separate or amended HASP must be developed by the Respondent. Task 1, Item c, of this SOW provides additional information on the requirements of the health and safety plan. EPA does not "approve" the treatability study HASP.

Treatability study evaluation report

Following completion of treatability testing, the Respondent shall analyze and interpret the testing results in a technical report to EPA. Depending on the sequence of activities, this report may be a part of the RI/FS report or a separate deliverable. The report must evaluate each technology's effectiveness, implementability, cost, and actual results as compared with predicted results. The report must also evaluate full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 5 - FEASIBILITY STUDY

The Feasibility Study is comprised of two primary activities: (1) the development and screening of alternatives, and (2) the detailed analysis of alternatives. The alternatives surviving the screening process will be subject to the detailed analysis process. The FS Report must document the results of these two components of FS. Interim deliverables associated with these activities will be identified in the RI/FS Work Plan. The RI and FS

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are interactive and will be conducted concurrently, to the extent practicable, in a manner that allows information and data collected during the RI to influence the development of remedial alternatives during the FS, which in turn affect additional information and data needs and the scope of any necessary treatability studies and risk assessments.

a. Remedial Alternative Development

The Respondent shall develop and evaluate a range of appropriate waste management options that, at a minimum, will remediate or control any contaminated media (soil, surface water, ground water, sediments) remaining at the Site, as deemed necessary in the RI to ensure protection of human health and the environment and comply with ARARs, concurrent with the RI site characterization task.

A range of remedial alternatives must be developed to identify and provide a variety of waste management options which then can be evaluated. This range of alternatives must include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which varies in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed. Options involving containment with little or no treatment must be included, as well as options involving both treatment and containment, and a no-action alternative. The following activities shall be performed by the Respondent during the development of remedial alternatives.

Refine and document remedial action objectives

Based on the BLRA, the Respondent shall review, and if necessary, modify the Site-specific remedial action objectives (RAOs) and the list of applicable preliminary remediation goals (PRGs). The modified PRGs shall be documented in a technical memorandum that will be reviewed and approved by EPA. These modified PRGs must specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

Develop general response actions

The Respondent shall develop a range of general response actions for each medium of interest addressing containment, treatment, excavation, pumping, or any other actions, singly or in combination, that may be utilized to satisfy the remedial action objectives for the Site.

Identify areas or volumes of media

The Respondent shall identify volumes and/or areas of media to which general response actions might be applied, taking into account the requirements for protectiveness as identified in the RAOs and the chemical and physical characterization of the Site.

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Identify, screen, and document remedial technologies

The Respondent shall identify and evaluate potential remedial technologies applicable to each general response action. The Respondent shall identify various alternatives for implementing each remedial technology. These alternatives must be evaluated and screened based upon their effectiveness, implementability, and cost factors. Generally, this screening is only necessary when there are many feasible alternatives available for detailed analysis. If necessary, the screening of alternatives shall be conducted to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening must preserve the range of treatment and containment alternatives that was initially developed insuring that the alternatives will meet RAOs, ARARs and all other identified performance standards. The range of remaining alternatives must include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondent shall prepare a technical memorandum summarizing the results and reasoning employed in screening and arraying alternatives that remain after screening. In addition, a description of the remedial technology alternatives which were eliminated from further consideration as well as the reasons for eliminating the alternatives must be included in the memorandum.

Assemble and document alternatives

The Respondent shall assemble selected representative technologies into a range of alternatives for each affected medium or operable unit. Together, all of the alternatives will represent treatment and containment combinations that will address either all of the Site or operable units. A summary of the assembled alternatives and their related action-specific ARARs must be prepared for EPA by the Respondent for inclusion in a technical memorandum.

TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES

The detailed analysis of alternatives shall be conducted by the Respondent to provide EPA with the information needed to allow for the selection of a Site remedy. This analysis is the final task to be performed by the Respondent during the FS.

a. Detailed Analysis of Alternatives

The Respondent shall conduct a detailed analysis of alternatives which must consist of an analysis of each option against a set of nine evaluation criteria and a comparative analysis of all options using the same evaluation criteria as a basis for comparison. EPA has developed the nine evaluation criteria to address the statutory requirements and preferences of CERCLA

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Apply nine criteria and document analysis

The Respondent shall apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) costs; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: Criteria 8 and 9 are considered after the RI/FS report has been released to the general public). For each alternative, the Respondent must provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative; and (2) a discussion of the individual criterion assessment.

Compare alternatives against each other and document the comparison of alternatives

The Respondent shall perform a comparative analysis between the remedial alternatives. That is, each alternative must be compared against the others using the evaluation criteria as a basis of comparison. Identification and selection of the preferred alternative are reserved by EPA. The Respondent shall prepare a technical memorandum summarizing the results of the comparative analysis.

b. *Detailed Analysis Deliverables*

In addition to the technical memorandum summarizing the results of the comparative analysis, the Respondent shall submit a draft FS report to the RPM for review and approval. Once EPA's comments have been addressed by the Respondent to the satisfaction of EPA, the final FS report may be bound with the final RI report.

Feasibility Study report

The Respondent shall submit a draft FS report for EPA and the Support Agencies' review and comment. This report, as ultimately adopted or amended by EPA, provides a basis for remedy selection by EPA, and documents the development and analysis of remedial alternatives. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and the required report content, and a suggested format for the report can be found in Attachment D. The Respondent shall prepare a final FS report which satisfactorily addresses the comments.

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REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process.

The (revised) National Oil and Hazardous Substance Pollution Contingency Plan (NCP).

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA", U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3.

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"A Compendium of Superfund Field Operations Methods", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.

U.S. EPA, NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA -330/9-78-991-R.

"Data Quality Objectives for Remedial Response Activities", U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.

"Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Research and Development, Cincinnati, Ohio, QAMS-004/80, December 29, 1980.

"QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision), EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Studies, and EPA QA/G-4 Guidance for the Data Quality Objective Process"

"Interim Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.

"Users Guide to the Lead Agency(ies) Contract Laboratory Program, U.S. EPA, Sample Management Office, August 1982.

"Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements", U.S. EPA, Office of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.

"CERCLA Compliance with Other Laws Manual", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.

"Guidance on Remedial Actions for Contaminated Groundwater at Superfund Sites", U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.

"Draft Guidance on the Lead Agency(ies) Superfund Decision Documents", U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02.

"Risk Assessment Guidance for Superfund--Volume I, Human Health Evaluation Manual (Part A)", December 1989, EPA/540/1-89/002.

"Risk Assessment Guidance for Superfund--Volume II Environmental Evaluation Manual", March 1989, EPA /540/1-89/001.

"Guidance for Data Usability in Risk Assessment", October 1990, EPA /540/G-90/008. "Performance of Risk Assessments in Remedial Investigation/ Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)", August 28, 1990, OSWER Directive No. 9835.15.

"Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions", April 22, 1991, OSWER Directive No. 9355.0-30.

"Health and Safety Requirements of Employees Employed in Field Activities", U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

"Interim guidance on Administrative Records for Selection of CERCLA Response Actions", U.S. EPA, Office of Waste Programs Enforcement, March 1, 1989, OSWER Directive No. 9833.3A.

"Community Relations in Superfund: A Handbook", U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9320.0-03B.

"Community Relations During Enforcement Activities and Development of the Administrative Record", U.S. EPA, Office of Waste Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1A.

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Attachments

Attachment A – Suggested RI/FS Work Plan Format

Executive Summary

1. Introduction
2. Site Background and Setting
3. Initial Evaluation
   - Types and volumes of waste present
   - Potential pathways of contaminant migration/preliminary public health and environmental impacts
   - Preliminary identification of operable units
   - Preliminary identification of response objectives and remedial action alternatives
4. Work Plan Rationale
   - DQO needs
   - Work Plan approach
5. RI/FS Tasks
6. Cost and Key Assumptions
7. Schedule
8. Project Management
   - Staffing
   - Coordination
9. References

Appendices

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Attachment B – Suggested Format for SAP (FSP and QAPP)

FSP

1. Site Background
2. Sampling Objectives
3. Sample Location and Frequency
4. Sample Designation
5. Sampling Equipment and Procedures
6. Sample Handling and Analysis

QAPP

Project Management
A1 Title and Approval Sheet
A2 Table of Contents
A2 Distribution List
A4 Project/Task Organization
A5 Problem Definition/Background
A6 Project/Task Description
A7 Quality Objectives and Criteria
A8 Special Training/Certifications
A9 Documentation and Records

Data Generation and Acquisition

B1 Sampling Process Design (Experimental Design)
B2 Sampling Methods
B3 Sample Handling and Custody
B4 Analytical Methods
B5 Quality Control
B6 Instrument/Equipment Testing, Inspection, and Maintenance
B7 Instrument/Equipment Calibration and Frequency
B8 Inspection/Acceptance of Supplies and Consumables
B9 Non-direct Measurements
B10 Data Management

Assessment and Oversight
C1 Assessments and Response Actions
C2 Reports to Management

Data Validation and Usability
D1 Data Review, Verification, and Validation
D2 Verification and Validation Methods
D3 Reconciliation with User Requirements

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~~Title Page~~

~~Table of Contents~~

~~1—Project Description~~

~~2—Project Organization and Responsibilities~~

~~3—QA Objectives for Measurement~~

~~4—Sampling Procedures~~

~~5—Sample Custody~~

~~6—Calibration Procedures~~

~~7—Analytical Procedures~~

~~8—Data Reduction, Validation, and Reporting~~

~~9—Internal Quality Control~~

~~10. Performance and Systems Audits~~

~~11. Preventative Maintenance~~

~~12. Data Assessment Procedures~~

~~13. Corrective Actions~~

~~14. Quality Assurance Reports~~

Attachment C – Suggested RI Report Format

Executive Summary

1. Introduction
   - 1.1 Purpose of Report
   - 1.2 Site Background
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Previous Investigations
   - 1.3 Report Organization
2. Study Area Investigation
   - 2.1 Includes field activities associated with site characterization. These may include physical and chemical monitoring of some, but not necessarily all, of the following:
     - 2.1.1 Surface Features (topographic mapping, etc.) (natural and manmade features)
     - 2.1.2 Contaminant Source Investigations
     - 2.1.3 Meteorological Investigations
     - 2.1.4 Surface-Water and Sediment Investigations
     - 2.1.5 Geological Investigations
     - 2.1.6 Soil and Vadose Zone Investigations
     - 2.1.7 Ground-Water Investigations
     - 2.1.8 Human Population Surveys
     - 2.1.9 Ecological Investigations
   - 2.2 If technical memoranda documenting field activities were prepared, they may be included in an appendix and summarized in this report chapter
3. Physical Characteristics of the Study Area
   - 3.1 Includes results of field activities to determine physical characteristics. These may include some, but not necessarily all, of the following:
     - 3.1.1 Surface Features
     - 3.1.2 Meteorology
     - 3.1.3 Surface-Water Hydrology
     - 3.1.4 Geology
     - 3.1.5 Soils
     - 3.1.6 Hydrogeology
     - 3.1.7 Demography and Land Use
     - 3.1.8 Ecology
4. Nature and Extent of Contamination

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4.1 Presents the results of Site characterization, both natural and chemical components and contaminants in some, but not necessarily all, of the following media:

4.1.1 Sources (lagoons, sludges, tanks, etc.)

4.1.2 Soils and Vadose Zone

4.1.3 Ground Water

4.1.4 Surface Water and Sediments

4.1.5 Air

5. Contaminant Fate and Transport

5.1 Potential Routes of Migration (i.e., air, groundwater, etc.)

5.2 Contaminant Persistence

5.2.1 If they are applicable (i.e., for organic contaminants), describe estimated persistence in the study area environment and physical, chemical, and/or biological factors of importance for the media of interest

5.3 Contaminant Migration

5.3.1 Discuss factors affecting contaminant migration for the media of important (e.g., sorption onto soils, solubility in water, movement of ground water, etc.)

5.3.2 Discuss modeling methods and results, if applicable

6. Baseline Risk Assessment

6.1 Human Health Evaluation

6.1.1 Exposure Assessment

6.1.2 Toxicity Assessment

6.1.3 Risk Characterization

6.2 Environmental Evaluation

7. Summary and Conclusions

7.1 Summary

7.1.1 Nature and Extent of Contamination

7.1.2 Fate and Transport

7.1.3 Risk Assessment

7.2 Conclusions

7.2.1 Data Limitations and Recommendations for Future Work

7.2.2 Recommended Remedial Action Objectives

Appendices

A. Technical Memorandum on Field Activities (if available)

B. Analytical Data and QA/QC Evaluation Results

C. Risk Assessment Methods

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Attachment D – Suggested Format for Feasibility Study Report

Executive Summary

1. Introduction
   - 1.1 Purpose and Organization Report
   - 1.2 Background Information (Summarized from RI Report)
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Nature and Extent of Contamination
     - 1.2.4 Contaminant Fate and Transport
     - 1.2.5 Baseline Risk Assessment
2. Identification and Screening of Technologies
   - 2.1 Introduction
   - 2.2 Remedial Action Objectives – Presents the development of remedial action objectives for each medium of interest (i.e., ground water, soil, surface water, air, etc.) For each medium, the following should be discussed:
     - Contaminants of interest
     - Allowable exposure based on risk assessment (including ARARs) Development of remediation goals
   - 2.3 General Response Actions – For each medium of interest, describes the estimation of areas or volumes to which treatment, containment, or exposure technologies may be applied.
   - 2.4 Identification and Screening of Technology Types and Process Options – For each medium of interest, describe:
     - 2.4.1 Identification and Screening of Technologies
     - 2.4.2 Evaluation of Technologies and Selection of Representative Technologies
3. Development and Screening of Alternatives
   - 3.1 Development of Alternatives – Describes rationale for combination of technologies/media into alternatives. Note: This discussion may be by medium or for the Site as a whole.
   - 3.2 Screening of Alternatives (if conducted)
     - 3.2.1 Introduction
     - 3.2.2 Alternative 1
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.2 Alternative 2
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.3 Alternative 3

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3.2.3.1 Description
3.2.3.2 Evaluation

4. Detailed Analysis of Alternatives
4.1 Introduction
4.2 Individual Analysis of Alternatives
4.2.1 Alternative 1
4.2.1.1 Description
4.2.1.2 Evaluation
4.2.2 Alternative 2
4.2.2.1 Description
4.2.2.2 Evaluation
4.2.3 Alternative 3
4.2.3.1 Description
4.2.3.2 Evaluation
4.3 Comparative Analysis

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Attachment E – Stibnite Mine Remedial Investigation and Feasibility Study (RI/FS) Statement of Work (SOW) Schedule

RI/FS Work Plan/Sampling and Analysis Plan (WP/SAP):

- Draft due within 120 days after the Effective Date of the Settlement Agreement/CO.
- Final Work Plan due within 90 days of receipt of consolidated Agency comments.

Data Summary Reports (DSRs):

- Draft DSRs due within 120 days completion of each season's field work or within 90 days of the receipt of final laboratory data, whichever is earlier. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the completion date. Within 5 days of the receipt of final laboratory data for the preceding field season, Respondent shall provide written notification to EPA identifying the receipt date of final laboratory data.
- Final DSRs due within 30 days of receipt of consolidated Agency comments.

Remedial Investigation Report (RI):

- Submit draft RI within 120 days after receipt of laboratory data from the final field season. Within 5 days of receipt of final laboratory data, Respondent shall provide written notification to EPA identifying receipt date of final laboratory data.
- Final RI due within 60 days of receipt of consolidated Agency comments.

Baseline Risk Assessment Report (BLRA):

- Submit draft BLRA within 60 days after submittal of Final RI.
- Final BLRA due within 60 days of receipt of consolidated Agency comments.

Feasibility Study (FS):

- Submit draft FS within 120 days after submittal of BLRA Report.
- Final FS due within 90 days of receipt of consolidated Agency comments.

Data Validation Summaries (DVSs):

- DVSs due within 120 days from the date of collection of the last sample from each sampling event. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the date of collection of the last sample from each sampling event.

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Interim Deliverables

- Draft Interim Deliverables (i.e., Technical Memoranda for Treatability Studies Preliminary Remedial Goals, Remedial Action Objectives, etc.) as identified in the SOW, or as required by EPA, shall be due within 30 days receipt of notice by Respondent that said Deliverable is required.
- Final Interim Deliverables due within 60 days of receipt of consolidated Agency comments.

Quarterly Progress Reports

- Quarterly Progress Reports shall be due 15 days after the end of the previous calendar quarter.

[1]Documents may initially be released as "draft final" pending final resolution of issues.

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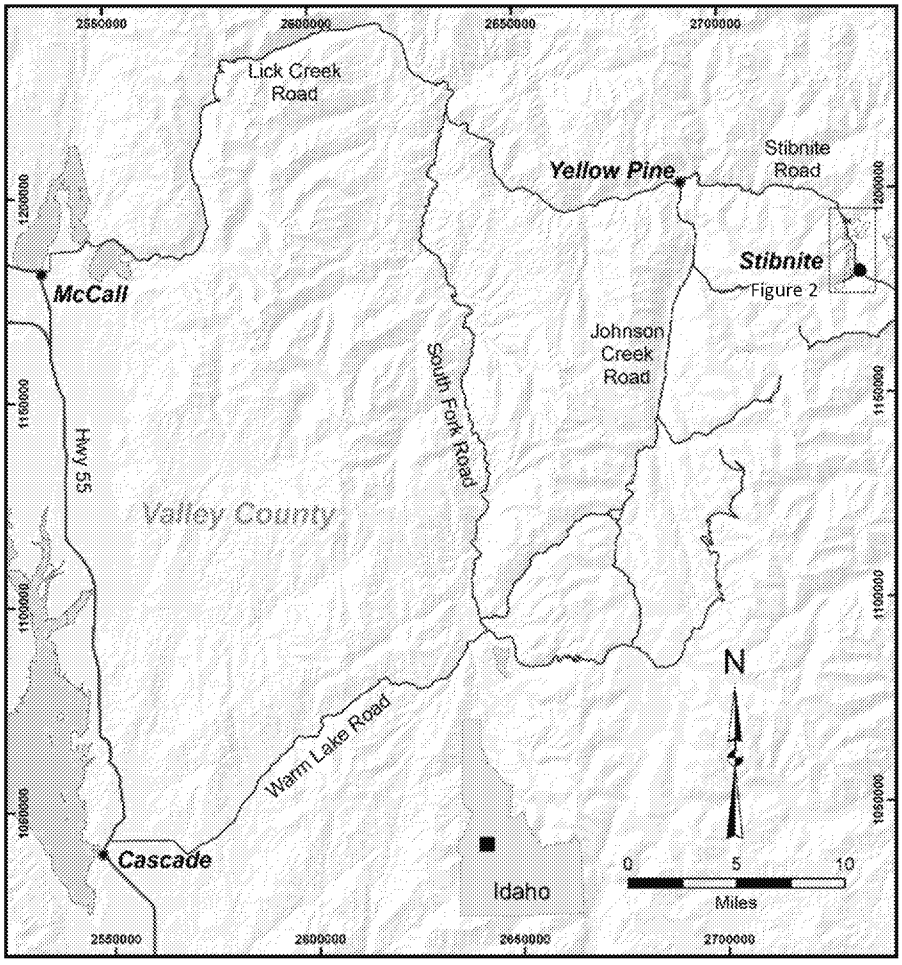

Figure 1 – Site Location

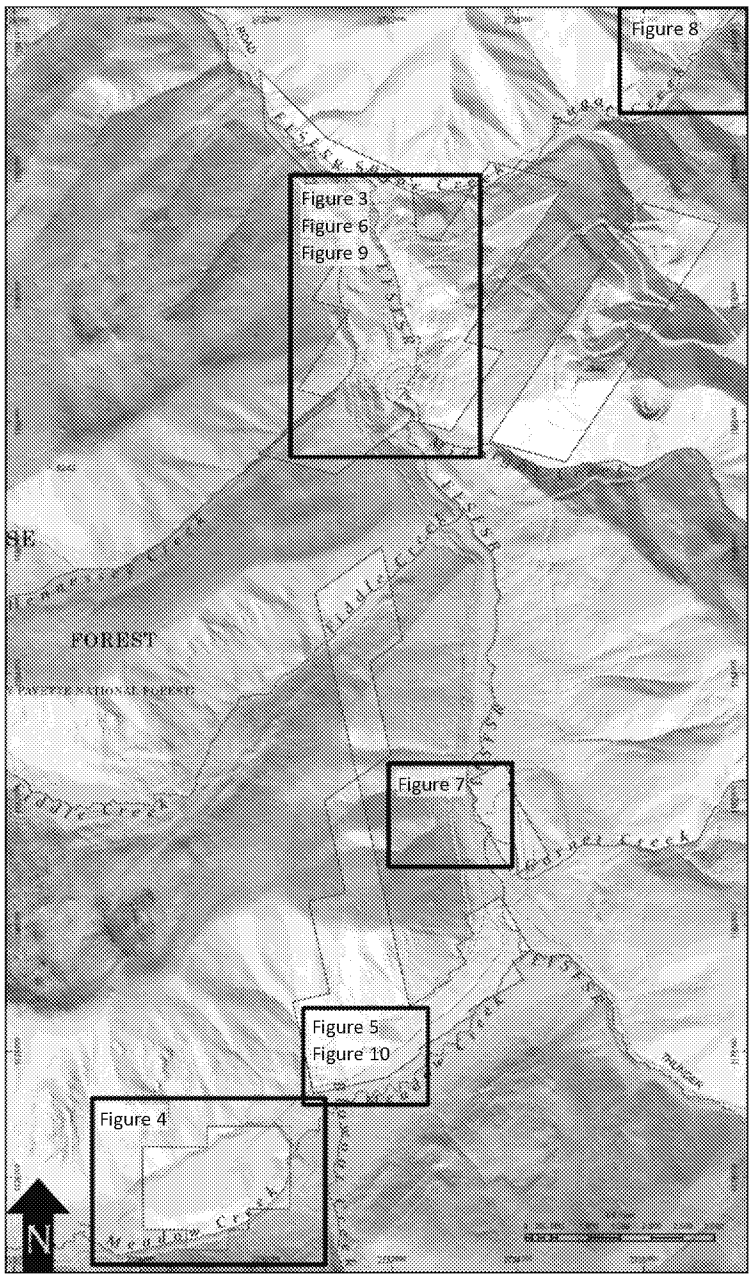

Figure 2 – Stibnite Mine Site

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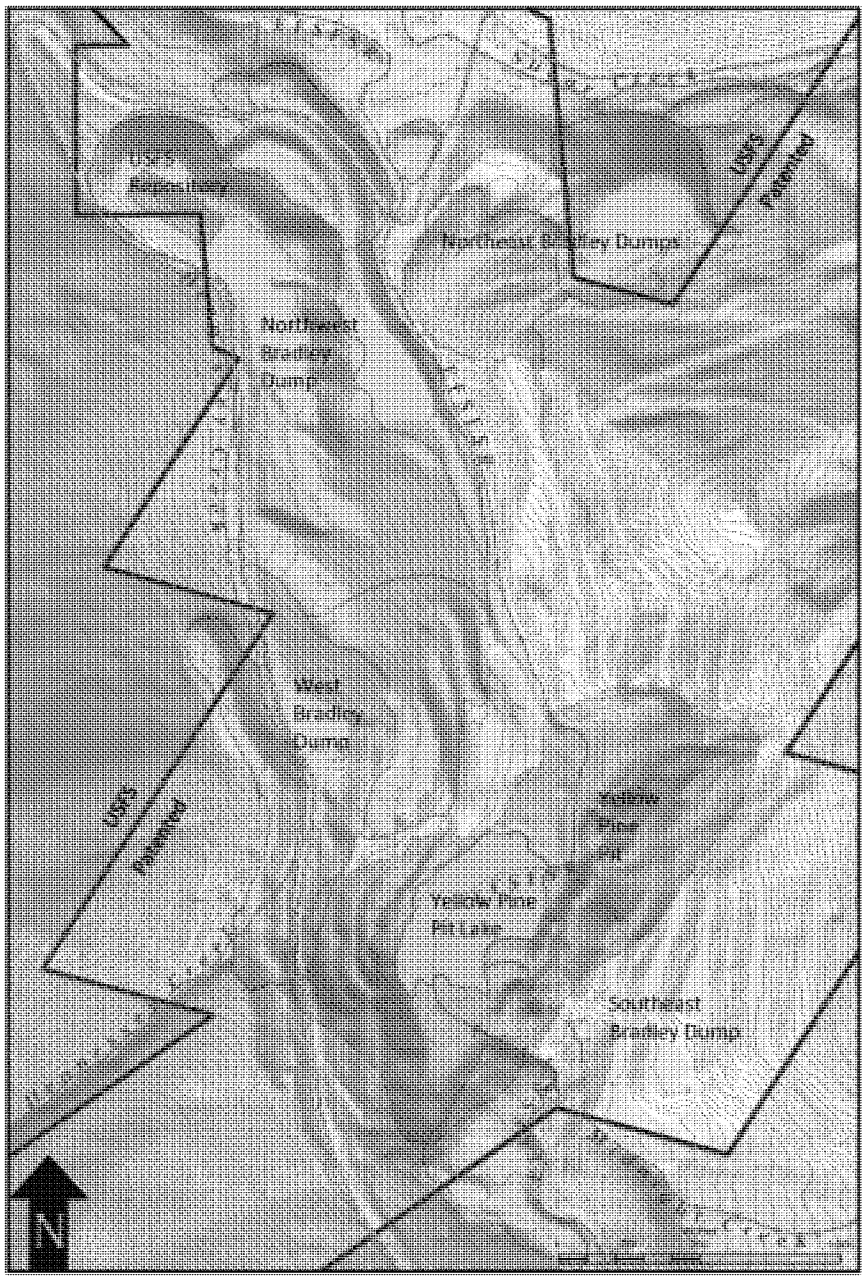

Figure 3 –Yellow Pine Pit

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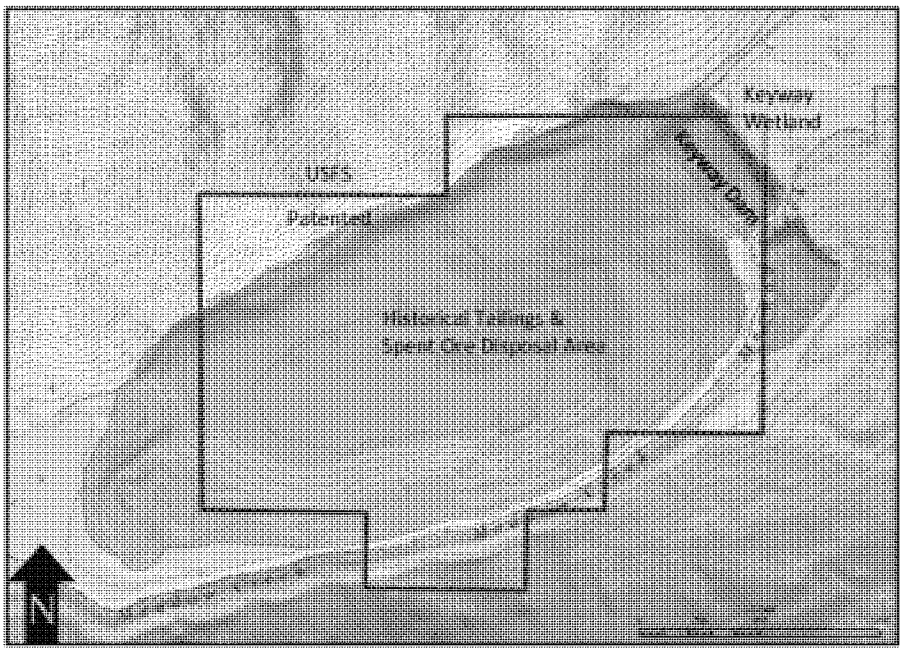

Figure 4 – Historical Tailings and Spent Ore Disposal Area

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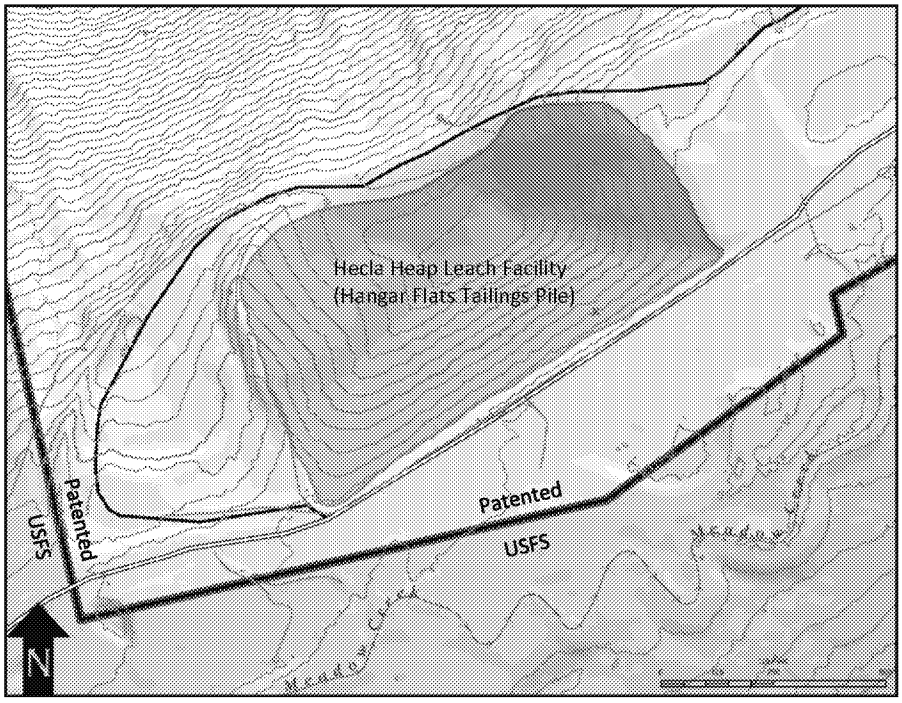

Figure 5 – Hecla Heap Leach Facility

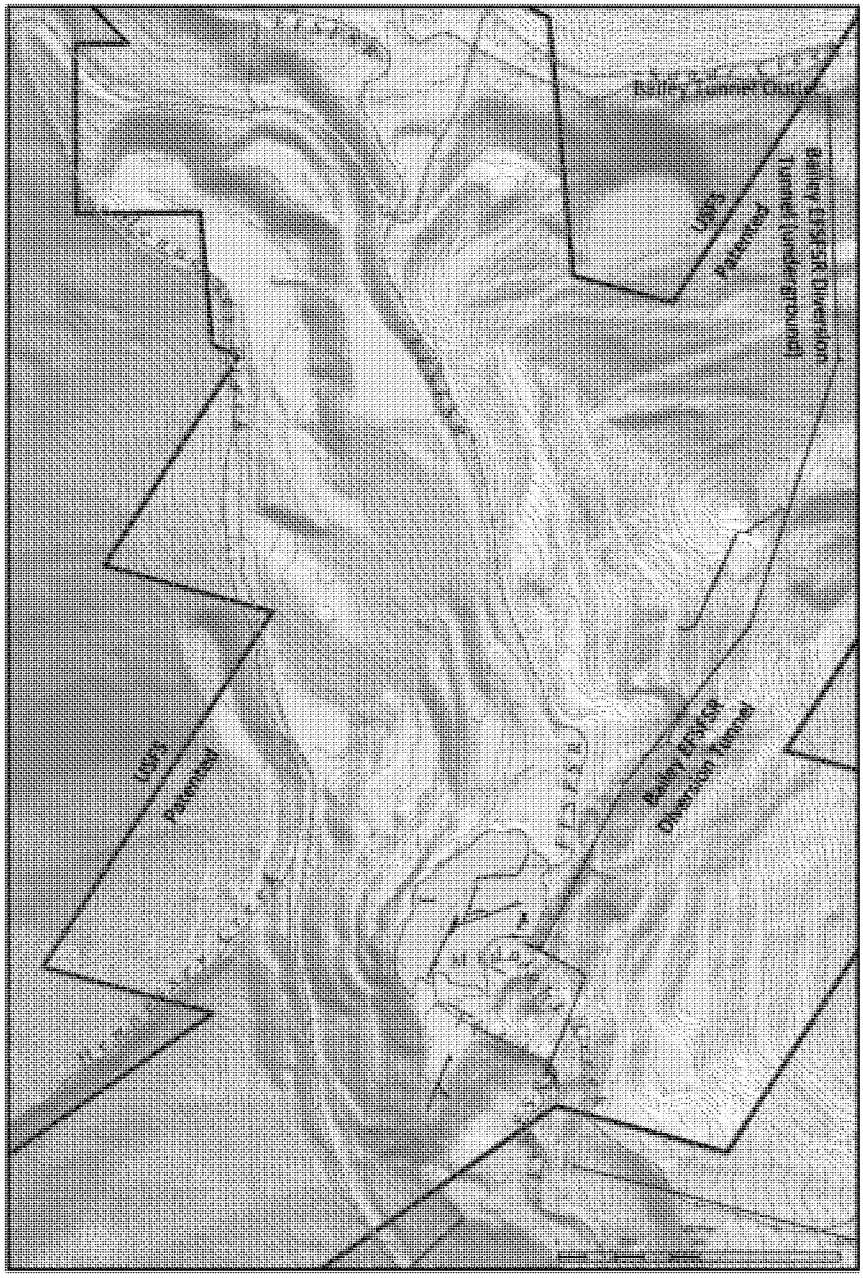

Figure 6 – Bailey Tunnel

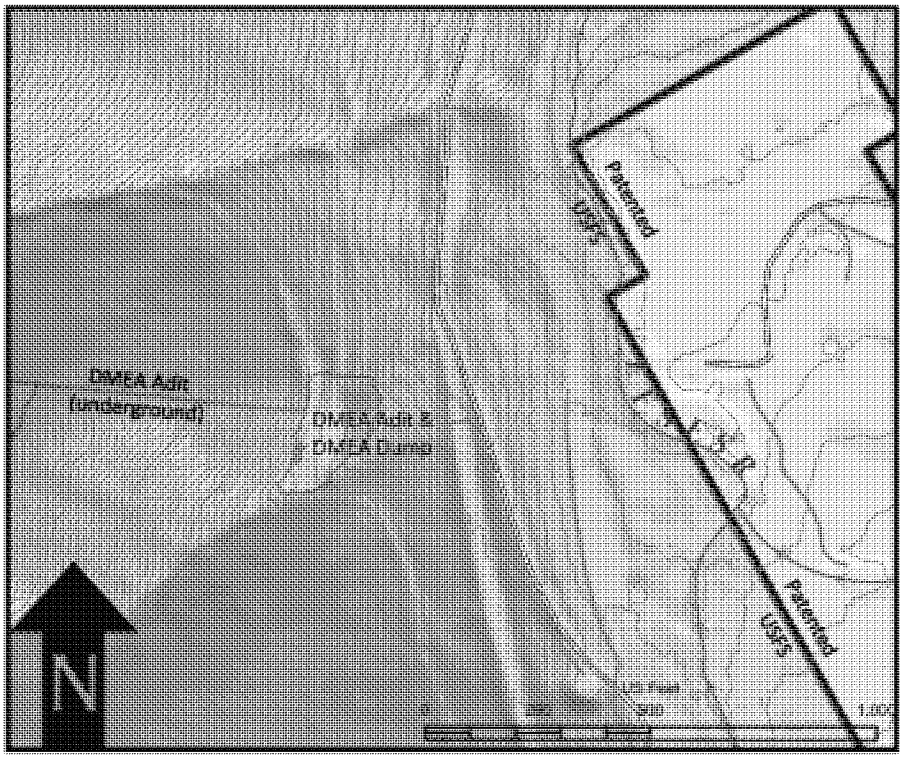

Figure 7 – Defense Minerals Exploration Administration Adit and Waste Rock Dump

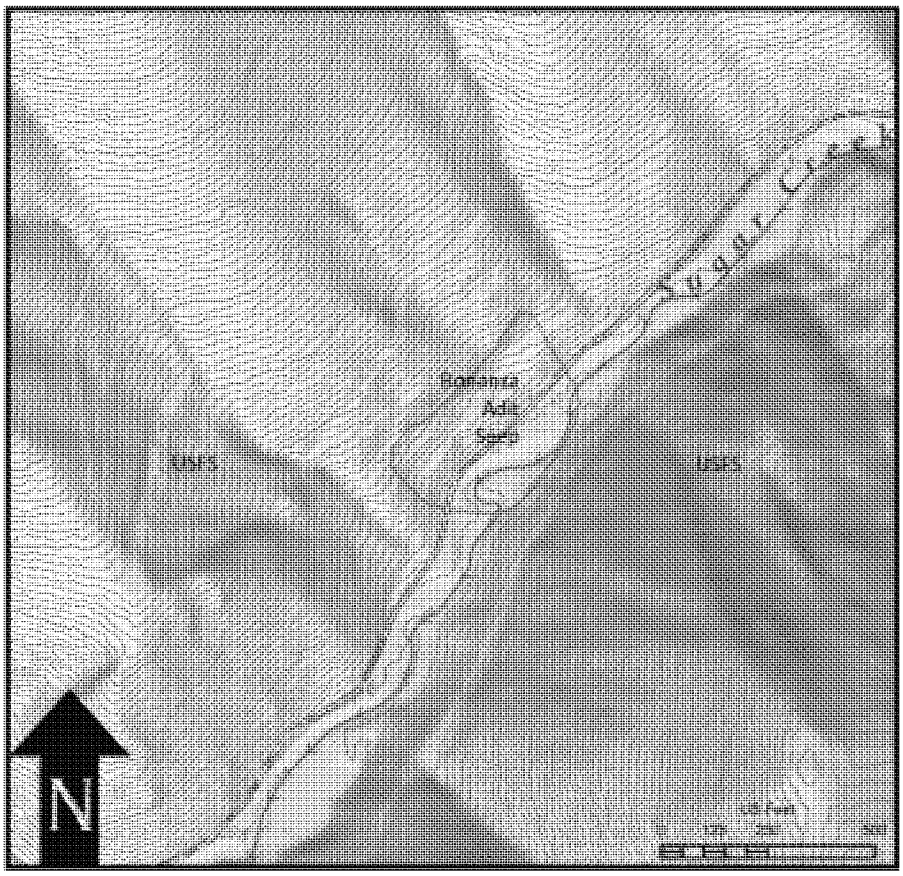

Figure 8 – Bonanza Adit

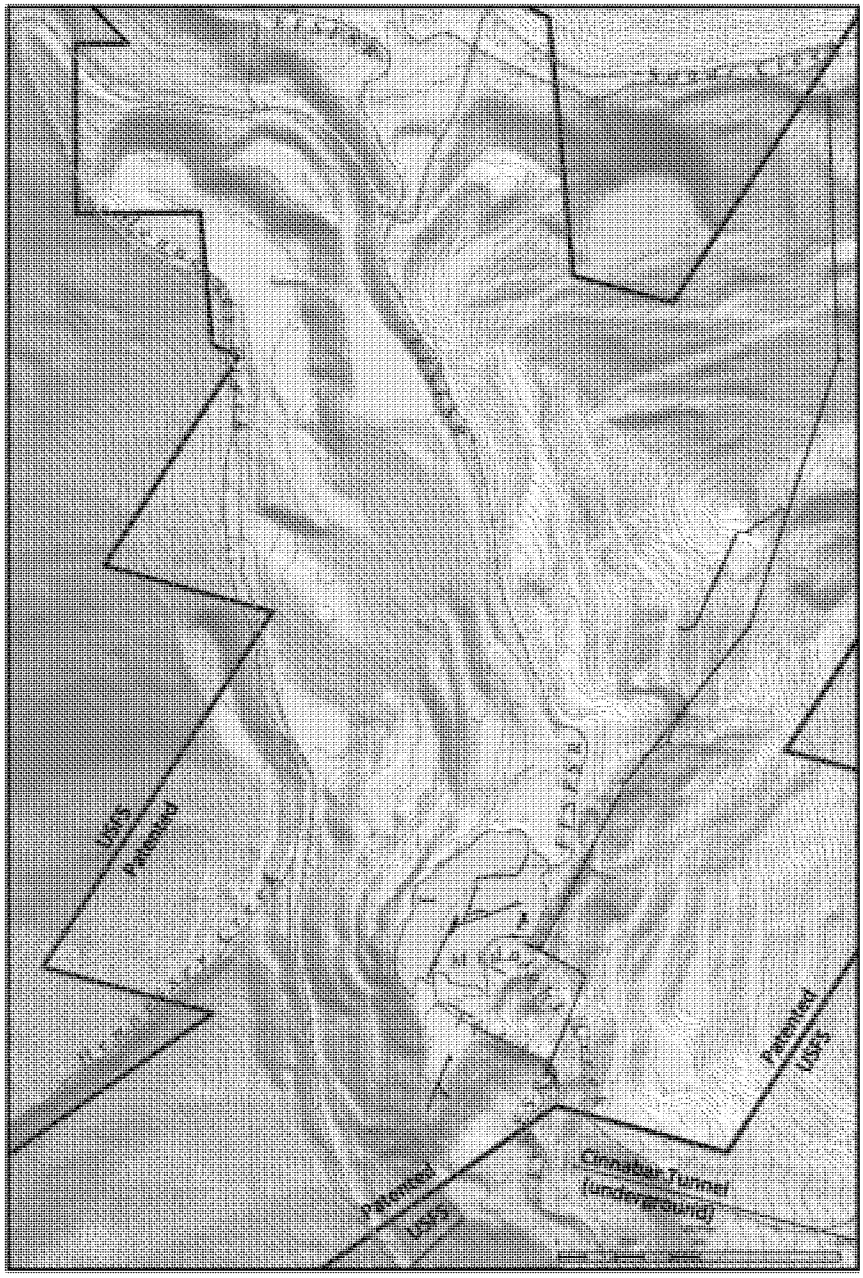

Figure 9 – Cinnabar Tunnel

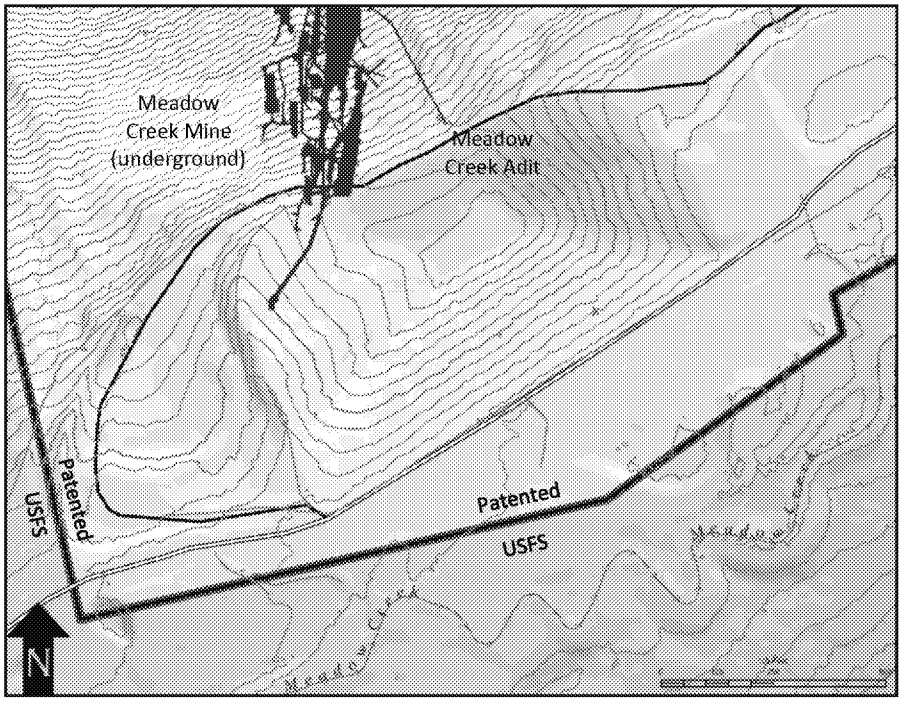

Figure 10 – Meadow Creek Adit

Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 11/15/2019 10:36:13 PM
To: Bradley M. Marten [bmarten@martenlaw.com]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Lisa.O'Hara@deq.idaho.gov; Jill Grant [jgrant@jillgrantlaw.com]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: Stibnite Mine

I heard back from the Mike Lopez. I shared the parties' comments on the SOW with Mike. The Nez Perce will provide comments to EPA by November 19th. EPA will provide its comments and revisions that reflect our review of all of the Parties' comments after we receive the Nez Perce's comments. Given that we will not have the Nez Perce Tribe's comments or an updated draft SOW by Monday, please let me know what topics the parties would like to focus on in our meeting.

Also, we have not yet received a map from Midas showing the areas in which Midas owns claims, has other ownership interests, and has conducted exploratory drilling. This relevant to establishing the scope of the RI/FS.

I will sending a draft AOC to the parties soon.

- Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: Cerise, Kathy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3CCF3F66D09943FE914BE271FC992084-HERNANDEZ, KATHRYN]
Sent: 11/12/2019 10:19:09 PM
To: Bradley M. Marten [bmarten@martenlaw.com]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Maley, Timothy [maley.timothy@epa.gov]; Morrison, Kay [morrison.kay@epa.gov]
Subject: RE: Stibnite Mine AOC/SOW

Brad,

I have not seen an invite for next weeks call.

Thanks

Kathy

Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1
Phone: 206-553-2589

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, November 12, 2019 1:30 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; L. Michael Bogert <mbogert@midasgoldinc.com>; Zamba, Kathy -FS <kathy.zamba@usda.gov>; michael.mccurdy@deq.idaho.gov; Cerise, Kathy <Cerise.Kathryn@epa.gov>; Maley, Timothy <maley.timothy@epa.gov>; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; kwright@sbtribes.com; Pino, Nicholas - OGC, Missoula, MT <nicholas.pino@usda.gov>; Aaron.Scheff@deq.idaho.gov; Morrison, Kay <morrison.kay@epa.gov>; Stifelman, Marc <Stifelman.Marc@epa.gov>; Uhling, Terry <Terry.Uhling@simplot.com>; Susanthanson9@icloud.com; Laurel Sayer <lsayer@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: Stibnite Mine AOC/SOW

Thanks, Elizabeth.

Jill, Kelly and Susan -- To facilitate review by the AOC Participants of the Tribe's SOW comment, in preparation for our call next Monday, could you please your comments today to the full group copied here? Thank you.

John Meyer will be circulating a number for a videoconference for our Monday call next week.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Tuesday, November 12, 2019 7:04 AM
To: Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; L. Michael Bogert <mbogert@midasgoldinc.com>; Zamba, Kathy -FS <kathy.zamba@usda.gov>; michael.mccurdy@deq.idaho.gov; Cerise, Kathy <Cerise.Kathryn@epa.gov>; Maley, Timothy <maley.timothy@epa.gov>; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; kwright@sbtribes.com; Pino, Nicholas - OGC, Missoula, MT <nicholas.pino@usda.gov>; Aaron.Scheff@deq.idaho.gov; Morrison, Kay <morrison.kay@epa.gov>; Stifelman, Marc <Stifelman.Marc@epa.gov>; Uhling, Terry <Terry.Uhling@simplot.com>; Susanthanson9@icloud.com; Laurel Sayer <lsayer@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Bradley M. Marten <bmarten@martenlaw.com>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: Stibnite Mine Negotiation Meeting Notes

Hello, attached are the meeting summary notes that Brad developed. I believe the notes accurately reflect our discussion. If you have any issues with the summary, please let me know. The second bullet reflects the parties' request for funding from Midas. To be clear, EPA is also requiring that its costs be reimbursed, though I may not have been explicit in the meeting about that.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

This e-mail may contain confidential and privileged information and is sent for the sole use of the intended recipient. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

IRS CIRCULAR 230 NOTICE: To the extent that this message or any attachment concerns tax matters, it is not intended to be used and cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law.

Appointment

From: Canino, Joyce Lynn T. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=02B304D3E84240BE8A4E069ECD634D97-CANINO, JOY]
Sent: 12/19/2019 12:31:41 AM
To: Hladick, Christopher [hladick.christopher@epa.gov]; Jolene Stevens [jstevens@midasgoldcorp.com]
CC: Laurel Sayer [lsayer@midasgoldinc.com]

Subject: Meeting w/Laurel Sayer, Midas Gold
Attachments: Visitor Check-in Policy and Procedures.docx
Location: 1200, 6th Ave Seattle, WA 98101

Start: 1/13/2020 10:00:00 PM
End: 1/13/2020 10:45:00 PM
Show Time As: Busy

For scheduling assistance, please call 206-553-1234.

Visitor Check-in Policy and Procedures

Hours and Location	The Service Center is co-located with the Public Environmental Resource Center (P.E.R.C) on the North side of the 1st floor, behind the security guard desk. The hours are 7:30 AM to 4:30 PM. All visitors, including family and friends, are required to check-in at the Service Center. Visitors to the Regional office must check in at the Service Center/ P.E.R.C • EPA field office staff visiting the regional office are required to sign in at the Service Center. As a safety measure, this allows us to know who is in the building at any given time and helps us with accountability in case of an emergency. • Service Center staff will summon the visitor's contact to escort them to their meeting. If a specific individual is not available, Service Center staff will rely on Program Office personnel to direct the visitor appropriately. • Visitors attending meetings in the regional conference complex should also sign in. • Visitors should be escorted to the lobby of the building following a meeting and not simply to the elevator.

Fragrance-free Workplace	To ensure healthy indoor air for all our occupants, Region 10 is a fragrance-free workplace. We ask all employees, visitors, contractors and grantees to please refrain from using perfume, cologne, essential oils, scented after-shave, lotion, and other fragrant personal care products while visiting Region 10 offices. Thank you!

Security Screening and Check-in	Before entering the Service Center, guests will go through standard federal facility security screening by federal contractors (like airport security screening). The screening will include a walk-through metal detector and an x-ray screening of packages and personal items. *Please inform your guest the following items are not permitted in EPA space and will be confiscated during screening and turned over to Federal Protective Service (FPS):* Firearms, with or without concealed weapon permit Pepper spray and any other personal defense weapons Razors, scissors or knives over 2.5 inches Work tools, without a work order to perform work in EPA space Marijuana and medical marijuana, with or without card [HYPERLINK "http://intranet.epa.gov/oaintran/smd/pdfs/prohibited-items-list.pdf" \h]After the screening process, guests will enter the Service Center and be issued a dated visitor badge with evacuation directions. The badge must be visibly worn by visitors to identify them as guests here to conduct official business with the EPA. Once the visitor leaves the building for any reason, i.e. lunch, coffee, walk, etc., they must go back through the security screening process. Even if they were accompanied by their Point of Contact or an EPA employee.

Escort Visitors	The Service Center staff will call an EPA host to escort the guest to their meeting. The Service Center permitted to escort visitors to their meeting/training destination. Visitors must be escorted *from* the Se meeting destination by EPA staff. Visitors check-in at the beginning of each day of their visit includin meetings and training. Badged visitors have relative freedom to access EPA areas like office workspac rooms and bathrooms. Visitors will be escorted to meeting destination by the EPA host.
Notifying the Service Center	For all expected visitors and guest participants for training and meetings, notify the Service Center at to the scheduled event by sending an email to R10-Service Center Mail Group with the information lis information will be shared with EPA security and will prepare us with processing and badging visitors • Date(s) of Visit • Expected Time of Arrival • Expected Number of Visitors • Meeting Location • Name of Host/Escort • Escort Contact Info ❖ It is recommended you provide the name(s) of your guest, though it is not required.
Maternal Wellness Room	The Seattle Regional Office has designated a room for nursing mothers for the purpose of expressing Maternal Wellness Room is a secure, clean, private room located on the sixteenth floor. This room is available ONLY for the purpose of expressing breast milk or breastfeeding a child. The any EPA visitor who may need to express milk or breastfeed. For more information or who to contact, use this link [HYPERLINK "https://usepa.sharepoint.com/:w:/r/sites/R10_Community/wellness/_layouts/15/Doc.aspx?sourcedoc= CE41-42F4-AECC- C47939A5D7E8%7D&file=Maternal%20Wellness%20Room%20Guidelines.docx&action=default&]

Couriers	All couriers and express mail carriers will be directed to both deliver and pick up packages at the Loading Dock mailroom (Suite# 155). Packages delivered to the mailroom prior to a normal mail delivery time, (8:00AM-4:30PM), will be delivered with the mail run. • If packages are delivered after that time, the recipient will be notified by telephone that a package is waiting at the Loading Dock mailroom for their retrieval. • Courier hand-delivery of packages to recipients is not permitted. • All packages must be delivered to the Loading Dock mailroom for screening. Suite# 155 • Reminder that personal packages and deliveries are not allowed.
Food Deliveries	For food delivered and catered, the individual catering will have to go through the screening process, along with the food.

Request for Unescorted Visitor Badge	If you're hosting staff from HQ or other Regions for multiple days who may need unescorted access to conference rooms and work areas, the R10 host is responsible for obtaining and returning the unescorted visitor's badge for them.

Region 10 Employees	Region 10 employees with a visible badge will not be screened prior to entering the PERC. If you forget your ID, you will be required to be screened so that you may check out a temporary keycard and badge from the PERC, (OBS) Orange Badge of Shame. EPA employees from operations/field office, HQ and other regions must also check at the Service Center each day of their visit and visibly wear their government ID badge.
Unscheduled Guests	Occasionally visitor's drop-in without prior notice or appointment with staff. The Service Center will attempt to contact the relevant program office. If program staff are unavailable at that time, the Service Center will provide visitor with the program administrative staff contact to schedule a future appointment.
Afterhours and weekend visitor access	There are to be no after hours or weekend visitor access. The Park Place building is open from 6:00AM – 6:00PM Monday through Friday. Holiday hours may vary and closed on weekends. Garage parking is not permitted.

TRAVEL DIRECTIONS

FROM AIRPORT HEADING NORTH on I-5	Seneca Exit - which is on left side of freeway R onto 6th Avenue First building on R is Park Place Building - 1200 6th Avenue
LIGHT RAIL FROM AIRPORT	Get on North bound train Get off at University Street Station Go up to street level - 3rd Avenue Walk three (3) blocks up University Street Building on right side of block, 6th and University: 1200 6th Avenue
FROM NORTH HEADING SOUTH on I-5	Union Street Exit L onto 5th L onto Spring L onto 6th Go to 6th and Seneca, first building on right: Park Place Building

- **Parking:** Parking is available in the building and is operated by private vendor, ACE. EPA DOES NOT OFFER OR PAY VALIDATED PARKING FOR VISITORS OR INVITED GUESTS. Also, guests cannot park in designated EPA vehicle parking slots. There are several garages nearby and plenty of metered street parking available.

BADGE TYPES: (All are to be signed out at the P.E.R.C)

Dated visitor sticker:	• Signifies that the visitor has gone through the security screening process • Visitor must be escorted at all times • Only valid for the date on the sticker • Has directions to the Convention Center for evacuation
Orange Badge of Shame:	• To be used by Seattle EPA office employees only • Are labeled by number • Has 2 access cards, one for the building and one for EPA access • Are to be returned in at the end of the day or will be deactivated
Visitor Badge	• All EPA federal employees are eligible • Are labeled by number • Has 2 access cards, one for the building and one for EPA access • Can be used and held on to for one week (5 business days), not over the weekend • To be checked out by Seattle EPA office POC • Does not have to be escorted • Must be turned in at the end of the meeting or will be deactivated

(Updated 6/1/2018)

Appointment

From: SGP_PM [SGP_PM@brwncald.com]
Sent: 9/6/2019 7:24:12 PM
To: SGP_PM [SGP_PM@brwncald.com]; Piper Goessel (kgoessel@fs.fed.us) [kgoessel@fs.fed.us]; Valerie Porter (valerie.porter@aecom.com) [valerie.porter@aecom.com]; Shepherd, Maria [maria.shepherd@aecom.com]; Christen Marve Griffith (Christen.M.Griffith@usace.army.mil) [Christen.M.Griffith@usace.army.mil]; Hood, Lynne [Hood.Lynne@epa.gov]; DGreen@idl.idaho.gov; Aaron.Scheff@deq.idaho.gov; John.Chatburn@oer.idaho.gov; Scott.Pugrud@oer.idaho.gov; Gordon Cruickshank (glc55@frontier.com) [glc55@frontier.com]; Ally Turner (ally_turner@fws.gov) [ally_turner@fws.gov]; Johnna.Sandow@noaa.gov [johnna.sandow@noaa.gov]; Alan Haslam [ahaslam@midasgoldinc.com]; Dale Kerner [dkerner@midasgoldinc.com]; Dan Kline (dkline@midasgoldinc.com) [dkline@midasgoldinc.com]; Gene Bosley (bosley@midasgoldinc.com) [bosley@midasgoldinc.com]; Austin Zinsser [zinsser@midasgoldinc.com]; Mckinsey Lyon [mlyon@midasgoldinc.com]; Todd Glindeman [TGlindeman@brwncald.com]; Mary Jay Martens [mjmartens@brwncald.com]; Jordan Nielsen [jnielsen@midasgoldinc.com]; Marde Mensinger [Marde.Mensinger@oer.idaho.gov]; Dworian, Paul [paul.dworian@aecom.com]; Aditya Jani [Ajani@BrwnCald.com]; Leeds, Todd - FS [toddleeds@fs.fed.us]; Adam.McMahon@deq.idaho.gov; Todd Drage [tdrage@idl.idaho.gov]; Eric Wilson [EWilson@idl.idaho.gov]; Bujak, Charissa [bujak.charissa@epa.gov]; manuel.rauhut@idwr.idaho.gov; Rakael Pope (Rakael.Pope@deq.idaho.gov) [Rakael.Pope@deq.idaho.gov]; Linique Kimball [Lkimball@BrwnCald.com]; Alok Gupta [agupta@brwncald.com]; Richard Mattucci [RMattucci@brwncald.com]; Hillary Wolff [Hwolff@BrwnCald.com]
CC: Brady.Johnson@deq.idaho.gov; Sarah.Hansen@deq.idaho.gov; Herlocker, Noah [noah.herlocker@aecom.com]; Derek Risso [drisso@ecosystemsciences.com]; Dave Ellerbroek [Dellerbroek@BrwnCald.com]; Shoulders, MacNamara [macnamara.shoulders@aecom.com]; Gazzetti, Edward - FS [egazzetti@fs.fed.us]; FS-R4 Payette NF SO Conf Rm 142 Thunder Mountain [pnf_so_conf_rm_142_thunder_mountain@ms.fs.fed.us]; Dan Stanaway [dstanaway@BrwnCald.com]; Karen.Jackson@deq.idaho.gov; George Lynch [George.Lynch@oer.idaho.gov]; Tammy Japhet [Tammy.Japhet@oer.idaho.gov]; Leeds, Todd - FS [todd.leeds@usda.gov]; Rob Bowell [rbowell@srk.co.uk]; Torrealday, Heidie -FS [heidie.torrealday@usda.gov]; Hughes, Clinton E -FS [clinton.hughes@usda.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]

Subject: Midas Gold - Monthly Technical Session: FINANCIAL ASSURANCE
Attachments: 20190918_PRO Bond Estimates_Tech Session_DRAFT.pdf; 20190918_BC_MidasGold_Tech Session Financial Assurance Meeting Agenda DRAFT.docx
Location: BC Boise Office, 950 West Bannock Street, Boise, Idaho; (b) (6)

Start: 9/18/2019 7:30:00 PM
End: 9/18/2019 10:30:00 PM
Show Time As: Busy

Recurrence: (none)

[UPDATE 9/13 – Draft agenda and slide deck attached for the 9/18 Technical Session on Financial Assurance]

[UPDATE 9/9 – MIDAS GOLD WOULD LIKE TO UTILIZE THIS TIME SLOT TO COVER **FINANCIAL ASSURANCE**. AN AGENDA WILL BE COMING OUT SOON. IN THE MEANTIME, PLEASE PASS THIS CALENDAR INVITE TO YOUR AGENCY SMEs AND THOSE FOLKS WHO WOULD LIKE TO PARTICIPATE IN THE DISCUSSION. THANK YOU]

USFS, AECOM, Cooperating Agencies, NOAA Fisheries, and USFWS,

This calendar invite extends the monthly technical sessions (third Wednesday of each month), which will give the team an opportunity to pass along updates on technical issues that are relevant to the project at the time.

We will update each month's invite with the draft agenda and draft slides as they become available so that you can reach out to your agency subject matter experts (SMEs) for attendance. Please forward this invite to your agency's SMEs that I may have missed.

Please let us know if you have any questions. Thank you.

Dan

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A Brown and Caldwell ShoreTel conference call has been created for this conference.

Call-in Number: (b) (6)
Participant code:

Click the link below for the web conference:

https://Conferencing2.brwncald.com (b) (6)

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Brown AND Caldwell

950 West Bannock Street, Suite 350
Boise, Idaho 83702

T: 208.389.7700
F: 208.389.7750

Meeting Agenda

Prepared for: Midas Gold Idaho, Inc. (Midas Gold)
Project Title: Stibnite Gold Project
Project No.: 153044

Purpose of Meeting: Monthly Technical Session – Financial Assurance **Date:** September 18, 2019
Meeting Location: BC Boise Office, 950 West Bannock Street **Time:** 12:30-3:30 p.m.
Agenda Prepared by: Kristan Robbins, Brown and Caldwell

Web Conference Link: [HYPERLINK "https://(Ex. 6 Personal Privacy (PP)]
Call-In Phone No.: Ex. 6 Personal Privacy (PP) (Participant Code: Ex. 6 Personal Privacy (PP)

Attendees:

Piper Goessel, USFS	Al Haslam, Midas Gold
Valerie Porter, AECOM	Dan Kline, Midas Gold
Maria Shepherd, AECOM	Austin Zinsser, Midas Gold
Marve Griffith, USACE	Todd Glindeman, BC
Aaron Scheff, IDEQ	Dan Stanaway, BC
John Chatburn, OER	Mary Jay Martens, BC
(Others to be added)	Alok Gupta, BC

Agenda

1. Safety moment
2. Why financial assurance is needed
3. How appropriate financial assurance is estimated
4. Example estimates of financial assurance requirements based on the PRO
5. Path forward for ultimate Stibnite Gold Project financial assurance

Restore the Site

Valley County, Idaho

September 2019

MAX.TSX

MDRPF.OTCQX

TODAY'S DISCUSSION

- Why financial assurance is needed
- How appropriate financial assurance is estimated
- Example estimates of financial assurance requirements based on the PRO
- Path forward for ultimate Stibnite Gold Project financial assurance

Financial Assurance: Purpose and Requirements

INTRODUCTION TO FINANCIAL ASSURANCE

- Financial Assurance is set aside upfront to:
  - Demonstrate that owner/operators have the resources to properly close and reclaim a facility when the operational life is over
  - Ensure that reclamation and closure work outlined in a closure plan is successfully performed, even in the event that the proponent of the plan is unable or unwilling to perform the work
- The US Forest Service, in 36 CFR 228, requires all operators to furnish a bond sufficient to reclaim the area of operation prior to approval of their plan of operation
- Likewise, the Idaho Mining Act* requires adequate financial assurance be set aside prior to permit approval

** Legislative changes to the Idaho Surface Mining Act are currently under development*

IDAHO HB 141 AND NEGOTIATED RULEMAKING

- In March 2019, Governor Little signed House Bill 141 proposing changes to IDAPA Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities
- Key changes related to Financial Assurance:
  - Incorporating **water treatment and post-closure activities** in reclamation plans
  - Requiring that **all reclamation tasks** in a plan be completed and **covered by financial assurance**
  - Estimating **actual cost** of reclamation and post-closure activities
  - Allowing additional types of financial assurance
- IDL began negotiated rulemaking in May 2019 and a temporary rule was adopted by the Land Board in July 2019

AGENCIES REQUIRING FINANCIAL ASSURANCE

Amount to stabilize, rehabilitate, and reclaim area of operations.

Bond may be held by USFS as long as it is sufficient to “reclaim the lands.”

Financial assurance for compensatory mitigation project. Allows for “alternative mechanism.”

Tailings dam bond amount must be approved by IDWR. IDL bond may be accepted in lieu.

Cyanidation Permit issuance dependent on meeting IDL bond requirements.

NEED FOR COOPERATIVE AGREEMENT

- Several agencies will require financial assurance for certain aspects of the project
- Each agency has its own unique requirements for estimating and funding a reclamation bond
- An overlap in bond requirements does not necessitate duplication of funds:
  - "COOPERATIVE AGREEMENTS. Where more than one agency, Federal and/or State, has jurisdiction over a mineral operation, the role of each agency should be defined in a cooperative agreement. The cooperative agreement becomes a primary basis for avoiding multiple and excessive bonding and eliminating conflicting reclamation requirements." —FSM 2846

Estimating Financial Assurance

HISTORY & INADEQUACIES

- Financial Assurance historically estimated on price-per-acre of disturbance basis
- Studies have shown that bond amounts set aside in the past proved to be inadequate for reclamation and closure
- No standardized method for estimation or determination of adequacy

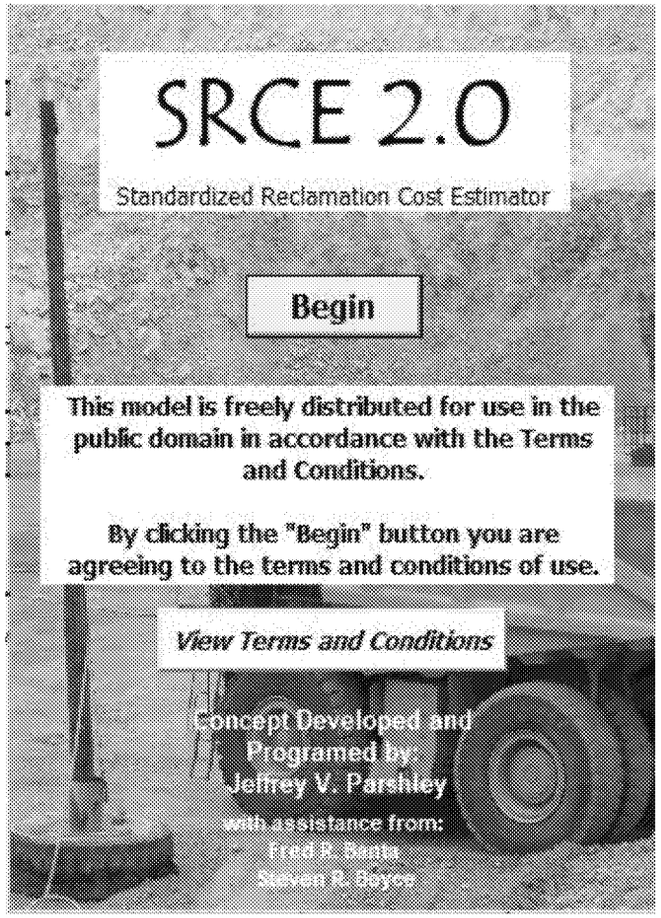
➢Need for site-specific, real-time costs

➢Need for data calibrated to real-world scenarios

➢Need for transparency and reproducibility for reviewing agencies

STANDARDIZED RECLAMATION COST ESTIMATOR (SRCE)

- Standardized computer model for estimating mine reclamation and closure costs
- Developed in a collaborative effort by:
  - Nevada Division of Environmental Protection – Bureau of Mining Regulation and Reclamation (NDEP-BMRR)
  - Bureau of Land Management (BLM)
  - Nevada Mining Association
- Useful for both mine operators and regulatory agencies
  - Life-of-Mine, Asset Retirement Obligation, or Financial Assurance
- Commonly used in most western states, including Idaho



SRCE, CONTINUED

- Standardizes inputs and calculation methodologies for estimating mine reclamation costs
  - Basic formula: **Unit costs x reclamation quantities**

Local, up-to-date | Specific to PRO

- Incorporates site-specific conditions, project-specific parameters and reclamation methods
- Tested and calibrated using real world data from mining and reclamation projects
- Provides transparent and reproducible cost calculations
- Meets state and federal regulatory requirements

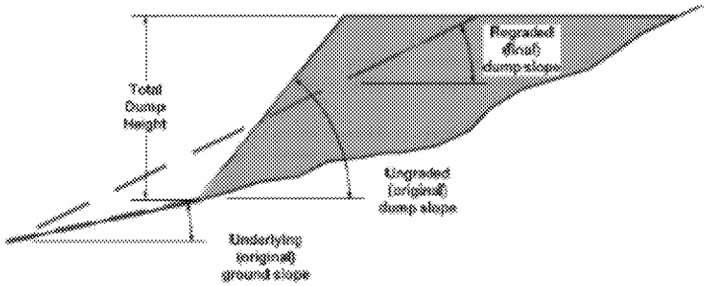


Figure 5-7: Waste Rock Dump or Heap Slope Inputs

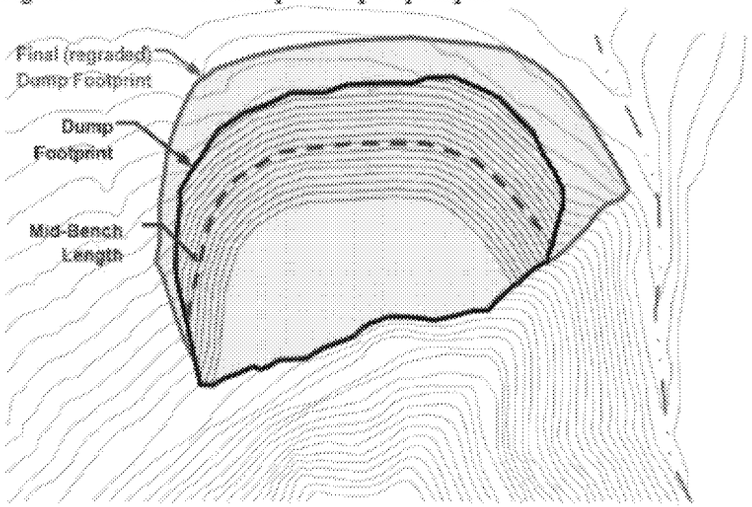


Figure 5-8 - Regrading Volume Inputs

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SRCE MODEL BENEFITS

- Publicly available
- Excel-based
- Customizable and flexible
- Can use standardized *or* custom cost data
  - SRCE includes standardized cost data file based on Davis-Bacon labor rates and applicable fuel, equipment, and rental rates
  - Updated annually
  - Can be modified to include region-specific labor rates and other cost data
- Continually evolving and improving
- Facilitates more efficient review by regulatory agencies

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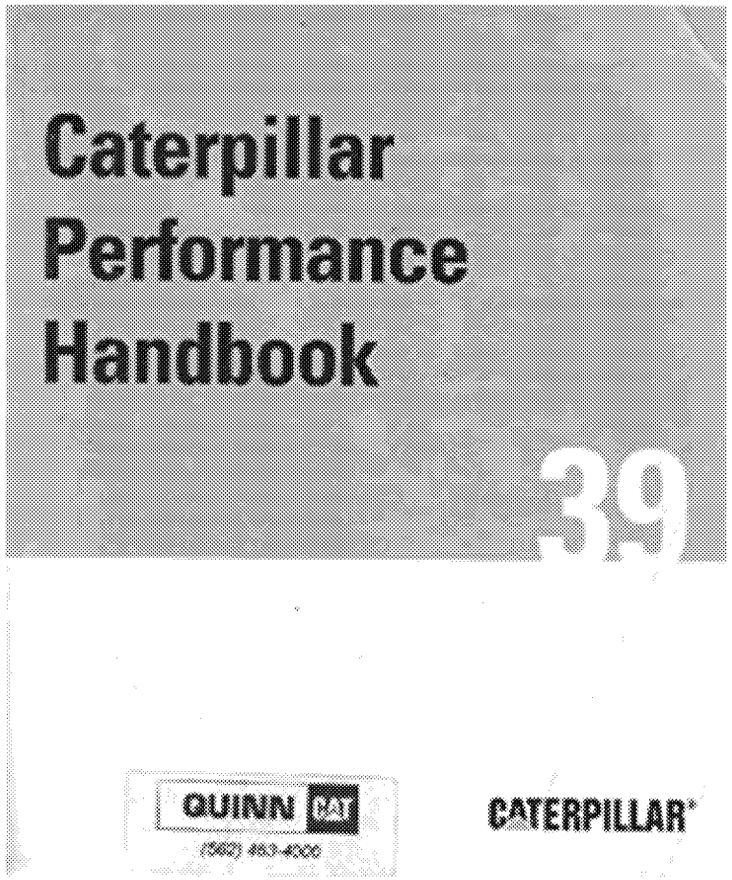
Unit Costs

UNIT COSTS FOR LABOR

- Davis-Bacon labor rates
  - U.S. Government publication
  - Updated regularly
  - Specific to heavy construction industry
  - Local to Valley County
  - Includes zone pay for remote site
  - Includes base pay and fringe benefits
- Equipment operators, truck drivers, laborers, project managers
- Indirect labor costs (social security, workman's comp, insurance, taxes…)

UNIT COSTS FOR EQUIPMENT

- Equipment costs include:
  - Costs for rental from local CAT vendor
  - Preventative maintenance costs
  - Wear costs for replacing ground-engaging-tools
  - Tire replacement costs
  - Assembly and disassembly costs
- These costs are converted to a per-hour-of-operation unit cost
- Equipment productivity rates estimated using the CAT Performance Handbook



UNIT COSTS FOR MATERIALS

- From local vendors and SRCE published rates
- Example materials:
  - Revegetation materials
  - Mulch and soil amendments
  - Well abandonment materials
  - Fuel
- Example miscellaneous costs:
  - Monitoring
  - Waste disposal
  - Demolition of buildings and foundations, removal of fences and pipes
  - Stormwater controls

PRO Bond Estimates

STIBNITE PROJECT PHASES

- What we are presenting today: **Example bond estimates based on the PRO to demonstrate methodology and approach**
- PRO Bond estimates developed for four timesteps during the Operation phase
  - Additional estimate to be developed for timestep representing end of Construction, prior to Operation
- SRCE estimates encompass four project phases:
  - Pre-mining construction (3 years)
  - Operation (snapshot of reclamation financial assurance at 3-year timesteps up to planned 12-year mine life)
  - Closure (takes 13 years from hypothetical cease of operations)
  - Post-Closure (to 30 years post-cease of operations)

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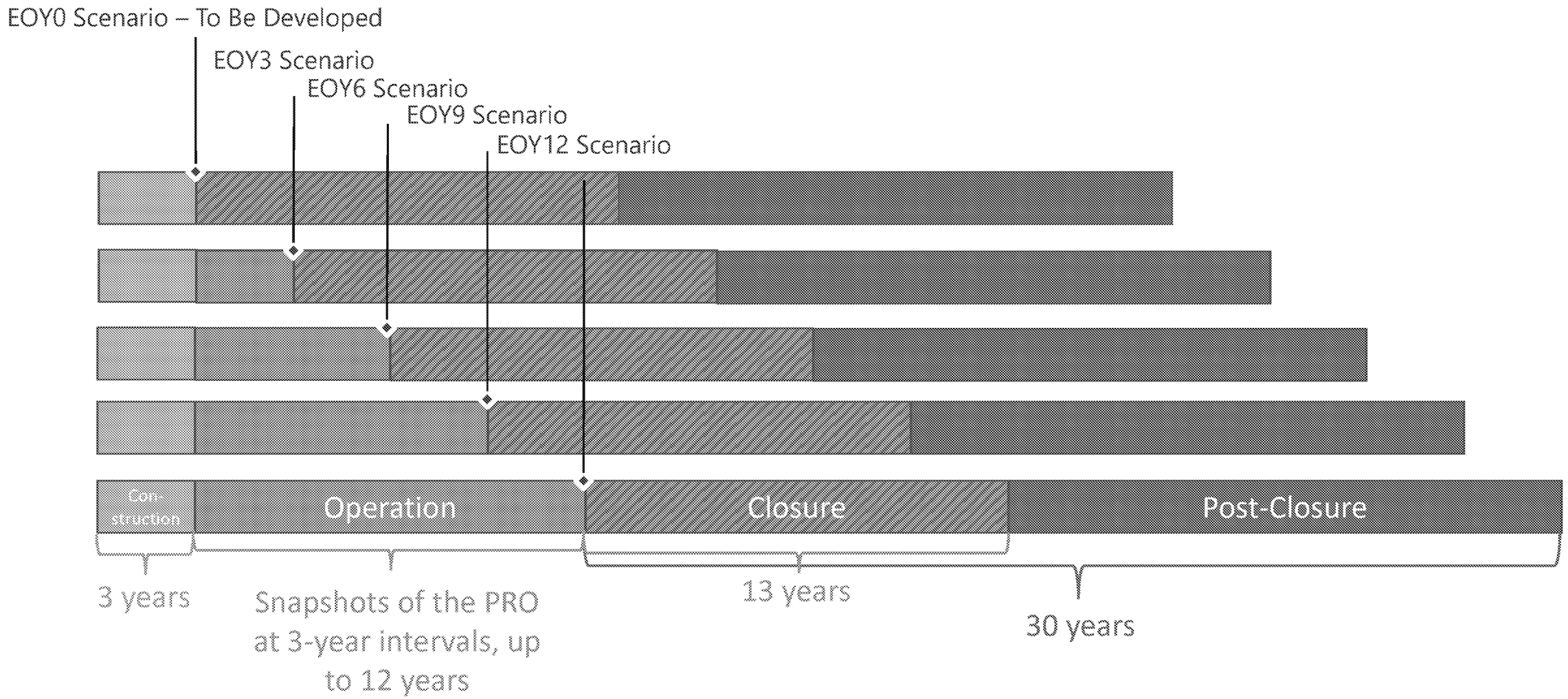
PROJECT PHASES & BOND SCENARIO TIMESTEPS



APPROACH TO ESTIMATING COSTS AT 'UNDEVELOPED' TIMESTEPS

Developed Timestep

- For EOY 12 (planned end of operations), a reclamation plan is presented in the PRO
- Reclamation quantities (disturbed areas, volumes of material, lengths of pipe, etc.) were taken from the PRO for SRCE model inputs

'Undeveloped' Timesteps

- For all other timesteps, operations cease at a point when extra steps may be required prior to reclamation
- Hypothetical scenarios were developed to capture extra steps
- Other reclamation quantities according to PRO, with consideration given to timing of disturbance and concurrent reclamation activities

EOY3 BACKFILL SCENARIO

PRO EOY3 Fiddle DRSF & YPP

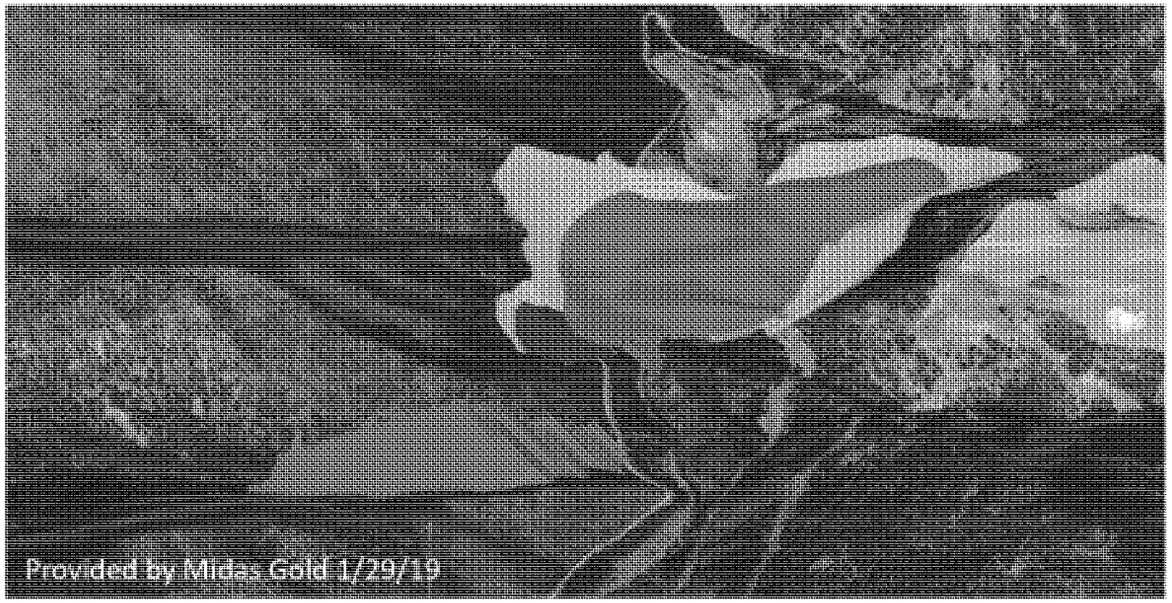
PRO EOY3 YPP Backfill Scenario

Backfill volume required at EOY3 to allow EFSFSR reconnection = 7,588,567 m^3

EOY6 BACKFILL SCENARIO

PRO EOY6 Fiddle DRSF & YPP

PRO EOY6 YPP Backfill Scenario



Backfill volume required at EOY6 to allow EFSFSR reconnection = 29,599,400 m^3

Note: the maximum volume of backfill would be required at approximately year 6.5 (32,213,189 m^3)

EOY9 BACKFILL SCENARIO

PRO EOY9 Fiddle DRSF & YPP

PRO EOY9 YPP Backfill Scenario

Backfill volume required at EOY9 to allow EFSFSR reconnection = 6,117,343 m^3

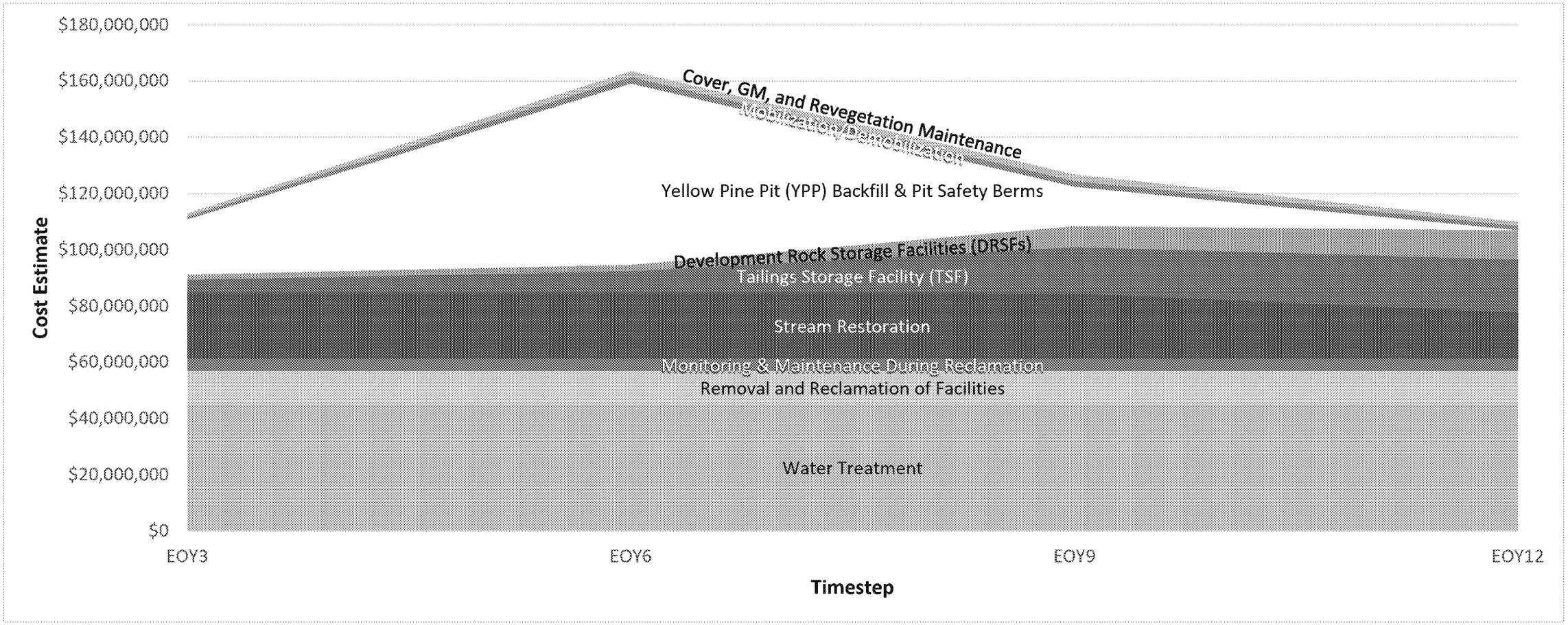
MAJOR ASSUMPTIONS

- All backfill, cover material, and growth medium sourced at site (no imported material)
- Only cover material screened – unscreened DRSF material used as backfill
- No cover placed on DRSFs
- Process plant equipment will be sold/salvaged (net zero demolition cost)
- Unit cost rates from Davis Bacon, local vendors, SRCE 2018 Nevada rates
- Site diesel delivery at $3.08/gal
- PLACEHOLDER stream restoration costs
- PLACEHOLDER water treatment O&M costs for 30 years (no capital cost included)
- Indirect cost rates according to USFS and SRCE guidelines and professional experience
- Real discount rate of 5.0%

DIRECT RECLAMATION AND CLOSURE COSTS FOR PRO

Facility/Activity Type(s)	EOY3	EOY6	EOY9	EOY12
Yellow Pine Pit Backfill & Pit Safety Berms	$ 19,664,537	$ 64,452,965	$ 14,050,307	$ 74,183
Water Treatment	$ 45,000,000	$ 45,000,000	$ 45,000,000	$ 45,000,000
Stream Restoration	$ 23,357,149	$ 23,357,149	$ 23,163,149	$ 16,331,649
Tailings Storage Facility	$ 4,664,227	$ 7,737,135	$ 16,461,461	$ 18,915,666
Removal and Reclamation of Infrastructure: (yards, buildings & foundations, equipment, roads, ponds, diversions, wells, pipes, powerlines, fences, culverts, waste)	$ 11,866,203	$ 11,866,203	$ 11,866,203	$ 11,866,203
Development Rock Storage Facilities	$ 1,849,414	$ 2,251,981	$ 7,464,698	$ 10,357,771
Monitoring and Maintenance During Reclamation	$ 4,493,800	$ 4,493,800	$ 4,493,800	$ 4,493,800
Mobilization/Demobilization	$ 1,063,774	$ 2,325,062	$ 1,980,014	$ 1,540,104
Cover, Growth Media, and Revegetation Maintenance	$ 945,816	$ 1,972,031	$ 2,195,216	$ 1,301,784
Total Direct Costs	**$ 112,904,920**	**$ 163,456,326**	**$ 126,674,848**	**$ 109,881,160**

DIRECT RECLAMATION AND CLOSURE COSTS FOR PRO



INDIRECT COSTS

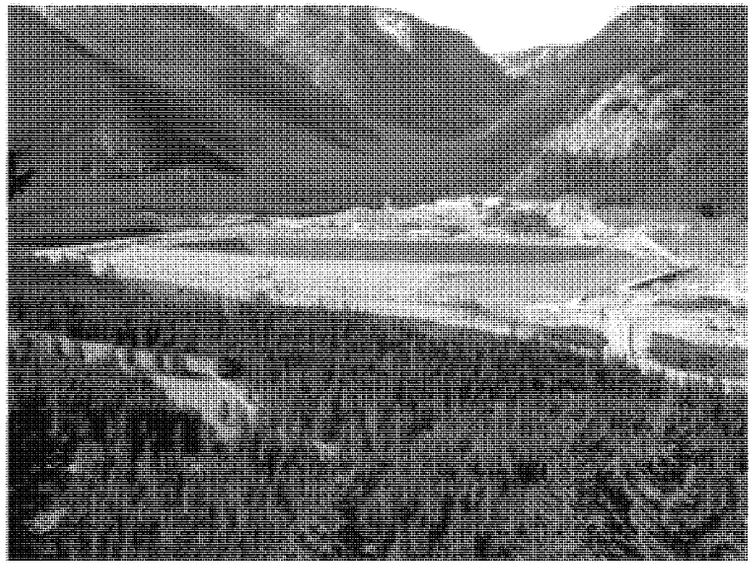
- USFS and SRCE both offer guidance on indirect costs based on overall scale of project
  - Cost to engineer and redesign
  - Costs for agencies to oversee and administer construction plan
  - Contractors' costs (profit, overhead, insurance, performance and payment bonds)
  - Contingencies
- SRCE incorporates indirect costs as a percent of direct project costs

TRAINING GUIDE FOR RECLAMATION BOND ESTIMATION AND ADMINISTRATION

For Mineral Plans of Operation authorized and administered under 36 CFR 228A

USDA – Forest Service

APRIL 2004



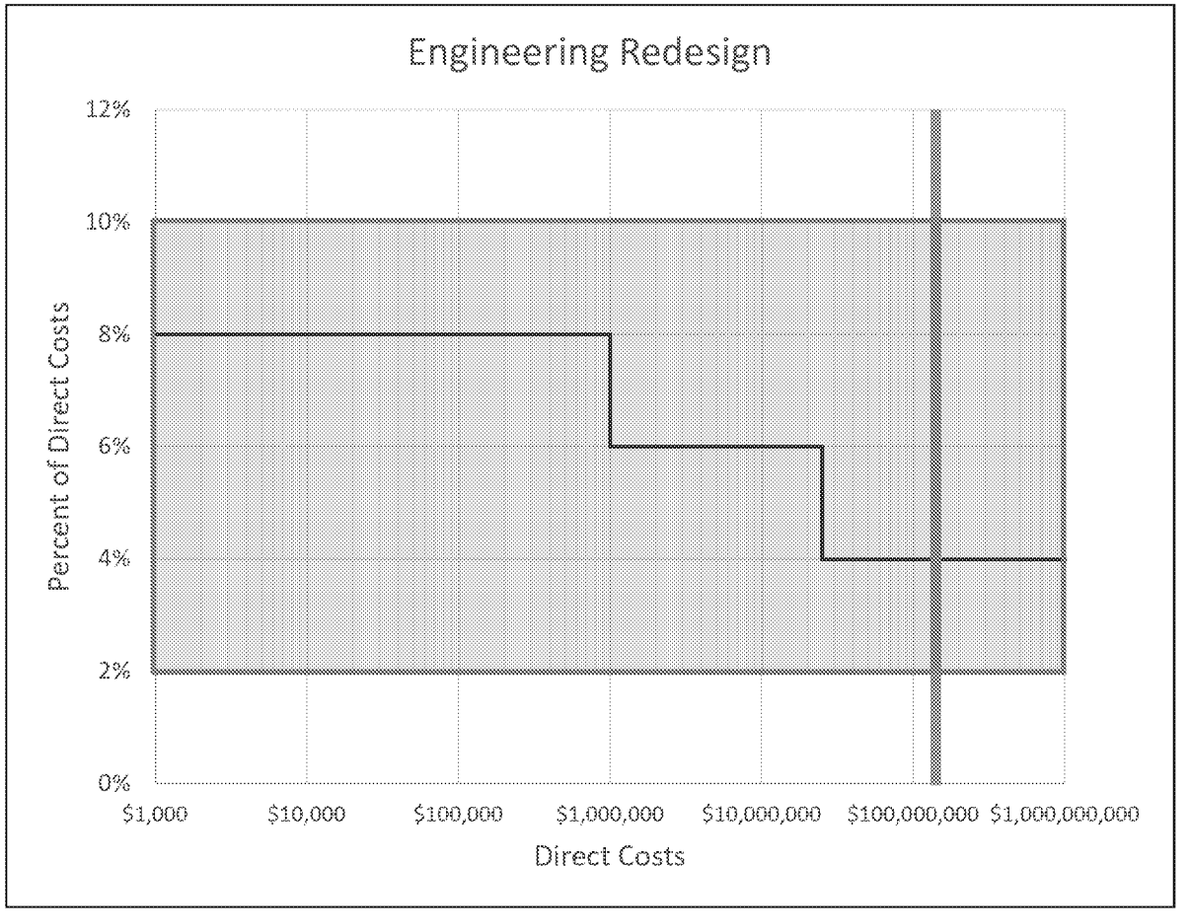
INDIRECT COSTS

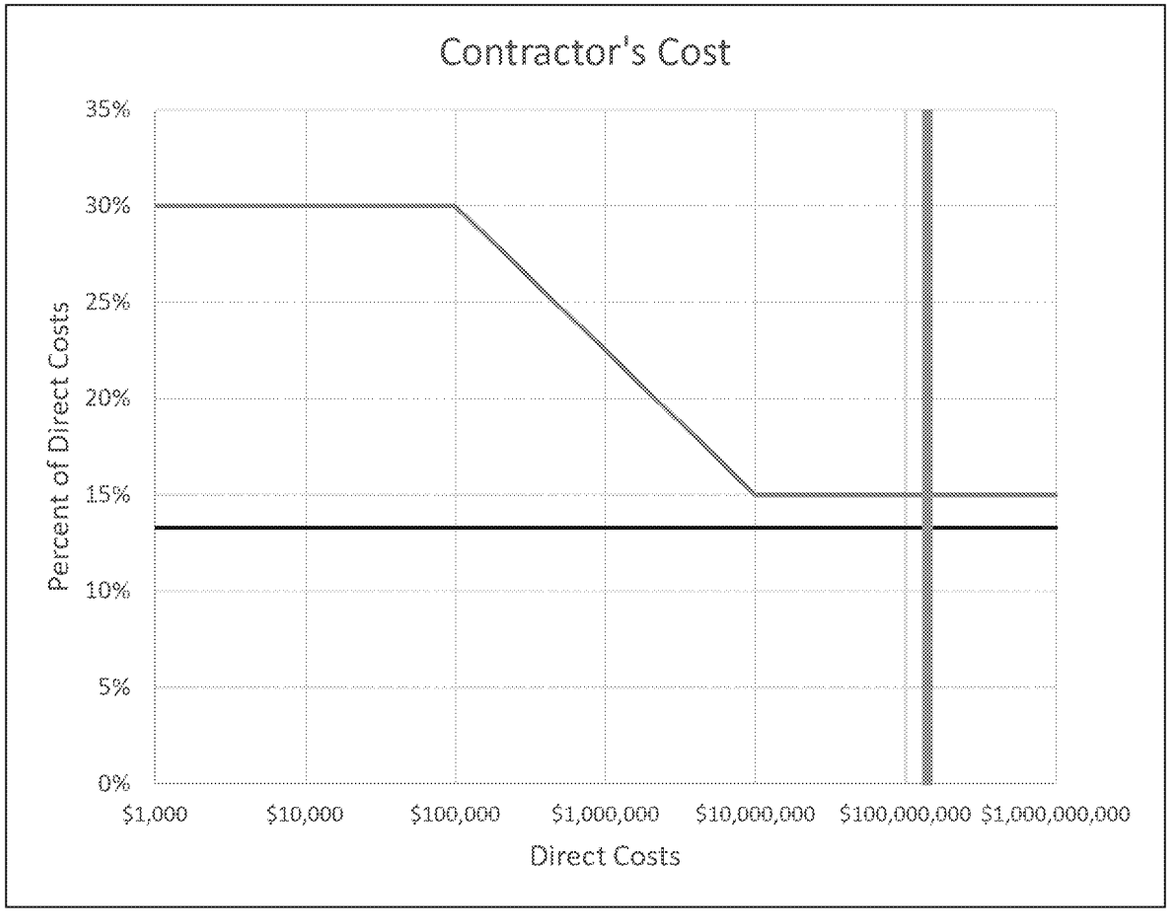
USFS Guidance 2004 Indirect Cost Category		SRCE Indirect Cost Category	Level Used in PRO Bond Estimates
Engineering Redesign		Engineering, Design and Construction Plan	1.4% to 2.0% weighted average depending on timestep [A]
Contractor's Costs	Profit & Overhead	Contractor OH and Profit	13.3% [B]
	Performance and Payment Bonds		
	Insurance		
Agency Project Management	Agency Administration	Contract Administration	4% [C]
	Contract Administration		
Contingencies	Scope	Contingency	33.7% to 38.3% weighted average depending on timestep [D]
	Bid		
Mobilization and demobilization		*(included as a direct cost)*	
Inflation		*(included as component of Net Present Value)*	

[A] 4% applied to most reclamation items. Certain items warranted lower Engineering Redesign costs in specific timesteps.
[B] 10% for contractor Profit, 1.5% each for Performance and Payment Bonds, plus 1.5% of labor costs (assumed to be 20% of direct costs) for Insurance.
[C] 2% for Agency Administration and 2% for Contract Administration
[D] 20% Bid Contingency plus, for most items, 20% Scope Contingency. Certain items warranted lower Scope Contingency costs in specific timesteps.

Note: Scope Contingency reflects current stage of project development, and will be reduced as reclamation plan for Preferred Alternative is finalized.

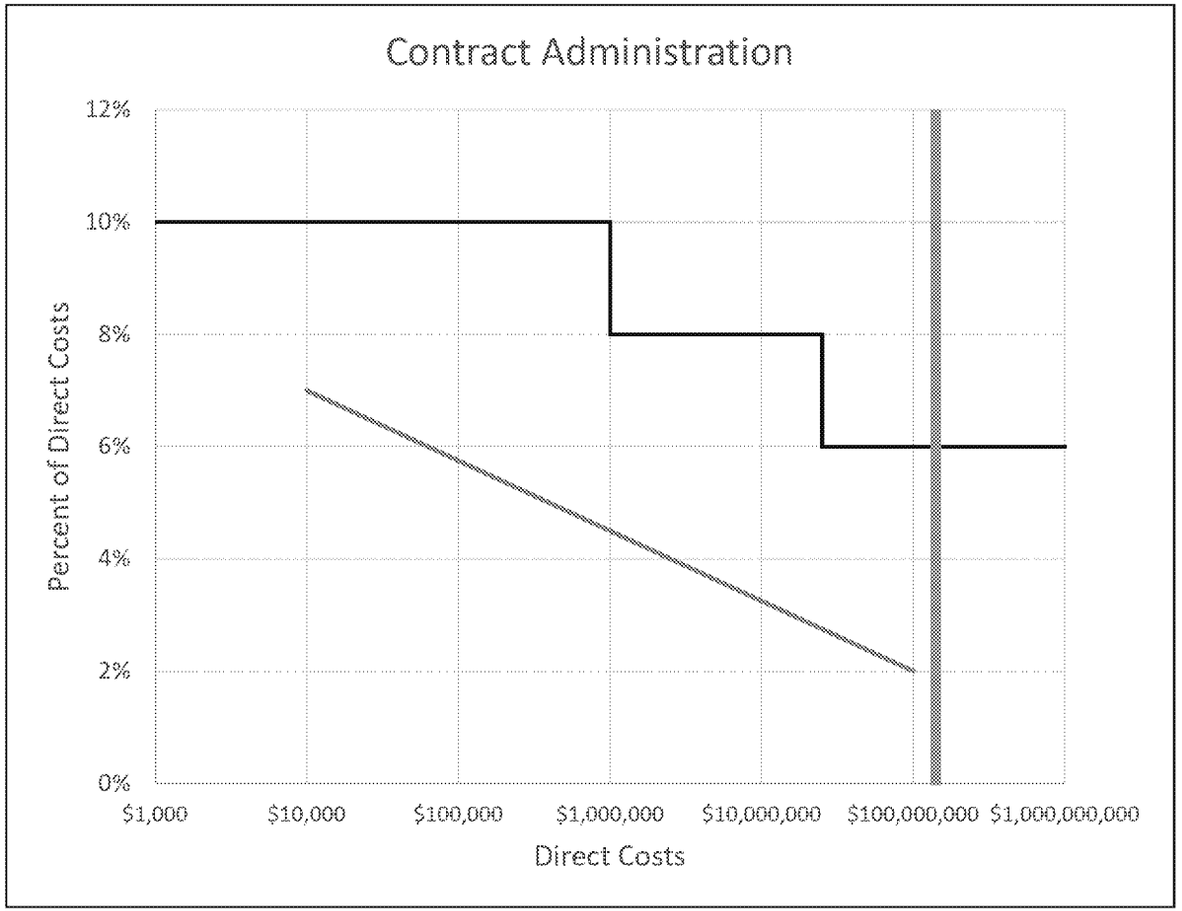
ENGINEERING & CONTRACTOR'S COST

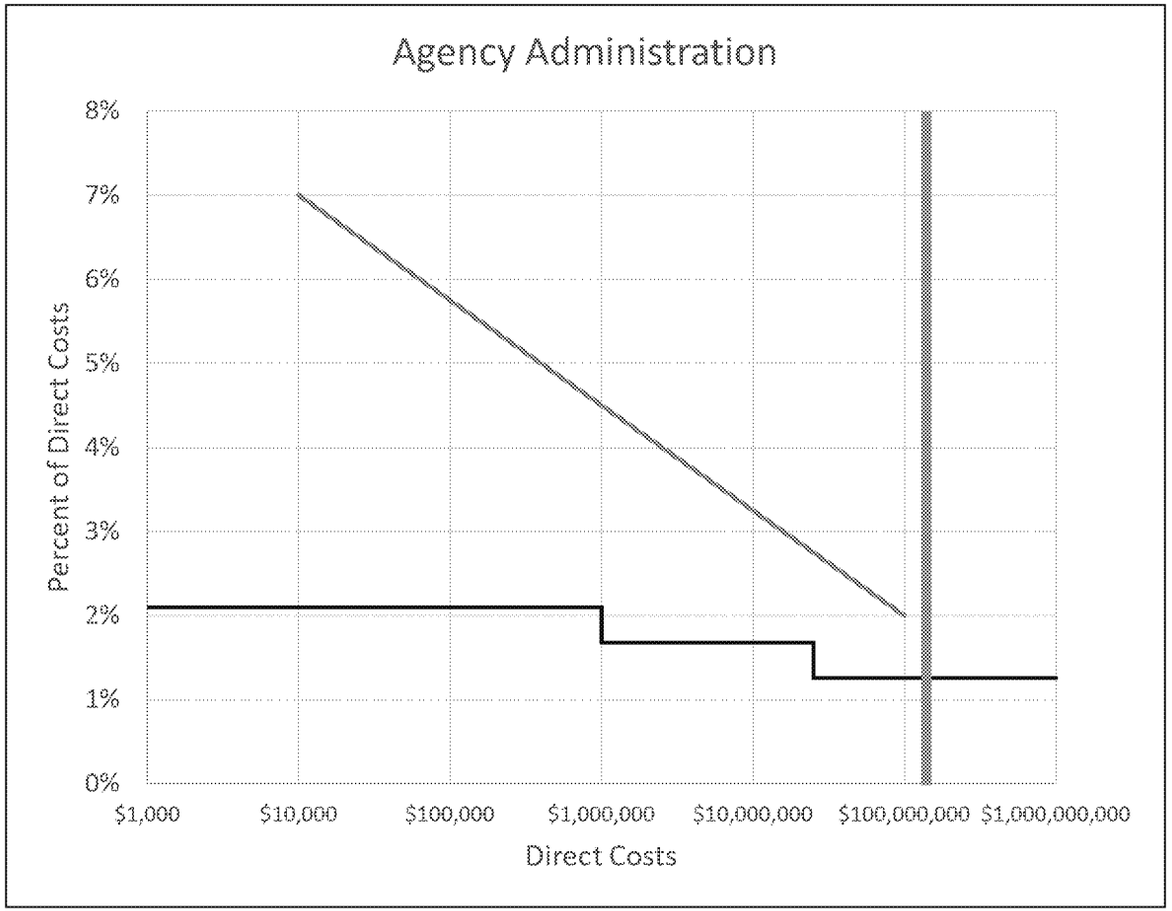




Guidance from USFS — Guidance from SRCE — Stibnite Gold Project

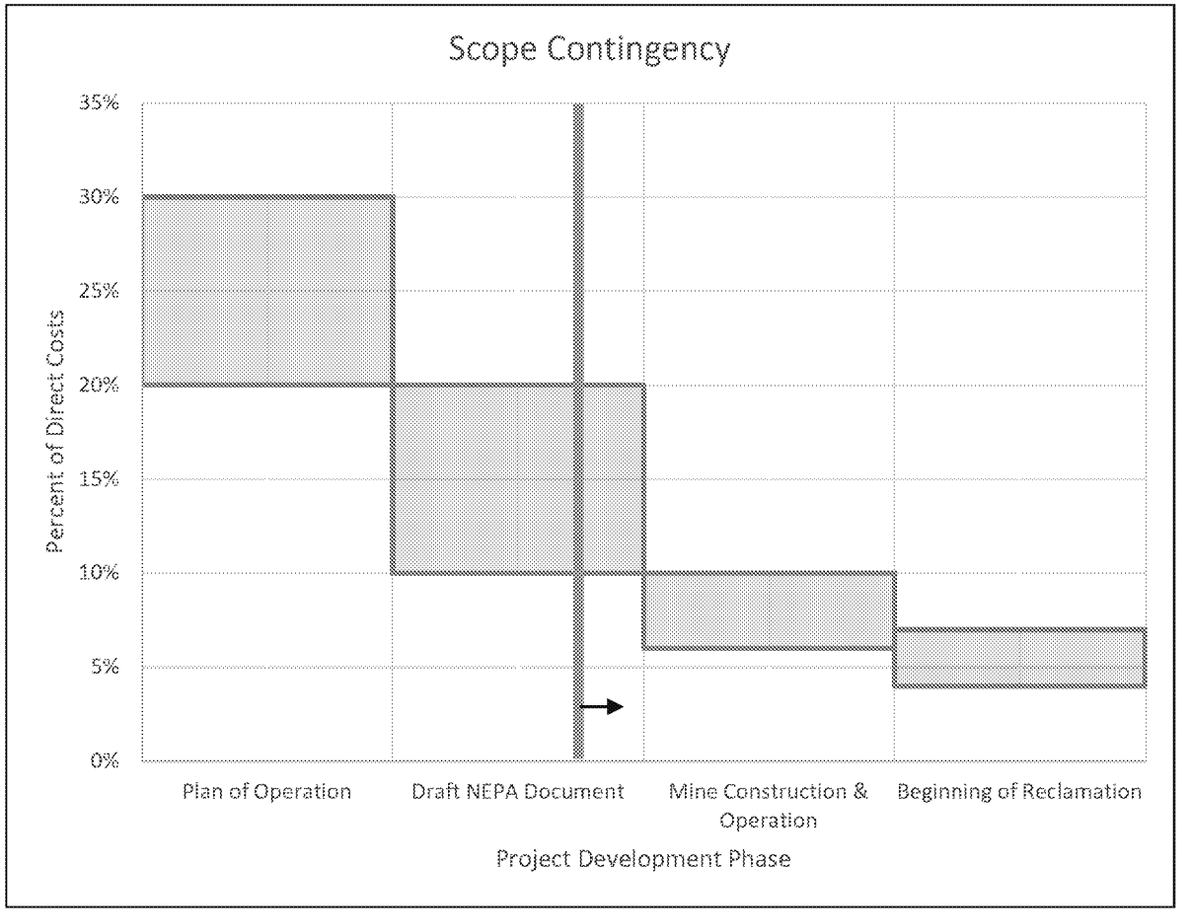
PROJECT MANAGEMENT





Guidance from USFS — Guidance from SRCE — Stibnite Gold Project

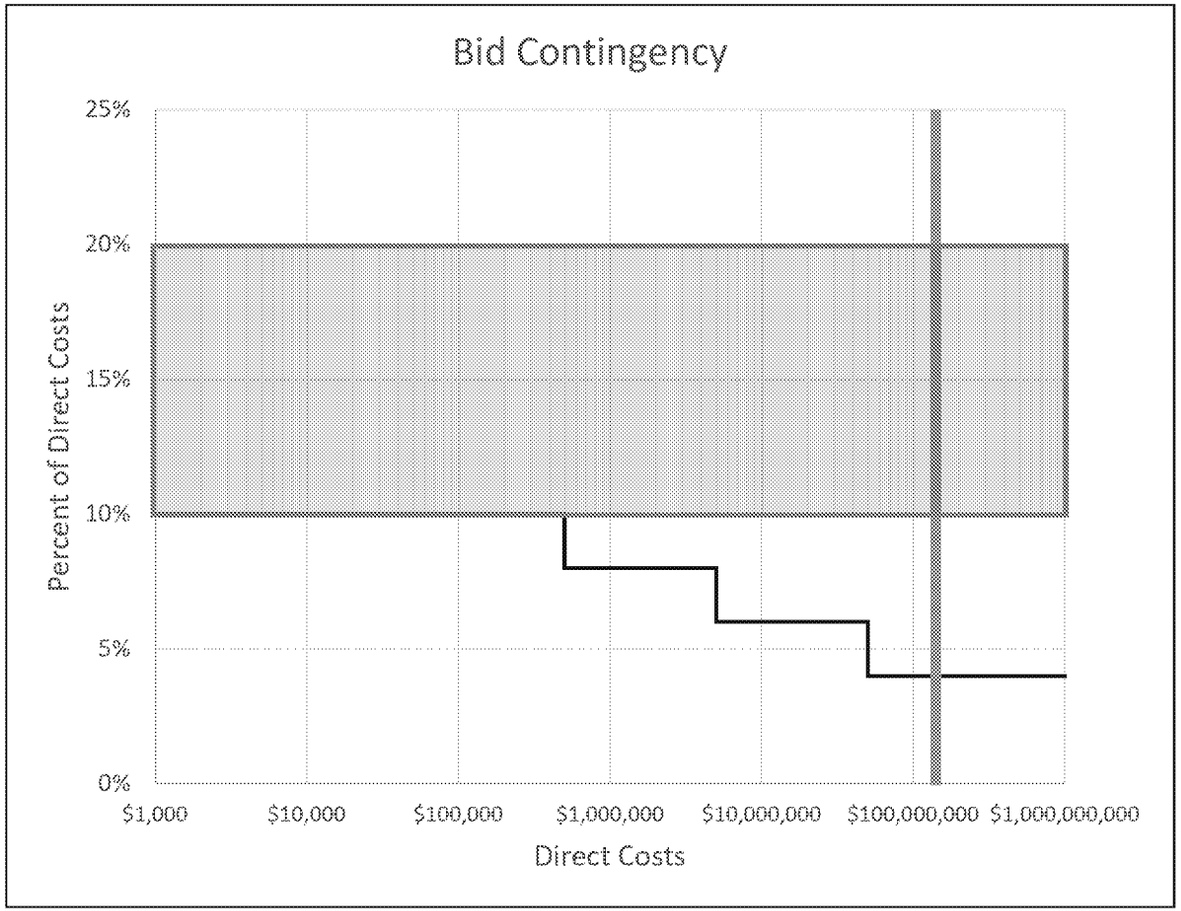
SCOPE CONTINGENCY



- Addresses the uncertainty inherent in producing a closure design
- Level of accuracy depends on stage of project development

Guidance from USFS — Guidance from SRCE — Stibnite Gold

BID CONTINGENCY



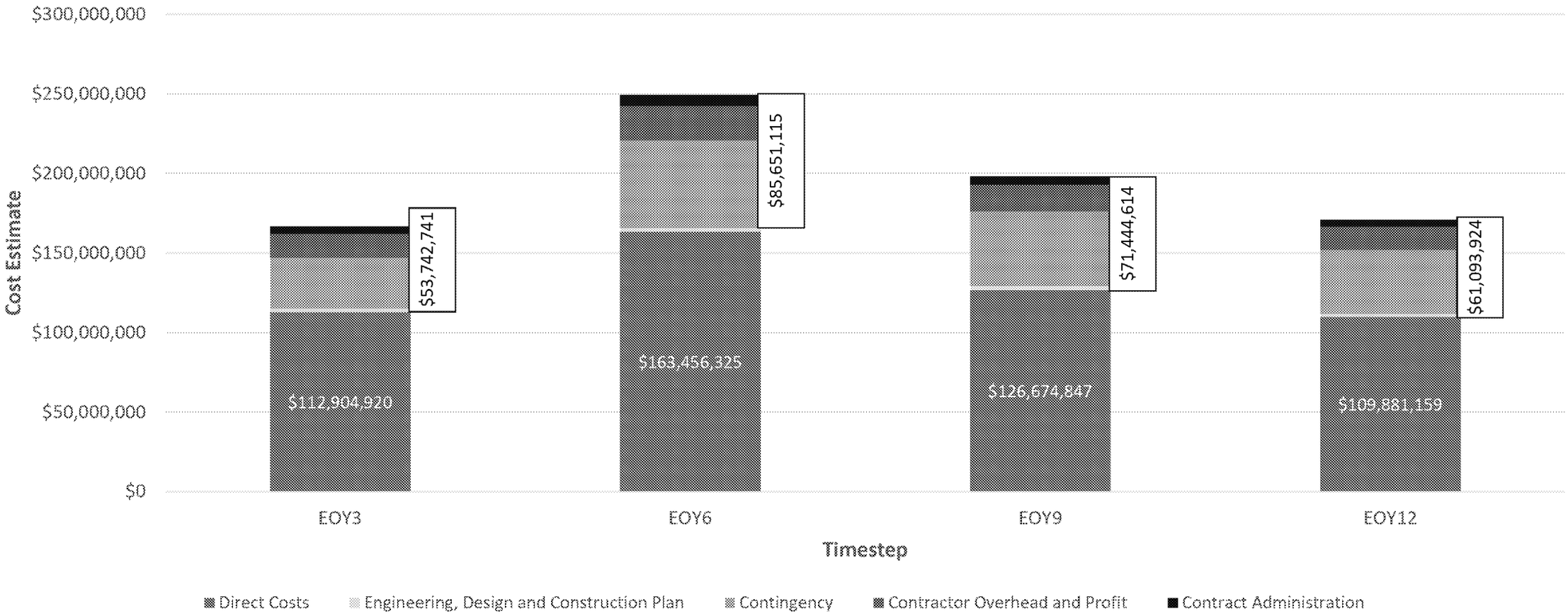
- Addresses the cost uncertainty inherent in actual construction implementation of the project design
- E.g., adverse weather
- E.g., material or supply shortages
- Depends on
  - complexity and scope of construction
  - Amount of data available for the site

Guidance from USFS — Guidance from SRCE — Stibnite Gold Project

INDIRECT COSTS FOR PRO

Indirect Cost Category	EOY3	EOY6	EOY9	EOY12
Engineering, Design and Construction Plan	$ 2,258,098	$ 2,288,389	$ 2,533,497	$ 1,867,980
Contingency	$ 31,952,092	$ 55,084,782	$ 46,996,368	$ 40,216,504
Contractor Overhead and Profit	$ 15,016,354	$ 21,739,691	$ 16,847,755	$ 14,614,194
Contract Administration	$ 4,516,197	$ 6,538,253	$ 5,066,994	$ 4,395,246
Total Indirect Costs	**$ 53,742,741**	**$ 85,651,115**	**$ 71,444,614**	**$ 61,093,924**

DIRECT & INDIRECT COSTS FOR PRO

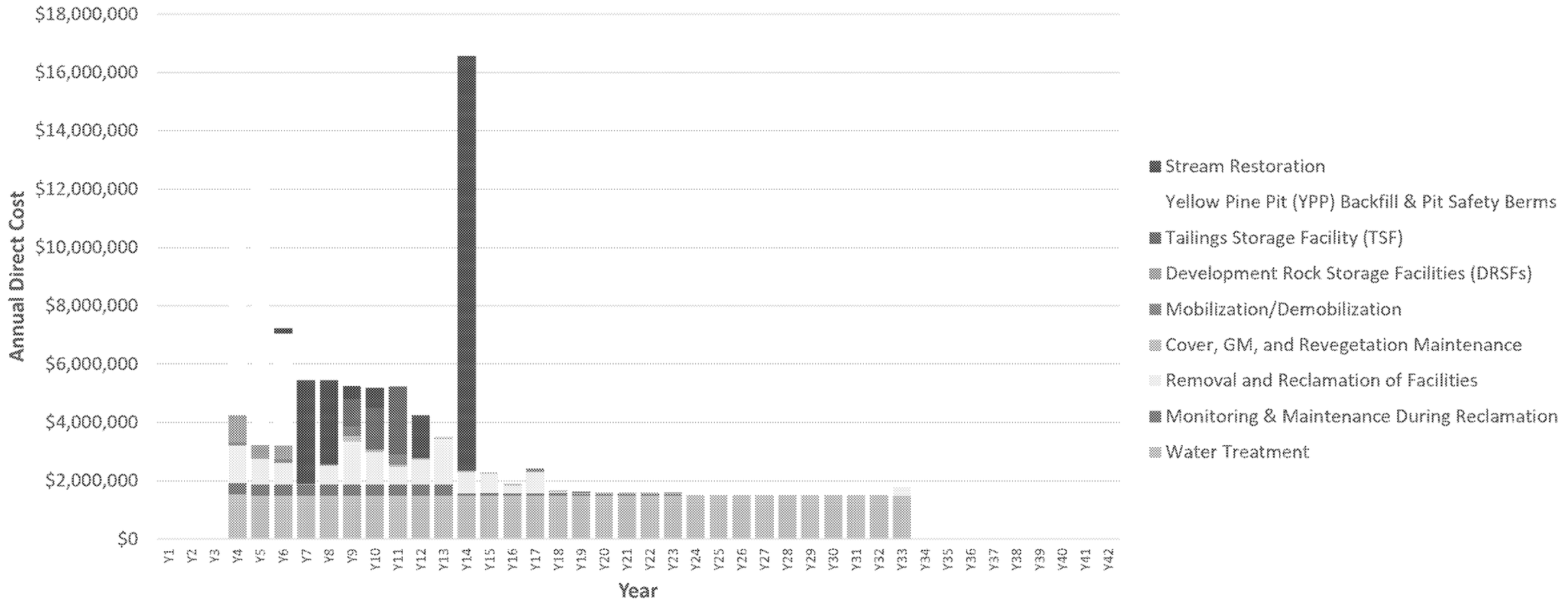


TOTAL FINANCIAL ASSURANCE REQUIREMENT FOR PRO

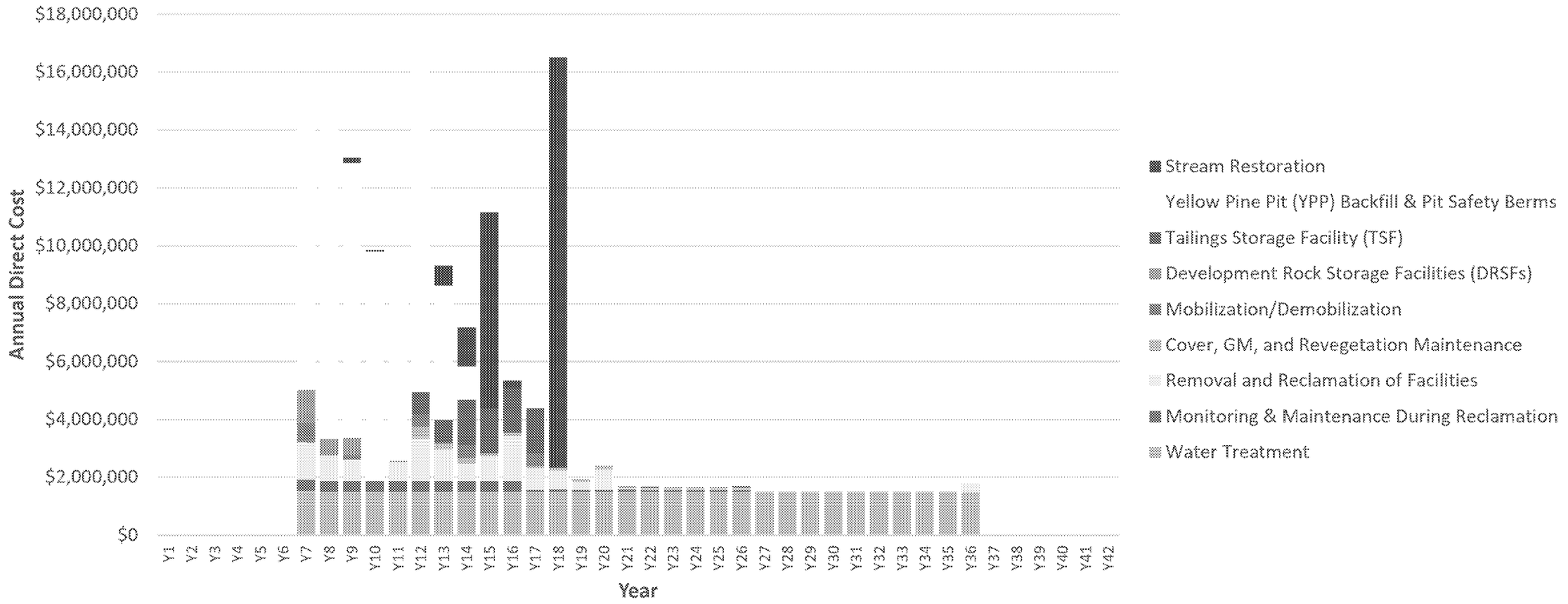
Description	EOY3	EOY6	EOY9	EOY12
Direct Costs	$ 112,904,920	$ 163,456,325	$ 126,674,847	$ 109,881,159
Indirect Costs	$ 53,742,741	$ 85,651,115	$ 71,444,614	$ 61,093,924
Total Financial Assurance Requirement	**$ 166,647,661**	**$ 249,107,440**	**$ 198,119,461**	**$ 170,975,083**

- These estimated totals represent:
  - Current, local unit costs multiplied by reclamation quantities from the PRO and hypothetical scenarios
  - Plus indirect costs applied as a percent of estimated direct costs according to guidelines and experience

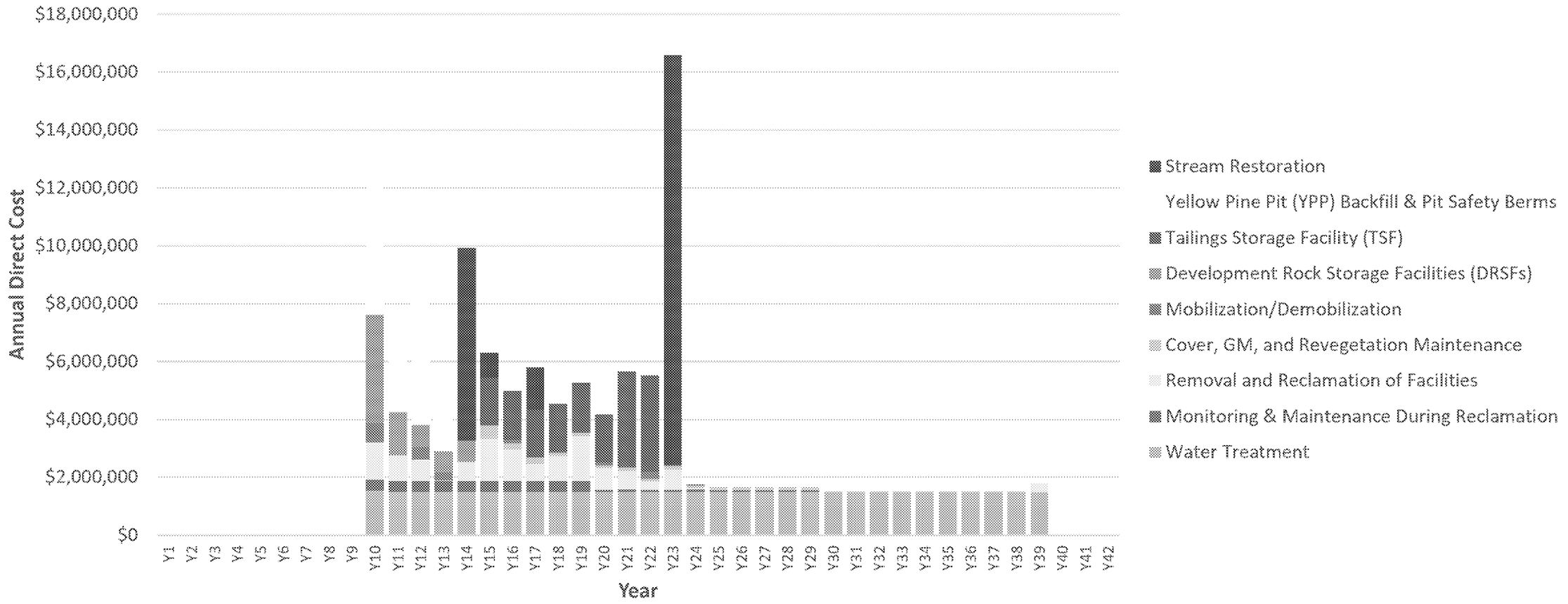
EOY3 SCENARIO
BOND SPEND SCHEDULE



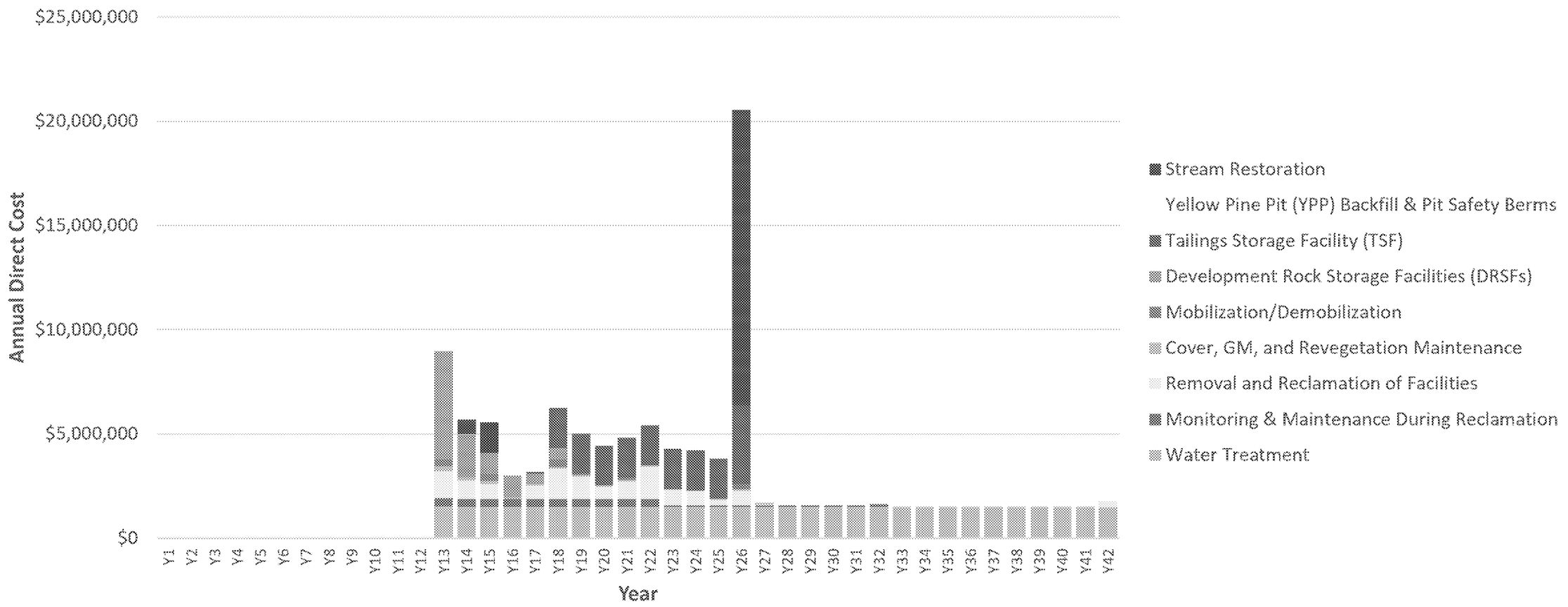
EOY6 SCENARIO
BOND SPEND SCHEDULE



EOY9 SCENARIO
BOND SPEND SCHEDULE



EOY12 SCENARIO
BOND SPEND SCHEDULE



NET PRESENT VALUE ESTIMATION

- Financial assurance funds are set aside for potential *future* need
- *Current* unit costs are used to prepare realistic cost estimates
- Therefore, the cost estimates must be *inflated* to future dollars
- However, since funds are set aside now in an interest-bearing instrument, and may not be accessed for several years, future dollars are *discounted* to account for accrued interest
- SRCE combines inflation and discounting in one term: the "real" discount rate
- Reclamation activities required for each bond-scenario timestep are scheduled into future years based on a hypothetical reclamation plan for that scenario
- The real discount rate is applied to the total dollars assigned to each year of reclamation, closure and post-closure to determine the Net Present Value cost estimate

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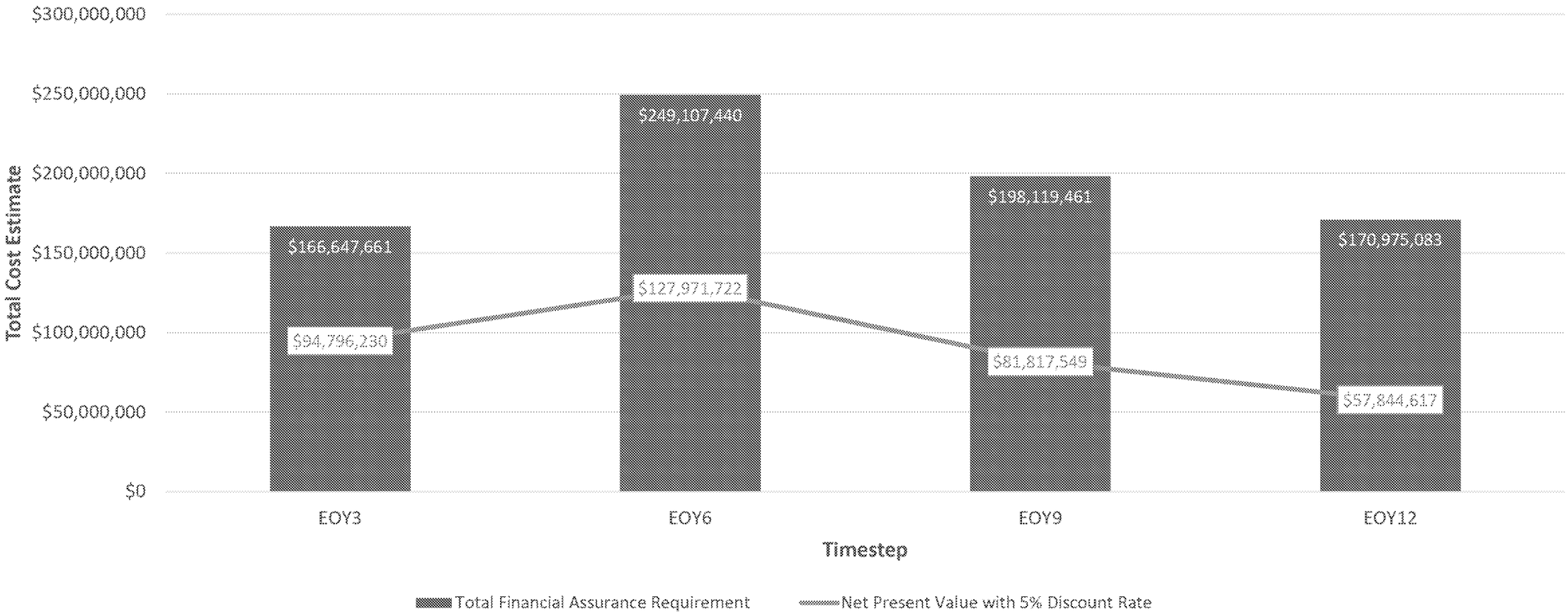
NET PRESENT VALUE OF TOTAL FINANCIAL ASSURANCE FOR PRO

Description	EOY3	EOY6	EOY9	EOY12
Direct Costs	$ 112,904,920	$ 163,456,325	$ 126,674,847	$ 109,881,159
Indirect Costs	$ 53,742,741	$ 85,651,115	$ 71,444,614	$ 61,093,924
Total Financial Assurance Requirement	$ 166,647,661	$ 249,107,440	$ 198,119,461	$ 170,975,083
Net Present Value with 5% Real Discount Rate	**$ 94,796,230**	**$ 127,971,722**	**$ 81,817,549**	**$ 57,844,617**

- These estimated totals represent:
  - Current, local unit costs multiplied by reclamation quantities from the PRO and hypothetical scenarios
  - Plus indirect costs applied as a percent of estimated direct costs according to guidelines and experience
  - Inflated to future dollars and discounted to NPV for estimates of Financial Assurance required to be set aside today for these PRO timesteps

TOTAL FINANCIAL ASSURANCE & NPV ESTIMATES FOR PRO



Discussion

NEXT STEPS

For Midas Gold

- Compensatory mitigation - incorporate
- Water treatment – replace with final
- Stream restoration - replace
- Update with reclamation details of Preferred Alternative
- Prepare EOY0 estimate
- Revisit discount rate indices
- Follow rulemaking and ensure compliance with Financial Assurance requirements

For Agencies

- Determine cooperative agreement terms
- Consider whether to include any of the PRO estimate information in the DEIS
- Create plan for reviewing Financial Assurance estimates for Preferred Alternative

COMPLIANCE WITH NI 43-101

The technical information in this presentation (the "Technical Information") has been approved by Stephen P. Quin, P. Geo., President & CEO of Midas Gold Corp. (together with its subsidiaries, "Midas Gold") and a Qualified Person. Midas Gold's exploration activities at Stibnite Gold were carried out under the supervision of Christopher Dail, C.P.G., Qualified Person and Exploration Manager and Richard Moses, C.P.G., Qualified Person and Site Operations Manager. **For readers to fully understand the information in this presentation, they should read the Pre-Feasibility Study Report (available on SEDAR or at www.midasgoldcorp.com) in its entirety (the "Technical Report"), including all qualifications, assumptions and exclusions that relate to the information set out in this presentation that qualifies the Technical Information. The Technical Report is intended to be read as a whole, and sections or summaries should not be read or relied upon out of context. The technical information in the Technical Report is subject to the assumptions and qualifications contained therein.**

Mineral resources that are not mineral reserves do not have demonstrated economic viability. Mineral resource estimates do not account for mineability, selectivity, mining loss and dilution. These mineral resource estimates include inferred mineral resources that are considered too speculative geologically to have economic considerations applied to them that would enable them to be categorized as mineral reserves. There is also no certainty that these Inferred mineral resources will be converted to the Measured and Indicated categories through further drilling, or into mineral reserves, once economic considerations are applied.

Section 2.3 of NI 43-101 states that: Despite paragraph (1) (a), an issuer may disclose in writing the potential quantity and grade, expressed as ranges, of a target for further exploration if the disclosure

(a) states with equal prominence that the potential quantity and grade is conceptual in nature, that there has been insufficient exploration to define a mineral resource and that it is uncertain if further exploration will result in the target being delineated as a mineral resource; and

(b) states the basis on which the disclosed potential quantity and grade has been determined.

The mineral resources and mineral reserves at the Stibnite Gold Project are contained within areas that have seen historic disturbance resulting from prior mining activities. In order for Midas Gold to advance its interests at Stibnite, the Project will be subject to a number of federal, State and local laws and regulations and will require permits to conduct its activities. However, Midas Gold is not aware of any environmental, permitting, legal or other reasons that would prevent it from advancing the project.

The PFS was compiled by M3 Engineering & Technology Corp. ("M3") which was engaged by Midas Gold Corp.'s wholly owned subsidiary, Midas Gold, Inc. ("MGI"), to evaluate potential options for the possible redevelopment of the Stibnite Gold Project based on information available up to the date of the PFS. Givens Pursley LLP (land tenure), Kirkham Geosystems Ltd. (mineral resources), Blue Coast Metallurgy Ltd. (metallurgy), Pieterse Consulting, Inc. (autoclave), Independent Mining Consultants Inc. (mine plan and mineral reserves), Allen R. Anderson Metallurgical Engineer Inc. (recovery methods), HDR Engineering Inc. (access road), SPF Water Engineering, LLC (water rights) and Tierra Group International Ltd. (tailings, water management infrastructure and closure) also contributed to the PFS. Additional details of responsibilities are provided in the technical report filed on SEDAR in December 2014. The PFS supersedes and replaces the technical report entitled 'Preliminary Economic Assessment Technical Report for the Golden Meadows Project, Idaho' prepared by SRK Consulting (Canada) Inc. and dated September 21, 2012 (PEA) and that PEA should no longer be relied upon.

NON-IFRS REPORTING MEASURES

"Cash Costs", "All-in Sustaining Costs" and "Total costs" are not Performance Measures reported in accordance with International Financial Reporting Standards ("IFRS"). These performance measures are included because these statistics are key performance measures that management uses to monitor performance. Management uses these statistics to assess how the Project ranks against its peer projects and to assess the overall effectiveness and efficiency of the contemplated mining operations. These performance measures do not have a meaning within IFRS and, therefore, amounts presented may not be comparable to similar data presented by other mining companies. These performance measures should not be considered in isolation as a substitute for measures of performance in accordance with IFRS.

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FORWARD LOOKING STATEMENTS

Statements contained in this presentation that are not historical facts are "forward-looking information" or "forward-looking statements" (collectively, "Forward-Looking Information") within the meaning of applicable Canadian securities legislation and the United States Private Securities Litigation Reform Act of 1995. Forward-Looking Information includes, but is not limited to, disclosure regarding possible events, conditions or financial performance that is based on assumptions about future economic conditions and courses of action; and the plans for completion of the Offerings, expected use of proceeds and business objectives. In certain cases, Forward-Looking Information can be identified by the use of words and phrases such as "anticipates", "expects", "understanding", "has agreed to" or variations of such words and phrases or statements that certain actions, events or results "would", "occur" or "be achieved". Although Midas Gold has attempted to identify important factors that could affect Midas Gold and may cause actual actions, events or results to differ materially from those described in Forward-Looking Information, there may be other factors that cause actions, events or results not to be as anticipated, estimated or intended. There can be no assurance that Forward-Looking Information will prove to be accurate, as actual results and future events could differ materially from those anticipated in such statements. Accordingly, readers should not place undue reliance on Forward-Looking Information. Except as required by law, Midas Gold does not assume any obligation to release publicly any revisions to Forward-Looking Information contained in this news release to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Forward-Looking Information involves known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of the Corporation to be materially different from any future results, performance or achievements expressed or implied by the Forward-Looking Information. Such risks and other factors include, among others, the industry-wide risks and project-specific risks identified in the 2014 prefeasibility study and summarized above; risks related to the availability of financing on commercially reasonable terms and the expected use of proceeds; operations and contractual obligations; changes in exploration programs based upon results of exploration; changes in estimated mineral reserves or mineral resources; future prices of metals; availability of third party contractors; availability of equipment; failure of equipment to operate as anticipated; accidents, effects of weather and other natural phenomena and other risks associated with the mineral exploration industry; environmental risks, including environmental matters under US federal and Idaho rules and regulations; impact of environmental remediation requirements and the terms of existing and potential consent decrees on the Corporation's planned exploration and development activities on the Stibnite Gold Project; certainty of mineral title; community relations; delays in obtaining governmental approvals or financing; fluctuations in mineral prices; the Corporation's dependence on one mineral project; the nature of mineral exploration and mining and the uncertain commercial viability of certain mineral deposits; the Corporation's lack of operating revenues; governmental regulations and the ability to obtain necessary licences and permits; risks related to mineral properties being subject to prior unregistered agreements, transfers or claims and other defects in title; currency fluctuations; changes in environmental laws and regulations and changes in the application of standards pursuant to existing laws and regulations which may increase costs of doing business and restrict operations; risks related to dependence on key personnel; and estimates used in financial statements proving to be incorrect; as well as those factors discussed in the Corporation's public disclosure record. Although the Corporation has attempted to identify important factors that could affect the Corporation and may cause actual actions, events or results to differ materially from those described in Forward-Looking Information, there may be other factors that cause actions, events or results not to be as anticipated, estimated or intended. There can be no assurance that Forward-Looking Information will prove to be accurate, as actual results and future events could differ materially from those anticipated in such statements. Accordingly, readers should not place undue reliance on Forward-Looking Information. Except as required by law, the Corporation does not assume any obligation to release publicly any revisions to Forward-Looking Information contained in this presentation to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Cautionary Note

The presentation has been prepared by Midas Gold management and does not represent a recommendation to buy or sell these securities. Investors should always consult their investment advisors prior to making any investment decisions.

All references to "dollars" or "$" shall mean United States dollars unless otherwise specified. Exchange rates and share prices used, where appropriate, are based on the spot prices as of Feb. 19th, 2016.

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THE STIBNITE GOLD PROJECT

SUPPORT STIBNITE

WWW.MIDASGOLDIDAHO.COM

EMAIL: info@midasgoldinc.com PHONE: (208) 901-3060

Message

From: Alan Haslam [ahaslam@midasgoldinc.com]
Sent: 8/12/2019 7:40:16 PM
To: Hood, Lynne [Hood.Lynne@epa.gov]; Cerise, Kathy [Cerise.Kathryn@epa.gov]
CC: Piper M Goessel [kgoessel@fs.fed.us]; Porter, Valerie [valerie.porter@aecom.com]; Dan Kline [dkline@midasgoldinc.com]; Kyle Fend [fend@midasgoldinc.com]; Todd Glindeman [TGlindeman@brwncald.com]; walt.vering@tetratech.com; Alan Haslam [ahaslam@midasgoldinc.com]
Subject: RE: August Site Visit- Requested Purpose

Sounds good.
Thanks Lynne.
Alan

From: Hood, Lynne <Hood.Lynne@epa.gov>
Sent: Monday, August 12, 2019 1:31 PM
To: Alan Haslam <ahaslam@midasgoldinc.com>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Cc: Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>; Dan Kline <dkline@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>; walt.vering@tetratech.com
Subject: RE: August Site Visit- Requested Purpose

Hi Alan,
Thank you for your suggested itineraries. I wanted to follow-up that we are working through the CERCLA component of the site visit. We will try to send you the list of sites by the end of the week.
Thanks!
Lynne

Lynne Ann Hood
Environmental Scientist, NEPA Review
EPA R10- Idaho Operations Office
950 W Bannock Street, Suite 900
Boise, Idaho 83702

Phone: 208-378-5757
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From: Alan Haslam <ahaslam@midasgoldinc.com>
Sent: Friday, August 9, 2019 10:24 PM
To: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Cc: Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>; Hood, Lynne <Hood.Lynne@epa.gov>; Dan Kline <dkline@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>; walt.vering@tetratech.com; Alan Haslam <ahaslam@midasgoldinc.com>
Subject: Re: August Site Visit- Requested Purpose

Kathy -
That is fine but we will not have enough time in the day to visit all sites listed below.
So the group will have to decide what they want to see.
If we are going to run with one large group my preference would be to follow the General Tour Agenda that I proposed below.
Alan

On Aug 9, 2019, at 8:36 PM, Cerise, Kathy <Cerise.Kathryn@epa.gov> wrote:

Alan,

My preference is to keep the group together. The CERCLA program interested in seeing all the issues at the Site.

Thanks

Kathryn Cerise
Stibnite RPM

Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1
Phone: 206-553-2589

From: Alan Haslam <ahaslam@midasgoldinc.com>
Sent: Friday, August 09, 2019 4:59 PM
To: Hood, Lynne <Hood.Lynne@epa.gov>; Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>
Cc: Dan Kline <dkline@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>; Cerise, Kathy <Cerise.Kathryn@epa.gov>; Alan Haslam <ahaslam@midasgoldinc.com>; walt.vering@tetratech.com
Subject: RE: August Site Visit- Requested Purpose
Importance: High

Lynne –
OK.....I also think there is still value in going different directions at some point because the groups will be interested in very different features.
Let me propose the following:

1. We meet everyone in Yellow Pine by the fire station to do the safety orientation similar to past tours.
2. We convoy up the Stibnite Road with MGII vehicles leading and following with radio comms.
3. We ALL stop at the YPP overlook and give the general tour presentation including discussion about cleanup and restoration that is included in the Midas Gold Plan. We'll hand out maps, (Current ESA Tour Maps) to EVERYONE. Then split into a General Tour group and a CERCLA group.
4. Coordinate so both groups can meet back up at Midas Gold facilities for lunch and download with each other
5. Also coordinate at end of day to convoy from Midas Gold facilities to Yellow Pine with radio comms.

GENERAL GROUP

1. After larger discussion at YPP, the General Tour group will head up to Upper EFSFSR to discuss, Alternative #3, streams, 404 permitting and mitigation.
2. Depending on timing, either meet back at Midas Gold facilities for lunch or proceed to south end of SODA to discuss Alternative #3, streams, mitigation, 404 permitting and general mine plan.
3. After lunch head up to the Hecla Heap overlook to cover the HF Pit, Blowout Ck restoration, Meadow Ck modifications, and ModPro mine plan details.

4. Meet back up with larger group for bio break and convoy back to Yellow Pine.

CERCLA GROUP

1. After larger discussion at YPP, the CERCLA group will head to the historic Bradley Dumps and the USFS repository area
2. Depending on timing, either meet back at Midas Gold facilities for lunch or proceed to the Hecla Heap overlook to discuss legacy components of the mine plan (Hecla Heap, SODA, Bradley Tails).
3. After lunch head to Box Culvert area to continue the CERCLA discussions about the remaining legacy features including remaining Bradley Tails throughout the valley, the Superior Pads, etc.
4. Meet back up with larger group for bio break and convoy back to Yellow Pine.

Hopefully this would meet everyone's expectations for a tour and allow each group to visit the more specific sites they need for what they are working on.
Please let me know if this will work for your folks.
Thanks,
Alan

From: Hood, Lynne <Hood.Lynne@epa.gov>
Sent: Wednesday, August 7, 2019 10:07 AM
To: Alan Haslam <ahaslam@midasgoldinc.com>; Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>
Cc: Dan Kline <dkline@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: RE: August Site Visit- Requested Purpose

Hi Alan, after coordinating with folks, I've learned that it would be beneficial for the CERCLA to get the overall tour as well and for the group to stay together ideally. I'm thinking if it's possible to mix the two and maybe we keep the stops to limited time?
Thanks,
Lynne

Lynne Ann Hood
Environmental Scientist, NEPA Review
EPA R10- Idaho Operations Office
950 W Bannock Street, Suite 900
Boise, Idaho 83702

Phone: 208-378-5757
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From: Alan Haslam <ahaslam@midasgoldinc.com>
Sent: Tuesday, August 6, 2019 12:45 PM
To: Hood, Lynne <Hood.Lynne@epa.gov>; Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>
Cc: Dan Kline <dkline@midasgoldinc.com>; Alan Haslam <ahaslam@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>
Subject: RE: August Site Visit- Requested Purpose
Importance: High

Lynne –
Thanks for the advance notice on your desire to add a CERCLA portion to the tour.

With that, I think we would prefer to separate and run 2 distinct tours as they will have different interests.
Can you give me a list of who all would be participating in the CERCLA portion of the tour as well as the overview tour?...
Thanks,
Alan

From: Hood, Lynne <Hood.Lynne@epa.gov>
Sent: Tuesday, August 6, 2019 10:07 AM
To: Alan Haslam <ahaslam@midasgoldinc.com>; Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>
Subject: August Site Visit- Requested Purpose

Hi Alan, We are looking forward to the site visit on August 22nd. I am writing to discuss our ideal dual purpose for the tour.
-Tracie Nadeau in our 404 program will be attending and she hasn't been to the site yet. So we were hoping that part of the tour could involve discussion of 404 (perhaps going up to the EFSF again?).
-In addition, now that we have a CERCLA RMP assigned Kathy Cerise is also planning to attend. Therefore, I am requesting that part of the trip involve pointing out the historic disturbance and proposals related to CERCLA. This could include a detour to some of those sites if possible?

Or if there's a way to split up at some point so that they both can have a productive/informative visit?

Let me know if you have any questions.
Thanks!
Lynne

Lynne Ann Hood
Environmental Scientist, NEPA Review
EPA R10- Idaho Operations Office
950 W Bannock Street, Suite 900
Boise, Idaho 83702

Phone: 208-378-5757
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Message

From: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Sent: 8/19/2019 7:35:10 PM
To: Hood, Lynne [Hood.Lynne@epa.gov]; Alan Haslam [ahaslam@midasgoldinc.com]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]; Leeds, Todd - FS [todd.leeds@usda.gov]; Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Subject: RE: CERCLA site tour logistics
Attachments: 20190822_fieldtrip_08192019.xlsx

Hi Alan – here is what I have for attendees as of now. Trying to firm up with IDL & DEQ before updating the calendar invite – thanks!

Piper Goessel
Physical Scientist
Forest Service
Payette National Forest
p: 208-634-0760
f: 208-634-0744
kathryn.goessel@usda.gov
500 N Mission St, Bldg 2
McCall, ID 83638
www.fs.fed.us
Caring for the land and serving people

From: Hood, Lynne [mailto:Hood.Lynne@epa.gov]
Sent: Monday, August 19, 2019 1:16 PM
To: Alan Haslam <ahaslam@midasgoldinc.com>
Cc: Cerise, Kathy <Cerise.Kathryn@epa.gov>; Goessel, Kathryn M -FS <kathryn.goessel@usda.gov>; Leeds, Todd - FS <todd.leeds@usda.gov>
Subject: CERCLA site tour logistics

Hi Alan, Thank you again for talking with me last week. Kathy and I talked with Todd this morning and we worked out the plan for the CERCLA tour.

In order to accomplish the necessary sites and make the most of Kathy's and others time, we are going to start earlier than the general tour. The itinerary/times for general tour remain. Also, Don Clabaugh, EPA hydro, will be attending the general tour and will be waiting at the Yellow Pine site to join one of the vehicles for that tour.

One request to expedite our time when we meet with the Midas contact Thursday morning- would you mind sending me the Safety Sheet beforehand so that we can read and initial and hand in that morning? That way we can limit the meet up to a few minutes and head off more immediately. If you can send it to me, I will disseminate to EPA folks and forward to Piper to have USFS and any IDEQ folks do the same.

We'll have Todd lead the CERCLA group. Midas will have a geologist (Blaine?) as well. We'll plan to eat lunch in the field.

7:00 AM – Agencies meet at McCall Payette National Forest Supervisor Office, 500 N Mission St, Bldg 2 McCall, ID
7:15 AM – Depart McCall, PNF SO
9.30 AM – Meet Midas at Yellow Pine Town site, hand in safety sheets and include brief additional safety talk if needed.
9.45 AM – Depart Yellow Pine
10.15 – 11:00 AM Bradley Waste Rock Dump and USFS Repository

11:15 – 11:45 AM – Yellow Pine Pit Overlook
12:00 – 2:00 PM – Keyway Marsh, Meadow Creek
2:15 – 3:15 PM – DMEA Adit and Waste Rock Dump
3:30 – 6:00 PM – Travel to McCall

Please let me know if you have any questions.
Thank you,
Lynne

Lynne Ann Hood
Environmental Scientist, NEPA Review
EPA R10- Idaho Operations Office
950 W Bannock Street, Suite 900
Boise, Idaho 83702

Phone: 208-378-5757
Visit https://ceq.doe.gov/ for information about the National Environmental Policy Act

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Name	Agency	Agenda	Start Pt	Vehicle	
Piper Goessel	fs	Tour	McCall	5951	Driver
Belle Craig	fs	Tour	McCall	5951	
Heidi Torrealday	fs	Tour	McCall	5951	
Ken Tu	fs	Tour	McCall	5951	
Kevin Johnson	fs	Tour	McCall	5951	
Sitka Pence	fs	Tour	McCall	5951	
Paul Klasner	fs	Tour	McCall	2080	Driver
Tawnya Brummett	fs	Tour	McCall	2080	
Kevin Knesek	fs	Tour	McCall	2080	
Don Clabaugh	epa	Tour	McCall	2080	
Adam McMahon	deq	IPDES	Yellow Pine	DEQ?	
Karen Jackson	deq	IPDES	Boise	DEQ?	
James Craft	deq	IPDES	Boise	DEQ?	
Rakael Pope	deq	IPDES	Boise	DEQ?	
Eric Wilson	idl	?	Boise	IDL?	
Mick Thomas	idl	?	Boise	IDL?	
Robbie Johnson	idl	?	Boise	IDL?	

Name	Agency	Depart Pt	Vehicle	
Todd Leeds	fs	McCall	Hydro	Driver
Kathy Zamba	fs	McCall	Hydro	
Kathy Cerise	epa	McCall	Hydro	
Jeffery Philip	epa	McCall	Hydro	
Tim Maley	epa	McCall	Hydro	
Tom Crawford	fs	McCall	5050	Driver
Marve Griffith	usace	McCall	5050	
Diane Green	idl	McCall	5050	IDL rig?
Charissa Bujak	epa	McCall	5050	
Lynne Hood	epa	McCall	5050	
Aaron Scheff	deq	Yellow Pine	5050	

Message

From: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Sent: 8/13/2019 4:02:33 PM
To: Nadeau, Tracie-Lynn [Nadeau.Tracie@epa.gov]; Bujak, Charissa [bujak.charissa@epa.gov]; Hood, Lynne [Hood.Lynne@epa.gov]; Griffith, Christen CIV CENWW CENWD (US) [Christen.M.Griffith@usace.army.mil]; Leeds, Todd - FS [todd.leeds@usda.gov]; Porter, Valerie [valerie.porter@aecom.com]; Aaron.Scheff@deq.idaho.gov; Diane Green [DGreen@idl.idaho.gov]; Gordon Cruickshank [glc55@frontier.com]; Manuel Rauhut [manuel.rauhut@idwr.idaho.gov]; Marde.Mensinger@oer.idaho.gov; mark_c_nelson@fws.gov; jeremy_n_moore@fws.gov; Ally_Turner@fws.gov; Zamba, Kathy -FS [kathy.zamba@usda.gov]; Craig, Belle A -FS [belle.craig@usda.gov]; Brummett, Tawnya -FS [tawnya.brummett@usda.gov]
CC: Torrealday, Heidie -FS [heidie.torrealday@usda.gov]; Lau, Sarah -FS [sarah.lau@usda.gov]; Cerise, Kathy [Cerise.Kathryn@epa.gov]; Myers, Casey A. [myers.casey@epa.gov]; Todd Drage [tdrage@idl.idaho.gov]; Mick Thomas [mthomas@idl.idaho.gov]; Karen.Jackson@deq.idaho.gov; Fritz.Durham@deq.idaho.gov; julia.achabal@deq.idaho.gov; kati.carberry@deq.idaho.gov; Eric Wilson [EWilson@idl.idaho.gov]; Roehner, Clayton - FS [clayton.roehner@usda.gov]; Strohmeyer, Jake M -FS [jake.strohmeyer@usda.gov]; daniel_nolfi@fws.gov; Philip, Jeffrey [Philip.Jeff@epa.gov]; Todd.Crutcher@deq.idaho.gov; Adam.McMahon@deq.idaho.gov; Brady.Johnson@deq.idaho.gov; Klasner, Paul H -FS [paul.klasner@usda.gov]; Kathryn.Elliott@deq.idaho.gov; James.Craft@deq.idaho.gov; Alan Haslam [ahaslam@midasgoldinc.com]; Porter, Valerie [valerie.porter@aecom.com]
Subject: SGP - August 22 field trip(s)

Hi everyone – just an update on what I know so far. It looks like there will be two separate agendas/itineraries next Thursday but let's all plan on meeting by 1015 at the vault toilets in Yellow Pine for a site safety briefing from Midas Gold. We also could plan to seat folks in the right vehicles depending on their role(s) before heading up to the site. I expect we may all start out at the Yellow Pine Pit (Glory Hole) overlook and then split up from there. In any case, please arrive at Yellow Pine with your field lunch and PPE (boots, long pants, hard hat, high-viz vest, safety glasses) at 1015.

I will update the calendar invite by early next week with any more specific logistics I can obtain. Thanks!

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-----Original Appointment-----
From: Goessel, Kathryn M -FS
Sent: Monday, June 3, 2019 9:51 AM
To: Goessel, Kathryn M -FS; Nadeau, Tracie-Lynn; Bujak, Charissa; Lynne Hood (hood.lynne@epa.gov); Griffith, Christen CIV CENWW CENWD (US); Leeds, Todd - FS; Porter, Valerie; Aaron.Scheff@deq.idaho.gov; Diane Green; Gordon Cruickshank; Manuel Rauhut; Marde.Mensinger@oer.idaho.gov; 'mark_c_nelson@fws.gov'; 'jeremy_n_moore@fws.gov'; Ally_Turner@fws.gov; Zamba, Kathy -FS; Craig, Belle A -FS; Brummett, Tawnya -FS

Cc: Torrealday, Heidie -FS; Lau, Sarah -FS; 'Cerise, Kathy'; Myers, Casey A.; Todd Drage; Mick Thomas; Karen.Jackson@deq.idaho.gov; Fritz.Durham@deq.idaho.gov; Julia.Achabal@deq.idaho.gov; Kati.Carberry@deq.idaho.gov; Eric Wilson; Roehner, Clayton - FS; Strohmeyer, Jake M -FS; daniel_nolfi@fws.gov; Philip, Jeffrey; Todd.Crutcher@deq.idaho.gov; Adam.McMahon@deq.idaho.gov; Brady.Johnson@deq.idaho.gov; Klasner, Paul H -FS; Kathryn.Elliott@deq.idaho.gov; James.Craft@deq.idaho.gov
Subject: SGP - 404-focus field trip
When: Thursday, August 22, 2019 12:00 AM to Friday, August 23, 2019 12:00 AM (UTC-07:00) Mountain Time (US & Canada).
Where: Stibnite, ID

Hello everyone – please accept/decline and forward so we can get a clean head count. Will be sending details/itinerary as we firm up. Thanks!

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Message

From: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Sent: 8/12/2019 9:44:58 PM
To: Alan Haslam [ahaslam@midasgoldinc.com]; Hood, Lynne [Hood.Lynne@epa.gov]; Cerise, Kathy [Cerise.Kathryn@epa.gov]
CC: Porter, Valerie [valerie.porter@aecom.com]; Dan Kline [dkline@midasgoldinc.com]; Kyle Fend [fend@midasgoldinc.com]; Todd Glindeman [TGlindeman@brwncald.com]; walt.vering@tetratech.com; Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Subject: RE: August Site Visit- Requested Purpose

Hi Alan – one thing I would recommend for any general site orientation would be to visit Meadow Creek (Hecla heap) second and upper EFSFSR site third. On the most recent field trip, it was difficult to try to explain an alternative to the proposed action before actually having seen the proposed action.

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From: Alan Haslam [mailto:ahaslam@midasgoldinc.com]
Sent: Monday, August 12, 2019 1:40 PM
To: Hood, Lynne <Hood.Lynne@epa.gov>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Cc: Goessel, Kathryn M -FS <kathryn.goessel@usda.gov>; Porter, Valerie <valerie.porter@aecom.com>; Dan Kline <dkline@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>; walt.vering@tetratech.com; Alan Haslam <ahaslam@midasgoldinc.com>
Subject: RE: August Site Visit- Requested Purpose

Sounds good.
Thanks Lynne.
Alan

From: Hood, Lynne <Hood.Lynne@epa.gov>
Sent: Monday, August 12, 2019 1:31 PM
To: Alan Haslam <ahaslam@midasgoldinc.com>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Cc: Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>; Dan Kline <dkline@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>; walt.vering@tetratech.com
Subject: RE: August Site Visit- Requested Purpose

Hi Alan,
Thank you for your suggested itineraries. I wanted to follow-up that we are working through the CERCLA component of the site visit. We will try to send you the list of sites by the end of the week.
Thanks!

Lynne

Lynne Ann Hood
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From: Alan Haslam <ahaslam@midasgoldinc.com>
Sent: Friday, August 9, 2019 10:24 PM
To: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Cc: Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>; Hood, Lynne <Hood.Lynne@epa.gov>; Dan Kline <dkline@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>; walt.vering@tetratech.com; Alan Haslam <ahaslam@midasgoldinc.com>
Subject: Re: August Site Visit- Requested Purpose

Kathy -
That is fine but we will not have enough time in the day to visit all sites listed below.
So the group will have to decide what they want to see.
If we are going to run with one large group my preference would be to follow the General Tour Agenda that I proposed below.
Alan

On Aug 9, 2019, at 8:36 PM, Cerise, Kathy <Cerise.Kathryn@epa.gov> wrote:

> Alan,
>
> My preference is to keep the group together. The CERCLA program interested in seeing all the issues at the Site.
>
> Thanks
>
> Kathryn Cerise
> Stibnite RPM
>
> Kathryn Cerise
> Region 10 Remedial Project Manager
> 1200 6th Ave,
> Seattle, WA 98101
> Mail Code: 12 D12 1
> Phone: 206-553-2589
>
> ---
>
> **From:** Alan Haslam <ahaslam@midasgoldinc.com>
> **Sent:** Friday, August 09, 2019 4:59 PM
> **To:** Hood, Lynne <Hood.Lynne@epa.gov>; Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>
> **Cc:** Dan Kline <dkline@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>; Cerise, Kathy <Cerise.Kathryn@epa.gov>; Alan Haslam <ahaslam@midasgoldinc.com>; walt.vering@tetratech.com

Subject: RE: August Site Visit- Requested Purpose
Importance: High

Lynne –
OK.....I also think there is still value in going different directions at some point because the groups will be interested in very different features.
Let me propose the following:

1. We meet everyone in Yellow Pine by the fire station to do the safety orientation similar to past tours.
2. We convoy up the Stibnite Road with MGII vehicles leading and following with radio comms.
3. We ALL stop at the YPP overlook and give the general tour presentation including discussion about cleanup and restoration that is included in the Midas Gold Plan. We'll hand out maps, (Current ESA Tour Maps) to EVERYONE. Then split into a General Tour group and a CERCLA group.
4. Coordinate so both groups can meet back up at Midas Gold facilities for lunch and download with each other
5. Also coordinate at end of day to convoy from Midas Gold facilities to Yellow Pine with radio comms.

GENERAL GROUP

1. After larger discussion at YPP, the General Tour group will head up to Upper EFSFSR to discuss, Alternative #3, streams, 404 permitting and mitigation.
2. Depending on timing, either meet back at Midas Gold facilities for lunch or proceed to south end of SODA to discuss Alternative #3, streams, mitigation, 404 permitting and general mine plan.
3. After lunch head up to the Hecla Heap overlook to cover the HF Pit, Blowout Ck restoration, Meadow Ck modifications, and ModPro mine plan details.
4. Meet back up with larger group for bio break and convoy back to Yellow Pine.

CERCLA GROUP

1. After larger discussion at YPP, the CERCLA group will head to the historic Bradley Dumps and the USFS repository area
2. Depending on timing, either meet back at Midas Gold facilities for lunch or proceed to the Hecla Heap overlook to discuss legacy components of the mine plan (Hecla Heap, SODA, Bradley Tails).
3. After lunch head to Box Culvert area to continue the CERCLA discussions about the remaining legacy features including remaining Bradley Tails throughout the valley, the Superior Pads, etc.
4. Meet back up with larger group for bio break and convoy back to Yellow Pine.

Hopefully this would meet everyone's expectations for a tour and allow each group to visit the more specific sites they need for what they are working on.
Please let me know if this will work for your folks.
Thanks,
Alan

From: Hood, Lynne <Hood.Lynne@epa.gov>
Sent: Wednesday, August 7, 2019 10:07 AM
To: Alan Haslam <ahaslam@midasgoldinc.com>; Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>
Cc: Dan Kline <dkline@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: RE: August Site Visit- Requested Purpose

Hi Alan, after coordinating with folks, I've learned that it would be beneficial for the CERCLA to get the overall tour as well and for the group to stay together ideally. I'm thinking if it's possible to mix the two and maybe we keep the stops to limited time?
Thanks,
Lynne

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---

From: Alan Haslam <ahaslam@midasgoldinc.com>
Sent: Tuesday, August 6, 2019 12:45 PM
To: Hood, Lynne <Hood.Lynne@epa.gov>; Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>
Cc: Dan Kline <dkline@midasgoldinc.com>; Alan Haslam <ahaslam@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Todd Glindeman <TGlindeman@brwncald.com>
Subject: RE: August Site Visit- Requested Purpose
Importance: High

Lynne –
Thanks for the advance notice on your desire to add a CERCLA portion to the tour.
With that, I think we would prefer to separate and run 2 distinct tours as they will have different interests.
Can you give me a list of who all would be participating in the CERCLA portion of the tour as well as the overview tour?...
Thanks,
Alan

From: Hood, Lynne <Hood.Lynne@epa.gov>
Sent: Tuesday, August 6, 2019 10:07 AM
To: Alan Haslam <ahaslam@midasgoldinc.com>; Piper M Goessel <kgoessel@fs.fed.us>; Porter, Valerie <valerie.porter@aecom.com>
Subject: August Site Visit- Requested Purpose

Hi Alan, We are looking forward to the site visit on August 22nd. I am writing to discuss our ideal dual purpose for the tour.
-Tracie Nadeau in our 404 program will be attending and she hasn't been to the site yet. So we were hoping that part of the tour could involve discussion of 404 (perhaps going up to the EFSF again?).
-In addition, now that we have a CERCLA RMP assigned Kathy Cerise is also planning to attend.
Therefore, I am requesting that part of the trip involve pointing out the historic disturbance and proposals related to CERCLA. This could include a detour to some of those sites if possible?

Or if there's a way to split up at some point so that they both can have a productive/informative visit?

Let me know if you have any questions.
Thanks!
Lynne

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Message

From: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Sent: 8/15/2019 6:26:52 PM
To: Hood, Lynne [Hood.Lynne@epa.gov]
CC: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]; Leeds, Todd - FS [todd.leeds@usda.gov]
Subject: RE: Soil Scientist
Attachments: SGP - FW: Soils Sampling Proposal

Hi Lynne -- unfortunately we never heard back from MGII/BC on our recommendations for field protocols, QA/QC, laboratory analytical methods, etc. And it seems that as Dan reported, they may already be out sampling because John Dixon, our soils scientist, received a call from Tetra Tech today about soil sampling currently occurring.

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From: Hood, Lynne [mailto:Hood.Lynne@epa.gov]
Sent: Thursday, August 15, 2019 11:41 AM
To: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Cc: Goessel, Kathryn M -FS <kathryn.goessel@usda.gov>
Subject: RE: Soil Scientist

Hi Kathy, thank you so much for identifying expertise!
I'll connect with Piper and see if we still have time to provide input or if we'll need to wait to provide it on the analysis.
Lynne

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From: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Sent: Thursday, August 15, 2019 11:30 AM
To: Hood, Lynne <Hood.Lynne@epa.gov>
Cc: Goessel, Kathryn M -FS <kathryn.goessel@usda.gov>
Subject: FW: Soil Scientist

Mark has worked extensively on evaluating soil characteristics to enhance its ability to support re-vegetation. He could help you identify analysis you may want to have Midas conduct on their cover material etc.

Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1
Phone: 206-553-2589

From: Lynch, Kira <lynch.kira@epa.gov>
Sent: Thursday, August 15, 2019 10:27 AM
To: Johnson, Mark <Johnson.Markg@epa.gov>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: Soil Scientist

Hi Mark

The purpose of this email is to introduce you to Kathy Cerise. She is working on a mine site cleanup and requires some technical input on soil quality assessment work. I thought you could help her or know someone that could answer her questions. Kira

Kira Lynch
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ORD - Office of Science and Policy
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Message

From: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Sent: 8/12/2019 9:41:26 PM
To: Dan Kline [dkline@midasgoldinc.com]
CC: Alan Haslam [ahaslam@midasgoldinc.com]; Todd Glindeman [TGlindeman@brwncald.com]; Brandy Lapthorne [blapthorne@BrwnCald.com]; Kristan Robbins [KRobbins@BrwnCald.com]; Porter, Valerie [valerie.porter@aecom.com]; Zamba, Kathy -FS [kathy.zamba@usda.gov]; Leeds, Todd - FS [todd.leeds@usda.gov]; Hood, Lynne [Hood.Lynne@epa.gov]; Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Subject: SGP - FW: Soils Sampling Proposal
Attachments: FW: EPA guidance

Hi Dan – here are some recommendations from Kathy Zamba (and a couple of follow up questions) in response to Todd's notes below:

- Analytical methods expected would typically be EPA Method 6020 for most metals, EPA 7471 for mercury (does ALS ME-MS61m conform? is the referenced ALS method the one used for the existing soil geochemistry dataset?)
- ACZ Lab is familiar with environmental testing requirements – ask them to run their standard QA/QC procedures for environmental cleanup sites.
- Collect 1 MS/MSD sample per 20 samples.
- Prepare 1 field split per 20 samples (homogenize and split).

Also attached are links to a couple of potentially relevant guidance documents and some additional recommendations from EPA.

Please let me know if we need to follow up. Thanks!

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From: Leeds, Todd - FS
Sent: Monday, August 12, 2019 9:07 AM
To: Goessel, Kathryn M -FS <kathryn.goessel@usda.gov>; Lynne Hood (hood.lynne@epa.gov) <hood.lynne@epa.gov>
Cc: Cerise, Kathy <Cerise.Kathryn@epa.gov>; Patty McGrath (mcgrath.patricia@epa.gov) <mcgrath.patricia@epa.gov>; Zamba, Kathy -FS <kathy.zamba@usda.gov>
Subject: RE: SGP - FW: Soils Sampling Proposal

All,

A few quick comments, I am in the process of mobilizing for a field project and only have a few minutes in the office today. Here is my high-level review:

- I would consider any data collected under this document to be screening-level data only.

- QA/QC procedures are not defined. The only reference is for equipment decontamination.
- ALS Method ME-MS61m appears to be an in-house (e.g. proprietary) laboratory method that is used for exploration sample analysis. I am not sure how this equates to EPA-approved laboratory (with associated QA/QC) methods. Suggest using an EPA-approved lab method.
- If this data is to be used for final reclamation cover purposes, all protocols used should align with standard environmental sampling.
- Under CERCLA it is typical to give agencies a 14-day heads up prior to sampling.

Todd

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Message

From: Hood, Lynne [Hood.Lynne@epa.gov]
Sent: 8/12/2019 8:37:32 PM
To: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: FW: EPA guidance

Hi Piper, this is from Chris. I'm also having another colleague review the sampling plan.

From: Eckley, Chris <Eckley.Chris@epa.gov>
Sent: Monday, August 12, 2019 2:29 PM
To: Hood, Lynne <Hood.Lynne@epa.gov>
Subject: RE: EPA guidance

Just walked over to where the QA team sites and no one is available right now....I looked at the links you have below. They're fine to send. Ultimately, the main thing they need to keep in mind is using soil collection equipment that will not introduce contamination into the sample (e.g. new plastic trowel, etc), wearing gloves while sampling, and storing the samples in approved containers (i.e. new plastic bags or new glass jars).
The other component is properly documenting where samples were collected (GPS lat/long) and how they were collected (what depth, type of equipment used to collect the sample, etc).
--Chris

From: Hood, Lynne <Hood.Lynne@epa.gov>
Sent: Monday, August 12, 2019 1:23 PM
To: Eckley, Chris <Eckley.Chris@epa.gov>
Subject: EPA guidance

Here is EPA's sampling design guidance (links)
https://www.epa.gov/sites/production/files/2015-06/documents/g5s-final.pdf

EPA QA Field Activities
https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures

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Message

From: Turner, Ally [ally_turner@fws.gov]
Sent: 6/14/2019 4:11:58 PM
To: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
CC: Marde.Mensinger@oer.idaho.gov; Aaron.Scheff@deq.idaho.gov; Johnna.Sandow@noaa.gov [johnna.sandow@noaa.gov]; Hood, Lynne [Hood.Lynne@epa.gov]; Gazzetti, Edward - FS [edward.gazzetti@usda.gov]; Nalder, Clayton -FS [clayton.nalder@usda.gov]; Dan Kline [dkline@midasgoldinc.com]; Griffith, Christen CIV CENWW CENWD (US) [Christen.M.Griffith@usace.army.mil]; Galloway, June -FS [june.galloway@usda.gov]; Williams, Kristin - FS [kristin.williams@usda.gov]; Porter, Valerie [valerie.porter@aecom.com]; paul.kline@idfg.idaho.gov; bill.bosworth@idfg.idaho.gov; Pete Katsilometes [Pete.Katsilometes@osc.idaho.gov]; Mike Edmondson [Mike.Edmondson@osc.idaho.gov]; jordan.messner@idfg.idaho.gov
Subject: Re: [EXTERNAL] SGP - June 27 field trip attendees/topics?

Hi Piper-
Thanks again for organizing this trip! I think the FWS will have 4 attendees total. Our preference would be to have a more technical focus, but with the usual background info as we stop at different sites or mentioned in the vehicle as we drive around. It is also fine for this to be an overview tour, if that is the consensus of the group. Do you anticipate the Lick Creek route to be open by June 27? Thanks again!

On Fri, Jun 14, 2019 at 8:10 AM Goessel, Kathryn M -FS <kathryn.goessel@usda.gov> wrote:

> Hi Ally – based on confirmed attendees for the 27th and the fact that the August 22 trip has firmed up as a 404 focus, I think the 6/27 trip could have an ESA focus. I am counting the following so far:
>
> FWS: Ally(?) + ???
>
> IDFG: Jordan
>
> OEMR: Marde + 2???
>
> DEQ (tentative): Kati, Julia, Brady, AJ, Rakael(?)
>
> FS: Piper, June, Eddie(?)
>
> I don't remember who it was that brought up a site visit during an informal consultation meeting, but when I sat in on your May 2 meeting, I think I heard consideration of both an orientation-type trip and the potential for a more technical trip for passage barriers. I'm thinking, based on confirmed attendees, 6/27 could more likely be on the orientation end of the spectrum.
>
> All that being said, since I'm just trying to facilitate, I would appreciate any input on what folks are looking for (topics, operational components, specific locations…) out of the 6/27 visit to Stibnite.
>
> Thanks for any assistance you can provide!

Piper Goessel
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From: Turner, Ally [mailto:ally_turner@fws.gov]
Sent: Wednesday, June 12, 2019 2:41 PM
To: Goessel, Kathryn M -FS <kathryn.goessel@usda.gov>
Subject: Re: [EXTERNAL] SGP - June 27 field trip update (REPLY REQUESTED)

Piper-

I am waiting to hear back from the FWS folks interested in a field visit and will confirm with you asap. Thanks.

On Tue, Jun 11, 2019 at 3:57 PM Goessel, Kathryn M -FS <kathryn.goessel@usda.gov> wrote:

Hi everyone – it sounds like the county is making good progress on clearing the EFSF road and may have it open to the public by June 27. Therefore, I would like to operator under the assumption that this trip to Stibnite is a go. With that in mind, would you please confirm whether or not you will attend (and forward this request to others who may be interested). If you will attend, please let me know if there are specific areas you would like to visit or topics you would like to discuss so that we can firm up logistics, itinerary, etc. Thanks for your patience on this (hopefully no longer moving) target!

Piper Goessel
Physical Scientist
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McCall, ID 83638
www.fs.fed.us

Caring for the land and serving people

-----Original Appointment-----
From: Goessel, Kathryn M -FS
Sent: Thursday, May 9, 2019 12:37 PM
To: Goessel, Kathryn M -FS; Aaron.Scheff@deq.idaho.gov; Diane Green; Gordon Cruickshank; Griffith, Christen CIV CENWW CENWD (US); Lynne Hood (hood.lynne@epa.gov); Manuel Rauhut; Marde.Mensinger@oer.idaho.gov; johnna.sandow@noaa.gov; Ally_Turner@fws.gov; Porter, Valerie; Shepherd, Maria; Leeds, Todd - FS; Gazzetti, Edward - FS; Torrealday, Heidie -FS; Nalder, Clayton -FS; Lau, Sarah -FS; Bujak, Charissa; Greg Martinez (greg.j.martinez@usace.army.mil); John Chatburn; Nadeau, Tracie-Lynn; Patty McGrath (mcgrath.patricia@epa.gov); Todd Drage; Alan Haslam; Todd Glindeman; Goshen, Richard - FS; Dan Kline
Cc: Karen.Jackson@deq.idaho.gov; Brady.Johnson@deq.idaho.gov; Kati.Carberry@deq.idaho.gov; AJ.Maupin@deq.idaho.gov; Rakael.Pope@deq.idaho.gov
Subject: SGP - ESA and/or 404 field trip? (UPDATES/RESPONSE REQUESTED)
When: Thursday, June 27, 2019 7:00 AM-5:30 PM (UTC-07:00) Mountain Time (US & Canada).
Where: Stibnite

Hi folks – a 404-focused field trip has been pushed out to August 22 and latest update on potential re-opening of the Stibnite Road is "end of the month" at the earliest. Wondering if anyone has thoughts on retaining this tentative invite on calendars given that a go ahead wrt site access would likely be pretty last-minute. Would appreciate updates on planned attendance and/or suggestions for rescheduling from those most in need of a site visit this year.

Thanks!

Piper Goessel
Physical Scientist
Forest Service

Payette National Forest
p: 208-634-0760
f: 208-634-0744
kathryn.goessel@usda.gov
500 N Mission St, Bldg 2
McCall, ID 83638

www.fs.fed.us

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Sending out as placeholder in case road is open by late June. Focus of trip ESA/404 can be firmed up with date and available attendees. Please respond with availability. Will send out a potential July date as well. Thanks!

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--

Allyson Turner

1387 S. Vinnell Way, Suite 368

Boise, ID 83709

(208) 685-6952

ally_turner@fws.gov

--

Allyson Turner
1387 S. Vinnell Way, Suite 368
Boise, ID 83709
(208) 685-6952
ally_turner@fws.gov

Message

From: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Sent: 8/20/2019 3:56:51 PM
To: Maley, Timothy [maley.timothy@epa.gov]
CC: Alan Haslam [ahaslam@midasgoldinc.com]; Cerise, Kathy [Cerise.Kathryn@epa.gov]; Leeds, Todd - FS [todd.leeds@usda.gov]; Hood, Lynne [Hood.Lynne@epa.gov]; Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Subject: RE: SGP - Site Orientation (IPDES)

Thanks for picking up on that, Tim. We'll have to watch the time, but for the IPDES group, we typically make those same 4 stop and are usually back in McCall around 5 PM, so I think that group should still be okay. On the CERCLA side, Todd did allow 30 minutes travel from YP to site.

Piper Goessel
Physical Scientist
Forest Service
Payette National Forest
p: 208-634-0760
f: 208-634-0744
kathryn.goessel@usda.gov
500 N Mission St, Bldg 2
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www.fs.fed.us
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From: Maley, Timothy [mailto:maley.timothy@epa.gov]
Sent: Tuesday, August 20, 2019 9:09 AM
To: Goessel, Kathryn M -FS <kathryn.goessel@usda.gov>
Cc: Leeds, Todd - FS <todd.leeds@usda.gov>
Subject: RE: SGP - Site Orientation (IPDES)

Piper –

Your schedule does not include drive time from Yellow Pine to Site (~ 1 hr).

- Tim

Tim Maley, PG
EPA-R10/LSASD
O: 206-553-1210

-----Original Appointment-----
From: Goessel, Kathryn M -FS <kathryn.goessel@usda.gov>
Sent: Monday, August 19, 2019 4:01 PM
To: Nadeau, Tracie-Lynn; Bujak, Charissa; Griffith, Christen CIV CENWW CENWD (US); Leeds, Todd - FS; Gordon Cruickshank; Manuel Rauhut; Marde.Mensinger@oer.idaho.gov; 'mark_c_nelson@fws.gov'; 'jeremy_n_moore@fws.gov'; Ally_Turner@fws.gov; Zamba, Kathy -FS

Cc: Cerise, Kathy; Myers, Casey A.; Todd Drage; Fritz.Durham@deq.idaho.gov; julia.achabal@deq.idaho.gov; kati.carberry@deq.idaho.gov; Strohmeyer, Jake M -FS; daniel_nolfi@fws.gov; Philip, Jeffrey; Todd.Crutcher@deq.idaho.gov; Brady.Johnson@deq.idaho.gov; Kathryn.Elliott@deq.idaho.gov; Maley, Timothy
Subject: Canceled: SGP - Site Orientation (IPDES)
When: Thursday, August 22, 2019 7:45 AM-4:45 PM (UTC-07:00) Mountain Time (US & Canada).
Where: Stibnite, ID
Importance: High

Hi everyone – please bring a lunch and PPE required on Midas Gold property (note MGII can provide hard hats/high viz vests). FS will be prepared to transport folks traveling from McCall and we'll meet IDL & DEQ folks coming from Boise & MGII personnel in Yellow Pine. Agency POCs, I believe I caught everyone expected for the general tour/IPDES group (see also table below) but please forward and copy me and Alan Haslam, if not (note that a separate invite went out for the CERCLA group, who will start about half an hour earlier). MGII personnel will be prepared to present & answer questions about potential discharges to be permitted. Here is the planned itinerary:

7:45 AM – Agency staff departing McCall meet at Payette NF Supervisor Office (500 N Mission St, Bldg 2 McCall, ID)
8:00 AM – Depart McCall (PNF SO)
10:00-10:30 AM – Meet MGII and IDL/DEQ personnel at vault toilets in Yellow Pine (site safety briefing)
10:30-11:30 AM – Yellow Pine Pit (Yellow Pine & West End pits, Fiddle & West End DRSFs, EFSF fishway)
11:30-12:30 PM – Hecla heap (Hangar Flats pit & DRSF, TSF)
12:30-1:15 PM – Stibnite admin site (lunch)
1:15-2:15 PM – Upper EFSFSR (worker housing, Burntlog route, potential alternate TSF/DRSF)
2:15-4:45 PM – Travel to McCall

Name	Agency	Agenda	Depart Pt	Vehicle	
Piper Goessel	fs	Tour	McCall	FS 5951	Driver
Belle Craig	fs	Tour	McCall	FS 5951	
Heidi Torrealday	fs	Tour	McCall	FS 5951	
Ken Tu	fs	Tour	McCall	FS 5951	
Kevin Johnson	fs	Tour	McCall	FS 5951	
Sitka Pence	fs	Tour	McCall	FS 5951	
Paul Klasner	fs	Tour	McCall	FS 2080	Driver
Tawnya Brummett	fs	Tour	McCall	FS 2080	
Kevin Knesek	fs	Tour	McCall	FS 2080	
Don Clabaugh	epa	Tour	McCall	FS 2080	
Adam McMahon	deq	IPDES	Yellow Pine	DEQ	
Karen Jackson	deq	IPDES	Boise	DEQ	
James Craft	deq	IPDES	Boise	DEQ	
Rakael Pope	deq	IPDES	Boise	DEQ	
Eric Wilson	idl	IPDES	Boise	IDL	
Mick Thomas	idl	IPDES	Boise	IDL	
Robbie Johnson	idl	IPDES	Boise	IDL	

Please review the attached safety orientation/liability release documentation, which will need to be executed by each attendee (if you haven't already completed one this year) and returned to MGII at Yellow Pine.

<< File: OHSF-001_2019 Tour Orientation.pdf >>
Thanks and see you all Thursday!

<< OLE Object: Picture (Device Independent Bitmap) >>

Piper Goessel
Physical Scientist

Forest Service
Payette National Forest

p: 208-634-0760
f: 208-634-0744
kathryn.goessel@usda.gov

500 N Mission St, Bldg 2
McCall, ID 83638
www.fs.fed.us

<< OLE Object: Picture (Device Independent Bitmap) >> << OLE Object: Picture (Device Independent Bitmap) >> << OLE Object: Picture (Device Independent Bitmap) >>

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MARTEN LAW

July 31, 2019

Via E-mail and U.S. Mail

Ms. Elizabeth McKenna
Assistant Regional Counsel
Environmental Protection Agency, Region 10
Park Place Building
1200 6th Avenue
Seattle, WA 98101

Re: Submittal of Supplemental Surface and Groundwater Data - Stibnite Gold Project

Dear Ms. McKenna:

On behalf of Midas Gold Idaho, Inc., I am writing to follow up on my previous correspondence to you of February 28, 2019, bringing to the attention of the Environmental Protection Agency, Region 10 ("EPA") the results of additional groundwater sampling at the Stibnite Gold Project ("SGP" or "Project") Site.

Midas Gold Idaho, Inc. and its corporate parent, Midas Gold Corporation (collectively, "Midas Gold" or the "Company") have bona fide prospective purchaser ("BFPP") status under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, codified as amended at 42 U.S.C. §§ 9601-9675 ("CERCLA") with respect to their patented private lands on the Project Site acquired pursuant the 1872 Mining Law.[1] BFPP status is an exclusion from liability under CERCLA, and Midas Gold is providing this information consistent with CERCLA § 101(40) to maintain that status.

In February, Midas Gold provided EPA sampling results showing elevated levels of arsenic and antimony in groundwater at the SGP Site. Midas Gold began formal groundwater sampling in 2010, in connection with baseline characterization of the Site and in support of the NEPA review of the Plan of Restoration and Operations ("PRO") for the Stibnite Gold Mine. In compliance with CERCLA § 101(40), Midas Gold continues to fulfill its continuing

[1] Idaho Gold Resources Company, LLC and Stibnite Gold Company (a wholly owned subsidiary of Idaho Gold Resources Company, LLC), control patented and unpatented mill site and lode claims at the SGP. Idaho Gold Resources Company, LLC is a wholly owned subsidiary of Midas Gold Corporation. Midas Gold Idaho, Inc. provides management services to Idaho Gold Resources Company, LLC and Stibnite Gold Company and will operate the Project on their behalf.

D - 206 . 292 . 2604 | E - bmarten@martenlaw.com | 1191 Second Ave, Suite 2200, Seattle, WA 98101

obligations, including exercising appropriate care and providing notice with respect to discovered hazardous substances and providing full cooperation, assistance and access to persons authorized to conduct response actions or natural resource restoration at a facility. 42 U.S.C. §§ 101(40)(C)-(E). Midas Gold has been, and is presently, complying with these continuing obligations under CERCLA to maintain its BFPP status and attendant liability protection and fully comply with the law.

Consistent with Midas Gold's ongoing assessment of the current Site conditions, the Company has just completed the latest Water Quality Summary Report ("WQSR") supplementing previously provided data, which now includes data collected through 2018. That report is enclosed as Attachment A. We will also be transmitting this report to the Payette National Forest ("PNF") through the customary NEPA information sharing protocols with the understanding it will be distributed to the cooperating agencies, including EPA.

The most current WQSR continues to measure elevated arsenic and antimony in ground and surface water sampling locations across the Site.[2] As we reported in February, those elevated levels were generally measured downgradient of historical mining areas. For example, elevated arsenic levels were detected downgradient of a legacy Forest Service-constructed repository for hazardous material that is adjacent to the East Fork South Fork of the Salmon River. As we also advised EPA in February, Midas Gold continues to measure elevated levels of arsenic and antimony in the Meadow Creek valley area in locations downgradient from the Spent Ore Disposal Area where tailings from milling operations were deposited on Forest Service land during World War II and the Korean War. Other potential sources of the elevated arsenic and antimony in ground and surface water at the Site may include naturally occurring, *in situ* mineralized rock, as well as development rock, spent ore, and milled tailings from historical mining operations.

Under Midas Gold's continuing CERCLA legal obligations and, more importantly, its dedication to the proper stewardship of the Site and surrounding area, Midas Gold has provided and will continue to provide full cooperation, assistance, and access to persons who are authorized to conduct response actions or natural resource restoration on the Stibnite Gold Project Site pursuant to CERCLA § 101(40)(E). Midas Gold remains committed to providing EPA Region 10 whatever additional information or assistance that the agency might find helpful in evaluating the information the Company is providing.

Please give me a call if you have any questions about this letter. We continue to appreciate your involvement in the Midas Gold project.

---

[2] We are also separately providing data for one alluvial monitoring well (MWH-A19), which is consistently reporting particularly high arsenic concentrations. That report is enclosed as Attachment B.

Sincerely,

Bradley M. Marten
Attorney at Law

Direct: (206) 292-2604
E-mail: bmarten@martenlaw.com

cc: Jim Werntz
Lynne Hood

Attachments:

Attachment A (Stibnite Gold Project Water Quality Summary Report (Conditional))
Attachment B (ALS Environmental Report (June 6, 2019) (Well MWH-A19))

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 10/24/2019 9:01:22 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: Stibnite Meeting

Sounds good. I'll just book a room and a conference call number. If we need something more modern technology than phones, we can arrange that next week. Ex. 6 Personal Privacy (PP)

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, October 24, 2019 1:57 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Meeting

Sorry, I'm in NY for Ex. 6 Personal Privacy (PP) Will get you answers by Monday. There will be Midas folks present. Probably Andy Koulermos and John Meyer and me. I view this as more of an organizational meeting than a "presentation," since everyone except the Sho-Bans have had multiple presentations. I'd just be sure everyone has the SOW as we last left it, and discuss timeline for completing, open or new issues, perhaps a data repository. I'll think more about it over the weekend and call Monday to finalize personnel, agenda. Ok with you?

Sent from my iPhone

On Oct 24, 2019, at 4:47 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Hi Brad. Do you know if Midas is planning to present materials on line for our meeting next Friday? If so, would Midas be able to provide the electronic forum for that? Also, does anyone from Midas plan to be here in person? I am reserving a conference room, but need to know how big it should be. I will also provide the conference call in number if Midas does not plan to present materials online.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image001.png>

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 10/15/2019 8:49:55 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: Stibnite

Hi Brad. The Tribe emailed a letter to me yesterday, when I was out of the office for the holiday. If you'd like to chat briefly today, I am available between 2:30 and 3:30.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, October 15, 2019 12:38 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Stibnite

Elizabeth – We haven't seen a letter from the Tribe. Have you?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 7/13/2019 2:05:03 AM
To: Bradley M. Marten [bmarten@martenlaw.com]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: Stibnite Mine

Hi Brad. I drafted a response to Midas' markup of the SOW but I'm not sending it tonight because I would like to give the FS and IDEQ the opportunity to weigh in. Kathy will coordinate with the agencies and send you our response on Monday.

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

Appointment

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 7/2/2019 1:32:55 AM
To: Bradley M. Marten [bmarten@martenlaw.com]

Subject: Accepted: Midas Gold Call
Location: Conference Call

Start: 7/2/2019 6:30:00 PM
End: 7/2/2019 7:30:00 PM
Show Time As: Busy

Appointment

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/12/2019 12:42:29 AM
To: Bradley M. Marten [bmarten@martenlaw.com]

Subject: Stibnite Mine
Location: I'll call you

Start: 6/12/2019 7:30:00 PM
End: 6/12/2019 8:00:00 PM
Show Time As: Tentative

Hi Brad. So sorry I didn't get back to you today. I've been tied up all day. Can you talk at 12:30 tomorrow? I'd like to give you the status of EPA's work and to talk to you about a FOIA request that we received. Thanks.

Elizabeth

Appointment

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 11/6/2019 8:11:33 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Bradley M. Marten [bmarten@martenlaw.com]

Subject: Stibnite Mine Site

Start: 11/6/2019 10:30:00 PM
End: 11/6/2019 11:00:00 PM
Show Time As: Busy

Appointment

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 7/3/2019 8:39:05 PM
To: John Meyer [JMeyer@midasgoldcorp.com]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Maley, Timothy [maley.timothy@epa.gov]; Andy Koulermos [akoulermos@FormationEnv.com]; Bradley M. Marten [bmarten@martenlaw.com]; Terry T. Uhling [tuhling@martenlaw.com]; Merissa A. Moeller [mmoeller@martenlaw.com]; Aaron.Scheff@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; Lisa.O'Hara@deq.idaho.gov; Cerise, Kathy [Cerise.Kathryn@epa.gov]; Keegan Hahn [keegan@midasgoldinc.com]

Subject: FW: Stibnite Gold Project Technical Meeting
Location: https://zoom.us/j/2822089706

Start: 7/10/2019 5:00:00 PM
End: 7/10/2019 6:00:00 PM
Show Time As: Tentative

-----Original Appointment-----
From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Wednesday, July 03, 2019 1:39 PM
To: John Meyer; Andy Koulermos; Bradley M. Marten; Terry T. Uhling; Merissa A. Moeller; Aaron.Scheff@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; Lisa.O'Hara@deq.idaho.gov; Cerise, Kathy; McKenna, Elizabeth; Keegan Hahn
Subject: FW: Stibnite Gold Project Technical Meeting
When: Wednesday, July 10, 2019 11:00 AM-12:00 PM (UTC-07:00) Mountain Time (US & Canada).
Where: https://zoom.us/j/2822089706

-----Original Appointment-----
From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Wednesday, June 26, 2019 11:44 AM
To: John Meyer; Bradley M. Marten; Merissa A. Moeller; L. Michael Bogert
Subject: Stibnite Gold Project Meeting
When: Wednesday, July 10, 2019 11:00 AM-12:00 PM (UTC-07:00) Mountain Time (US & Canada).
Where: https://zoom.us/j/2822089706

A Zoom meeting has been setup for Monday.

To join the Zoom meeting via computer video and audio please use:

https://zoom.us/j/2822089706

To join via audio only use:

Ex. 6 Personal Privacy (PP)

Meeting ID: Ex. 6 Personal Privacy (PP)

Appointment

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 7/1/2019 6:51:18 PM
To: Bradley M. Marten [bmarten@martenlaw.com]; gary.fremerman@usda.gov; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; Terry T. Uhling [tuhling@martenlaw.com]

Subject: Midas Gold Call
Location: Conference Call

Start: 7/2/2019 6:30:00 PM
End: 7/2/2019 7:30:00 PM
Show Time As: Busy

Call-in Number

Ex. 6 Personal Privacy (PP)

Passcode Ex. 6 Personal Privacy (PP)

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Appointment

From: Lisa.O'Hara@deq.idaho.gov [Lisa.O'Hara@deq.idaho.gov]
Sent: 6/24/2019 6:02:38 PM
To: Lisa.O'Hara@deq.idaho.gov; tuhling@martenlaw.com; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; gary.fremerman@usda.gov; bmarten@martenlaw.com

Subject: Meetings/Phone Calls for Stibnite

Start: 6/25/2019 8:00:00 PM
End: 6/25/2019 9:00:00 PM
Show Time As: Busy

Recurrence: (none)

(b) (6)

From: Lisa O'Hara
Sent: Monday, June 24, 2019 11:33 AM
To: 'Terry T. Uhling'; 'McKenna, Elizabeth'; Fremerman, Gary - OGC, Washington, DC; 'bmarten@martenlaw.com'
Subject: Meetings/Phone Calls for Stibnite

All,
Elizabeth and I think an attorney call in advance of next Monday's meeting would be beneficial. I have reserved a conference line for tomorrow, Tuesday, June 25 at 2 p.m. MST/1 p.m. PST. The call in number is: Ex. 6 Personal Privacy (PP) (b) (6)

I have a conference room reserved at IDEQ in Boise for next Monday, July 1st at 10:30 am MST/9:30 PST for the meeting you requested last week. This time works for Elizabeth & Kathy and DEQ staff and myself. Please let me know if you will need anything beyond a phone line that EPA and the Forest Service can call into.

As Elizabeth and I have both mentioned, a detailed agenda in advance of next Monday's meeting would be beneficial so we and our teams know what we will be discussing. Additionally, we'd ask that any new proposed scope of work that Midas would like to discuss be provided to DEQ/EPA/FS by Wednesday of this week so our technical staff have time to review in advance of Monday. We believe that would make next Monday's meeting the most productive.

Thank you,

***Lisa O'Hara* | Deputy Attorney General**
Office of the Attorney General | Environmental Quality Section
1410 N. Hilton – 2nd Floor
Boise, ID 83706
Office: 208.373.0494
lisa.ohara@deq.idaho.gov

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Appointment

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 11/26/2019 1:39:08 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]

Subject: Call re: Stibnite
Location: Brad to call Elizabeth

Start: 11/26/2019 9:30:00 PM
End: 11/26/2019 10:00:00 PM
Show Time As: Busy

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Message

From: Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]
Sent: 11/13/2019 12:51:05 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Bradley M. Marten [bmarten@martenlaw.com]; Smith, Grant (Government) [grant.s.smith@thomsonreuters.com]
CC: Lisa.O'Hara@deq.idaho.gov
Subject: RE: Stibnite Mine Negotiation Meeting Notes

One point of clarification: the Forest Service is not a "support agency" with respect to CERCLA response actions occurring on National Forest System (NFS) land. The Forest Service has been delegated the President's CERCLA response and enforcement authorities on the NFS portions of the site pursuant to Executive Order 12580.

Gary M. Fremerman
Senior Counsel
Natural Resources and Environment Division
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Ave., S.W., Rm 2013-S
Washington, D.C. 20250
202-720-8041 (voice)
202-631-4881 (mobile)
844-354-1119 (fax)
gary.fremerman@usda.gov

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Wednesday, November 13, 2019 1:38 AM
To: Bradley M. Marten <bmarten@martenlaw.com>; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Smith, Grant (Government) <grant.s.smith@thomsonreuters.com>
Cc: Lisa.O'Hara@deq.idaho.gov
Subject: FW: Stibnite Mine Negotiation Meeting Notes

Hi Brad, Gary, and Jill. I have attached the State's comments on the SOW. Please share with your teams.

Thanks,

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Lisa.O'Hara@deq.idaho.gov <Lisa.O'Hara@deq.idaho.gov>
Sent: Tuesday, November 12, 2019 3:08 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Mine Negotiation Meeting Notes

Elizabeth,

Here are the State's comments on the draft SOW. As for the minutes you sent, the State thought the funding mechanism could be in the AOC itself and a separate funding and participation agreement wouldn't be necessary so I wanted to clarify that and also that we'd be seeking funding for negotiations and oversight of the SOW.
Please let me know if you have any questions.

Thank you,
Lisa

***Lisa O'Hara* | Deputy Attorney General**
Office of the Attorney General | Environmental Quality Section
1410 N. Hilton – 2nd Floor
Boise, ID 83706
Office: 208.373.0453
lisa.ohara@deq.idaho.gov

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From: McKenna, Elizabeth [mailto:Mckenna.Elizabeth@epa.gov]
Sent: Tuesday, November 12, 2019 8:04 AM
To: Lisa O'Hara; Lisa Carlson; L. Michael Bogert; Zamba, Kathy -FS; Michael McCurdy; Cerise, Kathy; Maley, Timothy; Fremerman, Gary - OGC, Washington, DC; kwright@sbtribes.com; Pino, Nicholas - OGC, Missoula, MT; Aaron Scheff; Morrison, Kay; Stifelman, Marc; Uhling, Terry; Susanthanson9@icloud.com; Laurel Sayer; John Meyer; Bradley M. Marten; Cerise, Kathy
Subject: Stibnite Mine Negotiation Meeting Notes

Hello, attached are the meeting summary notes that Brad developed. I believe the notes accurately reflect our discussion. If you have any issues with the summary, please let me know. The second bullet reflects the parties' request for funding from Midas. To be clear, EPA is also requiring that its costs be reimbursed, though I may not have been explicit in the meeting about that.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 11/13/2019 6:54:15 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Shoshone-Bannock comments on Midas Gold draft statement of work

Thanks

Sent from my iPhone

On Nov 12, 2019, at 10:32 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Hi Brad. Please forward the Shoshone-Bannock Tribes' comments to the Midas crew. Thanks.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image004.png>

From: Jill Grant <jgrant@jillgrantlaw.com>
Sent: Tuesday, November 12, 2019 2:40 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: kwright@sbtribes.com; Susan Hanson (susanthanson9@icloud.com) <susanthanson9@icloud.com>; bbacon@sbtribes.com; Virginia Monsisco (vmonsisco@sbtribes.com) <vmonsisco@sbtribes.com>
Subject: Shoshone-Bannock comments on Midas Gold draft statement of work

Hi Elizabeth,

I've attached the Shoshone-Bannock Tribes' comments on Midas Gold's draft statement of work for the Stibnite Mine RI/FS.

We weren't sure whether to send them to all the people who were on the call, so I hope you don't mind that we're relying on you to make sure they get to the right place.

Thanks,

Jill

Jill Grant & Associates, LLC
1319 F Street NW
Suite 300
Washington, DC 20004
Tel: 202-821-1950
Fax: 202-459-9558

jgrant@jillgrantlaw.com
www.jillgrantlaw.com

<image005.png>

<image006.jpg>

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<2019-11-12 SBT Comments on Draft SOW for Stibnite Mine RIFS.docx>

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 10/22/2019 4:30:26 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
CC: Terry T. Uhling [tuhling@martenlaw.com]
Subject: Re: AOC meeting next week -- Stibnite Mine/Midas Gold

Thanks.

Sent from my iPhone

On Oct 22, 2019, at 12:19 AM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

I spoke with Mike Lopez this afternoon about the meeting. The Nez Perce Tribe is choosing to consult with the federal government agencies on a government to government basis throughout the negotiations, rather than to participate in the negotiations directly. The Tribe does not intend to join the negotiating parties in the meeting on November 1st. The Tribe will work closely with EPA and the Forest Service as the parties negotiate and would like to review drafts of documents as they are shared among the negotiating parties, and to provide input through its consultative relationship with EPA.

I will send an invite out to the parties tomorrow.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image001.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, October 21, 2019 5:01 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; 'Michael Bogert' <mbogert@midasgoldinc.com>; Terry T. Uhling <tuhling@martenlaw.com>
Subject: RE: AOC meeting next week -- Stibnite Mine/Midas Gold

Thanks, Elizabeth. We can confirm that we will attend at that time on November 1. Has an invitation to attend been extended to the Nez Perce Tribe?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com

martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

<image005.png>

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Monday, October 21, 2019 3:52 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Cc: Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; 'Michael Bogert' <mbogert@midasgoldinc.com>; Terry T. Uhling <tuhling@martenlaw.com>
Subject: RE: AOC meeting next week -- Stibnite Mine/Midas Gold

Hello, Brad. I have been coordinating with IDEQ, the USFS, and the Shoshone Bannock Tribe on a date that will work for all of the parties. Friday, November 1st from 9:00 a.m. to 11:00 a.m. is currently the time that works for the EPA team, Lisa O'Hara (IDEQ), Gary Fremerman (USFS) and Jill Grant (Shoshone-Bannock). Jill is checking with the Shoshone Bannock Tribe to see if someone from the Tribe can participate on that date. Would the Midas team be available on Friday from 9:00 a.m. to 11:00 a.m. on the 1st? Given the short notice, I expect many of the participants will choose to participate by phone.

I would add the following items to the agenda items that you suggested:

- A presentation by Midas regarding the specific areas on which Midas holds mine claims and an overlay of the areas where Midas has conducted exploratory activities. I realize that Midas has provided the parties ownership information in the past, but there is still some clarification needed on this topic. It would be helpful if Midas could distribute maps at the meeting.
- A broad/high level discussion regarding how the RI/FS should be conducted given the need to understand current environmental conditions and environmental conditions post mining by Midas. Several of us have had questions regarding how an RI/FS would be conducted at an operating mine and it would be good to start that discussion.

I will attach the latest draft of the SOW to the meeting invitation once we work out the date with all of the parties. Thank you.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image002.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, October 21, 2019 1:19 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; 'Michael Bogert' <mbogert@midasgoldinc.com>; Terry T. Uhling <tuhling@martenlaw.com>
Subject: AOC meeting next week -- Stibnite Mine/Midas Gold

Settlement Communication
Protected from Disclosure By FRE 408

Elizabeth:

I am writing to confirm Midas Gold's agreement to postpone the meeting previously requested with EPA Regional Administrator Hladick in order to resume our AOC negotiations with the State of Idaho and the US Forest Service, in consultation with the Nez Perce and Shoshone Bannock Tribes. My understanding is that you will be trying to schedule that meeting for the week of October 29, 2019 (next week).

It would be helpful to develop and distribute an agenda for the meeting next week in order to make the best use of everyone's time. I expect the various parties will have differing needs, but some of them are likely to be shared by all participants. They include:

1. A schedule for conducting future meetings, including a target schedule for completing the AOC;
2. Copies of the SOW previously negotiated among EPA, the State, USFS and Midas;
3. An understanding as to which participants wish to be signatories to the AOC, and the weight to be given to the comments of participants who do not wish to be signatories;
4. Confidentiality, including the use of information obtained in negotiations in the collateral litigation brought by the Nez Perce Tribe against Midas.

v

Feel fre to give me a call if it would be useful. I am on a plane for the next two hours, but able to talk after 3:30 pm PST.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Appointment

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 10/27/2019 7:17:51 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]

Subject: Accepted: Stibnite Mine Meeting - UPDATE
Location: R10Sea-ConfLineORC-Restricted-Ex. 6 Personal Privacy (PP) R10Sea-Room-13Heron/R10-Rooms-Service-Center

Start: 11/1/2019 4:00:00 PM
End: 11/1/2019 6:00:00 PM
Show Time As: Busy

Recurrence: (none)

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 11/18/2019 2:02:29 PM
To: Jill Grant [jgrant@jillgrantlaw.com]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Lisa.O'Hara@deq.idaho.gov; Bradley M. Marten [bmarten@martenlaw.com]
Subject: Stibnite Mine Site - Please use this version
Attachments: Draft #1 11-15-2019.docx

Discovered an error in the version I sent you this weekend and forgot to add Midas in the caption. Please distribute to your teams.

Thank you.
Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ___

IN THE MATTER OF: Stibnite Mine Site Midas Gold Corp., Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc. Respondents Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622.	)	CERCLA Docket No. ____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

**ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION / FEASIBILITY STUDY**

AOC Draft #1 11-15-2019

TABLE OF CONTENTS

[TOC \o "1-1" \u]

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), the United States Department of Agriculture Forest Service (USFS), the Idaho Department of Environmental Quality (IDEQ), the Shoshone-Bannock Tribes, and Midas Gold Corp., a Canadian corporation, and related Respondents Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc. (hereinafter collectively referred to as Respondents). The EPA, USFS, IDEQ, the Shoshone Bannock Tribes (Tribes), and Respondents are collectively referred to as the "Parties" and may be singularly referred to as a "Party." This Settlement provides for the performance of a remedial investigation and feasibility study (RI/FS) by Respondents and the payment of certain response costs incurred by EPA and USFS, IDEQ, and the Shoshone Bannock Tribes at or in connection with the Stibnite Mine Site (the "Site") generally located about fourteen (14) miles east of the town of Yellow Pine in Valley County, Idaho.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923-26 (1987), and the Secretary of the United States Department of Agriculture ("Secretary") by Executive Order 12580, 52 Fed. Reg. 2926 (January 23, 1987),3 C.F.R., 1987 Compilation, p. 193. The authority was further delegated to the EPA Regional Administrators on September 13, 1987, by EPA Delegation Nos. 14-14-A, 14-14-B, 14-14-C and 14-14-D. This authority has been redelegated by the Regional Administrator, EPA Region 10, and to the Office of Superfund Environmental Management Division Director. The Secretary's authority was further delegated to the Chief of the USFS by 7 C.F.R. § 2.60(a)(39). The Secretary's authority was re-delegated by the Chief of the FS to the FS Region 4 Regional Forester.

Commented [A1]: Check to see of updated delegation.

3. Consistent with EO 12580 and the NCP, EPA will be the lead agency for response actions involving the private portions of the Site, and the Forest Service will be the lead for response actions involving the NFS portions of the Site. Nevertheless, the parties have agreed that it is appropriate, for fiscal and efficiency reasons, for EPA to take the principal responsibility for implementation of the response action as a whole.

4. The State enters into this Settlement pursuant to Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. §§ 9620(f) and 9621(f) and will serve as Support Agency under this Settlement and will review response data and documents and consult with EPA and the USFS on decisions and approvals made under the Settlement.

5. The Tribes are a federally-recognized Indian Tribe with a governing body known as the Fort Hall Business Council. The Tribes assert that they are exercising their authorities pursuant to their inherent sovereign powers, the Fort Bridger Treaty (15 Stat. 673) the Fort Bridger Treaty (15 Stat. 673), and the Constitution and By-Laws of 1936. The Tribes will serve as a support agency under this Settlement and will review response data and documents and consult with EPA and the USFS on decisions approvals made under the Settlement.

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6. The EPA RPM and the other governmental parties' Project Coordinators shall coordinate with each other to implement response actions at the Site. This coordination shall include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings with contractors, consultants, the state, trustees, or other participating third parties related to the Site, or any significant on-Site activities. In most cases, reasonable prior notice shall be considered seven (7) days. In the event that a meeting needs to be scheduled on shorter notice, the EPA RPM shall use their best efforts to contact their governmental parties' counterparts and shall determine the counterparts availability prior to scheduling the meeting.

7. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Section [REF _Ref364854851 \r \h] (Findings of Fact) and [REF _Ref364854871 \r \h] (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

8. This Settlement is binding upon EPA, the USFS, IDEQ, the Shoshone Bannock Tribe and upon Respondents and their heirs, successors and assigns. Any change in ownership or corporate status of a Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Settlement.

9. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

10. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

11. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into under this Settlement upon performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

12. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall

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have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section [REF _Ref326220092 \r \h].

"Engineering Controls" shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. §9507.

"IDEQ" shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the Support Agencies incur in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section [REF _Ref378061137 \r \h * MERGEFORMAT] (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section [REF _Ref326220129 \r \h] (Emergency Response and Notification of Releases), Paragraph [REF _Ref408837399 \r \h] (Work Takeover), Paragraph [REF _Ref362014500 \r \h] (Access to Financial Assurance)], Paragraph [REF _Ref377733374 \r \h * MERGEFORMAT] (Community Involvement Plan), including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)], Section [REF _Ref364855795 \r \h] (Dispute Resolution), the costs of any cooperative agreements under Section 104(d)(1), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site, and all Interest on Past Response Costs.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action pursuant to this Settlement; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at [HYPERLINK "https://www.epa.gov/superfund/superfund-interest-rates"].

"Stibnite Mine Site Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site from [x date] to the Effective Date of the Settlement, plus Interest on all such costs through such date.]

Commented [A2]: This date will be the date on which Midas first met with EPA HQ regarding a CERCLA settlement.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Respondents" shall mean Midas Gold Corp., a Canadian corporation, and related Respondents Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc.

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section [REF _Ref408929826 \w \h] (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

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"Site" shall mean all area within the Stibnite Mining District in which Respondent has ownership interest in land or mining claims, and/or has conducted mine exploration drilling activities, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for response action implementation and materials handling.

"State" shall mean the State of Idaho

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to develop the RI/FS for the Site, as set forth in Appendix __ to this Settlement. The Statement of Work is incorporated into this Settlement and is an enforceable part of this Settlement as are any modifications made thereto in accordance with this Settlement.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"Tribe" shall mean the Shoshone Bannock Tribes.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any hazardous wastes as defined in the Idaho Hazardous Waste Management Act, Idaho Code 39-4403(8); (e) "pollutants" as defined in IDAPA 58.01.02.010.731; (f) "contaminants" as defined in IDAPA 58.01.11.007.10; (g) "hazardous materials" as defined in IDAPA58.01.02.010.40; or "deleterious materials" as defined in IDAPA 58.01.02.010.16.

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section [REF _Ref326220583 \w \h] (Record Retention).

IV. FINDINGS OF FACT

Commented [A3]: Note that the Findings of Fact are a work in progress. EPA is reviewing background information to fill in sections on types, levels, locations and effects of contamination at the Site and relevant history of the Site. I have taken these paragraphs from multiple documents by varying authors. Please let me know if there are inaccuracies.

13. The Stibnite Mining Site ("Site") is about fourteen (14) miles east of the town of Yellow Pine in Valley County, Idaho. The Site includes both National Forest Service lands and private lands, although most of the mining and processing areas are on patented (private) claims. The Site comprises a number of hazardous substances source areas resulting from mining along Meadow Creek and East Fork South Fork ("EFSF') Salmon River.

14. The Site is comprised of private, federal, and state land. Approximately 2,932 acres are under USFFS jurisdiction, 895 acres are private lands including lands owned by Midas Gold, 25 acres are administered by the Bureau of Reclamation, and 37 acres are administered by the State of Idaho.

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15. The Site is located within the historic Stibnite Mining District (District). Mining operations began in the District in the 1920s and continued through the 1990s. Historical mining in the District mostly occurred in three general areas named Hangar Flats, Yellow Pine, and West End. Mining operations in the 1920s through the 1950s focused in the area of the proposed Hangar Flats and Yellow Pine pits. Mining operations in the late 1970s through mid-1990s were focused in the West End deposit and a pit known as the Homestake pit located within the area of disturbance for Midas Gold's proposed Yellow Pine pit. Past mining, development, and reclamation activities in the District include: exploration, road construction, underground and surface mining, milling, tailings disposal, smelting, ore heap leaching, spent ore disposal, waste rock disposal, hydro- power development, water retention dam construction, saw mill, housing camps, a townsite, transmission line, and other associated infrastructure.

16. Antimony, tungsten and gold were mined at the Site. Most ore was mined by Bradley Mining Company using open-pit methods, although underground methods were used from 1927 to 1943. During World War II the mining area gained significance as the largest producer of strategic metals, specifically antimony and tungsten, which had many uses during the war. Early mining involved hauling ore rock from the underground workings to a mill site at the town of Stibnite where antimony and tungsten concentrates were separated from the pit-run ore in a mill using a selective flotation process. In 1943, Bradley Mining abandoned the underground workings and began the Yellow Pine Pit Mine. Waste tailings produced in the milling process were deposited in Meadow Creek above the mill site at the south end of the valley, using the upstream method tailings dam, and in areas along the creek downstream of the main tailings deposition area. A smelter was constructed at Stibnite in 1948 to process low grade gold and gold-antimony ore. The smelter existed at the site until 1955, when it was dismantled and moved to another mine.

17. Exploration of gold reserves in the area resumed in 1970. Mining operations in the late 1970s through mid-1990s were focused in the West End deposit and a pit known as the Homestake pit located adjacent to the historical Yellow Pine pit within the area of disturbance for Midas Gold's proposed Yellow Pine pit. Processing occurred primarily by heap leaching using both one-time use pads and on/off pads where the ore was loaded on, leached and then removed to allow the next load of ore to be placed. The leaching occurred primarily in the Meadow Creek valley. The use of a cyanide heap-leaching process to recover gold from low-grade ore was initiated and full-scale operation began in 1982. Heap-leach facilities were constructed along the north side of Meadow Creek to recover gold from low-grade ore.

18. There are several contaminant sources in the area including mill and smelter tailings, spent ore from heap leaching operations, contaminated soils in the smelter area, open pit mines, abandoned adits, tailings, and waste rock dumps.

19. [Place holder: insert hazardous substances at the Site. EPA reviewing information to summarize.]

20. A Preliminary Assessment/Site Investigation was conducted on public lands administered by the USFS in 2001. The Site was proposed for listing on the National Priorities

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List in 2001 (Federal Register, Vol. 66, No. 178, Thursday, September 13, 2001). There has been no change in the status since 2001, and the Stibnite/Yellow Pine Mining area, which includes the mine site, remains as "proposed" status on the NPL.

21. [Identification of the populations at risk, both human and non-human.]

22. [Health/environmental effects of some major contaminants.]

23. [Whether the Site is on the [proposed] National Priorities List. Sample language follows:

24. Beginning in 1982, the IDEQ began monitoring the Site. The IDEQ sampled surface water and groundwater for hazardous substances generated by mining operations. Sampling results showed exceedances of cyanide for the EPA quality criteria for water for fresh water aquatic organisms.

25. On September 25, 1991, the EPA placed the Yellow Pine Mine Area on the Federal Facilities Docket. The Forest Service initiated a CERCLA Section 104 and 107 response and enforcement action at the Site.

26. In 1995, former owner/operator Stibnite Mine, Inc. entered into an Administrative Order on Consent (AOC) with the EPA Region 10 to mitigate environmental problems associated with the historic Bradley tailings in the upper Meadow Creek Valley. The AOC required Stibnite Mine, Inc. to stabilize the upper Meadow Creek Diversion Channel and to treat the flow exiting the diversion to meet water quality standards.

27. In 1999, the Forest Service completed a time-critical removal action at the pilot plant. The action consisted of covering and capping ponds constructed by Canadian Superior Mining (U.S.) Limited in 1979 and were used as a pilot test for processing gold. The pilot test used cyanide-leaching technology for ore extracted from the site (Forest Service 2004).

28. By the end of 1999, most of the SMI facilities and haul roads were reclaimed under a reclamation plan approved by IDEQ, IDL, and the Forest Service and implemented by IDL. Reclamation and closure continued in 2000.

29. In 2002, the Forest Service completed two time-critical removal actions (TCR). The first was to remove tailings from the Poison Pond area. The Poison Ponds were located along Meadow Creek south of Hecla's heap leach pad. Approximately 2,500 cubic yards were removed and placed in a repository cell located on the northwest Bradley waste dump. The second TCR was in the smelter stack area. This action consisted of removing the wood flume and ash to an off-site EPA approved facility. This TCR also included removal and placement of 400 cubic yards of soil in the same repository cell located on the northwest Bradley waste dump. The soil was removed from below the smelter stack flume.

30. The Forest Service, IDL, IDEQ, and EPA have performed several removal actions in the Stibnite/Yellow Pine Mining Area including removal of minor quantities of legacy tailings and the smelter stack in 2003, re-channelization of lower Meadow Creek in 2005, and covering certain legacy tailings-related impoundments with clean fill in 2009.

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31. In the summer of 2003, the USFS and IDEQ found mine wastes containing very high levels of arsenic at the Stibnite Mine. These arsenic "hot spots" were in the northwest Bradley waste dump, which was an unsecured area with unrestricted public access. In 2004, EPA through its contractor, Environmental Quality Management (EQM), implemented a removal of the contaminated waste, regrading of the removal area, and soil placed on top. The area was later seeded with native plants and covered with straw. Excavated waste was placed in the on-site Forest Service "repository cell", an area designed to safely store the waste and prevent exposure to the public.

32. In 2004, a Meadow Creek Engineering Evaluation/Cost Analysis (EE/CA) was completed under a Forest Service contract by Science Applications International Corporation (SAIC), including specifications and design of the recommended alternative. Also, in 2004, a Biological Assessment (BA) was completed, as required by the Endangered Species Act (ESA), and submitted to the USFWS and National Marine Fisheries Service.

33. In 2005, the Forest Service and EPA completed a CERCLA removal action in Meadow Creek between Blowout Creek and its confluence with the EFSFSR. Legacy tailings that were contributing elevated levels of arsenic to the stream were excavated from a 19-acre area and placed in an engineered repository in the SODA and 3,500 feet of stream channel was reconstructed, providing habitat suitable for salmonid spawning.

34. In 2009, Respondents began acquiring land and mineral interests at the Site and is currently has ownership and operational control over the lands and mining claim(s) at the Site. Midas Gold has conducted exploratory drilling and is currently seeking a mine operating permit through the National Environmental Policy Act process.

35. Respondent proposes to develop and operate a mining operation that produces gold and silver doré, and antimony concentrates from ore deposits associated with Midas Gold's mining claims and rights in the project area. In addition, Respondents' proposed mining plan states that Respondents will undertake cleanup and reclamation at the Site before, during, and after the proposed mining.

36. In general, Midas Gold's proposed development of the mineral resources would include construction of access and haul roads within the mine site; construction of supporting infrastructure for the mine site (e.g., worker housing and support facilities); open pit mining; ore processing at the mine site for the recovery of gold, silver, and antimony; placement of tailings in a composite- lined TSF; and placement of development rock in engineered and designed facilities.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

37. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Stibnite Mine Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondents ares "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondents are responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondents are the "owners" and/or "operators" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in Paragraphs ___ of the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The actions required by this Settlement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

g. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement.

VI. SETTLEMENT AGREEMENT AND ORDER

38. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

39. **Selection of Contractors, Personnel**. All Work performed under this Settlement shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of Work, Respondents retain additional contractors or subcontractors, Respondents shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least __ days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications

Commented [A4]: EPA will be the lead agency and will be the primary point of contact with Midas. However, please suggest areas where IDEQ, Tribes, USFS should be inserted instead of just EPA.

within ___ days after EPA's disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," EPA/240/B-01/002 (Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

Commented [A5]: The governments need to discuss whether each mention of EPA approval needs to be "EPA/USFS approval". Also, does it make sense to have one statement in the beginning of the document that says something to the effect that "EPA will consult with the IDEQ and the Tribes when making a decision/approving documents" rather than putting in the consulting language each and every time we say EPA will do something?

40. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph [REF _Ref461736563 \r \h * MERGEFORMAT] (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within ___ days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to all Respondents.

41. EPA has designated Kathy Cerise of the Superfund Emergency Management Division in EPA Region 10 as its Remedial Project Manager (RPM). EPA will notify Respondents of a change of its RPM. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Settlement, shall be directed to the EPA RPM in accordance with Paragraph [REF _Ref446583619 \r \h * MERGEFORMAT].

42. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's RPM shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the EPA RPM from the area under study pursuant to this Settlement shall not be cause for stoppage or delay of Work.

VIII. WORK TO BE PERFORMED

43. Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at [HYPERLINK "https://semspub.epa.gov/src/document/11/128301"

], "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at [HYPERLINK "http://semspub.epa.gov/src/document/11/156756"], and guidance referenced therein, and guidance referenced in the SOW. If a mine operating permit is not issued and/or mining does not occur at the Site, Respondents remain obligated to perform the Work. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, evaluating and proposing early actions based on the results of the human health and ecological risk assessments, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

44. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

45. **Activities and Deliverables**

a. Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at [HYPERLINK "https://semspub.epa.gov/src/document/11/128301"], "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at [HYPERLINK "http://semspub.epa.gov/src/document/11/156756"], and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40

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C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

46. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

47. **Modification of the RI/FS Work Plan**

a. If at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to EPA's Project Coordinator within ___ days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify EPA's RPM by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall modify the RI/FS Work Plan in writing accordingly or direct Respondents to modify and submit the modified RI/FS Work Plan to EPA for approval. Respondents shall perform the RI/FS Work Plan as modified.

c. EPA may determine that, in addition to tasks defined in the initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Respondents shall perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a thorough RI/FS.

d. Respondents shall confirm their willingness to perform the additional work in writing to EPA within 7 days after receipt of the EPA request. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section [REF _Ref364855795 \r \h * MERGEFORMAT] (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondents shall complete the additional work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the work itself, to seek reimbursement from Respondents for the costs incurred in performing the work, and/or to seek any other appropriate relief.

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f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

48. **Off-Site Shipments**

a. Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the RI/FS and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

49. **Meetings**. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the preparation of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

50. **Progress Reports**. In addition to the deliverables set forth in this Settlement, Respondents shall submit written monthly progress reports to EPA by the ▒ day of the following month. At a minimum, with respect to the preceding month, these progress reports shall:

a. describe the actions that have been taken to comply with this Settlement;

b. include all results of sampling and tests and all other data received by Respondents;

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c. describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion; and

d. describe all problems encountered in complying with the requirements of this Settlement and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

IX. SUBMISSION AND APPROVAL OF DELIVERABLES

51. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to EPA's RPM at1200 6th Avenue, Seattle, Washington 98101, (206) 553-2589, cerise.kathy@epa.gov and to the State at [**insert contact information**]. Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph [REF _Ref425414746 \w \h * MERGEFORMAT]. All other deliverables shall be submitted in the electronic form specified by EPA's RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (i) in the ESRI File Geodatabase format; and (ii) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at [HYPERLINK "https://edg.epa.gov/EME/"].

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(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult [HYPERLINK "https://www.epa.gov/geospatial/geospatial-policies-and-standards"] for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

52. **Approval of Deliverables**

a. **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Settlement EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmissions**. Upon receipt of a notice of disapproval under Paragraph [REF _Ref446931551 \r \h * MERGEFORMAT].[REF _Ref422321426 \r \h * MERGEFORMAT] (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph [REF _Ref446931551 \r \h * MERGEFORMAT].[REF _Ref422321426 \r \h * MERGEFORMAT], Respondents shall, within __ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation**. Upon approval, approval upon conditions, or modification by EPA under Paragraph [REF _Ref446931551 \r \h * MERGEFORMAT].[REF _Ref447018382 \r \h * MERGEFORMAT] (Initial Submissions) or Paragraph [REF _Ref322533499 \w \h * MERGEFORMAT] (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (ii) Respondents shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section [REF _Ref447018476 \r \h] (Stipulated Penalties) for violations of this Settlement.

53. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

54. In the event that EPA takes over some of the tasks, but not the preparation of the Remedial Investigation Report ("RI Report") or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into those reports.

55. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: RI/FS Work Plan; Sampling and Analysis Plan; draft RI Report; Treatability Testing Work Plan; Treatability Testing Sampling and Analysis Plan; Treatability Testing Health and Safety Plan; and draft FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement.

56. For all remaining deliverables not listed in Paragraph [REF _Ref446931936 \r \h * MERGEFORMAT], Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

57. **Material Defects**. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph [REF _Ref447018382 \r \h * MERGEFORMAT] (Initial Submissions) or [REF _Ref322533499 \r \h * MERGEFORMAT] (Resubmissions) due to such material defect, Respondents shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section [REF _Ref447018476 \r \h] (Stipulated Penalties).

58. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

59. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

60. **Laboratories**

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a. Respondents shall ensure that EPA, the USFS, IDEQ, and the Shoshone Bannock Tribes' personnel and its their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at [HYPERLINK "https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures"]. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at [HYPERLINK "https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements"], and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program ([HYPERLINK "https://www.epa.gov/superfund/programs/clp/"]), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" ([HYPERLINK "https://www.epa.gov/hw-sw846"]), "Standard Methods for the Examination of Water and Wastewater" ([HYPERLINK "http://www.standardmethods.org/"]), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" ([HYPERLINK "https://www.epa.gov/ttnamti1/airtox.html)"].

b. Upon approval by EPA, after a reasonable opportunity for review and comment by the USFS, the State, and the Shoshone Bannock Tribes, Respondents may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the approved QAPP.

61. **Sampling**

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a. Upon request, Respondents shall provide split or duplicate samples to EPA. Respondents shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondents split or duplicate samples of any samples they take as part of EPA's oversight of Respondents' implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. Respondents shall submit to EPA, in the next monthly progress report as described in Paragraph [REF _Ref425418789 \r \h * MERGEFORMAT] (Progress Reports) the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

c. Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

XI. PROPERTY REQUIREMENTS

62. **Agreements Regarding Access and Non-Interference**. If the Site, or any other property where access is needed to implement this Settlement, is owned or controlled by Respondents, Respondents shall, commencing on the Effective Date, provide EPA, USFS, IDEQ, and the Shoshone Bannock Tribes, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, as may be needed to implement this Settlement. Beginning on the Effective Date of this Settlement, USFS shall permit access to the portions of the Site located on federally managed land to Respondents and its authorized representatives, as necessary to perform the Work required under this Settlement.

63. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents (other than the Parties), Respondents shall use best efforts to secure an agreement, enforceable by Respondents and the United States, providing that such owner shall (i) provide EPA, USFS, IDEQ, the Shoshone Bannock Tribes and Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Settlement; and refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or] interfere with or adversely affect the implementation or integrity of the Work. Respondents shall provide a copy of such access agreement(s) to EPA.

64. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable

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sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section [REF _Ref326224281 \w \h] (Payment of Response Costs).

65. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's efforts to secure and ensure compliance with such Institutional Controls.

XII. ACCESS TO INFORMATION

66. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

67. **Privileged and Protected Claims**

a. Respondents may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph [REF _Ref358288570 \w \h * MERGEFORMAT], and except as provided in Paragraph [REF _Ref383005108 \w \h * MERGEFORMAT].

b. If Respondents assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other

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Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

68. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA under this Section or Section [REF _Ref326220583 \w \h * MERGEFORMAT] (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA [and the State], or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

69. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION

70. Until 10 years after EPA provides Respondents with notice, pursuant to Section [REF _Ref326220653 \r \h] (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

71. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph [REF _Ref358291431 \r \h] (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

72. Each Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA, USFS, or the State and that it has fully

complied with any and all EPA, USFS, and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIV. COMPLIANCE WITH OTHER LAWS

73. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section [REF _Ref364856006 \r \h * MERGEFORMAT] (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

74. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify EPA's RPM or, in the event of his/her unavailability, the Regional Duty Officer at (206) 553-1263 and the National Response Center at (800) 424-8802 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section [REF _Ref326224281 \r \h] (Payment of Response Costs).

75. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify EPA's RPM or, in the event of his/her unavailability, the Regional Duty Officer at (206) 553-1263, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

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76. For any event covered under this Section, Respondents shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XVI. PAYMENT OF EPA, USFS, IDEQ, and TRIBES' RESPONSE COSTS

Commented [A6]: USFS, State, Tribe need to add their cost provisions in this section

77. **Payment for EPA Past Response Costs**

a. Within 30 days after the Effective Date, Respondents shall pay to EPA $____ for Past Response Costs. Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

For ACH payment:

Respondents shall make payment to EPA by Automated Clearinghouse (ACH) to:

500 Rivertech Court
Riverdale, Maryland 20737
Contact – John Schmid 202-874-7026 or REX, 1-866-234-5681
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
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and shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

For online payment:

Respondents shall make payment at [HYPERLINK "https://www.pay.gov"] to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.]

b. At the time of payment, Respondents shall send notice that payment has been made to Kathy Cerise, 1200 Sixth Avenue, MC____, Seattle, WA 98101, and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

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EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number ▒▒▒ and the EPA docket number for this action.

c. **Deposit of EPA Past Response Costs Payments**. The total amount to be paid by Respondents pursuant to Paragraph [REF _Ref326155583 \w \h * MERGEFORMAT] shall be deposited by EPA in the Stibnite Mine Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. **Payments for EPA Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis EPA will send Respondents a bill requiring payment that includes a cost summary. Respondents shall make all payments within thirty (30) days of receipt of each bill requiring payment. Respondents shall make all payments required by this Paragraph in the manner required by Paragraph 76, with notice as required by Subparagraph 76.b. The total amount paid will be deposited by EPA in the Stibnite Mine Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

78. **Interest**. In the event that any payment for Past Response Costs or Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section [REF _Ref364855845 \r \h] (Stipulated Penalties).

79. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section [REF _Ref364855795 \w \h] (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph [REF _Ref326154300 \r \h * MERGEFORMAT] (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such a dispute, Respondents shall submit a Notice of Dispute in writing to EPA's Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h *

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MERGEFORMAT], and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to EPA's Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h * MERGEFORMAT]. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h * MERGEFORMAT]. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section [REF _Ref364855795 \w \h] (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVII. NATURAL RESOURCE DAMAGES

80. For the purposes of Section 113(g)(1) of CERCLA, the Parties agree that, upon the Effective Date of this Settlement for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action.

XVIII. DISPUTE RESOLUTION

Commented [A7]: For IDEQ, USFS, Shoshone Bannock Tribes: discuss DR for disputes over non-EPA costs.

81. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

82. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, or, in the case of disputes between Settling Defendant and the USFS, IDEQ, or the Tribes under Paragraphs [payment of costs], they shall send EPA, or if applicable, another Party, a written Notice of Dispute describing the objection(s) within 20 days after such action. Respondents shall have 20 days from EPA's or another Party's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period maybe extended at the sole discretion of the Party with whom Respondents raised the dispute. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

Commented [A8]: Sean to check if this is OK. I'm imagining disputes over State-incurred costs.

83. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 30 days after the end of the Negotiation

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Period, submit a statement of position to EPA's RPM, or if applicable, to another Party's Project Manager. The Party with whom Respondents raised the dispute may, within 30 days thereafter, submit a statement of position. Thereafter, a management official at the appropriate supervisory level will issue a written decision on the dispute to Respondents. EPA's or another Party's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's or another Party's decision, whichever occurs.

84. Except as provided in Paragraph [REF _Ref326155627 \w \h * MERGEFORMAT] (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph [REF _Ref408928773 \r \h * MERGEFORMAT], stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [REF _Ref364855845 \w \h] (Stipulated Penalties).

XIX. FORCE MAJEURE

85. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

86. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondents shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Emergency Management Division, EPA Region 10, within 24 hours of when Respondents first knew that the event might cause a delay. Within 5 days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above

requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph [REF _Ref408928929 \w \h * MERGEFORMAT] and whether Respondents have exercised their best efforts under Paragraph [REF _Ref408928929 \w \h * MERGEFORMAT], EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

87. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

88. If Respondents elect to invoke the dispute resolution procedures set forth in Section [REF _Ref364855795 \w \h * MERGEFORMAT] (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs [REF _Ref408928929 \w \h * MERGEFORMAT] and [REF _Ref408929054 \w \h * MERGEFORMAT]. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

89. The failure by EPA, USFS, IDEQ, or the Tribes to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XX. STIPULATED PENALTIES

90. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs [REF _Ref453850196 \r \h * MERGEFORMAT] and [REF _Ref377733892 \w \h * MERGEFORMAT] for failure to comply with the obligations specified in Paragraphs [REF _Ref462842168 \r \h * MERGEFORMAT] and [REF _Ref377733892 \r \h * MERGEFORMAT], unless excused under Section [REF _Ref364856006 \w \h * MERGEFORMAT] (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

91. **Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones**

Penalty Per Violation Per Day	Period of Noncompliance
$ 5,000	1st through 14th day
$ 7,500	15th through 30th day
$ 10,000	31st day and beyond

Commented [A9]: Tentative numbers. Need management approval.

a. **Obligations**

(1) Payment of any amount due under Section [REF _Ref326224281 \w \h] (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section [REF _Ref453851067 \w \h] (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph [REF _Ref326155627 \w \h] (Contesting Future Response Costs).

(4) [Will insert list of major deliverables and milestones when SOW is finalized.]

92. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in Paragraph [REF _Ref462842168 \w \h]:

Penalty Per Violation Per Day	Period of Noncompliance
$ 2,500	1st through 14th day
$ 5,000	15th through 30th day
$ 7,500	31st day and beyond

Commented [A10]: Tentative numbers.

93. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph [REF _Ref408837399 \w \h * MERGEFORMAT] (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of _____. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs [REF _Ref408837399 \r \h * MERGEFORMAT] (Work Takeover) and [REF _Ref362014500 \w \h * MERGEFORMAT] (Access to Financial Assurance).]

Commented [A11]: EPA will be calculating this number.

94. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section [REF _Ref408930226 \w \h * MERGEFORMAT] (Submission and Approval of Deliverables), during the period, if any, beginning on the 31st day

after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the appropriate EPA Management Official, under Paragraph [REF _Ref408843896 \w \h * MERGEFORMAT] (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

95. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

96. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section [REF _Ref364855795 \r \h * MERGEFORMAT] (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph [REF _Ref326154300 \w \h * MERGEFORMAT] (Payments for Future Response Costs).

97. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph [REF _Ref408928773 \w \h * MERGEFORMAT] until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph [REF _Ref408929252 \w \h * MERGEFORMAT] until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

98. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement.

99. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph [REF _Ref408837399 \w \h * MERGEFORMAT] (Work Takeover).

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100. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XXI. COVENANTS BY THE UNITED STATES

Commented [A12]: Add covenants by IDEQ and Tribes?

101. Except as provided in Section [REF _Ref364856274 \w \h * MERGEFORMAT] (Reservations of Rights by the United States), the United States covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work , Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XXII. RESERVATIONS OF RIGHTS BY THE UNITED STATES

Commented [A13]: Add reservations for IDEQ and Tribes?

102. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

103. The covenant not to sue set forth in Section [REF _Ref364857586 \r \h * MERGEFORMAT] (Covenants by the United States) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement;

b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

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g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

104. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph [REF _Ref408843613 \w \h * MERGEFORMAT], Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT]. Funding of Work Takeover costs is addressed under Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] (Access to Financial Assurance).]

c. Respondents may invoke the procedures set forth in Section [REF _Ref364855795 \r \h * MERGEFORMAT] (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT]. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT] until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph [REF _Ref408843896 \w \h * MERGEFORMAT] (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY RESPONDENTS

105. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement, including, but not limited to:

Commented [A14]: State and Tribes, please insert appropriate language for covenants by Responsent.

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a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Past Response Costs, Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Idaho Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law;

106. Except as provided in Paragraph [REF _Ref408843999 \w \h * MERGEFORMAT] (Waiver of Claims by Respondents) these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section [REF _Ref364856274 \r \h * MERGEFORMAT] (Reservations of Rights by EPA), other than in Paragraph [REF _Ref377734500 \w \h * MERGEFORMAT] (liability for failure to meet a requirement of the Settlement), [REF _Ref377734512 \w \h * MERGEFORMAT] (criminal liability), or [REF _Ref424916441 \r \h * MERGEFORMAT] (liability for violations of federal or state law), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

107. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

108. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

109. **Waiver of Claims by Respondents**

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver**. For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for

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disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

b. **Exception to Waiver**

The waiver under this Paragraph 108 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.

XXIV. OTHER CLAIMS

110. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

111. Except as expressly provided in Paragraphs [REF _Ref408843999 \w \h] (Waiver of Claims by Respondents) and Section [REF _Ref364857586 \w \h] (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

112. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXV. EFFECT OF SETTLEMENT/CONTRIBUTION

113. Except as provided in Paragraphs [REF _Ref408843999 \w \h] (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section [REF _Ref364855096 \w \h] (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

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114. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, Past Response Costs, and Future Response Costs.

115. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

116. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

117. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA and/or the USFS, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section [REF _Ref364857586 \w \h] (Covenants By the United States).

118. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from such Respondent the payments required by Paragraphs [REF _Ref326155588 \w \h * MERGEFORMAT] (Payment for Past Response Costs) and, if any, Section [REF _Ref364855845 \w \h] (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph [REF _Ref326219447 \r \h * MERGEFORMAT] and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the United States gives notice to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by the United States.

XXVI. INDEMNIFICATION

119. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA and the USFS's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

120. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

121. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVII. INSURANCE

122. No later than 30 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section [REF _Ref326220653 \r \h] (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming the EPA and USFS as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy.

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Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA and the USFS that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to the contractor or subcontractor, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Stibnite Mine Site, Idaho and the EPA docket number for this action.

XXVIII. FINANCIAL ASSURANCE

123. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $ [ ] ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at [HYPERLINK "https://cfpub.epa.gov/compliance/models/"], and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

Commented [A15]: EPA is working with EPA HQ to determine the appropriate amount of FA.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

124. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from

EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of Paragraph [REF _Ref362014481 \w \h] (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

[NOTE REGARDING PARAGRAPH [REF _Ref362014500 \r \h] (Access to Financial Assurance): Case teams should make sure that the "trigger" for obtaining funds and/or work under the financial assurance mechanism is consistent with the trigger in the Settlement, e.g., if the Settlement allows EPA to access the funds in the event of a Work Takeover or a Respondent's failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.]

125. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT], then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph [REF _Ref362014763 \w \h * MERGEFORMAT].

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph [REF _Ref362014763 \w \h * MERGEFORMAT].

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT], either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraphs [REF _Ref362014207 \w \h * MERGEFORMAT] or [REF _Ref362014209 \w \h * MERGEFORMAT], then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within __ days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured

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by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Stibnite Mine Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] must be reimbursed as Future Response Costs under Section [REF _Ref326224281 \w \h * MERGEFORMAT] (Payment of Response Costs).

126. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph [REF _Ref362014176 \r \h * MERGEFORMAT], and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section [REF _Ref364855795 \w \h] (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph [REF _Ref362014176 \r \h * MERGEFORMAT].

127. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section [REF _Ref326220653 \w \h] (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section [REF _Ref364855795 \w \h] (Dispute Resolution).

XXIX. MODIFICATION

128. EPA's RPM may modify any plan or schedule or the SOW]in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of EPA's RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

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129. If Respondents seek permission to deviate from any approved work plan or schedule or the SOW, Respondents' RPM shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph [REF _Ref326219627 \r \h * MERGEFORMAT].

130. No informal advice, guidance, suggestion, or comment by EPA's RPM or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXX. NOTICE OF COMPLETION OF WORK

131. When EPA determines that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of Future Response Costs and Record Retention, EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Work Plan, if appropriate, in order to correct such deficiencies. Respondents shall implement the modified and approved RI/FS Work Plan and shall submit a modified draft RI Report and/or FS Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Settlement.

XXXI. INTEGRATION/APPENDICES

132. This Settlement [and its appendices] constitute[s] the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. [The following appendices are attached to and incorporated into this Settlement:

a. "Appendix _" is the description and/or map of the Site

b. "Appendix _" is the SOW.

XXXII. ADMINISTRATIVE RECORD

133. EPA and the USFS will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of the RI/FS upon which selection of the remedial action may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the

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remedial action, and all communications between Respondents and state, local, or other federal authorities concerning selection of the remedial action.

XXXIII. EFFECTIVE DATE

134. This Settlement shall be effective on the date that it has been signed by all of the Parties [and concurred on by the United States Attorney General].

Commented [A16]: I think the AG needs to sign agreements with multiple federal agenices, but I'm not sure.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Commented [A17]: Need to add signature pages for IDEQ and Tribe.

_____
Dated

_____
[Name]
Regional Administrator (or designee/delegatee), Region __

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Signature Page for Settlement Regarding _____ Superfund Site

FOR _____:
[Print name of Respondent]

_____
Dated

_____
[Name]
[Title]
[Company]
[Address]

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 11/13/2019 6:37:50 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Smith, Grant (Government) [grant.s.smith@thomsonreuters.com]
CC: Lisa.O'Hara@deq.idaho.gov
Subject: FW: Stibnite Mine Negotiation Meeting Notes
Attachments: 2019-07-25 Draft Stibnite SOW (2) + state comments 11 12 19.docx

Hi Brad, Gary, and Jill. I have attached the State's comments on the SOW. Please share with your teams.

Thanks,

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Lisa.O'Hara@deq.idaho.gov <Lisa.O'Hara@deq.idaho.gov>
Sent: Tuesday, November 12, 2019 3:08 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Mine Negotiation Meeting Notes

Elizabeth,
Here are the State's comments on the draft SOW. As for the minutes you sent, the State thought the funding mechanism could be in the AOC itself and a separate funding and participation agreement wouldn't be necessary so I wanted to clarify that and also that we'd be seeking funding for negotiations and oversight of the SOW.
Please let me know if you have any questions.

Thank you,
Lisa

***Lisa O'Hara* | Deputy Attorney General**
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From: McKenna, Elizabeth [mailto:Mckenna.Elizabeth@epa.gov]
Sent: Tuesday, November 12, 2019 8:04 AM
To: Lisa O'Hara; Lisa Carlson; L. Michael Bogert; Zamba, Kathy -FS; Michael McCurdy; Cerise, Kathy; Maley, Timothy; Fremerman, Gary - OGC, Washington, DC; kwright@sbtribes.com; Pino, Nicholas - OGC, Missoula, MT; Aaron Scheff; Morrison, Kay; Stifelman, Marc; Uhling, Terry; Susanthanson9@icloud.com; Laurel Sayer; John Meyer; Bradley M. Marten; Cerise, Kathy
Subject: Stibnite Mine Negotiation Meeting Notes

Hello, attached are the meeting summary notes that Brad developed. I believe the notes accurately reflect our discussion. If you have any issues with the summary, please let me know. The second bullet reflects the parties' request for funding from Midas. To be clear, EPA is also requiring that its costs be reimbursed, though I may not have been explicit in the meeting about that.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
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(206) 553-0016

Appendix 1

STATEMENT OF WORK FOR THE
STIBNITE MINE REMEDIAL INVESTIGATION / FEASIBILITY STUDY
Valley County ID near Yellow Pine, ID

Purpose

This Statement of Work (SOW) sets forth the requirements for conducting a Remedial Investigation and Feasibility Study (RI/FS) at the Stibnite Mine Site ("Site") located in northwest Idaho approximately 14 miles from the town of Yellow Pine (see Figure 1). The purpose of the RI/FS is to investigate the nature and extent of contamination at the Site and to develop and evaluate remedial alternatives, as appropriate. This SOW provides an overview of Work that will be carried out by Midas Gold Idaho, Inc. ("Midas Gold" or "Respondent") as it implements the RI/FS at the Site.

In September 2016, Midas Gold filed a Plan of Restoration and Operations ("PRO") with the United States Forest Service ("USFS") for the redevelopment of Stibnite, and plans to undertake mining, mineral processing and restoration activities on portions of the Site that will result in landscape-scale changes to many of the existing Site features. As such, the scope and timing of sampling and other elements of the RI/FS will consider potential mining activies in the PRO, any modifications and subsequent remediation ~~must be consistent with the PRO and the subsequent restoration~~. This will require flexibility in the RI/FS and could require a phased approach to accelerate certain activities.

The Site is defined as the ~~features~~ areas described below (general locations summarized on Figure 2) and the areal extent of contamination from those features and all suitable areas in ~~very~~ close proximity to the contamination necessary for response action implementation:

1. **Yellow Pine Pit (Figure 3)** – The Yellow Pine Pit (formerly known as "The Glory Hole") was actively mined during the 1930s through the 1950s for antimony, tungsten, gold and silver. The pit is located on Midas Gold patented land, and most of the waste rock dumps associated with the pit are adjacent to the pit; some of the waste rock dumps are located on USFS managed land. During active mining, the East Fork of the South Fork of the Salmon River (EFSFSR) was routed around the pit through the Bailey Tunnel but was allowed to return to its natural course through the pit after the Bailey Tunnel was abandoned in the mid-1950s. The EFSFSR now runs through the pit, but does not currently support fish passage to the headwaters. The Yellow Pine Pit, and the majority of waste rock dumps associated with it, are within the footprint of Midas Gold's proposed PRO.

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2. **Bradley Tailings Pile (Figure 4)** – The Bradley Tailings Pile, also known as the Historical Tailings and Spent Ore Disposal Area, is located on Midas Gold patented land. Approximately 3 million tons of mine tailings generated during the 1940s and 1950s are stored in this area, and they are overlain by approximately 6 million tons of spent heap leach ore placed in the 1980s and 1990s. The downstream end of the Tailings Pile is constrained by a structure known as the Keyway Dam, and a wetland exists downgradient of the Keyway Dam, which is also referred to as the Keyway Marsh. Meadow Creek is diverted around the south side of the Tailings Pile. The Bradley Tailings Pile is within the footprint of Midas Gold's proposed PRO.

3. **Hangar Flats Tailings Pile (Figure 5)** – The Hangar Flats Tailings Pile, also known as the Hecla Heap Leach Facility, is a reclaimed heap-leach facility which was built and operated in the 1990s to extract oxide gold and silver. The facility is located on Midas Gold controlled patented land, and is within the footprint of Midas Gold's proposed PRO.

4. **Bailey Tunnel (Figure 6)** – The Bailey Tunnel was constructed in the early 1940s to divert the EFSFSR around the Yellow Pine Pit and into Sugar Creek to facilitate open pit mining operations. The tunnel was no longer used after the mid-1950s, following cessation of open pit mining activities. The Bailey Tunnel is on Midas Gold patented land, and is within the footprint of Midas Gold's proposed PRO.

5. **DMEA Adit and Waste Rock Dump (Figure 7)** – The Defense Minerals Exploration Administration (DMEA) Adit and Waste Rock Dump are mining-related disturbances resulting from underground exploration activities during the 1950s. The adit and dump are located on USFS managed land, and are not within the footprint of the Midas Gold PRO.

6. **Bonanza Adit (Figure 8)** – The Bonanza Adit area is a mining-related disturbance in the Sugar Creek drainage resulting from underground exploration activities during the 1930s and 1940s. The Bonanza Adit area is located on USFS managed land, and is not within the footprint of the Midas Gold PRO.

7. **Cinnabar Tunnel (Figure 9)** – The Cinnabar Tunnel is a mining-related disturbance resulting from underground exploration activities during the late 1920s and early 1930s. The Tunnel is located on USFS managed land; the tunnel portal is within the footprint of the Midas Gold PRO.

8. **Meadow Creek Adit (Figure 10)** – The Meadow Creek Adit and associated waste rock dumps are mining-related disturbances that resulted from underground mining activities from the 1920s through the 1940s. The adit and waste rock dumps are located on Midas Gold controlled patented land, and are within the footprint of Midas Gold's proposed PRO.

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This RI/FS SOW is attached to and is incorporated into the Settlement Agreement and Administrative Order on Consent (AOC) for the Site. Technical work described in this SOW is intended to provide more information to the Respondent for the purpose of implementing the AOC and is not intended to change the meaning of any AOC language. This SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the [HYPERLINK "http://www.epa.gov/oilspill/pdfs/40cfr300.pdf" \h] [HYPERLINK "http://www.epa.gov/oilspill/pdfs/40cfr300.pdf" \h]commonly called the National Contingency Plan (NCP), 40 CFR 300. The AOC and this SOW are hereafter referred to interchangeably as the "AOC." Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the AOC will control any interpretive disputes.

Scope

The specific RI/FS activities to be conducted at the Site are set forth in ~~seven~~ six separate tasks.

Task 1 – Scoping
Task 2 – Community Relations
Task 3 – Site Characterization
Task 4 – Treatability Studies
Task 5 – Feasibility Study
Task 6 – Detailed Analysis of Remedial Alternatives

Oversight

Work conducted under the AOC is intended to satisfy the legal requirements for the RI/FS established under both Section 104(a)(l) of CERCLA and Idaho's Environmental Protection & Health Act, Idaho Code§§ 39-101 to 39-130; the Hazardous Waste Management Act of Idaho, Idaho Code§§ 39-4401 to 39-4432; and Idaho's Water Quality Act, Idaho Code§§ 39-3601 et seq. As such, oversight of the Respondent's Work conducted under the SOW will be carried out by EPA, the USFS, and the IDEQ (the Agencies) in a manner to assure the satisfaction of all federal and state requirements. The Respondent shall support the Agencies' initiation and conduct of activities related to the implementation of oversight activities.

Respondent shall submit all documents or deliverables required as part of this SOW to EPA, for EPA's review and approval. All work products submitted to EPA are subject to EPA approval, including but not limited to, submissions specified in the Work Plan(s) or Settlement Agreement and additional work products that may be required under Work Plan modifications. Respondent shall ensure that all plans, reports, and records are comprehensive, accurate, and consistent in content and format with the NCP and relevant EPA guidance.

Commented [LO1]: Although EPA is lead agency, there are several reference to "EPA's review and approval" that should also include the support agencies' role in review/comment for submittals. Instead of EPA, use of "Agencies approval" or "for Agencies' review and approval" to include DEQ, Forest Service and Shoshone-Bannock Tribes. Perhaps language in the Introduction section could be added to clarify EPA as lead agency with DEQ, Forest Service & and Shoshone Bannock as support agencies.

Commented [LO2]: Same as comment 1

Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA to aid in project planning. These reports must

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document the status of all work products under development. These reports shall describe the actions and decisions taken, and problems encountered during the previous quarter, and activities scheduled during the upcoming reporting period. Progress reports shall also summarize the extent to which the procedures and dates set forth in the AOC and the Work Plan are being met. These reports shall be submitted according to the Schedule included as Attachment E.

Schedule

Refer to Attachment E for the primary and potential secondary deliverables and associated schedules.

Guidance

The Respondent shall conduct the RI/FS, and produce technical reports that are in accordance with the AOC, SOW, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (RI/FS Guidance) (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance relevant to conducting an RI/FS. A list of the pertinent guidance documents is included at the end on this SOW. Attachments A, B, C, and D include suggested document formats for the Work Plan, Sampling and Analysis Plan, RI Report, and FS Report, respectively. The RI/FS guidance describes the required report contents.

Roles and Responsibilities

The Respondent shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the RI/FS, except as otherwise specified in the AOC. At the completion of the RI/FS, EPA will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision (ROD).

Commented [LO3]: Will support agencies be asked/required to concur in selection of a remedy?

Remedy Requirements

The remedial action alternative selected by the EPA will meet the cleanup standards specified in Section 121 of CERCLA. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements (ARARs) of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS report including the baseline risk assessment (BLRA), as adopted by the EPA, will, with the administrative record, form the basis for the selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

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TASK 1 - SCOPING

Scoping is the initial planning process of the RI/FS. Respondent shall document the specific project scope in the RI/FS Work Plan. During the scoping process, the Site-specific objectives of the RI/FS, including the identification of potential preliminary remediation goals (PRGs) will be proposed by the Respondent and approved by EPA. In addition to developing the Site-specific objectives of the RI/FS, Respondent shall define a general project management approach for the Site, which shall be documented by the Respondent in a draft Work Plan. Because the Work required to perform an RI/FS is not fully known at the outset and is phased in accordance with a Site's complexity and the amount of available information, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study. When scoping the specific aspects of this project, Respondent shall meet with EPA either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site.

Commented [LO4]: Same as comment 1

The following activities shall be performed by the Respondent as a function of the project planning process.

a. Site Background

The Respondent shall gather, analyze, and present existing Site background information and shall conduct a work session to assist in planning the scope of the RI/FS.

Collect and analyze existing data and document the need for additional data

Before planning RI/FS activities, all existing Site data shall be thoroughly compiled and reviewed by the Respondent. Historical data shall be submitted electronically according to EPA Region 10 specifications. The Respondent shall refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources. Specifically, this must include presently available data relating to the varieties and quantities of hazardous substances at the Site, and past disposal practices. This must also include results from any previous sampling events that may have been conducted. Only data that is determined by EPA to be of appropriate type and quality to support specific intended uses shall be utilized in the RI/FS. This includes data utilized to develop the BLRA, to identify additional data needs to better characterize the Site, to better define potential applicable or relevant and appropriate requirements (ARARs), and to develop a range of preliminarily identified remedial alternatives. Data Quality Objectives (DQOs) shall be established, subject to EPA's approval, which shall be used to assess the usefulness of existing data and to direct future data gathering efforts. Decisions regarding the necessary data needs and DQOs will be made by EPA. Guidance on systematic planning using the data quality objectives process (EPA QA/G-4). Washington, D.C.: 121. [HYPERLINK "http://www.epa.gov/quality/qs-docs/g4-final.pdf"], U.S. EPA (2006)

Commented [LO5]: Same as comment 1

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Conduct site visit

The Respondent and EPA shall conduct a Site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of contamination as well as potential exposure pathways and receptors at the Site. During the Site visit the Respondent shall observe the Site's physiography, hydrology, geology, and demographics, as well as natural resource, ecological, and cultural resources. This information shall be utilized to better scope the project and to determine the extent of additional data necessary to characterize the Site, better define potential ARARs, and assist in identifying potential remedial alternatives.

b. *Project Planning*

Once the Respondent has collected and analyzed existing data and conducted a Site visit, the specific project scope shall be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols. The Respondent shall meet with EPA's Remedial Project Manager (RPM) regarding the following activities and before drafting the scoping deliverables listed below.

Preliminary conceptual site model

Information on the waste sources, pathways, receptors, cultural resources, and other information concerning the Site is used to develop a conceptual understanding of the Site which helps to evaluate potential risks to human health and the environment. The Conceptual Site Model (CSM) should include known and suspected sources of contamination, types of contamination and affected media/resources, known and potential routes of migration, and known or potential human and environmental receptors. This effort, in addition to assisting in identification of locations where sampling is necessary, will also assist in the identification of potential remedial technologies. Additional information for evaluating exposure concerns through the use of a CSM is provided in the DQO Guidance. The CSM must be updated as new information becomes available.

The preliminary CSM associated with the ecological risk assessment (ERA) must include species and their habitats that could be impacted by Site-related contamination based on information generated from a historical review and a cultural resource audit and will show the relationships among species and potential exposure pathways. The Respondent shall provide assistance to the RPM in collecting this information as requested. If information is not provided to the Respondent within the timeframe specified by EPA, the RPM will notify the Respondent in writing either to proceed with the preparation of the RI/FS Work Plan without the information or to delay its submittal pending receipt of the information. The preliminary CSM for the human health risk assessment (HHRA) must identify potential receptor populations and potential exposure pathways.

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Refine and document preliminary remedial action objectives and alternatives

Once existing Site information has been analyzed and an understanding of the potential Site risks have been determined, the Respondent shall review and, if necessary, refine the Remedial Action Objectives (RAOs) that have been identified by EPA for each actually or potentially contaminated medium. The revised RAOs must be documented in a technical memorandum and subject to EPA's approval. The Respondent shall then identify a preliminary comprehensive range of potential remedial action alternatives and associated technologies. The range of potential alternatives shall encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative.

Commented [LO6]: Same as comment 1

Document the need for treatability studies

Respondent shall conduct bench and/or pilot studies as necessary to determine the suitability of various remedial technologies to Site conditions and problems. Technologies that may be suitable to the Site should be identified as early as possible to determine whether there is a need to conduct treatability studies to better estimate costs and performance capabilities. Should treatability studies be determined to be necessary, a testing plan identifying the types and goals of the studies, the level of effort needed, a schedule for completion, and the data management guidelines should be submitted to EPA for review and approval. Upon EPA approval, a test facility and any necessary equipment, vendors, and analytical services will be procured by the contractor.

When the treatability studies are completed, Respondent shall evaluate the results to assess the technologies with respect to the goals identified in the test plan. A report summarizing the testing program and its results shall be prepared by the Respondent and presented in the final RI/FS report. The Respondent shall implement all management and quality control review activities for this task. If remedial actions involving treatment have been identified by the Respondent or EPA, treatability studies shall be required, except where the Respondent can demonstrate to the satisfaction of EPA that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) should be planned to occur concurrently with Site characterization activities.

Begin preliminary identification of potential ARARs

The Respondent shall conduct a preliminary identification of potential ARARs (chemical-specific, location-specific, and action-specific) to assist in the refinement of the RAOs and the initial identification of remedial alternatives. ARAR identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.

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c. *Scoping Deliverables*

At the conclusion of the project planning phase, the Respondent shall submit an RI/FS Work Plan, a Sampling and Analysis Plan (SAP) consisting of a Field Sampling Plan (FSP) and Quality Assurance Project Plan (QAPP), and a Site Health and Safety Plan (HASP). These plans must be reviewed and approved by EPA prior to the initiation of field activities.

RI/FS Work Plan

A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM for review and approval. The Work Plan will ~~fully account~~ take in to consideration for the timing and scope of potential mining and processing activities associated with the PRO. This could include a phased approach to focus on issues of most concern or requiring early action. The Work Plan shall be developed in conjunction with the SAP and the Site HASP, although each plan may be delivered under separate cover. The Work Plan shall include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan shall include the rationale for performing the required activities. Specifically, the Work Plan must present a statement of the problem(s) and potential problem(s) posed by the Site and the objectives of the RI/FS. Furthermore, the plan must include a Site background summary setting forth the Site description including the geographic location of the Site, and to the extent possible, a description of the Site's physiography, hydrology, hydrogeology, geology, demographics, ecological, cultural, and natural resource features; a synopsis of the Site history and a description of previous responses that have been conducted at the Site by local, state, federal, or private parties; and a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified, and their distribution among the environmental media at the Site. In addition, the plan must include a description of the Respondent's Site management strategy developed during scoping and a preliminary identification of remedial alternatives and data needs for evaluation of remedial alternatives. The plan must reflect coordination with treatability study requirements, if treatability studies are initiated. It must include a process for and manner of identifying potential ARARs (chemical-specific, location-specific, and action-specific).

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Finally, the major part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task and for the BLRA, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the RPM. This includes the deliverables set forth in the remainder of this SOW; a schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to the RPM and meetings and presentations to EPA and the Support

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Agencies at the conclusion of each major phase of the RI/FS. The Respondent must refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required Work Plan, and a suggested format can be found in Attachment A.

Sampling and Analysis Plan

The Respondent shall prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a FSP and a QAPP. A suggested format for the SAP (inclusive of the FSP and QAPP) is provided in Attachment B. The SAP, FSP, and QAPP shall be prepared in accordance with EPA DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006).

The FSP must define in detail the sampling and data-gathering methods that will be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytic methods to identify contamination and remediate contamination consistent with the levels for remedial action objectives identified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), pages 51425-26 and 51433 (December 21, 1988). The QAPP shall be prepared in accordance with requirements in EPA QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision) and specifically should contain the twenty-four elements specified in Table 11 – List of QA Project Plan Elements, EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Investigations, and EPA QA/G-4 Guidance for the Data Quality Objective Process. All sampling and analyses performed pursuant to this SOW shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain-of-custody procedures. In addition, the QAPP must address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

Field personnel must be trained and conduct work in accordance with EPA and OSHA requirements and guidance. The Respondent shall demonstrate, in advance and to the satisfaction of EPA, that each laboratory they may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this Site for

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the purposes proposed and QA/QC procedures approved by EPA will be used. If the laboratory is not in the CLP program, a laboratory QA program must be submitted for EPA's review and approval. EPA may require that the Respondent submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment, and material specifications. The Respondent shall provide assurances that EPA has access to laboratory personnel, equipment, and records for sample collection, transportation, and analysis.

Potential Target Analytes

The following list of chemicals include the initial Chemicals of Potential Concern (COPCs). The initial COPC list includes, but is not limited to, the analytes listed below. The Respondent shall review this list for surface water, groundwater, sediments, soils, and vegetation analytes relative to ARARs, preliminary remediation goals (PRGs), screening levels, Site-specific risk assessment data needs, treatability study data needs, feasibility study data needs, and other potential performance standards. All metal analytes (aqueous) shall be analyzed for total and dissolved constituents unless otherwise approved by EPA. Analytes may be added and/or removed from further consideration or monitored at varying frequencies based upon Site-specific factors such as dry or wet year hydrologic cycles as approved or otherwise directed by EPA.

Chemicals/Analytes of Potential Concern for Surface Water

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for surface water sampling stations during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph. A minimum of two storm event sampling events shall be conducted.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Boron
- Cadmium
- Calcium
- Chloride
- Chromium (III)
- Chromium (VI)
- Cobalt

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- Copper
- Hardness
- Iron
- Lead
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrogen, total Kjeldahl
- Phosphorus
- Potassium
- Selenium
- Silver
- Sodium
- Sulphate
- Thallium
- Tungsten
- Total Dissolved Solids
- Total Organic Carbon
- Total Suspended Solids
- Uranium
- Vanadium
- Zinc

Field Analyses
- Conductivity
- Dissolved Oxygen
- Flow
- pH
- Temperature

The Respondent shall review the results of the first year's surface water sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent surface water sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent surface water sampling events.

Commented [LO8]: Same as comment 1

Chemicals/Analytes of Potential Concern for Sediments:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for sediment sampling stations.

Laboratory Analyses
- Antimony

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- Arsenic
- Cadmium
- Chromium
- Copper
- Lead
- Manganese
- Mercury
- Nickel
- Selenium
- Silver
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Soils/Waste Rock:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for soils/waste rock sampling.

Laboratory Analyses

- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Uranium
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Vegetation:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for vegetation sampling stations.

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Laboratory Analyses

- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Groundwater

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for groundwater sampling stations and shall be sampled at a minimum during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph and the low flow sampling shall be conducted at all groundwater sampling stations as close as possible to the low point of the surface water flow hydrograph.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Calcium
- Chloride
- Chromium III
- Chromium VI
- Cobalt
- Copper
- Hardness
- Iron

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- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrate/nitrite as N
- Nitrogen (TKN)
- Orthophosphate
- Potassium
- Selenium
- Silver
- Sodium
- Sulfate
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Total Organic Carbon
- Tungsten
- Uranium
- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen or ORP
- Ferric Iron
- Ferrous Iron
- Nitrite
- pH
- Temperature

The Respondent shall review the results of the first year's groundwater sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent groundwater sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent groundwater sampling events.

Site Health and Safety Plan

A HASP shall be prepared in conformance with the Respondent's health and safety program, and in compliance with OSHA regulations and protocols. It should be noted that EPA does not "approve" the Respondent's health and safety plan, but rather EPA reviews it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

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TASK 2 - COMMUNITY RELATIONS

The development and implementation of community relations activities are the responsibility of EPA. The critical community relations planning steps performed by EPA include conducting community interviews and developing a community relations plan. Although implementation of the community relations plan is the responsibility of EPA, the Respondent may assist by providing information regarding the Site's history, participating in public meetings, and preparing fact sheets for distribution to the general public. In addition, the Respondent shall establish a community information repository, at or near the City of McCall, to house one copy of the administrative record. The extent of community relations activities involvement by potentially responsible parties (PRPs) is left to the discretion of EPA. The Respondent's community relations responsibilities, if any, are specified in the community relations plan. Any PRP-conducted community relations activities will be subject to oversight by EPA.

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TASK 3 - SITE CHARACTERIZATION

As part of the RI, the Respondent shall perform the activities described in this task, including the preparation of a Site characterization summary and a RI report. The overall objective of Site characterization is to describe areas of a Site that may pose a threat to human health or the environment. This is accomplished by first determining a Site's physiography, geology, and hydrology/hydrogeology. Surface and subsurface pathways of migration must be defined. The Respondent shall identify the sources of contamination and define the nature, extent, and volume of the sources of contamination, including their physical and chemical constituents as well as their background concentrations at incremental locations in the affected media. The Respondent shall also investigate the extent of migration of this contamination as well as its volume and any changes in its physical or chemical characteristics, to provide for a comprehensive understanding of the nature and extent of contamination at the Site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the Work Plan, SAP, and HASP are implemented. Field data are collected and analyzed to provide the information required to accomplish the objectives of the study. The Respondent shall notify the RPM at least two weeks in advance of the field work regarding the planned dates for field activities, including ecological field surveys, field layout of the sampling grid, excavation, installation of wells, initiating sampling, installation and calibration of equipment, pump tests, and initiation of analysis and other field investigation activities. The Respondent shall demonstrate that the laboratory and type of laboratory analyses that will be utilized during Site characterization meet the specific QA/QC requirements and the DQOs of the Site investigation as specified in the SAP. In view of the unknown Site conditions, activities are often iterative, and to satisfy the objectives of the RI/FS, it may be necessary for the Respondent to supplement the work specified in the initial Work Plan. In addition to the deliverables below, the Respondent shall provide a monthly progress report and participate in weekly meetings or conference calls at major points in the RI/FS.

Commented [LO10]: Notification to Support Agencies also.

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a. *Field Investigation*

The field investigation shall include the gathering of data to define Site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. These activities shall be performed by the Respondent in accordance with the Work Plan and SAP. At a minimum, this shall address the following:

Implement and document field support activities

The Respondent shall initiate field support activities following approval of the Work Plan and SAP. Field support activities may include obtaining access to the Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondent shall notify the RPM at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM upon completion of field support activities.

Investigate and define site physical and biological characteristics

The Respondent shall collect data on the physical and biological characteristics of the Site and its surrounding areas, including the physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information must be ascertained through a combination of physical measurements, observations, and sampling efforts, and will be utilized to define potential transport pathways and human, cultural, and ecological receptor populations. In defining the Site's physical characteristics, the Respondent shall also obtain sufficient engineering data (such as the effects of contaminated media weathering and ground and surface water contaminant loading) to aid in the projection of contaminant fate and transport, and the development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination

The Respondent shall locate each source of contamination and define the areal extent and depth of contamination associated with each source in all media. The physical characteristics and chemical constituents and their concentrations must be determined for all known and discovered sources of contamination. The Respondent shall conduct sufficient sampling to define the boundaries of the contaminant sources consistent with the QAPP and DQOs.

Defining the source of contamination must include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence over time, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

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~~Describe~~ ~~Delineate~~ the nature and extent of contamination

The Respondent shall gather information to ~~describe~~ ~~delineate~~ the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondent must utilize the information and site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondent shall then implement an iterative monitoring program and any study program identified in the work plan or SAP such that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration of contaminants through the various media at the Site can be determined. In addition, the Respondent shall gather data for calculations of contaminant fate and transport. This process must be continued until the area and depth of contamination are known. This information will be used to determine the level of risk presented by the Site and to help develop appropriate remedial action alternatives for evaluation.

b. *Data Analyses*

Evaluate Site characteristics

The Respondent shall analyze and evaluate the data to describe: (1) Site physical and biological characteristics; (2) contaminant source characteristics; (3) nature and extent of contamination; and (4) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The evaluation must include the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to EPA together with a sensitivity analysis. The RI data shall be presented in a format (i.e., computer disc or equivalent) to facilitate the preparation of the BLRA. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. The Respondent shall then collect any data required to address data gaps identified by EPA as needed to complete the BLRA. This evaluation shall also provide information relevant to Site characteristics necessary to evaluate the need for remedial action in the BLRA and to aid in the development and evaluation of remedial alternatives. Analyses of data collected for Site characterization must meet the DQOs developed in the QA/QC plan stated in the SAP (or as revised during the RI).

c. *Data Management Procedures*

The Respondent shall consistently document the quality and validity of field and laboratory data compiled during the RI.

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Document field activities

Information gathered during Site characterization shall be consistently documented and adequately recorded by the Respondent in well-maintained field logs and laboratory reports. The method(s) of documentation must be specified in the work plan and/or the SAP. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document sample custody, analytical responsibility, analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking

The Respondent shall maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that only validated analytical data are reported and utilized in the development and evaluation of remedial alternatives. Analytical results developed under the Work Plan must not be included in any Site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, the Respondent shall establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

Data validation management

All validated data shall be made available to EPA in electronic format. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. Field and validated analytical data results for all media sampled shall be submitted to EPA by uploading the data to the Water Quality Exchange (WQX) using the Central Data Exchange (CDX). Field and laboratory samples must include information on the sampling locations which will also be submitted to WQX via CDX. (See [HYPERLINK "http://www.epa.gov/storet/wqx.hmtl)" \h]

d. Site Characterization Deliverables

The Respondent shall prepare the preliminary Site characterization summary and the RI report.

Data Summary Reports

After completing each annual field season's sampling and analysis (i.e., at the end of the field season each calendar year), the Respondent shall prepare a concise Site characterization Data Summary Report (DSR). This report must review the investigative activities that have taken place and describe and display Site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, including the affected media, locations, types, physical state, concentrations of contaminants and quantities. In addition, reports shall

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document the location, dimensions, physical condition and varying concentrations of each contaminant for each source and the extent of contaminant migration through each of the affected media. Each DSR must also evaluate data gaps and identify additional and/or modified sampling and analysis that shall be included in modifications to the SAP for each subsequent field season. If acceptable to EPA, the DSR following the final field season of data collection can be eliminated as a separate deliverable, and the information collected during the final field season can be presented in the RI report.

Remedial Investigation Report (RI)

The Respondent shall prepare and submit a draft RI report to the RPM for review and approval. This report shall summarize results of field activities to characterize the Site, sources of contamination, nature and extent of contamination, and the fate and transport of contaminants. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and contents, and a suggested format for the RI report can be found in Attachment C. Following comment by EPA, the Respondent shall prepare a final RI report satisfactorily addressing the comments.

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Baseline Risk Assessment (BLRA)

The Respondent shall conduct a BLRA to assess the potential human health, and environmental risks posed by the Site in the absence of any remedial action, but will consider implementation of the PRO. This effort will involve four components: contaminant identification, exposure assessment, toxicity assessment, and risk characterization.

Contaminant Identification – The Respondent shall review available information on all hazardous substances present at the Site and identify the major contaminants of concern. Contaminants of concern should be selected based on their intrinsic toxicological properties because they are present in large quantities, and/or because they are currently in, or potentially may migrate into, critical exposure pathways (e.g., drinking water).

Exposure Assessment – The Respondent shall identify actual or potential exposure pathways, characterize potentially exposed populations, and evaluate the actual or potential extent of exposure.

Toxicity Assessment – The Respondent shall provide a toxicity assessment of those chemicals found to be of concern during Site investigation activities. This will involve an assessment of the types of adverse health or environmental effects associated with chemical exposures, the relationship between magnitude of exposures and adverse effects, and the related uncertainties for contaminant toxicity, (e.g., weight of evidence for a chemical's carcinogenicity). EPA has prepared chemical screening tables with updated toxicity values and Preliminary Remediation Goals for various land uses available from: [HYPERLINK "https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables"]

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Risk Characterization – The Respondent shall integrate information developed during the exposure and toxicity assessments to characterize the current or potential risk to human health and/or the environment posed by the Site. This characterization should identify the potential for adverse health or environmental effects for the chemicals of concern and identify any uncertainties associated with contaminant(s), toxicity(ies), and /or exposure assumptions.

TASK 4 - TREATABILITY STUDIES

If potential remedial actions involving treatment have been identified by Respondent or EPA, Respondent shall conduct treatability studies except where Respondent can demonstrate to the satisfaction of EPA that they are not needed. The following activities shall be performed by the Respondent to support all treatability studies.

a. Determination of Candidate Technologies and of Need for Testing

The Respondent shall identify in a technical memorandum, subject to EPA review and approval, candidate technologies for a treatability studies program during project planning (Task 1). The listing of candidate technologies must cover the range of technologies required for the development and analysis of alternatives (Task 5 and 6) The specific data requirements for the testing program will be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 3, 5, and 6).

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Conduct literature survey and determine the need for treatability testing

The Respondent shall conduct a literature survey to gather information of performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. If practical candidate technologies have not been sufficiently demonstrated or cannot be adequately evaluated for this Site based on available information, treatability testing must be conducted. Where it is determined by EPA that treatability testing is required, and unless the Respondent can demonstrate to EPA's satisfaction that it is not needed, the Respondent shall submit a SOW to the RPM outlining the steps and data necessary to evaluate and initiate the treatability testing program.

Evaluation of treatability studies

Once a decision has been made to perform treatability studies, the Respondent and EPA will decide the types of treatability testing to utilize (e.g., bench and/or pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing should be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, the Respondent shall either submit

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to the RPM a treatability testing work plan or an amendment to the original Site work plan for EPA's review and approval.

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b. *Treatability Testing and Deliverables*

The deliverables that are required, in addition to the memorandum identifying candidate technologies, where treatability testing is conducted, include a work plan, a sampling and analysis plan, and a final treatability evaluation report. EPA may also require a treatability study health and safety plan, where appropriate.

Treatability testing work plan

The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's review and approval, describing the Site background, remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The DQOs for treatability testing must be documented as well. If pilot scale treatability testing is to be performed, the pilot scale work plan will describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-site, permitting requirements must be addressed.

Treatability study SAP

If the original QAPP or FSP does not address activities to be performed during the treatability tests, a separate treatability study SAP or amendment to the original Site SAP must be prepared by the Respondent for EPA's review and approval. Task 1, Item c. of this statement of work provides additional information on the requirements of the SAP.

Treatability study HASP

If the original HASP is not adequate for defining the activities to be performed during the treatment tests, a separate or amended HASP must be developed by the Respondent. Task 1, Item c, of this SOW provides additional information on the requirements of the health and safety plan. EPA does not "approve" the treatability study HASP.

Treatability study evaluation report

Following completion of treatability testing, the Respondent shall analyze and interpret the testing results in a technical report to EPA. Depending on the sequence of activities, this report may be a part of the RI/FS report or a separate deliverable. The report must evaluate each technology's effectiveness, implementability, cost, and actual results as compared with predicted results. The report must also evaluate

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full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 5 - FEASIBILITY STUDY

The Feasibility Study is comprised of two primary activities: (1) the development and screening of alternatives, and (2) the detailed analysis of alternatives. The alternatives surviving the screening process will be subject to the detailed analysis process. The FS Report must document the results of these two components of FS. Interim deliverables associated with these activities will be identified in the RI/FS Work Plan. The RI and FS are interactive and will be conducted concurrently, to the extent practicable, in a manner that allows information and data collected during the RI to influence the development of remedial alternatives during the FS, which in turn affect additional information and data needs and the scope of any necessary treatability studies and risk assessments.

a. Remedial Alternative Development

The Respondent shall develop and evaluate a range of appropriate waste management options that, at a minimum, will remediate or control any contaminated media (soil, surface water, ground water, sediments) remaining at the Site, as deemed necessary in the RI to ensure protection of human health and the environment and comply with ARARs, concurrent with the RI site characterization task.

A range of remedial alternatives must be developed to identify and provide a variety of waste management options which then can be evaluated. This range of alternatives must include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which varies in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed. Options involving containment with little or no treatment must be included, as well as options involving both treatment and containment, and a no-action alternative. The following activities shall be performed by the Respondent during the development of remedial alternatives.

<u>Refine and document remedial action objectives</u>

Based on the BLRA, the Respondent shall review, and if necessary, modify the Site-specific remedial action objectives (RAOs) and the list of applicable preliminary remediation goals (PRGs). The modified PRGs shall be documented in a technical memorandum that will be reviewed and approved by EPA. These modified PRGs must specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

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Develop general response actions

The Respondent shall develop a range of general response actions for each medium of interest addressing containment, treatment, excavation, pumping, or any other actions, singly or in combination, that may be utilized to satisfy the remedial action objectives for the Site.

Identify areas or volumes of media

The Respondent shall identify volumes and/or areas of media to which general response actions might be applied, taking into account the requirements for protectiveness as identified in the RAOs and the chemical and physical characterization of the Site.

Identify, screen, and document remedial technologies

The Respondent shall identify and evaluate potential remedial technologies applicable to each general response action. The Respondent shall identify various alternatives for implementing each remedial technology. These alternatives must be evaluated and screened based upon their effectiveness, implementability, and cost factors. Generally, this screening is only necessary when there are many feasible alternatives available for detailed analysis. If necessary, the screening of alternatives shall be conducted to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening must preserve the range of treatment and containment alternatives that was initially developed insuring that the alternatives will meet RAOs, ARARs and all other identified performance standards. The range of remaining alternatives must include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondent shall prepare a technical memorandum summarizing the results and reasoning employed in screening and arraying alternatives that remain after screening. In addition, a description of the remedial technology alternatives which were eliminated from further consideration as well as the reasons for eliminating the alternatives must be included in the memorandum.

Assemble and document alternatives

The Respondent shall assemble selected representative technologies into a range of alternatives for each affected medium or operable unit. Together, all of the alternatives will represent treatment and containment combinations that will address either all of the Site or operable units. A summary of the assembled alternatives and their related action-specific ARARs must be prepared for EPA by the Respondent for inclusion in a technical memorandum.

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TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES

The detailed analysis of alternatives shall be conducted by the Respondent to provide EPA with the information needed to allow for the selection of a Site remedy. This analysis is the final task to be performed by the Respondent during the FS.

a. Detailed Analysis of Alternatives

The Respondent shall conduct a detailed analysis of alternatives which must consist of an analysis of each option against a set of nine evaluation criteria and a comparative analysis of all options using the same evaluation criteria as a basis for comparison. EPA has developed the nine evaluation criteria to address the statutory requirements and preferences of CERCLA

Apply nine criteria and document analysis

The Respondent shall apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) costs; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: Criteria 8 and 9 are considered after the RI/FS report has been released to the general public). For each alternative, the Respondent must provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative; and (2) a discussion of the individual criterion assessment.

Compare alternatives against each other and document the comparison of alternatives

The Respondent shall perform a comparative analysis between the remedial alternatives. That is, each alternative must be compared against the others using the evaluation criteria as a basis of comparison. Identification and selection of the preferred alternative are reserved by EPA. The Respondent shall prepare a technical memorandum summarizing the results of the comparative analysis.

Commented [LO14]: Will there be consultation with the Support Agencies?

b. Detailed Analysis Deliverables

In addition to the technical memorandum summarizing the results of the comparative analysis, the Respondent shall submit a draft FS report to the RPM for review and approval. Once EPA's comments have been addressed by the Respondent to the satisfaction of EPA, the final FS report may be bound with the final RI report.

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Feasibility Study report

The Respondent shall submit a draft FS report for EPA and the Support Agencies' review and comment. This report, as ultimately adopted or amended by EPA, provides a basis for remedy selection by EPA, and documents the development and analysis of remedial alternatives. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and the required report content, and a suggested format for the report can be found in Attachment D. The Respondent shall prepare a final FS report which satisfactorily addresses the comments.

Commented [LO15]: This is the first reference to Support Agencies in the draft SOW. Should Support Agencies be defined? Does the FS report need approval in addition to review and comment?

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REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process.

The (revised) National Oil and Hazardous Substance Pollution Contingency Plan (NCP).

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA", U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3.

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"A Compendium of Superfund Field Operations Methods", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.

U.S. EPA, NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA -330/9-78-991-R.

"Data Quality Objectives for Remedial Response Activities", U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.

"Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Research and Development, Cincinnati, Ohio, QAMS-004/80, December 29, 1980.

"QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision), EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Studies, and EPA QA/G-4 Guidance for the Data Quality Objective Process"

"Interim Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.

"Users Guide to the Lead Agency(ies) Contract Laboratory Program, U.S. EPA, Sample Management Office, August 1982.

"Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements", U.S. EPA, Office of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.

"CERCLA Compliance with Other Laws Manual", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.

"Guidance on Remedial Actions for Contaminated Groundwater at Superfund Sites", U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.

"Draft Guidance on the Lead Agency(ies) Superfund Decision Documents", U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02.

"Risk Assessment Guidance for Superfund--Volume I, Human Health Evaluation Manual (Part A)", December 1989, EPA/540/1-89/002.

"Risk Assessment Guidance for Superfund--Volume II Environmental Evaluation Manual", March 1989, EPA /540/1-89/001.

"Guidance for Data Usability in Risk Assessment", October 1990, EPA /540/G-90/008. "Performance of Risk Assessments in Remedial Investigation/ Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)", August 28, 1990, OSWER Directive No. 9835.15.

"Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions", April 22, 1991, OSWER Directive No. 9355.0-30.

"Health and Safety Requirements of Employees Employed in Field Activities", U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

"Interim guidance on Administrative Records for Selection of CERCLA Response Actions", U.S. EPA, Office of Waste Programs Enforcement, March 1, 1989, OSWER Directive No. 9833.3A.

"Community Relations in Superfund: A Handbook", U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9320.0-03B.

"Community Relations During Enforcement Activities and Development of the Administrative Record", U.S. EPA, Office of Waste Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1A.

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Attachments

Attachment A – Suggested RI/FS Work Plan Format

Executive Summary

1. Introduction
2. Site Background and Setting
3. Initial Evaluation
   - Types and volumes of waste present
   - Potential pathways of contaminant migration/preliminary public health and environmental impacts
   - Preliminary identification of operable units
   - Preliminary identification of response objectives and remedial action alternatives
4. Work Plan Rationale
   - DQO needs
   - Work Plan approach
5. RI/FS Tasks
6. Cost and Key Assumptions
7. Schedule
8. Project Management
   - Staffing
   - Coordination
9. References

Appendices

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Attachment B – Suggested Format for SAP (FSP and QAPP)

FSP

1. Site Background
2. Sampling Objectives
3. Sample Location and Frequency
4. Sample Designation
5. Sampling Equipment and Procedures
6. Sample Handling and Analysis

QAPP

Project Management
A1 Title and Approval Sheet
A2 Table of Contents
A2 Distribution List
A4 Project/Task Organization
A5 Problem Definition/Background
A6 Project/Task Description
A7 Quality Objectives and Criteria
A8 Special Training/Certifications
A9 Documentation and Records

Data Generation and Acquisition

B1 Sampling Process Design (Experimental Design)
B2 Sampling Methods
B3 Sample Handling and Custody
B4 Analytical Methods
B5 Quality Control
B6 Instrument/Equipment Testing, Inspection, and Maintenance
B7 Instrument/Equipment Calibration and Frequency
B8 Inspection/Acceptance of Supplies and Consumables
B9 Non-direct Measurements
B10 Data Management

Assessment and Oversight
C1 Assessments and Response Actions
C2 Reports to Management

Data Validation and Usability
D1 Data Review, Verification, and Validation
D2 Verification and Validation Methods
D3 Reconciliation with User Requirements

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~~Title Page~~

~~Table of Contents~~

~~1—Project Description~~

~~2—Project Organization and Responsibilities~~

~~3—QA Objectives for Measurement~~

~~4—Sampling Procedures~~

~~5—Sample Custody~~

~~6—Calibration Procedures~~

~~7—Analytical Procedures~~

~~8—Data Reduction, Validation, and Reporting~~

~~9—Internal Quality Control~~

~~10. Performance and Systems Audits~~

~~11. Preventative Maintenance~~

~~12. Data Assessment Procedures~~

~~13. Corrective Actions~~

~~14. Quality Assurance Reports~~

Attachment C – Suggested RI Report Format

Executive Summary

1. Introduction
   - 1.1 Purpose of Report
   - 1.2 Site Background
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Previous Investigations
   - 1.3 Report Organization
2. Study Area Investigation
   - 2.1 Includes field activities associated with site characterization. These may include physical and chemical monitoring of some, but not necessarily all, of the following:
     - 2.1.1 Surface Features (topographic mapping, etc.) (natural and manmade features)
     - 2.1.2 Contaminant Source Investigations
     - 2.1.3 Meteorological Investigations
     - 2.1.4 Surface-Water and Sediment Investigations
     - 2.1.5 Geological Investigations
     - 2.1.6 Soil and Vadose Zone Investigations
     - 2.1.7 Ground-Water Investigations
     - 2.1.8 Human Population Surveys
     - 2.1.9 Ecological Investigations
   - 2.2 If technical memoranda documenting field activities were prepared, they may be included in an appendix and summarized in this report chapter
3. Physical Characteristics of the Study Area
   - 3.1 Includes results of field activities to determine physical characteristics. These may include some, but not necessarily all, of the following:
     - 3.1.1 Surface Features
     - 3.1.2 Meteorology
     - 3.1.3 Surface-Water Hydrology
     - 3.1.4 Geology
     - 3.1.5 Soils
     - 3.1.6 Hydrogeology
     - 3.1.7 Demography and Land Use
     - 3.1.8 Ecology
4. Nature and Extent of Contamination

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4.1 Presents the results of Site characterization, both natural and chemical components and contaminants in some, but not necessarily all, of the following media:

4.1.1 Sources (lagoons, sludges, tanks, etc.)

4.1.2 Soils and Vadose Zone

4.1.3 Ground Water

4.1.4 Surface Water and Sediments

4.1.5 Air

5. Contaminant Fate and Transport

5.1 Potential Routes of Migration (i.e., air, groundwater, etc.)

5.2 Contaminant Persistence

5.2.1 If they are applicable (i.e., for organic contaminants), describe estimated persistence in the study area environment and physical, chemical, and/or biological factors of importance for the media of interest

5.3 Contaminant Migration

5.3.1 Discuss factors affecting contaminant migration for the media of important (e.g., sorption onto soils, solubility in water, movement of ground water, etc.)

5.3.2 Discuss modeling methods and results, if applicable

6. Baseline Risk Assessment

6.1 Human Health Evaluation

6.1.1 Exposure Assessment

6.1.2 Toxicity Assessment

6.1.3 Risk Characterization

6.2 Environmental Evaluation

7. Summary and Conclusions

7.1 Summary

7.1.1 Nature and Extent of Contamination

7.1.2 Fate and Transport

7.1.3 Risk Assessment

7.2 Conclusions

7.2.1 Data Limitations and Recommendations for Future Work

7.2.2 Recommended Remedial Action Objectives

Appendices

A. Technical Memorandum on Field Activities (if available)

B. Analytical Data and QA/QC Evaluation Results

C. Risk Assessment Methods

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Attachment D – Suggested Format for Feasibility Study Report

Executive Summary

1. Introduction
   - 1.1 Purpose and Organization Report
   - 1.2 Background Information (Summarized from RI Report)
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Nature and Extent of Contamination
     - 1.2.4 Contaminant Fate and Transport
     - 1.2.5 Baseline Risk Assessment
2. Identification and Screening of Technologies
   - 2.1 Introduction
   - 2.2 Remedial Action Objectives – Presents the development of remedial action objectives for each medium of interest (i.e., ground water, soil, surface water, air, etc.) For each medium, the following should be discussed:
     - Contaminants of interest
     - Allowable exposure based on risk assessment (including ARARs) Development of remediation goals
   - 2.3 General Response Actions – For each medium of interest, describes the estimation of areas or volumes to which treatment, containment, or exposure technologies may be applied.
   - 2.4 Identification and Screening of Technology Types and Process Options – For each medium of interest, describe:
     - 2.4.1 Identification and Screening of Technologies
     - 2.4.2 Evaluation of Technologies and Selection of Representative Technologies
3. Development and Screening of Alternatives
   - 3.1 Development of Alternatives – Describes rationale for combination of technologies/media into alternatives. Note: This discussion may be by medium or for the Site as a whole.
   - 3.2 Screening of Alternatives (if conducted)
     - 3.2.1 Introduction
     - 3.2.2 Alternative 1
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.2 Alternative 2
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation

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3.2.3 Alternative 3
3.2.3.1 Description
3.2.3.2 Evaluation

4. Detailed Analysis of Alternatives
4.1 Introduction
4.2 Individual Analysis of Alternatives
4.2.1 Alternative 1
4.2.1.1 Description
4.2.1.2 Evaluation
4.2.2 Alternative 2
4.2.2.1 Description
4.2.2.2 Evaluation
4.2.3 Alternative 3
4.2.3.1 Description
4.2.3.2 Evaluation
4.3 Comparative Analysis

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Attachment E – Stibnite Mine Remedial Investigation and Feasibility Study (RI/FS) Statement of Work (SOW) Schedule

RI/FS Work Plan/Sampling and Analysis Plan (WP/SAP):

- Draft due within 120 days after the Effective Date of the Settlement Agreement/CO.
- Final Work Plan due within 90 days of receipt of consolidated Agency comments.

Data Summary Reports (DSRs):

- Draft DSRs due within 120 days completion of each season's field work or within 90 days of the receipt of final laboratory data, whichever is earlier. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the completion date. Within 5 days of the receipt of final laboratory data for the preceding field season, Respondent shall provide written notification to EPA identifying the receipt date of final laboratory data.
- Final DSRs due within 30 days of receipt of consolidated Agency comments.

Remedial Investigation Report (RI):

- Submit draft RI within 120 days after receipt of laboratory data from the final field season. Within 5 days of receipt of final laboratory data, Respondent shall provide written notification to EPA identifying receipt date of final laboratory data.
- Final RI due within 60 days of receipt of consolidated Agency comments.

Baseline Risk Assessment Report (BLRA):

- Submit draft BLRA within 60 days after submittal of Final RI.
- Final BLRA due within 60 days of receipt of consolidated Agency comments.

Feasibility Study (FS):

- Submit draft FS within 120 days after submittal of BLRA Report.
- Final FS due within 90 days of receipt of consolidated Agency comments.

Data Validation Summaries (DVSs):

- DVSs due within 120 days from the date of collection of the last sample from each sampling event. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the date of collection of the last sample from each sampling event.

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Interim Deliverables

- Draft Interim Deliverables (i.e., Technical Memoranda for Treatability Studies Preliminary Remedial Goals, Remedial Action Objectives, etc.) as identified in the SOW, or as required by EPA, shall be due within 30 days receipt of notice by Respondent that said Deliverable is required.
- Final Interim Deliverables due within 60 days of receipt of consolidated Agency comments.

Quarterly Progress Reports

- Quarterly Progress Reports shall be due 15 days after the end of the previous calendar quarter.

[1]Documents may initially be released as "draft final" pending final resolution of issues.

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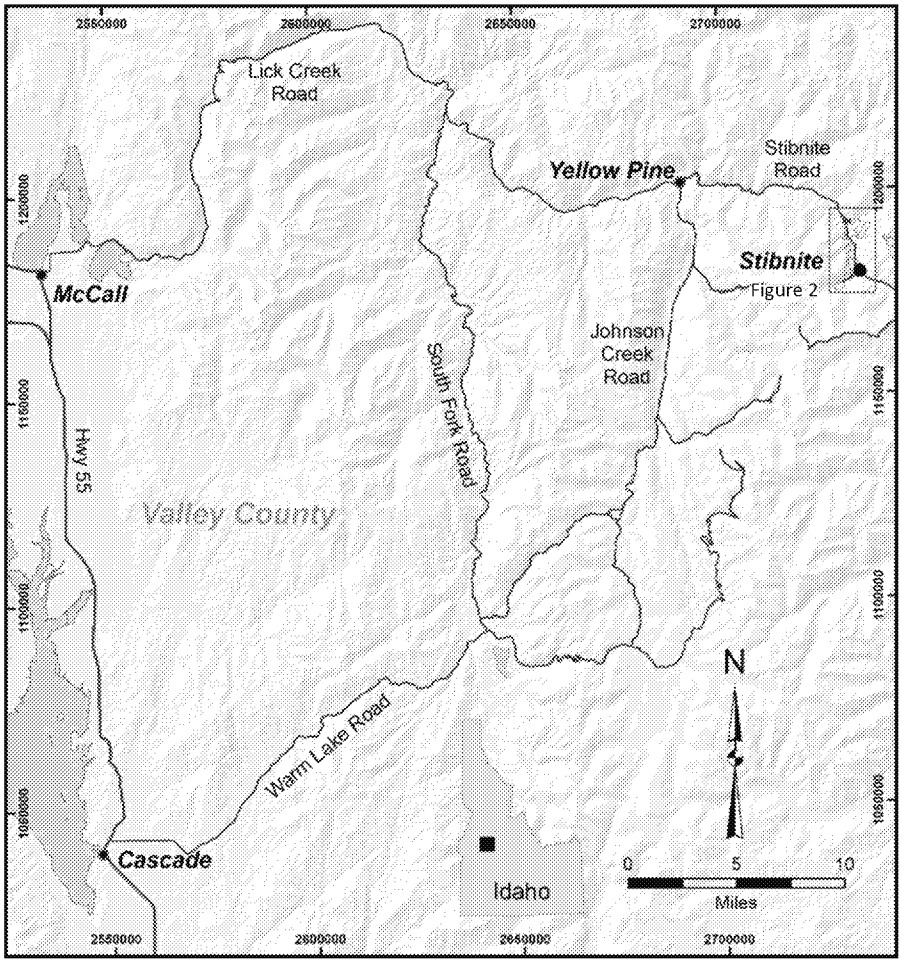

Figure 1 – Site Location

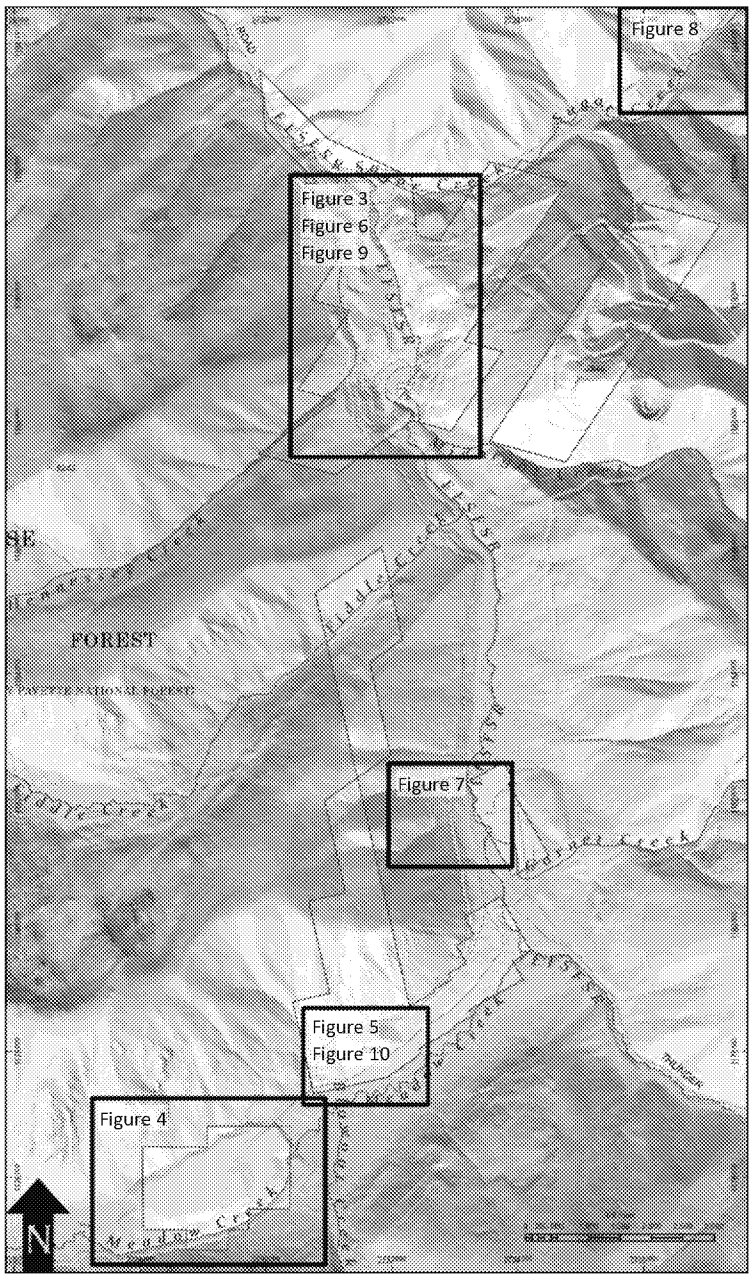

Figure 2 – Stibnite Mine Site

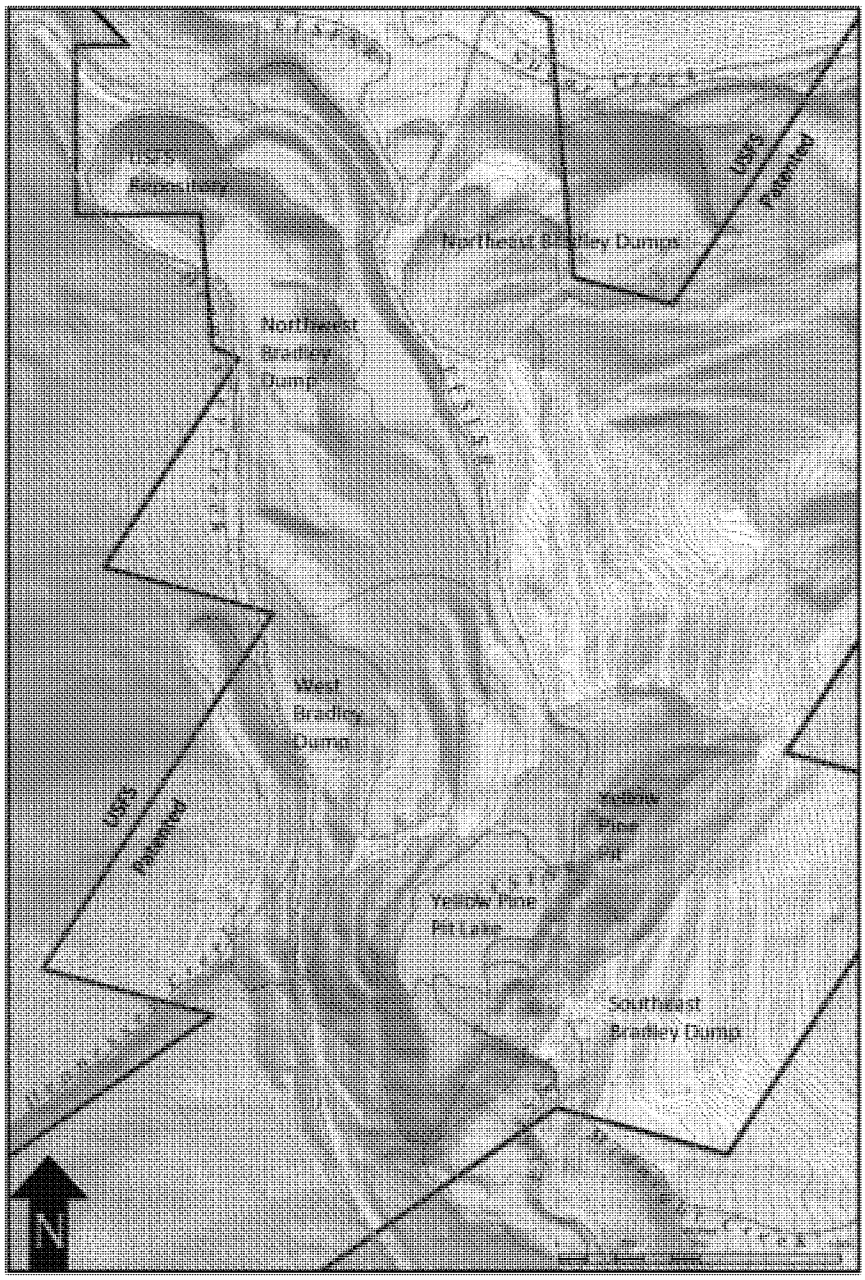

Figure 3 –Yellow Pine Pit

ED_004715_00093887-00039

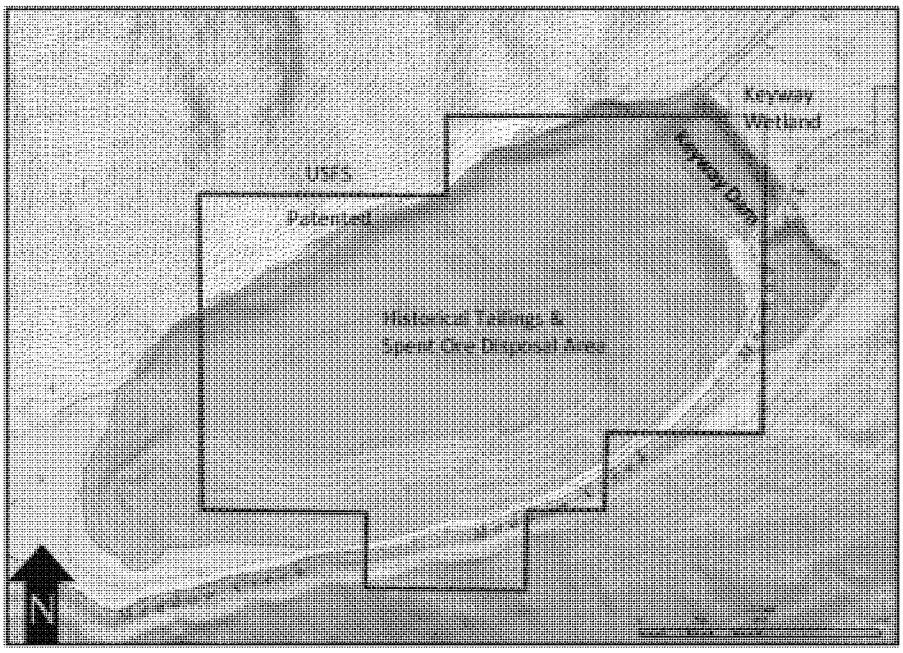

Figure 4 – Historical Tailings and Spent Ore Disposal Area

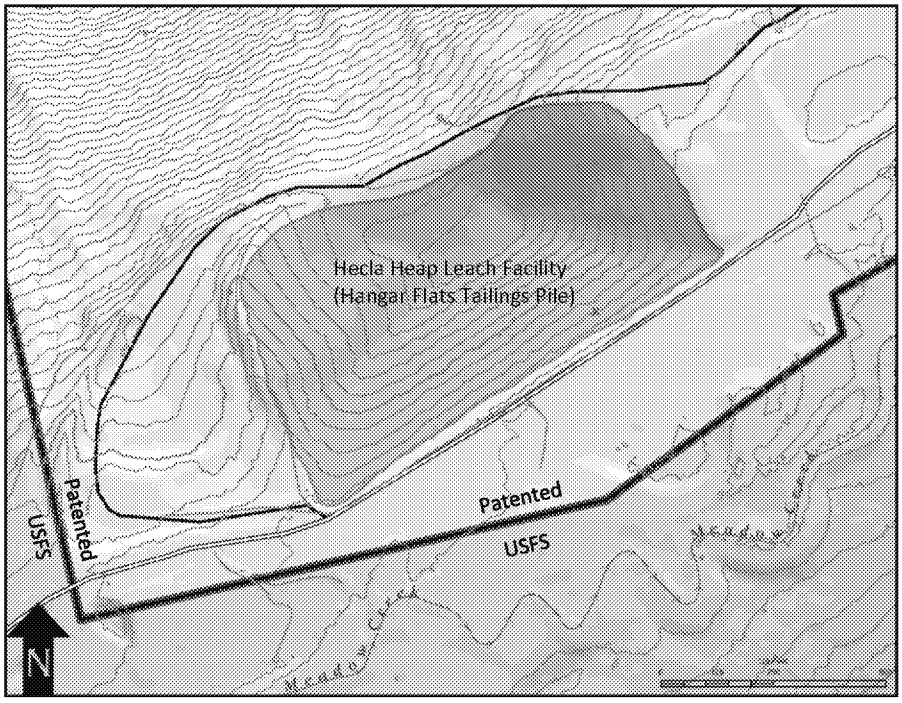

Figure 5 – Hecla Heap Leach Facility

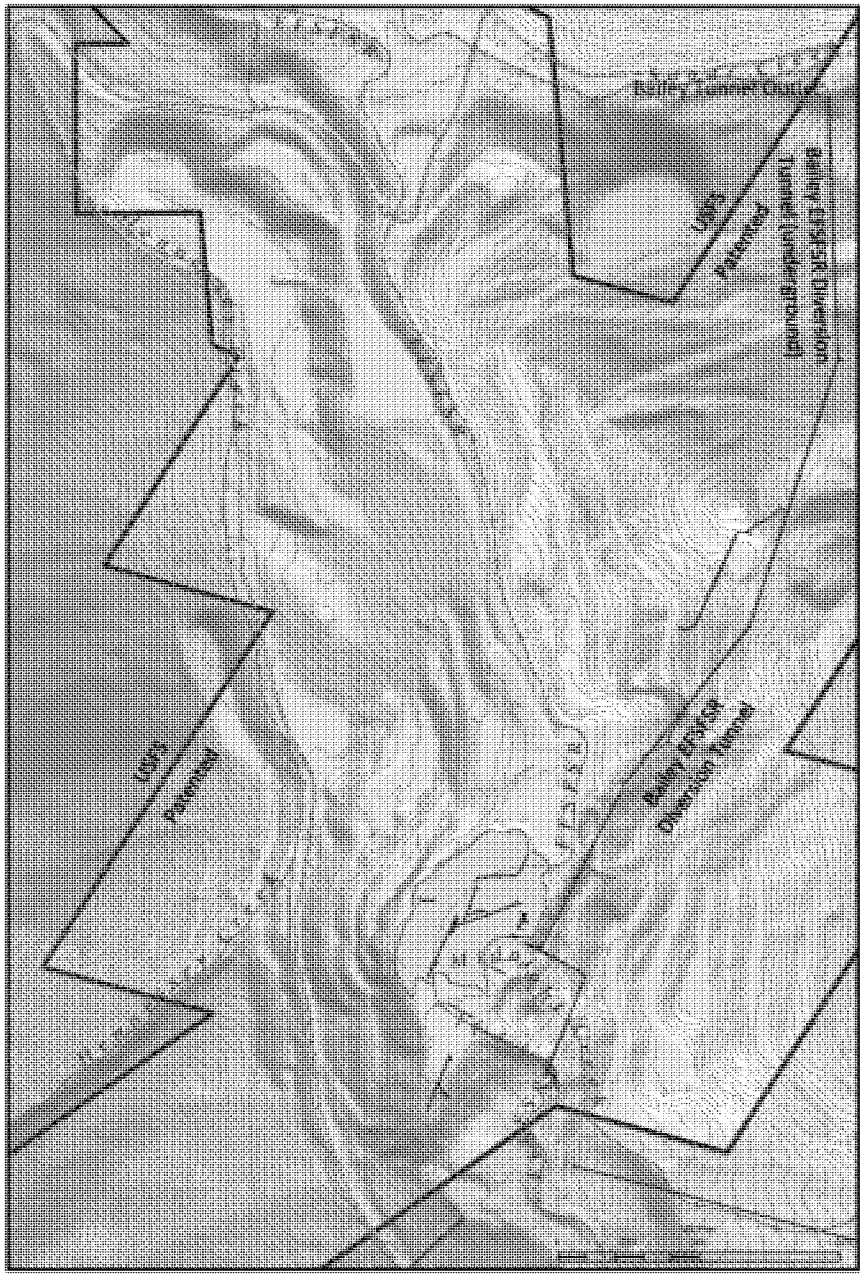

Figure 6 – Bailey Tunnel

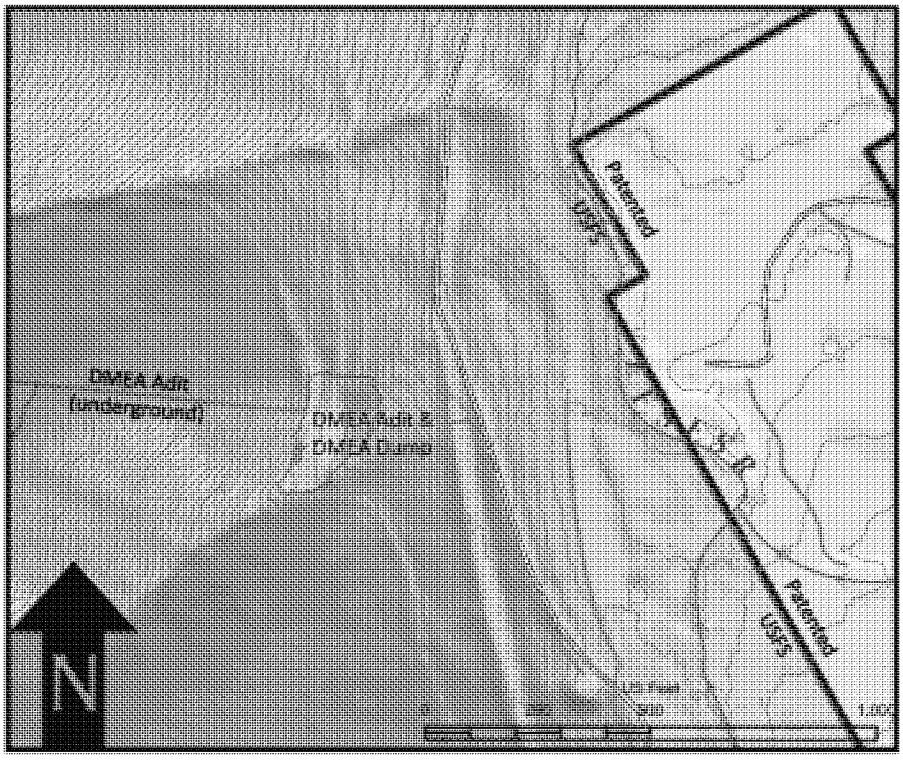

Figure 7 – Defense Minerals Exploration Administration Adit and Waste Rock Dump

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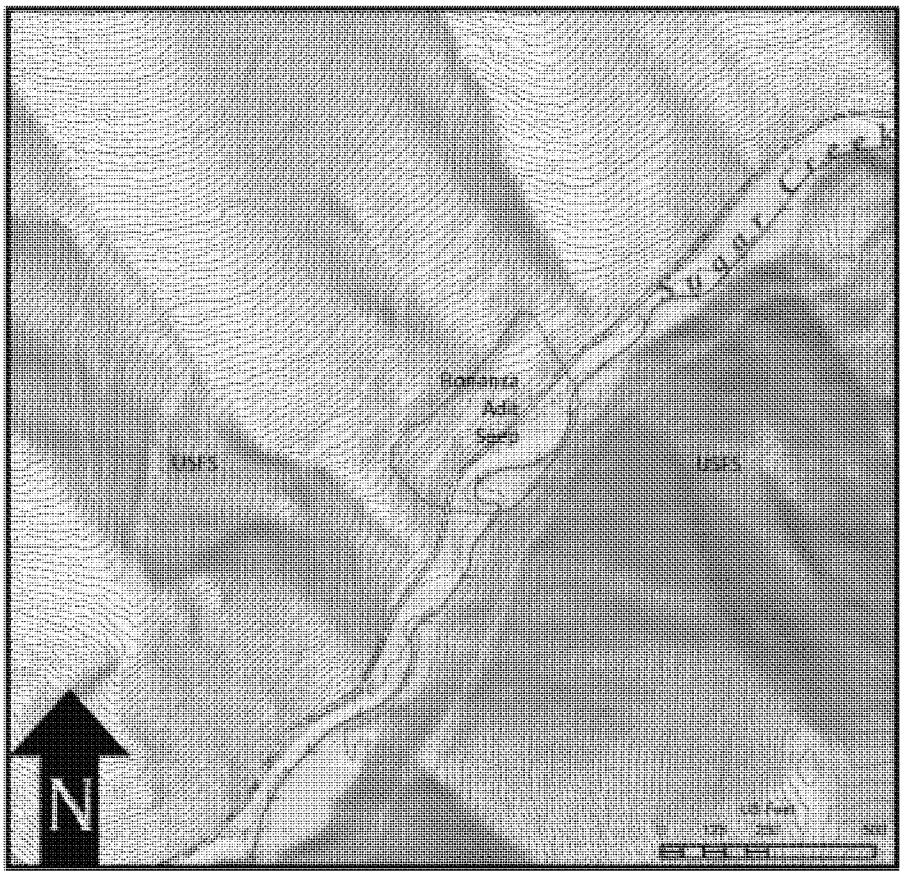

Figure 8 – Bonanza Adit

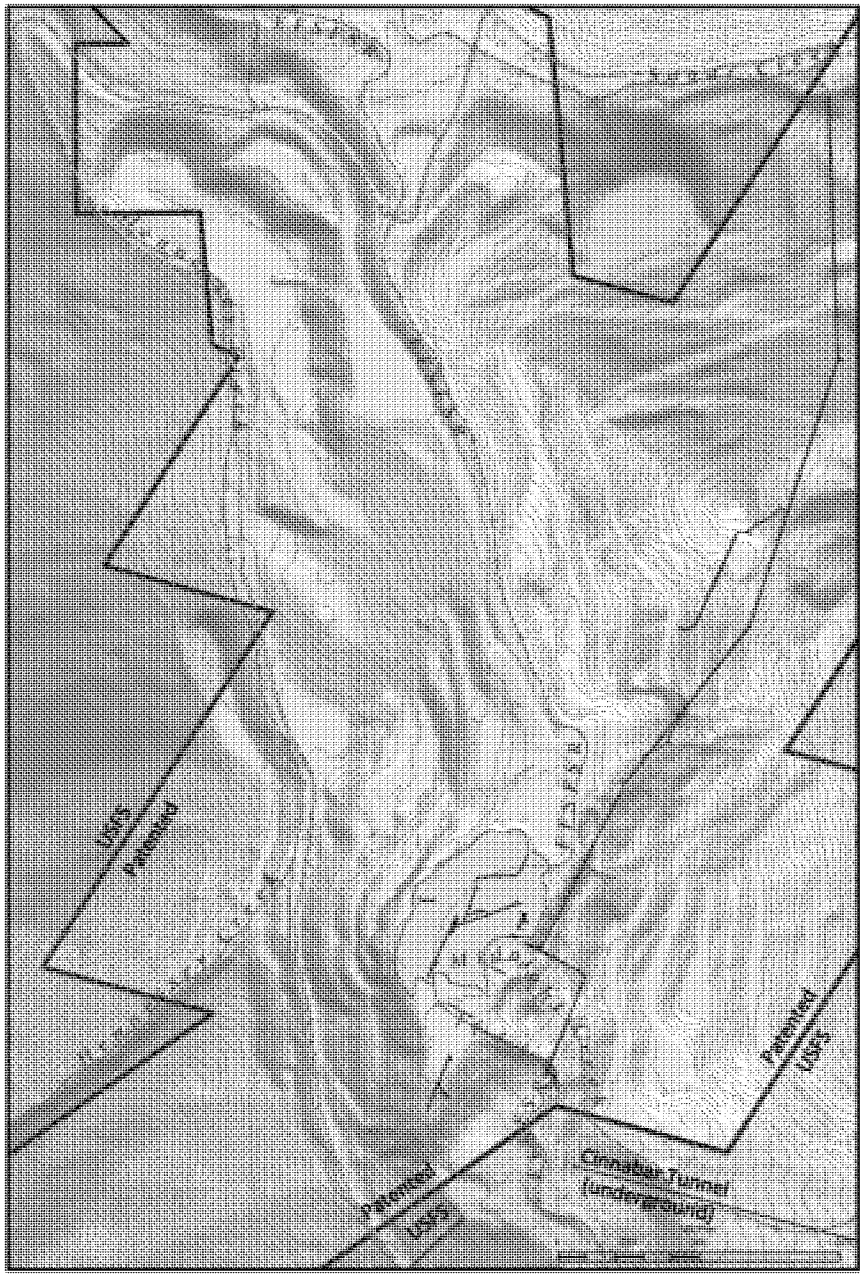

Figure 9 – Cinnabar Tunnel

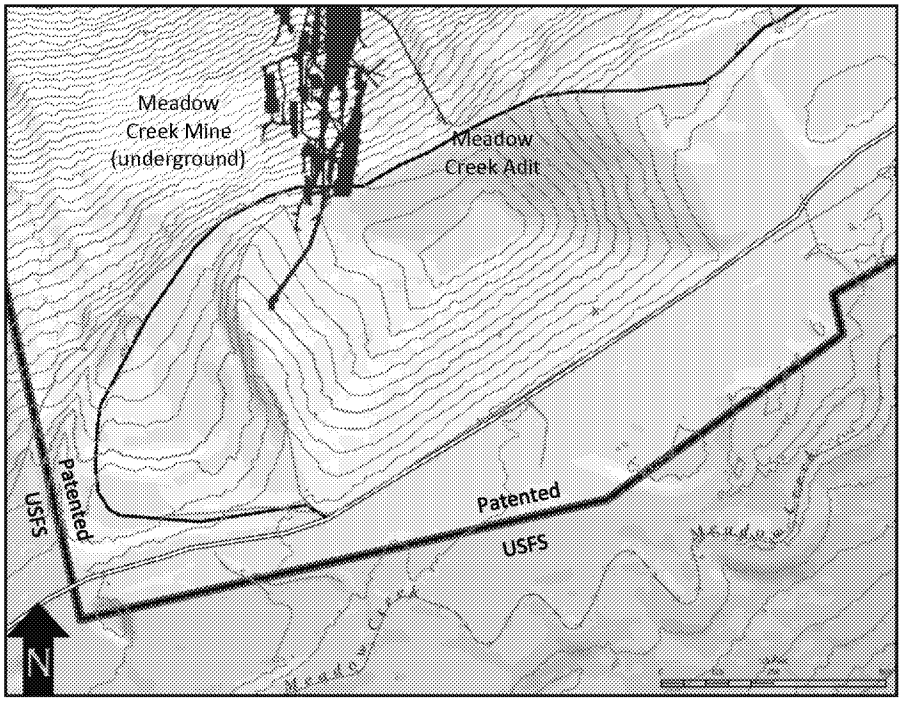

Figure 10 – Meadow Creek Adit

ED_004715_00093887-00046

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 11/13/2019 6:31:32 AM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: FW: Shoshone-Bannock comments on Midas Gold draft statement of work
Attachments: 2019-11-12 SBT Comments on Draft SOW for Stibnite Mine RIFS.docx

Hi Brad. Please forward the Shoshone-Bannock Tribes' comments to the Midas crew. Thanks.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Jill Grant <jgrant@jillgrantlaw.com>
Sent: Tuesday, November 12, 2019 2:40 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: kwright@sbtribes.com; Susan Hanson (susanthanson9@icloud.com) <susanthanson9@icloud.com>; bbacon@sbtribes.com; Virginia Monsisco (vmonsisco@sbtribes.com) <vmonsisco@sbtribes.com>
Subject: Shoshone-Bannock comments on Midas Gold draft statement of work

Hi Elizabeth,

I've attached the Shoshone-Bannock Tribes' comments on Midas Gold's draft statement of work for the Stibnite Mine RI/FS.

We weren't sure whether to send them to all the people who were on the call, so I hope you don't mind that we're relying on you to make sure they get to the right place.

Thanks,

Jill

Jill Grant & Associates, LLC
1319 F Street NW
Suite 300
Washington, DC 20004
Tel: 202-821-1950
Fax: 202-459-9558
jgrant@jillgrantlaw.com
www.jillgrantlaw.com

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Draft Statement of Work for Stibnite Mine RI/FS
Shoshone-Bannock Tribes' Comments
November 12, 2019

General Comments and Questions:

1. Many places throughout the document should refer to "analyses" rather than "analysis."
2. Does the Mining Plan of Restoration and Operations (PRO) cover all of Midas Gold's patented land?

Oversight:

Page 3 – The Shoshone-Bannock Tribes ("SBT" or "Tribes") should be listed as an oversight Agency, along with the EPA, USFS and IDEQ. [Note –The term "Agency" in the rest of these comments is intended to include the SBT.]

SBT should receive copies of all reports, etc., because the Tribes plan to comment on these documents as part of their oversight responsibilities. This seems to be what Midas Gold intended, since Attachment E (schedule) refers throughout to "consolidated Agency comments." We added specific references to SBT/Tribes (which could be changed to "Agencies" assuming SBT is added as an "Agency" and assuming that the other Agencies want to be included) where we thought appropriate, just to be sure. For example, on page 3 the last full paragraph should say "Respondent shall submit all documents or deliverables required as part of this SOW to EPA and the Tribes, for EPA's and the Tribes' review and EPA's approval." The last paragraph should say "Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA and the Tribes to aid in project planning."

Roles and Responsibilities:

Page 4 – Please add the underlined language for clarity, since there's a required process for EPA to go through before issuing a ROD: "At the completion of the RI/FS . . . in a Record of Decision (ROD), consistent with the NCP."

Task 1 - Scoping:

Page 4 – "Respondent shall document the specific project scope in the RI/FS Work Plan, which shall be consistent with the AOC." Also, "During the scoping process, the Site- specific objectives of the RI/FS . . . will be proposed by the Respondent but will be determined ~~and approved~~ by EPA."

Page 5 – "When scoping the specific aspects of this project, Respondent shall meet with EPA and the Tribes either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site."

Page 5 – "The Respondent, ~~and~~ EPA and the Tribes shall conduct a Site visit during the project scoping phase."

Page 6 – "The Respondent shall meet with EPA's Remedial Project Manager (RPM) and with the appropriate contact from the Tribes (either in person or telephonically) regarding the following activities and before drafting the scoping deliverables listed below."

Page 7 – Document the Need for Treatability Studies – "Should treatability studies be determined to be necessary, a testing plan . . . should be submitted to EPA and the Tribes for review and for EPA's approval."

Page 7 – Scoping Deliverables – "These plans must be reviewed by EPA and the Tribes and approved by EPA prior to the initiation of field activities."

Page 7 - RI/FS Work Plan – "A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM and the Tribes for review and for EPA's approval."

Pages 11 through 14 – Potential Target Analytes – The only radiological constituent listed is uranium, and it isn't listed for all media. Since uranium may be a concern, as indicated by it being listed as a COPC for surface water, then uranium and all associated uranium daughters should be listed as COPCs in all media.

Task 2 - Community Relations:

Page 14 – "Respondent may assist by providing information regarding the Site's history, participating in public and community (including tribal community) meetings, and preparing fact sheets for distribution to the general public and relevant tribes, including the Shoshone-Bannock Tribes." All impacted tribes should be included, even though the Shoshoni historically were the main tribes in this area."

Also, "Any PRP-conducted community relations activities will be subject to oversight by EPA and the other Agencies."

Task 3 - Site Characterization

Page 15, 2d ¶ – "The Respondent shall notify the RPM and the relevant contacts for the other Agencies at least two weeks in advance of the field work regarding the planned dates for field activities . . . ."

Same edit in last sentence on pages 15-16: "The Respondent shall notify the RPM and the relevant contacts for the other Agencies at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM and the relevant contacts for the other Agencies upon completion of field support activities."

Page 17 – "All data and programming, including any proprietary programs, shall be made available to EPA and the Tribes together with a sensitivity analysis.

Page 18 – same edit: "All validated data shall be made available to EPA and the Tribes in electronic format. . . . Field and validated analytical data results for all media sampled shall be submitted to EPA and the Tribes by uploading the data . . . ."

Page 18 – Similarly, "The Respondent shall prepare and submit a draft RI report to the RPM for review and approval, and shall provide a copy of the report to the Tribes."

Page 19 – The Tribes would provide comments on the report, but they could do so directly to Midas Gold or through EPA (see first complete sentence at the top of p. 19).

Page 19 – BLRA – The EPA human health risk assessment must include a tribal scenario.

Task 4 – Treatability Studies

Page 20 – first sentence: "Respondent shall identify in a technical memorandum, subject to EPA and the Tribes' review and EPA's approval, candidate technologies for a treatability studies program during project planning (Task 1)."

Page 20 – Evaluation of Treatability Studies – "Once a decision has been made to perform treatability studies, the Respondent and EPA, in consultation with the Tribes, will decide the types of treatability testing to utilize. . . . the Respondent shall either submit to the RPM and the Tribes a treatability testing work plan or an amendment to the original Site work plan for EPA's and the Tribes' review and EPA's approval."

Pages 20-21 – Treatability Testing Work Plan – "The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's and the Tribes' review and EPA's approval." Same edit to Treatability Study SAP.

Task 5 – Feasibility Study

Page 22 – "The modified PRGs shall be documented in a technical memorandum that will be reviewed by EPA and the Tribes and approved by EPA."

Attachment C – Suggested RI Report Format

Vegetation results need to be included here so the Tribes can see what has been evaluated. If they aren't included, this will be a major data gap.

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 11/12/2019 10:20:12 PM
To: Cerise, Kathy [Cerise.Kathryn@epa.gov]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Maley, Timothy [maley.timothy@epa.gov]; Morrison, Kay [morrison.kay@epa.gov]
CC: John Meyer [JMeyer@midasgoldcorp.com]
Subject: Stibnite Mine AOC/SOW

I'll have John (copied) circulate one.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Sent: Tuesday, November 12, 2019 2:19 PM
To: Bradley M. Marten <bmarten@martenlaw.com>; McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>; Maley, Timothy <maley.timothy@epa.gov>; Morrison, Kay <morrison.kay@epa.gov>
Subject: RE: Stibnite Mine AOC/SOW

Brad,

I have not seen an invite for next weeks call.

Thanks

Kathy

Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1
Phone: 206-553-2589

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, November 12, 2019 1:30 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; L. Michael Bogert <mbogert@midasgoldinc.com>; Zamba, Kathy -FS <kathy.zamba@usda.gov>; michael.mccurdy@deq.idaho.gov; Cerise, Kathy <Cerise.Kathryn@epa.gov>; Maley, Timothy <maley.timothy@epa.gov>; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; kwright@sbtribes.com; Pino, Nicholas - OGC, Missoula, MT <nicholas.pino@usda.gov>; Aaron.Scheff@deq.idaho.gov; Morrison, Kay <morrison.kay@epa.gov>; Stifelman, Marc <Stifelman.Marc@epa.gov>; Uhling, Terry <Terry.Uhling@simplot.com>; Susanthanson9@icloud.com;

Laurel Sayer <lsayer@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: Stibnite Mine AOC/SOW

Thanks, Elizabeth.

Jill, Kelly and Susan -- To facilitate review by the AOC Participants of the Tribe's SOW comment, in preparation for our call next Monday, could you please your comments today to the full group copied here? Thank you.

John Meyer will be circulating a number for a videoconference for our Monday call next week.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Tuesday, November 12, 2019 7:04 AM
To: Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; L. Michael Bogert <mbogert@midasgoldinc.com>; Zamba, Kathy -FS <kathy.zamba@usda.gov>; michael.mccurdy@deq.idaho.gov; Cerise, Kathy <Cerise.Kathryn@epa.gov>; Maley, Timothy <maley.timothy@epa.gov>; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; kwright@sbtribes.com; Pino, Nicholas - OGC, Missoula, MT <nicholas.pino@usda.gov>; Aaron.Scheff@deq.idaho.gov; Morrison, Kay <morrison.kay@epa.gov>; Stifelman, Marc <Stifelman.Marc@epa.gov>; Uhling, Terry <Terry.Uhling@simplot.com>; Susanthanson9@icloud.com; Laurel Sayer <lsayer@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Bradley M. Marten <bmarten@martenlaw.com>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: Stibnite Mine Negotiation Meeting Notes

Hello, attached are the meeting summary notes that Brad developed. I believe the notes accurately reflect our discussion. If you have any issues with the summary, please let me know. The second bullet reflects the parties' request for funding from Midas. To be clear, EPA is also requiring that its costs be reimbursed, though I may not have been explicit in the meeting about that.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 12/2/2019 7:42:35 PM
To: Bradley M. Marten [bmarten@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jill Grant [jgrant@jillgrantlaw.com]
Subject: Stibnite Mine
Attachments: 2019-11-27 Chris Hladick, EPA - Nez Perce Tribe Comments Draft Stibnite AOC and SOW - Midas.pdf

I have attached the Nez Perce Tribe's comments on the SOW. Brad and I have talked about getting a technical meeting set up shortly to discuss potential early actions to include in the agreement. I think the government agencies should have a technical discussion as early as possible, and then set up a subsequent meeting with Midas. Gary, Lisa, and Jill, can you please talk to your folks about possible times to meet? Then we can schedule a technical meeting with Midas after that.
Thanks

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Nez Perce

TRIBAL EXECUTIVE COMMITTEE
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

November 27, 2019

Sent via email: Hladick.Christopher@epa.gov

Mr. Christopher W. Hladick
Region 10 Administrator
U.S. Environmental Protection Agency
1200 Sixth Avenue, Ste. 155, M/S 21-B03
Seattle, WA 98101

Re: Nez Perce Tribe's comments on the draft Stibnite Mine Site Administrative Order on Consent and Statement of Work

Dear Mr. Hladick:

The Nez Perce Tribe ("Tribe") appreciates the opportunity to comment on the draft Statement of Work ("SOW") for the Stibnite Mine Remedial Investigation ("RI") and Feasibility Study ("FS"). The Tribe, however, cannot fully understand and provide feedback on a SOW without seeing the underlying and legally operative draft Administrative Order on Consent ("AOC"). For this reason, the Tribe also reviewed and is providing the Environmental Protection Agency ("EPA") with preliminary feedback on the draft AOC for the Stibnite site that Midas Gold recently filed in the Tribe's Clean Water Act litigation against the company and which the Tribe presumes is the most recent draft version.

The Tribe's paramount priority is to protect and advance its treaty-reserved rights and cultural interests in its aboriginal territory. As EPA is aware, the Stibnite mine site is located entirely within the Tribe's aboriginal territory and is subject to the rights that the Tribe reserved, and the United States secured, in its 1855 Treaty.[1] In addition to holding treaty-reserved rights at the Stibnite site, the site is located entirely within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission.[2] As a co-manager of its fishery, the Tribe also expends millions of dollars in hatchery supplementation, fishery research, and habitat restoration projects in the South Fork Salmon River watershed.

---

[1] Treaty with the Nez Perces, June 11, 1855, 12 Stat. 957 (1859).

[2] *Nez Perce Tribe v. United States*, Docket # 175, 18 Ind. Cl. Comm. 1.

The Tribe is disappointed that the AOC and SOW appear to be tailored to limit Midas Gold's liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") while only actually addressing the eight point sources at the site that the company is liable for under the Clean Water Act ("CWA"). The AOC and SOW are therefore currently inadequate to address the legacy pollution at the Stibnite site in a timely and holistic manner that protects the Tribe's treaty-reserved rights and cultural interests. The AOC and SOW leave the Tribe with numerous questions as to how EPA plans, in real terms, to pursue what appears to be the novel task before it: the completion and implementation of an RI and FS at a site with a pending mine development proposal.

To better understand EPA's approach, the Tribe requests that the EPA provide it with an example of when and how an RI and FS have been conducted at a site that may be re-mined. The Tribe also requests a technical staff-to-staff meeting to discuss its comments and questions (appended here), followed by formal government-to-government consultation. Consistent with the applicable executive orders and EPA's consultation policies, the Tribe fully expects that this technical conversation and formal consultation will occur prior to EPA providing the Tribe with a final draft to review and prior to EPA opening the AOC and SOW to a 30-day public comment period.

Because the Tribe's treaty-reserved rights and natural and cultural resources are directly at issue at the Stibnite site, the Tribe offers the following narrative comments to assist the EPA with fulfilling its trust responsibilities to the Tribe. Attached to the Tribe's narrative comments are suggested edits to the SOW, reflected in track-changes, as well as a copy of the draft AOC reviewed by the Tribe.

Sincerely,

Shannon F. Wheeler
Chairman

cc: Ms. Elizabeth McKenna (McKenna.Elizabeth@epa.gov)

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Nez Perce Tribe's Comments on Stibnite Draft AOC & SOW

The Tribe is opposed to any CERCLA action at the Stibnite site that does not, in good faith, contemplate a site-wide and comprehensive cleanup of the site. The scale of past remedial actions has been inadequate in comprehensively and holistically addressing contamination at the Stibnite site. The Tribe cannot accept a repeat. The Tribe fully expects that if EPA invokes CERCLA for the Stibnite site, that it will use the statute to ensure that the full legacy of contamination at the Stibnite site is addressed. The Tribe, therefore, opposes the Stibnite AOC and SOW in their current form.

I. The AOC and SOW are Currently Inadequate to Protect the Tribe's Resources

Congress passed the CERCLA in 1980 as a strict liability statute to ensure that sites contaminated by hazardous substances would be efficiently investigated and cleaned up, thereby reducing risks to human health and the environment.[1] Unfortunately, the Stibnite draft AOC, which Midas Gold filed in Idaho District Court, Case No. 19-cv-00307-BLW, on November 13, 2019 ("11/13 AOC") appears more focused on using CERCLA as a liability shield for Midas Gold than ensuring rigorous protection of the human and environmental health. The 11/13 AOC and SOW together do not require Midas Gold to implement an efficient and comprehensive cleanup of the legacy contamination at the Stibnite site. Instead, both documents appear to act as a permission structure for Midas Gold's already planned gold mine, the Stibnite Gold Project, while requiring only a cursory cleanup of the point source discharges Midas is currently liable for under the CWA. In light of these glaring deficiencies, EPA would be abdicating its duty to protect the Tribe and the public were it to approve the AOC and associated SOW in their current state.

A. The AOC Must Require RI and FS Processes to Begin Immediately

The Tribe questions why the 11/13 AOC's effective date is tied to the Forest Service's issuance of a Record of Decision ("ROD") for the Midas Gold's Stibnite Gold Project.[2] EPA should not sign an agreement with Midas Gold only to delay initiation of actual cleanup work—i.e. the RI and FS processes. The RI and FS processes must begin immediately to ensure thorough work product and to ensure these processes are not unduly influenced by a permitted mining plan.

If EPA allows Midas Gold to wait until the Forest Service issues a ROD to begin the RI and FS processes (assuming the Forest Service even issues a ROD), years could pass before any CERCLA investigations begin, if investigations begin at all. Meanwhile, pollution discharges into the East Fork South Fork Salmon River and its tributaries will continue unstudied and unabated. Such a scenario is not in keeping with CERCLA's foundational intent and would be a betrayal of the public's trust.

The RI and FS processes should also be initiated as soon as the AOC is signed because they are complicated and involved processes that must be completed in a careful and thorough manner. The objective of the RI and FS process under CERCLA is to gather information to support an informed

[1] *Burlington Northern and Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 602, 608 (2009).
[2] 11/13 AOC at 31.

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risk management decision regarding remedies.[3] EPA guidance on developing and screening alternatives explains that remedy alternatives are typically developed concurrently with the RI site characterization, with the results of one influencing the other in an iterative fashion (i.e., RI site characterization data are used to develop alternatives and screen technologies, whereas the range of alternatives developed guides subsequent to site characterization and/or treatability studies). The RI and FS are to be conducted concurrently and the data collected in the RI influences the development of remedial alternatives in the FS, which in turn affects the data needs and scope of treatability studies and additional field investigations. This concept is essential to the phased RI/FS approach.[4]

Waiting until after the Forest Service has approved a mining plan to begin the RI process also means that the mining plan will inevitably become the starting point for the remedy alternatives considered and the ultimate remedy selected. The Tribe does not think that tiering the RI and FS processes off an approved mining plan is appropriate. The RI and FS process are supposed to be focused on protecting human health and the environment.[5] The Tribe strongly feels that the best way to accomplish this is to initially focus the RI and FS processes on a no-mine scenario for the Stibnite site.

The best way for EPA to ensure that the Stibnite site is efficiently and effectively cleaned up is to finalize an AOC prior to the Forest Service issuing a ROD for the Stibnite Gold Project and to complete an RI and FS for the site for a no-mine scenario, prior to Midas Gold commencing mine construction. If mining does not proceed, or does not proceed within a reasonable time frame of 3 years or less, then the no-mining remedy identified in the RI and FS should be implemented. If mining is permitted, then EPA can modify the AOC's remedy or, if necessary, the completed remedy can be modified to accommodate future mining.

This phased approach will ensure that there is a clear cleanup protocol in place for the Stibnite site should the Stibnite Gold project not be approved or should Midas Gold decide not to implement the approved project, in part or in full. This phased approach will also help ensure that the cleanup protocol has not been unduly influenced by Midas Gold's profit-motivated plans and that a comprehensive cleanup occurs, while sparing EPA that pain of trying to anticipate the contents of an as-of-yet unwritten and unissued ROD. And finally, this phased approach will ensure that the Forest Service can consider the RI and FS in its National Environmental Policy Act ("NEPA") analysis of the Stibnite Gold project and approve as a mining plan that facilitates a comprehensive cleanup at the site.

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[3] 1988 EPA Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, October 1998, U.S. EPA, at 1-3.
[4] *Id* at 4-3.
[5] 42 U.S.C. § 9621.

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B. The AOC Needs to Include Robust Financial Assurance

EPA needs to require robust financial assurance in the AOC for the cleanup of the Stibnite site, separate and apart from financial assurance for the full-scale mine. And, such financial assurance needs to be solid, so that EPA has the funds necessary to invoke the "Work Takeover" section of the AOC if need be.[6]

The Tribe is, therefore, adamantly opposed to Midas Gold providing financial assurance in the form of a corporate guarantee; Midas Gold must provide financial assurance in the form of a cash or surety bond. Also, when calculating the amount of financial assurance necessary for the AOC, the Tribe fully expects that EPA will use an accepted method such as the Standard Reclamation Cost Estimator. EPA should require the estimate to include long-term water management and treatment and long-term monitoring and maintenance. The Tribe also expects that EPA will require financial assurance for the legacy waste material at the Stibnite site. This is important because there is no assurance that the reclamation and closure plan contained in a future Forest Service ROD will successfully address all legacy pollution at the Stibnite site or that a future Forest Service ROD will include adequate financial assurance. Unaddressed legacy waste material could become commingled with new mining waste during mine construction and operation. Consequently, EPA must require financial assurance for all legacy waste material at the site. The Tribe is, therefore, opposed to an AOC clause that allows Midas Gold to request that EPA reduce its financial assurance prior to mine closure.

C. The AOC Must Include Stipulated Penalties for Non-Compliance

The AOC must include a stipulated penalties section. As EPA knows, a stipulated penalties section is a standard clause in EPA AOCs.

D. The SOW Must be Site-Wide and Comprehensive

The SOW's scope is currently too narrow. The SOW for the Stibnite site must be site-wide and comprehensive. Previous CERCLA actions at the site have only addressed a small fraction of the site's legacy contamination and, thereby, have failed to fulfill CERCLA's foundational purpose of protecting human health and the environment. A repeat of these past, inadequate actions is unacceptable to the Tribe. The Tribe and the public have tolerated legacy contamination and federal agency inaction at the site for far too long. EPA needs to require a cleanup of all legacy pollution at the Stibnite site, not simply the areas identified in the Tribe's CWA litigation against Midas Gold. Although the areas identified in the Tribe's litigation definitely need attention, they are simply a small portion of a larger problem; legacy contaminants exist all over the Stibnite site that may not be currently discharging pollutants, but which must be included in a RI and FS and, ultimately, be cleaned up.

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[6] 11/13 AOC at 23.

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EPA should have a willing partner in Midas Gold for a comprehensive cleanup. Midas Gold has repeatedly represented to the public and the Tribe that it wants to "restore" the Stibnite site. "Restoration," the act of bringing back to a former position or condition,[7] can only be accomplished through a site-wide cleanup. Restoration cannot be accomplished by limiting the SOW to the eight point sources in the Tribe's CWA lawsuit.

In addition to ensuring that the SOW is comprehensive and site-wide, EPA must ensure that the RI and FS are begun as soon as an AOC is signed by including a timeline for each of its six constituent tasks—project scoping, data collection, risk assessment, treatability studies, and analysis of alternatives[8]—as well as the remedial action work. EPA should also tailor the scope and timing of these activities to the nature and complexity of the problem and the response alternatives being considered.[9]

Since EPA reserves the right to conduct any aspect of the RI,[10] the Tribe also requests that EPA specify in the AOC that it will conduct the baseline assessment for the site. This is the most sensitive part of the RI to project proponent bias, and it is vital that the baseline assessment including impacts and risks to Tribal lifestyles.[11]

E. The Tribe's Outstanding Questions and Comments on the AOC and SOW

In order to understand EPA's thinking regarding cleanup at the Stibnite site, the Tribe also asks for clarification on the following points:

- When will point source pollution at the site actually be remediated?
- When will non-point source contamination at the site actually be remediated?
- When and how will Midas Gold be held accountable for compliance with the AOC?
- By linking the effective date of the AOC with the Forest Service's ROD, is EPA presupposing that Midas Gold's approved mining plan will be the preferred CERCLA remedy for the Stibnite site? If so, why is this appropriate prior to conducting the RI and FS?
- The national goal of the remedy selection process is to select remedies that are protective of human health and the environment, that maintain protection over time, and that minimize untreated waste.[12] How does EPA propose to reconcile this goal with Midas Gold's mining proposal? How does EPA propose to ensure that remedy selection is impartial and fact-

[7] Restoration [Def. 1] In *Merriam-Webster Online*, Retrieved November 25, 2019, (available at: http://www.merriam-webster.com/dictionary/restoration).
[8] 40 CFR § 300.430(a)(2).
[9] *Id.*
[10] The Remedial Investigation: Site Characterization and Treatability Studies, U.S. EPA, at 4 (available at: https://nepis.epa.gov/Exe/ZyPDF.cgi/600016JW.PDF?Dockey=600016JW.PDF).
[11] Consideration of Tribal Treaty Rights and Traditional Ecological Knowledge in the Superfund Remedial Program, 2017, U.S. EPA, at 4.
[12] 40 CFR § 300.430(a)(1).

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based, when it is proposing to delay the initiation of the RI and FS process to after Midas Gold has a permitted mine?

- Why doesn't EPA select a remedy for the site prior to the Forest Service issuing a ROD? Wouldn't the Forest Service benefit from a completed RI and FS in analyzing and approving a mine alternative? Wouldn't the Forest Service's incorporation of the AOC's selected remedy into its NEPA analysis and design of the approved mining project help ensure a comprehensive cleanup of the Stibnite site?
- Will EPA include in the AOC the legal basis for each signatory's participation in the AOC and each signatory's involvement in supervising and implementing the AOC?
- The AOC should clarify that ROD means Final ROD once all appeals or other legal challenges are resolved.
- What happens to the CERCLA clean-up under the current AOC if the Forest Service never issues a ROD for a mine at the Stibnite site?

II. EPA's Trust Responsibilities to the Tribe

In addition to holding treaty-reserved rights at the Stibnite site, the site is located entirely within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission.[13] EPA thus has a trust responsibility when negotiating this AOC and associated SOW to consult with the Tribe to ensure that its actions are fully consistent with the 1855 Treaty, executive orders, statues, regulations, EPA guidelines, and other federal laws implicating the United States' unique relationship with the Tribe. EPA also has a trust responsibility to inform and consult with the Tribe in order to avoid or mitigate impacts to culturally significant resources at the site.

A. Responsibility to Consult

EPA has a duty to engage and consult with the Tribe on the AOC and SOW discussions.[14] According to EPA guidance, "[c]onsultation consists of respectful, meaningful, and effective two-way communication."[15]

The Tribe fully expected that any serious engagement by EPA with the Tribe on the Stibnite AOC would come after EPA had negotiated a funding agreement with the Tribe and that EPA would provide the Tribe with sufficient time to review and prepare comments and feedback on the AOC negotiations. The Tribe is providing these comments under very different circumstances, since the Tribe and EPA have yet to negotiate a funding agreement and the Tribe is providing these comments under tight time constraints. The Tribe expects that EPA will engage the Tribe in a more respectful manner going forward.

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[13] *Nez Perce Tribe v. United States*, Docket # 175, 18 Ind. Cl. Comm. 1.

[14] Exec. Order 13175, 65 Fed. Reg. 67249 (2000); EPA Region 10 Tribal Consultation and Coordination Procedures, 2012, at 8-9 (available at: https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100FFEY.txt).

[15] EPA Region 10 Tribal Consultation and Coordination Procedures, 2012, at 5 (available at: https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100FFEY.txt).

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On September 13, 2019, Elizabeth McKenna, Assistant Regional Counsel for EPA, sent Michael Lopez, Staff Attorney for the Tribe, a letter outlining the Tribe's options for participating in AOC discussions between EPA, Idaho, the U.S. Forest Service, and Midas Gold. Ms. McKenna's letter stated: "If the Tribe chose not to be a signatory to the administrative settlement agreement, EPA could consult with the Tribe during the negotiations[.] [...] Under this option the parties could agree to negotiate terms for reimbursement of the Tribe's costs incurred by the Tribe as a participant in the RI/FS implementation process directly to the Tribe. Or, EPA could provide funds through a cooperative agreement with the Tribe, and EPA would negotiate terms that would provide for reimbursement of those costs to EPA." In a letter dated October 14, 2019, Mr. Lopez conveyed to EPA that the Tribe has elected to not be a signatory on the AOC and instead chose to "consult directly with EPA during the negotiations" and that "the Tribe would like EPA to provide funds through a cooperative agreement, and EPA would negotiate terms that would provide for reimbursement of those costs to EPA."

The Tribe has yet to negotiate or agree to a funding cooperative agreement with EPA. Despite this, Mr. Lopez was notified by Elizabeth McKenna on November 4, 2019, that the parties to the AOC would be submitting comments on November 12, 2019, and meeting on November 18, 2019, to discuss comments on the AOC and that the parties would also like to have the Nez Perce Tribe's comments by that date. This was the first time EPA asked the Tribe to provide comments by a date certain. Mr. Lopez informed Ms. McKenna that the Tribe could not provide comments on such a short timeline in light of the Nez Perce Tribal Executive Committee's schedule.

The Tribe is providing these comments on a very limited timeline and is working on this matter without the funding agreement EPA promised. The Tribe expects that EPA will ensure that a funding agreement is in place as soon as possible and will give the Tribe ample notice of deadlines going forward.

The Tribe also requests a technical staff-to-staff meeting to discuss its comments and questions followed by formal government-to-government consultation. Consistent with the applicable executive orders and EPA's consultation policies, the Tribe fully expects that this technical conversation and formal consultation will occur prior to EPA providing the Tribe with a final draft to review and prior to EPA opening the AOC and SOW to a 30-day public comment period.

B. Responsibility to Protect

EPA noted in its January 17, 2017, memorandum, Consideration of Tribal Treaty Rights and Traditional Ecological Knowledge in the Superfund Remedial Program 9 ("Memorandum"), that treaties have the same legal force as federal statutes and it is, therefore, EPA's duty to ensure that its actions are in accordance with tribal treaty rights, especially when "EPA decisions focused on specific geographic areas where tribal treaty rights relating to natural resources may exist in, or treaty-protected resources may rely upon, those areas."[16]

[16] Memorandum at 2.

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The Memorandum also states:

> Section 300.430(d)(2) of the [National Oil and Hazardous Substances Pollution Contingency Plan] indicates that, as part of the lead agency's efforts to characterize a site or to develop potential remedial options, it should assess a number of factors, including (v) "actual and potential exposure pathways through environmental media;" and (vii) "[o]ther factors, such as sensitive populations, that pertain to the characterization of the site or support the analysis of potential remedial action alternatives." Depending on the site-specific circumstances, as part of that analysis, regional Superfund Remedial Program offices should consider the human health and environmental risks to tribal members, treaty-protected resources and lifeways. In instances where the Agency determines that a Superfund remedial decision potentially affects tribal treaty rights or treaty-protected resources, EPA should identify the nature and extent of potential risks to tribal members exercising those rights. For example, as part of the baseline risk assessment, the tribal lifestyle may result in different risks, such as higher fish consumption rates due to subsistence fishing. Similarly, a portion of a site may be a sacred/ceremonial area or an area of cultural sensitivity that warrants consideration in remedy selection/implementation.[17]

EPA's Memorandum also points out just how complex, and at times precedent-setting, the legal and policy analyses concerning how to protect affected rights can be.[18]

The Stibnite site is an enormously complex site, in light of its significant Nez Perce use, legacy mining disturbance and contamination, and Midas Gold's current proposal to re-mine the site. Protecting the Tribe's rights and resources at such a site is, admittedly, not an easy task, but EPA needs to focus on the fact that the Tribe still actively uses and manages resources in the Stibnite watershed.[19] The site, including the waters that flow through it, provide important habitat for the Tribe's treaty-reserved resources. Not only is the habitat within the site degraded due to legacy disturbance and contamination, but the site continues to pollute the East Fork South Fork Salmon River and its tributaries, which support the Tribe's immensely important salmon fishery. Today,

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[17] *Id* at 4.

[18] *Id* at 4.

[19] The Tribe's Fisheries Department expends $2.5 million annually on work to support and increase salmon runs throughout the Salmon River watershed. This work includes moving some Chinook salmon every year above the fish passage blockage at the Stibnite mine site, created by the legacy mine pit known as the Glory Hole, to spawn. The resulting juvenile production from above the Glory Hole helps boost overall returns to the Salmon River watershed.

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Nez Perce Tribal members typically fish in the South Fork Salmon River watershed from mid-June through August and hunt and gather traditional their traditional resources at other times of the year.

The best way to protect the Tribe's resources is to provide a site-wide and comprehensive cleanup. Drawing small lines around point source discharges at the site is not sufficient to protect Nez Perce Tribal members and their treaty-reserved resources.

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Appendix 1

STATEMENT OF WORK FOR THE
STIBNITE MINE REMEDIAL INVESTIGATION / FEASIBILITY STUDY
Valley County ID near Yellow Pine, ID

1. Introduction

a. Purpose

This Statement of Work (SOW) sets forth the requirements for conducting a Remedial Investigation and Feasibility Study (RI/FS) at the Stibnite Mine Site ("Site") located in northwest Idaho approximately 14 miles from the town of Yellow Pine (see Figure 1). The purpose of the RI/FS is to investigate the nature and extent of contamination at the Site and to develop and evaluate remedial alternatives, as appropriate. This SOW provides an overview of Work that will be carried out by Midas Gold Idaho, Inc. ("Midas Gold" or "Respondent") as it implements the RI/FS at the Site.

The SOW is attached to the AOC. Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the Order will control.

In September 2016, Midas Gold filed a Plan of Restoration and Operations ("PRO") with the United States Forest Service ("USFS") for the redevelopment of Stibnite, and plans to undertake mining, mineral processing and restoration activities on portions of the Site that will result in landscape-scale changes to many of the existing Site features. As such, the scope and timing of sampling and other elements of the RI/FS will consider potential mining acitivities in the PRO, any modifications and subsequent remediation. ~~must be consistent with the PRO and the subsequent restoration~~. This will require flexibility in the RI/FS and could require a phased approach to accelerate certain activities.

Commented [A1]: As mining activities in part or whole cannot be guaranteed to occur in the future, the RI/FS should consider a full-range of alternatives that do not involve potential mining activities.

This RI/FS SOW is attached to and is incorporated into the Settlement Agreement and Administrative Order on Consent (AOC) for the Site. Technical work described in this SOW is intended to provide more information to the Respondent for the purpose of implementing the AOC and is not intended to change the meaning of any AOC language. This SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan, commonly calledthe National Contingency Plan (NCP), 40 CFR 300. The AOC and this SOW are hereafter referred to interchangeably as the "AOC." Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the AOC will control any interpretive disputes.

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2. Description and Current Status of the Site

The site is located in..... *Provide general description of the site in terms of location, size, elevation, primary use, water drainages. Describe general history of mining at site*

The Site includesis defined as the features areas described below (general locations summarized on Figure 2) and the areal extent of contamination from those features and all suitable areas in very close proximity to the contamination necessary for response action implementation:

Commented [A2]: Site Boundary for RI/FS should be defined and shown on map. OU boundaries should be described as "general" boundaries.

Commented [A3]: Typically, the SOW would include Operable Units (OUs). Recommend determining OUs and revising SOW.

1. **Yellow Pine Pit (Figure 3)** – The Yellow Pine Pit (formerly known as "The Glory Hole") was actively mined during the 1930s through the 1950s for antimony, tungsten, gold and silver. The pit is located on Midas Gold patented land, and most of the waste rock dumps associated with the pit are adjacent to the pit; some of the waste rock dumps are located on USFS managed land. During active mining, the East Fork of the South Fork of the Salmon River (EFSFSR) was routed around the pit through the Bailey Tunnel but was allowed to return to its natural course through the pit after the Bailey Tunnel was abandoned in the mid-1950s. The EFSFSR now runs through the pit, but does not currently support fish passage to the headwaters. The Yellow Pine Pit, and the majority of waste rock dumps associated with it, are within the footprint of Midas Gold's proposed PRO.

2. **Bradley Tailings Pile (Figure 4)** – The Bradley Tailings Pile, also known as the Historical Tailings and Spent Ore Disposal Area, is located on Midas Gold patented land. Approximately 3 million tons of mine tailings generated during the 1940s and 1950s are stored in this area, and they are overlain by approximately 6 million tons of spent heap leach ore placed in the 1980s and 1990s. The downstream end of the Tailings Pile is constrained by a structure known as the Keyway Dam, and a wetland exists downgradient of the Keyway Dam, which is also referred to as the Keyway Marsh. Meadow Creek is diverted around the south side of the Tailings Pile. The Bradley Tailings Pile is within the footprint of Midas Gold's proposed PRO.

3. **Hangar Flats Tailings Pile (Figure 5)** – The Hangar Flats Tailings Pile, also known as the Hecla Heap Leach Facility, is a reclaimed heap-leach facility which was built and operated in the 1990s to extract oxide gold and silver. The facility is located on Midas Gold controlled patented land, and is within the footprint of Midas Gold's proposed PRO.

4. **Bailey Tunnel (Figure 6)** – The Bailey Tunnel was constructed in the early 1940s to divert the EFSFSR around the Yellow Pine Pit and into Sugar Creek to facilitate open pit mining operations. The tunnel was no longer used after the mid-1950s, following cessation of open pit mining activities. The Bailey Tunnel is on Midas Gold patented land, and is within the footprint of Midas Gold's proposed PRO.

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5. **DMEA Adit and Waste Rock Dump (Figure 7)** – The Defense Minerals Exploration Administration (DMEA) Adit and Waste Rock Dump are mining-related disturbances resulting from underground exploration activities during the 1950s. The adit and dump are located on USFS managed land, and are not within the footprint of the Midas Gold PRO.

6. **Bonanza Adit (Figure 8)** – The Bonanza Adit area is a mining-related disturbance in the Sugar Creek drainage resulting from underground exploration activities during the 1930s and 1940s. The Bonanza Adit area is located on USFS managed land, and is not within the footprint of the Midas Gold PRO.

7. **Cinnabar Tunnel (Figure 9)** – The Cinnabar Tunnel is a mining-related disturbance resulting from underground exploration activities during the late 1920s and early 1930s. The Tunnel is located on USFS managed land; the tunnel portal is within the footprint of the Midas Gold PRO.

8. **Meadow Creek Adit (Figure 10)** – The Meadow Creek Adit and associated waste rock dumps are mining-related disturbances that resulted from underground mining activities from the 1920s through the 1940s. The adit and waste rock dumps are located on Midas Gold controlled patented land, and are within the footprint of Midas Gold's proposed PRO.

Closure Management Units. Following completion of RI activities and any necessary risk assessment activities for a given OU, the OU structure shall conclude, and that portion of the site will be organized according to Closure Management Units (CMUs) for the remainder of the FS process and remedial design / remedial action (RD/RA). This reorganization into CMUs is intended to recognize that the remedial alternatives, and ultimately the remedial action will proceed in a manner that is likely to cross OU boundaries in order to take advantage of efficiencies derived from fewer mobilizations, and to maximize the utilization of on-site materials for filling, contouring, and capping. This allows for remedial alternatives to be developed and for the remedial action to ultimately proceed in a site-wide, holistic approach, rather than in a manner constrained by OU boundaries.

Commented [A4]: EPA should consider whether this might ultimately be needed, or something like it, given the site specific circumstances. Typically the CMUs are described as phases related to all or portions of OUs.

~~This RI/FS SOW is attached to and is incorporated into the Settlement Agreement and Administrative Order on Consent (AOC) for the Site. Technical work described in this SOW is intended to provide more information to the Respondent for the purpose of implementing the AOC and is not intended to change the meaning of any AOC language. This SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan, commonly calledthe National Contingency Plan (NCP), 40 CFR 300. The AOC and this SOW are hereafter referred to interchangeably as the "AOC." Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the AOC will control any interpretive disputes.~~

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Scope

The specific RI/FS activities to be conducted at the Site are set forth in ~~seven~~ six separate tasks.

Task 1 – Scoping
Task 2 – Community Relations
Task 3 – Site Characterization
Task 4 – Treatability Studies
Task 5 – Feasibility Study
Task 6 – Detailed Analysis of Remedial Alternatives

Oversight

Work conducted under the AOC is intended to satisfy the legal requirements for the RI/FS established under both Section 104(a)(l) of CERCLA and Idaho's Environmental Protection & Health Act, Idaho Code§§ 39-101 to 39-130; the Hazardous Waste Management Act of ldaho, Idaho Code§§ 39-4401 to 39-4432; and Idaho's Water Quality Act, Idaho Code§§ 39-3601 et seq. As such, oversight of the Respondent's Work conducted under the SOW will be carried out by EPA, the USFS, and the IDEQ (the Agencies) in a manner to assure the satisfaction of all federal and state requirements. The Respondent shall support the Agencies' initiation and conduct of activities related to the implementation of oversight activities.

Respondent shall submit all documents or deliverables required as part of this SOW to EPA, for EPA's review and approval. All work products submitted to EPA are subject to EPA approval, including but not limited to, submissions specified in the Work Plan(s) or Settlement Agreement and additional work products that may be required under Work Plan modifications. Respondent shall ensure that all plans, reports, and records are comprehensive, accurate, and consistent in content and format with the NCP and relevant EPA guidance.

EPA's approval of deliverables is required, and allows Midas Gold to proceed to the next steps in implementing the Work. EPA's approval does not imply any warranty of performance, nor does it imply that the RI/FS, when completed, will be ultimately accepted by EPA. EPA retains the right to disapprove deliverables and require revision to meet EPA requirements. EPA may disapprove deliverables including, but not limited to, submissions concerning such matters as contractor selection, work plans, schedules, processes, sampling, or any other deliverables within the context of the Order. EPA may grant Midas Gold extensions of time on individual activity deadlines. As described in Section X of the Order (Submission and Approval of Deliverables), after initial review of any deliverable that is required to be submitted to EPA for approval under this SOW, EPA shall: 1) approve, in whole or in part, the submission; 2) approve the submission upon specified conditions; 3) disapprove, in whole or in part, the submission, or 4) any combination of the foregoing.

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Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA to aid in project planning. These reports must document the status of all work products under development. These reports shall describe the actions and decisions taken, and problems encountered during the previous quarter, and activities scheduled during the upcoming reporting period. Progress reports shall also summarize the extent to which the procedures and dates set forth in the AOC and the Work Plan are being met. These reports shall be submitted according to the Schedule included as Attachment E.

Schedule

Refer to Attachment E for the primary and potential secondary deliverables and associated schedules.

Guidance

The Respondent shall conduct the RI/FS, and produce technical reports that are in accordance with the AOC, SOW, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (RI/FS Guidance) (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance relevant to conducting an RI/FS. A list of the pertinent guidance documents is included at the end on this SOW. Attachments A, B, C, and D include suggested document formats for the Work Plan, Sampling and Analysis Plan, RI Report, and FS Report, respectively. The RI/FS guidance describes the required report contents.

Roles and Responsibilities

The Respondent shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the RI/FS, except as otherwise specified in the AOC. At the completion of the RI/FS, EPA will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision (ROD).

Remedy Requirements

The remedial action alternative selected by the EPA will meet the cleanup standards specified in Section 121 of CERCLA. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements (ARARs) of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS report including the baseline risk assessment (BLRA), as adopted by the EPA, will, with the administrative record, form the basis for the selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

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TASK 1 - SCOPING

Scoping is the initial planning process of the RI/FS. Respondent shall document the specific project scope in the RI/FS Work Plan. During the scoping process, the Site-specific objectives of the RI/FS, including the identification of potential preliminary remediation goals (PRGs) will be proposed by the Respondent and approved by EPA. In addition to developing the Site-specific objectives of the RI/FS, Respondent shall define a general project management approach for the Site, which shall be documented by the Respondent in a draft Work Plan. Because the Work required to perform an RI/FS is not fully known at the outset and is phased in accordance with a Site's complexity and the amount of available information, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study. When scoping the specific aspects of this project, Respondent shall meet with EPA either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site.

The following activities shall be performed by the Respondent as a function of the project planning process.

a. Site Background

The Respondent shall gather, analyze, and present existing Site background information and shall conduct a work session to assist in planning the scope of the RI/FS.

Collect and analyze existing data and document the need for additional data

Before planning RI/FS activities, all existing Site data shall be thoroughly compiled and reviewed by the Respondent. Historical data shall be submitted electronically according to EPA Region 10 specifications. The Respondent shall refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources. Specifically, this must include presently available data relating to the varieties and quantities of hazardous substances at the Site, and past disposal practices. This must also include results from any previous sampling events that may have been conducted. Only data that is determined by EPA to be of appropriate type and quality to support specific intended uses shall be utilized in the RI/FS. This includes data utilized to develop the BLRA, to identify additional data needs to better characterize the Site, to better define potential applicable or relevant and appropriate requirements (ARARs), and to develop a range of preliminarily identified remedial alternatives. Data Quality Objectives (DQOs) shall be established, subject to EPA's approval, which shall be used to assess the usefulness of existing data and to direct future data gathering efforts. Decisions regarding the necessary data needs and DQOs will be made by EPA. Guidance on systematic planning using the data quality objectives process (EPA QA/G-4). Washington, D.C.: 121. http://www.epa.gov/quality/qs-docs/g4-final.pdf, U.S. EPA (2006)

Conduct site visit

The Respondent and EPA shall conduct a Site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of

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contamination as well as potential exposure pathways and receptors at the Site. During the Site visit the Respondent shall observe the Site's physiography, hydrology, geology, and demographics, as well as natural resource, ecological, and cultural resources. This information shall be utilized to better scope the project and to determine the extent of additional data necessary to characterize the Site, better define potential ARARs, and assist in identifying potential remedial alternatives.

b. *Project Planning*

Once the Respondent has collected and analyzed existing data and conducted a Site visit, the specific project scope shall be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols. The Respondent shall meet with EPA's Remedial Project Manager (RPM_____) regarding the following activities and before drafting the scoping deliverables listed below.

Preliminary conceptual site model

Information on the waste sources, pathways, receptors, cultural resources, and other information concerning the Site is used to develop a conceptual understanding of the Site which helps to evaluate potential risks to human health and the environment. The Conceptual Site Model (CSM) should include known and suspected sources of contamination, types of contamination and affected media/resources, known and potential routes of migration, and known or potential human and environmental receptors. This effort, in addition to assisting in identification of locations where sampling is necessary, will also assist in the identification of potential remedial technologies. Additional information for evaluating exposure concerns through the use of a CSM is provided in the DQO Guidance. The CSM must be updated as new information becomes available.

The preliminary CSM associated with the ecological risk assessment (ERA) must include species and their habitats that could be impacted by Site-related contamination based on information generated from a historical review and a cultural resource audit and will show the relationships among species and potential exposure pathways. The Respondent shall provide assistance to the RPM in collecting this information as requested. If information is not provided to the Respondent within the timeframe specified by EPA, the RPM will notify the Respondent in writing either to proceed with the preparation of the RI/FS Work Plan without the information or to delay its submittal pending receipt of the information. The preliminary CSM for the human health risk assessment (HHRA) must identify potential receptor populations and potential exposure pathways.

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Refine and document preliminary remedial action objectives and alternatives

Begin preliminary identification of potential ARARs

The Respondent shall conduct a preliminary identification of potential ARARs (chemical-specific, location-specific, and action-specific) to assist in the refinement of the RAOs and the initial identification of remedial alternatives. ARAR identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.

Once existing Site information has been analyzed and an understanding of the potential Site risks have been determined, the Respondent shall review and, if necessary, refine the Remedial Action Objectives (RAOs) that have been identified by EPA for each actually or potentially contaminated medium. The revised RAOs must be documented in a technical memorandum and subject to EPA's approval. The Respondent shall then identify a preliminary comprehensive range of potential remedial action alternatives and associated technologies. The range of potential alternatives shall encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative. The range of alternatives will also include both no-mining and mining activities as described by the PRO.

Midas Gold will develop the final RAOs and a list of potential ARARs based on the information provided in the final EPA approved RI Reports and the approved human health risk assessments and ecological risk assessments. Additionally, Midas Gold will develop RAOs that are consistent with the EPA Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA and the following provisions:

- Section 121(d) of CERCLA;
- National Contingency Plan (NCP) at 40 CFR § 300.430(e);
- Protective of human health and the environment, as generally defined for individual human exposure by an acceptable risk level for carcinogens between 10-4 and 10-6 (using 10-6 risk level as the point of departure for determining remediation goals for alternatives) and for non-carcinogens a Hazard Index of 1 or less, and no significant adverse impacts to ecological receptors consistent with the NCP at 40 CFR § 300.430(e)(2)(i)(A); See, 1995 Guidance, p.7;
- Ensure that groundwater is restored to its beneficial use, consistent with the NCP, 40 C.F.R. § 300.430(a)(1)(iii)(F), unless an ARARs waiver is justified

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consistent with the requirements of CERCLA section 121(d)(4)(c), 42 U.S.C. § 9621(d)(4), 40 C.F.R. § 300.430(f)(1)(ii)(C), or NAC 445A.22725; and

- Evaluate the extent to which Maximum Contaminant Level Goals or Maximum Contaminant Levels for groundwater established under the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., are considered legally ARARs under section 121(d)(2)(A)(i) of CERCLA for any portion of the affected groundwater aquifer that is a current or potential source of drinking water based on the factors in 40 C.F.R. § 300.400(g)(2) during selection of remedial action goals in the feasibility study. 40 C.F.R. §§ 300.430(e)(2)(i)(B),(C).

Document the need for treatability studies

Respondent shall conduct bench and/or pilot studies as necessary to determine the suitability of various remedial technologies to Site conditions and problems. Technologies that may be suitable to the Site should be identified as early as possible to determine whether there is a need to conduct treatability studies to better estimate costs and performance capabilities. Should treatability studies be determined to be necessary, a testing plan identifying the types and goals of the studies, the level of effort needed, a schedule for completion, and the data management guidelines should be submitted to EPA for review and approval. Upon EPA approval, a test facility and any necessary equipment, vendors, and analytical services will be procured by the contractor.

When the treatability studies are completed, Respondent shall evaluate the results to assess the technologies with respect to the goals identified in the test plan. A report summarizing the testing program and its results shall be prepared by the Respondent and presented in the final RI/FS report. The Respondent shall implement all management and quality control review activities for this task. If remedial actions involving treatment have been identified by the Respondent or EPA, treatability studies shall be required, except where the Respondent can demonstrate to the satisfaction of EPA that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) should be planned to occur concurrently with Site characterization activities.

~~Begin preliminary identification of potential ARARs~~

~~The Respondent shall conduct a preliminary identification of potential ARARs (chemical-specific, location-specific, and action-specific) to assist in the refinement of the RAOs and the initial identification of remedial alternatives. ARAR identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.~~

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c. *Scoping Deliverables*

At the conclusion of the project planning phase, the Respondent shall submit an RI/FS Work Plan, a Sampling and Analysis Plan (SAP) consisting of a Field Sampling Plan (FSP) and Quality Assurance Project Plan (QAPP), and a Site Health and Safety Plan (HASP). These plans must be reviewed and approved by EPA prior to the initiation of field activities.

RI/FS Work Plan

A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM for review and approval. The Work Plan will ~~fully account~~ take in to consideration for the timing and scope of potential mining and processing activities associated with the PRO. This could include a phased approach to focus on issues of most concern or requiring early action. The Work Plan shall be developed in conjunction with the SAP and the Site HASP, although each plan may be delivered under separate cover. The Work Plan shall include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan shall include the rationale for performing the required activities. Specifically, the Work Plan must present a statement of the problem(s) and potential problem(s) posed by the Site and the objectives of the RI/FS. Furthermore, the plan must include a Site background summary setting forth the Site description including the geographic location of the Site, and to the extent possible, a description of the Site's physiography, hydrology, hydrogeology, geology, demographics, ecological, cultural, and natural resource features; a synopsis of the Site history and a description of previous responses that have been conducted at the Site by local, state, federal, or private parties; and a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified, and their distribution among the environmental media at the Site. In addition, the plan must include a description of the Respondent's Site management strategy developed during scoping and a preliminary identification of remedial alternatives and data needs for evaluation of remedial alternatives. The plan must reflect coordination with treatability study requirements, if treatability studies are initiated. It must include a process for and manner of identifying potential ARARs (chemical-specific, location-specific, and action-specific).

Finally, the major part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task and for the BLRA, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the RPM. This includes the deliverables set forth in the remainder of this SOW; a baseline schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to the RPM and meetings and presentations to EPA and the Support Agencies at the conclusion of each major phase of the RI/FS. The

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Respondent must refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required Work Plan, and a suggested format can be found in Attachment A.

Sampling and Analysis Plan

The Respondent shall prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a FSP and a QAPP. A suggested format for the SAP (inclusive of the FSP and QAPP) is provided in Attachment B. The SAP, FSP, and QAPP shall be prepared in accordance with EPA DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006).

The FSP must define in detail the sampling and data-gathering methods that will be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytic methods to identify contamination and remediate contamination consistent with the levels for remedial action objectives identified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), pages 51425-26 and 51433 (December 21, 1988). The QAPP shall be prepared in accordance with requirements in EPA QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision) and specifically should contain the twenty-four elements specified in Table 11 – List of QA Project Plan Elements, EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Investigations, and EPA QA/G-4 Guidance for the Data Quality Objective Process. All sampling and analyses performed pursuant to this SOW shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain-of-custody procedures. In addition, the QAPP must address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

Field personnel must be trained and conduct work in accordance with EPA and OSHA requirements and guidance. The Respondent shall demonstrate, in advance and to the satisfaction of EPA, that each laboratory they may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by EPA will be used. If the laboratory is not in the CLP program, a laboratory QA program must be

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submitted for EPA's review and approval. EPA may require that the Respondent submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment, and material specifications. The Respondent shall provide assurances that EPA has access to laboratory personnel, equipment, and records for sample collection, transportation, and analysis.

Potential Target Analytes

The following list of chemicals include the initial Chemicals of Potential Concern (COPCs). The initial COPC list includes, but is not limited to, the analytes listed below. The Respondent shall review this list for surface water, groundwater, sediments, soils, and vegetation analytes relative to ARARs, preliminary remediation goals (PRGs), screening levels, Site-specific risk assessment data needs, treatability study data needs, feasibility study data needs, and other potential performance standards. All metal analytes (aqueous) shall be analyzed for total and dissolved constituents unless otherwise approved by EPA. Analytes may be added and/or removed from further consideration or monitored at varying frequencies based upon Site-specific factors such as dry or wet year hydrologic cycles as approved or otherwise directed by EPA.

Chemicals/Analytes of Potential Concern for Surface Water

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for surface water sampling stations during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph. A minimum of two storm event sampling events shall be conducted.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Boron
- Cadmium
- Calcium
- Chloride
- Chromium (III)
- Chromium (VI)
- Cobalt
- Copper
- Hardness

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- Iron
- Lead
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrogen, total Kjeldahl
- Phosphorus
- Potassium
- Selenium
- Silver
- Sodium
- Sulphate
- Thallium
- Tungsten
- Total Dissolved Solids
- Total Organic Carbon
- Total Suspended Solids
- Uranium
- Vanadium
- Zinc

Field Analyses
- Conductivity
- Dissolved Oxygen
- Flow
- pH
- Temperature

The Respondent shall review the results of the first year's surface water sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent surface water sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent surface water sampling events.

Chemicals/Analytes of Potential Concern for Sediments:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for sediment sampling stations.

Laboratory Analyses
- Antimony
- Arsenic
- Cadmium

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- Chromium
- Copper
- Lead
- Manganese
- Mercury
- Nickel
- Selenium
- Silver
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Soils/Waste Rock:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for soils/waste rock sampling.

Laboratory Analyses
- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Uranium
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Vegetation:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for vegetation sampling stations.

Laboratory Analyses
- Antimony

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- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Groundwater

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for groundwater sampling stations and shall be sampled at a minimum during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph and the low flow sampling shall be conducted at all groundwater sampling stations as close as possible to the low point of the surface water flow hydrograph.

Laboratory Analyses
- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Calcium
- Chloride
- Chromium III
- Chromium VI
- Cobalt
- Copper
- Hardness
- Iron
- Magnesium
- Manganese

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- Mercury
- Molybdenum
- Nickel
- Nitrate/nitrite as N
- Nitrogen (TKN)
- Orthophosphate
- Potassium
- Selenium
- Silver
- Sodium
- Sulfate
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Total Organic Carbon
- Tungsten
- Uranium
- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen or ORP
- Ferric Iron
- Ferrous Iron
- Nitrite
- pH
- Temperature

The Respondent shall review the results of the first year's groundwater sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent groundwater sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent groundwater sampling events.

Site Health and Safety Plan

A HASP shall be prepared in conformance with the Respondent's health and safety program, and in compliance with OSHA regulations and protocols. It should be noted that EPA does not "approve" the Respondent's health and safety plan, but rather EPA reviews it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

TASK 2 - COMMUNITY RELATIONS

The development and implementation of community relations activities are the responsibility of EPA. The critical community relations planning steps performed by EPA include conducting community interviews and developing a community relations plan.

Although implementation of the community relations plan is the responsibility of EPA, the Respondent may assist by providing information regarding the Site's history, participating in public meetings, and preparing fact sheets for distribution to the general public. In addition, the Respondent shall establish a community information repository, at or near the City of McCall, to house one copy of the administrative record. The CIPP will include providing online access to initial submissions and updates of deliverables, as well as providing online storage and access to all Site documents. The extent of community relations activities involvement by potentially responsible parties (PRPs) is left to the discretion of EPA. The Respondent's community relations responsibilities, if any, are specified in the community relations plan. Any PRP-conducted community relations activities will be subject to oversight by EPA.

TASK 3 - SITE CHARACTERIZATION

As part of the RI, the Respondent shall perform the activities described in this task, including the preparation of a Site characterization summary and a RI report. The overall objective of Site characterization is to describe areas of a Site that may pose a threat to human health or the environment. This is accomplished by first determining a Site's physiography, geology, and hydrology/hydrogeology. Surface and subsurface pathways of migration must be defined. The Respondent shall identify the sources of contamination and define the nature, extent, and volume of the sources of contamination, including their physical and chemical constituents as well as their background concentrations at incremental locations in the affected media. The Respondent shall also investigate the extent of migration of this contamination as well as its volume and any changes in its physical or chemical characteristics, to provide for a comprehensive understanding of the nature and extent of contamination at the Site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the Work Plan, SAP, and HASP are implemented. Field data are collected and analyzed to provide the information required to accomplish the objectives of the study. The Respondent shall notify the RPM at least two weeks in advance of the field work regarding the planned dates for field activities, including ecological field surveys, field layout of the sampling grid, excavation, installation of wells, initiating sampling, installation and calibration of equipment, pump tests, and initiation of analysis and other field investigation activities. The Respondent shall demonstrate that the laboratory and type of laboratory analyses that will be utilized during Site characterization meet the specific QA/QC requirements and the DQOs of the Site investigation as specified in the SAP. In view of the unknown Site conditions, activities are often iterative, and to satisfy the objectives of the RI/FS, it may be necessary for the Respondent to supplement the work specified in the initial Work Plan. In addition to the deliverables below, the

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Respondent shall provide a monthly progress report and participate in weekly meetings or conference calls at major points in the RI/FS.

a. *Field Investigation*

The field investigation shall include the gathering of data to define Site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. These activities shall be performed by the Respondent in accordance with the Work Plan and SAP. At a minimum, this shall address the following:

Implement and document field support activities

The Respondent shall initiate field support activities following approval of the Work Plan and SAP. Field support activities may include obtaining access to the Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondent shall notify the RPM at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM upon completion of field support activities.

Investigate and define site physical and biological characteristics

The Respondent shall collect data on the physical and biological characteristics of the Site and its surrounding areas, including the physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information must be ascertained through a combination of physical measurements, observations, and sampling efforts, and will be utilized to define potential transport pathways and human, cultural, and ecological receptor populations. In defining the Site's physical characteristics, the Respondent shall also obtain sufficient engineering data (such as the effects of contaminated media weathering and ground and surface water contaminant loading) to aid in the projection of contaminant fate and transport, and the development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination

The Respondent shall locate each source of contamination and define the areal extent and depth of contamination associated with each source in all media. The physical characteristics and chemical constituents and their concentrations must be determined for all known and discovered sources of contamination. The Respondent shall conduct sufficient sampling to define the boundaries of the contaminant sources consistent with the QAPP and DQOs.

Defining the source of contamination must include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence over time, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

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~~Describe~~ Delineate the nature and extent of contamination

The Respondent shall gather information to ~~describe~~ delineate the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondent must utilize the information and site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondent shall then implement an iterative monitoring program and any study program identified in the work plan or SAP such that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration of contaminants through the various media at the Site can be determined. In addition, the Respondent shall gather data for calculations of contaminant fate and transport. This process must be continued until the area and depth of contamination are known. This information will be used to determine the level of risk presented by the Site and to help develop appropriate remedial action alternatives for evaluation.

b. *Data Analyses*

Evaluate Site characteristics

The Respondent shall analyze and evaluate the data to describe: (1) Site physical and biological characteristics; (2) contaminant source characteristics; (3) nature and extent of contamination; and (4) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The evaluation must include the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to EPA together with a sensitivity analysis. The RI data shall be presented in a format (i.e., computer disc or equivalent) to facilitate the preparation of the BLRA. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. The Respondent shall then collect any data required to address data gaps identified by EPA as needed to complete the BLRA. This evaluation shall also provide information relevant to Site characteristics necessary to evaluate the need for remedial action in the BLRA and to aid in the development and evaluation of remedial alternatives. Analyses of data collected for Site characterization must meet the DQOs developed in the QA/QC plan stated in the SAP (or as revised during the RI).

c. *Data Management Procedures*

The Respondent shall consistently document the quality and validity of field and laboratory data compiled during the RI.

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Document field activities

Information gathered during Site characterization shall be consistently documented and adequately recorded by the Respondent in well-maintained field logs and laboratory reports. The method(s) of documentation must be specified in the work plan and/or the SAP. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document sample custody, analytical responsibility, analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking

The Respondent shall maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that only validated analytical data are reported and utilized in the development and evaluation of remedial alternatives. Analytical results developed under the Work Plan must not be included in any Site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, the Respondent shall establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

Data validation management

All validated data shall be made available to EPA in electronic format. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. Field and validated analytical data results for all media sampled shall be submitted to EPA by uploading the data to the Water Quality Exchange (WQX) using the Central Data Exchange (CDX). Field and laboratory samples must include information on the sampling locations which will also be submitted to WQX via CDX. (See www.epa.gov/storet/wqx.hmtl)

d. Site Characterization Deliverables

The Respondent shall prepare the preliminary Site characterization summary and the RI report.

Data Summary Reports

After completing each annual field season's sampling and analysis (i.e., at the end of the field season each calendar year), the Respondent shall prepare a concise Site characterization Data Summary Report (DSR). This report must review the investigative activities that have taken place and describe and display Site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, including the affected media, locations, types, physical state, concentrations of contaminants and quantities. In addition, reports shall

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document the location, dimensions, physical condition and varying concentrations of each contaminant for each source and the extent of contaminant migration through each of the affected media. Each DSR must also evaluate data gaps and identify additional and/or modified sampling and analysis that shall be included in modifications to the SAP for each subsequent field season. If acceptable to EPA, the DSR following the final field season of data collection can be eliminated as a separate deliverable, and the information collected during the final field season can be presented in the RI report.

Remedial Investigation Report (RI)

The Respondent shall prepare and submit a draft RI report to the RPM for review and approval. This report shall summarize results of field activities to characterize the Site, sources of contamination, nature and extent of contamination, and the fate and transport of contaminants. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and contents, and a suggested format for the RI report can be found in Attachment C. Following comment by EPA, the Respondent shall prepare a final RI report satisfactorily addressing the comments.

Baseline Risk Assessment (BLRA)

The Respondent shall conduct a BLRA to assess the potential human health, and environmental risks posed by the Site in the absence of any remedial action, but will consider implementation of the PRO. This effort will involve four components: contaminant identification, exposure assessment, toxicity assessment, and risk characterization.

Contaminant Identification – The Respondent shall review available information on all hazardous substances present at the Site and identify the major contaminants of concern. Contaminants of concern should be selected based on their intrinsic toxicological properties because they are present in large quantities, and/or because they are currently in, or potentially may migrate into, critical exposure pathways (e.g., drinking water).

Exposure Assessment – The Respondent shall identify actual or potential exposure pathways, characterize potentially exposed populations, and evaluate the actual or potential extent of exposure.

Toxicity Assessment – The Respondent shall provide a toxicity assessment of those chemicals found to be of concern during Site investigation activities. This will involve an assessment of the types of adverse health or environmental effects associated with chemical exposures, the relationship between magnitude of exposures and adverse effects, and the related uncertainties for contaminant toxicity, (e.g., weight of evidence for a chemical's carcinogenicity). EPA has prepared chemical screening tables with updated toxicity values and Preliminary Remediation Goals for various land uses available from: https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables

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Risk Characterization – The Respondent shall integrate information developed during the exposure and toxicity assessments to characterize the current or potential risk to human health and/or the environment posed by the Site. This characterization should identify the potential for adverse health or environmental effects for the chemicals of concern and identify any uncertainties associated with contaminant(s), toxicity(ies), and /or exposure assumptions.

TASK 4 - TREATABILITY STUDIES

If potential remedial actions involving treatment have been identified by Respondent or EPA, Respondent shall conduct treatability studies except where Respondent can demonstrate to the satisfaction of EPA that they are not needed. The following activities shall be performed by the Respondent to support all treatability studies.

a. Determination of Candidate Technologies and of Need for Testing

The Respondent shall identify in a technical memorandum, subject to EPA review and approval, candidate technologies for a treatability studies program during project planning (Task 1). The listing of candidate technologies must cover the range of technologies required for the development and analysis of alternatives (Task 5 and 6) The specific data requirements for the testing program will be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 3, 5, and 6).

Conduct literature survey and determine the need for treatability testing

The Respondent shall conduct a literature survey to gather information of performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. If practical candidate technologies have not been sufficiently demonstrated or cannot be adequately evaluated for this Site based on available information, treatability testing must be conducted. Where it is determined by EPA that treatability testing is required, and unless the Respondent can demonstrate to EPA's satisfaction that it is not needed, the Respondent shall submit a SOW to the RPM outlining the steps and data necessary to evaluate and initiate the treatability testing program.

Evaluation of treatability studies

Once a decision has been made to perform treatability studies, the Respondent and EPA will decide the types of treatability testing to utilize (e.g., bench and/or pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing should be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, the Respondent shall either submit to the RPM a

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treatability testing work plan or an amendment to the original Site work plan for EPA's review and approval.

b. Treatability Testing and Deliverables

The deliverables that are required, in addition to the memorandum identifying candidate technologies, where treatability testing is conducted, include a work plan, a sampling and analysis plan, and a final treatability evaluation report. EPA may also require a treatability study health and safety plan, where appropriate.

Treatability testing work plan

The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's review and approval, describing the Site background, remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The DQOs for treatability testing must be documented as well. If pilot scale treatability testing is to be performed, the pilot scale work plan will describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-site, permitting requirements must be addressed.

Treatability study SAP

If the original QAPP or FSP does not address activities to be performed during the treatability tests, a separate treatability study SAP or amendment to the original Site SAP must be prepared by the Respondent for EPA's review and approval. Task 1, Item c. of this statement of work provides additional information on the requirements of the SAP.

Treatability study HASP

If the original HASP is not adequate for defining the activities to be performed during the treatment tests, a separate or amended HASP must be developed by the Respondent. Task 1, Item c, of this SOW provides additional information on the requirements of the health and safety plan. EPA does not "approve" thetreatability study HASP.

Treatability study evaluation report

Following completion of treatability testing, the Respondent shall analyze and interpret the testing results in a technical report to EPA. Depending on the sequence of activities, this report may be a part of the RI/FS report or a separate deliverable. The report must evaluate each technology's effectiveness, implementability, cost, and actual results as compared with predicted results. The report must also evaluate

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full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 5 - FEASIBILITY STUDY

The Feasibility Study is comprised of two primary activities: (1) the development and screening of alternatives, and (2) the detailed analysis of alternatives. The alternatives surviving the screening process will be subject to the detailed analysis process. The FS Report must document the results of these two components of FS. Interim deliverables associated with these activities will be identified in the RI/FS Work Plan. The RI and FS are interactive and will be conducted concurrently, to the extent practicable, in a manner that allows information and data collected during the RI to influence the development of remedial alternatives during the FS, which in turn affect additional information and data needs and the scope of any necessary treatability studies and risk assessments.

a. Remedial Alternative Development

The Respondent shall develop and evaluate a range of appropriate waste management options that, at a minimum, will remediate or control any contaminated media (soil, surface water, ground water, sediments) remaining at the Site, as deemed necessary in the RI to ensure protection of human health and the environment and comply with ARARs, concurrent with the RI site characterization task.

A range of remedial alternatives must be developed to identify and provide a variety of waste management options which then can be evaluated. This range of alternatives must include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which varies in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed. Options involving containment with little or no treatment must be included, as well as options involving both treatment and containment, and a no-action alternative. The following activities shall be performed by the Respondent during the development of remedial alternatives.

<u>Refine and document remedial action objectives</u>

Based on the BLRA, the Respondent shall review, and if necessary, modify the Site-specific remedial action objectives (RAOs) and the list of applicable preliminary remediation goals (PRGs). The modified PRGs shall be documented in a technical memorandum that will be reviewed and approved by EPA. These modified PRGs must specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

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Develop general response actions

The Respondent shall develop a range of general response actions for each medium of interest addressing containment, treatment, excavation, pumping, or any other actions, singly or in combination, that may be utilized to satisfy the remedial action objectives for the Site.

Identify areas or volumes of media

The Respondent shall identify volumes and/or areas of media to which general response actions might be applied, taking into account the requirements for protectiveness as identified in the RAOs and the chemical and physical characterization of the Site.

Identify, screen, and document remedial technologies

The Respondent shall identify and evaluate potential remedial technologies applicable to each general response action. The Respondent shall identify various alternatives for implementing each remedial technology. These alternatives must be evaluated and screened based upon their effectiveness, implementability, and cost factors. Generally, this screening is only necessary when there are many feasible alternatives available for detailed analysis. If necessary, the screening of alternatives shall be conducted to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening must preserve the range of treatment and containment alternatives that was initially developed insuring that the alternatives will meet RAOs, ARARs and all other identified performance standards. The range of remaining alternatives must include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondent shall prepare a technical memorandum summarizing the results and reasoning employed in screening and arraying alternatives that remain after screening. In addition, a description of the remedial technology alternatives which were eliminated from further consideration as well as the reasons for eliminating the alternatives must be included in the memorandum.

Assemble and document alternatives

The Respondent shall assemble selected representative technologies into a range of alternatives for each affected medium or operable unit. Together, all of the alternatives will represent treatment and containment combinations that will address either all of the Site or operable units. A summary of the assembled alternatives and their related action-specific ARARs must be prepared for EPA by the Respondent for inclusion in a technical memorandum.

TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES

The detailed analysis of alternatives shall be conducted by the Respondent to provide EPA with the information needed to allow for the selection of a Site remedy. This analysis is the final task to be performed by the Respondent during the FS.

a. Detailed Analysis of Alternatives

The Respondent shall conduct a detailed analysis of alternatives which must consist of an analysis of each option against a set of nine evaluation criteria and a comparative analysis of all options using the same evaluation criteria as a basis for comparison. EPA has developed the nine evaluation criteria to address the statutory requirements and preferences of CERCLA

Apply nine criteria and document analysis

The Respondent shall apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. Each alternative will be evaluated against the nine criteria contained in the National Contingency Plan (40 CFR Part 300.430(e)(9) (iii)). ~~The evaluation criteria include:~~ (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) costs; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: Criteria 8 and 9 are considered after the RI/FS report has been released to the general public). For each alternative, the Respondent must provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative; and (2) a discussion of the individual criterion assessment.

Compare alternatives against each other and document the comparison of alternatives

The Respondent shall perform a comparative analysis between the remedial alternatives. That is, each alternative must be compared against the others using the evaluation criteria as a basis of comparison. Identification and selection of the preferred alternative are reserved by EPA. The Respondent shall prepare a technical memorandum summarizing the results of the comparative analysis.

b. Detailed Analysis Deliverables

In addition to the technical memorandum summarizing the results of the comparative analysis, the Respondent shall submit a draft FS report to the RPM for review and approval. Once EPA's comments have been addressed by the

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Respondent to the satisfaction of EPA, the final FS report may be bound with the final RI report.

Feasibility Study report

The Respondent shall submit a draft FS report for EPA and the Support Agencies' review and comment. This report, as ultimately adopted or amended by EPA, provides a basis for remedy selection by EPA, and documents the development and analysis of remedial alternatives. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and the required report content, and a suggested format for the report can be found in Attachment D. The Respondent shall prepare a final FS report which satisfactorily addresses the comments.

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REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process.

The (revised) National Oil and Hazardous Substance Pollution Contingency Plan (NCP).

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA", U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3.

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"A Compendium of Superfund Field Operations Methods", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.

U.S. EPA, NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA -330/9-78-991-R.

"Data Quality Objectives for Remedial Response Activities", U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.

"Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Research and Development, Cincinnati, Ohio, QAMS-004/80, December 29, 1980.

"QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision), EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Studies, and EPA QA/G-4 Guidance for the Data Quality Objective Process"

"Interim Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.

"Users Guide to the Lead Agency(ies) Contract Laboratory Program, U.S. EPA, Sample Management Office, August 1982.

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"Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements", U.S. EPA, Office of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.

"CERCLA Compliance with Other Laws Manual", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.

"Guidance on Remedial Actions for Contaminated Groundwater at Superfund Sites", U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.

"Draft Guidance on the Lead Agency(ies) Superfund Decision Documents", U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02.

"Risk Assessment Guidance for Superfund--Volume I, Human Health Evaluation Manual (Part A)", December 1989, EPA/540/1-89/002.

"Risk Assessment Guidance for Superfund--Volume II Environmental Evaluation Manual", March 1989, EPA /540/1-89/001.

"Guidance for Data Usability in Risk Assessment", October 1990, EPA /540/G-90/008. "Performance of Risk Assessments in Remedial Investigation/ Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)", August 28, 1990, OSWER Directive No. 9835.15.

"Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions", April 22, 1991, OSWER Directive No. 9355.0-30.

"Health and Safety Requirements of Employees Employed in Field Activities", U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

"Interim guidance on Administrative Records for Selection of CERCLA Response Actions", U.S. EPA, Office of Waste Programs Enforcement, March 1, 1989, OSWER Directive No. 9833.3A.

"Community Relations in Superfund: A Handbook", U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9320.0-03B.

"Community Relations During Enforcement Activities and Development of the Administrative Record", U.S. EPA, Office of Waste Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1A.

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Attachments

Attachment A – Suggested RI/FS Work Plan Format

Executive Summary

1. Introduction
2. Site Background and Setting
3. Initial Evaluation
   - Types and volumes of waste present
   - Potential pathways of contaminant migration/preliminary public health and environmental impacts
   - Preliminary identification of operable units
   - Preliminary identification of response objectives and remedial action alternatives
4. Work Plan Rationale
   - DQO needs
   - Work Plan approach
5. RI/FS Tasks
6. Cost and Key Assumptions
7. Schedule
8. Project Management
   - Staffing
   - Coordination
9. References

Appendices

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Attachment B – Suggested Format for SAP (FSP and QAPP)

FSP

1. Site Background
2. Sampling Objectives
3. Sample Location and Frequency
4. Sample Designation
5. Sampling Equipment and Procedures
6. Sample Handling and Analysis

QAPP

Project Management

A1 Title and Approval Sheet
A2 Table of Contents
A2 Distribution List
A4 Project/Task Organization
A5 Problem Definition/Background
A6 Project/Task Description
A7 Quality Objectives and Criteria
A8 Special Training/Certifications
A9 Documentation and Records

Data Generation and Acquisition

B1 Sampling Process Design (Experimental Design)
B2 Sampling Methods
B3 Sample Handling and Custody
B4 Analytical Methods
B5 Quality Control
B6 Instrument/Equipment Testing, Inspection, and Maintenance
B7 Instrument/Equipment Calibration and Frequency
B8 Inspection/Acceptance of Supplies and Consumables
B9 Non-direct Measurements
B10 Data Management

Assessment and Oversight

C1 Assessments and Response Actions
C2 Reports to Management

Data Validation and Usability

D1 Data Review, Verification, and Validation
D2 Verification and Validation Methods
D3 Reconciliation with User Requirements

~~Title Page~~

~~Table of Contents~~

~~1. Project Description~~

~~2. Project Organization and Responsibilities~~

~~3. QA Objectives for Measurement~~

~~4. Sampling Procedures~~

~~5. Sample Custody~~

~~6. Calibration Procedures~~

~~7. Analytical Procedures~~

~~8. Data Reduction, Validation, and Reporting~~

~~9. Internal Quality Control~~

~~10. Performance and Systems Audits~~

~~11. Preventative Maintenance~~

~~12. Data Assessment Procedures~~

~~13. Corrective Actions~~

~~14. Quality Assurance Reports~~

Attachment C – Suggested RI Report Format

Executive Summary

1. Introduction
   - 1.1 Purpose of Report
   - 1.2 Site Background
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Previous Investigations
   - 1.3 Report Organization
2. Study Area Investigation
   - 2.1 Includes field activities associated with site characterization. These may include physical and chemical monitoring of some, but not necessarily all, of the following:
     - 2.1.1 Surface Features (topographic mapping, etc.) (natural and manmade features)
     - 2.1.2 Contaminant Source Investigations
     - 2.1.3 Meteorological Investigations
     - 2.1.4 Surface-Water and Sediment Investigations
     - 2.1.5 Geological Investigations
     - 2.1.6 Soil and Vadose Zone Investigations
     - 2.1.7 Ground-Water Investigations
     - 2.1.8 Human Population Surveys
     - 2.1.9 Ecological Investigations
   - 2.2 If technical memoranda documenting field activities were prepared, they may be included in an appendix and summarized in this report chapter
3. Physical Characteristics of the Study Area
   - 3.1 Includes results of field activities to determine physical characteristics. These may include some, but not necessarily all, of the following:
     - 3.1.1 Surface Features
     - 3.1.2 Meteorology
     - 3.1.3 Surface-Water Hydrology
     - 3.1.4 Geology
     - 3.1.5 Soils
     - 3.1.6 Hydrogeology
     - 3.1.7 Demography and Land Use
     - 3.1.8 Ecology
4. Nature and Extent of Contamination

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4.1 Presents the results of Site characterization, both natural and chemical components and contaminants in some, but not necessarily all, of the following media:

4.1.1 Sources (lagoons, sludges, tanks, etc.)

4.1.2 Soils and Vadose Zone

4.1.3 Ground Water

4.1.4 Surface Water and Sediments

4.1.5 Air

5. Contaminant Fate and Transport

5.1 Potential Routes of Migration (i.e., air, groundwater, etc.)

5.2 Contaminant Persistence

5.2.1 If they are applicable (i.e., for organic contaminants), describe estimated persistence in the study area environment and physical, chemical, and/or biological factors of importance for the media of interest

5.3 Contaminant Migration

5.3.1 Discuss factors affecting contaminant migration for the media of important (e.g., sorption onto soils, solubility in water, movement of ground water, etc.)

5.3.2 Discuss modeling methods and results, if applicable

6. Baseline Risk Assessment

6.1 Human Health Evaluation

6.1.1 Exposure Assessment

6.1.2 Toxicity Assessment

6.1.3 Risk Characterization

6.2 Environmental Evaluation

7. Summary and Conclusions

7.1 Summary

7.1.1 Nature and Extent of Contamination

7.1.2 Fate and Transport

7.1.3 Risk Assessment

7.2 Conclusions

7.2.1 Data Limitations and Recommendations for Future Work

7.2.2 Recommended Remedial Action Objectives

Appendices

A. Technical Memorandum on Field Activities (if available)

B. Analytical Data and QA/QC Evaluation Results

C. Risk Assessment Methods

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Attachment D – Suggested Format for Feasibility Study Report

Executive Summary

1. Introduction
   - 1.1 Purpose and Organization Report
   - 1.2 Background Information (Summarized from RI Report)
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Nature and Extent of Contamination
     - 1.2.4 Contaminant Fate and Transport
     - 1.2.5 Baseline Risk Assessment
2. Identification and Screening of Technologies
   - 2.1 Introduction
   - 2.2 Remedial Action Objectives – Presents the development of remedial action objectives for each medium of interest (i.e., ground water, soil, surface water, air, etc.) For each medium, the following should be discussed:
     - Contaminants of interest
     - Allowable exposure based on risk assessment (including ARARs) Development of remediation goals
   - 2.3 General Response Actions – For each medium of interest, describes the estimation of areas or volumes to which treatment, containment, or exposure technologies may be applied.
   - 2.4 Identification and Screening of Technology Types and Process Options – For each medium of interest, describe:
     - 2.4.1 Identification and Screening of Technologies
     - 2.4.2 Evaluation of Technologies and Selection of Representative Technologies
3. Development and Screening of Alternatives
   - 3.1 Development of Alternatives – Describes rationale for combination of technologies/media into alternatives. Note: This discussion may be by medium or for the Site as a whole.
   - 3.2 Screening of Alternatives (if conducted)
     - 3.2.1 Introduction
     - 3.2.2 Alternative 1
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.2 Alternative 2
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.3 Alternative 3

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3.2.3.1 Description
3.2.3.2 Evaluation

4. Detailed Analysis of Alternatives
   - 4.1 Introduction
   - 4.2 Individual Analysis of Alternatives
     - 4.2.1 Alternative 1
       - 4.2.1.1 Description
       - 4.2.1.2 Evaluation
     - 4.2.2 Alternative 2
       - 4.2.2.1 Description
       - 4.2.2.2 Evaluation
     - 4.2.3 Alternative 3
       - 4.2.3.1 Description
       - 4.2.3.2 Evaluation
   - 4.3 Comparative Analysis

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Attachment E – Stibnite Mine Remedial Investigation and Feasibility Study (RI/FS) Statement of Work (SOW) Schedule

RI/FS Work Plan/Sampling and Analysis Plan (WP/SAP):

- Draft due within 120 days after the Effective Date of the Settlement Agreement/CO.
- Final Work Plan due within 90 days of receipt of consolidated Agency comments.

Data Summary Reports (DSRs):

- Draft DSRs due within 120 days completion of each season's field work or within 90 days of the receipt of final laboratory data, whichever is earlier. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the completion date. Within 5 days of the receipt of final laboratory data for the preceding field season, Respondent shall provide written notification to EPA identifying the receipt date of final laboratory data.
- Final DSRs due within 30 days of receipt of consolidated Agency comments.

Remedial Investigation Report (RI):

- Submit draft RI within 120 days after receipt of laboratory data from the final field season. Within 5 days of receipt of final laboratory data, Respondent shall provide written notification to EPA identifying receipt date of final laboratory data.
- Final RI due within 60 days of receipt of consolidated Agency comments.

Baseline Risk Assessment Report (BLRA):

- Submit draft BLRA within 60 days after submittal of Final RI.
- Final BLRA due within 60 days of receipt of consolidated Agency comments.

Feasibility Study (FS):

- Submit draft FS within 120 days after submittal of BLRA Report.
- Final FS due within 90 days of receipt of consolidated Agency comments.

Data Validation Summaries (DVSs):

- DVSs due within 120 days from the date of collection of the last sample from each sampling event. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the date of collection of the last sample from each sampling event.

Interim Deliverables

- Draft Interim Deliverables (i.e., Technical Memoranda for Treatability Studies Preliminary Remedial Goals, Remedial Action Objectives, etc.) as identified in the SOW, or as required by EPA, shall be due within 30 days receipt of notice by Respondent that said Deliverable is required.
- Final Interim Deliverables due within 60 days of receipt of consolidated Agency comments.

Quarterly Progress Reports

- Quarterly Progress Reports shall be due 15 days after the end of the previous calendar quarter.

[1]Documents may initially be released as "draft final" pending final resolution of issues.

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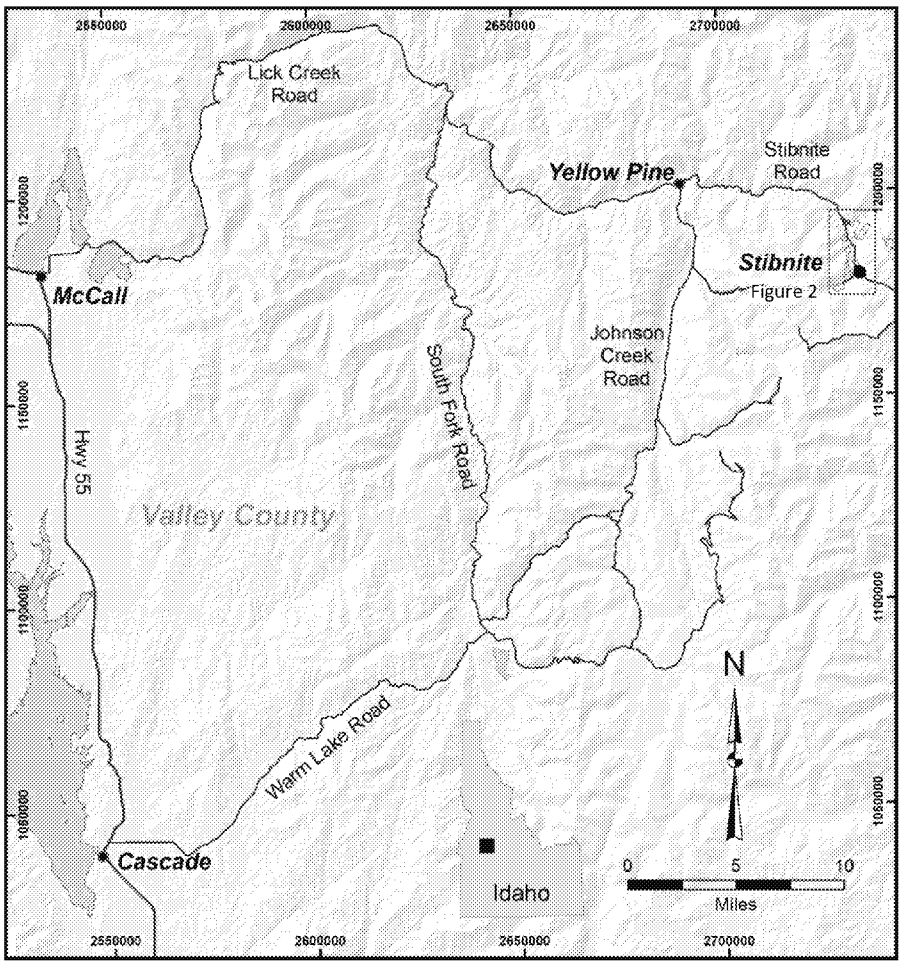

Figure 1 – Site Location

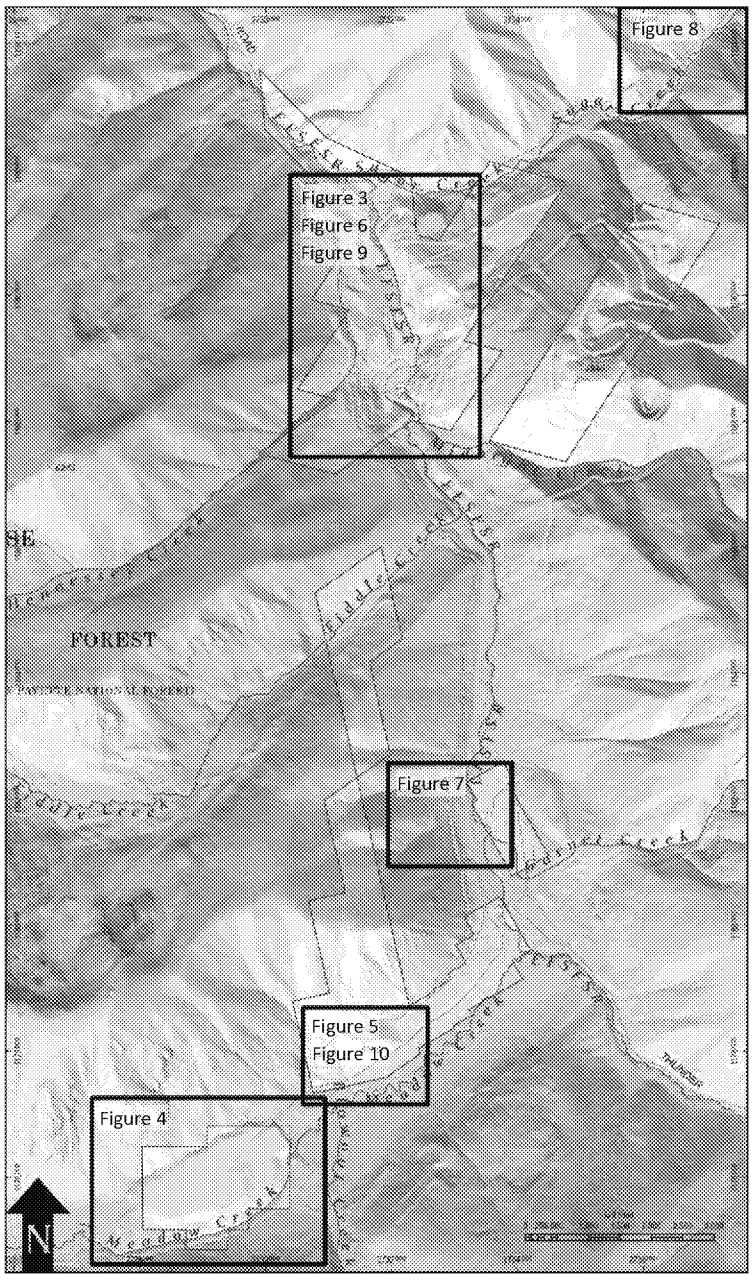

Figure 2 – Stibnite Mine Site

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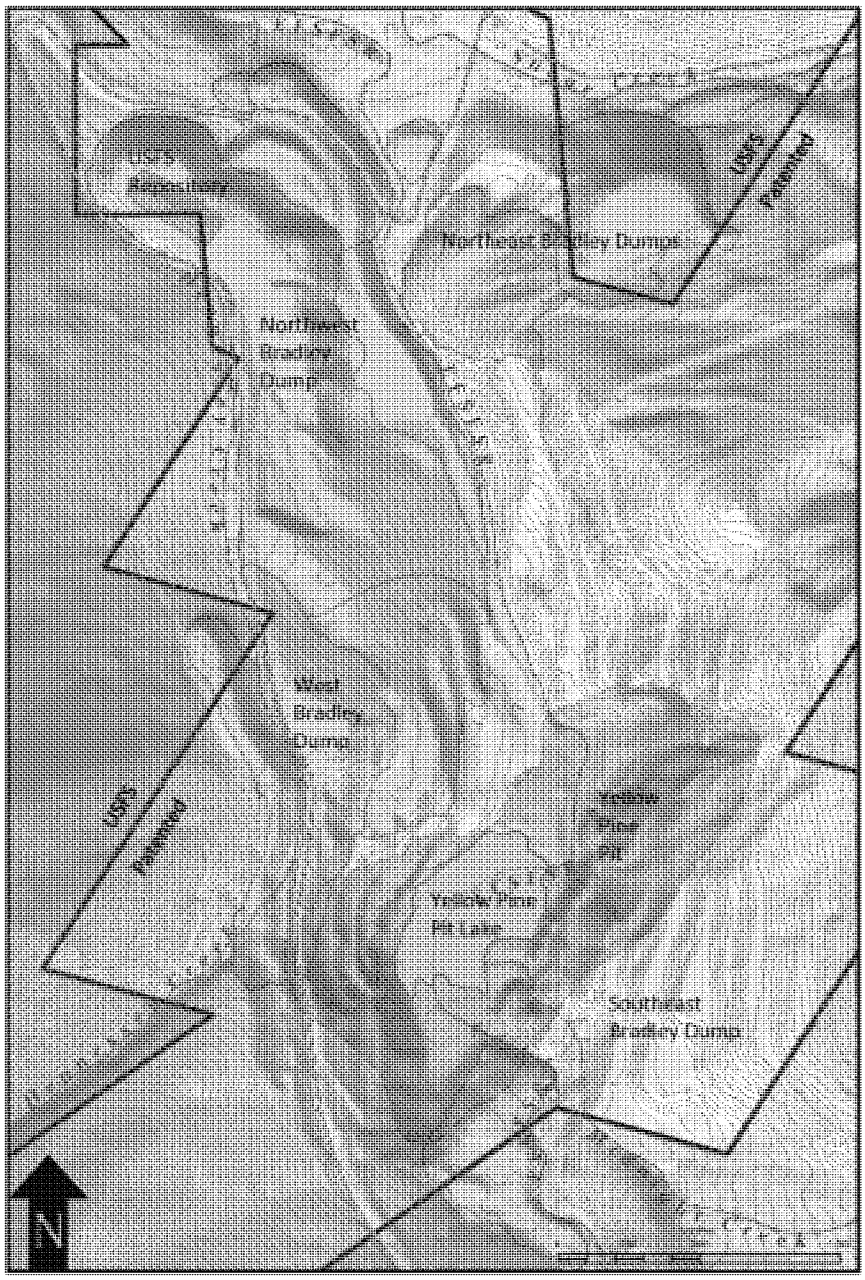

Figure 3 –Yellow Pine Pit

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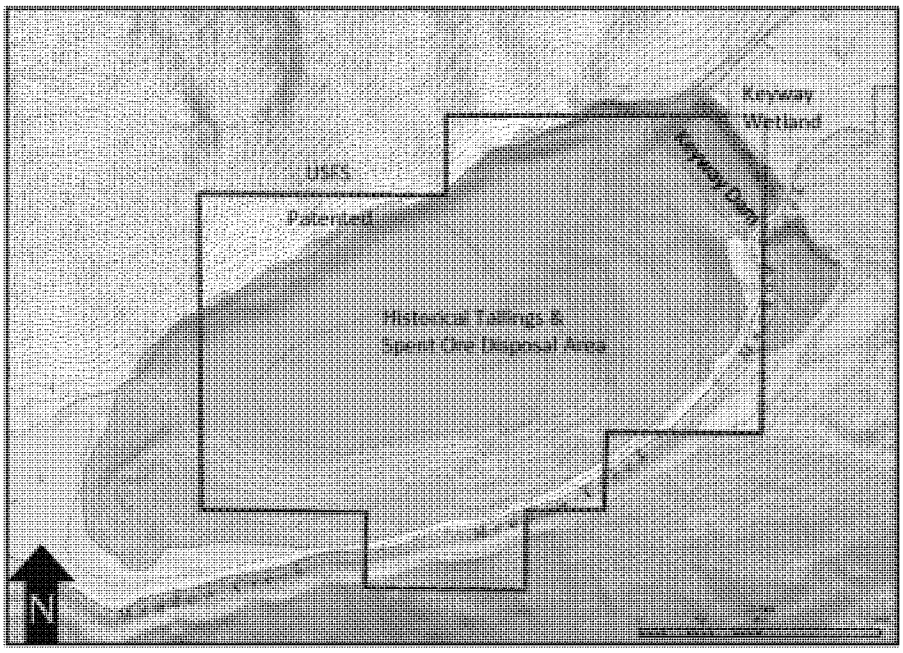

Figure 4 – Historical Tailings and Spent Ore Disposal Area

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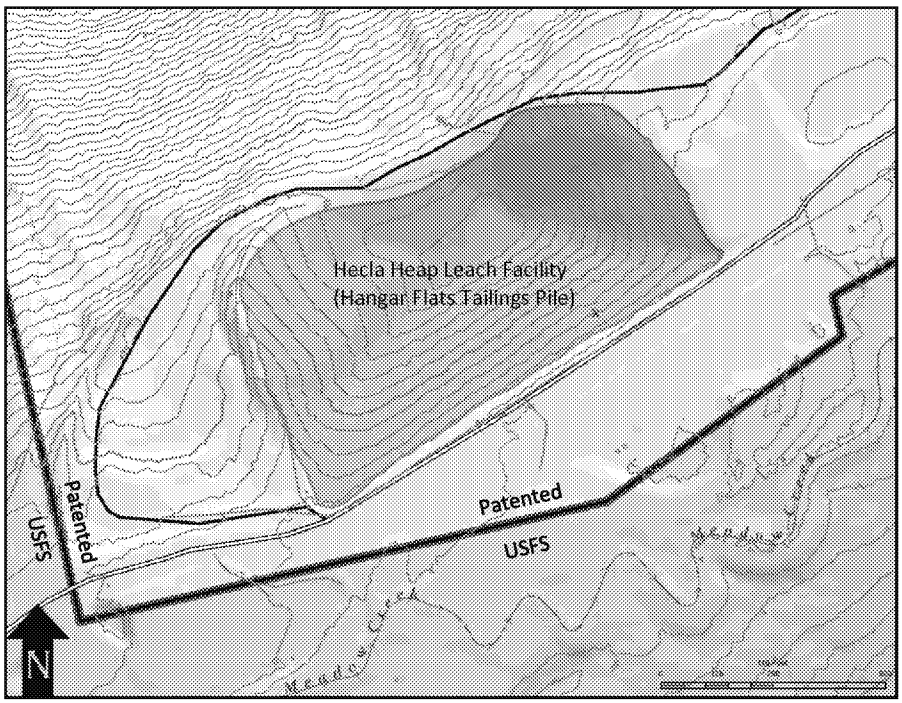

Figure 5 – Hecla Heap Leach Facility

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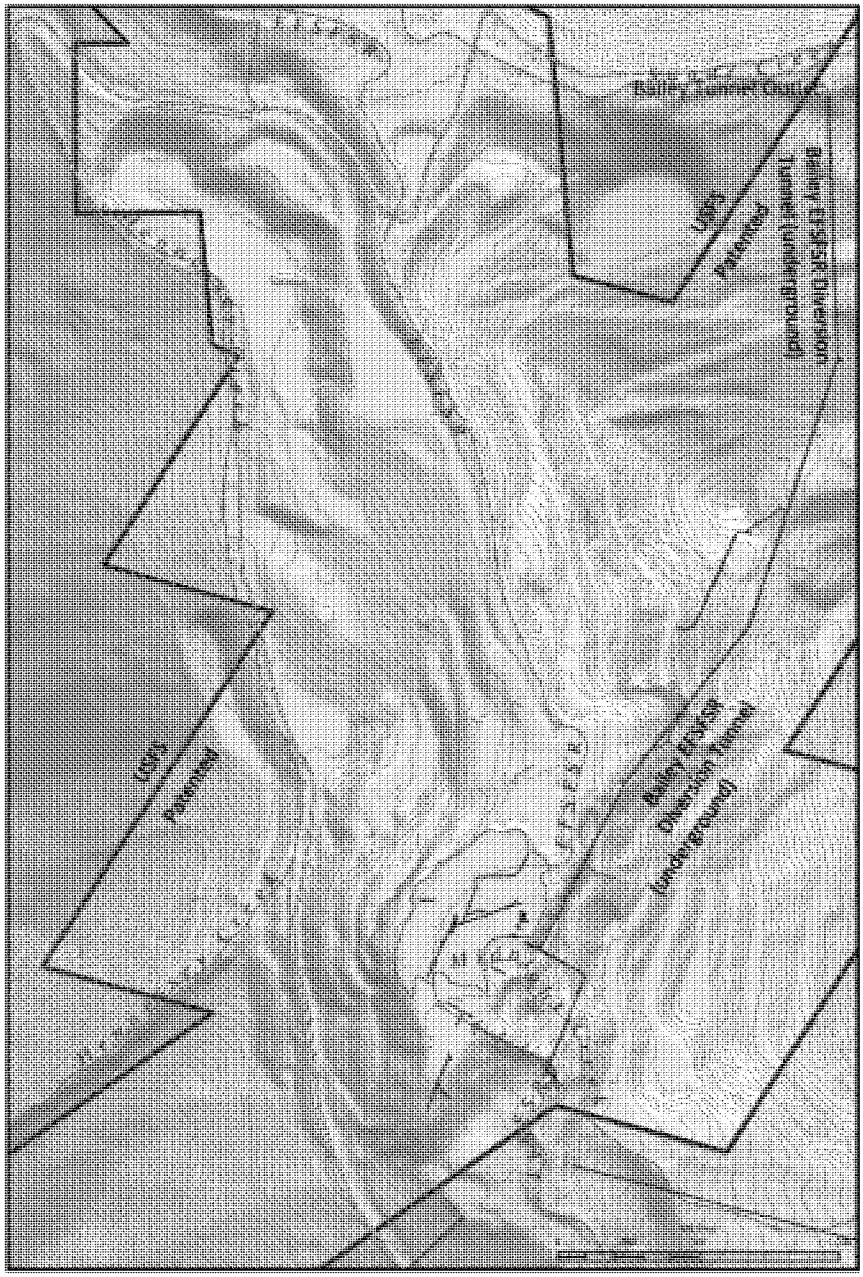

Figure 6 – Bailey Tunnel

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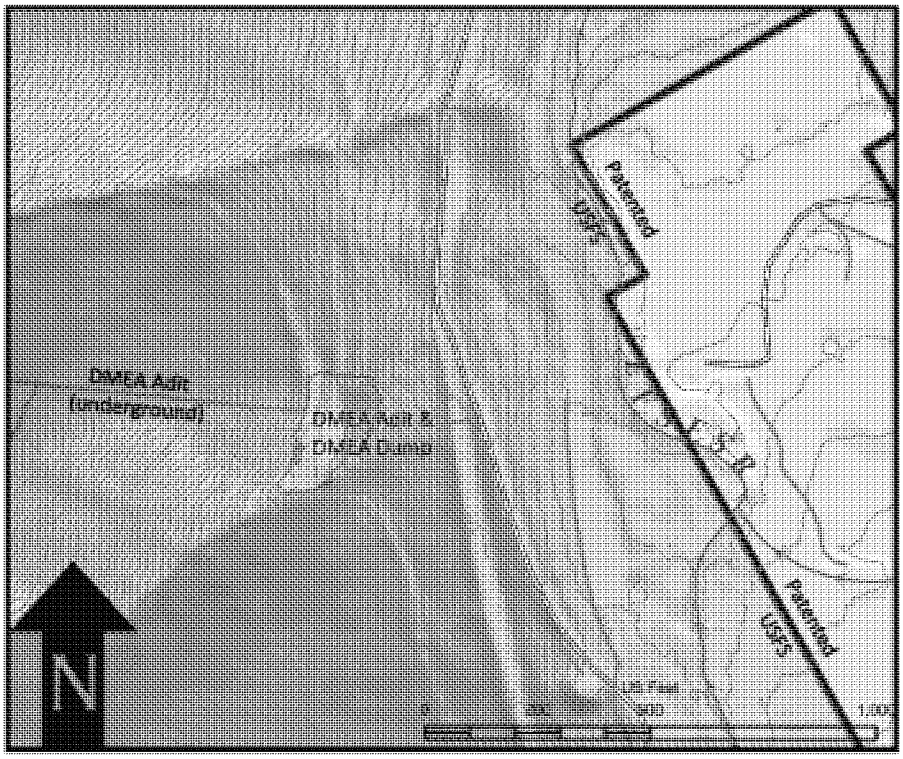

Figure 7 – Defense Minerals Exploration Administration Adit and Waste Rock Dump

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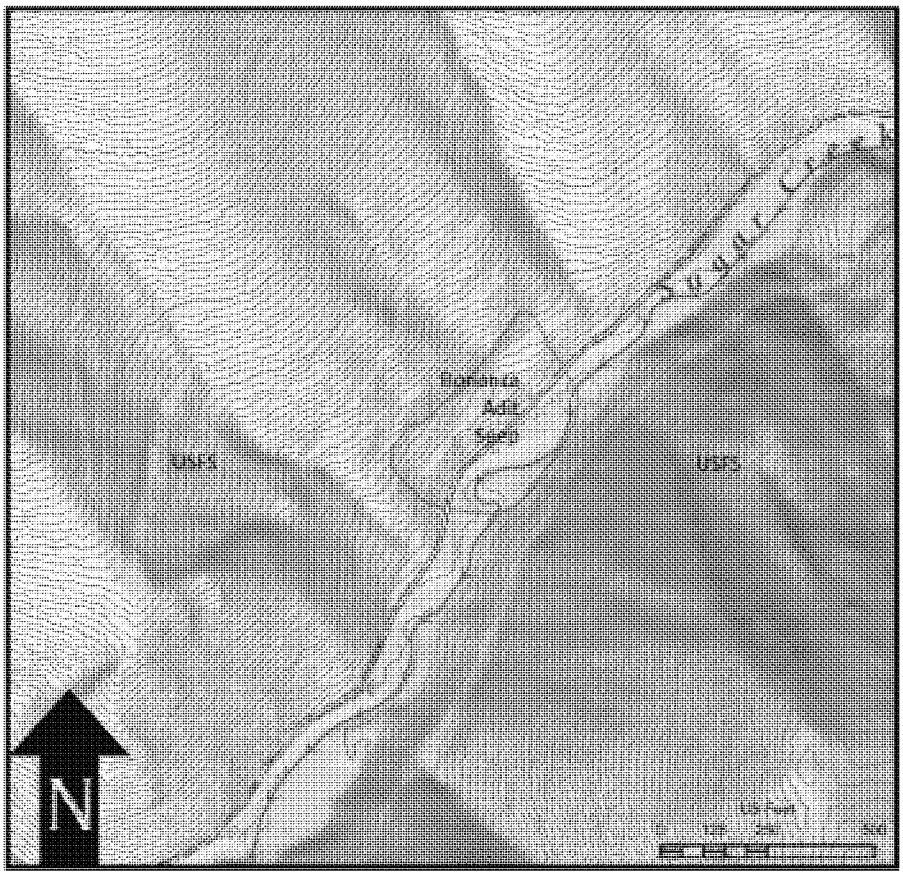

Figure 8 – Bonanza Adit

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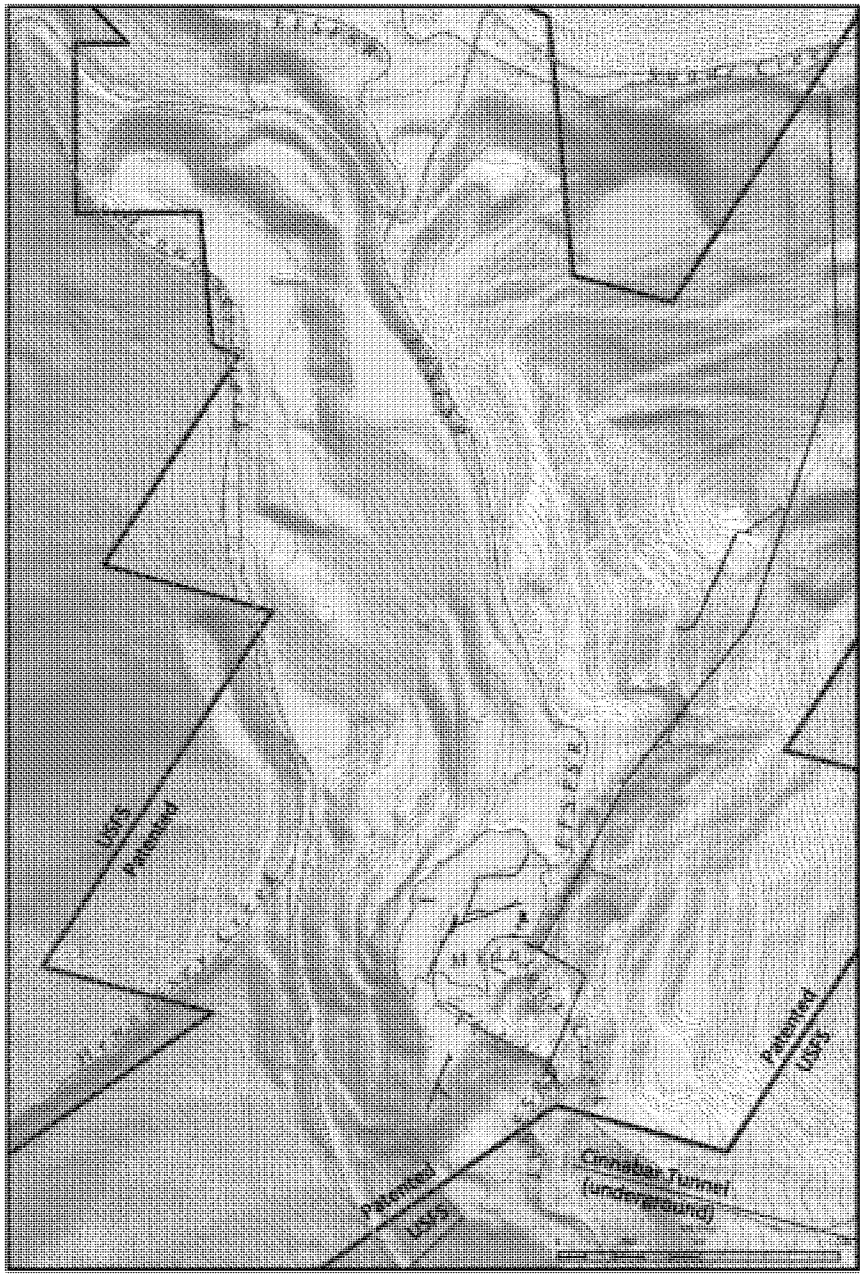

Figure 9 – Cinnabar Tunnel

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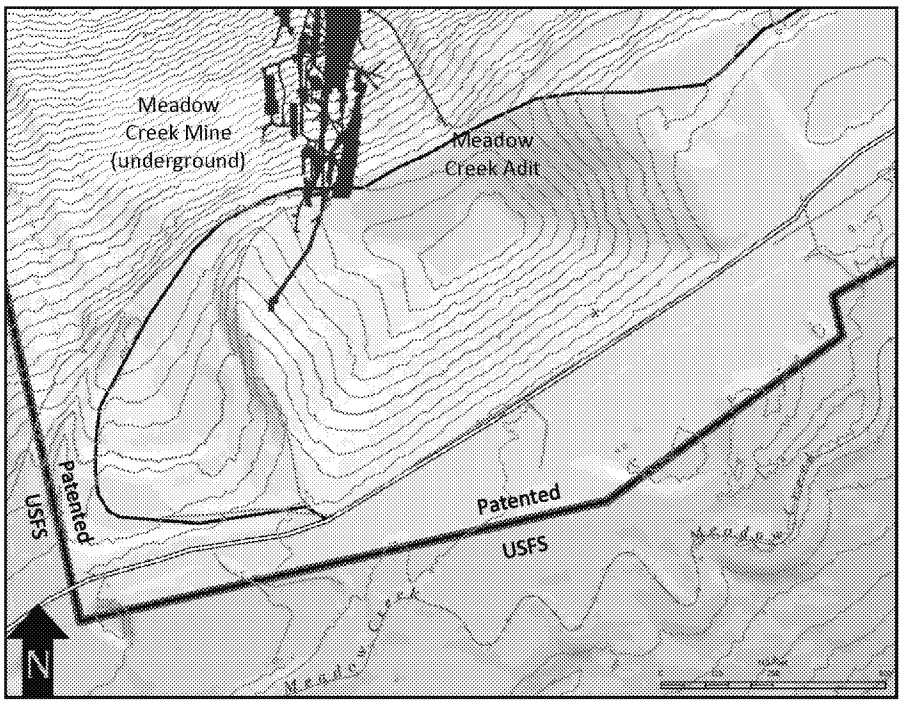

Figure 10 – Meadow Creek Adit

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EXHIBIT 4

to

Declaration of Michael Bogert

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10
AND
THE STATE OF IDAHO

IN THE MATTER OF: Stibnite Mine Site Stibnite, Idaho Midas Gold Idaho, Inc. [MGII/MGC] Proceeding Under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675	CERCLA Docket No. _____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR [REMOVAL] ACTIONS**

CONCEPT DRAFT

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), the State of Idaho (State) and Midas Gold Corp. (MGC) as the owner of Midas Gold Idaho, Inc. (MGII) and Idaho Gold Resources Company, LLC (IGRCLLC) IGRCLLC as the owner of Stibnite Gold Company (SGC), with MGII being the Site Operator and IGRCLLC and SGC being the owners of various patented, unpatented and mill site claims that comprise the property. This Settlement provides for the performance of Work by MGII in connection with the property located in Valley County, Idaho, known as the Stibnite Mine Site (Site).

2. This Settlement is issued under the authority vested in the President of the United States by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994). This Settlement is also entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States.

3. MGII, MGC, IGRCLLC and SGC represent that they will meet all of the BFPP provisions in CERCLA §§ 101(40)(A)-(H) and 107(r)(l), 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r)(l) and that they will continue to comply with these requirements during the time in which they have an operational and/or ownership interest in the Site. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the Site, and the risk of claims under CERCLA being asserted against MGII, MGC, IGRCLLC and SGC as a consequence of their activities at the Site pursuant to this Settlement, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section [INSERT] (Reservations of Rights by United States), any potential liability of MGII, MGC, IGRC and SGC under CERCLA for the Existing Contamination as defined by Paragraph 8 below.

4. EPA, MGII, MGC, IGRCLLC and SGC recognize that this Settlement has been negotiated in good faith. MGII, MGC, IGRCLLC and SGC agree to comply with and be bound by the terms of this Settlement and they further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon MGII, MGC, IGRCLLC, SGC and their successors and assigns. Any change in ownership or corporate status of MGII, MGC, IGRCLLC and SGC including, but not limited to, any transfer of assets or real or personal property shall not alter MGII, MGC, IGRCLLC or SGC's responsibilities under this Settlement.

6. Each undersigned representative of MGII, MGC, IGRCLLC and SGC certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind MGII, MGC, IGRCLLC and SGC to this Settlement.

7. MGII, as the Site Operator, shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing MGII with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. MGII or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. MGII shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"BFPP" shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section [INSERT].

"EFSFSR" shall mean the East Fork of the South Fork of the Salmon River.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Existing Contamination" shall mean:

a. any hazardous substances, pollutants, contaminants or Waste Materials present or existing on or under the Site as of the Effective Date;

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b. any hazardous substances, pollutants, contaminants or Waste Materials that migrated from the Site prior to the Effective Date; and

c. any hazardous substances, pollutants, contaminants or Waste Materials presently at the Site that migrate onto or under or from the Site after the Effective Date.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, not inconsistent with the NCP, that the United States and the State incur in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs.

"IDEQ" shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State.

"IGRCLLC" shall mean Idaho Gold Resources Company, LLC.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at http://www.epa.gov/superfund/superfund-interest-rates.

"MGC" shall mean Midas Gold Corporation.

"MGII" shall mean Midas Gold Idaho, Inc.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA, the State, MGII, MGC, IGRCLLC and SGC.

"Plan of Restoration and Operations" or "PRO" shall mean the approved plan of operations by the United States Forest Service pursuant to 36 C.F.R. § 228.5.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"RPM" shall mean the Remedial Project Manager as defined in 40 C.F.R. § 300.5.

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"SGC" shall mean Stibnite Gold Company.

"Stibnite Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent for Removal Action and all appendices attached hereto (listed in Section [INSERT] (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the Stibnite Mine Site, located in Stibnite, Idaho, approximately 15 miles east of Yellow Pine, Idaho in Valley County, Idaho, 78 miles from McCall, and depicted generally on the map attached as Appendix A.

"State" shall mean the State of Idaho.

"Statement of Work" or "SOW" shall mean the document describing the activities MGII must perform pursuant to this Settlement, as set forth in Appendix B, and any modifications made thereto in accordance with this Settlement.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous substances" under Idaho Chapter 34A-11.

"Work" shall mean all activities and obligations MGII is required to perform under this Settlement except those required by Section [INSERT] (Record Retention).

IV. STATEMENT OF FACTS

9. MGII is a wholly owned subsidiary of MGC. MGC is a Canadian company doing business in the State of Idaho through MGII. Pursuant to the United States Forest Service Plan of Restoration and Operations and 36 CFR 228.3 (b), MGII is an "operator," which is "[a] person conducting or proposing to conduct operations" on the Site.

10. IGRCLLC and SGC are owners of patented lode claims, patented mill site claims, unpatented federal lode claims and unpatented federal mill site claims which cover approximately 27,104 acres (approximately 42 square miles).

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11. The Stibnite Mine Site is located on the Payette National Forest in Valley County, Idaho, approximately 15 miles east of Yellow Pine, Idaho, 40 miles east of McCall, Idaho and 98 miles east of Boise, Idaho.

12. Mining at the Site began in the mid-1920s and continued into the 1950s. This first period of activity involved the mining of gold, silver, antimony, and tungsten mineralized materials by both underground and, later, open-pit mining methods.

13. During World War II, the Site is estimated to have produced more than 90% of the Nation's antimony and 65% of the Nation's tungsten, materials that were used in advancing the war effort, including munitions, steel-making, fire retardants, and other purposes. Strategic mining operations continued through much of the Korean War, and antimony, gold, and tungsten mining and milling ceased in 1952, near the end of the Korean War.

14. A second major period of activity at the Site began with exploration activities in 1972, and was followed by open-pit mining and seasonable on-off heap leaching and one-time heap leaching from 1982 to 1997. With ore provided by multiple operators from a number of locations, and processed in adjacent heap-leaching facilities, over 10 million tons of ore were mined and processed.

15. During the years of production, millions of cubic yards of mine tailings were deposited at locations within the Site, and in some cases, spent ore was permanently placed over historical Stibnite mill tailings that had previously been discarded.

16. Past additional actions at the Site include building removal, equipment removal, the 1965 failure of a hydropower dam on the East Fork of Meadow Creek (commonly referred to as "Blowout Creek), and the creation and storage of Waste Materials deposited at locations within the Site.

17. The mining activity at the Site resulted in CERCLA remedial actions by EPA, the Forest Service and the State of Idaho. Among other actions, minor quantities of legacy tailings have been removed, Meadow Creek was re-channelized, and certain legacy tailings impoundments have been covered with clean fill.

18. The Site has been subject to substantial cost recovery litigation under CERCLA, and several consent decrees emerged from these actions including *Mobil Oil v. United States*, Civ. No. 99-1467-A (D. Virginia) (consent decree filed June 26, 2000); *United States v. Oberbillig* (D. Idaho) (consent decree filed March 18, 2004; and *United States v. Bradley Mining Company*, Case No. 3:08-CV-03968 TEH and *United States v. Bradley Mining Company*, Case No. 3:08-CV-05501 TEH (N.D. Ca.) (consent decree filed April 19, 2012).

19. In some of the above-noted cost recovery litigation, the Site has been alleged to be a CERCLA "facility" as defined by Section 101 (9) of CERCLA, 42 U.S.C. § 9601 (9).

20. Notwithstanding multiple completed response actions, legacy tailings and contamination remain buried and unremediated over much of the Stibnite Mine Site.

21. MGII's Plan of Restoration and Operations, as approved by the Forest Service, will disturb legacy areas at the Stibnite Mine Site. By entering into this Agreement, the Parties understand that it is the intent of MGII to remove and then productively mine certain legacy tailings that have been previously deposited in areas of the Site. In some cases, such as the spent heap leach ore disposal area (SODA)/Bradley Tailings, remediation has previously been undertaken under CERCLA.

22. The general sequence of mining will be the Yellow Pine deposit first, Hangar Flats deposit second, and the West End deposit third. This mining sequence is guided by the restoration aspects of the Stibnite Gold Project, which includes backfilling the Yellow Pine Pit with West End development rock to restore the approximate original gradient of the EFSFSR, to provide permanent fish passage, and facilitate aquatic habitat enhancement.

23. As a part of the reuse of legacy tailings and subsequent restoration of certain areas on the Site, MGII will become an "operator" of a "facility" and the execution of its PRO will involve the "arranging for disposal of hazardous substances" under CERCLA § 107(a)(1)-(4).

24. Accordingly, present releases or threats of future releases of hazardous substances exist on the Site.

25. The estimates for direct employment from the Stibnite Mine Site are 594 construction jobs; 583 operations jobs; 160 reclamation jobs; and 44 monitoring jobs.

V. DETERMINATIONS

26. Based on the Statement of Facts set forth above, EPA has determined that:

a. The Stibnite Mine Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. MGII is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Pursuant to the Plan of Restoration and Operations, MGII, IGRCLLC and SGC are the "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

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e. As the owner of MGII, MGC is a derivative "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

f. The conditions described in the Statements of Facts above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

g. The Work required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP. [All on-Site actions required pursuant to this Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. [MGII] shall identify ARARs in the Work Plan subject to EPA approval.]]

VI. SETTLEMENT AGREEMENT AND ORDER

27. Based upon the Statements of Facts and Determinations set forth above, it is hereby Ordered and Agreed that MGII shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER

28. MGII may retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 7 days after the Effective Date or such date on which a contractor or subcontractor is proposed for selection, whichever date is later. MGII shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by MGII. If EPA disapproves of a selected contractor or subcontractor, MGII shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications as soon as practicable after EPA's disapproval. With respect to any proposed contractor performing activities related to the Work, MGII shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The

qualifications of the persons undertaking the Work for MGII shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

29. MGII has designated, and EPA has approved, [INSERT NAME] as its Project Coordinator who shall be responsible for administration of all actions by MGII required by this Settlement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA and retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph [INSERT]. If EPA disapproves of the designated Project Coordinator, MGII shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 7 days following EPA's disapproval or such date on which a different Project Coordinator is proposed for selection, whichever date is later. Notice or communication relating to this Settlement from EPA to MGII's Project Coordinator shall constitute notice or communication to MGII.

30. EPA has designated [INSERT] the Superfund Remedial Program, as its Remedial Project Manager (RPM). EPA and MGII shall have the right, subject to Paragraph [INSERT], to change their respective designated RPM or Project Coordinator. MGII shall notify EPA 7 days before such a change is made. The initial notification by MGII may be made orally, but shall be promptly followed by a written notice.

31. The RPM shall be responsible for overseeing MGII's implementation of this Settlement. The RPM shall have the authority stated in the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

VIII. WORK TO BE PERFORMED

32. MGII shall perform, at a minimum, all actions necessary to implement the SOW and approved Work Plans. A general description of the activities includes, but are not limited to, the following:

a. **SODA Area**.

(1) Approximately 3.5 million tons of legacy tailings in the SODA Area will be removed from their historical deposition areas in the Meadow Creek Valley to be reprocessed and disposed of within the tailings storage facility (TSF).

(2) Approximately 10.5 million tons of legacy spent ore in the SODA will be removed from their historical deposition areas in the Meadow Creek Valley to be reused in the construction of the TSF dam.

b. **Yellow Pine Pit Area**. During construction, the EFSFSR, Hennessy Creek, and other seeps and springs must be diverted around the

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perimeter of the Yellow Pine Pit in order to protect water quality and prevent water from filling the pit during operations. The Pit will be dewatered, and the river will be temporarily rerouted through a fish-friendly tunnel capable of providing fish passage to the EFSFSR and Meadow Creek while the river channel is being fully restored. Additionally, restoration for this element of Work includes response actions related to the impacts to the EFSFSR north of the Yellow Pine Pit, south of the Yellow Pine Pit to the confluence of Meadow Creek, and upstream to undisturbed areas of the EFSFSR from its confluence [at Meadow Creek].

c. **Plant Site Area**. Construction will require removal of contamination of the former Monday Camp shops, as well as the crusher buildings and will require management of seepage and runoff from various DRSF and former ore stockpiles. The removal activity will also require stabilization of former underground portals.

d. **West End Area**. West End Creek will be temporarily diverted around the West End Pit and West End DRSF during operations. The West End Pit will be mined until the end of operations; however, wetland mitigation projects in and adjacent to the Pit may run concurrently with the final phases of mining. Wetlands on benches around the perimeter of the West End Pit Lake will be created to provide a stable spillway channel through the historical development rock dump downstream of the lake outlet.

e. **Blowout Creek (East Fork of Meadow Creek) Restoration and Enhancement**. Blowout Creek (East Fork of Meadow Creek) will be restored to reduce sedimentation and restore wetland functionality. Action will enhance fish habitat in EFSFSR and Meadow Creek to provide salmon spawning beds and increase fish populations.

f. **Fiddle Creek Area**. Fiddle Creek will be diverted around the perimeter of the DRSF in a channel to protect water quality and prevent surface water from running onto the DRSF. Response action will be taken for the former north tunnel DRSF, and removal could require possible closure, stabilization of old portal and clean-up of the quarry site.

g. **Other**. [PLACEHOLDER FOR OTHER REMOVAL ACTIONS IF NECESSARY, SUCH AS NECESSARY INFRASTRUCTURE DISTURBANCES ON OR AROUND LEGACY AREAS]

33. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after MGII receives notification from EPA of the modification, amendment, or replacement.

34. **Work Plans and Implementation**

a. Within 30 days after the Effective Date, in accordance with Paragraph [INSERT] (Submission of Deliverables), MGII shall submit to EPA for approval a draft work plan to implement the SOW generally described in Paragraph [INSERT] and [INSERT] above. The Work implementing the SOWs generally described in Paragraph [INSERT] is collectively referred to as the "Work Plans." The draft Work Plans shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify each draft Work Plan in whole or in part provided such disapproval is reasonable and not arbitrary and capricious. If EPA requires revisions, MGII shall submit a revised draft Work Plan within 7 days of receipt of EPA's notification of the required revisions, but may be extended by EPA for good cause related to the extent and scope of matters addressed in the Work Plan. MGII shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Work Plans, MGII shall, upon notification to EPA that appropriate funding and other preparation pursuant to this agreement is in place, commence implementation of the Work in accordance with the schedule included therein. MGII shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the SOW and/or Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

35. **Submission of Deliverables**

a. General Requirements for Deliverables

(1) Except as otherwise provided in this Settlement, MGII shall direct all submissions required by this Settlement to the RPM by email at [INSERT] or mail to:

and the State at:

MGII shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

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(2) MGII shall submit all deliverables in electronic form and paper copies of all final versions of reports, SAP, QAPP, maps and figures shall also be submitted to EPA and the State. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph [INSERT]. All other deliverables shall be submitted to EPA in the form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5x11 inches, MGII shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Submission of Environmental Data. [RESERVE FOR REGION 10 SPECIFICS]

36. Health and Safety Plan. In accordance with the schedule set forth in the SOW, MGII shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at http://www.epa.gov/nscep, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaosc.org/HealthSafetvManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning for potential mine impacted water releases. EPA may comment and make recommendation to the Health and Safety Plan, however, MGII assumes full responsibility to adhere to applicable OSHA and MSHA regulations, as appropriate. MGII shall incorporate all changes to the plan recommended by EPA provided such recommendations are reasonable and not arbitrary and capricious and shall implement the plan during the pendency of the response action.

37. Quality Assurance, Sampling, and Data Analysis

a. MGII shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all environmental samples collected related to the Work consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), or "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. Sampling and Analysis Plan. Within 7 days after the Effective Date or before commencing Work, MGII shall submit a Sampling and Analysis Plan related to the Work to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the SOW, the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)"

EPA 240/B-01/003 (March 2001, reissued May 2006), or "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement. For current Region 8 QA requirements and guidance, refer to https://www.epa.gov/qualitv/managing-qualitv-environmental-data-epa-region-8.

c. MGII shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by MGII in implementing this Settlement. In addition, MGII shall ensure that such laboratories shall analyze pursuant to this Settlement all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that environmental sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P- 02.1 (9/23/2014) available at http://www.epa.gov/innpoli8/epa-qa-field-activities-procedures. MGII shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at http://www.epa.gov/measurements/documents-about-measurement-competencv-under-acquisition-agreements and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www3.epa.gov/epawaste/lrazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/). 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www3.epa.gov/ttnamtil/airtox.html).

d. However, upon approval by EPA, after a reasonable opportunity for review and comment by the State, MGII may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, *e.g.*, EPA, ASTM, NIOSH, OSHA, MSHA, etc. MGII shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B- 01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized

programs as meeting the Quality System requirements. MGII shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, MGII shall provide split or duplicate environmental samples related to the Work to EPA and the State or their authorized representatives. MGII shall notify EPA and the State not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples related to the Work that EPA or the State deem necessary. Upon request, EPA and the State shall provide to MGII split or duplicate samples of any samples they take as part of EPA's oversight of MGII's implementation of the Work.

f. Other than resource related data associated with the exploration activities, mine production and mill operations assays, MGII shall submit to EPA and the State results of all sampling and/or tests or other data obtained or generated by or on behalf of MGII with respect to the Site and/or the implementation of this Settlement.

38. Progress Reports. MGII shall submit a quarterly written progress report to EPA and the State concerning actions undertaken pursuant to this Settlement, or as otherwise requested by EPA, from 30 days after the Effective Date until issuance of Notice of Completion of Work pursuant to Section [INSERT], unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

39. Final Report. Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph [INSERT] (Notice of Completion), MGII shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The format of the final report or reports is included in the SOW. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP titled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant and material documentation generated during the Work (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of MGII or MGII's Project Coordinator: "I certify under penalty of law that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this document and all attachments, the information submitted is true, accurate, and complete. I have no personal knowledge that the information submitted is

other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

40. Off-Site Shipments and Wastes Generated On-Site

a. MGII may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. MGII will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if MGII obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. MGII may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. MGII also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. MGII shall provide the written notice after the award of the contract for the Work and before the Waste Material is shipped.

c. MGII may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

IX. PROPERTY REQUIREMENTS

41. MGII agrees to provide the State, EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Site and to any other property owned or controlled by MGII, IGRC, and SGC to which access is required for the implementation of response actions at the Site. EPA agrees to provide reasonable notice to MGII, IGRC, and SGC of the timing of response actions to be undertaken at the Site and other areas owned or controlled by MGII.

42. For so long as MGII is an operator of the Property, MGII shall require that assignees, successors in interest, and any other parties with rights to use the Property shall provide access and cooperation to the State, EPA, its authorized officers,

employees, representatives, and all other persons performing response actions under EPA oversight. MGII shall require that assignees, successors in interest and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with the Work, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Site.

43. MGII shall provide a copy of this Settlement to any current and other party with rights to use the Site as of the Effective Date.

44. Notwithstanding any provision of this Settlement, EPA and the State retain all of their access authorities and rights, as well as all of its rights to require land, water or other resource use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

45. MGII shall, subject to the record retention period in Paragraph [INSERT] and, if necessary, in accordance with Paragraph [INSERT], provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) within MGII's possession or control as of or after the Effective Date relating to Work at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work (hereinafter referred to as "Records"). MGII shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

46. Privileged and Protected Claims

a. MGII may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided MGII complies with Paragraph [INSERT], and except as provided in Paragraph [INSERT].

b. If MGII asserts such a privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (*e.g.*, company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, MGII shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. MGII shall retain all Records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in MGII's favor.

c. Except for Business Confidential Claims permitted in Paragraph [INSERT], MGII may make no claim of privilege or protection regarding: (1) any data,

other than non- environmental data, regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that MGII is required to create or generate pursuant to this Settlement.

47. Business Confidential Claims. MGII may assert that all or part of a Record provided to EPA and the State under this Section or Section [INSERT] (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). MGI shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which MGII asserts business confidentiality claims. Records that MGI claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified MGII that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to MGII.

48. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

49. Until ten (10) years after EPA provides MGII with notice, pursuant to Section [INSERT] (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, MGII shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to MGII's representations of the BFPP provisions of CERCLA §§ 101(40)(A)-(H) and 107(r)(l), 42 U.S.C. §§ 9601 (40)(A)-(H) and 9607(r)(l) with regard to the Site, provided, however, that a party who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. MGII must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that MGII (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

50. At the conclusion of the document retention period, MGII shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by

EPA, and except as provided in Paragraph [INSERT] (Privileged and Protected Claims), MGII shall deliver any such Records to EPA.

51. MGII certifies that, as of the Effective Date and to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to the Site and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

52. Nothing in this Settlement limits MGII's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). [In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. MGII shall identify ARARs in the Work Plan subject to EPA approval.]

53. No local, state, or Federal permit shall be required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, MGII shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. MGII may seek relief under the provisions of Section [INSERT] (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

54. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, MGII shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. MGII shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. MGII shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer of the incident or Site conditions. The MGII shall also notify the State in accordance with Section

[INSERT] (Notices). In the event that MGII fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, MGII shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section [INSERT] (Payment of Future Response Costs).

55. Release Reporting. Upon the occurrence of any event during performance of the Work that MGII is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, MGII shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 303-293-1788, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

56. For any event covered under this Section, MGII shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF FUTURE RESPONSE COSTS

57. Payment of Sum for Future Response Costs. Within 60 days prior to commencing Work, MGII shall pay to EPA $ ____ for Oversight Costs.

a. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to MGII by EPA Region 10 and shall be accompanied by a statement identifying the name and address of MGII, the Site name, the EPA Region and Site/Spill ID Number ____, and the EPA docket number for this action.

b. The total amount to be paid by MGII pursuant to Paragraph [INSERT] shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid by MGII pursuant to [INSERT] shall be deposited by EPA in the [Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to finance Oversight Costs.]

c. At the time of payment, MGII shall send notice that payment has been made to [insert names and mailing addresses of Regional Financial Officer and any other receiving officials at EPA.]

d. Return of Excess Sum Certain Oversight Cost Payment. After EPA issues its Notice of Completion pursuant to Section [INSERT] and has performed a final accounting of Oversight Costs, EPA shall remit and return to MGII any unused amount of the funds paid by MGII pursuant to Paragraph [INSERT] above.

58. Contesting Future Response Costs. MGII may initiate the procedures of Section [INSERT] (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph [INSERT] (Payments of Sum for Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, MGII shall submit a Notice of Dispute in writing to the RPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If MGII submits a Notice of Dispute, MGII shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph [INSERT], and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. MGII shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, the escrow agent shall release the sums due (with accrued interest) to EPA in the manner described in Paragraph 52. If MGII prevails concerning any aspect of the contested costs, the escrow agent shall release that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph [INSERT]. MGII shall be disbursed any balance of the escrow account within 5 days after the resolution of the dispute. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section [INSERT] (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding MGII's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

60. Informal Dispute Resolution. If MGII objects to any EPA action taken pursuant to this Settlement, including providing Notice of Completion of Work or matters pertaining to Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 14 days after such action or MGII becoming aware of such action, whichever is later. EPA and MGII shall have 30 days from EPA's receipt of MGII's Notice of Dispute to resolve the dispute through informal negotiations (the Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

61. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, MGII shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Supervisory level or higher will issue a written decision on the dispute to MGII. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. MGII shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

62. Except as provided in Paragraph [INSERT] (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of MGII under this Settlement. Except as provided in Paragraph [INSERT], stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that MGII does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [INSERT] (Stipulated Penalties).

XVI. FORCE MAJEURE

63. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of MGII, of any entity controlled by MGII, or of MGII's contractors that delays or prevents the performance of any obligation under this Settlement despite MGII's best efforts to fulfill the obligation. The requirement that MGII exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which MGII intends or may intend to assert a claim of force majeure, MGII shall notify EPA's RPM orally or, in their absence, EPA Region 10, within 10 days of when MGII first knew that the event might cause a delay. Within 5 days thereafter, MGII shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; MGII's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of MGII, such event may cause or contribute to an endangerment to public health or welfare, or the environment. MGII shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. MGII shall be deemed to know of any circumstance of which MGII, any entity controlled by MGII, or MGII's contractors knew or should have known. Failure to comply with the

above requirements regarding an event shall preclude MGII from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph [INSERT] and whether MGII has exercised their best efforts under Paragraph [INSERT], EPA may, in its unreviewable discretion, excuse in writing MGII's failure to submit timely or complete notices under this Paragraph.

65. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify MGII in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify MGII in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

66. If MGII elects to invoke the dispute resolution procedures set forth in Section [INSERT] (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, MGII shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that MGII complied with the requirements of Paragraphs [INSERT]. If MGII carries this burden, the delay at issue shall be deemed not to be a violation by MGII of the affected obligation of this Settlement identified to EPA.

67. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents MGII from meeting one or more deadlines under the Settlement, MGII may seek relief under this Section.

XVII. CERTIFICATION

68. By entering into this Settlement, MGII certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA as well as the lead and cooperating Federal agencies involved in approving the PRO all material information known to MGII, MGC, IGRC and SGC and all material information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement. MGII, MGC, IGRCLLC and SGC also certify that to the best of their knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. MGII further certifies to the representations made under Paragraph 3.

XVIII. COVENANTS BY UNITED STATES AND THE STATE

69. Except as provided in Section [INSERT] (Reservations of Rights by United States), the United States and the State covenants not to sue or to take administrative action against MGII pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Existing Contamination, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by MGII of their obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA by MGII relating to MGII's Work at the Site and the certification made by MGII in Paragraph [INSERT]. This covenant extends only to MGII and does not extend to any other person.

70. Nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, or the State to seek or obtain further relief from MGII, if the information provided to EPA by MGII relating to MGII's Work at the Site, or the certification made by MGII in Paragraph [INSERT], is false or in any material respect, inaccurate.

XIX. RESERVATIONS OF RIGHTS BY UNITED STATES AND THE STATE

71. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States and/or the State to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States and/or the State from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary.

72. The covenants set forth in Section [INSERT] (Covenants by the United States and the State) do not pertain to any matters other than those expressly identified therein. The United States and the State reserve, and this Settlement is without prejudice to, all rights against MGII with respect to all other matters, including, but not limited to:

a. liability for failure by MGII to meet a requirement of this Settlement;

b. criminal liability;

c. liability for violations of federal or state law that occur during or after implementation of the Work;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;

f. liability resulting from exacerbation of Existing Contamination not associated with the Work by MGII, its successors and assigns; and

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

73. With respect to any claim or cause of action asserted by the United States, MGII shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that MGII has complied with all of the requirements of 42 U.S.C. §§ 9601 (40)(A)-(H) and 9607(r)(l).

74. Work Takeover

a. In the event EPA determines that MGII: (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to MGII. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide MGII a period of 15 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 15-day notice period specified in Paragraph [INSERT] MGII has not remedied or begun to remedy to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (Work Takeover). EPA will notify MGII in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph [INSERT].

c. MGII may invoke the procedures set forth in Section [INSERT] (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph [INSERT]. However, notwithstanding MGII invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph [INSERT] until the earlier of (1) the date that MGII remedies, to EPA 's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph [INSERT] (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY MGII

75. MGII covenants not to sue and agrees not to assert any claims or causes of action against the State, the United States, or its contractors or employees, with respect to Existing Contamination, the Work, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of Idaho Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding, the Work, Future Response Costs, and this Settlement.

76. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section [INSERT] (Reservations of Rights by the United States and the State), other than in Paragraph [INSERT] (liability for failure to meet a requirement of the Settlement), 77.b (criminal liability), or [INSERT] (violations of federal/state law during or after implementation of the Work), but only to the extent that MGII's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

77. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

78. MGII reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of MGII's deliverables or activities.

79. MGII reserves, and this Settlement is without prejudice to, arguments that any claim or cause of action, or part thereof, is attributable solely to Existing

Contamination and that MGII has complied with all of the requirements of 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r)(l).

XXI. OTHER CLAIMS

80. By issuance of this Settlement, the United States, the State, and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of MGII. The United States, the State, and EPA shall not be deemed a party to any contract entered into by MGII or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

81. Except as expressly provided in Section [INSERT] (Covenants by the United States and the State), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against MGII or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

82. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

83. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section [INSERT] (Covenants by MGII), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

84. If a suit or claim for contribution is brought against MGII with respect to Existing Contamination (including any claim based on the contention that MGII is liable as a result of response actions taken in compliance with this Settlement or at the direction of EPA's RPM), the Parties agree that this Settlement constitutes an administrative settlement pursuant to which MGII has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C.§§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters

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addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, Existing Contamination, and Future Response Costs.

85. MGII shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. MGII shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, MGII shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

XXIII. INDEMNIFICATION

86. The United States and the State do not assume any liability by entering into this Settlement or by virtue of any designation of MGII as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). MGII shall indemnify, save, and hold harmless the United States and the State, their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of MGII, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on MGII's behalf or under their control, in carrying out activities pursuant to this Settlement. Further, MGII agrees to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of MGII, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States and the State shall not be held out as a party to any contract entered into by or on behalf of MGII in carrying out activities pursuant to this Settlement. Neither MGII nor any such contractor shall be considered an agent of the United States or the State.

87. The United States shall give MGII notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with MGII prior to settling such claim.

88. MGII covenants not to sue and agree not to assert any claims or causes of action against the United States or the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of MGII and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

89. In addition, MGII shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between MGII and any person for

performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

90. No later than 14 days before commencing any on-site Work, MGII shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section [INSERT] (Notice of Completion of Work), commercial general liability insurance with limits of $1 million per occurrence, and automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of MGII pursuant to this Settlement. In addition, for the duration of the Settlement, MGII shall provide EPA with certificates of such insurance and a copy of each insurance policy. MGII shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, MGII shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of MGII in furtherance of this Settlement. If MGII demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, MGII need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. MGII shall ensure that all submittals to EPA under this Paragraph identify the Stibnite Mine Site name and the EPA docket number for this action.

XXV. FINANCIAL ASSURANCE [TO BE REVIEWED TO CONSOLIDATE WITH STATE AND USFS FINANCIAL ASSURANCE AND AVOID DUPLICATION]

91. In order to ensure completion of the Work, MGII shall secure financial assurance, initially in the amount of $[INSERT] (Estimated Cost of the Work), [for the benefit of EPA.] The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. MGII may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; [BOOKMARK FOR DEVELOPMENT OF LANGUAGE FOR RECLAMATION SECURITY TRUST/QUALIFYING ENVIRONMENTAL TRUST W/EPA, STATE AND USFS AS BENEFICIARIES]

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

92. MGII shall submit such mechanisms and documents to the Regional financial assurance specialist at the following address:

[INSERT]

93. MGII shall diligently monitor the adequacy of the financial assurance. If MGII becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such MGII shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the MGII of such determination. MGII shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the MGII, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. MGII shall follow the procedures of Paragraph 98 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. MGII's inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of MGII to complete the Work in accordance with the terms of this Settlement.

94. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph [INSERT], then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph [INSERT].

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the MGII fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to

the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph [INSERT].

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph [INSERT], either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under Paragraph [INSERT], then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. MGII shall, within 7 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Stibnite Mine Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs, not inconsistent with the NCP, and not paid under this Paragraph must be reimbursed as Future Response Costs under Section [INSERT] (Payments for Response Costs).

95. Modification of Amount, Form, or Terms of Financial Assurance. MGII may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 99 and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify MGII of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. MGII may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section [INSERT] (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by MGII pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, MGII shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph [INSERT].

96. Release. Cancellation, or Discontinuation of Financial Assurance. MGII may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXVIII (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (Dispute Resolution).

XXVI. MODIFICATION

97. EPA's RPM may modify any plan or schedule or the SOW in writing or by oral direction. Any modification will not be arbitrary and capricious and will be of fair cost. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any modification will be subject to modification that may be required of the PRO or other agency authorization for the Work concerned. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties.

98. If MGII seeks permission to deviate from any approved Work Plan or schedule or the SOW, MGII's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. MGII may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph [INSERT].

99. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by MGII shall relieve MGII of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVII. NOTICE OF COMPLETION OF WORK

100. When EPA, in consultation with the State, determines, after review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, EPA will provide written notice to MGII. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify MGII, provide a list of the deficiencies, and require that MGII modify the Work Plans if appropriate in order to correct such deficiencies. MGII shall implement the modified and approved Work Plans and shall submit a modified Final Report in accordance with the EPA notice. Failure by MGII to implement the approved modified Work Plan shall be a violation of this Settlement.

XXVIII. PUBLIC COMMENT

101. This Settlement shall be subject to a thirty (30) day public comment period, after which EPA may modify or withdraw its consent to this Settlement if

comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

XXIX. INTEGRATION/APPENDICES

102. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement.

a. Appendix A is a map of the Site.

b. Appendix B is the SOW.

XXX. EFFECTIVE DATE

103. The effective date of this Settlement shall be the date upon which EPA issues written notice to MGII that EPA has fully executed the Settlement after review of and response to any public comments received. If, by the time EPA issues such notice to MGII, and MGII has not yet had its Plan of Restoration and Operation approved by the United States Forest Service through a record of decision (ROD), the effective date of this Settlement shall be the date upon which MGII receives final approval by the Forest Service for the Plan of Restoration and Operations through a ROD.

104. Notwithstanding any other provision in this Settlement, EPA agrees that the performance obligations under this Settlement cannot proceed in the absence of applicable required permits and other authorizations issued by the appropriate government agencies.

XXXI. DISCLAIMER

105. This Settlement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

XXXII. NOTICES AND SUBMISSIONS

106. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement, shall be deemed submitted either when an email is transmitted and received, it is hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to MGII shall be addressed to:

CONFIDENTIAL DRAFT

With copies to:

and

Submissions to MGC shall be addressed to:

Submissions to IGRCLLC shall be addressed to:

Submissions to SGC shall be addressed to:

All submissions to U.S. EPA shall be addressed to:

With electronic copies to:

All submissions to the State shall be addressed to:

With electronic copies to

CONCEPT DRAFT

IT IS SO AGREED:
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BY:

_____

_____

CONCEPT DRAFT

IT IS SO AGREED:
STATE OF IDAHO
BY:

_____

_____

CONCEPT DRAFT

The undersigned representative of MGII certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____
Name (MGII) Date

The undersigned representative of MGC certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____
Name (MGC) Date

The undersigned representative of IGRC LLC certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____
Name (IGRCLLC) Date

CONCEPT DRAFT

The undersigned representative of SGC certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____

Name (SGC) Date

CONCEPT DRAFT

Dated this ____ day of [INSERT].

By:_____

CONCEPT DRAFT

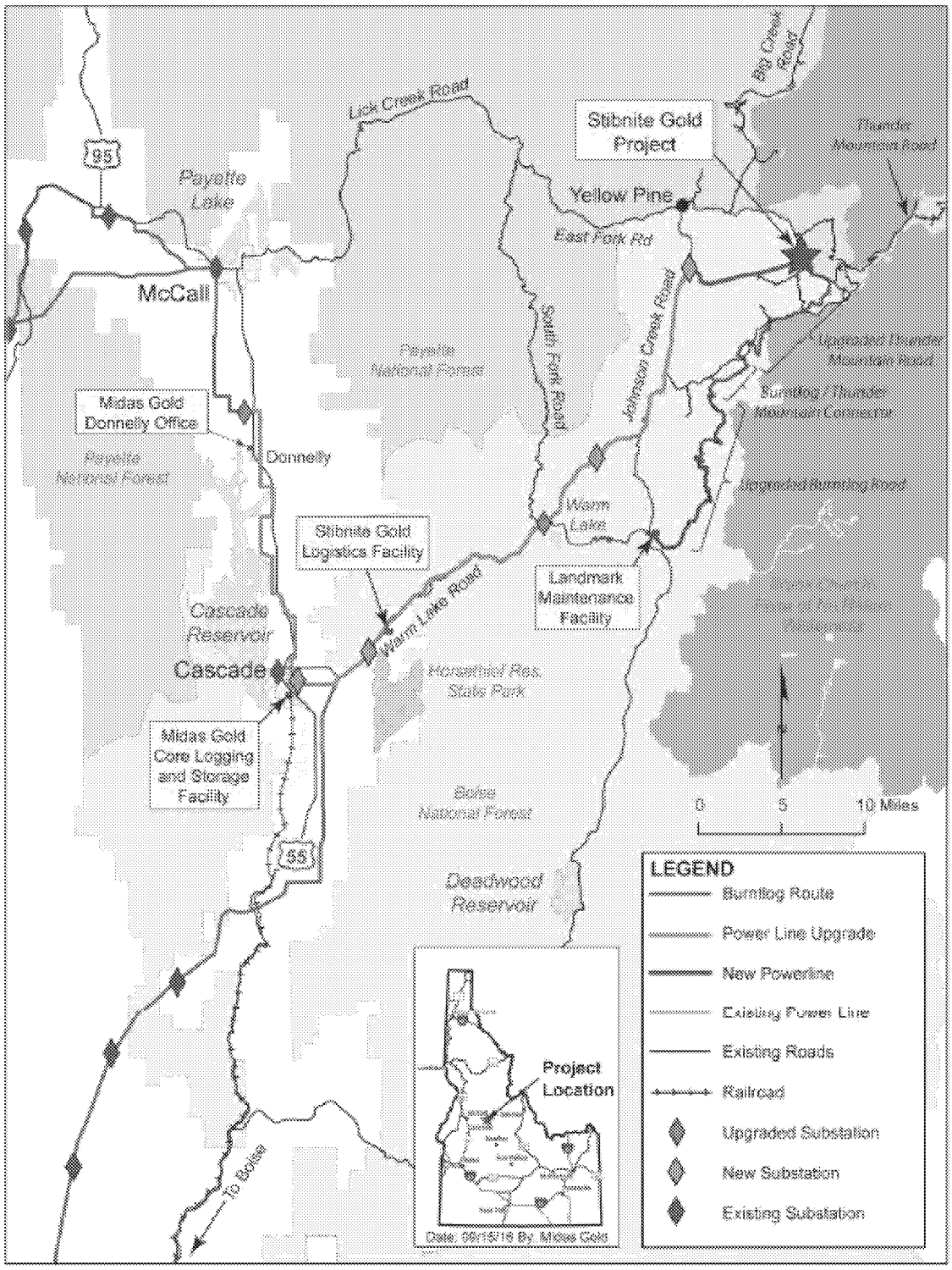
CERTIFICATE OF SERVICE

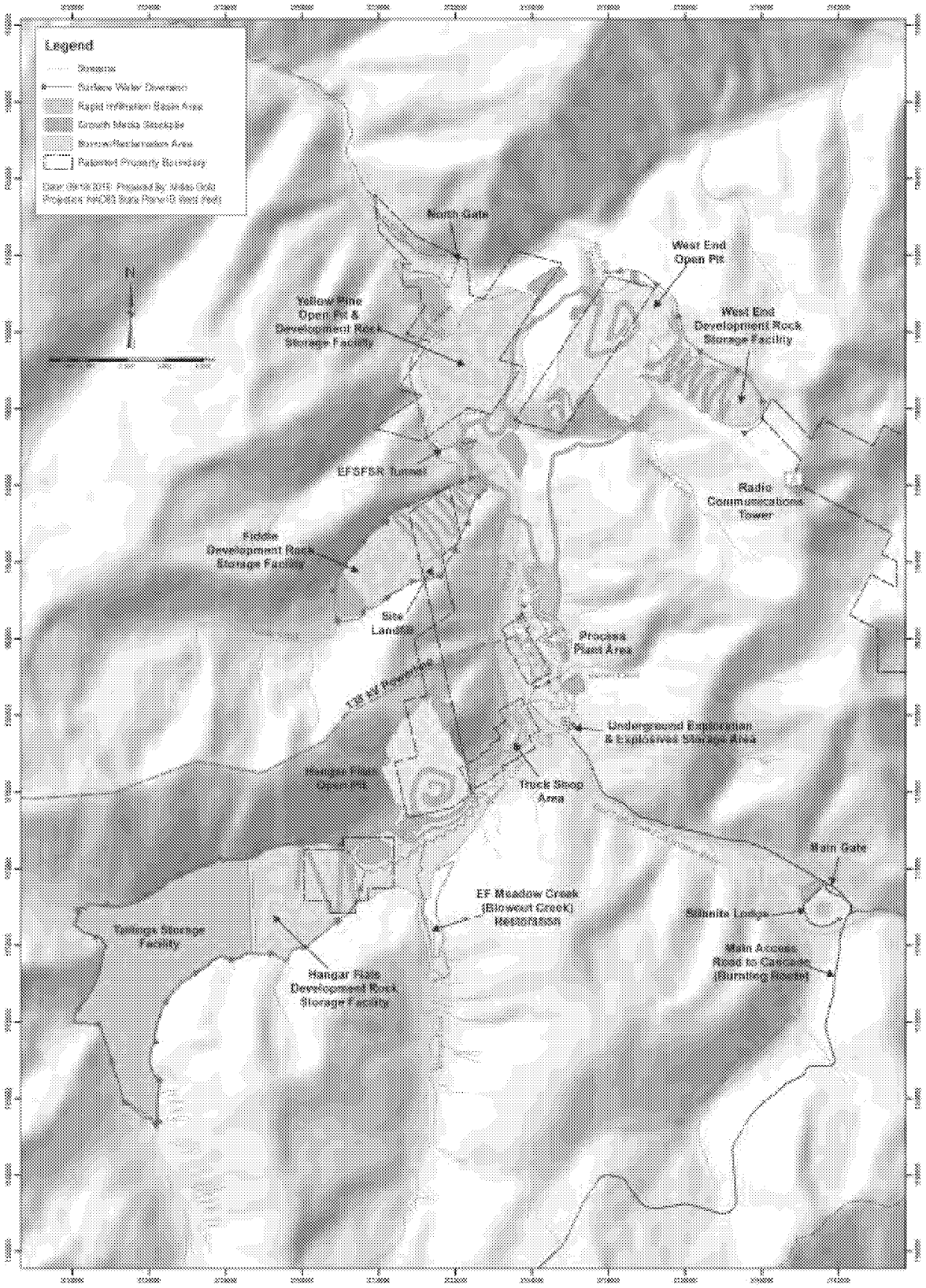
The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following parties listed below by United States mail, postage prepaid, this ___ day of _____, [INSERT].

CONCEPT DRAFT

APPENDIX A

PROJECT SITE




Legend
Streams
Surface Water Diversion
Rapid Infiltration Basin Area
Growth Media Stockpile
Borrow/Reclamation Area
Patented Property Boundary
North Gate
West End Open Pit
Yellow Pine Open Pit & Development Rock Storage Facility
West End Development Rock Storage Facility
EFSFSR Tailings
Radio Communications Tower
Fiddle Development Rock Storage Facility
Site Landfill
Process Plant Area
138 kV Powerline
Underground Exploration & Explosives Storage Area
Hangar Flats Open Pit
Truck Shop Area
Main Gate
EF Meadow Creek (Blowout Creek) Reservoir
Silmnite Lodge
Tailings Storage Facility
Main Access Road to Cascade (Burning Road)
Hangar Flats Development Rock Storage Facility

APPENDIX B

STATEMENT OF WORK
REMOVAL AND RESTORATION ACTIONS FOR STIBNITE MINE SITE

I. PURPOSE

The purpose and objective of the work described by this Statement of Work is to undertake Site response activity in areas of previous contamination while the Plan of Restoration and Operations is executed by MGII as the Stibnite Project Operator.

Further details of work activities, including the sequencing of actions, will be included in work plans that will be approved by the [RPM] in consultation with the Project Coordinator.

II. STATEMENT OF WORK

A. SODA Area

1. Bradley Tailings Removal

(1) Approximately 3.5 million tons of legacy tailings in the SODA Area will be removed from their historical deposition areas in the Meadow Creek Valley to be reprocessed and disposed of within the tailings storage facility (TSF).

(2) Approximately 10.5 million tons of legacy spent ore in the SODA will be removed from their historical deposition areas in the Meadow Creek Valley to be reused in the construction of the TSF dam.

Removal of the materials, which are currently in stored in an unconstrained and unlined valley fill, and reprocessing and reuse, as appropriate, of these materials will improve water quality in Meadow Creek where legacy metals loading in to the creek is present and would minimize the need to excavate new material for construction purposes.

The Hecla Heap leach area will be disturbed in order to develop TSF construction material, beginning with Hangar Flats Pit development. The removal activity will require actions related to a buried mill, smelter waste, tailings removal and heap leach wastes and possibly management of potential contaminated water effluent from the former underground mine portals.

2. Stream Diversion

Construction of the TSF in the Meadow Creek valley requires diverting the stream around the TSF to protect water quality and manage runoff. The diversion will intercept water from upstream drainages, seeps and springs, and includes a lined channel capable of passing high flows during snow melt runoff and keeping water from reaching the TSF. Approximately 21,000 linear-feet (LF) of diversion channel will be constructed initially to capture the flow from both sides of the drainage.

CONCEPT DRAFT

Meadow Creek must be diverted around the south side of Hangar Flats Pit to enable mining the Hangar Flats mineral resource. Early in operations and prior to mining the portion of the Hangar Flats Pit below the valley bottom, Meadow Creek would be diverted around the Hangar Flats pit in a meandering channel similar to the previously-constructed Meadow Creek channel, but with a more favorable gradient (1-2%) for Chinook salmon spawning. A low permeability liner would be provided under the stream bed material to prevent loss of water into the adjacent pit. The reconstructed channel is intended to provide optimal spawning habitat during operations for running Chinook salmon that will be able to naturally access Meadow Creek (via the future Yellow Pine Tunnel) for the first time since 1938, and permanently via a newly-created surface channel on the closure of the Yellow Pine Pit.

B. Yellow Pine Pit Area

1. Draining and Excavation of the Yellow Pine Pit

Drainage of the existing Yellow Pine Pit Lake will require response to contaminated sediment and debris in former open pit, as well as closure and stabilization of old portals (Monday, Cinnabar, and former Bradley Mining Company workings). Excavation of the Pit for mining will disturb hazardous substances and removal will include control actions for runoff, seepage and fugitive dust.

2. Stream Diversion

During the construction of the Tunnel (see below), the East Fork South Fork Salmon River (EFSFSR), Hennessy Creek, and other seeps and springs must be diverted around the perimeter of the Yellow Pine Pit in order to protect water quality and prevent water from filling the Pit during operations. Additionally, a former subsurface diversion of Hennessy Creek will be reclaimed. Response action will include controls for potential groundwater impacts for as-yet uncharacterized metals in legacy areas.

3. East Fork South Fork Salmon River Tunnel Installation

The existing legacy Yellow Pine pit was mined from the 1930s through the 1950s. Following diversion of the EFSFSR into a ditch in 1938 and later into a diversion tunnel in 1942, the anadromous fish passage was blocked, initially due to the nature of the diversion features and, following closure of the tunnel, from the EFSFSR flowing into the Yellow Pine pit over the steep slopes of the south rim of the pit.

During the construction period, the EFSFSR will be relocated from its current location within the Yellow Pine Pit, where a steep segment upstream of the existing pit lake has prevented upstream fish passage since approximately 1938. The EFSFSR will be diverted through a tunnel (.8 miles long, "Tunnel") capable of protecting water quality and providing fish passage from the EFSFSR below the Yellow Pine Pit to reaches of the EFSFSR above the Yellow Pine Pit to its headwaters and to Meadow Creek. The Tunnel will be designed with engineered fish-friendly features so as to mimic natural habitat including lighting and resting pools, among others. A natural channel will be restored upon closure and restoration of the Yellow Pine Pit and select fish habitat enhancement projects between the Yellow Pine Pit and the confluence with Meadow Creek will be implemented as well as upstream of the confluence to the headwaters of the EFSFSR.

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Construction activities will remove, as encountered, portions of legacy rock dumps that presently lie directly atop and adjacent to the banks of the EFSFSR and other potentially-contaminated material from the EFSFSR Valley.

C. Plant Site Area

During the construction of the Tunnel, construction will require removal of contamination of the former Monday Camp shops, as well as the crusher buildings and will require management of seepage and runoff from various development rock storage facility (DRSF) and former ore stockpiles. The removal activity will also require stabilization of former underground portals.

D. West End Area

Development of the West End Open Pit and the West End DRSF will necessarily encounter contaminated legacy areas.

1. West End Creek Diversion

West End Creek has been heavily impacted by legacy mining and mining-related activities, including development rock deposition over the stream channel, diversion of the stream into a French drain, and mining out of portions of the stream channel. West End Creek will be temporarily diverted around the West End pit and West End DRSF during operations. Diverting West End Creek away from the historical West End development rock dumps will improve water quality and prevent clean runoff from entering the West End Pit.

2. West End Pit Lake

The West End pit will be mined until the end of operations; however, wetland mitigation projects in and adjacent to the pit may run concurrently with the final phases of mining. Wetlands on benches around the perimeter of the West End Pit Lake will be created to provide a stable spillway channel through the historical development rock dump downstream of the lake outlet.

E. Blowout Creek (East Fork Meadow Creek) Restoration and Enhancement

Blowout Creek (East Fork Meadow Creek) has been severely impacted as a result of legacy mining-related activities and by the subsequent failure of the legacy water dam that had been constructed across its stream channel. Blowout Creek will be rehabilitated to control sediment from the incised and eroded stream regions, which is the single largest source of sediment, to the EFSFSR). As a part of its construction and operation activities, a phased approach to address the multiple environmental impacts associated with the 1965 failure of the Blowout Creek water reservoir will be undertaken.

A French Drain will be constructed in the main erosional gully feature, which is a major sediment contribution source for the basin. This constructed drain would convey that portion of Blowout Creek and disconnect erosional areas from the main stream, with the intent of controlling the ongoing erosion of the channel banks. Features near the old dam location to raise the Blowout Creek Valley water table to enhance the existing wetlands in the valley will be constructed in order to restore the pre-reservoir hydrologic conditions to support substantially

CONCEPT DRAFT

enhanced wetlands and riparian features in the upper Blowout Creek Valley. The base level will be raised to prevent further head-cutting and bank erosion in Blowout Creek upstream of the former dam site. Incised and eroded stream segments in the upper meadow will be improved to accelerate the natural channel recovery processes that are supported by the restored, higher base level.

F. Fiddle Creek Area

Fiddle Creek is currently cut off from the EFSFSR as a result of legacy mining operations, road construction and culvert installation. In addition, the drainage was the site of a legacy water storage reservoir that has left portions of the drainage in an unnatural state.

As a part of construction, Fiddle Creek will be diverted around the perimeter of the DRSF in a channel to protect water quality and prevent surface water from running onto the DRSF. Response action will be taken for the former north tunnel DRSF, and removal could require possible closure, stabilization of old portal and clean-up of the quarry site.

G. Other

[PLACEHOLDER FOR OTHER REMOVAL ACTIONS IF NECESSARY, SUCH AS NECESSARY INFRASTRUCTURE DISTURBANCES ON OR AROUND LEGACY AREAS]

CONCEPT DRAFT

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 8/23/2019 9:25:01 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Midas

Yes. Are you free around 4? Are you referring to the site visit?

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Friday, August 23, 2019 12:56 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Midas

Elizabeth:

Do you have a few moments this afternoon to follow up on recent events in the Midas matter?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 7/12/2019 10:11:02 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Left you a message

Hi Brad. Just tried to call you. Planned to connect today since this is my last day in the office for a while! I have to go to a meeting in 10 minutes, but will call you later this afternoon to talk about logistics with the Site (b) (6) and other issues.

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

-----Original Message-----
From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Friday, July 12, 2019 2:36 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Left you a message

Elizabeth- Are you available this afternoon to discuss the Midas Stibnite mine matter?

Sent from my iPhone

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/20/2019 1:23:09 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine

Hi Brad. Thanks for your email regarding Midas' desire to continue discussions on the appropriate investigatory work to perform at Stibnite. I will have Kathy contact the technical team to set up a meeting to continue discussions.

Regards,

Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 11/16/2019 2:17:46 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Lisa.O'Hara@deq.idaho.gov; Jill Grant [jgrant@jillgrantlaw.com]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: RE: Stibnite Mine

In my last email I erroneously said that the Nez Perce will provide comments by the 19th. I meant to say that the Nez Perce will provide comments by November 26th. I apologize for raising expectations for an earlier response.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: McKenna, Elizabeth
Sent: Friday, November 15, 2019 2:36 PM
To: Bradley M. Marten <bmarten@martenlaw.com>; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Lisa.O'Hara@deq.idaho.gov; Jill Grant <jgrant@jillgrantlaw.com>
Cc: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: Stibnite Mine

I heard back from the Mike Lopez. I shared the parties' comments on the SOW with Mike. The Nez Perce will provide comments to EPA by November 19th. EPA will provide its comments and revisions that reflect our review of all of the Parties' comments after we receive the Nez Perce's comments. Given that we will not have the Nez Perce Tribe's comments or an updated draft SOW by Monday, please let me know what topics the parties would like to focus on in our meeting.

Also, we have not yet received a map from Midas showing the areas in which Midas owns claims, has other ownership interests, and has conducted exploratory drilling. This relevant to establishing the scope of the RI/FS.

I will sending a draft AOC to the parties soon.

- Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

To: Bradley M. Marten[bmarten@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov[Lisa.O'Hara@deq.idaho.gov]; Fremerman, Gary - OGC, Washington, DC[gary.fremerman@usda.gov]; Jill Grant[jgrant@jillgrantlaw.com]
From: McKenna, Elizabeth[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: Wed 11/20/2019 12:08:19 AM (UTC)
Subject: Stibnite Mine Meeting

I now have a conflict on Friday for the start time of our discussion. An issue has come up in another case and I need to attend a briefing for the RA from 10:00 a.m. to 11:00 a.m. Is there any chance that we rearrange the time of the meeting a bit? We can talk at 9:00 for an hour or meet at 11:00 a.m. for longer than an hour. Otherwise, we can look at next week. Thank you.
Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 10/9/2019 12:43:08 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Nez Perce

Thanks for letting me know. No news yet from Michael.

_____
Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

-----Original Message-----
From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, October 08, 2019 3:31 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Nez Perce

Called, declined Midas's request to stay. Midas's motion to stay and Twombley letter will now go out. Too bad, but the effort was worth making.

Any news from Michael in consultation?

Sent from my iPhone

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 10/15/2019 8:49:55 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite

Hi Brad. The Tribe emailed a letter to me yesterday, when I was out of the office for the holiday. If you'd like to chat briefly today, I am available between 2:30 and 3:30.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, October 15, 2019 12:38 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Stibnite

Elizabeth – We haven't seen a letter from the Tribe. Have you?

Bradley M. Marten
Partner

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T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 10/24/2019 8:47:48 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Meeting

Hi Brad. Do you know if Midas is planning to present materials on line for our meeting next Friday? If so, would Midas be able to provide the electronic forum for that? Also, does anyone from Midas plan to be here in person? I am reserving a conference room, but need to know how big it should be. I will also provide the conference call in number if Midas does not plan to present materials online.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 10/24/2019 9:01:22 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Meeting

Sounds good. I'll just book a room and a conference call number. If we need something more modern technology than phones, we can arrange that next week. Ex. 6 Personal Privacy (PP)

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, October 24, 2019 1:57 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Meeting

Sorry, I'm in NY Ex. 6 Personal Privacy (PP). Will get you answers by Monday. There will be Midas folks present. Probably Andy Koulermos and John Meyer and me. I view this as more of an organizational meeting than a "presentation," since everyone except the Sho-Bans have had multiple presentations. I'd just be sure everyone has the SOW as we last left it, and discuss timeline for completing, open or new issues, perhaps a data repository. I'll think more about it over the weekend and call Monday to finalize personnel, agenda. Ok with you?

Sent from my iPhone

On Oct 24, 2019, at 4:47 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Hi Brad. Do you know if Midas is planning to present materials on line for our meeting next Friday? If so, would Midas be able to provide the electronic forum for that? Also, does anyone from Midas plan to be here in person? I am reserving a conference room, but need to know how big it should be. I will also provide the conference call in number if Midas does not plan to present materials online.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
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<image001.png>

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 10/29/2019 11:22:35 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine
Attachments: Idaho Governor Brad Little to EPA Administrator Andrew Wheeler - Stibnite Gold Project.pdf

FYI

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Governor Brad Little
State Capitol :: Boise, Idaho 83720
(208) 334-2100 :: gov.idaho.gov

October 29, 2019

The Honorable Andrew Wheeler
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington D.C., 20004

Re: Stibnite Gold Project, Valley County, Idaho

Dear Administrator Wheeler,

I am writing to bring to your attention to an important matter related to our water quality in the State of Idaho. The U.S. Environmental Protection Agency (EPA) has an opportunity to facilitate environmental restoration at a long-standing legacy mining site known as the Stibnite Mine.

Elevated arsenic and antimony in ground and surface water sampling locations across the Stibnite site have been reported to the Idaho Department of Environmental Quality and indicate that levels of both metals are beyond what is considered safe for human consumption.

The cause for the degraded water quality is likely tied to the history of the location where mining activity first started 120 years ago. After decades of mining with little thought to reclamation, the site was left in trouble. Now, I am looking for solutions. Currently, a private entity – Midas Gold Idaho – is working to provide resources and technical ability to hopefully resolve the problems we are left with.

I understand that your team at EPA has been discussing the matter since last year and that a draft action plan is under consideration. I ask that you please see that this process is addressed with expediency.

I am hopeful that we can work together to improve and maintain Idaho's precious natural resources. Please feel free to reach out to me or my staff anytime.

Sincerely,

Brad Little
Governor of Idaho

cc: Director John Tippets, Idaho Department of Environmental Quality
Idaho Congressional Delegation

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 10/30/2019 11:58:59 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine
Attachments: FINAL Gay Mine - AOC.pdf

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
U.S. EPA REGION 10

IN THE MATTER OF:	)	
	)	
	)	
The Gay Mine	)	EPA Docket No.
	)	CERCLA-10-2011-0032
	)	
J.R. Simplot Company	)	
FMC Corp.	)	
	)	
Respondents.	)	
	)	
	)	

ADMINISTRATIVE SETTLEMENT AGREEMENT AND
ORDER ON CONSENT
FOR PERFORMANCE OF
REMEDIAL INVESTIGATION AND
FEASIBILITY STUDY
FOR THE GAY MINE
IN SOUTHEASTERN IDAHO

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I. INTRODUCTION

1.1 This Settlement Agreement is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), the Shoshone-Bannock Tribes ("Tribes"), and the J.R. Simplot Company ("Simplot") and FMC Corporation ("FMC"), the latter two entities as Respondents (collectively, the "Parties" or alone a "Party"). The mine Site addressed in this Settlement Agreement is the Gay Mine Site (the "Site") located in Southeastern Idaho within the boundaries of the Fort Hall Reservation.

1.2 As provided for in the July 17, 2000, Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho ("MOU"), EPA has been designated as the "Lead Agency" for this Site. The Tribes and DOI (Bureau of Indian Affairs ("BIA"), Bureau of Land Management ("BLM"), and Fish and Wildlife Service ("FWS")) have elected to participate at the Site as Support Agencies.

1.3 This Settlement Agreement provides for the performance by Respondents of a Remedial Investigation ("RI") and Feasibility Study ("FS") for the Site. In entering into this Settlement Agreement, the objectives of the Parties are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a feasibility study; and (c) to recover response and oversight costs incurred by EPA, DOI, and the Tribes with respect to this Settlement Agreement. The Work required for performance of the RI and FS is specified in the Statement of Work ("SOW") attached, and incorporated by reference,

as Appendix 1 to this Settlement Agreement, and is governed by Section IX of this Settlement Agreement ("Work to be Performed"). Data relevant to the RI/FS may be available from the Area-Wide Investigation conducted pursuant to the Area-Wide Investigation CO/AOC (July 20, 2001) ("AWAOC"), as well as from other sources. This Settlement Agreement is intended to be implemented consistent with the MOU. However, this Settlement Agreement does not create any rights in Respondents under the MOU.

II. JURISDICTION AND GENERAL PROVISIONS

2.1. This Settlement Agreement is entered into by the United States under the authority vested in the President of the United States by Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, 9622(a), and 9622(d)(3).

2.2. The Tribes are a federally-recognized Indian Tribe with a governing body known as the Fort Hall Business Council. In general, the Tribes exercise their authorities pursuant to their inherent sovereign powers, the Fort Bridger Treaty (15 Stat. 673), the Constitution and By-Laws of 1936, the Shoshone-Bannock Tribes' Waste Management Act (WMA), various provisions of the Land Use Policy Ordinance, and the Law and Order Code of 1982.

2.3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), EPA has notified the natural resources trustees of negotiations with Respondents regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal and State trusteeship.

2.4. The Parties recognize that this Settlement Agreement has been negotiated in good faith and that the actions taken by Respondents in accordance with this Settlement Agreement do not constitute an admission of liability.

2.5. In any action to enforce the terms of this Settlement Agreement, the Parties agree not to contest its validity or the authority and jurisdiction of the United States or its Agencies to issue and enforce this Settlement Agreement, and the Parties agree to comply with and be bound by the terms and conditions of this Settlement Agreement. In addition, the Parties agree not to contest the authority and jurisdiction of the United States or it Agencies to enforce the provisions in Section XXIII ("Payment of Federal Agency Response Costs") and Section XXIV ("Payment of Tribal Response Costs") of this Settlement Agreement. By signing this Settlement Agreement, however, Respondents do not concede or waive their right to object to any authority the United States or the Tribes may have to issue, take, or enforce any other order or action relating to this Site.

III. PARTIES BOUND

3.1. This Settlement Agreement shall apply to, and be binding upon EPA, the Tribes, and upon Respondents and their officers, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' obligation to comply with the requirements of this Settlement Agreement or to ensure compliance by any successor or assign of Respondents, regardless of whether Respondents continue to exist following such transaction. The signatories to the Settlement Agreement certify that they are authorized to execute and legally bind the Parties they represent to this Settlement Agreement.

3.2. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

3.3. Respondents shall provide a copy of this Settlement Agreement and all of its Appendices to each contractor, subcontractor, laboratory, and consultant retained to perform Work under the Settlement Agreement within fourteen (14) days after the effective date of this Settlement Agreement or the date of retaining their services, whichever is later. Notwithstanding the provisions of contracts with such persons, Respondents are, and shall remain, responsible for compliance with this Settlement Agreement.

IV. DEFINITIONS

4.1. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the attached Appendices, the following definitions shall apply:

"Agency" shall mean EPA and any federal Support Agency.

"BIA" shall mean the Bureau of Indian Affairs, United States Department of the Interior.

"BLM" shall mean the United States Department of the Interior, Bureau of Land Management.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Cultural Items" means human remains and—

(1) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except

that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(2) "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(3) "sacred objects" which shall mean man-made objects and human remains which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(4) "cultural patrimony" which shall mean man-made objects and human remains having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, or a Federal holiday. In computing any period of time under this Settlement Agreement, when the last day falls on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next Working Day.

"Deliverable" shall mean the documents Respondents are required to submit pursuant to this Settlement Agreement, the SOW, or any approved Work Plans, and any additional documents identified in writing by EPA under Section XX ("Additional Investigation and Analysis") of this Settlement Agreement. All Deliverables under this Settlement Agreement are subject to review, comment, modification, and approval as described in Paragraph 9.7 of this Settlement Agreement.

"DOI" shall mean the United States Department of the Interior.

"Effective Date of this Settlement Agreement" shall mean the date on which the Settlement Agreement has been signed by all Parties.

"EPA" shall mean the United States Environmental Protection Agency.

"Federal Agency" shall mean EPA or DOI.

"USFS" shall mean the United States Department of Agriculture, Forest Service.

"Future Response Costs" shall mean all direct and indirect costs incurred after the Effective Date by EPA and the Support Agencies designated herein in connection with this Settlement Agreement including, but not limited to, oversight, review and performance of the Work performed hereunder; time and travel costs; contractor costs; compliance monitoring, including the collection and analysis of split samples; site visits; discussions regarding disputes that may arise under this Settlement Agreement; review, modification, and approval or disapproval of reports; the costs incurred pursuant to Paragraph 29.6 ("Work Takeover"); the costs to prepare the remedial action proposed plan(s) and record(s) of decision; and any other costs directly incurred in overseeing this Settlement Agreement.

"FWS" shall mean the United States Department of the Interior, Fish and Wildlife Service.

"MOU" shall mean the July 2000 "Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho" between several federal agencies (EPA, Forest Service (USFS), BLM, BIA, and FWS), Idaho Department of Environmental Quality (IDEQ) and the Tribes.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, and amendments thereto.

"Natural Resource Damages" or "NRD" shall mean damages for harm to natural resources within the United States pursuant to common law, State statutory law, or federal statutory law, including CERCLA and the Clean Water Act, 33 U.S.C. §§ 1251 et seq.

"Past Response Costs" shall mean $80,000 to be paid by Respondents pursuant to this Settlement Agreement. These costs include, but are not limited to, direct and indirect costs, that EPA incurred at or in connection with the Site through September 27, 2010 plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Respondents" shall mean the J.R. Simplot Company and FMC Corporation collectively.

"Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent/Consent Order, the Statement of Work ("SOW"), and all attached Appendices and all documents incorporated by reference into this document pursuant to Paragraph 9.7 of this Settlement Agreement including, without limitation, approved submissions. Approved submissions (other than progress reports) are incorporated into and become part of the Settlement Agreement upon approval by Remedial Project Manager. In the event of a conflict between this Settlement Agreement and any Appendix, this Settlement Agreement shall control.

"Site" shall mean the Gay Mine, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for response action implementation. The Site is located within the Fort Hall Reservation. The Site does not include the rail right-of-way extending from the Gay Mine tipple to the junction with the Union Pacific main rail line at Fort Hall, Idaho. A map of the vicinity of the Site is attached to this Settlement Agreement as Appendix 2 and is incorporated by reference into this Settlement Agreement.

"State" shall mean the State of Idaho, including its departments, agencies and instrumentalities.

"Statement of Work" or "SOW" shall mean the document(s) set forth as Appendix 1 of this Settlement Agreement that outline(s) the Work to be performed by Respondents to implement the RI and FS. The SOW is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement, as are any modifications made thereto in accordance with Sections XIX ("Emergency Response and Notification"), XX ("Additional Investigation and Analysis") and XXXV ("Modification").

"Support Agency" means an agency that provides a support agency coordinator or project manager to furnish necessary data to EPA, or that reviews response data and documents, and/or provides other assistance requested by the Remedial Project Manager.

"Tribes" shall mean the Shoshone-Bannock Tribes residing on the Fort Hall Reservation near Pocatello, Idaho.

"United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

"Work" shall mean all tasks that Respondents are required to perform pursuant to this Settlement Agreement, and its attached Appendices, and all Deliverables produced pursuant to this Settlement Agreement.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW BY EPA

5.1. Findings of Fact

5.1.1. The Gay Mine is located within the Fort Hall Reservation in southeastern Idaho. It is located in parts of Townships 4 and 5 South, Range 37, 38, and 39 East, Boise Meridian, on the north end of the Portneuf Mountain Range, and the east edge of the Upper Snake River Plain, approximately 25 miles northeast of Pocatello, Idaho, and about 15 miles east of the Fort Hall Townsite.

5.1.2 Beginning in 1946, the Simplot Fertilizer Company, now known as the J.R. Simplot Company, began to extract phosphate ore from the Site for processing at facilities in Pocatello, Idaho. Mining activities were conducted pursuant to leases entered into with the Tribes and individual Tribal members.

5.1.3 Phosphate mining continued at the Site until 1993, at which time economically extractable sources of ores had been largely depleted. Mining was conducted throughout this period pursuant to leases held initially by Simplot, and later by both Simplot and FMC, Respondents.

5.1.4 Phosphate mining activities at the Site included the construction of waste rock and overburden piles partially comprised of center waste shales high in naturally occurring concentrations of selenium and other substances, as well as the creation of pit lakes and other potential sources of contamination. Selenium and other hazardous substances have been detected above background concentrations in monitoring and sampling conducted at the

Site, as well as sampling conducted as part of the southeastern phosphate region Area-Wide Investigation generally.

5.1.5 Neither EPA nor the Tribes assert as of the Effective Date of this Settlement Agreement that any specific Tribal standards constitute Applicable or Relevant and Appropriate Requirements ("ARARs") for purposes of Work performed by Respondents pursuant to this Settlement Agreement.

5.2. Conclusions of Law. Subject to Paragraph 6.1, and based on the Findings of Fact set forth above in Paragraphs 5.1.1– 5.1.4, EPA makes the determinations in Paragraphs 5.2.1 through 5.2.7.

5.2.1. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5.2.2. The contaminants found at the Site, including selenium and other hazardous substances, are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

5.2.3. There has been an actual or threatened "release," as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of one or more hazardous substances from the facility.

5.2.4. Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5.2.5. Respondents are liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a past and/or current operator of the Site and/or as a person who arranged for the disposal of hazardous substances at the Site.

5.2.6. The actual or threatened release of pollutants, contaminants and/or hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

5.2.7. The Work approved under this Settlement Agreement is necessary to protect public health, welfare or the environment, will be consistent with CERCLA and the NCP, will expedite effective response actions, and is in the public interest.

VI. COLLATERAL USE OF THIS SETTLEMENT AGREEMENT

6.1. Except as set forth in Paragraph 2.5, nothing in this Settlement Agreement shall constitute or be construed as an admission of jurisdiction, liability, or fact by any of the Parties. Specifically, Respondents do not admit the jurisdiction, or any responsibility or liability, or the findings of fact, conclusions of law, or determinations made by EPA set forth in this Settlement Agreement, and do not admit any responsibility or liability for any releases or threatened releases of pollutants, hazardous substances, and/or other materials from the Site. Moreover, Respondents do not acknowledge or concede that any release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. The United States, including its agencies, and the Tribes similarly do not admit any liability arising out of or relating to the Site or otherwise waive any provisions of the MOU relating to liability or jurisdiction.

6.2. None of the provisions of this Settlement Agreement shall be admissible in evidence in any proceeding, other than (a) in an administrative proceeding brought by EPA or a judicial proceeding brought by the United States to enforce this Settlement Agreement or any judgment related to it, or (b) for the purpose of demonstrating the consistency of the actions

taken under this Settlement Agreement with the NCP and CERCLA.

VII. SETTLEMENT AGREEMENT AND ORDER

7.1. Based upon the foregoing provisions of this Settlement Agreement, it is hereby ordered and agreed that Respondents shall comply with the provisions of this Settlement Agreement, including but not limited to all Appendices to this Settlement Agreement and documents incorporated by reference into this Settlement Agreement, and perform the actions required in this Settlement Agreement.

7.2. Notwithstanding any other provision of this Settlement Agreement, the Tribes as parties hereto acknowledge and agree that (i) only EPA and the United States have authority to enforce this Settlement Agreement, and (ii) they shall not assert that the Respondents by having entered into this Settlement Agreement have consented to Tribal jurisdiction.

7.3. Nothing in this Settlement Agreement constitutes consent on the part of the Companies that Tribal laws, ordinances, regulations or other standards constitute ARARs.

VIII. REMEDIAL PROJECT MANAGER/COORDINATORS

8.1. EPA has been designated as the Lead Agency for the Site. EPA will coordinate with the Support Agencies pursuant to the MOU. EPA will appoint a Remedial Project Manager ("RPM") who will communicate orally and in writing with Respondents through Respondents' Project Coordinators listed in this Paragraph. The RPM will also send electronic copies of written approvals, disapprovals, modifications and notices under this Settlement Agreement to Respondents' additional representatives listed in Paragraph 8.3 below. The RPM for the Site and the Respondents' Project Coordinators under this Settlement Agreement are as follows:

EPA RPM:

Joe Wallace
US EPA Region 10
1200 Sixth Avenue (ECL-115)
Seattle, Washington 98101
Phone: (206) 553-4470
Fax: (206) 553-0124
E-mail:wallace.joe@epa.gov

Simplot Project Coordinator:

Alan L. Prouty
Vice President, Environmental and Regulatory Affairs
J.R. Simplot Company
P.O. Box 27
999 Main Street
Boise, Idaho 83707
Phone: (208) 389-7365
Fax: (208) 389-7333
Email: Alan.Prouty@simplot.com

FMC Project Coordinator:

Barbara E. Ritchie
Associate Director, Environment
FMC Corporation
1735 Market Street
Philadelphia, Pennsylvania 19103
Phone: (215) 299-6700
Fax: (215) 299-6947
Email: Barbara.Ritchie@fmc.com

8.2. The Remedial Project Manager and the Project Coordinators shall be responsible for overseeing implementation of the Work and/or activities required at the Site under this Settlement Agreement. EPA may change its Remedial Project Manager and Respondents may change their Project Coordinators and shall notify each other in writing at least five (5) days prior to any such change.

8.3. Copies of Deliverables shall be sent to each of the following persons in the manner described in Paragraph 9.9 of this Settlement Agreement:

For EPA: the Remedial Project Manager designated in Paragraph 8.1 and one electronic copy to:

Elizabeth McKenna
EPA Office of Regional Counsel
1200 Sixth Avenue (ORC-158)
Seattle, WA 98118
Phone: (206) 553-0016
Fax: (206) 553-0163
E-mail: mckenna.Elizabeth@epa.gov

For the BLM:

Colleen S. O'Hara
Environmental Protection Specialist
Bureau of Land Management
Pocatello Field Office
4350 Cliffs Drive
Pocatello, ID 83204
Phone: (208) 236-7577
Fax: (208) 478-6376
Email: Colleen_O'Hara@blm.gov

For BIA:

Eldine Stevens
Bureau of Indian Affairs
3100 W. Peak Boulevard
Muskogee, OK 74401
Phone: (918) 781-4645
Fax: (918) 781-4689
Email: Eldine_Stevens@bia.gov

For FWS:

Sandi Fisher
U.S. Fish and Wildlife Service
4425 Burley Drive, Suite A
Chubbuck, Idaho 83202
Phone: (208) 237-6975 Ext 102
Fax: (208) 237-8213
E-mail: Sandi_Fisher@fws.gov

For the Tribes:

Kelly Wright
Environmental Waste Management Program
Shoshone-Bannock Tribes
PO Box 306
Fort Hall, Idaho 83203
Phone: (208) 478-3903
Fax: (208) 478-3909
E-mail: kwright@shoshonebannocktribes.com

Susan Hanson
Shoshone-Bannock Tribes
11458 Philbin Road
Pocatello, Idaho 83202
susanh@ida.net

For Respondents: Their Project Coordinators designated in Paragraph 8.1 and one electronic copy to each of the following:

Sheila Glusco Bush
Asssistant General Counsel
J.R. Simplot Company
P.O. Box 27, One Capital Center
999 Main Street, Suite 1300
Boise, Idaho 83707-0027
Phone: (208) 389-7361
Fax: (208) 389-7515

David M. Heineck
Summit Law Group
315 Fifth Avenue South, Suite 1000
Seattle, Washington 98104-2682
Phone: (206) 676-7030
Fax: (206) 676-7031
Email: davidh@summitlaw.com

8.4. The Remedial Project Manager designated pursuant to Paragraph 8.1 above shall have the authority vested in the Remedial Project Manager by the NCP. Absence of the Remedial Project Manager from the Site shall not be cause for stoppage of Work unless specifically directed by the Remedial Project Manager.

IX. WORK TO BE PERFORMED

9.1 Respondents agree to perform an RI/FS at the Site, consistent with this Settlement Agreement and attached SOW. Investigation and related activities have already been performed that may be relevant in completing the Work under this Settlement Agreement and the SOW, including but not limited to those activities performed in connection with the AWAOC, and other activities performed by Respondents and various other public and private entities. The Parties agree to use reasonable efforts to coordinate activities under this Settlement Agreement with future operations to minimize interference between Settlement Agreement activities and operations activities.

9.2. The general objective of the RI is to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, and to assess risk to human health and the environment. The general objective of the FS for the Site is to identify and evaluate (based on treatability testing, where appropriate) alternatives for remedial action designed to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances from the Site. The alternatives evaluated shall include, but shall not be limited to, the range of alternatives described in the NCP, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). The FS report as amended, and the administrative record shall provide the basis for the proposed

plan under CERCLA Sections 113(k) and 117(a), 42 U.S.C. §§ 9613(k) and 9617(a), by EPA, and shall document the development and analysis of remedial alternatives.

9.3. Respondents shall conduct activities and submit Deliverables as provided by this Settlement Agreement and the SOW for the development of the RI/FS, and in accordance with the standards, specifications, and other requirements of the RI and FS Work Plans and Sampling and Analysis Plan ("SAP"), as initially approved or modified, and as may be amended by the Remedial Project Manager. All such Work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive #9355.3-01, October 1988), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-09A, April 1992) guidance referenced therein, and guidance referenced in the SOW, as may be amended or modified by EPA.

9.4. Selection of Contractors, Personnel. Work to be performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel of Respondents or their consultants with experience in CERCLA investigations and response actions. Respondents shall notify the Remedial Project Manager of their qualifications or the name and qualifications of any contractors or subcontractors retained to perform the Work under this Settlement Agreement at least fifteen (15) days prior to commencement of such Work. EPA retains the right to disapprove of any of the contractors and/or subcontractors retained by Respondents, or of Respondents' choice of themselves to do the Work. The Remedial Project Manager shall provide a single notification from all Agencies regarding approval or disapproval of contractors or subcontractors selected by Respondents. If the Remedial Project Manager issues a notification of disapproval of a selected contractor or Respondents' choice of themselves,

Respondents shall retain a different contractor or notify the Remedial Project Manager that Respondents will perform the Work in place of the disapproved contractor, within thirty (30) days following the Remedial Project Manager's notification of disapproval. Respondents shall notify the Remedial Project Manager of that contractor's name and the qualifications of the contractor or Respondents within that same time. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement, conduct a complete RI/FS, and seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents shall notify the Remedial Project Manager in writing of any changes or additions in the contractors, subcontractors, or personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to contractors, subcontractors, and personnel as it had regarding the initial notification.

9.5. All samples analyzed shall be analyzed by a laboratory that participates in a Quality Assurance/Quality Control ("QA/QC") program equivalent to that specified in the guidance documents listed in the SOW.

9.6. The documents required under this Settlement Agreement to be prepared, submitted for approval, and implemented by Respondents shall be known as "Deliverables." For the purposes of this Settlement Agreement, Deliverables shall include, but are not limited to, the Draft and Final RI and FS Work Plans, the Draft and Final SAP, the Draft RI Report, the Final RI Report, the Draft FS Report, the Final FS Report, and all other documents required by this Settlement Agreement and the SOW. These Deliverables are described more fully below:

9.6.1. RI and FS Work Plans. Respondents shall submit and implement complete RI and FS Work Plans that satisfy the SOW.

9.6.2. Sampling and Analysis Plan ("SAP"). Respondents shall submit and

implement a SAP for the Site that includes a Site Health and Safety Plan ("HASP"), Quality Assurance Project Plan ("QAPP") and field sampling plan ("FSP") covering all Work under this Settlement Agreement. These plans shall be developed in accordance with the NCP and any applicable EPA guidance including EPA's current Standard Operating Safety Guides (EPA Publication 9285:1-03, PB92-963414, June 1992). In addition, the HASP shall comply with all applicable occupational safety and health regulations. Also, the FSP and QAPP for the Site will include procedures for collecting, transporting and analyzing all samples collected at the Site, as well as procedures for QA/QC. These procedures shall be consistent with 40 C.F.R. § 300.415(b)(4)(ii), "EPA Guidance for Quality Assurance Project Plans QA/G-5" (EPA/600/R-02/009, December 2002 or subsequently issued guidance), and "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA 240/B-01/003, March 2001 or subsequently issued guidance). The SAP shall identify laboratories to be used during performance of the Work of this Settlement Agreement.

9.6.3. RI Report. Respondents shall submit for review and approval an RI Report for the Site consistent with the SOW, RI Work Plan, and the SAP.

9.6.4. FS Report. Respondents shall submit an FS Report which reflects data collected during site characterization, the Site-specific Remedial Action Objectives, ("RAOs"), and the results of the baseline human health and ecological risk assessments that Respondents shall perform consistent with the SOW and approved FS Work Plan. The FS Report shall be in accordance with the SOW. The FS Report and the administrative record shall provide the basis for the Proposed Plan under CERCLA Sections 113(k) and 117(a), 42 U.S.C. §§ 9613(a) and 9617(k), and shall document the development and analysis of alternatives.

9.7. Approval of Plans and Other Submissions.

9.7.1. All Deliverables shall be submitted initially by Respondents in draft form, in accordance with the schedule provided in the SOW, the Work Plans, or as otherwise established by the Remedial Project Manager, and are subject to review, comment, and written approval or disapproval. The Remedial Project Manager shall consolidate any comments received from EPA and the Support Agencies and provide a single set of comments to Respondents. Respondents shall provide responses to all comments to the Remedial Project Manager in accordance with the schedule set forth in the SOW and the approved Work Plans. Approved Deliverables shall be enforceable as a part of this Settlement Agreement. All Work performed pursuant to this Settlement Agreement shall be in accordance with approved Deliverables, unless otherwise authorized in writing. Failure to comply materially with any provision of an approved Deliverable shall be considered a violation of this Settlement Agreement.

9.7.2. A Deliverable may also be approved with modifications, and subject to the dispute resolution provision of this Settlement Agreement, shall be enforceable as part of this Settlement Agreement. In the event Respondents disagree with a modification, such disagreement shall be resolved under the provisions of Section XXI ("Dispute Resolution") of this Settlement Agreement. Upon completion of Dispute Resolution, the Deliverable, as modified and approved through the Dispute Resolution process, shall be incorporated herein and shall be enforceable as part of this Settlement Agreement.

9.7.3. Resubmission. Subsequent to the procedure described in paragraph 9.7.1, Respondents shall amend and submit a revised document to the Remedial Project Manager in accordance with the schedule in the SOW or the Work Plans. The revised document shall

incorporate all comments and correct all deficiencies identified by the Remedial Project Manager, unless such comments have been revised or withdrawn in writing. Any stipulated penalties applicable to the submission shall accrue during the period specified in the SOW and the Work Plans for document resubmission by Respondents, but Respondents shall not be liable for payment of such penalties unless the resubmission is disapproved or modified due to a material defect.

9.7.3.1. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by the Remedial Project Manager. Implementation of any non-deficient portion of the submission shall not relieve Respondents of any liability for Stipulated Penalties.

9.7.3.2. Respondents shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition, or modification of the following deliverables: RI and FS Work Plans and SAP, Draft RI Report and Treatability Testing Work Plan and SAP, and Draft FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement.

9.7.3.3. For all remaining Deliverables, not listed in subparagraph 9.7.3.2, Respondents shall proceed with all subsequent tasks, activities, and Deliverables without awaiting EPA approval on the submitted Deliverable, unless otherwise instructed by the Remedial Project Manager. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or Deliverable at any point during the

RI/FS.

9.7.3.4. If EPA disapproves a resubmitted plan, report, or other Deliverable, or portion thereof, the Remedial Project Manager may again direct Respondents to correct the deficiencies. EPA also retains the right to modify or develop the plan, report or other Deliverable. Respondents shall implement any such plan, report or other Deliverable as corrected, modified, or developed by EPA, subject only to Respondents' right to invoke Dispute Resolution.

9.8. The absence of written comments in response to the submission of any Deliverable by Respondents pursuant to the schedules set out under the SOW and the Work Plans shall not be construed as approval of the Deliverable under this Settlement Agreement.

9.9. Unless the Remedial Project Manager authorizes a smaller number in writing, Respondents shall provide to the Remedial Project Manager an electronic copy and three (3) paper copies of each draft and final Deliverable, including one unbound copy, and shall provide one electronic copy and one paper copy to each Support Agency, with the exception of the Tribes. Respondents shall provide to the Tribes two electronic copies and two paper copies of each draft and final Deliverable. Such copies shall be sent to the contacts listed in Paragraph 8.3 of this Settlement Agreement. All reports, maps and supporting information shall be provided in readily reproducible form. Electronic copies shall be in a form that can be electronically modified. Paper copies of Deliverables shall be sent by regular or overnight mail or facsimile.

9.10. EPA will prepare a Community Relations Plan for the Site in accordance with applicable EPA guidance and the NCP. Respondents shall provide information and otherwise cooperate in support of the preparation and implementation of the Community Relations Plan and any modification of the Community Relations Plan.

9.11. Upon request by the Remedial Project Manager, Respondents shall provide copies of plans, task memoranda, field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other documents generated in connection with the Work performed under this Settlement Agreement to EPA or a Support Agency.

X. ADMINISTRATIVE RECORD

10.1. In accordance with 40 C.F.R. §§ 300.800-825, EPA shall determine the contents and location of the administrative record for the Site and shall provide reasonable notice to Respondents of these contents and this location. Respondents may submit to the Remedial Project Manager for consideration for inclusion in the administrative record any records, reports, data, documents, photographs, or other information or materials prepared, discovered, relied on, or otherwise generated or used in connection with Respondents' performance of Work under this Settlement Agreement. However, nothing in this Paragraph shall be deemed to limit or affect the lawful discretion of EPA to determine the contents of the administrative record.

10.2. EPA retains the responsibility for the release to the public of the RI and FS Reports. EPA retains responsibility for the preparation and the release to the public of the Proposed Plan and Record of Decision in accordance with CERCLA and the NCP. The Remedial Project Manager shall provide Respondents with the final RI and FS Reports, Proposed Plan and Record of Decision. Nothing in this Settlement Agreement shall be deemed to obligate Respondents to perform or take any action pertaining to the selected remedial action.

XI. OTHER APPLICABLE LAWS

11.1 All actions required to be taken pursuant to this Settlement Agreement shall be performed in accordance with the requirements of all applicable State, Federal, Tribal and other

local laws and regulations, except that, pursuant to Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e), no Federal, State, Tribal or other local permit shall be required for the portion of the Work conducted entirely on-Site, where such Work is carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621, and the NCP. Where any portion of the Work performed off-Site requires a Federal, State, Tribal or other local permit or approval, which is a matter of substantive law that is extrinsic to and not determined by this Settlement Agreement, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

11.2 Compliance by Respondents with the terms of this Settlement Agreement shall not relieve Respondents of any obligations they may have to comply with any other Federal, State, Tribal or local laws and regulations. Whether any such obligations exist is a matter of substantive law that is extrinsic to and not determined by this Settlement Agreement.

XII. RECORD PRESERVATION

12.1 The original or one copy of all records and documents in the possession, custody or control of Respondents, excluding internal drafts of Deliverables, that are generated or collected pursuant to this Settlement Agreement shall be preserved during performance of the Work and for a minimum of ten (10) years after completion of the Work required under this Settlement Agreement, unless the Remedial Project Manager notifies Respondents in writing that these documents may be destroyed earlier. After the expiration of this ten-year period, Respondents shall notify EPA at least sixty (60) days before the documents are scheduled to be destroyed and shall provide EPA with the opportunity to take possession of or copy non-privileged material. Such notice is only required for five (5) years following expiration of the ten-year post-completion period, unless extended by request of EPA in writing.

XIII. CLAIMS INVOLVING THIRD PARTIES

13.1 In addition to the reservation of rights provided by Section XXIX, the Parties to this Settlement Agreement reserve any claims they now have, or may have in the future, against any party not a signatory to this Settlement Agreement including, but not limited to, claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, for recovery of response costs, including oversight or enforcement costs arising out of, or related to, this Settlement Agreement, and any future and/or past costs incurred in connection with the Site or this Settlement Agreement. Nothing in this Settlement Agreement shall constitute or be construed as a release from any claim, cause of action or demand against any person, firm, partnership, or corporation not a signatory to this Settlement Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances found at, taken to, or taken from the Site, or from the ownership or operation of the Site or any portion thereof. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §9613(f)(2) – (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

13.2 This Settlement Agreement expressly is not enforceable by parties other than the United States. The Parties expressly disclaim any intent to create third-party beneficiary rights, with the exception of DOI, under this Settlement Agreement.

XIV. THREATENED/ENDANGERED SPECIES/NATURAL RESOURCE DAMAGES

14.1 Respondents shall immediately notify the Remedial Project Manager of any and all threatened or endangered species encountered on the Site in the course of performing

activities under this Settlement Agreement.

14.2 For the purposes of Section 113(g)(1) of CERCLA, 42 U.S.C. § 9613(g)(1), the Parties agree that, upon issuance of this Settlement Agreement, for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within three (3) years after completion of the remedial action.

XV. COUNTERPARTS AND EFFECTIVE DATE

15.1 This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts shall together constitute a single, integrated document. This Settlement Agreement shall be effective on the date it has been signed by all Parties.

XVI. ACCESS

16.1 Beginning on the Effective Date of this Settlement Agreement, the Tribes shall permit access to EPA and Respondents and their authorized representatives to the Site and to off-Site areas under the ownership and/or control of the Tribes as may be needed to implement this Settlement Agreement. The Tribes authorize such access upon reasonable prior notice from Respondents and without any requirement for access or trespass permits or associated fees.

16.2 Respondents shall provide access to EPA personnel accompanied or authorized by the Remedial Project Manager to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Settlement Agreement, subject to the procedures described in Paragraphs 17.4 and 17.5 for documents which Respondents claim are privileged.

16.3 Respondents shall use their best efforts to obtain access to private lands not owned and/or controlled by Respondents or the Tribes as may be necessary to perform the Work

required under this Settlement Agreement. Respondents will use their best efforts to have any access agreement they obtain also provide for access by EPA and the Support Agencies as may be necessary to implement the terms of this Settlement Agreement. Any such access agreements shall specify that Respondents are not the representatives of any governmental agencies for purposes of liability associated with Site activities. Respondents shall provide the Remedial Project Manager with copies of all relevant access agreements prior to initiation of field activities on the area covered by the access agreement. To the extent that Respondents are unable to obtain consensual access to any private lands, EPA may exercise its authorities to obtain necessary access. All persons with access to the Site under this Paragraph shall be required to comply with the health and safety plans established pursuant to this Settlement Agreement; provided that the Federal Agencies and Tribes may elect, at their discretion, to adopt their own health and safety plan applicable to federal or Tribal employees and their contractors. For purposes of this Paragraph, "best efforts" may include the payment of reasonable sums of money in consideration of an access agreement and/or access easement.

XVII. SAMPLING/ DATA AVAILABILITY/ACCESS TO INFORMATION

17.1 Respondents shall notify the Remedial Project Manager at least fifteen (15) Working Days prior to conducting field events, including construction, excavation, drilling and sampling events. The fifteen-day notice period may be shortened if the Remedial Project Manager agrees that this notice period would impede or prevent necessary or desirable sampling. Any Party, including its contractors, that is taking samples, will, at the request of another Party, allow split or duplicate samples to be taken by or for the other Party of any samples collected in the course of implementing this Settlement Agreement.

17.2 Respondents waive any objection to the validity and admissibility of any data

generated in the course of performance of Work under this Settlement Agreement, if such data has been collected or generated in compliance with this Settlement Agreement, and validated in accordance with the QA/QC procedures set forth in the SAP. The Parties do not waive their rights to object to the relevance or the interpretation of, or the conclusions to be drawn from, such validated data.

17.3 All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, during implementation of this Settlement Agreement, shall be submitted to the Remedial Project Manager, upon request, in the subsequent progress report as described in the SOW. The Remedial Project Manager will make available to Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement subject to the remaining provisions of Section XVII.

17.4 Respondents agree not to assert any business confidentiality claim, or attorney-client or attorney work product privilege, with respect to any analytical data relating to sampling, monitoring, or other activities required to be performed under this Settlement Agreement, or with respect to observations of conditions at or resulting from releases at the Site made or generated in the course of the performance of the Work pursuant to this Settlement Agreement. Respondents may assert a claim of business confidentiality or other privilege covering any other type of information generated pursuant to the requirements of this Settlement Agreement, provided, in the case of a business confidentiality claim only, that such claim is consistent with the language of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and is asserted in the manner

described in 40 C.F.R. § 2.203. If no claim of confidentiality or other privilege accompanies the information when it is received by the Remedial Project Manager, it may be made available to the public without further notice.

17.5 Respondents may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall inform the Remedial Project Manager of that decision and provide the Remedial Project Manager with the date, author, recipient(s), title, and description of the document or information withheld. Respondents shall also identify which privilege(s) they assert applies to the document or information withheld and explain the basis for its assertion. Based on the information supplied by Respondents, EPA shall determine whether to accept Respondents' claim of privilege. In the event EPA disagrees with Respondents' claim of privilege, Respondents shall promptly disclose the document or information previously withheld, unless Respondents dispute the determination by invoking the Dispute Resolution provisions of Section XXI of this Settlement Agreement. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

17.6 EPA, and its authorized representatives, and Support Agency personnel accompanied or authorized by the Remedial Project Manager, shall have the authority at all reasonable times to inspect activities at the Site and conduct such tests on the Site as deemed necessary and may use cameras, sound recording devices, or any other equipment needed to verify data submitted or monitor activities undertaken by Respondents. Nothing in this Paragraph shall affect the authority of DOI under the Federal Land Policy and Management Act, the Mineral Leasing Act, or other applicable laws to inspect lands within its jurisdiction at the

Site or conduct such tests on such lands as are deemed necessary. Respondents may request split or duplicate samples under Paragraph 17.1 of this Settlement Agreement and, upon request, shall also be entitled to inspect and make copies of any test results, recordings, photographs, or other non-privileged information or materials generated during or as a result of the inspection conducted by EPA or a Support Agency. Subject to the provisions in Paragraph 17.4 or 17.5 of this Settlement Agreement, EPA and its authorized representatives, and the other Support Agencies and their authorized representatives accompanied or authorized by the Remedial Project Manager shall be allowed to inspect and make copies of all records, operating logs, contracts, files, photographs, sampling and monitoring data, or any other non-privileged documents related to the Work required under this Settlement Agreement. Any claim that such materials may be privileged shall be governed by Paragraphs 17.4 and 17.5 of this Settlement Agreement. Nothing herein is intended to limit or to expand in any way the right of entry or inspection authority of EPA or the Support Agencies under CERCLA or any other applicable legal authority.

XVIII. WORK STOPPAGE

18.1 The Remedial Project Manager will communicate EPA's determination to stop Work from proceeding, either temporarily or permanently, on any task, activity or Deliverable at any point during performance of the Work required under this Settlement Agreement if Respondents materially fail to comply with the terms of this Settlement Agreement. The Remedial Project Manager must provide Respondents with written notice to stop Work and the reasons for doing so, unless the Remedial Project Manager communicates that an imminent and substantial endangerment to human health, welfare or the environment exists at the Site, such that written notice is impracticable. In addition, Respondents must comply with the provisions

of Paragraph 36.2, regarding discovery of objects of historic interest, Tribal cultural items, human remains, and funerary objects.

XIX. EMERGENCY RESPONSE AND NOTIFICATION

19.1 If any incident, or change in Site conditions, during the Work conducted by Respondents pursuant to this Settlement Agreement on the Site, causes or threatens to cause an endangerment to the public health, welfare, or the environment, Respondents shall immediately notify the Remedial Project Manager of the incident or Site conditions. If the Remedial Project Manager is unavailable, Respondents shall notify the EPA Region 10, Emergency Response and Site Cleanup Unit, 24 Hour Duty Officer, (206) 553-1263, and Tribal Emergency Management and Response personnel, (208) 237-0137.

19.2 If any act or omission of Respondents or those acting on their behalf, including their officers, employees, agents, contractors, subcontractors, or assigns, in carrying out the Work causes or threatens a release of hazardous substances or oil of any kind or form that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. In the event that Respondents fail to take appropriate response actions as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XXIII ("Payment of Federal Agency Response Costs").

19.3 If EPA determines there is an imminent and substantial endangerment to human

health, welfare or the environment due to unanticipated or changed circumstances at the Site, which Respondents are not otherwise required to address under Paragraph 19.2 of this Settlement Agreement, the Remedial Project Manager shall notify Respondents in writing of modifications to the Work Plans, and/or the Deliverable(s) that EPA deems necessary to address the immediate threat. Within five (5) working days of the receipt of such notification, Respondents shall notify the Remedial Project Manager in writing whether they agree to perform the work required under the proposed modifications. If EPA and Respondents agree in writing to the proposed modification to the Work Plans and/or the new Deliverables, the modifications to the Work Plan and/or the new Deliverables shall become an attachment to this Settlement Agreement and incorporated herein. In the event of an imminent and substantial endangerment to human health, welfare or the environment due to unanticipated or changed circumstances at the Site, modifications to the Work Plans may also be made orally by the Remedial Project Manager and shall be memorialized in writing within ten (10) days; provided, however, that the modification effective date shall be the date of the Remedial Project Manager's oral direction.

19.4 If Respondents do not agree to perform the Work required by the modifications proposed pursuant to Paragraph 19.3, EPA may perform the proposed Work or take any action deemed necessary and may seek recovery of any costs it incurs performing such proposed Work pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) or other applicable law. The Parties agree that any determination by the Remedial Project Manger or EPA that an immediate response at the Site is required shall not be subject to the Dispute Resolution provisions in Section XXI of this Settlement Agreement.

XX. ADDITIONAL INVESTIGATION AND ANALYSIS

20.1 If at any time during the RI/FS process, Respondents identify a need for

additional data, Respondents shall submit a memorandum documenting the need for additional data to the Remedial Project Manager within ten (10) days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into plans, reports, and other deliverables.

20.2 If EPA determines that additional Work on the Site is required to meet the objectives of this Settlement Agreement and that Work is not covered by Section IX above, the Remedial Project Manager may notify Respondents in writing of such determination and specify any proposed changes to the SOW and any Deliverable to reflect the additional Work. Subject to their rights pursuant to Section XXI to invoke Dispute Resolution, Respondents agree to conduct this additional Work pursuant to this Settlement Agreement. Within ten (10) working days of receipt of the written determination that additional Work is required, Respondents shall confirm their willingness to perform the additional Work by providing notification to the Remedial Project Manager or invoke Dispute Resolution. The SOW and/or RI and FS Work Plans shall be modified to incorporate the additional Work, or in accordance with the final resolution of the dispute. EPA reserves the right to seek any appropriate relief, including the right to conduct the Work itself at any point, and to require reimbursement from Respondents, as provided by Section XXIII ("Payment of Federal Agency Response Costs") and Paragraph 29.6 ("Work Takeover").

20.3 If prior to the completion of Work required by a Work Plan, EPA determines that sufficient data has been collected with respect to a particular portion of the Site or issue then the Remedial Project Manager may communicate a decision to accelerate the RI Report and FS process or undertake a removal action with respect to that particular portion or issue. EPA's election to undertake this approach may result in one or more Engineering Evaluation and Cost Assessments ("EE/CAs") and one or more FSs, the combination of which will address all

pathways for the release or threatened release of hazardous substances at the Site. Respondents will complete the initial FS on the schedule provided in the SOW. Respondents will complete the EE/CAs or subsequent FSs on a schedule provided in a revised FS or EE/CA Work Plan.

XXI. DISPUTE RESOLUTION

21.1 The dispute resolution procedures in this Section are the exclusive mechanism for resolving disputes arising under this Settlement Agreement. A dispute shall be considered to have arisen when Respondents serve the Remedial Project Manager with a written Notice of Dispute. A Notice of Dispute shall be served by facsimile, overnight mail, or some equivalent service.

21.2 In the first instance, EPA and Respondents shall attempt to resolve any dispute arising under this Settlement Agreement by informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the date of receipt of the Notice of Dispute, unless EPA and Respondents agree in writing to modify the period for informal negotiations. If Respondents and EPA fail to resolve the dispute informally, the formal dispute resolution procedure in the following Paragraphs shall apply.

21.3 In the event EPA and Respondents cannot resolve the dispute through informal negotiations, then the position of EPA shall be binding unless, within seven (7) days after the conclusion of the informal negotiations period, Respondents invoke the formal dispute resolution procedures of this Section by serving on EPA a written Statement of Position on the matter in dispute. Respondents' written Statement of Position shall be sent by facsimile, overnight mail, or some equivalent service, and shall define the dispute and state the basis of Respondents' objections to the position of EPA.

21.4 Following receipt of Respondents' Statement of Position, EPA shall send its

written Statement of Position to Respondents by facsimile, overnight mail or some equivalent service.

21.5 Following this exchange of Statements of Position, EPA shall make a final determination resolving the matter in dispute.

21.6 Any determination by EPA pursuant to this Section is governed by Section 113(h) and (j) of CERCLA, 42 U.S.C. § 9613(h) and (j), and shall not constitute a final agency action subject to judicial review unless and until the United States commences a judicial action to enforce this Settlement Agreement, in which case the determination shall only be reviewable in Federal Court.

21.7 Nothing in this Settlement Agreement precludes the Parties from agreeing to use other forms of alternative dispute resolution in lieu of the procedures described in Paragraphs 21.3 – 21.5.

21.8 Upon completion of all dispute resolution procedures under this Section, Respondents shall proceed in accordance with the final determination regarding the matter in dispute. If Respondents do not perform any required Work in accordance with the final determination, EPA may perform the Work and/or pursue any other appropriate relief, including judicial enforcement of this Settlement Agreement pursuant to CERCLA.

21.9 The invocation of the dispute resolution provisions of this Settlement Agreement shall not extend, postpone or affect in any way any unrelated obligation of Respondents under this Settlement Agreement not directly in dispute, unless the Parties agree in writing otherwise. Stipulated penalties with respect to any disputed matter shall accrue from the first day of noncompliance with any applicable provision of the Settlement Agreement and shall continue to accrue for the duration of the dispute resolution process, except as provided under Section XXV

("Stipulated Penalties") of this Settlement Agreement, but payment of the penalties shall be stayed pending resolution of the dispute. In the event Respondents do not prevail on the disputed matter, stipulated penalties shall be assessed and paid as provided in Section XXV of this Settlement Agreement ("Stipulated Penalties"), unless otherwise agreed by the Parties in writing.

XXII. FORCE MAJEURE

22.1 Delays or inability to perform any of the requirements of the Settlement Agreement within the time limits prescribed shall not be a violation of the Settlement Agreement where performance is prevented or delayed by a *force majeure* event. *Force majeure* is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents performance of any obligation under this Settlement Agreement, despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include the financial inability of Respondents to complete performance of the obligation or increased cost of performance. Respondents shall have the burden of proving *force majeure* by a preponderance of the evidence.

22.2 If any event occurs that may materially delay performance of any obligation under this Settlement Agreement or submittal of any Deliverable past the applicable deadline, Respondents shall notify the Remedial Project Manager within twenty-four (24) hours of the time Respondents knew or should have known that the event would delay such performance or submittal. Within five (5) business days thereafter, Respondents shall notify the Remedial Project Manager in writing of the reasons for the delay, its anticipated length, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with these requirements shall waive any claim of *force majeure* by Respondents.

22.3 The Remedial Project Manager shall notify Respondents in writing of the determination by EPA as to whether *force majeure* applies to the event or circumstances within seven (7) days, or upon notice, such additional time EPA reasonably needs to respond, after receipt of written notice from Respondents. If EPA determines that the delay has been or will be caused by circumstances constituting a *force majeure*, the due date for each uncompleted task in this Settlement Agreement shall be extended for a sufficient period to complete the tasks that were delayed or prevented. Such period shall be at least equal to the delay resulting from the *force majeure* circumstance. If EPA disagrees with Respondents' *force majeure* claim, or there is no agreement on the length of an extension of time, the dispute shall be resolved in accordance with the dispute resolution provisions in Section XXI of this Settlement Agreement or the stipulated penalties provisions of Section XXV, as appropriate.

XXIII. PAYMENT OF FEDERAL AGENCY RESPONSE COSTS

23.1 Payment of EPA Costs. Within thirty (30) days of the Effective Date of this Settlement Agreement, Respondents shall pay Past Response Costs. The total amount to be paid by Respondents in reimbursement of Past Response Costs shall be deposited in the Gay Mine Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. Within thirty (30) days of the Effective Date of this Settlement Agreement Respondents shall pay to EPA $100,000 in prepayment of EPA Future Response Costs. The total amount paid to EPA in prepayment of Future Response Costs shall be deposited by EPA in the Gay Mine Site Special Account. These funds shall be retained and used by EPA to conduct or finance response actions at the Site. Payments made pursuant to this Paragraph shall be made by Electronic Funds Transfer ("EFT"), in accordance with EFT

instructions provided by EPA, or by submitting a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and the EPA Site/Spill ID Number10BH. Respondents shall send the check to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Respondents shall use the following address for payments made by overnight mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
Saint Louis, MO 63101-1229

23.2 At the time of payment, Respondents shall send notice that payment has been made to EPA to the Remedial Project Manager and to the Servicing Finance Office, EPA Finance Center, MS-NWD, Cincinnati, OH 45268.

23.3 Respondents shall reimburse EPA for all Future Response Costs associated with the Site not inconsistent with the NCP. On a periodic basis EPA will send Respondents a bill requiring payment that includes a cost summary. Respondents shall make all payments within thirty (30) days of Respondents' receipt of each bill requiring payment. Respondents shall make all payments required by this Paragraph in the manner required by Paragraph 23.1, with notice as required by Paragraph 23.2. The total amount paid will be deposited by EPA in the Gay Mine Site Special Account. These funds will be retained and used by EPA to pay Future Response Costs. Any amounts remaining in the Gay Mine Site Special Account will be disbursed or credited in accordance with Paragraph 23.4.

23.4 After EPA issues a written notification of completion of Work pursuant to Section XXXIV and EPA has performed a final accounting of all direct and indirect costs relating to Future Response Costs, EPA shall apply any unused amount paid by Respondents in prepayment of Future Response costs pursuant to Paragraph 23.1 to any other unreimbursed response costs or response actions remaining at the Site. Any surplus or unused monies paid in prepayment of Future Response Costs pursuant to Subparagraph 23.1 will be remitted to Respondents.

23.5. Payment of DOI Future Response Costs.

23.5.1. Respondents hereby agree to pay up to $30,000 per year to pay the Future Response Costs of DOI. Within 30 days of the Effective Date of this Settlement Agreement Respondents shall pay to DOI $30,000 in prepayment of DOI's Future Response Costs. Within 365 days after the Effective Date, and annually thereafter, DOI shall submit to Respondents an estimated annual cost budget. Within thirty (30) days of receipt of the this estimated annual cost budget, Respondents shall deposit with the DOI an amount equal to the its estimated annual cost budget or $30,000, whichever is less.

23.5.2. DOI shall use such monies to establish an account fund dedicated solely to its activities associated with this Settlement Agreement, in accordance with the Appropriations Act for the Department of the Interior and Related Agencies of 2000, Pub. L. 106-113, 113 Stat. 150, and other applicable statutes, regulations and guidance. Within 180 days of the execution of this Settlement Agreement, and every 180 days thereafter, the DOI shall provide Respondents an accounting of its costs, including supporting cost summaries.

23.5.3. Payments to DOI shall be made by EFT, in accordance with EFT instructions provided by DOI, or by certified or cashier's check made payable to the Central Hazardous Materials Fund (Gay Mine) and mailed to:

Central Hazardous Materials Fund
NBC Division of Financial Management Services
Branch of Accounting Operations
Mail Stop D-2777
7401 West Mansfield Ave.
Lakewood, Colorado 80235

Each check shall reference:

Site Name: Southeast Idaho Phosphate Mining - Gay Mine Settlement Agreement

23.5.4. Within 120 days after completion of DOI support activities under this Settlement Agreement, DOI shall provide Respondents with a final cost accounting. In the event that the monies remain in the Fund, the DOI shall reimburse Respondents within thirty (30) days of submission of the final cost accounting.

23.6 Respondents may dispute payment of any portion of EPA's, and/or DOI's Future Response Costs, but only on the basis of accounting errors or if they believe that such costs were excess costs incurred as a direct result of an action that was inconsistent with the NCP. Disputes regarding EPA's or DOI's Response Costs will be resolved using the dispute resolution procedures described in Section XXI of this Settlement Agreement. Any objection by Respondents shall be made in writing to EPA within thirty (30) days of receipt of the billing statement and shall specifically identify the disputed EPA or DOI costs and the basis of the dispute. Disputed costs shall be paid by Respondents into an interest-bearing escrow account while the dispute is pending. Respondents shall send to EPA's Remedial Project Manager at the address provided in Paragraph 8.1 a copy of the transmittal letter, a copy of the check paying the uncontested portion of EPA and DOI Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. All

undisputed EPA and DOI costs shall be remitted by Respondents in accordance with the provisions in the preceding Paragraphs of this Section. In any dispute resolution proceeding, Respondents shall bear the burden of establishing an accounting error, the inclusion of costs inconsistent with the NCP, or the inclusion of costs for work outside the scope of this Settlement Agreement. If EPA prevails in the dispute resolution proceeding regarding EPA or DOI costs, Respondents shall remit the amount(s) in question, including any applicable interest, within 30 days after receipt of the final EPA determination. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs for which they did not prevail in the manner described in the preceding sentence. Respondents shall be disbursed any balance of the escrow account.

23.7 Payment of Interest to EPA and DOI. For purposes of this Section, Interest shall accrue at the rate established under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year and is compounded. In the event that payment for Past or Future Response Costs to EPA or DOI is not made by the due dates specified in this Settlement Agreement, Respondents shall be liable to pay stipulated penalties, as provided in this Settlement Agreement, and shall pay Interest on the unpaid balance. Interest on Past Response Costs and Future Response Costs paid in accordance with this Section shall begin to accrue on the date of receipt of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States under this Settlement Agreement by virtue of Respondents' failure to make timely payments under this Section.

XXIV. PAYMENT OF TRIBAL RESPONSE COSTS

24.1. Payment of Tribal Future Response Costs.

24.1.1. Respondents hereby agree to pay the sum of up to $85,000 per year to pay the Future Response Costs of the Tribes. Within 30 days of the Effective Date of this Settlement Agreement Respondents shall pay to the Tribes $85,000 in prepayment of the Tribes' Future Response Costs. Within 365 days after the Effective Date, and annually thereafter, the Tribes shall submit to Respondents an estimated annual cost budget. Within thirty (30) days of receipt of the this estimated annual cost budget, Respondents shall deposit with the Tribes an amount equal to the estimated annual cost budget, or $85,000,whichever is less.

24.1.2. The Tribes shall use such monies to establish an account fund dedicated solely to its activities associated with this Settlement Agreement, in accordance with applicable statutes, regulations, and guidance. Within 180 days of the execution of this Settlement Agreement, and every 180 days thereafter, the Tribes shall provide Respondents an accounting of its costs, including supporting cost summaries.

24.1.3. Payments to the Tribes shall be made by certified or cashier's check made payable to the Shoshone-Bannock Tribes and mailed to:

Environmental Waste Management Program
Shoshone-Bannock Tribes
PO Box 306
Fort Hall, Idaho 83203

Each check shall reference: Site Name: Southeast Idaho Phosphate Mining - Gay Mine Settlement Agreement

24.1.4. Within 120 days after completion of Tribal support activities under this Settlement Agreement, the Tribes shall provide Respondents with a final cost accounting. In the event that the monies remain in the Fund, the Tribes shall reimburse Respondents within thirty

(30) days of submission of the final cost accounting.

24.2 Respondents may dispute payment of any portion of the Tribes' Future Response Costs, but only on the basis of accounting errors or if they believe that such costs were excess costs incurred as a direct result of an action that was inconsistent with the NCP. Disputes regarding the Tribes' Response Costs will be resolved using the dispute resolution procedures described in Section XXI of this Settlement Agreement. Any objection by Respondents shall be made in writing to EPA within thirty (30) days of receipt of the billing statement and shall specifically identify the disputed costs and the basis of the dispute. Disputed Tribal costs shall be paid by Respondents into an interest-bearing escrow account while the dispute is pending. Respondents shall send to EPA and the Tribes at the address provided in Paragraph 8.3, a copy of the transmittal letter, a copy of the check paying the uncontested portion of Tribal Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. All undisputed Tribal costs shall be remitted by Respondents in accordance with the provisions in the preceding Paragraphs of this Section. In any dispute resolution proceeding, Respondents shall bear the burden of establishing an accounting error or the inclusion of costs inconsistent with the NCP. If EPA prevails in the dispute resolution proceeding regarding the Tribal costs, Respondents shall remit the amount(s) in question, including any applicable interest, within thirty (30) days after receipt of the final EPA determination. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs for which they did not prevail in the manner described in the preceding sentence. Respondents shall be disbursed any balance of the escrow account.

XXV. STIPULATED PENALTIES

25.1 Unless there has been a written modification of a compliance date or other requirement of this Settlement Agreement by the Remedial Project Manager, or a *force majeure* event as defined herein, in the event Respondents fail to meet any requirement of this Settlement Agreement, Respondents shall pay stipulated penalties in the amount of $1,000 per day, per violation for the 1st through 14th days of noncompliance; $3,000 per day, per violation for the 15th through 30th day of noncompliance; and $7,500 per day, per violation for the 31st day of noncompliance and every day thereafter. Compliance by Respondents shall include complete and timely performance of each activity required under this Settlement Agreement including, but not limited to, payment of response costs pursuant to Sections XXIII and XXIV or complete and timely performance of all Work or any activities described in any plan, statement or Deliverable approved under this Settlement Agreement.

25.2 All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission of a Deliverable under Section IX (Work to be Performed), during the period, if any, beginning on the 31st day after the Remedial Project Manager's receipt of such submission until the date that the Remedial Project Manager notifies Respondents of any deficiency, and (2) with respect to a matter subject to Dispute Resolution (Section XXI), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the reviewing agency issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of the Settlement Agreement.

25.3 The Remedial Project Manager will advise Respondents in writing of any stipulated penalties owed by Respondents pursuant to this Section. All penalties shall be paid by certified or cashier's check within thirty (30) days of the date of receipt of the demand for payment, unless Respondents have properly disputed such demand or related notice of violation. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Interest shall accrue at the rate provided in applicable law. Payment shall be made in accordance with instructions provided by the Remedial Project Manager.

25.4 Nothing in this Settlement Agreement shall be considered as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXIX ("Reservation of Rights") Paragraph 29.6. Notwithstanding any other provision of this Section, the United States may at any time and in its unreviewable discretion, waive any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement.

XXVI. OTHER CLAIMS

26.1 By entering into this Settlement Agreement, the Parties, EPA, and the Tribes assume no liability for injuries or damages to persons or property resulting from any acts or omissions of any other Party. No Party shall be deemed to be a Party to any contract entered into

by any other Party or its contractors to carry out actions pursuant to this Settlement Agreement, unless so specified in such contract and the Party is a signatory to such contract.

XXVII. COVENANT NOT TO SUE BY THE UNITED STATES

27.1 In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or take administrative action against Respondents pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the Work performed under this Settlement Agreement and for recovery of Past Response Costs and Future Response Costs that are reimbursed by Respondents pursuant to this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Past Response Costs and Future Response Costs. This covenant not to sue extends only to Respondents and does not extend to any other person.

27.2 This Settlement Agreement requires the performance of an RI/FS but does not itself require Respondents to undertake actions to remediate or clean up contamination. As such this Settlement Agreement does not constitute a final remedy for contamination or pollution, if any, resulting from the matters addressed herein.

XXVIII. COVENANT NOT TO SUE BY RESPONDENTS

28.1 Notwithstanding Section XXIX, "Reservation of Rights," Respondents covenant not to sue and agree not to assert any claims or causes of action against EPA, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

28.1.1. any direct or indirect claim for reimbursement from the Hazardous

Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

28.1.2. any claim arising out of the Work or for Past Response Costs or Future Response Costs that have been or will be incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or;

28.1.3. Respondents further covenant not to sue and agree not to assert any claim against the EPA pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, relating to the Work, Past Response Costs, or Future Response Costs.

XXIX. RESERVATION OF RIGHTS

29.1 Except as expressly provided in this Settlement Agreement, nothing in this Settlement Agreement shall be construed to limit the power and authority of the United States, if any, to take, direct, or order all actions necessary to protect the public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste at or from the Site. Further, except as provided in Paragraph 25.4 ("Stipulated Penalties"), nothing in this Settlement Agreement shall prevent the United States from seeking legal or equitable relief to enforce any terms of this Settlement Agreement. Nothing in this Settlement Agreement shall prevent the United States from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERLCA or any other applicable law.

29.2 The covenant not to sue set forth in Section XXVII does not pertain to any

matters other than those expressly identified therein. The United States reserves and this Settlement Agreement is without prejudice to all rights, claims, and defenses the United States may have including, but not limited to: a) the right to bring an action against Respondents under CERCLA or other applicable law, for recovery of any unreimbursed response costs incurred in connection with the Site; b) claims based on a failure by Respondents to meet a requirement of this Settlement Agreement; c) liability for performance of response action other than the Work and for response costs other than those to be reimbursed by Respondents pursuant to this Settlement Agreement; d) criminal liability; e) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; f) liability arising from the past, present, or future disposal, release or threat of release of hazardous substances outside of the Site; and g) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site. The United States expressly reserves the right to seek further relief to address contamination or pollution resulting from the matters addressed herein.

29.3 Except as provided in Section XXVIII ("Covenant Not to Sue by Respondents"), nothing in this Settlement Agreement shall be construed as releasing the United States or any of its agencies or departments from any liability for any of their actions.

29.4 Respondents reserve, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place

where the act or omission occurred. However, any such claim shall not include a claim for damages caused, in whole or in part by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. 2671; nor shall such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Respondents' plans or activities. The foregoing applies only to claims brought pursuant to a statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

29.5 Except as expressly provided in this Settlement Agreement, Respondents reserve all rights, claims and defenses they may have, including the right to bring an action against the United States or any other person or entity under CERCLA for recovery of any response costs incurred in connection with the Site. Nothing in this Settlement Agreement shall be deemed to obligate Respondents to perform or take any action pertaining to the selected remedial action. Respondents also reserve any defense that may be asserted by law in response to any enforcement action taken pursuant to the United States' reservation of rights in this Section. Respondents also reserve their defenses with respect to any actions by the Tribes to recover their costs under this Settlement Agreement.

29.6 Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in its performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or of any portion of the Work as EPA determines necessary. Respondents may invoke the dispute resolution procedures set forth in Section XXI of this Settlement Agreement to dispute EPA's determination that takeover of the Work is warranted. Costs incurred by EPA in performing the

Work pursuant to this Paragraph shall be considered Future Response Costs that Respondents shall pay pursuant to Section XXIII ("Payment of Federal Agency Response Costs"). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXX. CONTRIBUTION PROTECTION

30.1 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), and that Respondents are entitled, as of the Effective Date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs. Nothing in this Settlement Agreement precludes the Parties from asserting any claims, causes of action, or demands against any person not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

XXXI. INDEMNIFICATION

31.1 Respondents agree to indemnify and hold the United States and the Tribes and their agencies, departments, agents and employees, harmless from all claims of third parties arising from acts or omissions of Respondents or those acting on their behalves, including their officers, employees, agents, contractors, subcontractors, or assigns, in carrying out activities under this Settlement Agreement.

31.2 In performing any of the Work required by this Settlement Agreement, Respondents have an affirmative duty to protect from injury and damage lands of the Tribes and the United States. Damage includes, but is not limited to, fire suppression costs and all costs and

damages associated with restoration or rehabilitation of natural resources associated with Respondents' implementation of this Settlement Agreement. Respondents shall be liable for damage to all roads and trails of the Tribes and the United States caused by the use of Respondents, or those acting on their behalves, except that damage shall not include reasonable and ordinary wear and tear.

XXXII. FINANCIAL ASSURANCE AND INSURANCE

32.1 Within thirty (30) days of the Effective Date of this Settlement Agreement, Respondents shall establish and maintain financial security in the amount of $1,500,000.00, to be provided in the amount of $750,000.00 from each Respondent, in one or more of the following forms:

32.1.1 A surety bond guaranteeing performance of the Work;

32.1.2 One or more irrevocable letters of credit equaling the total estimated cost of the Work;

32.1.3 A trust agreement establishing a trust fund containing the estimated cost of the Work with terms and conditions acceptable to EPA.

32.1.4 A written guarantee to perform the Work executed in favor of EPA by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Respondents, provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirement of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the Work and must also comply with the requirements of the following Paragraph 32.2; or

32.1.5 A demonstration that Respondents satisfy the requirements of 40 C.F.R. § 264.143(f).

32.2 If Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to the preceding Paragraph 32.1.4 of this Settlement Agreement, Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Respondents seek to demonstrate the ability to complete the Work by means of the financial test or the corporate guarantee pursuant to the preceding Paragraph 32.1.5 they shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date.

32.3 In the event that EPA, after a reasonable opportunity for review and comment, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondents shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in the preceding Paragraph 32.1 of this Settlement Agreement. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

32.4 If Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 32.1 above, Respondents may, on any anniversary date of the Effective Date of this Settlement Agreement, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondents may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

32.5 Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

32.6 No later than fifteen (15) days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary of completion of all activities required under this Settlement Agreement, comprehensive general liability insurance with limits of $1,000,000, combined single limit, and automobile liability insurance with limits of $1,000,000, combined single limit, naming the United States and the Tribes as additional insureds. In addition, for the duration of this Settlement Agreement, Respondents shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. Prior to commencement of the Work under this Settlement Agreement, Respondents shall provide to EPA certificates of such insurance or a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXXIII. INTEGRATION/APPENDICES

33.1 This Settlement Agreement and its appendices and any Deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix 1 SOW
Appendix 2 Site Map

XXXIV. NOTICE OF COMPLETION

34.1 Upon completion of all requirements under this Settlement Agreement, Respondents shall certify in writing to the Remedial Project Manager that all requirements under this Settlement Agreement, including any additional Work and payment of stipulated penalties, have been completed. The certification shall be signed by a representative of each Respondent with the requisite knowledge and authority, and shall include the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete." If EPA agrees with Respondents' certifications, the Remedial Project Manager will so notify Respondents in writing and this Settlement Agreement, with the exception of any continuing obligations, shall be terminated, with respect to all or a portion of the Site that has been certified. For the purposes of this Section, continuing obligations shall include, but not be limited to, the following obligations contained in this Settlement Agreement: Section XII

("Record Preservation"), Section XXIX ("Reservation of Rights") and Section XXXI ("Indemnification"). EPA will provide BIA and the Tribes an opportunity for consultation with EPA prior to issuance of a Notice of Completion. If EPA determines that any requirements of this Settlement Agreement have not been completed by Respondents, the Remedial Project Manager will notify Respondents in writing consistent with Paragraph 8.1 and specify the deficiencies. Respondents shall correct such deficiencies in accordance with the notice from the Remedial Project Manager. Failure by Respondents to correct such deficiencies shall be a violation of this Settlement Agreement.

XXXV. MODIFICATION

35.1 Minor field modifications may be made orally by the Remedial Project Manager and shall be memorialized in writing within ten (10) days; provided, however, that the modification effective date shall be the date of the Remedial Project Manager's oral direction. Modification to any plan or schedule may be made by EPA and communicated, in writing, by the Remedial Project Manager or at the Remedial Project Manager's direction. EPA will provide the Tribes prior notice of a written modification the RPM makes to any plan or schedule. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties. In the event Respondents disagree with any modification proposed under this Paragraph, such disagreement shall be resolved in accordance with the provisions of Section XXI ("Dispute Resolution").

XXXVI. MISCELLANEOUS

36.1 During the performance of this Settlement Agreement, Respondents agree that in connection with the performance of Work under this Settlement Agreement, Respondents shall not discriminate against any employee or applicant for employment because of race, color,

religion, sex, national origin, age or handicap. Respondents shall include and require compliance with the above nondiscrimination provision in any contract or subcontract made with respect to this Settlement Agreement. EPA shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or any other remedy under the laws of the United States or the state in which the breach or violation occurs.

36.2 If, while implementing the terms of this Settlement Agreement, Respondents inadvertently discover, uncover, or excavate a Tribal cultural item, or object of historic interest, including tribal or prehistoric ruins, fossils, or artifacts, they shall immediately cease the activity in the area of discovery, make a reasonable effort to protect the items or remains discovered before resuming such activity, and shall notify the Remedial Project Manager and leave the discovery intact until receipt of instruction from the Remedial Project Manager, which instruction shall be provided to Respondents as soon as reasonably possible. Compliance with any protective or mitigation measures shall be the responsibility of Respondents under the direction of the Remedial Project Manager. Respondents shall comply with the provisions of any federal and Tribal laws that are applicable to cultural resources, human remains, and archaeological resources, including but not limited to, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act, and the National Historic Preservation Act.

United States Environmental Protection Agency
Region 10

By: Cami Grandinetti

Name: Cami Grandinetti

Title: Unit Manager, Site Cleanup Unit 4

Date: 12/10/10

Shoshone-Bannock Tribes

By: Nathan Small

Name: Nathan Small
Title: Chairman, Fort Hall Business Council

Date: Nov. 15, 2010

J.R. Simplot Company

By:

Name: Terry T. Uhling

Title: Sr. Vice-President, Secretary and General Counsel

Date: November 24, 2010

Gay Mine Site
Administrative Settlement Agreement and Order on Consent

FMC Corporation

Robert T. Forbes

By: Robert T. Forbes

Title: Director, Environment.

Date: 11/22/2010

ED_004715_00093955-00062

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 11/6/2019 5:54:57 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine Site

Hi Brad. Do you have time this afternoon to talk briefly about Stibnite? My calendar is unusually open today. Thanks.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 11/6/2019 8:02:37 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine Site

2:30 works.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Wednesday, November 06, 2019 11:35 AM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Mine Site

How about 2:30 pm or 3 pm?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Wednesday, November 6, 2019 9:55 AM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: Stibnite Mine Site

Hi Brad. Do you have time this afternoon to talk briefly about Stibnite? My calendar is unusually open today. Thanks.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 11/25/2019 11:06:40 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite

Are you free any time between 12 and 2 tomorrow?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, November 25, 2019 2:30 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Stibnite

I've gotten some direction from Midas. Are you in at or after 4 pm, or tomorrow?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 11/26/2019 1:17:13 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite

Today is not great. (b) (6) I can talk at 1:30 or 2. Would that work for you?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, November 25, 2019 3:43 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite

No, out at a lunch. Is there a better time today?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Monday, November 25, 2019 3:07 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Stibnite

Are you free any time between 12 and 2 tomorrow?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, November 25, 2019 2:30 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Stibnite

I've gotten some direction from Midas. Are you in at or after 4 pm, or tomorrow?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 11/26/2019 9:33:52 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite - will call you in a minute or two

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 12/5/2019 11:46:21 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine

Hi Brad. I'm in a Stibnite meeting right now. I can give you a quick update when I'm done with this meeting.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, December 05, 2019 3:28 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Stibnite Mine

Elizabeth:

Following up on a message left on your voice mail. When you have a moment, could you lease give me a call? Thanks

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Appointment

From: McKenna, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=859179a8cb0547bc974dc0241e973d37-McKenna, Elizabeth]
Sent: 11/6/2019 8:11:37 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]

Subject: Stibnite Mine Site

Start: 11/6/2019 10:30:00 PM
End: 11/6/2019 11:00:00 PM
Show Time As: Tentative

Appointment

From: McKenna, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=859179a8cb0547bc974dc0241e973d37-McKenna, Elizabeth]
Sent: 11/26/2019 5:57:31 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]

Subject: Accepted: Call re: Stibnite
Location: Brad to call Elizabeth

Start: 11/26/2019 9:30:00 PM
End: 11/26/2019 10:00:00 PM
Show Time As: Busy

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 12/18/2019 9:26:26 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: RE: Midas hearing on motion to stay and motion to dismiss

Thanks, very helpful. I'll call you this afternoon.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Wednesday, December 18, 2019 1:25 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Midas hearing on motion to stay and motion to dismiss

Hi Brad. Thanks for letting me know about the litigation update. We did have a call yesterday afternoon with the governmental agencies. Helen Bottcher will be sending a meeting invitation to the parties shortly, including Midas. We talked about potential early actions, but all agreed that we need to talk with Midas about its plans and schedule to address ongoing releases at the Site. Understanding Midas' plans to address the releases is important in the process of identifying and prioritizing early actions. Feel free to give me a call any time.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, December 16, 2019 10:54 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Midas hearing on motion to stay and motion to dismiss

Elizabeth:

The parties to the Clean Water Act suit appeared before Judge Winmill today. The Court took the motion to stay under consideration and denied the motion to dismiss (see attached minute order).

I recall that you have a call with the parties participating in the AOC negotiations tomorrow afternoon, to discuss the SOW and early actions addressing known point source discharges of pollutants to the river. Expecting that we can make some progress by scheduling a meeting with Midas and its consultant Andy Koulermous following your call, can you please ask the participating parties for possible dates for a meeting the first week of January in Seattle?

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 12/18/2019 8:52:08 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Stibnite AOC negotiations

Elizabeth – do you have any time this afternoon to discuss the results of your call yesterday and scheduling our next meeting between Midas and the Participating Parties?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 12/17/2019 6:54:18 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Midas hearing on motion to stay and motion to dismiss
Attachments: Activity in Case 1:19-cv-00307-BLW Nez Perce Tribe v. Midas Gold Corp. et al Motion Hearing

Elizabeth:

The parties to the Clean Water Act suit appeared before Judge Winmill today. The Court took the motion to stay under consideration and denied the motion to dismiss (see attached minute order).

I recall that you have a call with the parties participating in the AOC negotiations tomorrow afternoon, to discuss the SOW and early actions addressing known point source discharges of pollutants to the river. Expecting that we can make some progress by scheduling a meeting with Midas and its consultant Andy Koulermous following your call, can you please ask the participating parties for possible dates for a meeting the first week of January in Seattle?

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Message

From: ecf@id.uscourts.gov [ecf@id.uscourts.gov]
Sent: 12/17/2019 12:17:47 AM
To: CourtMail@idd.uscourts.gov
Subject: Activity in Case 1:19-cv-00307-BLW Nez Perce Tribe v. Midas Gold Corp. et al Motion Hearing

[EXTERNAL]

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
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U.S. District Court

District of Idaho (LIVE Database)Version 6.2.2

Notice of Electronic Filing

The following transaction was entered on 12/16/2019 at 5:17 PM MST and filed on 12/16/2019

Case Name: Nez Perce Tribe v. Midas Gold Corp. et al
Case Number: 1:19-cv-00307-BLW
Filer:
Document Number: 28

Docket Text:
Minute Entry for proceedings held before Judge B. Lynn Winmill: Motion Hearing held on 12/16/2019 re [15] MOTION to Stay *Litigation* and [19] MOTION to Dismiss. The Court denied Defendants' Motion to Dismiss [19] and took the Motion to Stay Litigation [15] under advisement. (Court Reporter Tammy Hohenleitner.) (jlb)THESE MINUTES SHALL STAND AS THE ORDER OF THE COURT

1:19-cv-00307-BLW Notice has been electronically mailed to:

Amanda Wright Rogerson arogerson@advocateswest.org, anjeet@nezperce.org, bhurlbutt@advocateswest.org, juliek@nepzerce.org, lisaa@nezperce.org, llucas@advocateswest.org, mlopez@nezperce.org

Bryan Jack Hurlbutt bhurlbutt@advocateswest.org

Christopher H Meyer chrismeyer@givenspursley.com, johnbunn@givenspursley.com

Laurence J Lucas llucas@advocateswest.org, lairdlucas55@gmail.com

Margaret Peloso mpeloso@velaw.com, draichelson@velaw.com

Michael Anthony Lopez mlopez@nezperce.org, lisaa@nezperce.org, marlenet@nezperce.org

Preston N Carter prestoncarter@givenspursley.com, kendrah@givenspursley.com

Ronald Tenpas rtenpas@velaw.com

Theresa L. Romanosky tromanosky@velaw.com, draichelson@velaw.com

1:19-cv-00307-BLW Notice will be served by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1089316566 [Date=12/16/2019] [FileNumber=2024466-0] [a6921e5943985145af5aac18c5beba6fc5ae8933a379aa3d8babbf5cd3318b2190155c94bef5fcd8e08cb5427f0c8cb8e5b5aa8a9db72202053985a2b48af169]]

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 11/18/2019 4:00:43 PM
To: Jill Grant [jgrant@jillgrantlaw.com]
CC: Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Lisa.O'Hara@deq.idaho.gov; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Agenda for Nov 18 call

Thanks, Jill. Here's the call in info.

All,

A Zoom meeting has been set up for next week's Stibnite Mine AOC Technical Meeting.

To participate via computer audio and video please use:

Ex. 6 Personal Privacy (PP)

For audio only in the USA use:

Ex. 6 Personal Privacy (PP)
Meeting ID: 2 Ex. 6 Personal Privacy (PP)

For audio only in Canada use:

Ex. 6 Personal Privacy (PP)
Meeting ID Ex. 6 Personal Privacy (PP)

Regards,

John

Sent from my iPhone

On Nov 18, 2019, at 7:56 AM, Jill Grant <jgrant@jillgrantlaw.com> wrote:

I forgot to add that I'm available for an attorney call on Monday next week but not the rest of the week.

From: Jill Grant
Sent: Monday, November 18, 2019 10:53 AM
To: 'Bradley M. Marten' <bmarten@martenlaw.com>; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Lisa.O'Hara@deq.idaho.gov; McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: Michael Bogert <mbogert@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Laurel Sayer <lsayer@midasgoldinc.com>; Jonathan E. Rackoff <rackoff@martenlaw.com>
Subject: RE: Agenda for Nov 18 call

Good morning all,
What is the call-in number for our conference call today?
I agree that it makes sense to go through everyone's comments, and I appreciate Brad taking the time to address some of the Shoshone-Bannock Tribes' comments in advance (below). However, not all of the Tribes' comments are addressed – not just the technical comments, but also comments regarding tribal community meetings, location of administrative record, and some proposed edits related to consistency with the NCP – so I think it would be helpful to go through them.
Thanks,
Jill

Jill Grant & Associates, LLC
1319 F Street NW
Suite 300
Washington, DC 20004
Tel: 202-821-1950
Fax: 202-459-9558
jgrant@jillgrantlaw.com
www.jillgrantlaw.com

<image001.png>

<image003.jpg>

From: Bradley M. Marten [mailto:bmarten@martenlaw.com]
Sent: Sunday, November 17, 2019 5:07 PM
To: Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Lisa.O'Hara@deq.idaho.gov; McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>; Jill Grant <jgrant@jillgrantlaw.com>
Cc: Michael Bogert <mbogert@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Laurel Sayer <lsayer@midasgoldinc.com>; Jonathan E. Rackoff <rackoff@martenlaw.com>
Subject: Agenda for Nov 18 call
Elizabeth, Jill, Gary and Lisa:
My thought for the call tomorrow at 10 am is to go through the comments filed by the Shoshone Bannock Tribe, the State of Idaho and the US Forest Service one by one, and to get any comments from EPA and from Midas out on the table and resolved. We should also set up a call to review any additional comments, if any, received from the Nez Perce Tribe. My understanding is that they have been promised, but not before Nov. 26th, which is essentially the end of the short Thanksgiving holiday week. Perhaps we can set a call for Monday, December 2 with the goal of finalizing the SOW. Please advise of your availability, at 10 am PST.
Midas will be prepared to have an attorney call next week to discuss the AOC Elizabeth circulated late Friday night. Please let me know your availability Thanksgiving week and we will coordinate schedules.
For ease of reference, I attach the three sets of comments received (as revised or updated), and Midas's comments (sent Saturday, Nov. 16) below. The attachments are from the Forest Service (titled "Stibnite SOW"), the State (titled 2019-07-25 Draft)" and the Shoshone Bannock Tribe (titled 2019-11-13 SBT Comments").
Talk to you tomorrow.
Jill and Lisa:
Thanks for your comments on the Statement of Work we have been working on with you, EPA and the US Forest Service. In advance of our call on Monday, I am providing these preliminary responses, in order to expedite our call. I anticipate that we can complete the call in an hour or less.

- Shoshone Bannock Tribe comments:
    - <!--[if !supportLists]--><!--[endif]-->Scope

The scope of the RI/FS investigation are the eight areas identified in the "Purpose" section, pp. 1-2. Midas Gold and EPA recognize that implementation of the PRO, once approved, may broaden the scope and EPA (Kathy Cerise) has proposed language to reflect this, to be added to the second paragraph of the Purpose section, which would read as follows:

> *In September 2016, Midas Gold filed a Plan of Restoration and Operations ("PRO") with the United States Forest Service ("USFS") for the redevelopment of Stibnite, and plans to undertake mining, mineral processing and restoration activities on portions of the Site that will result in landscape-scale changes to many of the existing Site features. As such, the scope and timing of sampling and other elements of the RI/FS will consider potential mining activities in the PRO, any modifications and subsequent remediation.. This will require flexibility in the RI/FS and could require a phased approach to accelerate certain activities.*

We believe that EPA's proposed language addresses your comment. With respect to the request for "some time to review the PRO in its entirety," Midas Gold of course has no objection and is happy to facilitate your review.

- Role of the Tribe in Review Process

In several places, the comments include clarification as to the role of the Tribe (and presumably the other Participants) in reviewing documents submitted under the SOW. The Tribe is correct in concluding that all documents will be submitted for review by the Participants. We understand this to be the understanding of all Participants, and will ask to confirm this on Monday.

- Human Health Risk Assessment

The Tribe has asked to confirm that the human health risk assessment will include "a tribal scenario." Midas Gold has no objection.

- Uranium and Daughter Products

We will defer to EPA on this comment

- Vegetation Results

Seems fine to include these, but we defer to EPA.

- State Comments

We read these as largely consistent with the Tribe's comment on its role in the review process, and have the same understanding as above, to be confirmed on Monday.

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 12/5/2019 11:47:33 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: RE: Stibnite Mine

Thanks, Elizabeth

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Thursday, December 5, 2019 3:46 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Stibnite Mine

Hi Brad. I'm in a Stibnite meeting right now. I can give you a quick update when I'm done with this meeting.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, December 05, 2019 3:28 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Stibnite Mine

Elizabeth:

Following up on a message left on your voice mail. When you have a moment, could you lease give me a call? Thanks

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com

martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/13/2019 4:58:39 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: FOIA request
Attachments: Nez Perce Tribe FOIA 2019-05-29, Midas Gold Stibnite.pdf

Good morning, Brad.

Gary Fremerman said that he is the person to contact. Here is his contact information:
Gary M. Fremerman
Senior Counsel
Natural Resources and Environment Division
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Ave., S.W., Rm 2013-S
Washington, D.C. 20250
202-720-8041 (voice)
202-631-4881 (mobile)
844-354-1119 (fax)
gary.fremerman@ogc.usda.gov

I have also attached a copy of the Nez Perce FOIA request. Thanks for forwarding Jennifer's contact information.

I will be sending positive thoughts to you and Susan.

- Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Wednesday, June 12, 2019 9:50 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: FOIA request

Elizabeth-

Good to talk to you today, and (b) (6)
(b) (6)

When you can, I understand you will be sending me a copy of the FOIA request EPA received from the Nez Perce Tribe. As I mentioned, we are fortunate to have in our firm Jennifer Hammitt, who, until a year ago, was at EPA headquarters running a team that responded to,-

and litigated, numerous FOIA requests to the agency in the VW and Gold King cases. Jennifer can help. She knows her stuff. https://www.martenlaw.com/lawyers/jhammitt

I also wanted to ask you if you could send me the names of the two Forest Service lawyers you are working with on Stibnite. I think you said they are in DC.

Let's catch up some more tomorrow on the AOC. Is there s good time to reach you?

Sent from my iPhone

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Nez Perce

TRIBAL EXECUTIVE COMMITTEE
Office of Legal Counsel
P.O. BOX 305 • LAPWAI, IDAHO 83540-0305 • (208) 843-7355
FAX (208) 843-7377

May 29, 2019

Sent via Mail and Email to: kercheval.stephanie@epa.gov

Ms. Stephanie Kercheval, R10 FOIA Officer
U.S. Environmental Protection Agency
Office of Regional Counsel
Multi-Media Unit 1, FOIA Team
1200 Sixth Avenue, Suite 155, M/S 11-C07
Seattle, WA 98101-3123

Re: Freedom of Information Act Request

Dear Ms. Kercheval:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552 et seq., the Nez Perce Tribe (Tribe) requests the following information:

> All communications with Midas Gold Corporation, it's contractors, attorneys or affiliated companies (Midas Gold Idaho, Inc., Midas Gold Corp., Idaho Gold Resources Company, LLC, or Stibnite Gold Co.) regarding regulation of the Stibnite Mine area under CERCLA, including issuance of any CERCLA remediation or removal orders. Communications shall include all emails, voice mails, correspondence of any kind, text messages, and all other forms of written or electronic communication between EPA Region 10 or EPA HQ and one of the above-named Midas Gold entities or their representatives. This FOIA is limited to the time period January 1, 2018 to the present.

The request encompasses all documents and records, whether in draft or final form, in the possession of the EPA, regardless of whether the documents or records were produced by employees or contractors of the EPA. This request includes but is not limited to communication

from or to the following EPA officials: Andrew Wheeler, David Ross, Lee Forsgren, David Fotouhi, E. Scott Pruitt, Anna Wildeman, Christopher Hladick, and Dan Opalski.

The Tribe requests a fee waiver under the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii). The Tribe has no commercial interest in the requested information. The requested information is pertinent to governmental issues concerning EPA's administration and oversight of Stibnite Mine activities located within the Tribe's aboriginal territory. As such, the information will "contribute significantly to public understanding of the operation or activities of the government."

If you deny all or any part of this request, please cite each specific exemption that justifies your refusal to release the information and notify the Tribe of appeal procedures available under the law. Please contact me with any questions regarding this request at (208) 843-7355 or mlopez@nezperce.org. Thank you.

Sincerely,

Michael A. Lopez
Senior Staff Attorney

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 12/6/2019 5:57:51 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: Stibnite Mine

Hi Brad. Thank you for checking in on my thoughts about Midas attaching the draft AOC to court documents in the CWA litigation. I would prefer that neither party submit the draft AOC to the court because the document is being negotiated and does not represent an agreement on the terms. I have sent a similar email to Mike Lopez.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 7/28/2019 3:53:55 PM
To: Elizabeth Mckenna [macjamseattle@gmail.com]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Mine

Elizabeth – I'll be reachable all day if you are able to call. Cell is best. (b) (6) We'll talk soon. Thanks

---

From: Elizabeth Mckenna (b) (6)
Date: Saturday, July 27, 2019 at 9:26 AM
To: Bradley Marten <bmarten@martenlaw.com>
Cc: "Cerise, Kathy" <cerise.kathryn@epa.gov>, Elizabeth Mckenna <mckenna.elizabeth@epa.gov>
Subject: Stibnite Mine

CAUTION: This email was sent from a gmail.com address
Hi Brad. Just got Kathy's email forwarding your email. I'm not able to check my work email, so you can email me on my personal email. We have not had wifi for the last several days. It finally started working again today. I'll give you a call and leave my land line number for you so that we can talk about scheduling a call next week.

Elizabeth

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/7/2019 5:07:58 AM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: Midas AOC

Hi Brad. I wasn't aware of that a petition had been filed. I will be traveling tomorrow. But, I can set up a meeting for early next week. We should also talk about the BFPP status. Perhaps you can outline for EPA why Midas believes it meets the criteria for a BFPP and we can have a discussion about that. (b) (6)

- Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, June 06, 2019 7:34 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Midas AOC

Elizabeth:

It's been about three weeks since we met to discuss the investigative work Midas proposed to conduct this summer into arsenic discharges at the Stibnite site. I understand that quite a bit of information has been exchanged and am hopeful we can move forward with the documentation of the work scope the technical folks have been discussing. There has also been a new development – a Notice of Intent to sue filed by the Nez Pearce Tribe against Midas for alleged Clean Water Act violations relating to the same arsenic discharges we have been discussing.

Do you have some time tomorrow (Friday) to catch up? If you'd like to invite Kathy Cerise, that would be helpful, and I might be able to get John Meyer to participate. If not tomorrow, then perhaps Monday? Thanks

---

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 7/12/2019 10:16:25 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Left you a message

Ok. Let's make sure we talk today. What time should I call you?

Sent from my iPhone

> On Jul 12, 2019, at 3:11 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:
>
> Hi Brad. Just tried to call you. Planned to connect today since this is my last day in the office for a while! I have to go to a meeting in 10 minutes, but will call you later this afternoon to talk about logistics with the Site (b) (6) and other issues.
>
> Elizabeth McKenna
> Assistant Regional Counsel
> U.S. EPA
> 1200 Sixth Avenue
> Seattle, WA 98101
> (206) 553-0016
> Cell: (206) 402-9963
>
> -----Original Message-----
> From: Bradley M. Marten <bmarten@martenlaw.com>
> Sent: Friday, July 12, 2019 2:36 PM
> To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
> Subject: Left you a message
>
> Elizabeth- Are you available this afternoon to discuss the Midas Stibnite mine matter?
>
> Sent from my iPhone
> ---
>
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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 6/7/2019 2:33:58 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Midas AOC

Elizabeth:

It's been about three weeks since we met to discuss the investigative work Midas proposed to conduct this summer into arsenic discharges at the Stibnite site. I understand that quite a bit of information has been exchanged and am hopeful we can move forward with the documentation of the work scope the technical folks have been discussing. There has also been a new development – a Notice of Intent to sue filed by the Nez Pearce Tribe against Midas for alleged Clean Water Act violations relating to the same arsenic discharges we have been discussing.

Do you have some time tomorrow (Friday) to catch up? If you'd like to invite Kathy Cerise, that would be helpful, and I might be able to get John Meyer to participate. If not tomorrow, then perhaps Monday? Thanks

---

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 7/2/2019 6:04:40 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
CC: Terry T. Uhling [tuhling@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; gary.fremerman@usda.gov; Merissa A. Moeller [mmoeller@martenlaw.com]
Subject: Re: Stibnite Mine

Thanks, Elizabeth – talk to you tomorrow

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Monday, July 1, 2019 at 10:40 PM
To: Bradley Marten <bmarten@martenlaw.com>
Cc: Terry Uhling <tuhling@martenlaw.com>, "Lisa.O'Hara@deq.idaho.gov" <Lisa.O'Hara@deq.idaho.gov>, "Lisa.Carlson@deq.idaho.gov" <Lisa.Carlson@deq.idaho.gov>, "gary.fremerman@usda.gov" <gary.fremerman@usda.gov>
Subject: Stibnite Mine

I have attached the most recent guidance and model SA/AOC for an RI/FS. This will be the template that EPA proposes to use for the Site. Lisa, please take a look and let me know what provisions the state would need to include as a co-signatory.

- Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Friday, June 28, 2019 2:20 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: 'Michael Bogert' <mbogert@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Terry T. Uhling <tuhling@martenlaw.com>; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; gary.fremerman@usda.gov; Andy Koulermos <akoulermos@formationenv.com>
Subject: Midas -- Monday meeting at IDEQ

Elizabeth:

Just left you an e-mail asking if you could let me know who from the three agencies will be participating in our meeting on Monday, and whether in person or by conference call.

I believe you have the call in number from an earlier e-mail but please let me know if you need me to circulate it again. You also have our attendance list. There may be one additional lawyer from my firm – Merissa Moeller, who you met in Seattle at an earlier meeting and who is working with Terry Uhling and me on this project. Merissa's attendance is uncertain, because of a Monday hearing in Bend that may or may not be going forward.

Thanks – see you Monday (in person or by conference call – please advise) at IDEQ at 10:30 am.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 7/24/2019 7:37:08 PM
To: Cerise, Kathy [Cerise.Kathryn@epa.gov]
CC: Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Terry T. Uhling [tuhling@martenlaw.com]
Subject: RE: EPA response to Midas draft SOW

Kathy:

On our call yesterday, we discussed setting up a call this week with the Nez Perce Tribe. Do you know how I can reach Elizabeth about setting up that call? I don't have her mobile and not sure if she gets e-mail.

Bradley M. Marten
Partner

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From: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Sent: Monday, July 15, 2019 10:23 AM
To: Bradley M. Marten <bmarten@martenlaw.com>
Cc: 'Aaron.Scheff@deq.idaho.gov' <Aaron.Scheff@deq.idaho.gov>; Zamba, Kathy -FS <kathy.zamba@usda.gov>; Albert Crawshaw <Albert.Crawshaw@deq.idaho.gov>; Maley, Timothy <maley.timothy@epa.gov>; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Philip, Jeffrey <Philip.Jeff@epa.gov>
Subject: EPA response to Midas draft SOW

Brad,

Please see Elizabeth's response below. USFS has concurred. The State has not yet had the opportunity to review this language.

Thanks

Kathy

From: McKenna, Elizabeth
Sent: Saturday, July 13, 2019 4:13 PM

Hello, Brad. EPA has reviewed Midas' July 10th markup of EPA's July 3rd draft SOW for the Stibnite Mine Site. EPA is interested in pursuing conversations with Midas to come to an understanding of the scope of the remedial investigation

and feasibility study (RI/FS). EPA is willing to consider narrowing the scope of the RI/FS to the eight areas identified in the Nez Perce's Clean Water Act Notice of Intent.

Both Midas and EPA have an interest in addressing the releases of hazardous substances at the Site. Midas' goal is to avoid CWA litigation over unpermitted discharges at the Site. To achieve that goal, it must evaluate potential response actions that would address those discharges. The purpose of the RI is to characterize the nature and extent of risks posed by hazardous substances for evaluating potential response actions. Midas' proposal to conduct only an RI, without a risk assessment and concurrent feasibility study would not achieve its own goal of developing a solution to the discharges and releases that could result in avoiding CWA litigation. A scope of work that includes an RI, baseline risk assessment, treatability studies, and evaluation of alternatives is necessary to meet Midas' objectives and to have a CERCLA compliant agreement.

The RI/FS Guidance outlines the tasks that must be performed during the RI/FS and the EPA's draft SOW incorporates these tasks. The determination of the nature and extent of surface and subsurface contamination must include an assessment of all potential source area(s) and contaminants of concern potentially affecting surficial soil, subsurface soil, surface water, sediment, air, groundwater, and subsurface structures. The RI/F Guidance also outlines a process in which the RI and FS are conducted concurrently such that the data collected during the RI influences the development of remedial alternatives in the FS, which in turn affects the scope and additional data needs related to treatability studies and reducing data gaps. We understand that Midas' planned mining and reclamation activities will need to be considered in designing an RI/FS.

EPA would like to work with Midas to develop an approach that meets the needs of all parties involved. We are available to meet next week to continue our discussions.

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 8/21/2019 4:07:04 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Midas Gold

Elizabeth:

Just wanted to let you know that Midas reached out to the Nez Perce Tribe's lawyers to request a voluntary stay of their CWA lawsuit. I did that verbally last Friday on my call with them, and we followed up in writing on Monday. They have not responded. We will be meeting with their counsel tomorrow (Wednesday) and have asked for a reply by then.

I hope you'll encourage Mike and Amanda to give the consultation process a chance. Their lawsuit is only going to delay making progress on the ground and lead to a lot of paper flying. Please let Chris Hladick know we have tried to work with the Tribe, so that he has that information at his meeting with them next week in Idaho. Regardless of the Tribe's litigation decisions, we look forward to wrapping up the AOC negotiations, based on the SOW we have already negotiated. Kathy Cerise will be on site later this week with technical players from the Forest Service and the State to keep us moving forward.

Feel free to give me a call, if you'd like. I'll be in town all week.

Bradley M. Marten
Partner

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 10/1/2019 11:16:29 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: You could be ignoring me....

Or you could be busy with something else.

Wondering if you have heard anything from the Tribe about their interest in consultation v. litigation. They seem bent on pursuing their claims in court and have not responded to multiple efforts by Midas to reach out for a conversation. Are they talking to you?

Bradley M. Marten
Partner

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EXHIBIT 4

to

Declaration of Michael Bogert

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10
AND
THE STATE OF IDAHO

IN THE MATTER OF: Stibnite Mine Site Stibnite, Idaho Midas Gold Idaho, Inc. [MGII/MGC] Proceeding Under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675	CERCLA Docket No. _____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR [REMOVAL] ACTIONS**

CONCEPT DRAFT

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), the State of Idaho (State) and Midas Gold Corp. (MGC) as the owner of Midas Gold Idaho, Inc. (MGII) and Idaho Gold Resources Company, LLC (IGRCLLC) IGRCLLC as the owner of Stibnite Gold Company (SGC), with MGII being the Site Operator and IGRCLLC and SGC being the owners of various patented, unpatented and mill site claims that comprise the property. This Settlement provides for the performance of Work by MGII in connection with the property located in Valley County, Idaho, known as the Stibnite Mine Site (Site).

2. This Settlement is issued under the authority vested in the President of the United States by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994). This Settlement is also entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States.

3. MGII, MGC, IGRCLLC and SGC represent that they will meet all of the BFPP provisions in CERCLA §§ 101(40)(A)-(H) and 107(r)(l), 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r)(l) and that they will continue to comply with these requirements during the time in which they have an operational and/or ownership interest in the Site. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the Site, and the risk of claims under CERCLA being asserted against MGII, MGC, IGRCLLC and SGC as a consequence of their activities at the Site pursuant to this Settlement, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section [INSERT] (Reservations of Rights by United States), any potential liability of MGII, MGC, IGRC and SGC under CERCLA for the Existing Contamination as defined by Paragraph 8 below.

4. EPA, MGII, MGC, IGRCLLC and SGC recognize that this Settlement has been negotiated in good faith. MGII, MGC, IGRCLLC and SGC agree to comply with and be bound by the terms of this Settlement and they further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon MGII, MGC, IGRCLLC, SGC and their successors and assigns. Any change in ownership or corporate status of MGII, MGC, IGRCLLC and SGC including, but not limited to, any transfer of assets or real or personal property shall not alter MGII, MGC, IGRCLLC or SGC's responsibilities under this Settlement.

6. Each undersigned representative of MGII, MGC, IGRCLLC and SGC certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind MGII, MGC, IGRCLLC and SGC to this Settlement.

7. MGII, as the Site Operator, shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing MGII with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. MGII or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. MGII shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"BFPP" shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section [INSERT].

"EFSFSR" shall mean the East Fork of the South Fork of the Salmon River.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Existing Contamination" shall mean:

a. any hazardous substances, pollutants, contaminants or Waste Materials present or existing on or under the Site as of the Effective Date;

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b. any hazardous substances, pollutants, contaminants or Waste Materials that migrated from the Site prior to the Effective Date; and

c. any hazardous substances, pollutants, contaminants or Waste Materials presently at the Site that migrate onto or under or from the Site after the Effective Date.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, not inconsistent with the NCP, that the United States and the State incur in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs.

"IDEQ" shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State.

"IGRCLLC" shall mean Idaho Gold Resources Company, LLC.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at http://www.epa.gov/superfund/superfund-interest-rates.

"MGC" shall mean Midas Gold Corporation.

"MGII" shall mean Midas Gold Idaho, Inc.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA, the State, MGII, MGC, IGRCLLC and SGC.

"Plan of Restoration and Operations" or "PRO" shall mean the approved plan of operations by the United States Forest Service pursuant to 36 C.F.R. § 228.5.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"RPM" shall mean the Remedial Project Manager as defined in 40 C.F.R. § 300.5.

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"SGC" shall mean Stibnite Gold Company.

"Stibnite Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent for Removal Action and all appendices attached hereto (listed in Section [INSERT] (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the Stibnite Mine Site, located in Stibnite, Idaho, approximately 15 miles east of Yellow Pine, Idaho in Valley County, Idaho, 78 miles from McCall, and depicted generally on the map attached as Appendix A.

"State" shall mean the State of Idaho.

"Statement of Work" or "SOW" shall mean the document describing the activities MGII must perform pursuant to this Settlement, as set forth in Appendix B, and any modifications made thereto in accordance with this Settlement.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous substances" under Idaho Chapter 34A-11.

"Work" shall mean all activities and obligations MGII is required to perform under this Settlement except those required by Section [INSERT] (Record Retention).

IV. STATEMENT OF FACTS

9. MGII is a wholly owned subsidiary of MGC. MGC is a Canadian company doing business in the State of Idaho through MGII. Pursuant to the United States Forest Service Plan of Restoration and Operations and 36 CFR 228.3 (b), MGII is an "operator," which is "[a] person conducting or proposing to conduct operations" on the Site.

10. IGRCLLC and SGC are owners of patented lode claims, patented mill site claims, unpatented federal lode claims and unpatented federal mill site claims which cover approximately 27,104 acres (approximately 42 square miles).

CONCEPT DRAFT

11. The Stibnite Mine Site is located on the Payette National Forest in Valley County, Idaho, approximately 15 miles east of Yellow Pine, Idaho, 40 miles east of McCall, Idaho and 98 miles east of Boise, Idaho.

12. Mining at the Site began in the mid-1920s and continued into the 1950s. This first period of activity involved the mining of gold, silver, antimony, and tungsten mineralized materials by both underground and, later, open-pit mining methods.

13. During World War II, the Site is estimated to have produced more than 90% of the Nation's antimony and 65% of the Nation's tungsten, materials that were used in advancing the war effort, including munitions, steel-making, fire retardants, and other purposes. Strategic mining operations continued through much of the Korean War, and antimony, gold, and tungsten mining and milling ceased in 1952, near the end of the Korean War.

14. A second major period of activity at the Site began with exploration activities in 1972, and was followed by open-pit mining and seasonable on-off heap leaching and one-time heap leaching from 1982 to 1997. With ore provided by multiple operators from a number of locations, and processed in adjacent heap-leaching facilities, over 10 million tons of ore were mined and processed.

15. During the years of production, millions of cubic yards of mine tailings were deposited at locations within the Site, and in some cases, spent ore was permanently placed over historical Stibnite mill tailings that had previously been discarded.

16. Past additional actions at the Site include building removal, equipment removal, the 1965 failure of a hydropower dam on the East Fork of Meadow Creek (commonly referred to as "Blowout Creek), and the creation and storage of Waste Materials deposited at locations within the Site.

17. The mining activity at the Site resulted in CERCLA remedial actions by EPA, the Forest Service and the State of Idaho. Among other actions, minor quantities of legacy tailings have been removed, Meadow Creek was re-channelized, and certain legacy tailings impoundments have been covered with clean fill.

18. The Site has been subject to substantial cost recovery litigation under CERCLA, and several consent decrees emerged from these actions including *Mobil Oil v. United States*, Civ. No. 99-1467-A (D. Virginia) (consent decree filed June 26, 2000); *United States v. Oberbillig* (D. Idaho) (consent decree filed March 18, 2004; and *United States v. Bradley Mining Company*, Case No. 3:08-CV-03968 TEH and *United States v. Bradley Mining Company*, Case No. 3:08-CV-05501 TEH (N.D. Ca.) (consent decree filed April 19, 2012).

19. In some of the above-noted cost recovery litigation, the Site has been alleged to be a CERCLA "facility" as defined by Section 101 (9) of CERCLA, 42 U.S.C. § 9601 (9).

20. Notwithstanding multiple completed response actions, legacy tailings and contamination remain buried and unremediated over much of the Stibnite Mine Site.

21. MGII's Plan of Restoration and Operations, as approved by the Forest Service, will disturb legacy areas at the Stibnite Mine Site. By entering into this Agreement, the Parties understand that it is the intent of MGII to remove and then productively mine certain legacy tailings that have been previously deposited in areas of the Site. In some cases, such as the spent heap leach ore disposal area (SODA)/Bradley Tailings, remediation has previously been undertaken under CERCLA.

22. The general sequence of mining will be the Yellow Pine deposit first, Hangar Flats deposit second, and the West End deposit third. This mining sequence is guided by the restoration aspects of the Stibnite Gold Project, which includes backfilling the Yellow Pine Pit with West End development rock to restore the approximate original gradient of the EFSFSR, to provide permanent fish passage, and facilitate aquatic habitat enhancement.

23. As a part of the reuse of legacy tailings and subsequent restoration of certain areas on the Site, MGII will become an "operator" of a "facility" and the execution of its PRO will involve the "arranging for disposal of hazardous substances" under CERCLA § 107(a)(1)-(4).

24. Accordingly, present releases or threats of future releases of hazardous substances exist on the Site.

25. The estimates for direct employment from the Stibnite Mine Site are 594 construction jobs; 583 operations jobs; 160 reclamation jobs; and 44 monitoring jobs.

V. DETERMINATIONS

26. Based on the Statement of Facts set forth above, EPA has determined that:

a. The Stibnite Mine Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. MGII is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Pursuant to the Plan of Restoration and Operations, MGII, IGRCLLC and SGC are the "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

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e. As the owner of MGII, MGC is a derivative "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

f. The conditions described in the Statements of Facts above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

g. The Work required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP. [All on-Site actions required pursuant to this Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. [MGII] shall identify ARARs in the Work Plan subject to EPA approval.]]

VI. SETTLEMENT AGREEMENT AND ORDER

27. Based upon the Statements of Facts and Determinations set forth above, it is hereby Ordered and Agreed that MGII shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER

28. MGII may retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 7 days after the Effective Date or such date on which a contractor or subcontractor is proposed for selection, whichever date is later. MGII shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by MGII. If EPA disapproves of a selected contractor or subcontractor, MGII shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications as soon as practicable after EPA's disapproval. With respect to any proposed contractor performing activities related to the Work, MGII shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The

qualifications of the persons undertaking the Work for MGII shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

29. MGII has designated, and EPA has approved, [INSERT NAME] as its Project Coordinator who shall be responsible for administration of all actions by MGII required by this Settlement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA and retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph [INSERT]. If EPA disapproves of the designated Project Coordinator, MGII shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 7 days following EPA's disapproval or such date on which a different Project Coordinator is proposed for selection, whichever date is later. Notice or communication relating to this Settlement from EPA to MGII's Project Coordinator shall constitute notice or communication to MGII.

30. EPA has designated [INSERT] the Superfund Remedial Program, as its Remedial Project Manager (RPM). EPA and MGII shall have the right, subject to Paragraph [INSERT], to change their respective designated RPM or Project Coordinator. MGII shall notify EPA 7 days before such a change is made. The initial notification by MGII may be made orally, but shall be promptly followed by a written notice.

31. The RPM shall be responsible for overseeing MGII's implementation of this Settlement. The RPM shall have the authority stated in the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

VIII. WORK TO BE PERFORMED

32. MGII shall perform, at a minimum, all actions necessary to implement the SOW and approved Work Plans. A general description of the activities includes, but are not limited to, the following:

a. **SODA Area**.

(1) Approximately 3.5 million tons of legacy tailings in the SODA Area will be removed from their historical deposition areas in the Meadow Creek Valley to be reprocessed and disposed of within the tailings storage facility (TSF).

(2) Approximately 10.5 million tons of legacy spent ore in the SODA will be removed from their historical deposition areas in the Meadow Creek Valley to be reused in the construction of the TSF dam.

b. **Yellow Pine Pit Area**. During construction, the EFSFSR, Hennessy Creek, and other seeps and springs must be diverted around the

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perimeter of the Yellow Pine Pit in order to protect water quality and prevent water from filling the pit during operations. The Pit will be dewatered, and the river will be temporarily rerouted through a fish-friendly tunnel capable of providing fish passage to the EFSFSR and Meadow Creek while the river channel is being fully restored. Additionally, restoration for this element of Work includes response actions related to the impacts to the EFSFSR north of the Yellow Pine Pit, south of the Yellow Pine Pit to the confluence of Meadow Creek, and upstream to undisturbed areas of the EFSFSR from its confluence [at Meadow Creek].

c. **Plant Site Area**. Construction will require removal of contamination of the former Monday Camp shops, as well as the crusher buildings and will require management of seepage and runoff from various DRSF and former ore stockpiles. The removal activity will also require stabilization of former underground portals.

d. **West End Area**. West End Creek will be temporarily diverted around the West End Pit and West End DRSF during operations. The West End Pit will be mined until the end of operations; however, wetland mitigation projects in and adjacent to the Pit may run concurrently with the final phases of mining. Wetlands on benches around the perimeter of the West End Pit Lake will be created to provide a stable spillway channel through the historical development rock dump downstream of the lake outlet.

e. **Blowout Creek (East Fork of Meadow Creek) Restoration and Enhancement**. Blowout Creek (East Fork of Meadow Creek) will be restored to reduce sedimentation and restore wetland functionality. Action will enhance fish habitat in EFSFSR and Meadow Creek to provide salmon spawning beds and increase fish populations.

f. **Fiddle Creek Area**. Fiddle Creek will be diverted around the perimeter of the DRSF in a channel to protect water quality and prevent surface water from running onto the DRSF. Response action will be taken for the former north tunnel DRSF, and removal could require possible closure, stabilization of old portal and clean-up of the quarry site.

g. **Other**. [PLACEHOLDER FOR OTHER REMOVAL ACTIONS IF NECESSARY, SUCH AS NECESSARY INFRASTRUCTURE DISTURBANCES ON OR AROUND LEGACY AREAS]

33. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after MGII receives notification from EPA of the modification, amendment, or replacement.

34. **Work Plans and Implementation**

a. Within 30 days after the Effective Date, in accordance with Paragraph [INSERT] (Submission of Deliverables), MGII shall submit to EPA for approval a draft work plan to implement the SOW generally described in Paragraph [INSERT] and [INSERT] above. The Work implementing the SOWs generally described in Paragraph [INSERT] is collectively referred to as the "Work Plans." The draft Work Plans shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify each draft Work Plan in whole or in part provided such disapproval is reasonable and not arbitrary and capricious. If EPA requires revisions, MGII shall submit a revised draft Work Plan within 7 days of receipt of EPA's notification of the required revisions, but may be extended by EPA for good cause related to the extent and scope of matters addressed in the Work Plan. MGII shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Work Plans, MGII shall, upon notification to EPA that appropriate funding and other preparation pursuant to this agreement is in place, commence implementation of the Work in accordance with the schedule included therein. MGII shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the SOW and/or Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

35. **Submission of Deliverables**

a. General Requirements for Deliverables

(1) Except as otherwise provided in this Settlement, MGII shall direct all submissions required by this Settlement to the RPM by email at [INSERT] or mail to:

and the State at:

MGII shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

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(2) MGII shall submit all deliverables in electronic form and paper copies of all final versions of reports, SAP, QAPP, maps and figures shall also be submitted to EPA and the State. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph [INSERT]. All other deliverables shall be submitted to EPA in the form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5x11 inches, MGII shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Submission of Environmental Data. [RESERVE FOR REGION 10 SPECIFICS]

36. Health and Safety Plan. In accordance with the schedule set forth in the SOW, MGII shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at http://www.epa.gov/nscep, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaosc.org/HealthSafetvManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning for potential mine impacted water releases. EPA may comment and make recommendation to the Health and Safety Plan, however, MGII assumes full responsibility to adhere to applicable OSHA and MSHA regulations, as appropriate. MGII shall incorporate all changes to the plan recommended by EPA provided such recommendations are reasonable and not arbitrary and capricious and shall implement the plan during the pendency of the response action.

37. Quality Assurance, Sampling, and Data Analysis

a. MGII shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all environmental samples collected related to the Work consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), or "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. Sampling and Analysis Plan. Within 7 days after the Effective Date or before commencing Work, MGII shall submit a Sampling and Analysis Plan related to the Work to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the SOW, the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)"

EPA 240/B-01/003 (March 2001, reissued May 2006), or "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement. For current Region 8 QA requirements and guidance, refer to https://www.epa.gov/qualitv/managing-qualitv-environmental-data-epa-region-8.

c. MGII shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by MGII in implementing this Settlement. In addition, MGII shall ensure that such laboratories shall analyze pursuant to this Settlement all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that environmental sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P- 02.1 (9/23/2014) available at http://www.epa.gov/innpoli8/epa-qa-field-activities-procedures. MGII shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at http://www.epa.gov/measurements/documents-about-measurement-competencv-under-acquisition-agreements and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www3.epa.gov/epawaste/lrazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/). 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www3.epa.gov/ttnamtil/airtox.html).

d. However, upon approval by EPA, after a reasonable opportunity for review and comment by the State, MGII may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, *e.g.*, EPA, ASTM, NIOSH, OSHA, MSHA, etc. MGII shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B- 01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized

programs as meeting the Quality System requirements. MGII shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, MGII shall provide split or duplicate environmental samples related to the Work to EPA and the State or their authorized representatives. MGII shall notify EPA and the State not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples related to the Work that EPA or the State deem necessary. Upon request, EPA and the State shall provide to MGII split or duplicate samples of any samples they take as part of EPA's oversight of MGII's implementation of the Work.

f. Other than resource related data associated with the exploration activities, mine production and mill operations assays, MGII shall submit to EPA and the State results of all sampling and/or tests or other data obtained or generated by or on behalf of MGII with respect to the Site and/or the implementation of this Settlement.

38. Progress Reports. MGII shall submit a quarterly written progress report to EPA and the State concerning actions undertaken pursuant to this Settlement, or as otherwise requested by EPA, from 30 days after the Effective Date until issuance of Notice of Completion of Work pursuant to Section [INSERT], unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

39. Final Report. Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph [INSERT] (Notice of Completion), MGII shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The format of the final report or reports is included in the SOW. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP titled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant and material documentation generated during the Work (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of MGII or MGII's Project Coordinator: "I certify under penalty of law that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this document and all attachments, the information submitted is true, accurate, and complete. I have no personal knowledge that the information submitted is

other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

40. Off-Site Shipments and Wastes Generated On-Site

a. MGII may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. MGII will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if MGII obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. MGII may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. MGII also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. MGII shall provide the written notice after the award of the contract for the Work and before the Waste Material is shipped.

c. MGII may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

IX. PROPERTY REQUIREMENTS

41. MGII agrees to provide the State, EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Site and to any other property owned or controlled by MGII, IGRC, and SGC to which access is required for the implementation of response actions at the Site. EPA agrees to provide reasonable notice to MGII, IGRC, and SGC of the timing of response actions to be undertaken at the Site and other areas owned or controlled by MGII.

42. For so long as MGII is an operator of the Property, MGII shall require that assignees, successors in interest, and any other parties with rights to use the Property shall provide access and cooperation to the State, EPA, its authorized officers,

employees, representatives, and all other persons performing response actions under EPA oversight. MGII shall require that assignees, successors in interest and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with the Work, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Site.

43. MGII shall provide a copy of this Settlement to any current and other party with rights to use the Site as of the Effective Date.

44. Notwithstanding any provision of this Settlement, EPA and the State retain all of their access authorities and rights, as well as all of its rights to require land, water or other resource use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

45. MGII shall, subject to the record retention period in Paragraph [INSERT] and, if necessary, in accordance with Paragraph [INSERT], provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) within MGII's possession or control as of or after the Effective Date relating to Work at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work (hereinafter referred to as "Records"). MGII shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

46. Privileged and Protected Claims

a. MGII may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided MGII complies with Paragraph [INSERT], and except as provided in Paragraph [INSERT].

b. If MGII asserts such a privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (*e.g.*, company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, MGII shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. MGII shall retain all Records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in MGII's favor.

c. Except for Business Confidential Claims permitted in Paragraph [INSERT], MGII may make no claim of privilege or protection regarding: (1) any data,

other than non- environmental data, regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that MGII is required to create or generate pursuant to this Settlement.

47. Business Confidential Claims. MGII may assert that all or part of a Record provided to EPA and the State under this Section or Section [INSERT] (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). MGI shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which MGII asserts business confidentiality claims. Records that MGI claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified MGII that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to MGII.

48. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

49. Until ten (10) years after EPA provides MGII with notice, pursuant to Section [INSERT] (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, MGII shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to MGII's representations of the BFPP provisions of CERCLA §§ 101(40)(A)-(H) and 107(r)(l), 42 U.S.C. §§ 9601 (40)(A)-(H) and 9607(r)(l) with regard to the Site, provided, however, that a party who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. MGII must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that MGII (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

50. At the conclusion of the document retention period, MGII shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by

EPA, and except as provided in Paragraph [INSERT] (Privileged and Protected Claims), MGII shall deliver any such Records to EPA.

51. MGII certifies that, as of the Effective Date and to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to the Site and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

52. Nothing in this Settlement limits MGII's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). [In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. MGII shall identify ARARs in the Work Plan subject to EPA approval.]

53. No local, state, or Federal permit shall be required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, MGII shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. MGII may seek relief under the provisions of Section [INSERT] (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

54. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, MGII shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. MGII shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. MGII shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer of the incident or Site conditions. The MGII shall also notify the State in accordance with Section

[INSERT] (Notices). In the event that MGII fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, MGII shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section [INSERT] (Payment of Future Response Costs).

55. Release Reporting. Upon the occurrence of any event during performance of the Work that MGII is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, MGII shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 303-293-1788, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

56. For any event covered under this Section, MGII shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF FUTURE RESPONSE COSTS

57. Payment of Sum for Future Response Costs. Within 60 days prior to commencing Work, MGII shall pay to EPA $ ____ for Oversight Costs.

a. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to MGII by EPA Region 10 and shall be accompanied by a statement identifying the name and address of MGII, the Site name, the EPA Region and Site/Spill ID Number ____, and the EPA docket number for this action.

b. The total amount to be paid by MGII pursuant to Paragraph [INSERT] shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid by MGII pursuant to [INSERT] shall be deposited by EPA in the [Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to finance Oversight Costs.]

c. At the time of payment, MGII shall send notice that payment has been made to [insert names and mailing addresses of Regional Financial Officer and any other receiving officials at EPA.]

d. Return of Excess Sum Certain Oversight Cost Payment. After EPA issues its Notice of Completion pursuant to Section [INSERT] and has performed a final accounting of Oversight Costs, EPA shall remit and return to MGII any unused amount of the funds paid by MGII pursuant to Paragraph [INSERT] above.

58. Contesting Future Response Costs. MGII may initiate the procedures of Section [INSERT] (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph [INSERT] (Payments of Sum for Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, MGII shall submit a Notice of Dispute in writing to the RPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If MGII submits a Notice of Dispute, MGII shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph [INSERT], and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. MGII shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, the escrow agent shall release the sums due (with accrued interest) to EPA in the manner described in Paragraph 52. If MGII prevails concerning any aspect of the contested costs, the escrow agent shall release that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph [INSERT]. MGII shall be disbursed any balance of the escrow account within 5 days after the resolution of the dispute. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section [INSERT] (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding MGII's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

60. Informal Dispute Resolution. If MGII objects to any EPA action taken pursuant to this Settlement, including providing Notice of Completion of Work or matters pertaining to Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 14 days after such action or MGII becoming aware of such action, whichever is later. EPA and MGII shall have 30 days from EPA's receipt of MGII's Notice of Dispute to resolve the dispute through informal negotiations (the Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

61. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, MGII shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Supervisory level or higher will issue a written decision on the dispute to MGII. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. MGII shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

62. Except as provided in Paragraph [INSERT] (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of MGII under this Settlement. Except as provided in Paragraph [INSERT], stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that MGII does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [INSERT] (Stipulated Penalties).

XVI. FORCE MAJEURE

63. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of MGII, of any entity controlled by MGII, or of MGII's contractors that delays or prevents the performance of any obligation under this Settlement despite MGII's best efforts to fulfill the obligation. The requirement that MGII exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which MGII intends or may intend to assert a claim of force majeure, MGII shall notify EPA's RPM orally or, in their absence, EPA Region 10, within 10 days of when MGII first knew that the event might cause a delay. Within 5 days thereafter, MGII shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; MGII's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of MGII, such event may cause or contribute to an endangerment to public health or welfare, or the environment. MGII shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. MGII shall be deemed to know of any circumstance of which MGII, any entity controlled by MGII, or MGII's contractors knew or should have known. Failure to comply with the

above requirements regarding an event shall preclude MGII from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph [INSERT] and whether MGII has exercised their best efforts under Paragraph [INSERT], EPA may, in its unreviewable discretion, excuse in writing MGII's failure to submit timely or complete notices under this Paragraph.

65. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify MGII in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify MGII in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

66. If MGII elects to invoke the dispute resolution procedures set forth in Section [INSERT] (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, MGII shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that MGII complied with the requirements of Paragraphs [INSERT]. If MGII carries this burden, the delay at issue shall be deemed not to be a violation by MGII of the affected obligation of this Settlement identified to EPA.

67. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents MGII from meeting one or more deadlines under the Settlement, MGII may seek relief under this Section.

XVII. CERTIFICATION

68. By entering into this Settlement, MGII certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA as well as the lead and cooperating Federal agencies involved in approving the PRO all material information known to MGII, MGC, IGRC and SGC and all material information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement. MGII, MGC, IGRCLLC and SGC also certify that to the best of their knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. MGII further certifies to the representations made under Paragraph 3.

XVIII. COVENANTS BY UNITED STATES AND THE STATE

69. Except as provided in Section [INSERT] (Reservations of Rights by United States), the United States and the State covenants not to sue or to take administrative action against MGII pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Existing Contamination, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by MGII of their obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA by MGII relating to MGII's Work at the Site and the certification made by MGII in Paragraph [INSERT]. This covenant extends only to MGII and does not extend to any other person.

70. Nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, or the State to seek or obtain further relief from MGII, if the information provided to EPA by MGII relating to MGII's Work at the Site, or the certification made by MGII in Paragraph [INSERT], is false or in any material respect, inaccurate.

XIX. RESERVATIONS OF RIGHTS BY UNITED STATES AND THE STATE

71. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States and/or the State to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States and/or the State from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary.

72. The covenants set forth in Section [INSERT] (Covenants by the United States and the State) do not pertain to any matters other than those expressly identified therein. The United States and the State reserve, and this Settlement is without prejudice to, all rights against MGII with respect to all other matters, including, but not limited to:

a. liability for failure by MGII to meet a requirement of this Settlement;

b. criminal liability;

c. liability for violations of federal or state law that occur during or after implementation of the Work;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;

f. liability resulting from exacerbation of Existing Contamination not associated with the Work by MGII, its successors and assigns; and

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

73. With respect to any claim or cause of action asserted by the United States, MGII shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that MGII has complied with all of the requirements of 42 U.S.C. §§ 9601 (40)(A)-(H) and 9607(r)(l).

74. Work Takeover

a. In the event EPA determines that MGII: (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to MGII. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide MGII a period of 15 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 15-day notice period specified in Paragraph [INSERT] MGII has not remedied or begun to remedy to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (Work Takeover). EPA will notify MGII in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph [INSERT].

c. MGII may invoke the procedures set forth in Section [INSERT] (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph [INSERT]. However, notwithstanding MGII invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph [INSERT] until the earlier of (1) the date that MGII remedies, to EPA 's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph [INSERT] (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY MGII

75. MGII covenants not to sue and agrees not to assert any claims or causes of action against the State, the United States, or its contractors or employees, with respect to Existing Contamination, the Work, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of Idaho Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding, the Work, Future Response Costs, and this Settlement.

76. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section [INSERT] (Reservations of Rights by the United States and the State), other than in Paragraph [INSERT] (liability for failure to meet a requirement of the Settlement), 77.b (criminal liability), or [INSERT] (violations of federal/state law during or after implementation of the Work), but only to the extent that MGII's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

77. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

78. MGII reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of MGII's deliverables or activities.

79. MGII reserves, and this Settlement is without prejudice to, arguments that any claim or cause of action, or part thereof, is attributable solely to Existing

Contamination and that MGII has complied with all of the requirements of 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r)(l).

XXI. OTHER CLAIMS

80. By issuance of this Settlement, the United States, the State, and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of MGII. The United States, the State, and EPA shall not be deemed a party to any contract entered into by MGII or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

81. Except as expressly provided in Section [INSERT] (Covenants by the United States and the State), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against MGII or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

82. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

83. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section [INSERT] (Covenants by MGII), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

84. If a suit or claim for contribution is brought against MGII with respect to Existing Contamination (including any claim based on the contention that MGII is liable as a result of response actions taken in compliance with this Settlement or at the direction of EPA's RPM), the Parties agree that this Settlement constitutes an administrative settlement pursuant to which MGII has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C.§§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters

addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, Existing Contamination, and Future Response Costs.

85. MGII shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. MGII shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, MGII shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

XXIII. INDEMNIFICATION

86. The United States and the State do not assume any liability by entering into this Settlement or by virtue of any designation of MGII as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). MGII shall indemnify, save, and hold harmless the United States and the State, their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of MGII, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on MGII's behalf or under their control, in carrying out activities pursuant to this Settlement. Further, MGII agrees to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of MGII, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States and the State shall not be held out as a party to any contract entered into by or on behalf of MGII in carrying out activities pursuant to this Settlement. Neither MGII nor any such contractor shall be considered an agent of the United States or the State.

87. The United States shall give MGII notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with MGII prior to settling such claim.

88. MGII covenants not to sue and agree not to assert any claims or causes of action against the United States or the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of MGII and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

89. In addition, MGII shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between MGII and any person for

performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

90. No later than 14 days before commencing any on-site Work, MGII shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section [INSERT] (Notice of Completion of Work), commercial general liability insurance with limits of $1 million per occurrence, and automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of MGII pursuant to this Settlement. In addition, for the duration of the Settlement, MGII shall provide EPA with certificates of such insurance and a copy of each insurance policy. MGII shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, MGII shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of MGII in furtherance of this Settlement. If MGII demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, MGII need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. MGII shall ensure that all submittals to EPA under this Paragraph identify the Stibnite Mine Site name and the EPA docket number for this action.

XXV. FINANCIAL ASSURANCE [TO BE REVIEWED TO CONSOLIDATE WITH STATE AND USFS FINANCIAL ASSURANCE AND AVOID DUPLICATION]

91. In order to ensure completion of the Work, MGII shall secure financial assurance, initially in the amount of $[INSERT] (Estimated Cost of the Work), [for the benefit of EPA.] The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. MGII may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; [BOOKMARK FOR DEVELOPMENT OF LANGUAGE FOR RECLAMATION SECURITY TRUST/QUALIFYING ENVIRONMENTAL TRUST W/EPA, STATE AND USFS AS BENEFICIARIES]

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

92. MGII shall submit such mechanisms and documents to the Regional financial assurance specialist at the following address:

[INSERT]

93. MGII shall diligently monitor the adequacy of the financial assurance. If MGII becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such MGII shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the MGII of such determination. MGII shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the MGII, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. MGII shall follow the procedures of Paragraph 98 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. MGII's inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of MGII to complete the Work in accordance with the terms of this Settlement.

94. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph [INSERT], then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph [INSERT].

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the MGII fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to

the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph [INSERT].

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph [INSERT], either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under Paragraph [INSERT], then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. MGII shall, within 7 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Stibnite Mine Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs, not inconsistent with the NCP, and not paid under this Paragraph must be reimbursed as Future Response Costs under Section [INSERT] (Payments for Response Costs).

95. Modification of Amount, Form, or Terms of Financial Assurance. MGII may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 99 and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify MGII of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. MGII may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section [INSERT] (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by MGII pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, MGII shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph [INSERT].

96. Release. Cancellation, or Discontinuation of Financial Assurance. MGII may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXVIII (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (Dispute Resolution).

XXVI. MODIFICATION

97. EPA's RPM may modify any plan or schedule or the SOW in writing or by oral direction. Any modification will not be arbitrary and capricious and will be of fair cost. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any modification will be subject to modification that may be required of the PRO or other agency authorization for the Work concerned. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties.

98. If MGII seeks permission to deviate from any approved Work Plan or schedule or the SOW, MGII's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. MGII may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph [INSERT].

99. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by MGII shall relieve MGII of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVII. NOTICE OF COMPLETION OF WORK

100. When EPA, in consultation with the State, determines, after review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, EPA will provide written notice to MGII. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify MGII, provide a list of the deficiencies, and require that MGII modify the Work Plans if appropriate in order to correct such deficiencies. MGII shall implement the modified and approved Work Plans and shall submit a modified Final Report in accordance with the EPA notice. Failure by MGII to implement the approved modified Work Plan shall be a violation of this Settlement.

XXVIII. PUBLIC COMMENT

101. This Settlement shall be subject to a thirty (30) day public comment period, after which EPA may modify or withdraw its consent to this Settlement if

comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

XXIX. INTEGRATION/APPENDICES

102. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement.

a. Appendix A is a map of the Site.

b. Appendix B is the SOW.

XXX. EFFECTIVE DATE

103. The effective date of this Settlement shall be the date upon which EPA issues written notice to MGII that EPA has fully executed the Settlement after review of and response to any public comments received. If, by the time EPA issues such notice to MGII, and MGII has not yet had its Plan of Restoration and Operation approved by the United States Forest Service through a record of decision (ROD), the effective date of this Settlement shall be the date upon which MGII receives final approval by the Forest Service for the Plan of Restoration and Operations through a ROD.

104. Notwithstanding any other provision in this Settlement, EPA agrees that the performance obligations under this Settlement cannot proceed in the absence of applicable required permits and other authorizations issued by the appropriate government agencies.

XXXI. DISCLAIMER

105. This Settlement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

XXXII. NOTICES AND SUBMISSIONS

106. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement, shall be deemed submitted either when an email is transmitted and received, it is hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to MGII shall be addressed to:

CONFIDENTIAL DRAFT

With copies to:

and

Submissions to MGC shall be addressed to:

Submissions to IGRCLLC shall be addressed to:

Submissions to SGC shall be addressed to:

All submissions to U.S. EPA shall be addressed to:

With electronic copies to:

All submissions to the State shall be addressed to:

With electronic copies to

CONCEPT DRAFT

IT IS SO AGREED:
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BY:

_____

_____

CONCEPT DRAFT

IT IS SO AGREED:
STATE OF IDAHO
BY:

_____

_____

CONCEPT DRAFT

The undersigned representative of MGII certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____
Name (MGII) Date

The undersigned representative of MGC certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____
Name (MGC) Date

The undersigned representative of IGRC LLC certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____
Name (IGRCLLC) Date

CONCEPT DRAFT

The undersigned representative of SGC certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____

Name (SGC) Date

CONCEPT DRAFT

Dated this ____ day of [INSERT].

By:_____

CONCEPT DRAFT

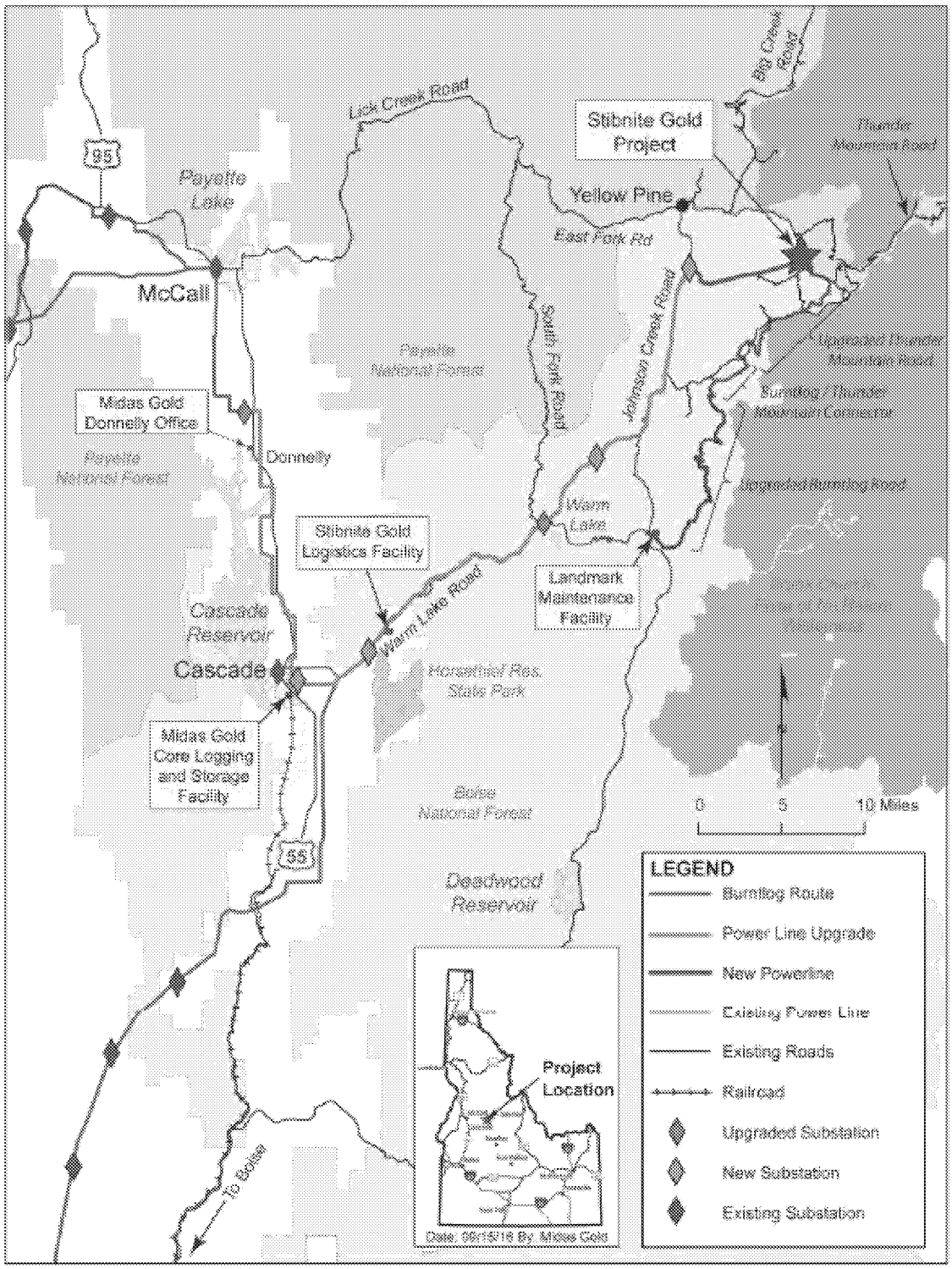
CERTIFICATE OF SERVICE

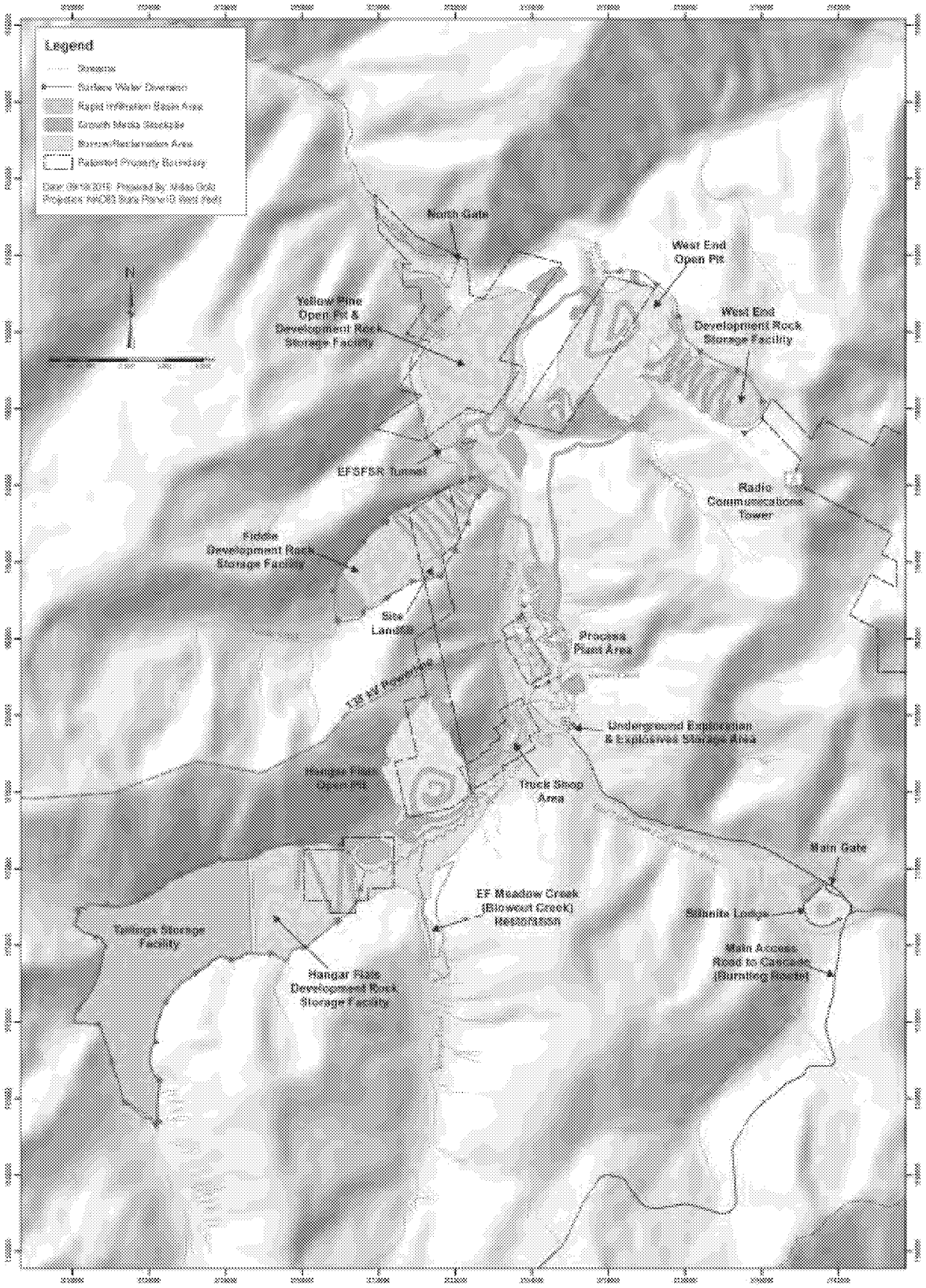
The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following parties listed below by United States mail, postage prepaid, this ___ day of _____, [INSERT].

CONCEPT DRAFT

APPENDIX A

PROJECT SITE




Legend
Streams
Surface Water Diversion
Rapid Infiltration Basin Area
Growth Media Stockpile
Borrow/Reclamation Area
Patented Property Boundary
North Gate
West End Open Pit
Yellow Pine Open Pit & Development Rock Storage Facility
West End Development Rock Storage Facility
EFSFSR Tunnel
Radio Communications Tower
Fiddle Development Rock Storage Facility
Site Lands
Process Plant Area
138 kV Powerline
Underground Exploration & Explosives Storage Area
Hangar Flats Open Pit
Truck Shop Area
Main Gate
EF Meadow Creek (Blowout Creek) Reservoir
Stibnite Lodge
Tailings Storage Facility
Main Access Road to Cascade (Burntlog Route)
Hangar Flats Development Rock Storage Facility

APPENDIX B

STATEMENT OF WORK
REMOVAL AND RESTORATION ACTIONS FOR STIBNITE MINE SITE

I. PURPOSE

The purpose and objective of the work described by this Statement of Work is to undertake Site response activity in areas of previous contamination while the Plan of Restoration and Operations is executed by MGII as the Stibnite Project Operator.

Further details of work activities, including the sequencing of actions, will be included in work plans that will be approved by the [RPM] in consultation with the Project Coordinator.

II. STATEMENT OF WORK

A. SODA Area

1. Bradley Tailings Removal

(1) Approximately 3.5 million tons of legacy tailings in the SODA Area will be removed from their historical deposition areas in the Meadow Creek Valley to be reprocessed and disposed of within the tailings storage facility (TSF).

(2) Approximately 10.5 million tons of legacy spent ore in the SODA will be removed from their historical deposition areas in the Meadow Creek Valley to be reused in the construction of the TSF dam.

Removal of the materials, which are currently in stored in an unconstrained and unlined valley fill, and reprocessing and reuse, as appropriate, of these materials will improve water quality in Meadow Creek where legacy metals loading in to the creek is present and would minimize the need to excavate new material for construction purposes.

The Hecla Heap leach area will be disturbed in order to develop TSF construction material, beginning with Hangar Flats Pit development. The removal activity will require actions related to a buried mill, smelter waste, tailings removal and heap leach wastes and possibly management of potential contaminated water effluent from the former underground mine portals.

2. Stream Diversion

Construction of the TSF in the Meadow Creek valley requires diverting the stream around the TSF to protect water quality and manage runoff. The diversion will intercept water from upstream drainages, seeps and springs, and includes a lined channel capable of passing high flows during snow melt runoff and keeping water from reaching the TSF. Approximately 21,000 linear-feet (LF) of diversion channel will be constructed initially to capture the flow from both sides of the drainage.

CONCEPT DRAFT

Meadow Creek must be diverted around the south side of Hangar Flats Pit to enable mining the Hangar Flats mineral resource. Early in operations and prior to mining the portion of the Hangar Flats Pit below the valley bottom, Meadow Creek would be diverted around the Hangar Flats pit in a meandering channel similar to the previously-constructed Meadow Creek channel, but with a more favorable gradient (1-2%) for Chinook salmon spawning. A low permeability liner would be provided under the stream bed material to prevent loss of water into the adjacent pit. The reconstructed channel is intended to provide optimal spawning habitat during operations for running Chinook salmon that will be able to naturally access Meadow Creek (via the future Yellow Pine Tunnel) for the first time since 1938, and permanently via a newly-created surface channel on the closure of the Yellow Pine Pit.

B. Yellow Pine Pit Area

1. Draining and Excavation of the Yellow Pine Pit

Drainage of the existing Yellow Pine Pit Lake will require response to contaminated sediment and debris in former open pit, as well as closure and stabilization of old portals (Monday, Cinnabar, and former Bradley Mining Company workings). Excavation of the Pit for mining will disturb hazardous substances and removal will include control actions for runoff, seepage and fugitive dust.

2. Stream Diversion

During the construction of the Tunnel (see below), the East Fork South Fork Salmon River (EFSFSR), Hennessy Creek, and other seeps and springs must be diverted around the perimeter of the Yellow Pine Pit in order to protect water quality and prevent water from filling the Pit during operations. Additionally, a former subsurface diversion of Hennessy Creek will be reclaimed. Response action will include controls for potential groundwater impacts for as-yet uncharacterized metals in legacy areas.

3. East Fork South Fork Salmon River Tunnel Installation

The existing legacy Yellow Pine pit was mined from the 1930s through the 1950s. Following diversion of the EFSFSR into a ditch in 1938 and later into a diversion tunnel in 1942, the anadromous fish passage was blocked, initially due to the nature of the diversion features and, following closure of the tunnel, from the EFSFSR flowing into the Yellow Pine pit over the steep slopes of the south rim of the pit.

During the construction period, the EFSFSR will be relocated from its current location within the Yellow Pine Pit, where a steep segment upstream of the existing pit lake has prevented upstream fish passage since approximately 1938. The EFSFSR will be diverted through a tunnel (.8 miles long, "Tunnel") capable of protecting water quality and providing fish passage from the EFSFSR below the Yellow Pine Pit to reaches of the EFSFSR above the Yellow Pine Pit to its headwaters and to Meadow Creek. The Tunnel will be designed with engineered fish-friendly features so as to mimic natural habitat including lighting and resting pools, among others. A natural channel will be restored upon closure and restoration of the Yellow Pine Pit and select fish habitat enhancement projects between the Yellow Pine Pit and the confluence with Meadow Creek will be implemented as well as upstream of the confluence to the headwaters of the EFSFSR.

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Construction activities will remove, as encountered, portions of legacy rock dumps that presently lie directly atop and adjacent to the banks of the EFSFSR and other potentially-contaminated material from the EFSFSR Valley.

C. Plant Site Area

During the construction of the Tunnel, construction will require removal of contamination of the former Monday Camp shops, as well as the crusher buildings and will require management of seepage and runoff from various development rock storage facility (DRSF) and former ore stockpiles. The removal activity will also require stabilization of former underground portals.

D. West End Area

Development of the West End Open Pit and the West End DRSF will necessarily encounter contaminated legacy areas.

1. West End Creek Diversion

West End Creek has been heavily impacted by legacy mining and mining-related activities, including development rock deposition over the stream channel, diversion of the stream into a French drain, and mining out of portions of the stream channel. West End Creek will be temporarily diverted around the West End pit and West End DRSF during operations. Diverting West End Creek away from the historical West End development rock dumps will improve water quality and prevent clean runoff from entering the West End Pit.

2. West End Pit Lake

The West End pit will be mined until the end of operations; however, wetland mitigation projects in and adjacent to the pit may run concurrently with the final phases of mining. Wetlands on benches around the perimeter of the West End Pit Lake will be created to provide a stable spillway channel through the historical development rock dump downstream of the lake outlet.

E. Blowout Creek (East Fork Meadow Creek) Restoration and Enhancement

Blowout Creek (East Fork Meadow Creek) has been severely impacted as a result of legacy mining-related activities and by the subsequent failure of the legacy water dam that had been constructed across its stream channel. Blowout Creek will be rehabilitated to control sediment from the incised and eroded stream regions, which is the single largest source of sediment, to the EFSFSR). As a part of its construction and operation activities, a phased approach to address the multiple environmental impacts associated with the 1965 failure of the Blowout Creek water reservoir will be undertaken.

A French Drain will be constructed in the main erosional gully feature, which is a major sediment contribution source for the basin. This constructed drain would convey that portion of Blowout Creek and disconnect erosional areas from the main stream, with the intent of controlling the ongoing erosion of the channel banks. Features near the old dam location to raise the Blowout Creek Valley water table to enhance the existing wetlands in the valley will be constructed in order to restore the pre-reservoir hydrologic conditions to support substantially

CONCEPT DRAFT

enhanced wetlands and riparian features in the upper Blowout Creek Valley. The base level will be raised to prevent further head-cutting and bank erosion in Blowout Creek upstream of the former dam site. Incised and eroded stream segments in the upper meadow will be improved to accelerate the natural channel recovery processes that are supported by the restored, higher base level.

F. Fiddle Creek Area

Fiddle Creek is currently cut off from the EFSFSR as a result of legacy mining operations, road construction and culvert installation. In addition, the drainage was the site of a legacy water storage reservoir that has left portions of the drainage in an unnatural state.

As a part of construction, Fiddle Creek will be diverted around the perimeter of the DRSF in a channel to protect water quality and prevent surface water from running onto the DRSF. Response action will be taken for the former north tunnel DRSF, and removal could require possible closure, stabilization of old portal and clean-up of the quarry site.

G. Other

[PLACEHOLDER FOR OTHER REMOVAL ACTIONS IF NECESSARY, SUCH AS NECESSARY INFRASTRUCTURE DISTURBANCES ON OR AROUND LEGACY AREAS]

CONCEPT DRAFT

EXHIBIT 5

to

Declaration of Michael Bogert

L. Michael Bogert

From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Thursday, November 15, 2018 11:39 AM
To: L. Michael Bogert
Cc: Falvo, Nicholas; Darwin, Veronica; Cook, Steven; Mackey, Cyndy; Woolford, James; Starfield, Lawrence
Subject: RE: Follow Up from Last Week

Michael,

I would like to thank you, Stephen, and Laurel for meeting with us on October 30 and sharing some of Midas Gold's plans for the Stibnite Mine Project in Idaho.

Based on the information you provided, we understand that you are seeking some protection from CERCLA liability in exchange for cleaning up existing contamination in areas you own and/or plan to conduct mining activities.

As you are aware, EPA requires consideration for CERCLA settlement agreements that provide liability protection and conducting a CERCLA response action addressing existing contamination for which others are liable may be appropriate consideration. However, managing newly created waste or cleaning up contamination that you cause would be your responsibility under appropriately issued permits, so any CERCLA liability for those activities would not be addressed prospectively. Of course if you cause new contamination, you may then go through the normal CERCLA process, clean up that contamination in accordance with CERCLA, and receive covenants not to sue and protection from third party contribution claims for that work as provided in our model consent decrees.

In our meeting, it was not clear what cleanup actions you are proposing to carry out or the scope of liability protection you are seeking.

Accordingly, we think it would be helpful for Midas Gold to provide Region 10 with additional technical details about the project (the geographic scope of the planned mining operations and how cleanup actions would be integrated into them; what additional cleanup activities would occur and how legacy contamination at the Site will be addressed; what would be required under reclamation and closure plans; what environmental controls would be required under your water and air permits; the scope of the protection you are seeking; whether future mine expansion could impact other areas of existing contamination, etc.).

This additional information would facilitate EPA's ability to understand the relationship between CERCLA and your planned mining activities and determine whether negotiating a CERCLA agreement would be appropriate.

Sincerely,

Susan Bodine

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance
202-564-2440

EXHIBIT 6

to

Declaration of Michael Bogert

MIDAS GOLD

CERCLA and the Stibnite Gold Project (SGP)

EPA Region X
December 17, 2018

CERCLA and the Stibnite Gold Project

1899
The Thunder Mountain gold rush brings mining to the area

1900-1930
Meadow Creek Mine operations & town of Stibnite is established

1938
Mining at Yellow Pine pit stops salmon migration upstream

1941-1952
The town of Stibnite booms – operations provide 90% of antimony and 40% of tungsten for WWII effort, & later Korean conflict

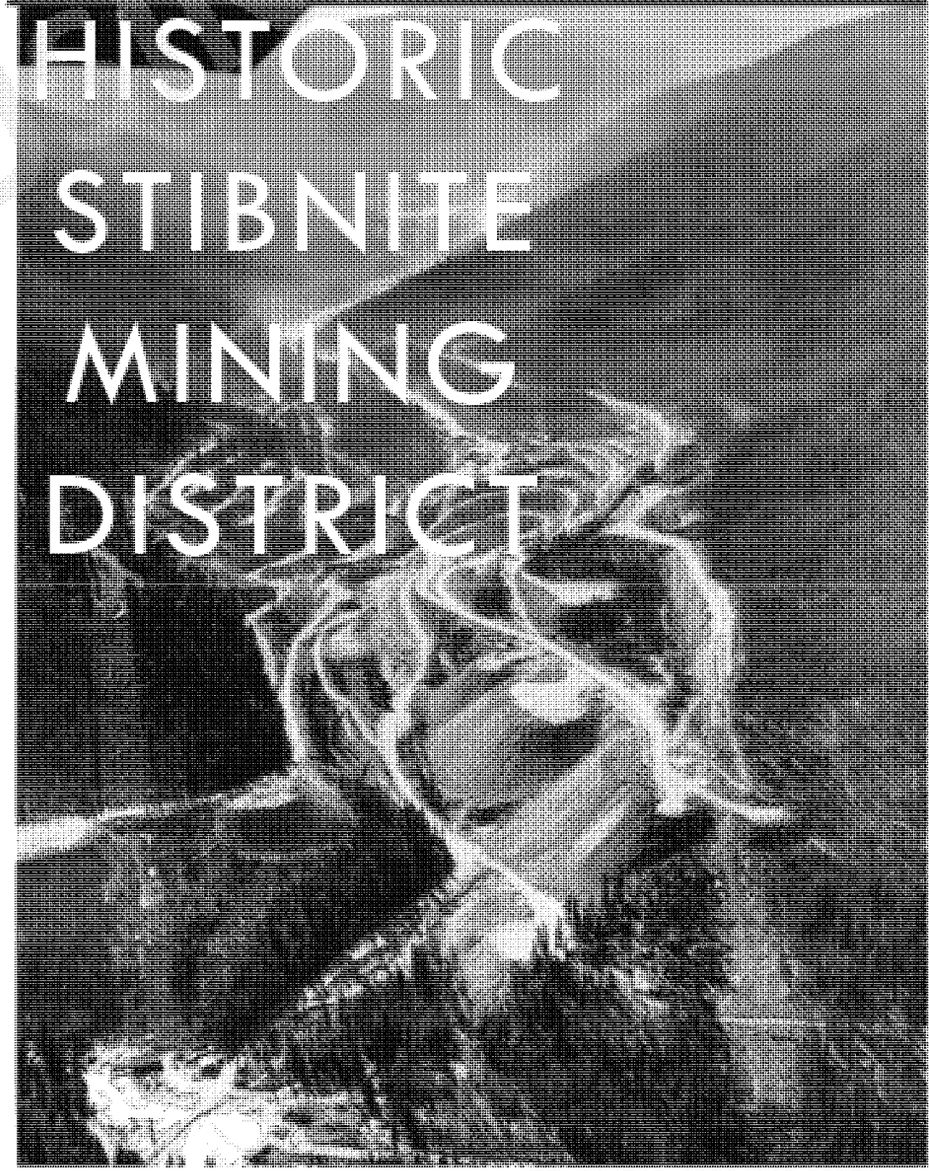
1952-1960
With WWII & the Korean war over, mining slowed and Stibnite slowly faded

1960s
Earthen dam failure resulting in hundreds of tons of sediment eroding into surrounding streams & rivers, even to this day

1970-1990
Periodic oxide heap leach mines developed by multiple owners and operators

1990s
All mining stopped, PRP's, State & Federal governments conduct limited clean-up & restoration

2009-2015
Midas Gold consolidates land ownership & begins evaluating the geology & environmental conditions within the SGP Project area



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CERCLA and the Stibnite Gold Project

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1. ***How does Midas Gold Idaho, Inc. (MGII) plan to define "existing contamination" and maintain that distinction?***

(The comingling of legacy tailings and new ore from processing and the comingled waste as well as the expansion of open pits with legacy contamination complicates the distinction.)

- Many of the areas are documented on site by legacy private, state, federal and MGII investigations, but some are known, but not well characterized and others may be unidentified;
- Definition in Gilt Edge AOC:

  "Existing Contamination" shall mean:

  a. any hazardous substances, pollutants, contaminants or Waste Materials present or existing on or under the Site as of the Effective Date;
  b. any hazardous substances, pollutants, contaminants or Waste Materials that migrated from the Site prior to the Effective Date; and
  c. any hazardous substances, pollutants, contaminants or Waste Materials presently at the Site that migrate onto or under or from the Site after the Effective Date.

CERCLA and the Stibnite Gold Project

- Materials consisting of or containing previously processed or handled materials will be mapped prior to/during operations and considered legacy materials (and if appropriate based on characterization, handled and treated as hazardous materials) and be managed separately until they are disposed of, or if they are comingled with modern operations materials, and become part of the materials chain for the proposed operations.

- Materials once excavated and handled may be segregated (depending on character) and if suitable whether they can be treated to recover metals, disposed of on site or transported off site depending upon their character as described in the PRO.

- Legacy materials characterized as hazardous requiring special handling may be placed in on-site or offsite repositories.

- Assumptions in the PRO are that hazardous materials that cannot be reprocessed will be transported off site to suitable licensed disposal facilities.

- A simple decision tree approach to project SOPs will be developed to manage this process.

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CERCLA and the Stibnite Gold Project

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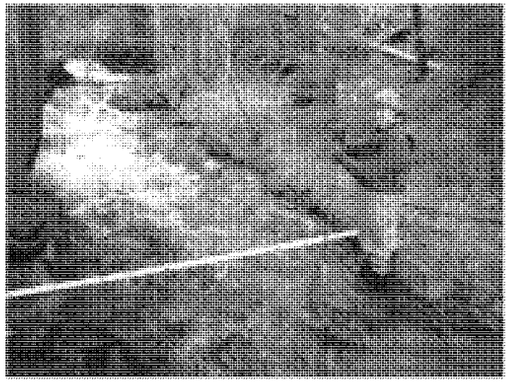
2. *EPA would like copies of all MGII studies performed and documents related to existing contamination.*

- MGII has completed numerous studies covering existing environmental conditions on the site. These include characterization of:
  - ✓ Surface water, seeps, adit seeps and groundwater from monitoring wells;
  - ✓ Soil/rock materials in former Development Rock Storage Facilities and Tailings Storage Facilities;
  - ✓ Various legacy stockpiles and fill materials;
  - ✓ Area wide stream sediments, soils and rocks; and
  - ✓ Materials characterization studies (SCLP, HCT, etc.).



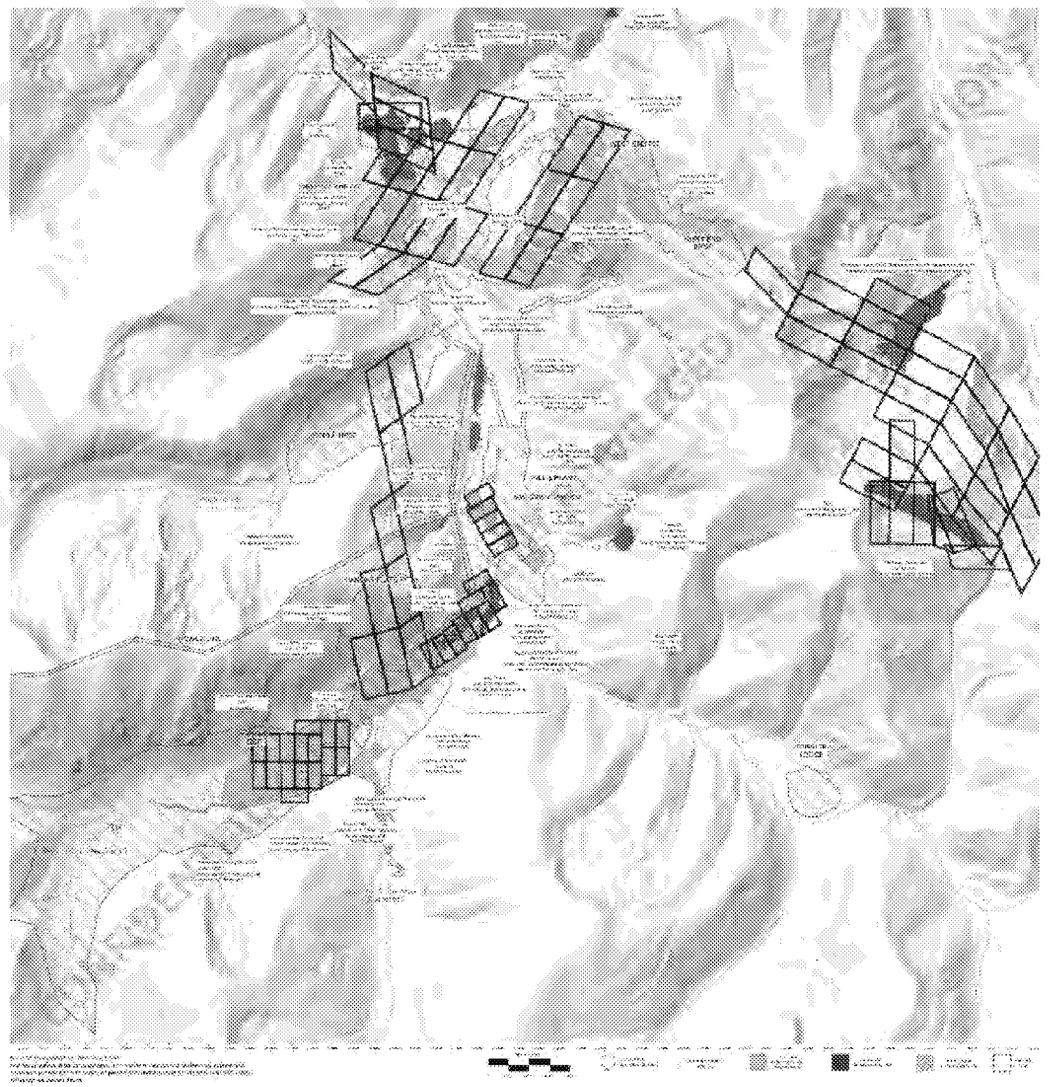
- Specific studies include:
  - ✓ MSE Phase I and Phase II Reports
  - ✓ Baseline SWQ data report (B-C version) and MGII SWQ dbase (if appropriate);
  - ✓ Monitoring well dbase and characterization data for GW quality (including seeps) throughout project area;
  - ✓ Exploration soil and rock dbase (with caveats of methodology differences between methods and protocols); and
  - ✓ SRK SLCP, HCT and other analyses of existing materials (from SRK, McClelland work);

CERCLA and the Stibnite Gold Project

3. Please clarify the locations of existing contamination and how the footprint overlaps with what MGII is disturbing in its operations.

Upper Man Camp Legacy Stockpiles in EFSFSR Floodplain

Legacy disturbance-PRO overlay map



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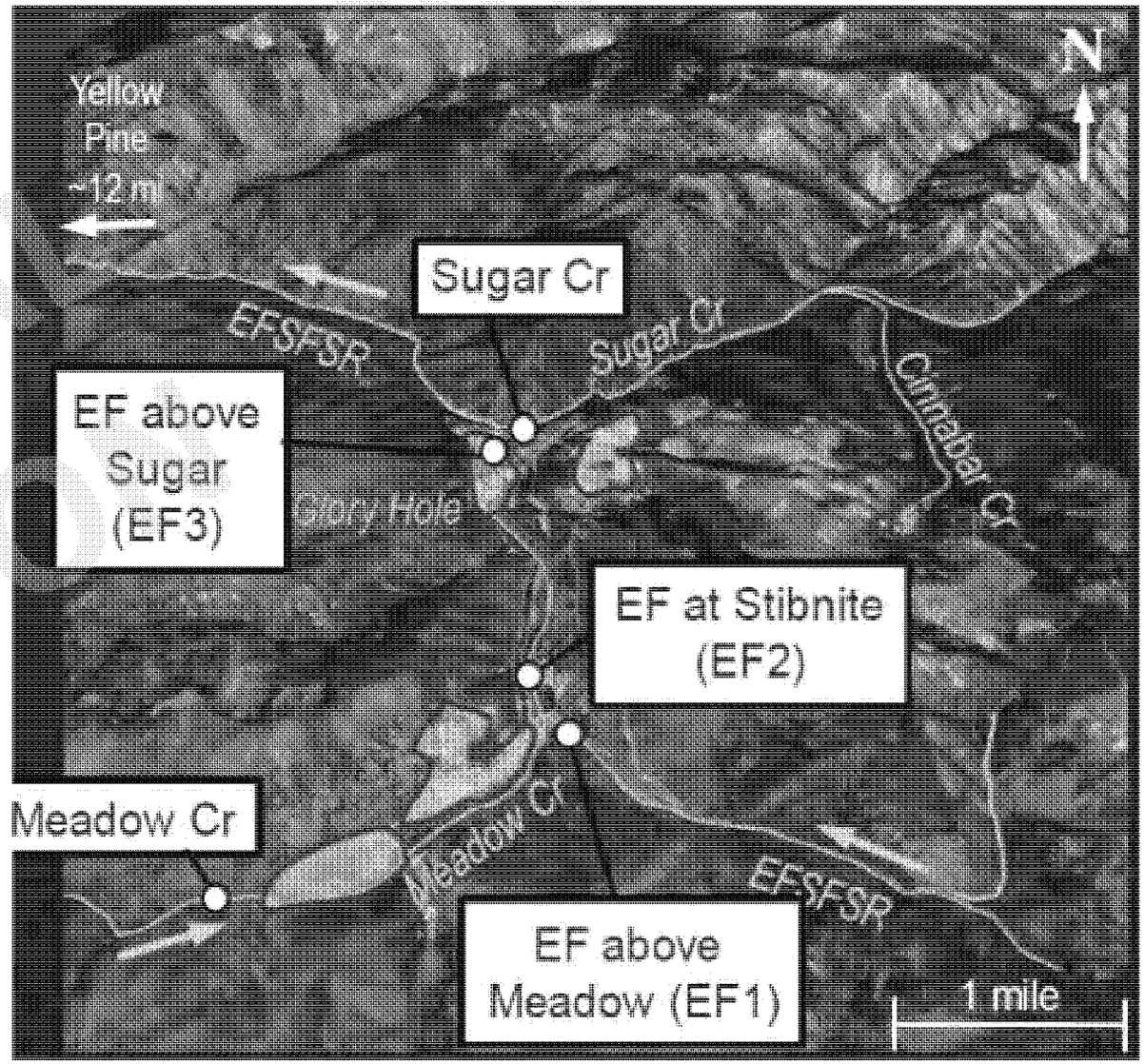
USGS/MGII Water Quality Studies

(2012 – Present)

1. Characterize current conditions
2. Assess from regulatory perspective
3. Identify potential for releases and ID possible source areas
4. Establish baseline for background to guide permitting and ARARs



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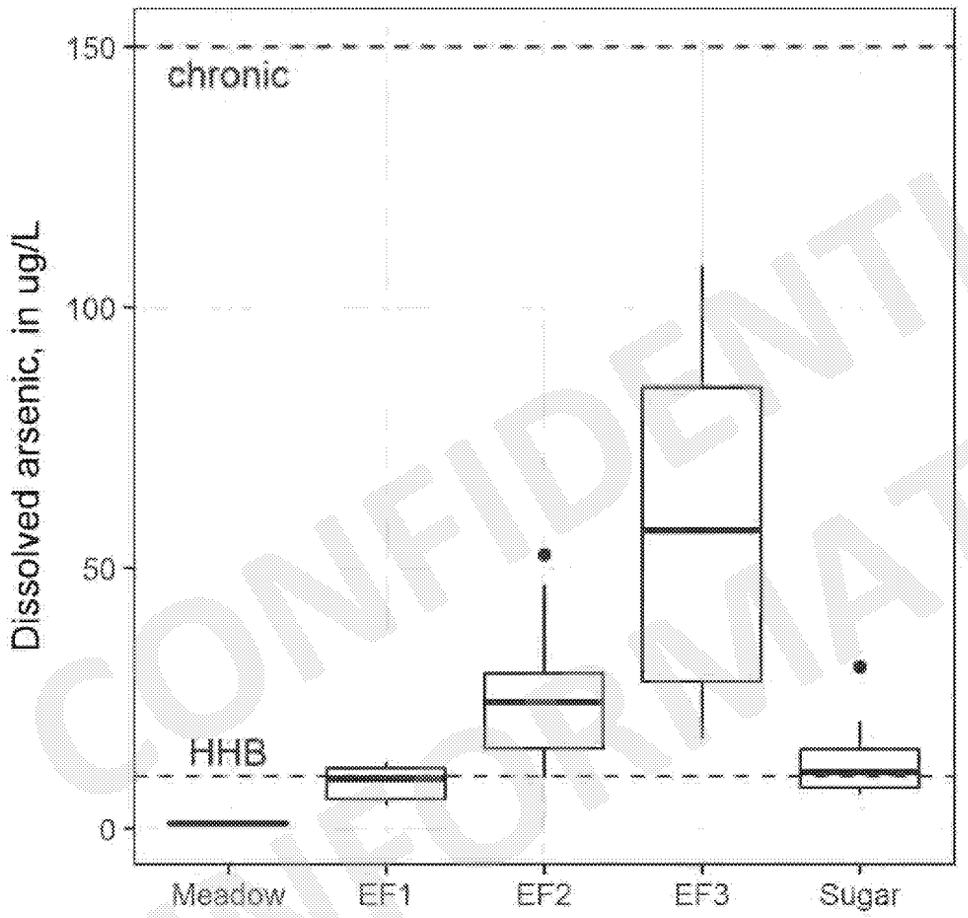
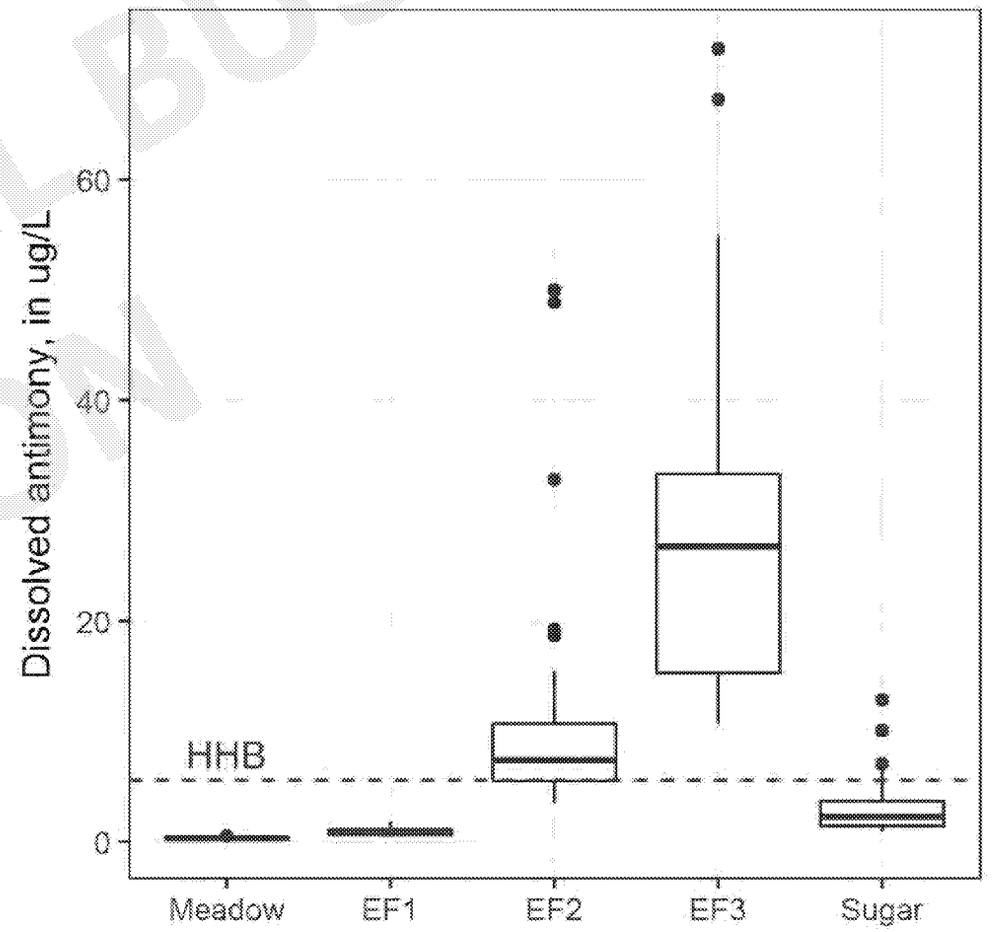
Arsenic and Antimony Primary COC





SOURCE: USGS (2015)

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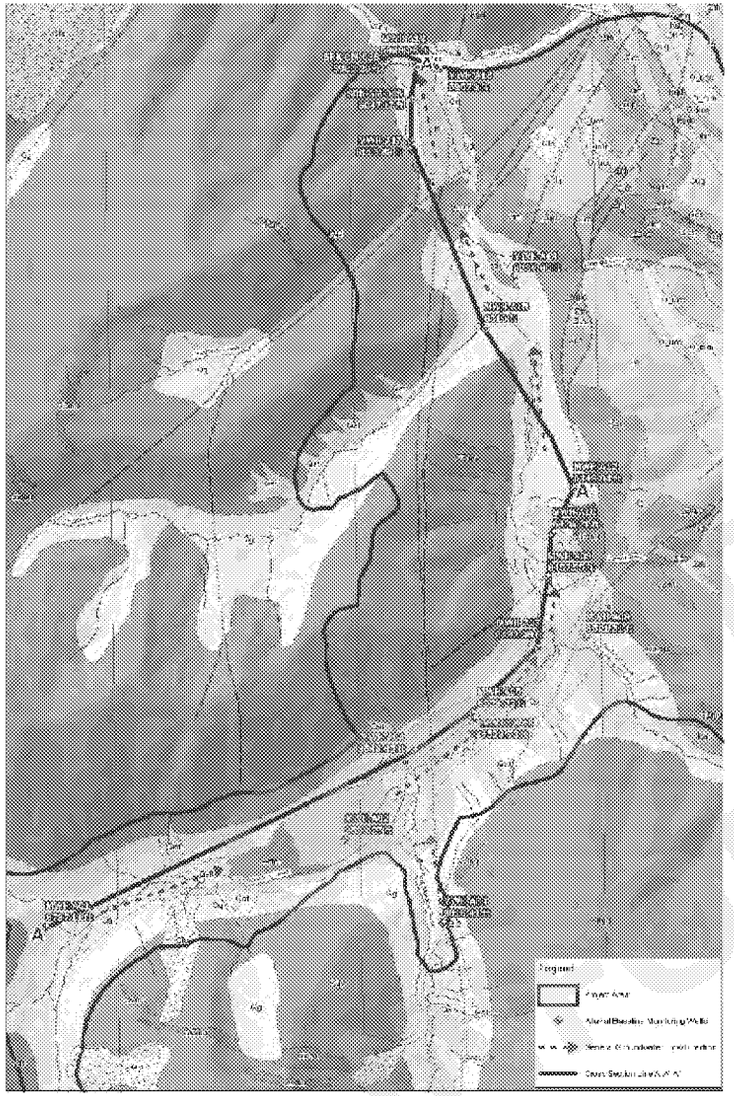

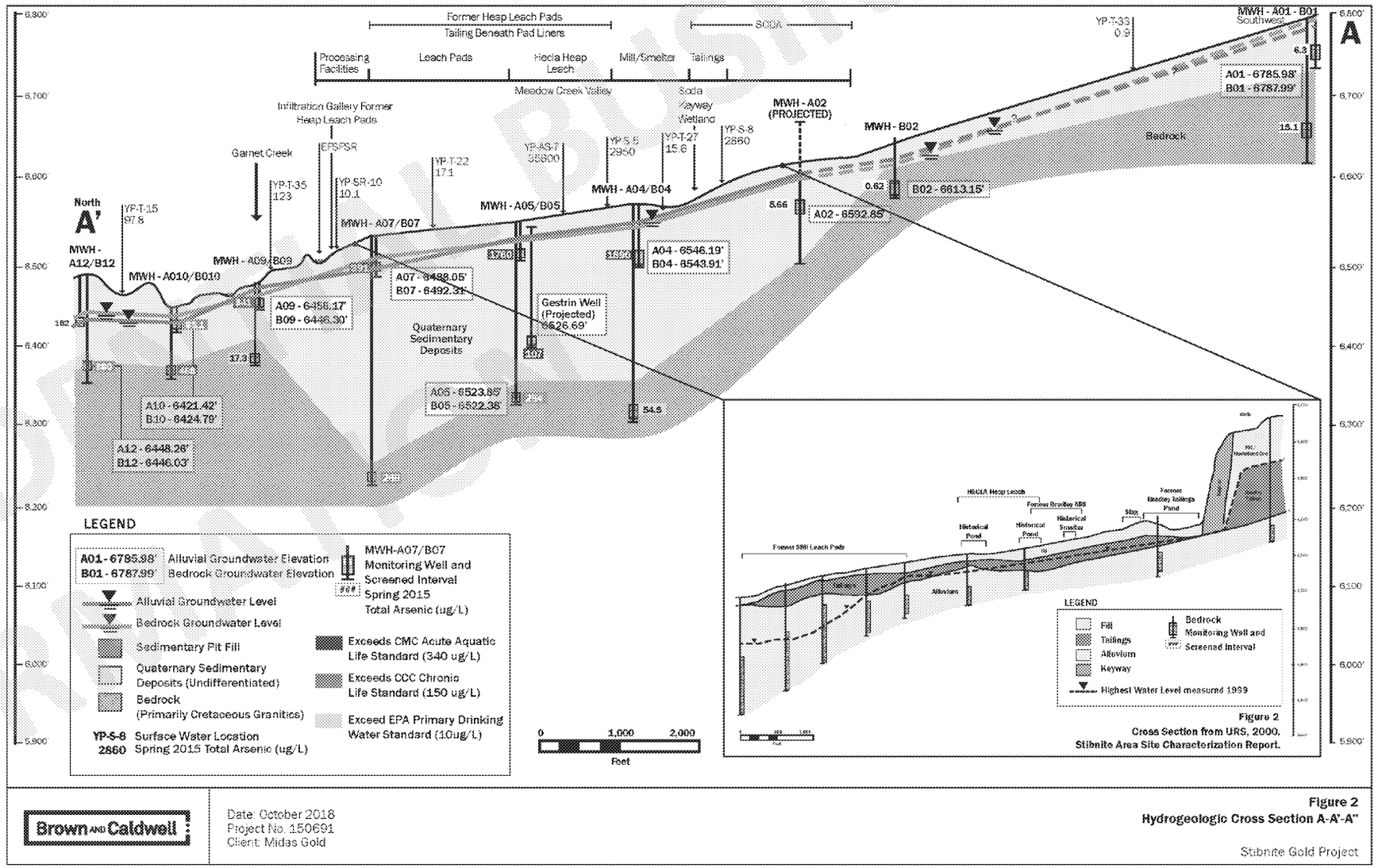

SOURCE: Modified (October 2018) from Brown and Caldwell (June 30, 2017 SWWQ Study)

CERCLA and the Stibnite Gold Project

4. *What is MGII's estimate of the volume of tails, spent ore & other legacy wastes that currently exist at the site?*

- There are an estimated 33 million tons of legacy mining materials spread over 30 sites in the project area;
- Some are well characterized in 3-D based on drill data and extensive sampling;
- Others however, lack quality volumetric data (specifically some former landfills, areas of mixed wastes and areas previously disturbed during site removal actions) Very few as-builts exist or were even created by state and federal OSC's during VCO and AOC activities;
- Many sites were disturbed numerous times by multiple legacy operators and regulatory agencies during reclamation, restoration and enforcement actions; and
- MGII has developed high quality LIDAR derived topographic maps and recovered numerous legacy era maps providing a solid foundation for subsurface studies, determination of spatial distribution of potential waste materials and volumetric estimates.

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Some examples:

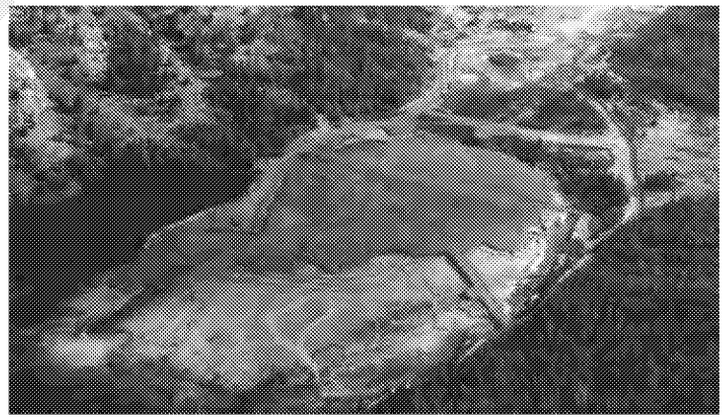
Tailing contaminated alluvium in central reach EFSFS

Tailing in EFSFSR floodplain adjacent former check dam/lagoon

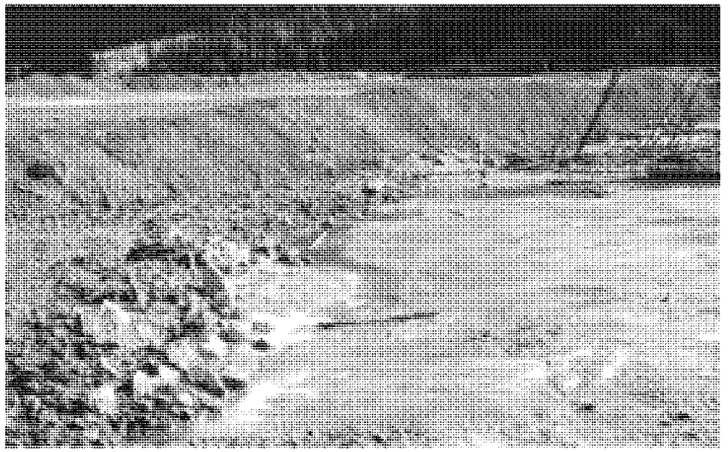
CERCLA and the Stibnite Gold Project

5. *What volume of these materials does MGI intend to reprocess, reuse in construction, disturb, manage, or handle in any way?*

- General volumetric calculations are provided in the PRO;
- Materials may be excavated and:
  - Moved and hauled offsite to licensed facilities;
  - Moved and stored in properly engineering facilities on site; and
  - Moved and reused, and/or Moved and reprocessed.
- Sites where activity may involve handling of formerly handled materials include:
  - SODA (~8 million short tons);
  - Tailings (~4 million short tons);
  - Meadow Creek Mine area DRSF's and former Hecla heap leach pad materials (~1.4 million short tons) including former smelter and mill wastes;
  - Yellow Pine pit area and Monday Camp DRSF (~5 million short tons);
  - West End in pit bench-fill DRSF (~9 million short tons); and
  - North Tunnel DRSF.



SODA construction mid-1980's (USFS Collection)



1980's spent ore placement on 1930's-50's era tails (USFS Collection)

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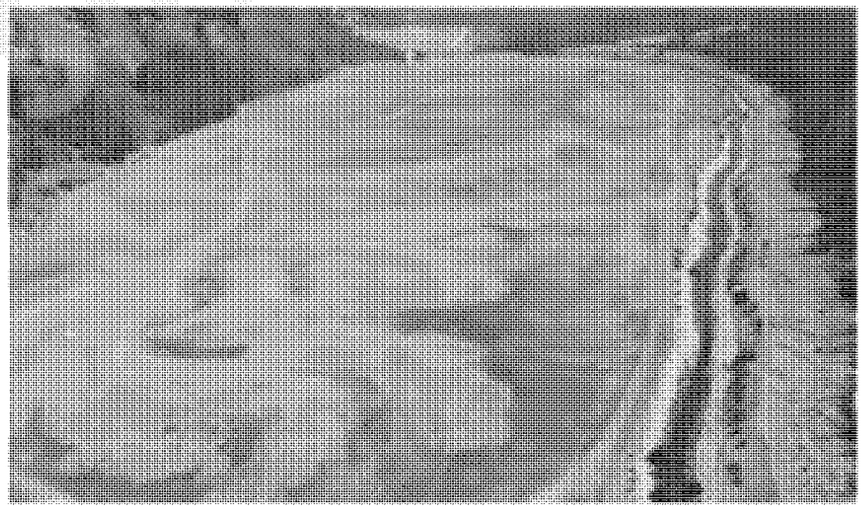
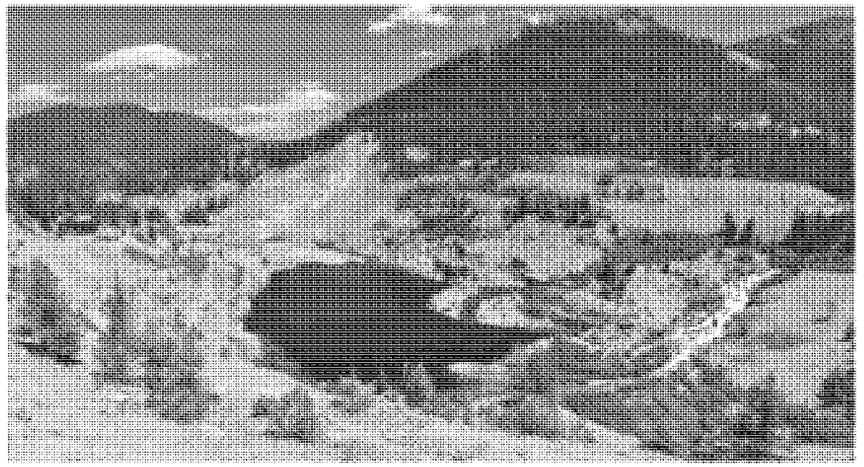
CERCLA and the Stibnite Gold Project

6. *Would these volumes change under different EIS alternatives being considered by the US Forest Service?*

- Yes, they would if implemented;
- USFS/USACE are pursuing evaluation of an alternative to place the TSF in the EFSFSR basin vs. the proposed Meadow Creek site – an alternative MGII and its engineering and environmental teams see as having no significant environmental advantages, increases technical risk; and
- The result of the USFS proposed alternative would result in no changes nor cleanup of the large unlined TSF from legacy operations, no restoration of Blowout Creek a major source of excess sediment in the EFSFSR drainage and have significant negative overall economic and environmental impacts.



Spent Ore Disposal Area (SODA) in 2015. Note rip rap channel.



Yellow Pine "Glory Hole" Pit and EFSFSR cascade (2012).

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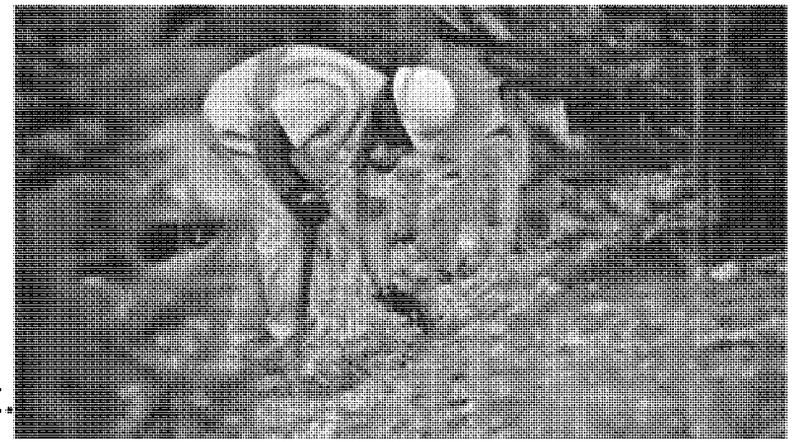
CERCLA and the Stibnite Gold Project

7. *What is the extent of disturbance at the Site related to previous activities by MGII?*

- MGII has disturbed a total of 18 acres (much of which were existing roads and parking areas, but still counted as disturbance) during exploration operations. This number is cumulative (and there is some double counting of disturbance where drill sites were reoccupied and reutilized more than once);
- Approximately 0.385 acres (mostly road and camp site areas) remain un-reclaimed as they are still in use; and
- Approximately 2X as much reclamation and restoration work has occurred vs. disturbance
  - Reclaimed 33 acres since 2009;
  - 52,640 trees planted since 2011;
  - 30.5 tons of scrap metal removed;
  - Noxious weed removal program; and
  - $190,000 on public road gravelling (7 miles) & culvert replacement.



Tree planting (2013).

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CERCLA and the Stibnite Gold Project

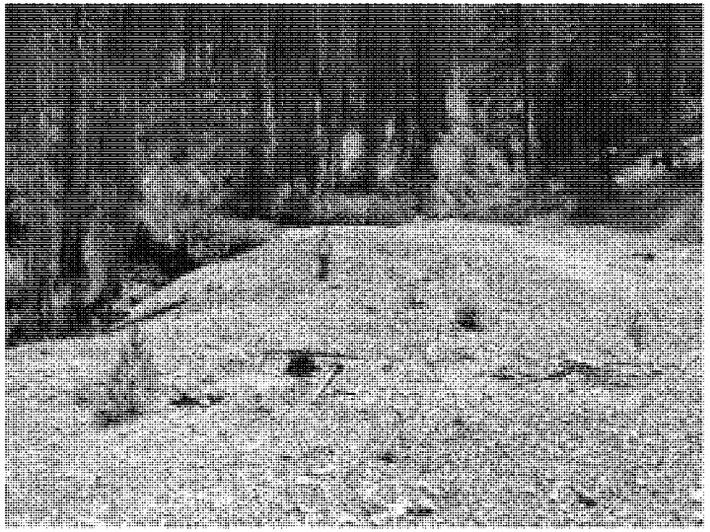
8. *Does Midas Gold plan to clean up all areas of existing contamination even if Midas doesn't plan to mine in those areas?*

- Not at this time; but the PRO includes Blowout Creek restoration.

If not, please identify and describe those areas where potential sources of contamination may remain in place.

- On and below CSM-PMC-SMI heap leach pads;
- NW Bradley DRSF and stockpiles;
- Various backfill areas along old roads and former Garnet Pit;
- Materials between Box culvert and southern limit of YP pit disturbance;
- Sugar Creek DRSF;
- DMEA DRSF;
- Former upper West End DRSF; and
- Fern and Cinnabar.

(all of the above except West End DRSF outside scope and disturbance footprint of project)



Legacy DMEA DRSF (USFS land)
Note active slump into unnamed drainage

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CERCLA and the Stibnite Gold Project

9. *Please describe MGII's plans for the integration of CERCLA cleanup activities and the mining operations.*

- In areas known or suspected to contain hazardous materials (whether from modern or legacy operations) MGII will include appropriate SOPs for such operations and involve use of decision trees as discussed in the response to Q1:
  - Materials not previously characterized will be characterized prior to handling and/or upon discovery in the case of previously unidentified hazardous materials;
  - Procedures will be consistent with applicable mining and environmental compliance regulations and utilize protocols similar to and consistent with Applicable or Relevant and Appropriate Requirements (ARARs).

Legacy Bradley Smelter and Mill Complex
(Circa 1950, USFS collection)

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CERCLA and the Stibnite Gold Project

10. *How does MGII envision EPA and the Forest Service working together on an integrated mining and cleanup operation (given their different statutory authority)?*

- Areas of known or suspected contamination (characterized further as needed) outside of footprint would be straightforward with all activities authorized under CERCLA authority and managed in coordination with EPA, State and/or USFS OSC;
- Oversight of activities in areas of overlap (legacy cleanup and ops) would also likely be handled with EPA, State and/or USFS OSC coordinating with Payette Minerals staff; and
- Any financial assurance associated with proposed mining operations can and will include provisions and appropriate clauses and management procedures to cover any anticipated CERCLA required financial assurance (and tied to bond) and managed via an MOU between the EPA and USFS as appropriate.

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CERCLA and the Stibnite Gold Project

11. *What the expectations with respect to the CERCLA Section 121 permitting exemptions?*

- MGII would seek standard protections and permit exceptions for handling, transport and disposal of legacy hazardous materials excavated and not reused or reprocessed;
  - This would include 401, 402, 404 and other necessary state and federal permit exemptions specific to the individual removal action sites.
- For sites potentially out of the footprint of proposed operations, where CERCLA protections could be granted and removal actions and subsequent restoration work could occur, MGII would expect appropriate permit exemptions to facilitate timely removal and site stabilization.

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CERCLA and the Stibnite Gold Project

12. What has been done, and if anything will MGII do to mitigate existing releases at the Site? How does MGII plan to prevent future releases or exposure to contamination?

- MGII has conducted and is currently conducting significant site investigations to evaluate potential presence and potential for releases of hazardous substances on and around the project site;
- Extensive water monitoring and site materials characterization testing (+100 holes);
- Extensive site characterization or surface materials (native and contaminated sediments, soils, rocks and various waste materials);
- In addition, MGII has funded (cooperatively with the Idaho Department of Water Resources and the US Geological Survey) synoptic studies, five stream gaging stations, and a number of other environmental studies on the site;

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CERCLA and the Stibnite Gold Project

- Midas Gold restoration activities:
  - Extensive replanting (~55,000 lodgepole pines from native seed stock) and 300 willows in wetland areas;
  - Established over 200 sediment and stormwater management engineering control BMP's for that has included repairs, upgrades and routine maintenance of 15 miles of county roads since 2009;
  - Removal of over 33 short tons of legacy scrap metal from the project site;
  - Reclamation and restoration of over 33 acres (as of 2016) since 2009;

Open legacy 1940's adit in Clark Tunnel area prior to MGII closure in 2011

Legacy culvert draining into EFSFSR prior to MGII repair 2010

CONFIDENTIAL BUSINESS INFORMATION

CERCLA and the Stibnite Gold Project

13. What activities will be part of reclamation or mitigation in PRO?

- Explained in the PRO Chapter 14:
  - Provision of a tunnel around the current Yellow Pine pit to keep the EFSFSR separate from mining activities and facilitate fish passage during operations, allowing restoration of fish migration and populations early in the Project life;
  - Backfilling the Yellow Pine pit to reestablish a natural riverine flow system for the EFSFSR and to permanently reestablish fish passage to Meadow Creek and the upper reaches of the EFSFSR;
  - Reestablishing and enhancing a durable habitat to provide long-term support for the fishery resource upstream of the present Yellow Pine pit fish blockage, including enhancement of riparian areas and enhancement of spawning beds;
  - Repairing Blowout Creek and wetlands upstream of the historical dam failure to restore functionality, while improving downstream water quality by reducing sediment generation;

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CERCLA and the Stibnite Gold Project

- Repairing, replacing, establishing, and enhancing wetland/riparian habitat areas throughout the site, including the EFSFSR and Meadow Creek, and on the reclaimed DRSFs and TSF;
- Removing and re-processing legacy tailings, a potential source of metals impacting surface and groundwater, early in the Project life;
- Removing legacy development rock and spent ore material, in order to improve water quality, and reusing these for construction;
- Removing potentially contaminated materials from the site of the old mill and smelter facilities in the Meadow Creek valley, and any other sites encountered during Project construction or operations;
- Closing and decommissioning the new ore processing facilities upon conclusion of operations;
- Removing surface facilities and infrastructure (except where selected facilities will benefit future activities);
- Re-contouring artificial landforms to blend more naturally into the landscape;

CONFIDENTIAL BUSINESS INFORMATION

CERCLA and the Stibnite Gold Project

- Replacing growth medium material; and
- Establishing a productive and sustainable vegetative community on areas disturbed by Project activities, historic activities, and areas disturbed by previous forest fires within the Project area, with resulting mitigation and reduction of greenhouse gas emissions.

CONFIDENTIAL BUSINESS INFORMATION

CERCLA and the Stibnite Gold Project

Concurrent Restoration

		Construction			Operations												Closure				
	ACTIVITY	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Water Quality	**Remove sources of water quality degradation**																				
	Remove spent ore and tailings from Meadow Creek valley		2																		
	Legacy materials reprocessing				4																
	Remove legacy development rock at Yellow Pine Pit & West End Pit			3																	
Stream and Wetland Enhancement, Restoration and Mitigation	**Stream Restoration (concurrent reclamation)**																				
	Install rock drain and weir at Blowout Creek, elevate groundwater table			3																	
	EFSFSR stream habitat and riparian enhancements			3																	
	Lower Meadow Creek diversion around Hangar Flats pit			3																	
	Fiddle Creek restored											11									
	EFSFSR, Hennessy Creek, Midnight Creek restored																				
	Upper Meadow Creek (TSF) restored																				
	Blowout/Lower Meadow Creek routed to HF Lake																	17			
	Decommission fish tunnel																		18		
	Garnet Creek restored																		18		
	Route West End Creek into West End pit																				
	Final restoration of Blowout Creek																				
	Wetland mitigation			3																	
Revegetation	**Revegetation**																				
	Reforest burned areas	1																			
	Revegetation	1																			

*EFSFSR = East Fork of the South Fork of the Salmon River

CONFIDENTIAL PRELIMINARY INFORMATION

CERCLA and the Stibnite Gold Project

14. What cleanup activities does MGII expect CERCLA protection for beyond the scope of reclamation or mitigation?

- No proposed mitigation [404 or otherwise] touching contamination absent CERCLA protection; and
- Disturbance of existing contamination within the Project footprint and called for to execute Plan of Operations (e.g., to build fish tunnel) not otherwise reprocessed or reused.

Drums and debris in old lagoon in central reach EFSFSR
Blowout sediment at surface, underlain by tailings

CONFIDENTIAL BUSINESS INFORMATION

CERCLA and the Stibnite Gold Project

15. How does MGII envision fulfillment of the NCP (including RI/FS and remedy selection) necessary prior to implementation of the remedy? How does that integrate with permitting and ongoing mining operations?

- The Gilt Edge AOC contained EPA-approved response actions that were required to be consistent with NCP:
  - "The Work required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP."
- Presumably any response activity sanctioned in an AOC would be NCP-compliant and thus complementary to any future remedy.

CONFIDENTIAL BUSINESS INFORMATION

CERCLA and the Stibnite Gold Project

16. What is the scope of covenants and contribution protection MGII is seeking in a CERCLA settlement agreement?

- No expectation of CERCLA protection from mining operation itself;
- No exposure to past response costs from USFS, EPA and State of Idaho; and
- Covenants not to sue and protections for clean-up activities cradle to grave for non-comingled waste materials handled, managed and disposed of.

CONFIDENTIAL BUSINESS INFORMATION

CERCLA and the Stibnite Gold Project

CONFIDENTIAL BUSINESS INFORMATION

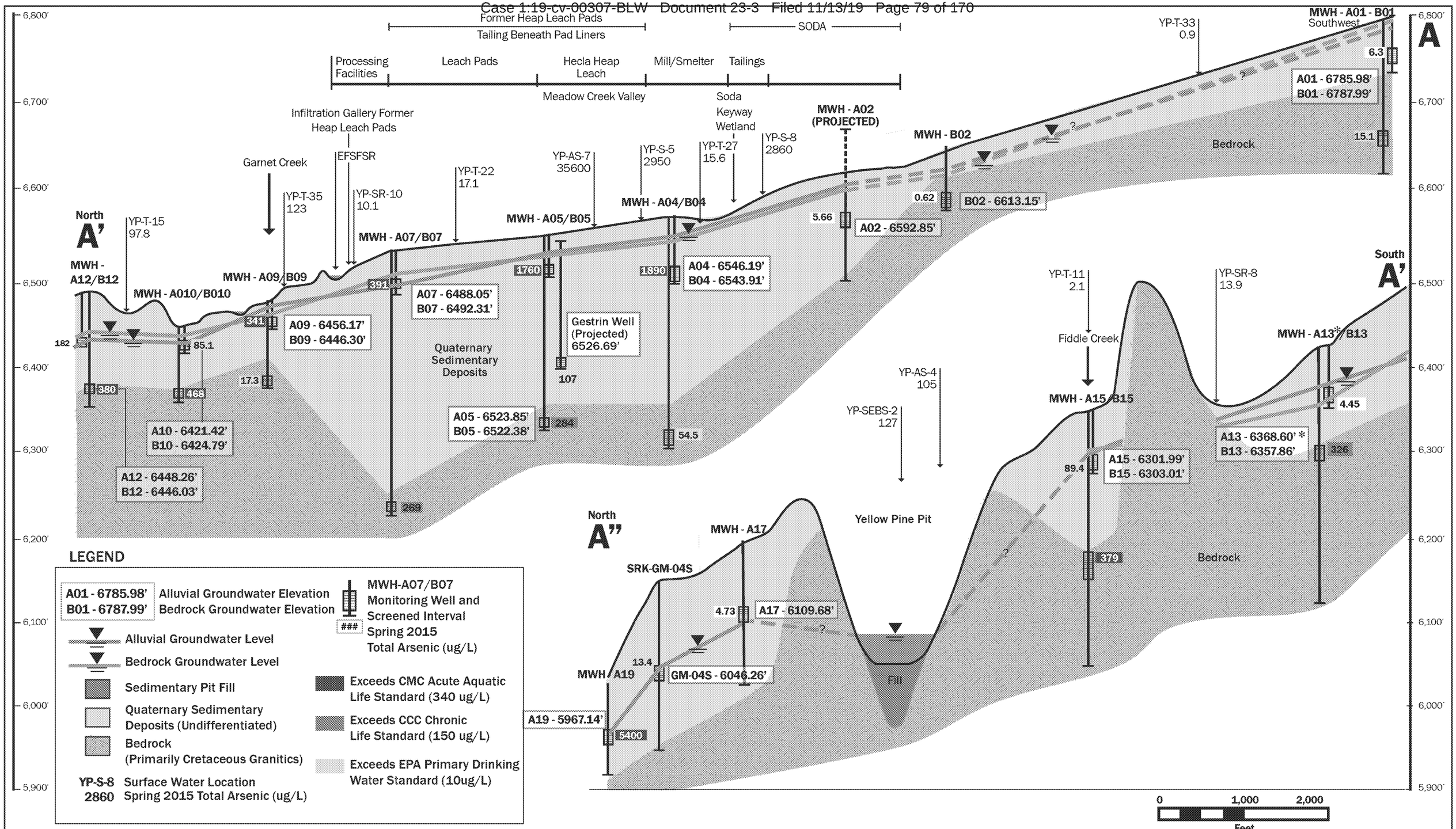
17. If MGII is seeking CERCLA protection for initial disturbance, how would it be defined?

- We are not certain we need protection for "initial disturbance" as we think the question is intended;
- The Gilt Edge AOC provides protection from "Existing Contamination" tied to an "Effective Date," two defined terms in the AOC; and
- Agnico Eagle was required to perform response activity as defined through a Statement of Work and approved Work Plans that involved disturbing "Existing Contamination" that is subject to an exiting remedy on the Gilt Edge NPL Site.

EXHIBIT 7

to

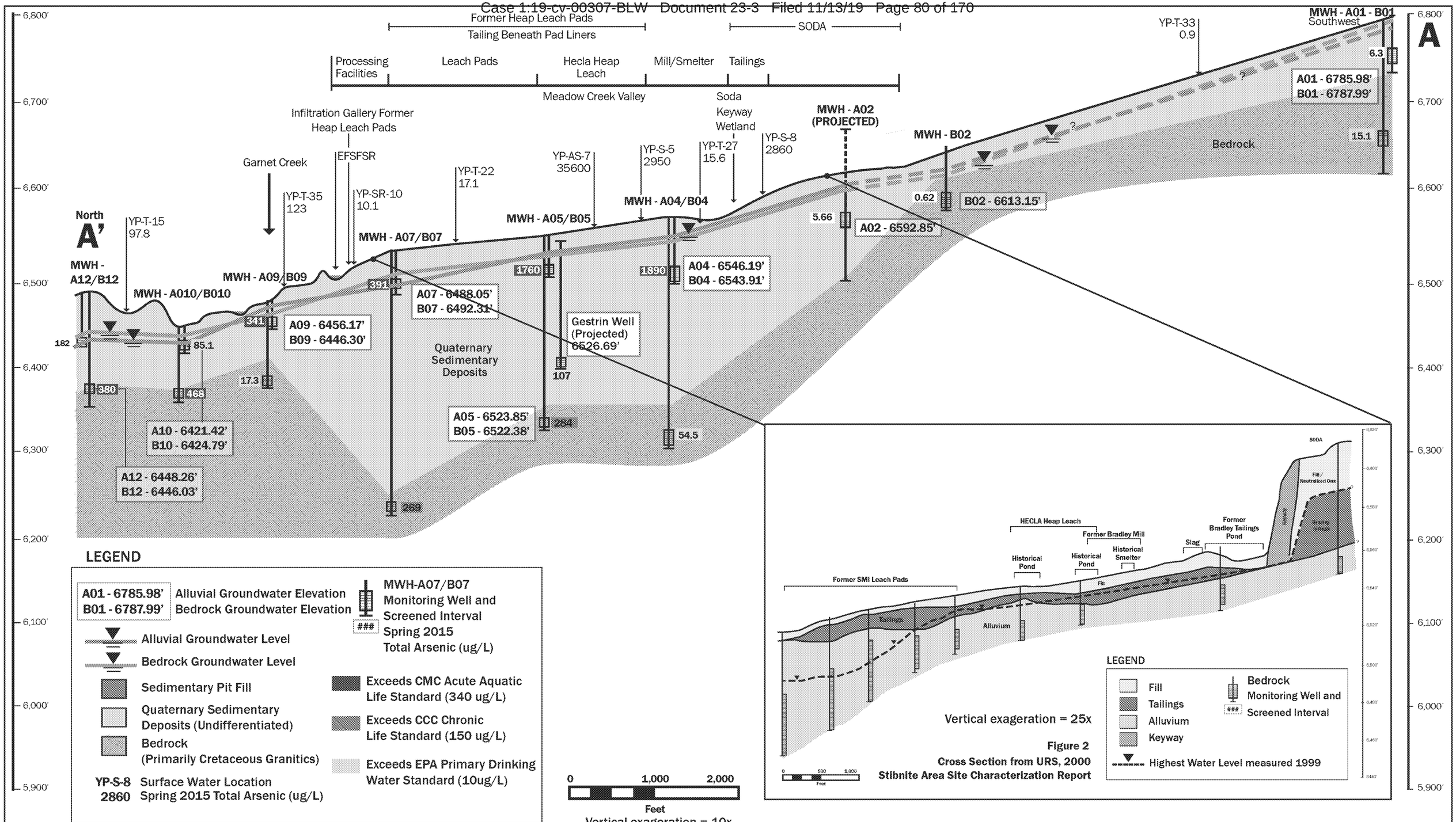
Declaration of Michael Bogert



Brown AND Caldwell

Date: October 2018
Project No. 150691
Client: Midas Gold

Figure 1
Hydrogeologic Cross Section A-A'-A"
Water Resources Summary Report
Stibnite Gold Project



Brown AND Caldwell

Date: October 2018
Project No. 150691
Client: Midas Gold

Figure 2
Hydrogeologic Cross Section A-A'-A"

Stibnite Gold Project

EXHIBIT 8

to

Declaration of Michael Bogert

405 S. 8th Street #201
Boise, ID USA 83702
info@midasgoldidaho.com

MAX.TSX
MDRPF.OTCQX

www.midasgoldidaho.com

February 28, 2019

Keith B. Lannom
Forest Supervisor
Payette National Forest
500 N Mission Street
McCall, ID 83638

Via: USPS and Email: klannom@fs.fed.us

Re: Submittal of Supplemental Groundwater Data - Stibnite Gold Project

Dear Keith:

I am writing to bring to the attention of the Payette National Forest ("PNF") the results of recent groundwater sampling at the Stibnite Gold Project ("SGP" or "Project"). Midas Gold Idaho, Inc. and its corporate parent, Midas Gold Corporation (collectively, "Midas Gold") are, jointly, a bona fide prospective purchaser ("BFPP") under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") with respect to their patented private lands on the Project Site acquired pursuant the 1872 Mining Law.[1] BFPP status is an exclusion from liability under CERCLA.

I am confirming and updating prior information we previously transmitted consistently reporting elevated levels of arsenic and antimony in groundwater at the Project Site. This information was gathered as part of the ongoing baseline characterization of the Site and in support of permitting and National Environmental Policy Act ("NEPA") review of the Company's Plan of Restoration and Operations ("PRO") by the Payette National Forest. On June 30, 2017, as a part of the Stibnite Gold Project permitting process and NEPA review, Midas Gold provided the PNF information from water quality monitoring from 2012 through Q2 2016 indicating elevated arsenic and antimony levels in groundwater beneath the Project Site. A copy of that electronic correspondence is enclosed as Attachment A. Pursuant to NEPA information sharing protocols, the PNF was obligated to provide a copy of this information to EPA Region 10 and the

[1]. Idaho Gold Resources Company, LLC and Stibnite Gold Company (a wholly owned subsidiary of Idaho Gold Resources Company, LLC), control patented and unpatented millsite and lode claims at the SGP. Idaho Gold Resources Company, LLC is a wholly owned subsidiary of Midas Gold Corporation. Midas Gold Idaho, Inc. provides management services to Idaho Gold Resources Company, LLC and Stibnite Gold Company and will operate the Project on their behalf.

Exhibit D

Idaho Department of Environmental Quality as well as the other cooperating agencies, which obligation we assume they completed.

Consistent with our ongoing assessment of the current Site conditions, we have just completed the latest Water Quality Summary Report supplementing previously-provided data which is now inclusive of data collected in calendar year 2017. That report is enclosed as Attachment B. We will also be transmitting this report through the customary NEPA information sharing protocols with the understanding it will be distributed to the cooperating agencies. A Water Quality Summary Report for calendar year 2018 is nearing completion and will be provided to the PNF soon.

The most current Water Quality Summary Report includes measurements of elevated arsenic and antimony in ground and surface water sampling locations across the Site. One alluvial monitoring well (MWH-A19) has measured particularly high arsenic concentrations; typically ranging from 3,000 to 6,000 µg/L and as high as 7,520 µg/L from a sample gathered in Q2 2017. By comparison, the arsenic concentration measured in the East Fork of the South Fork of the Salmon River ("EFSFSR") near this location (site YP-SR-04) during the same quarterly monitoring period was measured at 48.4 µg/L.

It is unclear why these elevated arsenic levels were measured at MWH-A19, but its location is downgradient of a legacy Forest Service constructed repository for hazardous material that is adjacent to the EFSFSR. Other potential sources of the elevated arsenic and antimony in ground and surface water at the Site may also include naturally occurring, *in situ* mineralized rock, as well as development rock, spent ore, and milled tailings from historical mining operations.

Additionally, we have consistently measured elevated levels of arsenic and antimony in the Meadow Creek valley area in locations downgradient from the Spent Ore Disposal Area ("SODA") where tailings from milling operations were deposited on Forest Service land during World War II and the Korean War, some of which area was subsequently patented. Alluvial groundwater sampled in wells MWH-A04 and MWH-A05 regularly show arsenic concentrations of 1,000 – 3,000 µg/L; groundwater in well MWH-A07 regularly shows antimony concentrations of 600-1,600 µg/L.

Recall that in the PRO, we propose to remove approximately 3 million tons of legacy tailings presently located under SODA from their unconstrained and unlined historical deposition areas in the Meadow Creek valley to be reprocessed and disposed of within a state-of-the-art, composite-lined tailings storage facility ("TSF"). Additionally, approximately 7.5 million tons of legacy spent ore, in the SODA and in historical leach pads, would be removed from their historical deposition areas in the Meadow Creek valley to be reused in the construction of the TSF. These activities are intended to reduce sources of arsenic and antimony and improve ground and surface water quality.

Under our continuing CERCLA legal obligations and, more importantly, our dedication to the proper stewardship of the Site and surrounding area, we have been and will continue to provide full cooperation, assistance, and access to persons who are authorized to conduct response actions or natural resource restoration on the Stibnite Site. We remain committed to providing the Forest Service whatever additional information or assistance that you might find helpful in evaluating the information we are providing.

In its NEPA review, the PNF has largely ignored the Company's remediation and restoration commitments in the Plan of Restoration and Operation. On a number of occasions, the PNF has questioned that the Company's restoration plan was perhaps a public relations gimmick. Midas Gold did not cause and is not liable for the elevated contaminant levels we continue to discover and report from the Stibnite Site. However, in the PRO and subsequent information provided in support of the NEPA review, Midas Gold has provided a comprehensive plan to address legacy issues on Site.

Midas Gold remains committed to integrating restoration into our future Site operations and, should the PRO be approved, our restoration plan would squarely address legacy contamination, such as that indicated by this recent data, and eliminate its sources. We are resolute that the Stibnite Gold Project is a model of private investment to resolve Site environmental legacies that would otherwise be left to taxpayers.

Sincerely,
MIDAS GOLD IDAHO, INC.

Laurel Sayer
President and CEO

Enclosures: (2)

Attachment A
Attachment B

cc: Dave Rosenkrance
Gordon Cruickshank

From: Brandy Lapthorne
Sent: Friday, June 30, 2017 5:01 PM
To: Piper Goessel <kgoessel@fs.fed.us>; Valerie Porter <valerie.porter@aecom.com>
Cc: Glindeman, Todd (TGlindeman@brwncald.com) <TGlindeman@brwncald.com>; 'Alan Haslam' <ahaslam@agrium.com>; Shelley Bennett <sbennett@midasgoldinc.com>; Bob Barnes (bbarnes@midasgoldcorp.com) <bbarnes@midasgoldcorp.com>; Shepherd, Maria <maria.shepherd@aecom.com>; Rowles, Lisa (lrowles@BrwnCald.com) <lrowles@BrwnCald.com>; Steinpress, Martin (msteinpress@BrwnCald.com) <msteinpress@BrwnCald.com>
Subject: Midas - WRSR and SW/GW Baseline Reports

Piper/Valerie

The following documents have been uploaded to the Project SharePoint Site at the following location:

1. Water Resources Summary Report (WRSR) [https://midasgoldsp.aecomonline.net/Shared Documents/Midas Gold Transfer/Baseline/WR Summary Report]
    a. This WRSR summarizes the information contained in the following four baseline study reports. This document was created to assist the Forest Service/AECOM in understanding surface water and groundwater resources at the site and surface water/ groundwater interaction. It combines the water resources baseline studies with geologic information and an overview of the historical mine features into a comprehensive document that summarizes and analyzes the data. The WRSR document should be considered the primary review document for Forest Service/AECOM staff. We hope that by developing the WRSR that it makes the assimilation of the information more efficient. The foundational baseline study plans and reports are included here for reference.
    b. Report and Appendices

2. Groundwater Hydrology [https://midasgoldsp.aecomonline.net/Shared Documents/Midas Gold Transfer/Baseline/GW Hydrology]
    a. Work Plan
    b. Report

3. Groundwater Quality [https://midasgoldsp.aecomonline.net/Shared Documents/Midas Gold Transfer/Baseline/GW Quality]
    a. Work Plans – multiple revisions through the years
    b. QAPPs – multiple revisions through the years
    c. Report and Appendices

4. Surface Water Hydrology [https://midasgoldsp.aecomonline.net/Shared Documents/Midas Gold Transfer/Baseline/SW Hydrology]
    a. Work Plan
    b. Report
    c. Field Survey

5. Surface water Quality [https://midasgoldsp.aecomonline.net/Shared Documents/Midas Gold Transfer/Baseline/SW Quality]

a. Work Plan
b. QAPPs – multiple revisions through the years
c. Report and Appendices

Please note, Midas/BC had intended on supplying the Groundwater Model Work Plan, however, the document is still in internal review and will not be available for upload until next week. I will send a separate e-mail and link when the document is uploaded.

Please let me know if you have any questions. I hope you all have a nice holiday weekend. Thank you

Brandy Lapthorne for:

Todd Glindeman
Associate Scientist
Brown and Caldwell | Boise, ID
TGlindeman@brwncald.com
T 208.389.7707 | **C** 208.870.7990

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Brown AND Caldwell

950 Bannock Street, Suite 350
Boise, Idaho 83702

T: 208.389.7700
F: 208.389.7750

Transmittal Cover Sheet

To: Piper Goessel, CMA1, MEC Stibnite Mine Project Manager 500 N Mission St, Bldg 1 McCall, ID 83638	**Date:** June 30, 2017	**Transmittal No.:** GWH-1
	Project No.: 150695	**Task No.:** 006
	Project Title: Midas Gold Stibnite Mine EIS Project	
From: Todd Glindeman, Project Manager		
We are sending the following item(s): ☒ NEPA Baseline Study Plan ☒ NEPA Baseline Study Report	**Sent via:** ☒ SharePoint Site Upload	
These are transmitted as checked below: ☒ For Review and Approval		

If attachments are not as noted, please notify sender at once.

No. of Copies	Description
1	20170504_MGII_Final GW Hydrology_BaselineStudy_WorkPlan.pdf
1	20170504_MGII_Final GW Hydrology_BaselineStudy_Report.pdf

Remarks:	
cc: Valerie Porter, AECOM Maria Shepherd, AECOM Bob Barnes, Midas Gold Idaho, Inc. Alan Haslam, Midas Gold Idaho, Inc. Shelley Bennett, Midas Gold Idaho, Inc.	**Prepared by:** Brandy Lapthorne **Title:** Assistant PM

Brown AND Caldwell

950 Bannock Street, Suite 350
Boise, Idaho 83702

T: 208.389.7700
F: 208.389.7750

Transmittal Cover Sheet

To: Piper Goessel, CMA1, MEC Stibnite Mine Project Manager 500 N Mission St, Bldg 1 McCall, ID 83638	**Date:** June 30, 2017	**Transmittal No.:** SWH-1
	Project No.: 150695	**Task No.:** 006
	Project Title: Midas Gold Stibnite Mine EIS Project	
From: Todd Glindeman, Project Manager		
We are sending the following item(s): ☒ NEPA Baseline Study Plan ☒ NEPA Baseline Study Reports	**Sent via:** ☒ SharePoint Site Upload	
These are transmitted as checked below: ☒ For Review and Approval		

If attachments are not as noted, please notify sender at once.

No. of Copies	Description
1	20170630_MGII_Final SW Hydrology_BaselineStudy_WorkPlan.pdf
1	20170630_MGII_Final SW Hydrology_BaselineStudy_Report.pdf
1	20170630_MGII_2012 SW Hydrology_BaselineStudy_FieldSurvey.pdf
1	20170630_MGII_2012 SWH Field Survey Appendix K
1	20170630_MGII_2012 SW Hydrology_BaselineStudy_FieldSurvey Figure 1-3.pdf

Remarks:

cc: Valerie Porter, AECOM Maria Shepherd, AECOM Bob Barnes, Midas Gold Idaho, Inc. Alan Haslam, Midas Gold Idaho, Inc. Shelley Bennett, Midas Gold Idaho, Inc.	**Prepared by:** Brandy Lapthorne **Title:** Assistant PM

Brown AND Caldwell

950 Bannock Street, Suite 350
Boise, Idaho 83702

T: 208.389.7700
F: 208.389.7750

Transmittal Cover Sheet

To: Piper Goessel, CMA1, MEC Stibnite Mine Project Manager 500 N Mission St, Bldg 1 McCall, ID 83638	Date: June 30, 2017	Transmittal No.: SWQ-1
	Project No.: 150695	Task No.: 006
	Project Title: Midas Gold Stibnite Mine EIS Project	
From: Todd Glindeman, Project Manager		
We are sending the following item(s): ☒ NEPA Baseline Study Plan and QAPPs ☒ NEPA Baseline Study Reports	Sent via: ☒ SharePoint Site Upload	
These are transmitted as checked below: ☒ For Review and Approval		

If attachments are not as noted, please notify sender at once.

No. of Copies	Description
1	20170630_MGII_Final SW Quality_BaselineStudy_WorkPlan.pdf
1	20170630_MGII_2012 SW Quality_QAPP.pdf
1	20170630_MGII_2013 SW Quality_QAPP.pdf
1	20170630_MGII_2014 SW Quality_QAPP.pdf
1	20170630_MGII_2015 SW Quality_QAPP.pdf
1	20170630_MGII_2016 SW Quality_QAPP.pdf
1	20170630_MGII_Final SW Quality_BaselineStudy_Report.pdf
1	20170630_MGII_Final SWQ_BaselineStudy_Rept_Appendix A.pdf
1	20170630_MGII_Final SWQ_BaselineStudy_Rept_Appendix B.pdf
1	20170630_MGII_Final SWQ_BaselineStudy_Rept_Appendix C.pdf
1	20170630_MGII_Final SWQ_BaselineStudy_Rept_Appendix D.pdf
1	20170630_MGII_Final SWQ_BaselineStudy_Rept_Appendix E.pdf
1	20170630_MGII_Final SWQ_BaselineStudy_Rept_Appendix F.pdf
1	20170630_MGII_Final SWQ_BaselineStudy_Rept_Appendix G.pdf
1	20170630_MGII_Final SWQ_BaselineStudy_Rept_Appendix H.xlsx

Remarks:	
cc: Valerie Porter, AECOM Maria Shepherd, AECOM Bob Barnes, Midas Gold Idaho, Inc. Alan Haslam, Midas Gold Idaho, Inc. Shelley Bennett, Midas Gold Idaho, Inc.	Prepared by: Brandy Lapthorne Title: Assistant PM

EXHIBIT 9

to

Declaration of Michael Bogert

405 S. 8th Street #201
Boise, ID USA 83702
info@midasgoldidaho.com

MAX.TSX
MDRPF.OTCQX

www.midasgoldidaho.com

August 13, 2019

Tawnya Brummett
Acting Forest Supervisor
Payette National Forest
500 North Mission Street
McCall, Idaho 83638

Via: USPS and Email tbrummett@fs.fed.us

Re: Submittal of Supplemental Surface and Ground Water Data - Stibnite Gold Project

Dear Ms. Brummett:

On behalf of my corporate CEO Stephen Quin and myself, it was a pleasure to visit this past week and discuss several matters related to the Stibnite Gold Project ("SGP"). We look forward to working with you and your team in the days ahead.

On behalf of Midas Gold Idaho, Inc., I am writing to follow up on my previous correspondence to Keith Lannom of February 28, 2019, bringing to the attention of the Payette National Forest ("PNF") the results of additional groundwater sampling at the SGP Site.

Midas Gold Idaho, Inc. and its corporate parent, Midas Gold Corporation (collectively, "Midas Gold" or the "Company") have bona fide prospective purchaser ("BFPP") status under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, codified as amended at 42 U.S.C. §§ 9601-9675 ("CERCLA") with respect to their patented private lands on the Project Site acquired pursuant to the 1872 Mining Law.[1] BFPP status is an exclusion from liability under CERCLA, and Midas Gold is providing this information consistent with CERCLA § 101(40) to maintain that status.

In February, Midas Gold provided the PNF sampling results showing elevated levels of arsenic and antimony in groundwater at the SGP Site. Midas Gold began formal groundwater sampling in 2010, in connection with baseline characterization of the Site and in support of the NEPA review of the Plan of Restoration and Operations ("PRO") for the Stibnite Gold Mine. In compliance with CERCLA § 101(40), Midas Gold continues to fulfill its continuing obligations, including exercising appropriate care and providing notice with respect to discovered hazardous substances and providing full cooperation, assistance and access to persons authorized to conduct response actions or natural resource restoration

1. Idaho Gold Resources Company, LLC and Stibnite Gold Company (a wholly owned subsidiary of Idaho Gold Resources Company, LLC), control patented and unpatented millsite and lode claims at the SGP. Idaho Gold Resources Company, LLC is a wholly owned subsidiary of Midas Gold Corporation. Midas Gold Idaho, Inc. provides management services to Idaho Gold Resources Company, LLC and Stibnite Gold Company and will operate the Project on their behalf.

at a facility. 42 U.S.C. §§ 101(40)(C)-(E). Midas Gold has been, and is presently, complying with these continuing obligations under CERCLA to maintain its BFPP status and attendant liability protection and fully comply with the law.

Consistent with Midas Gold's ongoing assessment of the current Site conditions, the Company has recently completed the latest Water Quality Summary Report ("WQSR") supplementing previously provided data, which now includes data collected through 2018. That report is enclosed as Attachment A. We will also be transmitting this report through the customary NEPA information sharing protocols with the understanding it will be distributed to the cooperating agencies.

The most current WQSR continues to measure elevated arsenic and antimony in ground and surface water sampling locations across the Site.[2] As we reported in February, those elevated levels were generally measured downgradient of historical mining areas. For example, elevated arsenic levels were detected downgradient of a legacy Forest Service-constructed repository for hazardous material that is adjacent to the East Fork South Fork of the Salmon River. As we also advised the PNF in February (in addition to the Environmental Protection Agency and the Idaho Department of Environmental Quality), Midas Gold continues to measure elevated levels of arsenic and antimony in the Meadow Creek valley area in locations downgradient from the Spent Ore Disposal Area where tailings from milling operations were deposited on Forest Service land during World War II and the Korean War. Other potential sources of the elevated arsenic and antimony in ground and surface water at the Site may include naturally occurring, *in situ* mineralized rock, as well as development rock, spent ore, and milled tailings from historical mining operations.

Under Midas Gold's continuing CERCLA legal obligations and, more importantly, its dedication to the proper stewardship of the Site and surrounding area, Midas Gold has provided and will continue to provide full cooperation, assistance, and access to persons who are authorized to conduct response actions or natural resource restoration on the Stibnite Gold Project Site pursuant to CERCLA § 101(40)(E). Midas Gold remains committed to providing the PNF whatever additional information or assistance that the agency might find helpful in evaluating the information the Company is providing.

Please call me if you have any questions about this letter.

Sincerely,
MIDAS GOLD IDAHO, INC.

Laurel Sayer
President and CEO

cc: Dave Rosenkrance
Gordon Cruickshank

Electronic Attachments (2)

2. We are also separately providing data for one alluvial monitoring well (MWH-A19), which is consistently reporting particularly high arsenic concentrations. That report is enclosed as Attachment B.

EXHIBIT 10

to

Declaration of Michael Bogert

IN THE MATTER OF	)	VOLUNTARY CONSENT
	)	ORDER/ADMINISTRATIVE ORDER ON
Midas Gold Idaho, Inc.	)	CONSENT
Stibnite Mining District	)	

I. PARTIES

The Idaho Department of Environmental Quality ("IDEQ") and the United States Environmental Protection Agency ("EPA") enter into this Voluntary Consent Order/Administrative Order on Consent ("Agreement") with Midas Gold Corp. ("MGC") as the owner of Midas Gold Idaho, Inc. ("MGII"), and Idaho Gold Resources Company, LLC ("IGRCLLC") as the owner of Stibnite Gold Company ("SGC"), with MGII being the mine operator and IGRCLLC and SGC being the owners of various patented, unpatented and mill site claims that comprise the property, (collectively "Midas"). All parties enter into this Agreement voluntarily. IDEQ and EPA are hereinafter collectively referred to as the "Agencies." IDEQ, EPA, and Midas are hereinafter collectively referred to as the "Parties" and may be singularly referred to as a "Party."

II. PURPOSE AND SCOPE OF AGREEMENT

The purpose and scope of this Agreement is to carry out a limited investigation into Existing Contamination from historical mining operations in the Stibnite Mining District ("the Stibnite Site") in the state of Idaho. The investigation activities for which Midas seeks approval are more particularly set forth in the Statement of Work ("SOW") attached hereto as Appendix A, incorporated herein by reference.

III. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement that are defined in the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"), or the Idaho Environmental Protection and Health Act ("EPHA") shall have the meaning assigned to them in those statutes or their implementing regulations, including any amendments thereto. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

a. "Agency" or "Agencies" shall mean IDEQ and EPA.

b. "Agreement" shall mean this Voluntary Consent Order/Administrative Order on Consent, all appendices attached hereto (listed in Section XI), and all documents incorporated by reference into this Agreement. In the event of conflict between this Agreement and any appendix, this Agreement shall control.

c. "BFPP" shall mean a bona fide prospective purchaser as defined in section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

d. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601–9675.

e. "Covered Sites" shall mean the Forest Service Repository and the DMEA Dump.

f. "CWA" shall mean the Federal Water Pollution Control Act, as amended, commonly referred to as the Clean Water Act, 33 U.S.C. §§ 1251–1387.

g. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

h. "DMEA Dump" shall mean the dump area associated with tunnel construction by the Bradley Mining Company, depicted on Appendix C.

i. "Effective Date" shall be the effective date of this Agreement as provided in Section X.

j. "EFSFSR" shall mean the East Fork South Fork Salmon River.

k. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

l. "EPHA" shall mean the Idaho Environmental Protection and Health Act, Idaho Code §§ 39-101 to 39-130.

m. "Existing Contamination" shall mean:

   i. any hazardous substances, pollutants, or contaminants present or existing on or under the Stibnite Site as of the Effective Date;

   ii. any hazardous substances, pollutants, or contaminants that migrated from the Stibnite Site before the Effective Date; and

   iii. any hazardous substances, pollutants, or contaminants presently at the Stibnite Site that migrate onto or under or from the Stibnite Site after the Effective Date.

n. "Forest Service" or "USFS" shall mean the United States Department of Agriculture Forest Service and any successor departments or agencies of the United States.

o. "Forest Service Smelter Waste Repository" means the legacy Forest Service-constructed repository depicted on Appendix C.

p. "HWMA" shall mean the Hazardous Waste Management Act of 1983, Idaho Code §§ 39-4401 to 39-4432.

ED_004715_00094015-00095

q. "IDEQ" shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State of Idaho.

r. "IGRCLLC" shall mean Idaho Gold Resources Company, LLC.

s. "MGII" shall mean Midas Gold Idaho, Inc.

t. "MGC" shall mean Midas Gold Corp.

u. "Midas" shall mean MGII, MGC, IGRCLLC, and SGC.

v. "Mining Claims" shall mean those certain patented mining claims owned by Midas.

w. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

x. "NEPA" shall mean the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., as amended, and any regulations promulgated pursuant thereto.

y. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

z. "Party" or "Parties" shall mean IDEQ, EPA, MGII, and MGC.

aa. "PRO" shall mean Midas's Plan of Restoration and Operations submitted to the Forest Service pursuant to 36 C.F.R. § 228 Subpart A.

bb. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

cc. "SGC" shall mean Stibnite Gold Company.

dd. "SOW" shall mean the Statement of Work in Appendix A to this Agreement and any modifications made in accordance with this Agreement.

ee. "Stibnite Gold Project" shall mean Midas's comprehensive restoration, operation, and reclamation plan for the Stibnite Site, detailed in the PRO.

ff. "Stibnite Site" shall mean the historic Stibnite Mining District.

gg. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

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hh. "Work" shall mean the limited investigation of Existing Contamination at the Covered Sites as set forth in the SOW.

ii. "Work Plan" shall mean the plan to be approved by the Agencies pursuant to Section VII of this Agreement.

IV. LIMITATION OF SCOPE

Nothing herein shall be deemed to affect or govern any of the parties' rights, duties, or obligations with respect to the identification, remediation, or cleanup of the Stibnite Site other than at the "Covered Sites." Each Party reserves all claims, rights, causes of action, and defenses with respect to the Stibnite Site, except as provided in this Agreement. The Parties agree that Midas's entry into this Agreement and the actions taken by Midas in accordance with this Agreement do not constitute an admission of any liability by Midas.

V. AUTHORITIES

The Statements of Authority set forth below shall not be construed to restrict, enlarge, or otherwise determine the rights, interests, and jurisdiction of the United States or the State of Idaho, or any of their respective departments, agencies, or members. Nor shall any statements made herein be construed to represent an admission, determination, settlement, or adjudication of any legal or factual dispute relating to any Party's rights, privileges, interests, authority, or jurisdiction. Each Party hereto reserves all claims, rights, causes of action, and defenses with respect to any claim of jurisdiction expressed herein.

1. FEDERAL AUTHORITY. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the authority to conduct various activities and recover costs under CERCLA has been delegated to, among others, EPA. Such response activities include investigations and response activities (42 U.S.C. § 9604), cost recovery (42 U.S.C. § 9607), issuing such orders as may be necessary to protect public health or welfare or the environment (42 U.S.C. § 9606(a)), and entering into agreements to perform investigations (42 U.S.C. § 9622(d)(3)).

2. STATE AUTHORITY. The authority to identify, investigate and clean-up facilities where hazardous substances have come to be located in the State of Idaho has been delegated to IDEQ, pursuant to the EPHA and the Hazardous Waste Management Act of 1983 ("HWMA"), Idaho Code §§ 39-4401 to 39-4432. IDEQ is also the Idaho state agency with the authority to cooperate with EPA and to participate in the initiation and development of CERCLA response actions to be undertaken in the State of Idaho.

VI. FACTUAL BACKGROUND

1. Midas owns patented mining claims ("Mining Claims") within the Stibnite Site. Extensive mining has been conducted by prior owners and operators of the Stibnite Site, including the Bradley Mining Company. During World War II and the Korean War, mining in the Stibnite Mining District was encouraged and supported by the United

States for strategic mineral development. Those mining activities include underground and open pit mining, heap leaching, ore processing in a mill, smelting, tailings disposal, development rock disposal, waterway diversions, hydro dam development, town and camp sites, haul roads, power lines, landfills, etc. Those activities, compounded by extensive forest fires, have resulted in releases of hazardous substances which have impaired water quality, compromised fish habitat, and elevated metals loading in surface and ground waters. The approximate extent of currently known historical mining operations at the Stibnite Site is indicated on the map attached hereto for informational purposes as Appendix B.

2. The Stibnite Site has been subject to substantial cost recovery litigation under CERCLA, and several consent decrees emerged from these actions including *Mobil Oil Corp. v. United States*, Case No. 1:99-cv-01467-LMB (E.D. Va.) (consent decree filed June 26, 2000); *United States v. Oberbillig*, Case No. 1:02-cv-00451-LMB (D. Idaho) (consent decree filed March 18, 2004); and *United States v. Bradley Mining Company*, Case No. 3:08-CV-03968 TEH (N.D. Cal.) and *United States v. Bradley Mining Company*, Case No. 3:08-CV-05501 TEH (N.D. Cal.) (consent decree filed April 19, 2012).

3. Midas is a bona fide prospective purchaser ("BFPP") as defined by section 101(40) of CERCLA, 42 U.S.C. § 9601(40). Midas has not conducted mining activities at the Stibnite Site and has conducted environmental investigations and site exploration activities in a manner consistent with and in order to maintain its status as a BFPP. Midas is presently assessing whether the Stibnite Site can be redeveloped, reclaimed, and restored. Midas has proposed to address the historical contamination and environmental impacts at the Stibnite Site through a comprehensive operation, reclamation and restoration plan (the "Stibnite Gold Project"), detailed in a Plan of Restoration and Operations ("PRO") submitted to the Forest Service pursuant to 36 C.F.R. § 228 Subpart A.

4. Since 2012, Midas has collected water quality monitoring samples in support of ongoing assessment of current site conditions and the National Environmental Policy Act ("NEPA") review of the PRO. Midas has previously provided those data to IDEQ and EPA, consistent with its continuing obligations as a BFPP.

5. The water quality sampling conducted to date has shown elevated arsenic and antimony levels in ground water beneath the Stibnite Site. One alluvial monitoring well (MWH-A19) near a legacy Forest Service-constructed repository ("Forest Service Smelter Waste Repository") has consistently measured particularly high arsenic concentrations, typically ranging from 3,000 to 6,000 µg/L and as high as 7,520 µg/L in a sample gathered in Q2 2017. By comparison, the arsenic concentration measured in the East Fork South Fork Salmon River ("EFSFR") near this location (site YP-SR-04) during the same quarterly monitoring period was measured at 48.4 µg/L.

6. Elevated arsenic, antimony, and mercury levels have also been detected in sampling locations located near a dump area associated with tunnel construction by the Bradley Mining Company pursuant to a contract and loan by the United States and supervised by

the Defense Minerals Exploration Administration ("DMEA," hereinafter referred to as the "DMEA Dump").

7. The approximate locations of the Forest Service Smelter Waste Repository and the DMEA Dump are indicated on the map attached hereto for informational purposes as Appendix C.

VII. AGREEMENT

1. Without admitting any liability and expressly reserving all claims and defenses except as specifically waived herein, the Parties hereto mutually agree as follows:

    a. Midas agrees to conduct a limited initial investigation (the "Work") into Existing Contamination at the Covered Sites, pursuant to a work plan ("Work Plan") to be submitted for approval to the Agencies pursuant to this Agreement. The Work for which Midas seeks approval is more particularly set forth in the SOW attached hereto as Appendix A.

    b. Within thirty (30) days of the execution date of this Agreement, Midas shall submit the Work Plan to the Agencies for approval. The Work Plan shall describe the proposed investigation activities in detail and propose an expedited schedule to implement them.

    c. Within thirty (30) days following submission of the Work Plan, the Agencies shall approve, disapprove, or request revisions to the Work Plan. If either Agency requests revisions, Midas shall submit a revised Work Plan to both Agencies responding to their request(s) within fifteen (15) days of receipt of the Agency's notification of the requested revisions.

    d. When the Agencies have both approved the Work Plan, Midas shall implement the actions required thereunder as approved in writing by the Agencies in accordance with the schedule they have approved. Once approved, the Work Plan and schedule, and any subsequent modifications to those documents, shall be incorporated into and become fully enforceable under this Agreement.

    e. Midas shall not commence the Work, except as approved by the Agencies and in conformance with the terms of this Agreement. Midas may continue its ongoing water quality monitoring, which is not Work requiring approval under this Agreement.

    f. Midas agrees only to the Work approved pursuant to this Agreement and does not agree to perform any other removal or remedial action at the Stibnite Site. The Parties may, but are not obligated to, address any related removal or remedial action through a subsequent agreement.

VIII. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

Any Work implemented or required under this Agreement shall be conducted in a manner that is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, including without limitation 40 C.F.R. Subpart H (40 C.F.R. §§ 300.415 and 300.700).

IX. COMPLIANCE WITH OTHER LAWS

Except as set forth herein, this Agreement shall not relieve Midas from its obligations to comply with any of the applicable provisions of and the Parties hereto specifically reserve all other rights under the EPHA; the HWMA; the Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 16.01.02.001 to 16.01.02.999; the Rules and Standards for Hazardous Waste, IDAPA 16.01.05.001 to 16.01.05.999; the Ground Water Quality Rule, IDAPA 16.01.11.001-16.01.11.999, CERCLA, 42 U.S.C. §§ 9601–9675 and any other applicable local, state, tribal or federal law.

X. GENERAL PROVISIONS

1. Conflict Between Agreement and Appendices. To the extent of any conflict between the meaning of the terms and provisions in this Agreement and the Appendices, the meaning in this Agreement shall control.

2. Modifications. This Agreement may be modified by the Parties' mutual agreement. Agreed modifications to the Agreement must be in writing signed by an authorized representative of each Party.

3. Notice. All communications required by this Agreement shall be addressed to:

   [IDEQ Contact]

   [EPA Contact]

   [Midas Contact]
   Midas Gold Idaho, Inc.
   P.O. Box 429
   13181 Hwy 55
   Donnelly, ID 83615

4. Integration. This Agreement contains the entire agreement between the Parties. This Agreement Order may not be enlarged, modified, or altered, except in writing signed by the Parties.

5. Authority. Each Party represents and warrants that it has the authority to enter into this Agreement and to take all actions provided for herein and that no further action or authorization is required.

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6. Severability. In case any provision or authority of this Agreement or the application of this Agreement to any Party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Agreement shall remain in force and not be affected thereby.

7. Termination. Upon fulfilling the requirements of this Agreement, Midas may petition the Agencies in writing for termination of this Agreement. This Agreement shall remain in full force and effect until the Agencies acknowledge in writing that the Agreement is terminated and that Midas has fulfilled all requirements of this Agreement.

8. Successors and Assigns. This Agreement shall bind Midas, its successors and assigns until terminated in writing by the Agencies.

9. Effective Date. The effective date of this Agreement shall be the later of the date of signature by the Director of the Idaho Department of Environmental Quality or the [EPA Representative].

XI. APPENDICES

The following appendices are attached to and incorporated into this Agreement:

a. Appendix A shall mean the SOW.

b. Appendix B shall mean the map depicting the approximate extent of currently known historical mining operations at the Stibnite Site.

c. Appendix C shall mean the map depicting the approximate locations of the Forest Service Smelter Waste Repository and the DMEA Dump.

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DATED this __ day of _____, 2019.

By: _____
John Tippets, Director
Idaho Department of Environmental Quality

DATED this __ day of _____, 2019.

By: _____
[EPA Representative]
United States Environmental Protection Agency
Office of Environmental Cleanup, Region 10

DATED this __ day of_____, 2019.

By: _____
[xx]
[xx]
Midas Gold Idaho, Inc.

By: _____
[xx]
[xx]
Midas Gold Corp.

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APPENDIX A

STATEMENT OF WORK

ASSESSMENT ACTIONS FOR THE STIBNITE MINE SITE

I. PURPOSE

The purpose and objective of the work described by this Statement of Work is to undertake Stibnite Site response activity in areas of previous contamination. Further details of work activities, including the sequencing of actions, will be included in work plans that will subsequently be approved by the Agencies pursuant to the Voluntary Consent Order/Administrative Order on Consent.

II. STATEMENT OF WORK

A. Forest Service Smelter Waste Repository

The subject area is located just south of the EFSFSR below its junction with Sugar Creek and on the west side of the EFSFSR above its junction with Sugar Creek. The Forest Service Smelter Waste Repository is located on private land with a small area in the SW corner on public land.

In 2002 and 2003, the United States Forest Service, in coordination with EPA and IDEQ, constructed an unlined smelter waste repository to store residual soils contaminated with high levels of arsenic and antimony from the former smelter and tailings from various "poison ponds" recovered in two removal actions near the former mill and smelter site (USFS, 2003).

The estimated volume of contaminated material in the Forest Service Smelter Waste Repository is estimated, from an after-action report (MSE, 2003), to be at least 400 cubic yards of smelter soil and residues as well as an unknown amount of former tailings and pond material. The dimensions described for the repository in the Smelter Stack Removal Action Report indicate the constructed cell had dimensions of approximately 288 feet x 77 feet x 8 feet for a total estimated contained volume of approximately 177,408 cubic feet. The estimated volume of tailings, contaminated soils and other materials is estimated at between approximately 6,170 cubic yards and 10,000 cubic yards.

Three groundwater monitoring wells drilled flanking the Forest Service Smelter Waste Repository have weakly elevated arsenic in groundwater, but a single well (MWH-A19) drilled directly down gradient has consistently reported exceptionally high total and dissolved arsenic and antimony (>3000-8000 µg/l arsenic) suggesting the presence of a source of soluble arsenic to load groundwater nearby.

<u>Proposed Elements of the Work Plan</u>

An investigation utilizing dye tests, synoptic methods and other field sampling methods and geochemical characterization is proposed for the spring and summer of 2019 to further evaluate whether a release of hazardous substances to surface waters (EFSRSR) is occurring or likely to occur. Field sampling procedures and measured parameters, sample preservation, chain of custody, analytical and quality control and quality assurance methods and analytical suites and

laboratories will be the same as or consistent with those used in the agency-approved baseline surface and groundwater water quality studies for the MGII PRO (HDR, 2012; MWH, 2012). In particular, the elements of the Work Plan will include:

1. Dye tests & mini-synoptic at high flow vs. low flow;
2. Pump tests; and
3. Additional groundwater quality monitoring and well drilling if required.

B. DMEA Dump

The subject area is located west of and uphill from the EFSFSR below its junction with Meadow Creek. Access is along the Stibnite Road—an improved two-lane public county road just below the dump and via a small unimproved single lane trail up the slope. The dump and portal are on public land managed by the USFS.

The federal government, through United States Bureau of Mines (USBM), sponsored and loaned funds to assist mine operators in locating minable reserves of strategic metals under the Defense Mineral Exploration Administration (DMEA) program. The DMEA Dump area resulting from the tunnel construction has indicated high levels of arsenic, antimony and mercury that could be impacting groundwater and surface water through seepage from the collapsed portal and from the stream passing through the toe of the DMEA Dump.

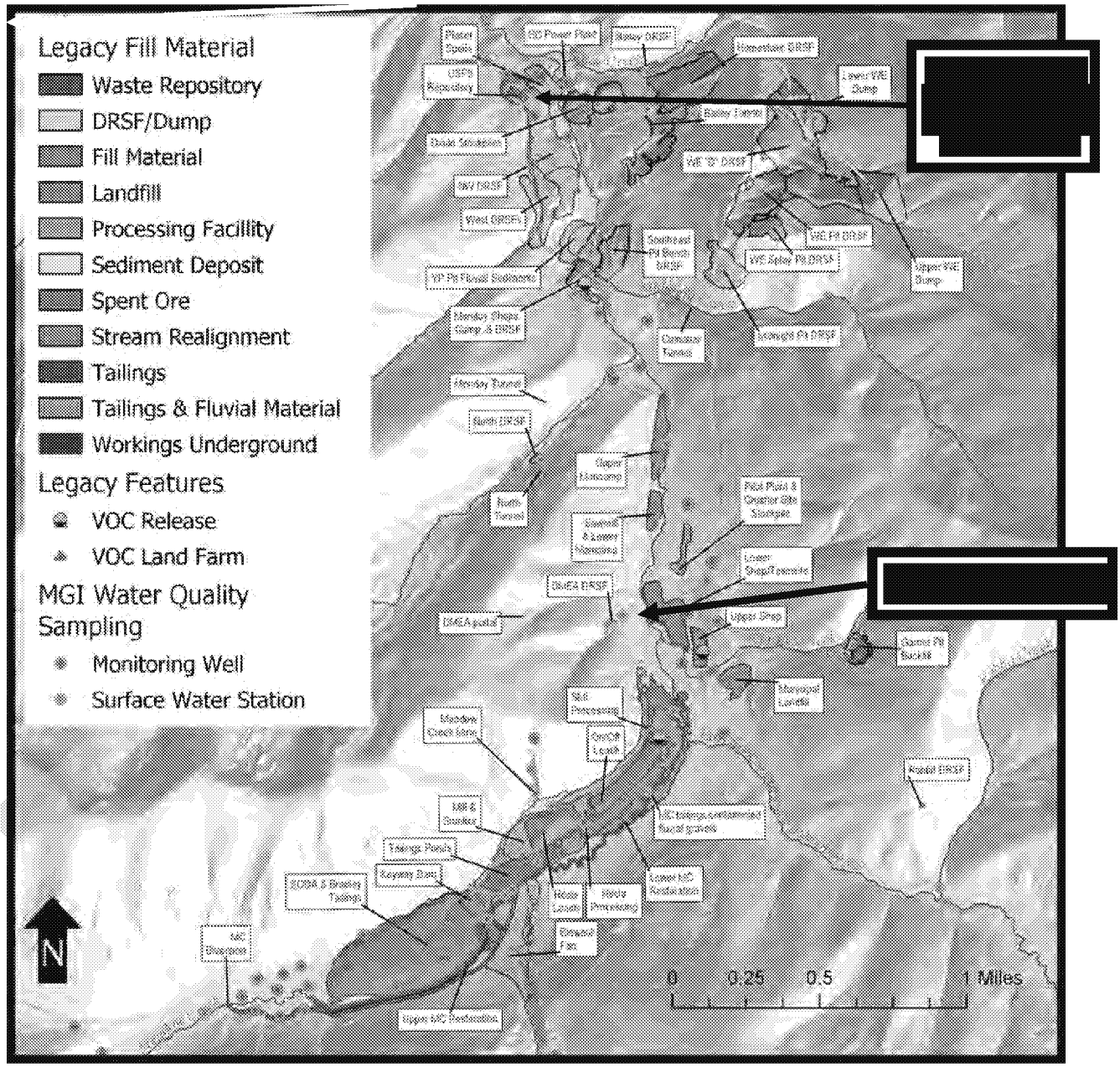
In particular, surface runoff from the unnamed Creek flows through the dumps and possibly comes in contact with the dump materials and/or adit seepage water loading with metals and passing into groundwater and/or migrating into the EFSFSR several hundred feet nearby and down gradient. Additionally, there is potential surface water impacts to EFSFSR and possibly groundwater from high arsenic, antimony and mercury, which in sampled seep and gully waters has exceeded acute freshwater aquatic life standards down gradient from the dump area.

Proposed Elements of the Work Plan

An investigation utilizing dye tests, synoptic methods and other field sampling methods and geochemical characterization is proposed for the spring and summer of 2019 to further evaluate whether a release of hazardous substances to surface waters (EFSRSR). An auger hole may be warranted to evaluate whether the lower part of the dump is saturated and to help characterize the dumps overall geochemical composition. In particular, the elements of the Work Plan will include:

1. Dye tests & mini-synoptic at high flow vs. low flow;
2. Potential auger drilling to obtain sufficient material for further characterization of the DMEA Dump; and
3. Further Investigation to determine whether seeping bedrock portal can be closed efficiently.

APPENDIX B


Legacy Fill Material
Waste Repository
DRSF/Dump
Fill Material
Landfill
Processing Facility
Sediment Deposit
Spent Ore
Stream Realignment
Tailings
Tailings & Fluvial Material
Workings Underground
Legacy Features
VOC Release
VOC Land Farm
MGI Water Quality Sampling
Monitoring Well
Surface Water Station
N
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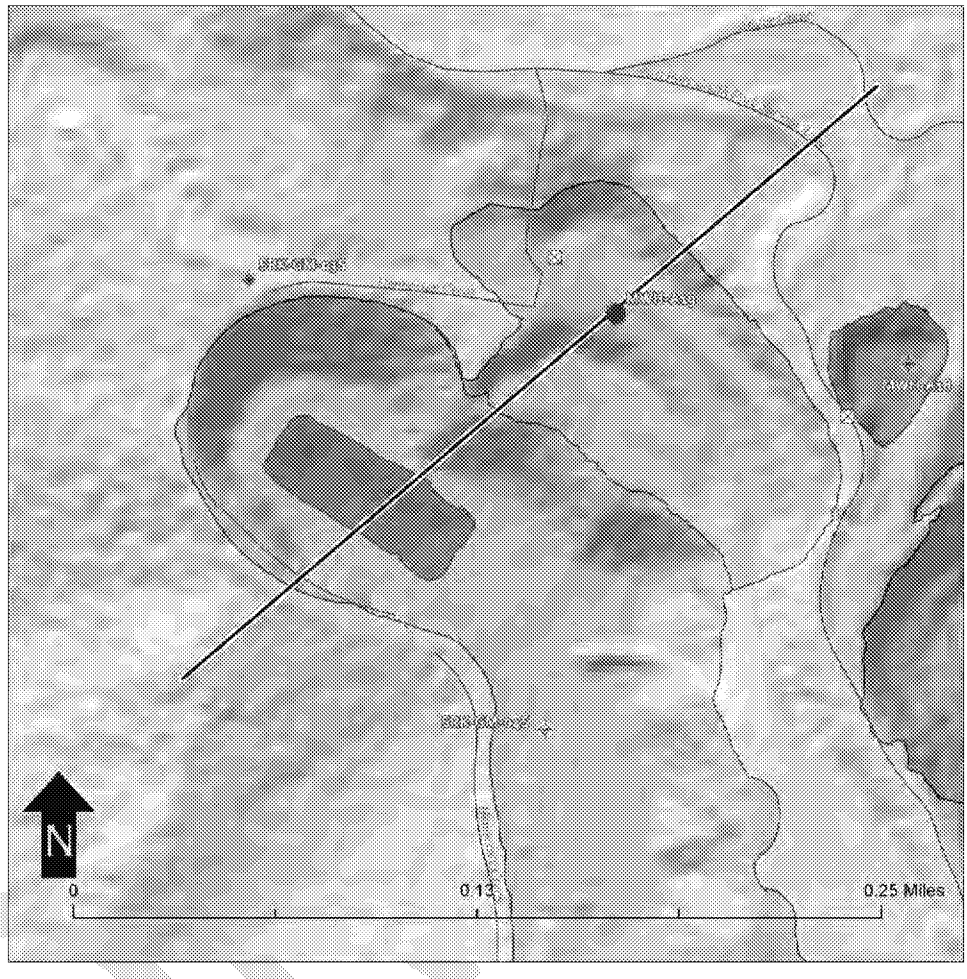
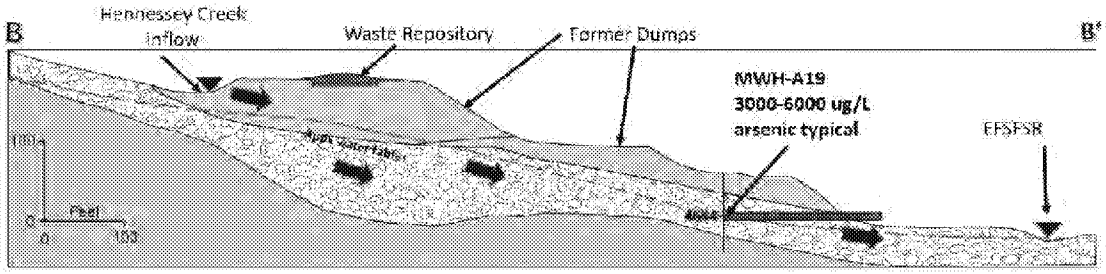
0.25
0.5
1 Miles

APPENDIX C

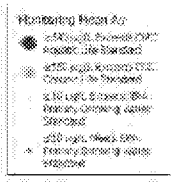
A. Forest Service Smelter Waste Repository and Profile Locations



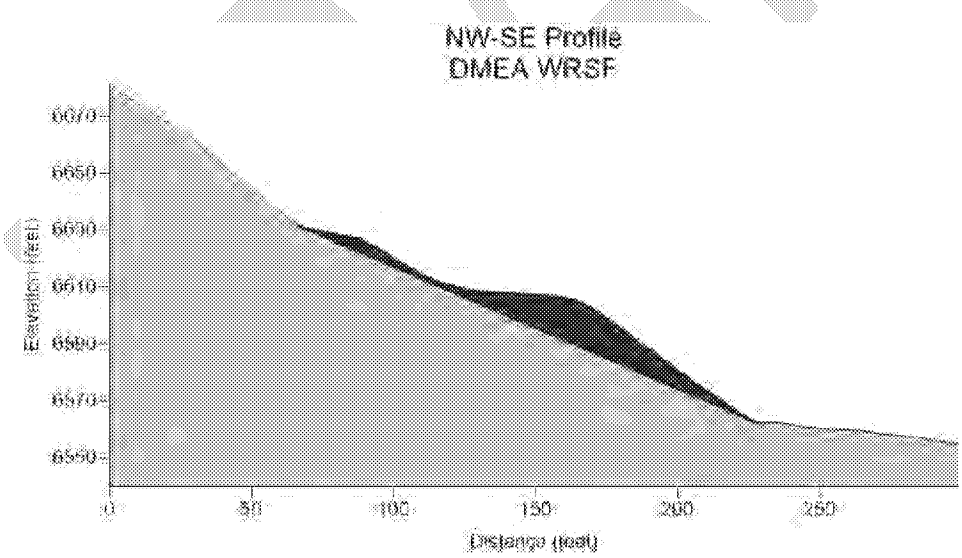
Northwest Bradley Waste Rock Dump
& Smelter Waste Repository Cross Section

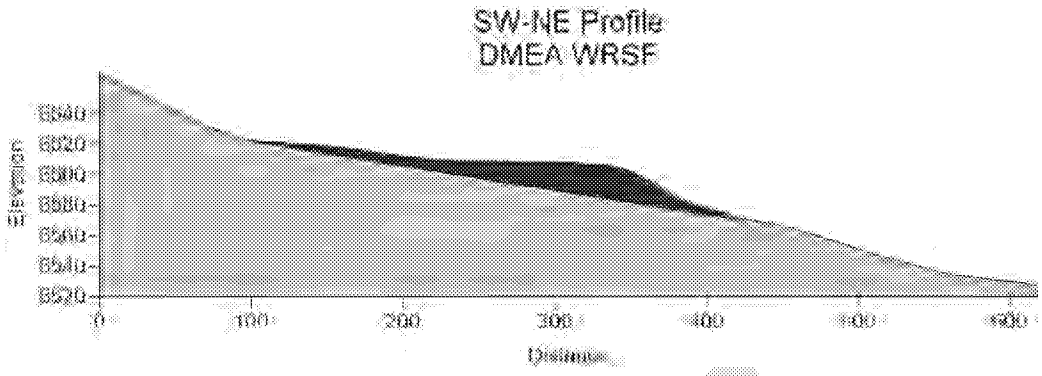


- Highly elevated geochemical values present in legacy dump materials adjacent to well
- Adjacent wells do not typically exceed WQ standards suggesting a local phenomena
- Bedrock source (at least proximal source) unlikely
- Also potential for other sources upgradient (Yellow Pine Deposit)



B. DMEA Dump Portal and Profile Locations





References

HDR, Inc. (2012) Appendix A, Surface Water Quality Baseline Study Work Plan for the Stibnite Gold Project, 2016. Prepared for Midas Gold Idaho, Inc. and Cooperating Agencies for baseline studies to support the Stibnite Gold Project Environmental Impact Statement, (including updates in 2014, 2015, and 2016)

USFS (2003) Removal Report, Smelter Stack Removal Action, Yellow Pine, Idaho, August 2003. Report from Pat Trainor, On Scene Coordinator, USDA - Forest Service, Region 4 - Payette National Forest McCall, Idaho.

MWH (2012) Groundwater Hydrology Baseline Study Work Plan, May 2012.

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EXHIBIT 11

to

Declaration of Michael Bogert

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

OFFICE OF
REGIONAL COUNSEL

June 13, 2019

Midas Gold Idaho, Inc.
P.O. Box 429
13181 Hwy 55
Donnelly, ID 83615

VIA ELECTRONIC MAIL ONLY

Re: Stibnite Mine

Dear Brad,

On April 30, 2019, Midas Gold Corporation provided the Environmental Protection Agency Region 10 (EPA) and the Idaho Department of Environmental Quality (IDEQ) with a proposed settlement agreement to undertake a limited initial investigation into existing contamination at the Forest Service Smelter Waste Cell and the Defense Minerals Exploration Administration Dump (DMEA Dump) at the Stibnite Mine Site (Site). This letter pertains to the technical proposal set forth in the statement of work attached to the proposed settlement agreement. As we have discussed, if the government agencies and Midas can agree on the appropriate technical work to be done, we will need to discuss restructuring the agreement so that terms reflect EPA's standard administrative orders on consent. In addition, Midas has not yet substantiated its claim that it is a bona fide prospective purchaser.

On May 17, 2019, Midas met with EPA and IDEQ to explain its technical proposal to the agencies. Midas stated that the goal of performing the work proposed is to discover the sources of elevated levels of arsenic, antimony, and mercury in ground water and/or surface water at the Site. During the meeting, EPA and IDEQ agreed to evaluate the proposal to determine whether the work was appropriate.

After the meeting, EPA invited the United States Forest Service (USFS) to participate in the technical discussions with EPA and IDEQ because the proposed investigatory work involves USFS land. (For the same reason, USFS will need to be a signatory to any final agreement.) We have collectively evaluated the proposal and have concerns that the investigatory work will not achieve the stated purpose. The agencies do not believe that the USFS-constructed repository on the Northwest Bradley Waste Rock Dump is a significant source of the elevated arsenic concentrations measured in monitoring well MWH-A19. The repository was constructed on an elevated portion of the dump that does not contact groundwater. In addition, the repository was constructed with a low-permeability Geosynthetic Clay Liner (GCL) cover to minimize infiltration and percolation through the materials. Groundwater elevation contour data provided by Midas Gold indicates a northerly flow direction, such that MWH-A19 may not be directly downgradient from the repository. Finally, the downgradient monitoring well SRK-GM-03S shows no similarly elevated arsenic or selenium concentrations, which would be expected if the repository were a significant groundwater contaminant source.

As we discussed during the May 17th meeting, the agencies do not believe that Midas Gold's exploration soil sampling data are appropriate for determining background concentrations of metals in surface soils. Midas Gold collected samples from 0–16 inches below ground surface (bgs), with an average and median depth of 9 and 12 inches bgs, respectively. This exceeds the recommended 0–6 inches bgs sampling depth for assessing risk to human health and wildlife. The agencies recommend using the data sets presented in the 1998 Stibnite Site Characterization Report to establish site-specific background concentrations for mineralized and non-mineralized areas. Analysis of the Woodward-Clyde samples indicate an average of 6.99 ppm arsenic for non-mineralized areas. This is consistent with regional norms. The mineralized areas have an average of 87.51 ppm arsenic.

The agencies have discussed other potential projects that may be more successful in achieving the goal of determining the sources of arsenic, antimony and mercury. For instance, additional groundwater, storm event surface water, and sediment samples near the Bradley Waste Rock Dumps, the Keyway Wetland, Upper Wetland, and stream channels of the East Fork South Fork Salmon River, and tributaries upstream of the Sugar Creek confluence would be important work to perform to understand the sources of contamination. We would be happy to discuss in more detail what options the agencies have considered as alternatives to the investigatory work proposed by Midas Gold. Please let me know if you and your client are interested in meeting to have further technical discussions.

Best regards,

Elizabeth McKenna

cc: Lisa O'Hara, Deputy Attorney General IDEQ
Gary Fremerman, USDA OGC

EXHIBIT 12

to

Declaration of Michael Bogert

MARTEN LAW

MEMORANDUM

TO:	Elizabeth McKenna
FROM:	Bradley Marten
COPY:	Kathy Cerise, Timothy Maley, Marc Stifelman, Lisa O'Hara, Lisa Carlson, Michael Bogert, Michael MacCurdy, Gary Fremerman, Terry Uhling, Kathy Zamba, Jill Grant, Kelly Wright, Nicholas Pino, Aaron Scheff, Kay Morrison, Susan Hanson, Laurel Sayer, John Meyers
DATE:	November 7, 2019
SUBJECT:	Stibnite Mine CERCLA AOC -- Summary of Tasks Agreed to at November 1, 2019 Meeting

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This memo summarizes the tasks agreed to at a meeting held at EPA Region X on Friday, November 1, 2019 regarding an Agreed CERCLA Order on Consent ("AOC") and Statement of Work ("SOW") for the Stibnite Mine in Idaho. Present were the following representatives of EPA, the US Forest Service ("USFS"), the Idaho Department of Fish and Wildlife ("DEQ"), the Shoshone-Bannock Tribes (the Tribes") and Midas Gold (hereafter, the "AOC Participants")

- Elizabeth McKenna (EPA)
- Kathy Cerise (EPA)
- Timothy Maley (EPA)
- Marc Stifelman (EPA)
- Lisa O'Hara (IDEQ)
- Lisa Carlson (IDEQ)
- Michael Bogert (Midas)
- Michael MacCurdy (IDEQ)
- Gary Fremerman (USFS)
- Kathy Zamba (USFS)
- Jill Grant (Tribes)
- Kelly Wright (Tribes)

- Nicholas Pino (USDA)
- Aaron Scheff (IDEQ)
- Kay Morrison (EPA)
- Susan Hanson (Tribes)
- Laurel Sayer (Midas)
- John Meyers (Midas)
- Bradley Marten (Midas)

1. The AOC Participants agreed not to assert a settlement or other privilege that would bar disclosure of their negotiations (other than the attorney-client privilege) and that their discussions will not be treated as confidential;

2. The Shoshone-Bannock Tribes, DEQ and USFS asked Midas to fund their participation in the AOC negotiations, using November 1, 2019 as a start date. Midas agreed to consider the request and to propose a Funding and Participation Agreement;

3. The Tribes agreed to provide its comments on the SOW by Tuesday, November 12, 2019, and to meet with the AOC Participants to discuss their comments on Monday, November 18, 2019 at 10 am PST. Midas will circulate a meeting invite and will arrange video conferencing through the Zoom videoconferencing service.

4. EPA agreed to provide a first draft of the AOC by Friday, November 15, 2019, and to meet with the AOC Participants to discuss their comments on Friday, November 22, 2019 at 10 am PST. Midas will circulate a meeting invite and will arrange video conferencing through the Zoom videoconferencing service. Midas Gold's attorney, Brad Marten, agreed to work with EPA's attorney, Elizabeth McKenna, and counsel for the other AOC Participants, to formulate a first draft. The AOC Participants agreed to use EPA model documents in drafting the AOC;

5. Midas agreed to add labelling to the site map it presented at the meeting;

6. EPA noted that it hopes to have an oversight contractor "on-board" within a month and is working through the contracting process;

7. EPA agreed to inform the Nez Perce Tribe of the deadlines agreed to among the AOC Participants and to communicate the AOC Participants' expectation that they will meet the same comment deadlines;

8. Midas agreed to establish a SharePoint Site to make available to the AOC Participants all documents generated by, and necessary to inform, the AOC process. Once the Site is established and operational, all AOC Participants will have access to the SharePoint site, in addition to the Nez Perce Tribe;

9. EPA asked Midas whether it wishes to maintain its claim of confidentiality for the Phase 1 and Phase 2 reports under the Confidential Business Information ("CBI") exception to the Freedom of Information Act. Midas committed to respond to the request.

EXHIBIT 13

to

Declaration of Michael Bogert

Draft Statement of Work for Stibnite Mine RI/FS
Shoshone-Bannock Tribes' Comments
November 12, 2019

General Comments and Questions:

1. Many places throughout the document should refer to "analyses" rather than "analysis."
2. Does the Mining Plan of Restoration and Operations (PRO) cover all of Midas Gold's patented land?

Oversight:

Page 3 – The Shoshone-Bannock Tribes ("SBT" or "Tribes") should be listed as an oversight Agency, along with the EPA, USFS and IDEQ. [Note –The term "Agency" in the rest of these comments is intended to include the SBT.]

SBT should receive copies of all reports, etc., because the Tribes plan to comment on these documents as part of their oversight responsibilities. This seems to be what Midas Gold intended, since Attachment E (schedule) refers throughout to "consolidated Agency comments." We added specific references to SBT/Tribes (which could be changed to "Agencies" assuming SBT is added as an "Agency" and assuming that the other Agencies want to be included) where we thought appropriate, just to be sure. For example, on page 3 the last full paragraph should say "Respondent shall submit all documents or deliverables required as part of this SOW to EPA and the Tribes, for EPA's and the Tribes' review and EPA's approval." The last paragraph should say "Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA and the Tribes to aid in project planning."

Roles and Responsibilities:

Page 4 – Please add the underlined language for clarity, since there's a required process for EPA to go through before issuing a ROD: "At the completion of the RI/FS . . . in a Record of Decision (ROD), consistent with the NCP."

Task 1 - Scoping:

Page 4 – "Respondent shall document the specific project scope in the RI/FS Work Plan, which shall be consistent with the AOC." Also, "During the scoping process, the Site- specific objectives of the RI/FS . . . will be proposed by the Respondent but will be determined ~~and approved~~ by EPA."

Page 5 – "When scoping the specific aspects of this project, Respondent shall meet with EPA and the Tribes either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site."

Page 5 – "The Respondent, ~~and~~ EPA and the Tribes shall conduct a Site visit during the project scoping phase."

Page 6 – "The Respondent shall meet with EPA's Remedial Project Manager (RPM) and with the appropriate contact from the Tribes (either in person or telephonically) regarding the following activities and before drafting the scoping deliverables listed below."

Page 7 – Document the Need for Treatability Studies – "Should treatability studies be determined to be necessary, a testing plan . . . should be submitted to EPA and the Tribes for review and for EPA's approval."

Page 7 – Scoping Deliverables – "These plans must be reviewed by EPA and the Tribes and approved by EPA prior to the initiation of field activities."

Page 7 - RI/FS Work Plan – "A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM and the Tribes for review and for EPA's approval."

Pages 11 through 14 – Potential Target Analytes – The only radiological constituent listed is uranium, and it isn't listed for all media. Since uranium may be a concern, as indicated by it being listed as a COPC for surface water, then uranium and all associated uranium daughters should be listed as COPCs in all media.

Task 2 - Community Relations:

Page 14 – "Respondent may assist by providing information regarding the Site's history, participating in public and community (including tribal community) meetings, and preparing fact sheets for distribution to the general public and relevant tribes, including the Shoshone-Bannock Tribes." All impacted tribes should be included, even though the Shoshoni historically were the main tribes in this area."

Also, "Any PRP-conducted community relations activities will be subject to oversight by EPA and the other Agencies."

Task 3 - Site Characterization

Page 15, 2d ¶ – "The Respondent shall notify the RPM and the relevant contacts for the other Agencies at least two weeks in advance of the field work regarding the planned dates for field activities . . . ."

Same edit in last sentence on pages 15-16: "The Respondent shall notify the RPM and the relevant contacts for the other Agencies at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM and the relevant contacts for the other Agencies upon completion of field support activities."

Page 17 – "All data and programming, including any proprietary programs, shall be made available to EPA and the Tribes together with a sensitivity analysis.

Page 18 – same edit: "All validated data shall be made available to EPA and the Tribes in electronic format. . . . Field and validated analytical data results for all media sampled shall be submitted to EPA and the Tribes by uploading the data . . . ."

Page 18 – Similarly, "The Respondent shall prepare and submit a draft RI report to the RPM for review and approval, and shall provide a copy of the report to the Tribes."

Page 19 – The Tribes would provide comments on the report, but they could do so directly to Midas Gold or through EPA (see first complete sentence at the top of p. 19).

Page 19 – BLRA – The EPA human health risk assessment must include a tribal scenario.

Task 4 – Treatability Studies

Page 20 – first sentence: "Respondent shall identify in a technical memorandum, subject to EPA and the Tribes' review and EPA's approval, candidate technologies for a treatability studies program during project planning (Task 1)."

Page 20 – Evaluation of Treatability Studies – "Once a decision has been made to perform treatability studies, the Respondent and EPA, in consultation with the Tribes, will decide the types of treatability testing to utilize. . . . the Respondent shall either submit to the RPM and the Tribes a treatability testing work plan or an amendment to the original Site work plan for EPA's and the Tribes' review and EPA's approval."

Pages 20-21 – Treatability Testing Work Plan – "The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's and the Tribes' review and EPA's approval." Same edit to Treatability Study SAP.

Task 5 – Feasibility Study

Page 22 – "The modified PRGs shall be documented in a technical memorandum that will be reviewed by EPA and the Tribes and approved by EPA."

Attachment C – Suggested RI Report Format

Vegetation results need to be included here so the Tribes can see what has been evaluated. If they aren't included, this will be a major data gap.

EXHIBIT 14

to

Declaration of Michael Bogert

Appendix 1

STATEMENT OF WORK FOR THE
STIBNITE MINE REMEDIAL INVESTIGATION / FEASIBILITY STUDY
Valley County ID near Yellow Pine, ID

Purpose

This Statement of Work (SOW) sets forth the requirements for conducting a Remedial Investigation and Feasibility Study (RI/FS) at the Stibnite Mine Site ("Site") located in northwest Idaho approximately 14 miles from the town of Yellow Pine (see Figure 1). The purpose of the RI/FS is to investigate the nature and extent of contamination at the Site and to develop and evaluate remedial alternatives, as appropriate. This SOW provides an overview of Work that will be carried out by Midas Gold Idaho, Inc. ("Midas Gold" or "Respondent") as it implements the RI/FS at the Site.

In September 2016, Midas Gold filed a Plan of Restoration and Operations ("PRO") with the United States Forest Service ("USFS") for the redevelopment of Stibnite, and plans to undertake mining, mineral processing and restoration activities on portions of the Site that will result in landscape-scale changes to many of the existing Site features. As such, the scope and timing of sampling and other elements of the RI/FS will consider potential mining activities in the PRO, any modifications and subsequent remediation ~~must be consistent with the PRO and the subsequent restoration~~. This will require flexibility in the RI/FS and could require a phased approach to accelerate certain activities.

The Site is defined as the ~~features~~ areas described below (general locations summarized on Figure 2) and the areal extent of contamination from those features and all suitable areas in ~~very~~ close proximity to the contamination necessary for response action implementation:

1. **Yellow Pine Pit (Figure 3)** – The Yellow Pine Pit (formerly known as "The Glory Hole") was actively mined during the 1930s through the 1950s for antimony, tungsten, gold and silver. The pit is located on Midas Gold patented land, and most of the waste rock dumps associated with the pit are adjacent to the pit; some of the waste rock dumps are located on USFS managed land. During active mining, the East Fork of the South Fork of the Salmon River (EFSFSR) was routed around the pit through the Bailey Tunnel but was allowed to return to its natural course through the pit after the Bailey Tunnel was abandoned in the mid-1950s. The EFSFSR now runs through the pit, but does not currently support fish passage to the headwaters. The Yellow Pine Pit, and the majority of waste rock dumps associated with it, are within the footprint of Midas Gold's proposed PRO.

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2. **Bradley Tailings Pile (Figure 4)** – The Bradley Tailings Pile, also known as the Historical Tailings and Spent Ore Disposal Area, is located on Midas Gold patented land. Approximately 3 million tons of mine tailings generated during the 1940s and 1950s are stored in this area, and they are overlain by approximately 6 million tons of spent heap leach ore placed in the 1980s and 1990s. The downstream end of the Tailings Pile is constrained by a structure known as the Keyway Dam, and a wetland exists downgradient of the Keyway Dam, which is also referred to as the Keyway Marsh. Meadow Creek is diverted around the south side of the Tailings Pile. The Bradley Tailings Pile is within the footprint of Midas Gold's proposed PRO.

3. **Hangar Flats Tailings Pile (Figure 5)** – The Hangar Flats Tailings Pile, also known as the Hecla Heap Leach Facility, is a reclaimed heap-leach facility which was built and operated in the 1990s to extract oxide gold and silver. The facility is located on Midas Gold controlled patented land, and is within the footprint of Midas Gold's proposed PRO.

4. **Bailey Tunnel (Figure 6)** – The Bailey Tunnel was constructed in the early 1940s to divert the EFSFSR around the Yellow Pine Pit and into Sugar Creek to facilitate open pit mining operations. The tunnel was no longer used after the mid-1950s, following cessation of open pit mining activities. The Bailey Tunnel is on Midas Gold patented land, and is within the footprint of Midas Gold's proposed PRO.

5. **DMEA Adit and Waste Rock Dump (Figure 7)** – The Defense Minerals Exploration Administration (DMEA) Adit and Waste Rock Dump are mining-related disturbances resulting from underground exploration activities during the 1950s. The adit and dump are located on USFS managed land, and are not within the footprint of the Midas Gold PRO.

6. **Bonanza Adit (Figure 8)** – The Bonanza Adit area is a mining-related disturbance in the Sugar Creek drainage resulting from underground exploration activities during the 1930s and 1940s. The Bonanza Adit area is located on USFS managed land, and is not within the footprint of the Midas Gold PRO.

7. **Cinnabar Tunnel (Figure 9)** – The Cinnabar Tunnel is a mining-related disturbance resulting from underground exploration activities during the late 1920s and early 1930s. The Tunnel is located on USFS managed land; the tunnel portal is within the footprint of the Midas Gold PRO.

8. **Meadow Creek Adit (Figure 10)** – The Meadow Creek Adit and associated waste rock dumps are mining-related disturbances that resulted from underground mining activities from the 1920s through the 1940s. The adit and waste rock dumps are located on Midas Gold controlled patented land, and are within the footprint of Midas Gold's proposed PRO.

This RI/FS SOW is attached to and is incorporated into the Settlement Agreement and Administrative Order on Consent (AOC) for the Site. Technical work described in this SOW is intended to provide more information to the Respondent for the purpose of implementing the AOC and is not intended to change the meaning of any AOC language. This SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the National Oil and Hazardous Substances Pollution Contingency Plan, commonly called the National Contingency Plan (NCP), 40 CFR 300. The AOC and this SOW are hereafter referred to interchangeably as the "AOC." Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the AOC will control any interpretive disputes.

Scope

The specific RI/FS activities to be conducted at the Site are set forth in ~~seven~~ six separate tasks.

Task 1 – Scoping
Task 2 – Community Relations
Task 3 – Site Characterization
Task 4 – Treatability Studies
Task 5 – Feasibility Study
Task 6 – Detailed Analysis of Remedial Alternatives

Oversight

Work conducted under the AOC is intended to satisfy the legal requirements for the RI/FS established under both Section 104(a)(l) of CERCLA and Idaho's Environmental Protection & Health Act, Idaho Code§§ 39-101 to 39-130; the Hazardous Waste Management Act of Idaho, Idaho Code§§ 39-4401 to 39-4432; and Idaho's Water Quality Act, Idaho Code§§ 39-3601 et seq. As such, oversight of the Respondent's Work conducted under the SOW will be carried out by EPA, the USFS, and the IDEQ (the Agencies) in a manner to assure the satisfaction of all federal and state requirements. The Respondent shall support the Agencies' initiation and conduct of activities related to the implementation of oversight activities.

Respondent shall submit all documents or deliverables required as part of this SOW to EPA, for EPA's review and approval. All work products submitted to EPA are subject to EPA approval, including but not limited to, submissions specified in the Work Plan(s) or Settlement Agreement and additional work products that may be required under Work Plan modifications. Respondent shall ensure that all plans, reports, and records are comprehensive, accurate, and consistent in content and format with the NCP and relevant EPA guidance.

Commented [LO1]: Although EPA is lead agency, there are several reference to "EPA's review and approval" that should also include the support agencies' role in review/comment for submittals. Instead of EPA, use of "Agencies approval" or "for Agencies' review and approval" to include DEQ, Forest Service and Shoshone-Bannock Tribes. Perhaps language in the Introduction section could be added to clarify EPA as lead agency with DEQ, Forest Service & and Shoshone Bannock as support agencies.

Commented [LO2]: Same as comment 1

Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA to aid in project planning. These reports must document the status of all work products under development. These reports shall describe

the actions and decisions taken, and problems encountered during the previous quarter, and activities scheduled during the upcoming reporting period. Progress reports shall also summarize the extent to which the procedures and dates set forth in the AOC and the Work Plan are being met. These reports shall be submitted according to the Schedule included as Attachment E.

Schedule

Refer to Attachment E for the primary and potential secondary deliverables and associated schedules.

Guidance

The Respondent shall conduct the RI/FS, and produce technical reports that are in accordance with the AOC, SOW, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (RI/FS Guidance) (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance relevant to conducting an RI/FS. A list of the pertinent guidance documents is included at the end on this SOW. Attachments A, B, C, and D include suggested document formats for the Work Plan, Sampling and Analysis Plan, RI Report, and FS Report, respectively. The RI/FS guidance describes the required report contents.

Roles and Responsibilities

The Respondent shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the RI/FS, except as otherwise specified in the AOC. At the completion of the RI/FS, EPA will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision (ROD).

Commented [LO3]: Will support agencies be asked/required to concur in selection of a remedy?

Remedy Requirements

The remedial action alternative selected by the EPA will meet the cleanup standards specified in Section 121 of CERCLA. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements (ARARs) of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS report including the baseline risk assessment (BLRA), as adopted by the EPA, will, with the administrative record, form the basis for the selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

TASK 1 - SCOPING

Scoping is the initial planning process of the RI/FS. Respondent shall document the specific project scope in the RI/FS Work Plan. During the scoping process, the Site-

specific objectives of the RI/FS, including the identification of potential preliminary remediation goals (PRGs) will be proposed by the Respondent and approved by EPA. In addition to developing the Site-specific objectives of the RI/FS, Respondent shall define a general project management approach for the Site, which shall be documented by the Respondent in a draft Work Plan. Because the Work required to perform an RI/FS is not fully known at the outset and is phased in accordance with a Site's complexity and the amount of available information, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study. When scoping the specific aspects of this project, Respondent shall meet with EPA either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site.

Commented [LO4]: Same as comment 1

The following activities shall be performed by the Respondent as a function of the project planning process.

a. *Site Background*

The Respondent shall gather, analyze, and present existing Site background information and shall conduct a work session to assist in planning the scope of the RI/FS.

Collect and analyze existing data and document the need for additional data

Before planning RI/FS activities, all existing Site data shall be thoroughly compiled and reviewed by the Respondent. Historical data shall be submitted electronically according to EPA Region 10 specifications. The Respondent shall refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources. Specifically, this must include presently available data relating to the varieties and quantities of hazardous substances at the Site, and past disposal practices. This must also include results from any previous sampling events that may have been conducted. Only data that is determined by EPA to be of appropriate type and quality to support specific intended uses shall be utilized in the RI/FS. This includes data utilized to develop the BLRA, to identify additional data needs to better characterize the Site, to better define potential applicable or relevant and appropriate requirements (ARARs), and to develop a range of preliminarily identified remedial alternatives. Data Quality Objectives (DQOs) shall be established, subject to EPA's approval, which shall be used to assess the usefulness of existing data and to direct future data gathering efforts. Decisions regarding the necessary data needs and DQOs will be made by EPA. Guidance on systematic planning using the data quality objectives process (EPA QA/G-4). Washington, D.C.: 121. http://www.epa.gov/quality/qs-docs/g4-final.pdf, U.S. EPA (2006)

Commented [LO5]: Same as comment 1

Conduct site visit

The Respondent and EPA shall conduct a Site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of contamination as well as potential exposure pathways and receptors at the Site. During the Site visit the Respondent shall observe the Site's physiography, hydrology, geology, and demographics, as well as natural resource, ecological, and

cultural resources. This information shall be utilized to better scope the project and to determine the extent of additional data necessary to characterize the Site, better define potential ARARs, and assist in identifying potential remedial alternatives.

b. *Project Planning*

Once the Respondent has collected and analyzed existing data and conducted a Site visit, the specific project scope shall be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols. The Respondent shall meet with EPA's Remedial Project Manager (RPM) regarding the following activities and before drafting the scoping deliverables listed below.

Preliminary conceptual site model

Information on the waste sources, pathways, receptors, cultural resources, and other information concerning the Site is used to develop a conceptual understanding of the Site which helps to evaluate potential risks to human health and the environment. The Conceptual Site Model (CSM) should include known and suspected sources of contamination, types of contamination and affected media/resources, known and potential routes of migration, and known or potential human and environmental receptors. This effort, in addition to assisting in identification of locations where sampling is necessary, will also assist in the identification of potential remedial technologies. Additional information for evaluating exposure concerns through the use of a CSM is provided in the DQO Guidance. The CSM must be updated as new information becomes available.

The preliminary CSM associated with the ecological risk assessment (ERA) must include species and their habitats that could be impacted by Site-related contamination based on information generated from a historical review and a cultural resource audit and will show the relationships among species and potential exposure pathways. The Respondent shall provide assistance to the RPM in collecting this information as requested. If information is not provided to the Respondent within the timeframe specified by EPA, the RPM will notify the Respondent in writing either to proceed with the preparation of the RI/FS Work Plan without the information or to delay its submittal pending receipt of the information. The preliminary CSM for the human health risk assessment (HHRA) must identify potential receptor populations and potential exposure pathways.

Refine and document preliminary remedial action objectives and alternatives

Once existing Site information has been analyzed and an understanding of the potential Site risks have been determined, the Respondent shall review and, if necessary, refine the Remedial Action Objectives (RAOs) that have been identified by EPA for each actually or potentially contaminated medium. The revised RAOs

must be documented in a technical memorandum and subject to EPA's approval. The Respondent shall then identify a preliminary comprehensive range of potential remedial action alternatives and associated technologies. The range of potential alternatives shall encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative.

Commented [LO6]: Same as comment 1

Document the need for treatability studies

Respondent shall conduct bench and/or pilot studies as necessary to determine the suitability of various remedial technologies to Site conditions and problems. Technologies that may be suitable to the Site should be identified as early as possible to determine whether there is a need to conduct treatability studies to better estimate costs and performance capabilities. Should treatability studies be determined to be necessary, a testing plan identifying the types and goals of the studies, the level of effort needed, a schedule for completion, and the data management guidelines should be submitted to EPA for review and approval. Upon EPA approval, a test facility and any necessary equipment, vendors, and analytical services will be procured by the contractor.

When the treatability studies are completed, Respondent shall evaluate the results to assess the technologies with respect to the goals identified in the test plan. A report summarizing the testing program and its results shall be prepared by the Respondent and presented in the final RI/FS report. The Respondent shall implement all management and quality control review activities for this task. If remedial actions involving treatment have been identified by the Respondent or EPA, treatability studies shall be required, except where the Respondent can demonstrate to the satisfaction of EPA that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) should be planned to occur concurrently with Site characterization activities.

Begin preliminary identification of potential ARARs

The Respondent shall conduct a preliminary identification of potential ARARs (chemical-specific, location-specific, and action-specific) to assist in the refinement of the RAOs and the initial identification of remedial alternatives. ARAR identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.

c. *Scoping Deliverables*

At the conclusion of the project planning phase, the Respondent shall submit an RI/FS Work Plan, a Sampling and Analysis Plan (SAP) consisting of a Field Sampling Plan (FSP) and Quality Assurance Project Plan (QAPP), and a Site Health and Safety Plan (HASP). These plans must be reviewed and approved by EPA prior to the initiation of field activities.

RI/FS Work Plan

A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM for review and approval. The Work Plan will ~~fully account~~ take in to consideration for the timing and scope of potential mining and processing activities associated with the PRO. This could include a phased approach to focus on issues of most concern or requiring early action. The Work Plan shall be developed in conjunction with the SAP and the Site HASP, although each plan may be delivered under separate cover. The Work Plan shall include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan shall include the rationale for performing the required activities. Specifically, the Work Plan must present a statement of the problem(s) and potential problem(s) posed by the Site and the objectives of the RI/FS. Furthermore, the plan must include a Site background summary setting forth the Site description including the geographic location of the Site, and to the extent possible, a description of the Site's physiography, hydrology, hydrogeology, geology, demographics, ecological, cultural, and natural resource features; a synopsis of the Site history and a description of previous responses that have been conducted at the Site by local, state, federal, or private parties; and a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified, and their distribution among the environmental media at the Site. In addition, the plan must include a description of the Respondent's Site management strategy developed during scoping and a preliminary identification of remedial alternatives and data needs for evaluation of remedial alternatives. The plan must reflect coordination with treatability study requirements, if treatability studies are initiated. It must include a process for and manner of identifying potential ARARs (chemical-specific, location-specific, and action-specific).

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Finally, the major part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task and for the BLRA, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the RPM. This includes the deliverables set forth in the remainder of this SOW; a schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to the RPM and meetings and presentations to EPA and the Support Agencies at the conclusion of each major phase of the RI/FS. The Respondent must refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required Work Plan, and a suggested format can be found in Attachment A.

Sampling and Analysis Plan

The Respondent shall prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a FSP and a QAPP. A suggested format for the SAP (inclusive of the FSP and QAPP) is provided in Attachment B. The SAP, FSP, and QAPP shall be prepared in accordance with EPA DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006).

The FSP must define in detail the sampling and data-gathering methods that will be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytic methods to identify contamination and remediate contamination consistent with the levels for remedial action objectives identified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), pages 51425-26 and 51433 (December 21, 1988). The QAPP shall be prepared in accordance with requirements in EPA QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision) and specifically should contain the twenty-four elements specified in Table 11 – List of QA Project Plan Elements, EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Investigations, and EPA QA/G-4 Guidance for the Data Quality Objective Process. All sampling and analyses performed pursuant to this SOW shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain-of-custody procedures. In addition, the QAPP must address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

Field personnel must be trained and conduct work in accordance with EPA and OSHA requirements and guidance. The Respondent shall demonstrate, in advance and to the satisfaction of EPA, that each laboratory they may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by EPA will be used. If the laboratory is not in the CLP program, a laboratory QA program must be submitted for EPA's review and approval. EPA may require that the Respondent submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment,

and material specifications. The Respondent shall provide assurances that EPA has access to laboratory personnel, equipment, and records for sample collection, transportation, and analysis.

Potential Target Analytes

The following list of chemicals include the initial Chemicals of Potential Concern (COPCs). The initial COPC list includes, but is not limited to, the analytes listed below. The Respondent shall review this list for surface water, groundwater, sediments, soils, and vegetation analytes relative to ARARs, preliminary remediation goals (PRGs), screening levels, Site-specific risk assessment data needs, treatability study data needs, feasibility study data needs, and other potential performance standards. All metal analytes (aqueous) shall be analyzed for total and dissolved constituents unless otherwise approved by EPA. Analytes may be added and/or removed from further consideration or monitored at varying frequencies based upon Site-specific factors such as dry or wet year hydrologic cycles as approved or otherwise directed by EPA.

Chemicals/Analytes of Potential Concern for Surface Water

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for surface water sampling stations during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph. A minimum of two storm event sampling events shall be conducted.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Boron
- Cadmium
- Calcium
- Chloride
- Chromium (III)
- Chromium (VI)
- Cobalt
- Copper
- Hardness
- Iron
- Lead
- Magnesium

- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrogen, total Kjeldahl
- Phosphorus
- Potassium
- Selenium
- Silver
- Sodium
- Sulphate
- Thallium
- Tungsten
- Total Dissolved Solids
- Total Organic Carbon
- Total Suspended Solids
- Uranium
- Vanadium
- Zinc

Field Analyses
- Conductivity
- Dissolved Oxygen
- Flow
- pH
- Temperature

The Respondent shall review the results of the first year's surface water sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent surface water sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent surface water sampling events.

Commented [LO8]: Same as comment 1

Chemicals/Analytes of Potential Concern for Sediments:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for sediment sampling stations.

Laboratory Analyses
- Antimony
- Arsenic
- Cadmium
- Chromium
- Copper
- Lead

- Manganese
- Mercury
- Nickel
- Selenium
- Silver
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Soils/Waste Rock:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for soils/waste rock sampling.

Laboratory Analyses
- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Uranium
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Vegetation:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for vegetation sampling stations.

Laboratory Analyses
- Antimony
- Arsenic
- Boron
- Cadmium

- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Groundwater

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for groundwater sampling stations and shall be sampled at a minimum during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph and the low flow sampling shall be conducted at all groundwater sampling stations as close as possible to the low point of the surface water flow hydrograph.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Calcium
- Chloride
- Chromium III
- Chromium VI
- Cobalt
- Copper
- Hardness
- Iron
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel

- Nitrate/nitrite as N
- Nitrogen (TKN)
- Orthophosphate
- Potassium
- Selenium
- Silver
- Sodium
- Sulfate
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Total Organic Carbon
- Tungsten
- Uranium
- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen or ORP
- Ferric Iron
- Ferrous Iron
- Nitrite
- pH
- Temperature

The Respondent shall review the results of the first year's groundwater sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent groundwater sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent groundwater sampling events.

Site Health and Safety Plan

A HASP shall be prepared in conformance with the Respondent's health and safety program, and in compliance with OSHA regulations and protocols. It should be noted that EPA does not "approve" the Respondent's health and safety plan, but rather EPA reviews it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

TASK 2 - COMMUNITY RELATIONS

The development and implementation of community relations activities are the responsibility of EPA. The critical community relations planning steps performed by EPA include conducting community interviews and developing a community relations plan. Although implementation of the community relations plan is the responsibility of EPA, the

Commented [LO9]: Only EPA or Support Agencies too?

Respondent may assist by providing information regarding the Site's history, participating in public meetings, and preparing fact sheets for distribution to the general public. In addition, the Respondent shall establish a community information repository, at or near the City of McCall, to house one copy of the administrative record. The extent of community relations activities involvement by potentially responsible parties (PRPs) is left to the discretion of EPA. The Respondent's community relations responsibilities, if any, are specified in the community relations plan. Any PRP-conducted community relations activities will be subject to oversight by EPA.

TASK 3 - SITE CHARACTERIZATION

As part of the RI, the Respondent shall perform the activities described in this task, including the preparation of a Site characterization summary and a RI report. The overall objective of Site characterization is to describe areas of a Site that may pose a threat to human health or the environment. This is accomplished by first determining a Site's physiography, geology, and hydrology/hydrogeology. Surface and subsurface pathways of migration must be defined. The Respondent shall identify the sources of contamination and define the nature, extent, and volume of the sources of contamination, including their physical and chemical constituents as well as their background concentrations at incremental locations in the affected media. The Respondent shall also investigate the extent of migration of this contamination as well as its volume and any changes in its physical or chemical characteristics, to provide for a comprehensive understanding of the nature and extent of contamination at the Site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the Work Plan, SAP, and HASP are implemented. Field data are collected and analyzed to provide the information required to accomplish the objectives of the study. The Respondent shall notify the RPM at least two weeks in advance of the field work regarding the planned dates for field activities, including ecological field surveys, field layout of the sampling grid, excavation, installation of wells, initiating sampling, installation and calibration of equipment, pump tests, and initiation of analysis and other field investigation activities. The Respondent shall demonstrate that the laboratory and type of laboratory analyses that will be utilized during Site characterization meet the specific QA/QC requirements and the DQOs of the Site investigation as specified in the SAP. In view of the unknown Site conditions, activities are often iterative, and to satisfy the objectives of the RI/FS, it may be necessary for the Respondent to supplement the work specified in the initial Work Plan. In addition to the deliverables below, the Respondent shall provide a monthly progress report and participate in weekly meetings or conference calls at major points in the RI/FS.

Commented [LO10]: Notification to Support Agencies also.

a. *Field Investigation*

The field investigation shall include the gathering of data to define Site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. These activities shall be performed by the Respondent in accordance with the Work Plan and SAP. At a minimum, this shall address the following:

Implement and document field support activities

The Respondent shall initiate field support activities following approval of the Work Plan and SAP. Field support activities may include obtaining access to the Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondent shall notify the RPM at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM upon completion of field support activities.

Investigate and define site physical and biological characteristics

The Respondent shall collect data on the physical and biological characteristics of the Site and its surrounding areas, including the physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information must be ascertained through a combination of physical measurements, observations, and sampling efforts, and will be utilized to define potential transport pathways and human, cultural, and ecological receptor populations. In defining the Site's physical characteristics, the Respondent shall also obtain sufficient engineering data (such as the effects of contaminated media weathering and ground and surface water contaminant loading) to aid in the projection of contaminant fate and transport, and the development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination

The Respondent shall locate each source of contamination and define the areal extent and depth of contamination associated with each source in all media. The physical characteristics and chemical constituents and their concentrations must be determined for all known and discovered sources of contamination. The Respondent shall conduct sufficient sampling to define the boundaries of the contaminant sources consistent with the QAPP and DQOs.

Defining the source of contamination must include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence over time, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

~~Describe~~ Delineate the nature and extent of contamination

The Respondent shall gather information to ~~describe~~ delineate the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondent must utilize the information and site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondent shall then implement an iterative monitoring program and any study program identified in the work plan or SAP such that by using analytical techniques sufficient to detect and quantify the concentration of

contaminants, the migration of contaminants through the various media at the Site can be determined. In addition, the Respondent shall gather data for calculations of contaminant fate and transport. This process must be continued until the area and depth of contamination are known. This information will be used to determine the level of risk presented by the Site and to help develop appropriate remedial action alternatives for evaluation.

b. *Data Analyses*

Evaluate Site characteristics

The Respondent shall analyze and evaluate the data to describe: (1) Site physical and biological characteristics; (2) contaminant source characteristics; (3) nature and extent of contamination; and (4) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The evaluation must include the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to EPA together with a sensitivity analysis. The RI data shall be presented in a format (i.e., computer disc or equivalent) to facilitate the preparation of the BLRA. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. The Respondent shall then collect any data required to address data gaps identified by EPA as needed to complete the BLRA. This evaluation shall also provide information relevant to Site characteristics necessary to evaluate the need for remedial action in the BLRA and to aid in the development and evaluation of remedial alternatives. Analyses of data collected for Site characterization must meet the DQOs developed in the QA/QC plan stated in the SAP (or as revised during the RI).

c. *Data Management Procedures*

The Respondent shall consistently document the quality and validity of field and laboratory data compiled during the RI.

Document field activities

Information gathered during Site characterization shall be consistently documented and adequately recorded by the Respondent in well-maintained field logs and laboratory reports. The method(s) of documentation must be specified in the work plan and/or the SAP. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document sample custody, analytical responsibility,

analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking

The Respondent shall maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that only validated analytical data are reported and utilized in the development and evaluation of remedial alternatives. Analytical results developed under the Work Plan must not be included in any Site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, the Respondent shall establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

Data validation management

All validated data shall be made available to EPA in electronic format. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. Field and validated analytical data results for all media sampled shall be submitted to EPA by uploading the data to the Water Quality Exchange (WQX) using the Central Data Exchange (CDX). Field and laboratory samples must include information on the sampling locations which will also be submitted to WQX via CDX. (See www.epa.gov/storet/wqx.hmtl)

d. Site Characterization Deliverables

The Respondent shall prepare the preliminary Site characterization summary and the RI report.

Data Summary Reports

After completing each annual field season's sampling and analysis (i.e., at the end of the field season each calendar year), the Respondent shall prepare a concise Site characterization Data Summary Report (DSR). This report must review the investigative activities that have taken place and describe and display Site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, including the affected media, locations, types, physical state, concentrations of contaminants and quantities. In addition, reports shall document the location, dimensions, physical condition and varying concentrations of each contaminant for each source and the extent of contaminant migration through each of the affected media. Each DSR must also evaluate data gaps and identify additional and/or modified sampling and analysis that shall be included in modifications to the SAP for each subsequent field season. If acceptable to EPA, the DSR following the final field season of data collection can be eliminated as a separate deliverable, and the information collected during the final field season can be presented in the RI report.

Remedial Investigation Report (RI)

The Respondent shall prepare and submit a draft RI report to the RPM for review and approval. This report shall summarize results of field activities to characterize the Site, sources of contamination, nature and extent of contamination, and the fate and transport of contaminants. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and contents, and a suggested format for the RI report can be found in Attachment C. Following comment by EPA, the Respondent shall prepare a final RI report satisfactorily addressing the comments.

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Baseline Risk Assessment (BLRA)

The Respondent shall conduct a BLRA to assess the potential human health, and environmental risks posed by the Site in the absence of any remedial action, but will consider implementation of the PRO. This effort will involve four components: contaminant identification, exposure assessment, toxicity assessment, and risk characterization.

Contaminant Identification – The Respondent shall review available information on all hazardous substances present at the Site and identify the major contaminants of concern. Contaminants of concern should be selected based on their intrinsic toxicological properties because they are present in large quantities, and/or because they are currently in, or potentially may migrate into, critical exposure pathways (e.g., drinking water).

Exposure Assessment – The Respondent shall identify actual or potential exposure pathways, characterize potentially exposed populations, and evaluate the actual or potential extent of exposure.

Toxicity Assessment – The Respondent shall provide a toxicity assessment of those chemicals found to be of concern during Site investigation activities. This will involve an assessment of the types of adverse health or environmental effects associated with chemical exposures, the relationship between magnitude of exposures and adverse effects, and the related uncertainties for contaminant toxicity, (e.g., weight of evidence for a chemical's carcinogenicity). EPA has prepared chemical screening tables with updated toxicity values and Preliminary Remediation Goals for various land uses available from: https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables

Risk Characterization – The Respondent shall integrate information developed during the exposure and toxicity assessments to characterize the current or potential risk to human health and/or the environment posed by the Site. This characterization should identify the potential for adverse health or environmental effects for the chemicals of concern and identify any uncertainties associated with contaminant(s), toxicity(ies), and /or exposure assumptions.

TASK 4 - TREATABILITY STUDIES

If potential remedial actions involving treatment have been identified by Respondent or EPA, Respondent shall conduct treatability studies except where Respondent can demonstrate to the satisfaction of EPA that they are not needed. The following activities shall be performed by the Respondent to support all treatability studies.

a. Determination of Candidate Technologies and of Need for Testing

The Respondent shall identify in a technical memorandum, subject to EPA review and approval, candidate technologies for a treatability studies program during project planning (Task 1). The listing of candidate technologies must cover the range of technologies required for the development and analysis of alternatives (Task 5 and 6) The specific data requirements for the testing program will be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 3, 5, and 6).

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Conduct literature survey and determine the need for treatability testing

The Respondent shall conduct a literature survey to gather information of performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. If practical candidate technologies have not been sufficiently demonstrated or cannot be adequately evaluated for this Site based on available information, treatability testing must be conducted. Where it is determined by EPA that treatability testing is required, and unless the Respondent can demonstrate to EPA's satisfaction that it is not needed, the Respondent shall submit a SOW to the RPM outlining the steps and data necessary to evaluate and initiate the treatability testing program.

Evaluation of treatability studies

Once a decision has been made to perform treatability studies, the Respondent and EPA will decide the types of treatability testing to utilize (e.g., bench and/or pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing should be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, the Respondent shall either submit to the RPM a treatability testing work plan or an amendment to the original Site work plan for EPA's review and approval.

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b. Treatability Testing and Deliverables

The deliverables that are required, in addition to the memorandum identifying candidate technologies, where treatability testing is conducted, include a work plan, a sampling and analysis plan, and a final treatability evaluation report. EPA may also require a treatability study health and safety plan, where appropriate.

Treatability testing work plan

The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's review and approval, describing the Site background, remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The DQOs for treatability testing must be documented as well. If pilot scale treatability testing is to be performed, the pilot scale work plan will describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-site, permitting requirements must be addressed.

Treatability study SAP

If the original QAPP or FSP does not address activities to be performed during the treatability tests, a separate treatability study SAP or amendment to the original Site SAP must be prepared by the Respondent for EPA's review and approval. Task 1, Item c. of this statement of work provides additional information on the requirements of the SAP.

Treatability study HASP

If the original HASP is not adequate for defining the activities to be performed during the treatment tests, a separate or amended HASP must be developed by the Respondent. Task 1, Item c, of this SOW provides additional information on the requirements of the health and safety plan. EPA does not "approve" thetreatability study HASP.

Treatability study evaluation report

Following completion of treatability testing, the Respondent shall analyze and interpret the testing results in a technical report to EPA. Depending on the sequence of activities, this report may be a part of the RI/FS report or a separate deliverable. The report must evaluate each technology's effectiveness, implementability, cost, and actual results as compared with predicted results. The report must also evaluate full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 5 - FEASIBILITY STUDY

The Feasibility Study is comprised of two primary activities: (1) the development and screening of alternatives, and (2) the detailed analysis of alternatives. The alternatives surviving the screening process will be subject to the detailed analysis process. The FS Report must document the results of these two components of FS. Interim deliverables associated with these activities will be identified in the RI/FS Work Plan. The RI and FS

are interactive and will be conducted concurrently, to the extent practicable, in a manner that allows information and data collected during the RI to influence the development of remedial alternatives during the FS, which in turn affect additional information and data needs and the scope of any necessary treatability studies and risk assessments.

a. Remedial Alternative Development

The Respondent shall develop and evaluate a range of appropriate waste management options that, at a minimum, will remediate or control any contaminated media (soil, surface water, ground water, sediments) remaining at the Site, as deemed necessary in the RI to ensure protection of human health and the environment and comply with ARARs, concurrent with the RI site characterization task.

A range of remedial alternatives must be developed to identify and provide a variety of waste management options which then can be evaluated. This range of alternatives must include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which varies in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed. Options involving containment with little or no treatment must be included, as well as options involving both treatment and containment, and a no-action alternative. The following activities shall be performed by the Respondent during the development of remedial alternatives.

Refine and document remedial action objectives

Based on the BLRA, the Respondent shall review, and if necessary, modify the Site-specific remedial action objectives (RAOs) and the list of applicable preliminary remediation goals (PRGs). The modified PRGs shall be documented in a technical memorandum that will be reviewed and approved by EPA. These modified PRGs must specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

Develop general response actions

The Respondent shall develop a range of general response actions for each medium of interest addressing containment, treatment, excavation, pumping, or any other actions, singly or in combination, that may be utilized to satisfy the remedial action objectives for the Site.

Identify areas or volumes of media

The Respondent shall identify volumes and/or areas of media to which general response actions might be applied, taking into account the requirements for protectiveness as identified in the RAOs and the chemical and physical characterization of the Site.

Identify, screen, and document remedial technologies

The Respondent shall identify and evaluate potential remedial technologies applicable to each general response action. The Respondent shall identify various alternatives for implementing each remedial technology. These alternatives must be evaluated and screened based upon their effectiveness, implementability, and cost factors. Generally, this screening is only necessary when there are many feasible alternatives available for detailed analysis. If necessary, the screening of alternatives shall be conducted to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening must preserve the range of treatment and containment alternatives that was initially developed insuring that the alternatives will meet RAOs, ARARs and all other identified performance standards. The range of remaining alternatives must include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondent shall prepare a technical memorandum summarizing the results and reasoning employed in screening and arraying alternatives that remain after screening. In addition, a description of the remedial technology alternatives which were eliminated from further consideration as well as the reasons for eliminating the alternatives must be included in the memorandum.

Assemble and document alternatives

The Respondent shall assemble selected representative technologies into a range of alternatives for each affected medium or operable unit. Together, all of the alternatives will represent treatment and containment combinations that will address either all of the Site or operable units. A summary of the assembled alternatives and their related action-specific ARARs must be prepared for EPA by the Respondent for inclusion in a technical memorandum.

TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES

The detailed analysis of alternatives shall be conducted by the Respondent to provide EPA with the information needed to allow for the selection of a Site remedy. This analysis is the final task to be performed by the Respondent during the FS.

a. Detailed Analysis of Alternatives

The Respondent shall conduct a detailed analysis of alternatives which must consist of an analysis of each option against a set of nine evaluation criteria and a comparative analysis of all options using the same evaluation criteria as a basis for comparison. EPA has developed the nine evaluation criteria to address the statutory requirements and preferences of CERCLA

Apply nine criteria and document analysis

The Respondent shall apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) costs; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: Criteria 8 and 9 are considered after the RI/FS report has been released to the general public). For each alternative, the Respondent must provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative; and (2) a discussion of the individual criterion assessment.

Compare alternatives against each other and document the comparison of alternatives

The Respondent shall perform a comparative analysis between the remedial alternatives. That is, each alternative must be compared against the others using the evaluation criteria as a basis of comparison. Identification and selection of the preferred alternative are reserved by EPA. The Respondent shall prepare a technical memorandum summarizing the results of the comparative analysis.

Commented [LO14]: Will there be consultation with the Support Agencies?

b. *Detailed Analysis Deliverables*

In addition to the technical memorandum summarizing the results of the comparative analysis, the Respondent shall submit a draft FS report to the RPM for review and approval. Once EPA's comments have been addressed by the Respondent to the satisfaction of EPA, the final FS report may be bound with the final RI report.

Feasibility Study report

The Respondent shall submit a draft FS report for EPA and the Support Agencies' review and comment. This report, as ultimately adopted or amended by EPA, provides a basis for remedy selection by EPA, and documents the development and analysis of remedial alternatives. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and the required report content, and a suggested format for the report can be found in Attachment D. The Respondent shall prepare a final FS report which satisfactorily addresses the comments.

Commented [LO15]: This is the first reference to Support Agencies in the draft SOW. Should Support Agencies be defined? Does the FS report need approval in addition to review and comment?

REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process.

The (revised) National Oil and Hazardous Substance Pollution Contingency Plan (NCP).

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA", U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3.

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"A Compendium of Superfund Field Operations Methods", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.

U.S. EPA, NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA -330/9-78-991-R.

"Data Quality Objectives for Remedial Response Activities", U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.

"Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Research and Development, Cincinnati, Ohio, QAMS-004/80, December 29, 1980.

"QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision), EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Studies, and EPA QA/G-4 Guidance for the Data Quality Objective Process"

"Interim Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.

"Users Guide to the Lead Agency(ies) Contract Laboratory Program, U.S. EPA, Sample Management Office, August 1982.

"Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements", U.S. EPA, Office of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.

"CERCLA Compliance with Other Laws Manual", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.

"Guidance on Remedial Actions for Contaminated Groundwater at Superfund Sites", U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.

"Draft Guidance on the Lead Agency(ies) Superfund Decision Documents", U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02.

"Risk Assessment Guidance for Superfund--Volume I, Human Health Evaluation Manual (Part A)", December 1989, EPA/540/1-89/002.

"Risk Assessment Guidance for Superfund--Volume II Environmental Evaluation Manual", March 1989, EPA /540/1-89/001.

"Guidance for Data Usability in Risk Assessment", October 1990, EPA /540/G-90/008. "Performance of Risk Assessments in Remedial Investigation/ Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)", August 28, 1990, OSWER Directive No. 9835.15.

"Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions", April 22, 1991, OSWER Directive No. 9355.0-30.

"Health and Safety Requirements of Employees Employed in Field Activities", U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

"Interim guidance on Administrative Records for Selection of CERCLA Response Actions", U.S. EPA, Office of Waste Programs Enforcement, March 1, 1989, OSWER Directive No. 9833.3A.

"Community Relations in Superfund: A Handbook", U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9320.0-03B.

"Community Relations During Enforcement Activities and Development of the Administrative Record", U.S. EPA, Office of Waste Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1A.

Attachments

Attachment A – Suggested RI/FS Work Plan Format

Executive Summary

1. Introduction
2. Site Background and Setting
3. Initial Evaluation
   - Types and volumes of waste present
   - Potential pathways of contaminant migration/preliminary public health and environmental impacts
   - Preliminary identification of operable units
   - Preliminary identification of response objectives and remedial action alternatives
4. Work Plan Rationale
   - DQO needs
   - Work Plan approach
5. RI/FS Tasks
6. Cost and Key Assumptions
7. Schedule
8. Project Management
   - Staffing
   - Coordination
9. References

Appendices

Attachment B – Suggested Format for SAP (FSP and QAPP)

FSP

1. Site Background
2. Sampling Objectives
3. Sample Location and Frequency
4. Sample Designation
5. Sampling Equipment and Procedures
6. Sample Handling and Analysis

QAPP

Project Management

A1 Title and Approval Sheet
A2 Table of Contents
A2 Distribution List
A4 Project/Task Organization
A5 Problem Definition/Background
A6 Project/Task Description
A7 Quality Objectives and Criteria
A8 Special Training/Certifications
A9 Documentation and Records

Data Generation and Acquisition

B1 Sampling Process Design (Experimental Design)
B2 Sampling Methods
B3 Sample Handling and Custody
B4 Analytical Methods
B5 Quality Control
B6 Instrument/Equipment Testing, Inspection, and Maintenance
B7 Instrument/Equipment Calibration and Frequency
B8 Inspection/Acceptance of Supplies and Consumables
B9 Non-direct Measurements
B10 Data Management

Assessment and Oversight

C1 Assessments and Response Actions
C2 Reports to Management

Data Validation and Usability

D1 Data Review, Verification, and Validation
D2 Verification and Validation Methods
D3 Reconciliation with User Requirements

~~Title Page~~

~~Table of Contents~~

~~1. Project Description~~

~~2. Project Organization and Responsibilities~~

~~3. QA Objectives for Measurement~~

~~4. Sampling Procedures~~

~~5. Sample Custody~~

~~6. Calibration Procedures~~

~~7. Analytical Procedures~~

~~8. Data Reduction, Validation, and Reporting~~

~~9. Internal Quality Control~~

~~10. Performance and Systems Audits~~

~~11. Preventative Maintenance~~

~~12. Data Assessment Procedures~~

~~13. Corrective Actions~~

~~14. Quality Assurance Reports~~

Attachment C – Suggested RI Report Format

Executive Summary

1. Introduction
   - 1.1 Purpose of Report
   - 1.2 Site Background
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Previous Investigations
   - 1.3 Report Organization
2. Study Area Investigation
   - 2.1 Includes field activities associated with site characterization. These may include physical and chemical monitoring of some, but not necessarily all, of the following:
     - 2.1.1 Surface Features (topographic mapping, etc.) (natural and manmade features)
     - 2.1.2 Contaminant Source Investigations
     - 2.1.3 Meteorological Investigations
     - 2.1.4 Surface-Water and Sediment Investigations
     - 2.1.5 Geological Investigations
     - 2.1.6 Soil and Vadose Zone Investigations
     - 2.1.7 Ground-Water Investigations
     - 2.1.8 Human Population Surveys
     - 2.1.9 Ecological Investigations
   - 2.2 If technical memoranda documenting field activities were prepared, they may be included in an appendix and summarized in this report chapter
3. Physical Characteristics of the Study Area
   - 3.1 Includes results of field activities to determine physical characteristics. These may include some, but not necessarily all, of the following:
     - 3.1.1 Surface Features
     - 3.1.2 Meteorology
     - 3.1.3 Surface-Water Hydrology
     - 3.1.4 Geology
     - 3.1.5 Soils
     - 3.1.6 Hydrogeology
     - 3.1.7 Demography and Land Use
     - 3.1.8 Ecology
4. Nature and Extent of Contamination

4.1 Presents the results of Site characterization, both natural and chemical components and contaminants in some, but not necessarily all, of the following media:

4.1.1 Sources (lagoons, sludges, tanks, etc.)

4.1.2 Soils and Vadose Zone

4.1.3 Ground Water

4.1.4 Surface Water and Sediments

4.1.5 Air

5. Contaminant Fate and Transport

5.1 Potential Routes of Migration (i.e., air, groundwater, etc.)

5.2 Contaminant Persistence

5.2.1 If they are applicable (i.e., for organic contaminants), describe estimated persistence in the study area environment and physical, chemical, and/or biological factors of importance for the media of interest

5.3 Contaminant Migration

5.3.1 Discuss factors affecting contaminant migration for the media of important (e.g., sorption onto soils, solubility in water, movement of ground water, etc.)

5.3.2 Discuss modeling methods and results, if applicable

6. Baseline Risk Assessment

6.1 Human Health Evaluation

6.1.1 Exposure Assessment

6.1.2 Toxicity Assessment

6.1.3 Risk Characterization

6.2 Environmental Evaluation

7. Summary and Conclusions

7.1 Summary

7.1.1 Nature and Extent of Contamination

7.1.2 Fate and Transport

7.1.3 Risk Assessment

7.2 Conclusions

7.2.1 Data Limitations and Recommendations for Future Work

7.2.2 Recommended Remedial Action Objectives

Appendices

A. Technical Memorandum on Field Activities (if available)

B. Analytical Data and QA/QC Evaluation Results

C. Risk Assessment Methods

Attachment D – Suggested Format for Feasibility Study Report

Executive Summary

1. Introduction
   - 1.1 Purpose and Organization Report
   - 1.2 Background Information (Summarized from RI Report)
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Nature and Extent of Contamination
     - 1.2.4 Contaminant Fate and Transport
     - 1.2.5 Baseline Risk Assessment
2. Identification and Screening of Technologies
   - 2.1 Introduction
   - 2.2 Remedial Action Objectives – Presents the development of remedial action objectives for each medium of interest (i.e., ground water, soil, surface water, air, etc.) For each medium, the following should be discussed:
     - Contaminants of interest
     - Allowable exposure based on risk assessment (including ARARs) Development of remediation goals
   - 2.3 General Response Actions – For each medium of interest, describes the estimation of areas or volumes to which treatment, containment, or exposure technologies may be applied.
   - 2.4 Identification and Screening of Technology Types and Process Options – For each medium of interest, describe:
     - 2.4.1 Identification and Screening of Technologies
     - 2.4.2 Evaluation of Technologies and Selection of Representative Technologies
3. Development and Screening of Alternatives
   - 3.1 Development of Alternatives – Describes rationale for combination of technologies/media into alternatives. Note: This discussion may be by medium or for the Site as a whole.
   - 3.2 Screening of Alternatives (if conducted)
     - 3.2.1 Introduction
     - 3.2.2 Alternative 1
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.2 Alternative 2
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation

3.2.3 Alternative 3
3.2.3.1 Description
3.2.3.2 Evaluation

4. Detailed Analysis of Alternatives
4.1 Introduction
4.2 Individual Analysis of Alternatives
4.2.1 Alternative 1
4.2.1.1 Description
4.2.1.2 Evaluation
4.2.2 Alternative 2
4.2.2.1 Description
4.2.2.2 Evaluation
4.2.3 Alternative 3
4.2.3.1 Description
4.2.3.2 Evaluation
4.3 Comparative Analysis

Attachment E – Stibnite Mine Remedial Investigation and Feasibility Study (RI/FS) Statement of Work (SOW) Schedule

RI/FS Work Plan/Sampling and Analysis Plan (WP/SAP):

- Draft due within 120 days after the Effective Date of the Settlement Agreement/CO.
- Final Work Plan due within 90 days of receipt of consolidated Agency comments.

Data Summary Reports (DSRs):

- Draft DSRs due within 120 days completion of each season's field work or within 90 days of the receipt of final laboratory data, whichever is earlier. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the completion date. Within 5 days of the receipt of final laboratory data for the preceding field season, Respondent shall provide written notification to EPA identifying the receipt date of final laboratory data.
- Final DSRs due within 30 days of receipt of consolidated Agency comments.

Remedial Investigation Report (RI):

- Submit draft RI within 120 days after receipt of laboratory data from the final field season. Within 5 days of receipt of final laboratory data, Respondent shall provide written notification to EPA identifying receipt date of final laboratory data.
- Final RI due within 60 days of receipt of consolidated Agency comments.

Baseline Risk Assessment Report (BLRA):

- Submit draft BLRA within 60 days after submittal of Final RI.
- Final BLRA due within 60 days of receipt of consolidated Agency comments.

Feasibility Study (FS):

- Submit draft FS within 120 days after submittal of BLRA Report.
- Final FS due within 90 days of receipt of consolidated Agency comments.

Data Validation Summaries (DVSs):

- DVSs due within 120 days from the date of collection of the last sample from each sampling event. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the date of collection of the last sample from each sampling event.

Interim Deliverables

- Draft Interim Deliverables (i.e., Technical Memoranda for Treatability Studies Preliminary Remedial Goals, Remedial Action Objectives, etc.) as identified in the SOW, or as required by EPA, shall be due within 30 days receipt of notice by Respondent that said Deliverable is required.
- Final Interim Deliverables due within 60 days of receipt of consolidated Agency comments.

Quarterly Progress Reports

- Quarterly Progress Reports shall be due 15 days after the end of the previous calendar quarter.

[1]Documents may initially be released as "draft final" pending final resolution of issues.

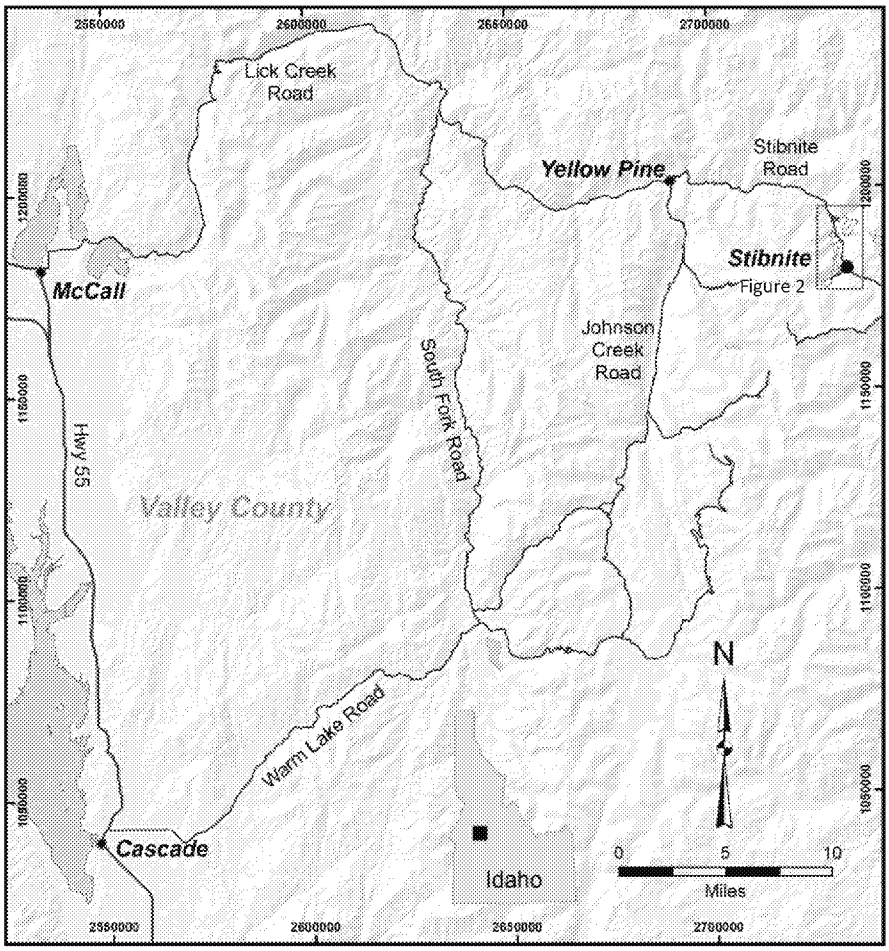

Figure 1 – Site Location

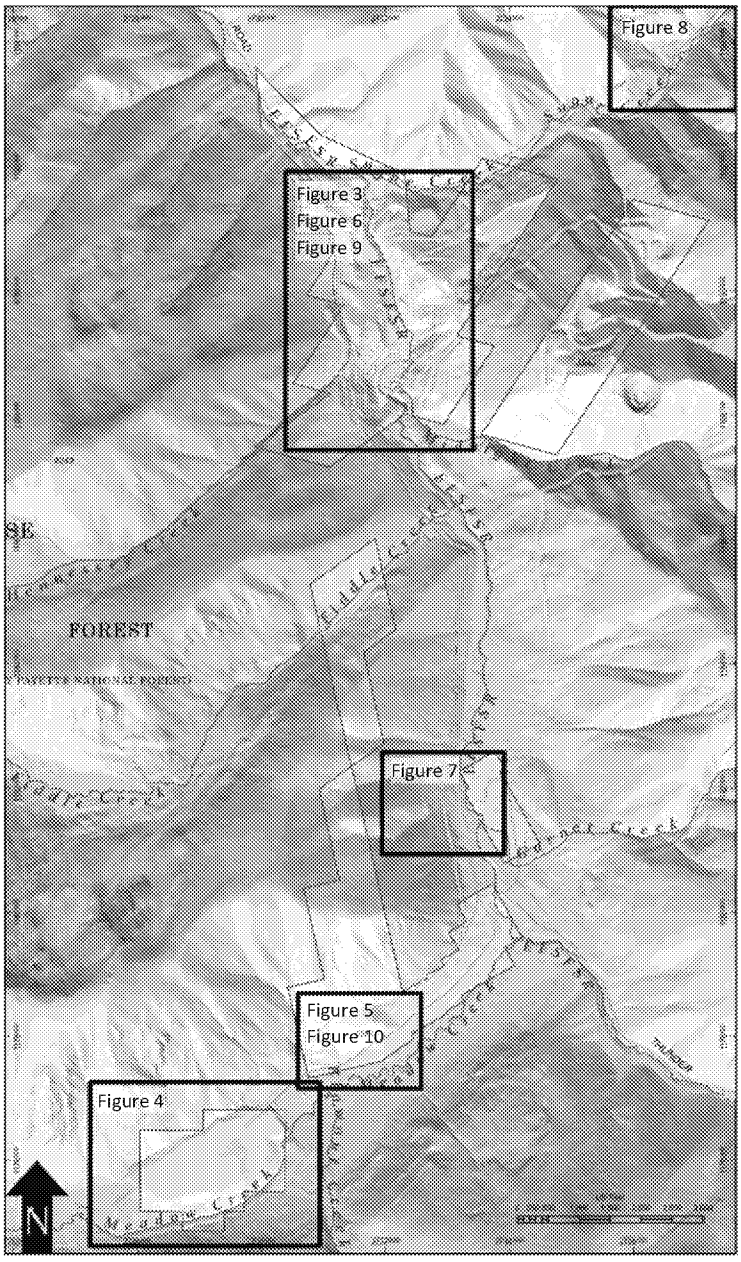

Figure 2 – Stibnite Mine Site

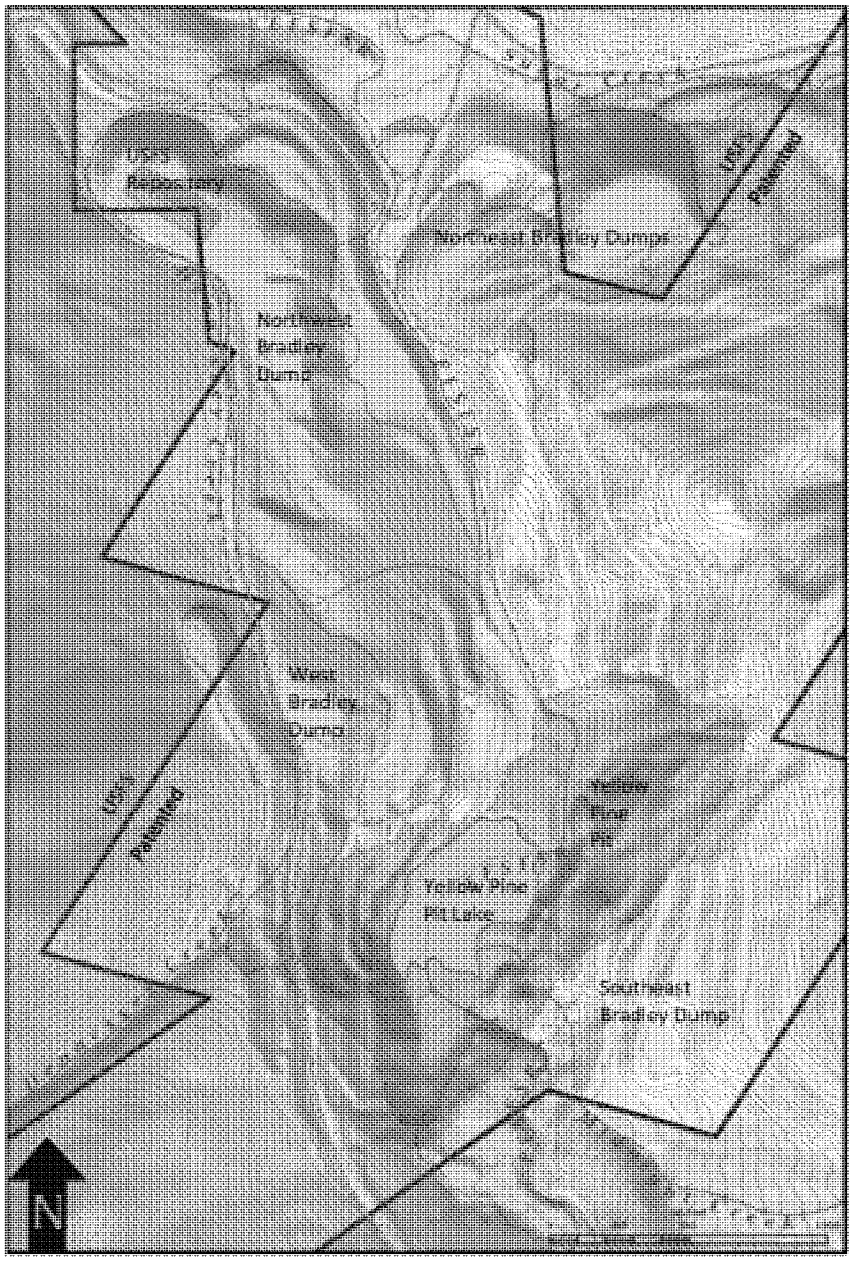

Figure 3 –Yellow Pine Pit

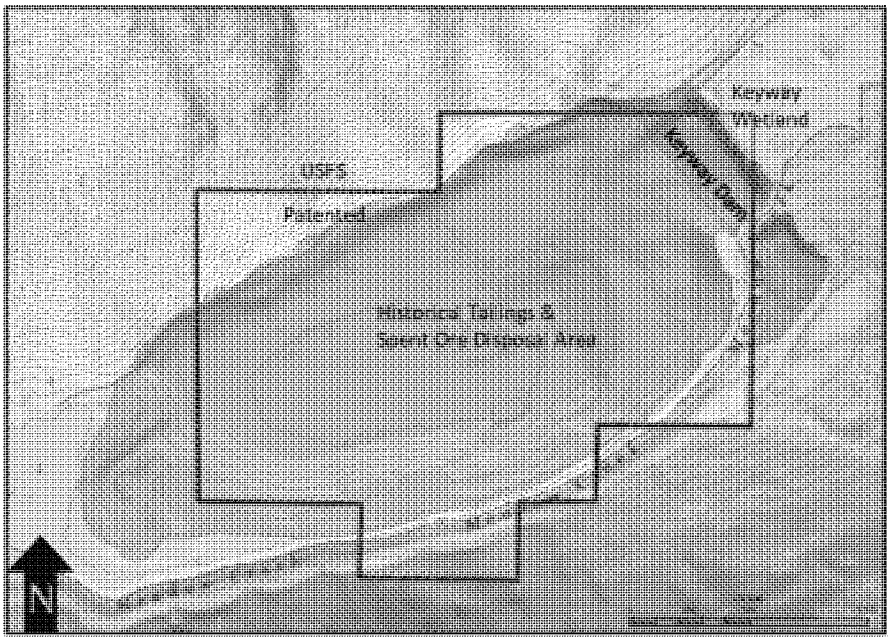

Figure 4 – Historical Tailings and Spent Ore Disposal Area

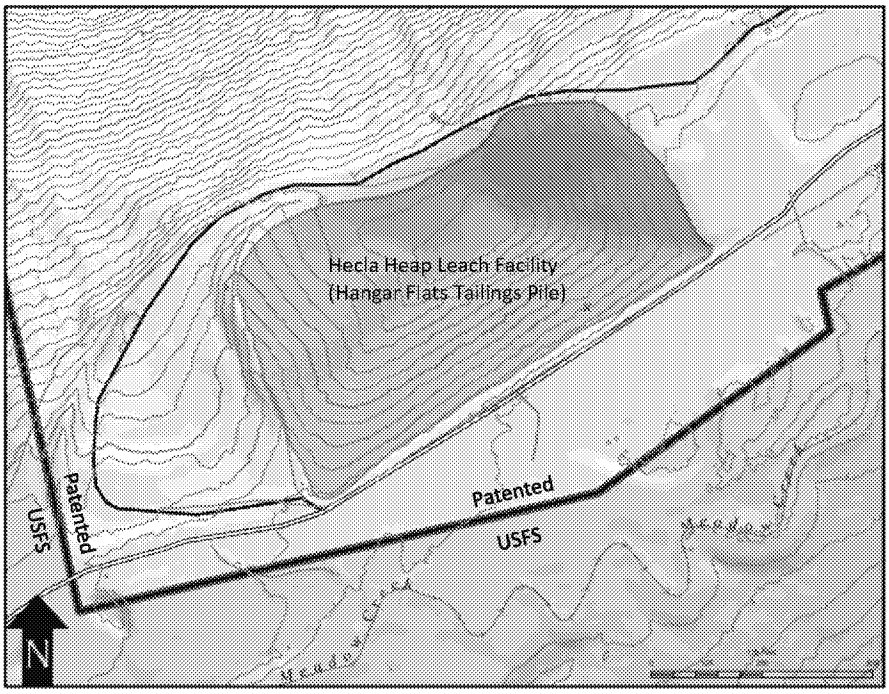

Figure 5 – Hecla Heap Leach Facility

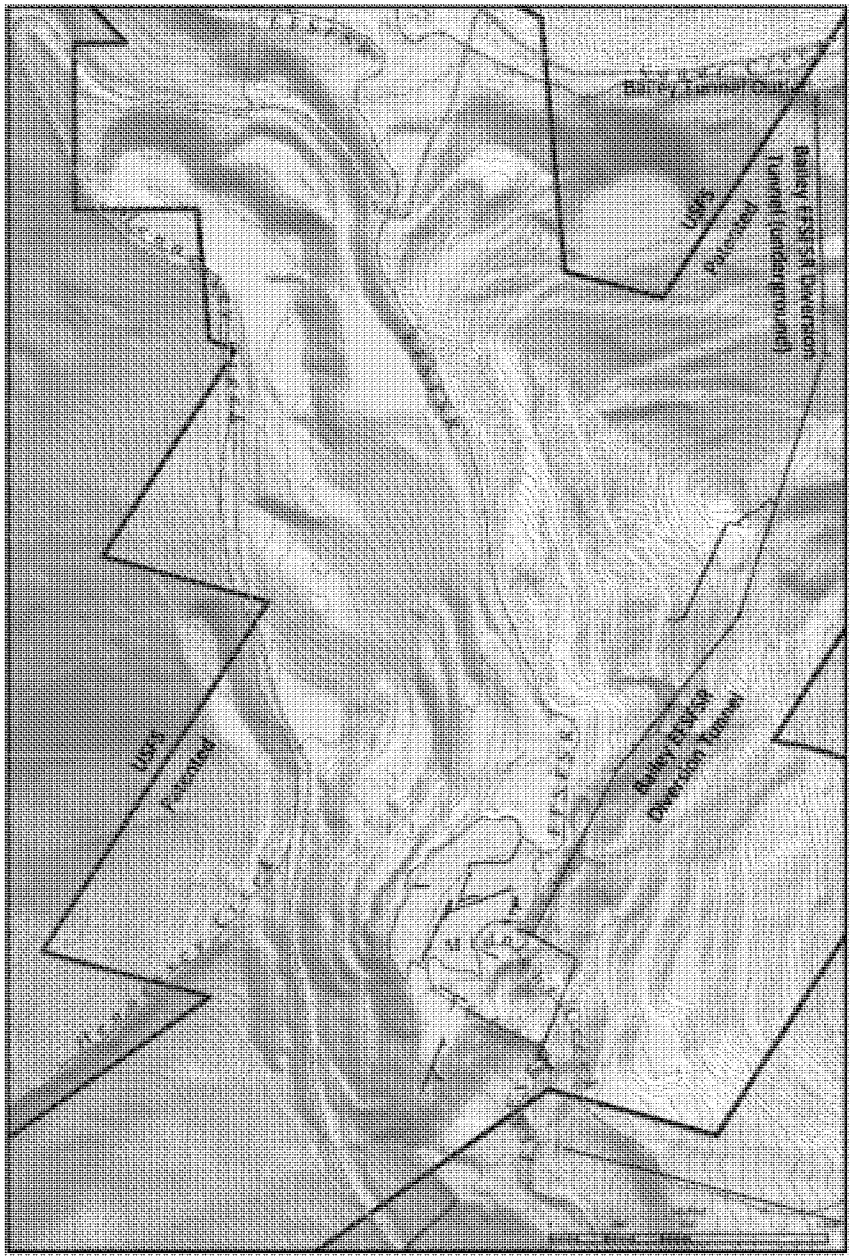

Figure 6 – Bailey Tunnel

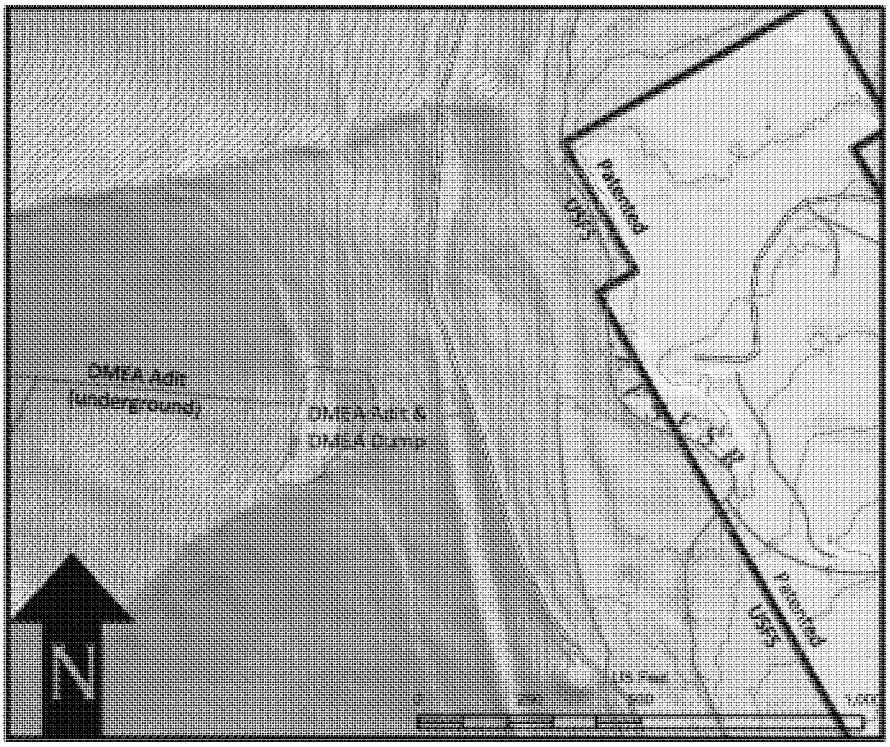

Figure 7 – Defense Minerals Exploration Administration Adit and Waste Rock Dump

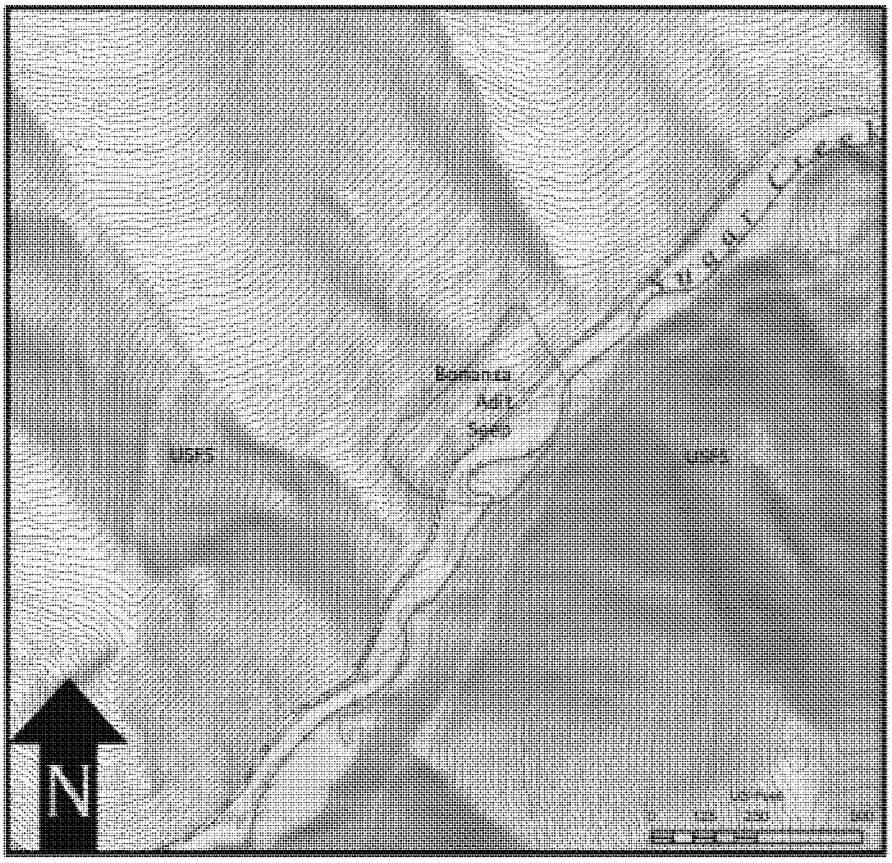

Figure 8 – Bonanza Adit

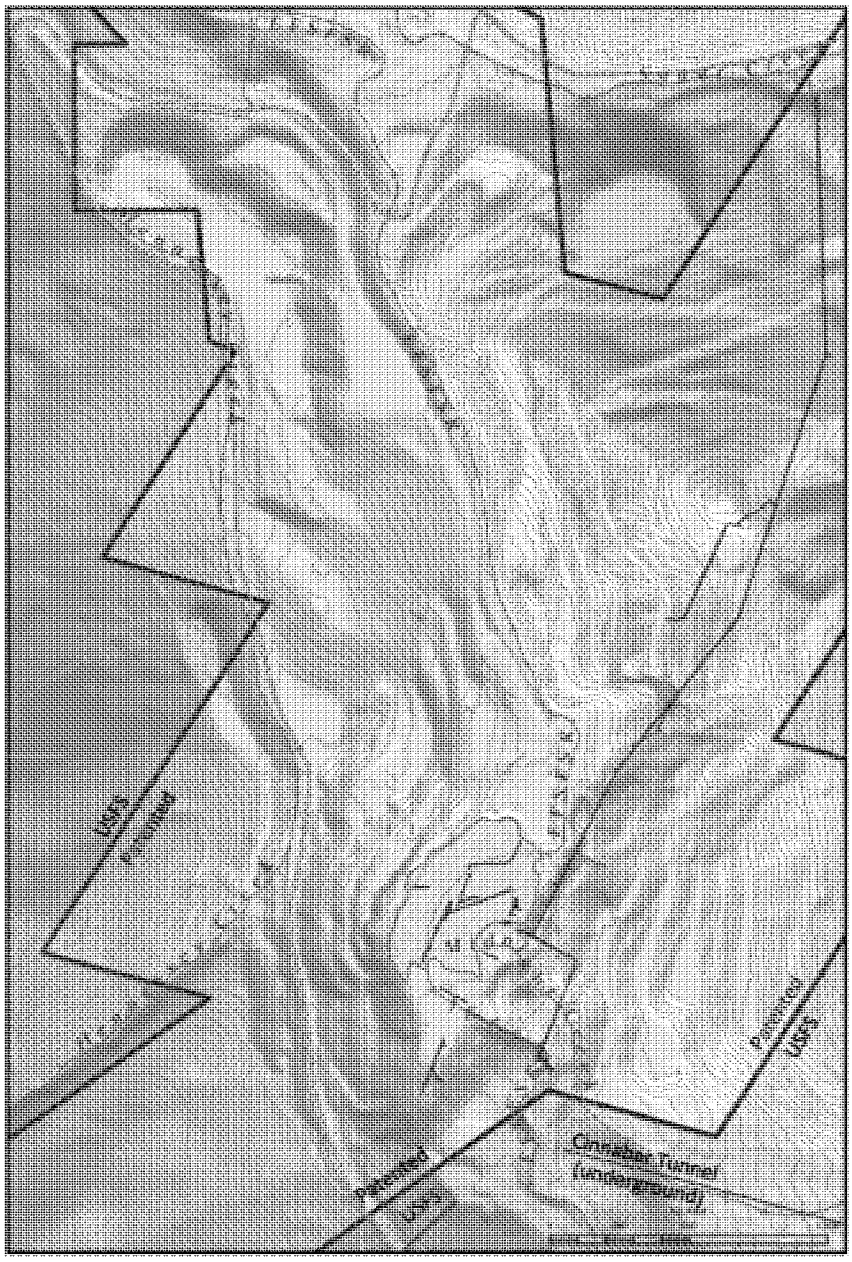

Figure 9 – Cinnabar Tunnel

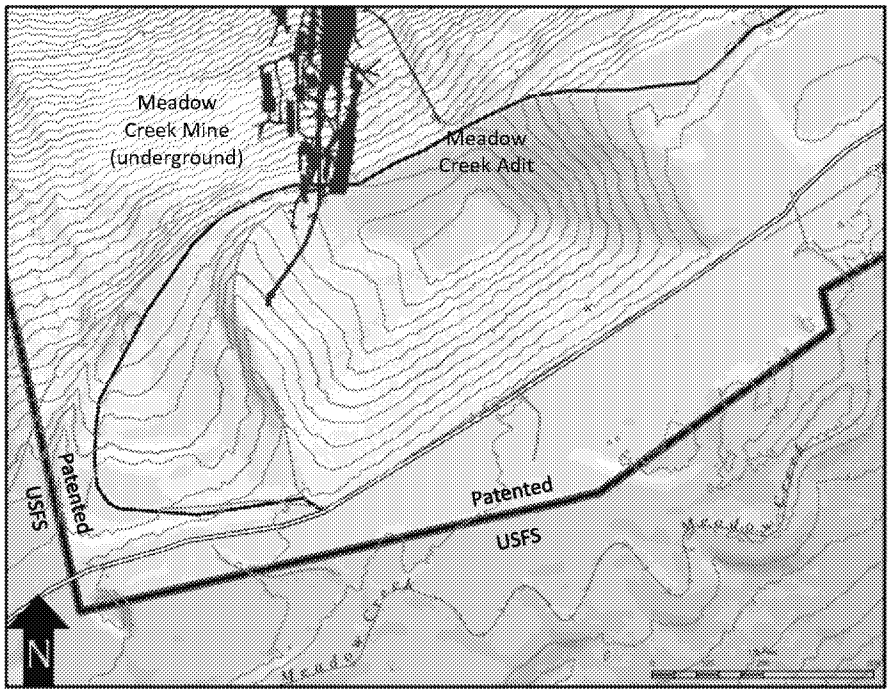

Figure 10 – Meadow Creek Adit

EXHIBIT 15

to

Declaration of Michael Bogert

Draft Statement of Work for Stibnite Mine RI/FS
Shoshone-Bannock Tribes' Comments
November 12, 2019, updated November 13, 2019

General Comments and Questions:

1. Many places throughout the Statement of Work (SOW) should refer to "analyses" rather than "analysis."
2. Does the Mining Plan of Restoration and Operations (PRO) cover all of Midas Gold's patented land, other than the DMEA Adit and Waste Rock Dump (#5 on page 2) and the Bonanza Adit (#6)? What are the plans for the parcels of land outside the PRO?
3. The SOW refers to the PRO, which is very lengthy; we would like some time to review the PRO in its entirety. Our initial comments regarding the PRO are as follows: (1) The PRO refers to a Technical Report and a Pre-Feasibility Report that have been conducted, and we're assuming much of the data in these reports will be used for the RI/FS. The data should be of Tier 4 Quality if it will be used for human health risk purposes. (2) The PRO references Canadian Mining Principles, N143-101. We think that U.S. guidance should be used.

Purpose/Description of the Site:

Page 2 - The Site is defined by 8 areas. Areas #5 and #6 (DMEA Adit and Waste Rock Dump and Bonanza Adit) are listed as not within the footprint of the Midas Gold PRO. The distance of these two areas from proposed mining activities should be listed, as well as any overflow expectations, connectivity of features to proposed mining, tailings, and expected or unexpected impacts on the hydrogeology of both surface water and groundwater.

Oversight:

Page 3 – The Shoshone-Bannock Tribes ("SBT" or "Tribes") should be listed as an oversight Agency, along with the EPA, USFS and IDEQ. [Note –The term "Agency" in the rest of these comments is intended to include the SBT.]

SBT should receive copies of all reports, etc., because the Tribes plan to comment on these documents as part of their oversight responsibilities. This seems to be what Midas Gold intended, since Attachment E (schedule) refers throughout to "consolidated Agency comments." We added specific references to SBT/Tribes (which could be changed to "Agencies" assuming SBT is added as an "Agency" and assuming that the other Agencies want to be included) where we thought appropriate, just to be sure. For example, on page 3 the last full paragraph should say "Respondent shall submit all documents or deliverables required as part of this SOW to EPA <u>and the Tribes</u>, for EPA's <u>and the Tribes'</u> review and <u>EPA's</u> approval." The last paragraph should say "Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA <u>and the Tribes</u> to aid in project planning."

Guidance:

Page 4 – All Guidance documents followed should be the most up to date drafts.

Roles and Responsibilities:

Page 4 – Please add the underlined language for clarity, since there's a required process for EPA to go through before issuing a ROD: "At the completion of the RI/FS . . . in a Record of Decision (ROD), consistent with the NCP."

Task 1 - Scoping:

Page 4 – "Respondent shall document the specific project scope in the RI/FS Work Plan, which shall be consistent with the AOC." Also, "During the scoping process, the Site- specific objectives of the RI/FS . . . will be proposed by the Respondent but will be determined ~~and approved~~ by EPA."

Page 5 – "When scoping the specific aspects of this project, Respondent shall meet with EPA and the Tribes either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site."

Page 5 – "The Respondent, ~~and~~ EPA and the Tribes shall conduct a Site visit during the project scoping phase."

Page 6 – "The Respondent shall meet with EPA's Remedial Project Manager (RPM) and with the appropriate contact from the Tribes (either in person or telephonically) regarding the following activities and before drafting the scoping deliverables listed below."

Page 7 – Document the Need for Treatability Studies – "Should treatability studies be determined to be necessary, a testing plan . . . should be submitted to EPA and the Tribes for review and for EPA's approval."

Page 7 – Scoping Deliverables – "These plans must be reviewed by EPA and the Tribes and approved by EPA prior to the initiation of field activities."

Page 7 - RI/FS Work Plan – "A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM and the Tribes for review and for EPA's approval."

Pages 11 through 14 – Potential Target Analytes – The only radiological constituent listed is uranium, and it isn't listed for all media. Since uranium may be a concern, as indicated by it being listed as a COPC for surface water, then uranium and all associated uranium daughters should be listed as COPCs in all media.

Task 2 - Community Relations:

Page 14 – "Respondent may assist by providing information regarding the Site's history, participating in public and community (including tribal community) meetings, and preparing fact sheets for distribution to the general public and relevant tribes, including the Shoshone-Bannock Tribes." All impacted tribes should be included, even though the Shoshoni historically were the main tribes in this area.

Also, SBT would like to have a copy of the administrative record kept at Fort Hall so that it is readily available to tribal members, especially those who exercise their treaty rights in this area. And finally, "Any PRP-conducted community relations activities will be subject to oversight by EPA and the other Agencies."

Task 3 - Site Characterization

Page 15, 2d ¶ – "The Respondent shall notify the RPM and the relevant contacts for the other Agencies at least two weeks in advance of the field work regarding the planned dates for field activities . . . ."

Same edit in last sentence on pages 15-16: "The Respondent shall notify the RPM and the relevant contacts for the other Agencies at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM and the relevant contacts for the other Agencies upon completion of field support activities."

Page 17 – "All data and programming, including any proprietary programs, shall be made available to EPA and the Tribes together with a sensitivity analysis.

Page 18 – same edit: "All validated data shall be made available to EPA and the Tribes in electronic format. . . . Field and validated analytical data results for all media sampled shall be submitted to EPA and the Tribes by uploading the data . . . ."

Page 18 – Similarly, "The Respondent shall prepare and submit a draft RI report to the RPM for review and approval, and shall provide a copy of the report to the Tribes."

Page 19 – The Tribes would provide comments on the report, but they could do so directly to Midas Gold or through EPA (see first complete sentence at the top of p. 19).

Page 19 – BLRA – The EPA human health risk assessment must include a tribal scenario.

Task 4 – Treatability Studies

Page 20 – first sentence: "Respondent shall identify in a technical memorandum, subject to EPA and the Tribes' review and EPA's approval, candidate technologies for a treatability studies program during project planning (Task 1)."

Page 20 – Evaluation of Treatability Studies – "Once a decision has been made to perform treatability studies, the Respondent and EPA, in consultation with the Tribes, will decide the types of treatability testing to utilize. . . . the Respondent shall either submit to the RPM and the Tribes a treatability testing work plan or an amendment to the original Site work plan for EPA's and the Tribes' review and EPA's approval."

Pages 20-21 – Treatability Testing Work Plan – "The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's and the Tribes' review and EPA's approval." Same edit to Treatability Study SAP.

Task 5 – Feasibility Study

Page 22 – "The modified PRGs shall be documented in a technical memorandum that will be reviewed by EPA and the Tribes and approved by EPA."

Attachment C – Suggested RI Report Format

Vegetation results need to be included here so the Tribes can see what has been evaluated. If they aren't included, this will be a major data gap.

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/14/2019 5:15:21 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; Merissa A. Moeller [mmoeller@martenlaw.com]
Subject: Stibnite Mine
Attachments: 6-13-2019 EPA Response to Midas Gold Technical Proposal.pdf

Hello, Brad and Merissa. The technical staff from EPA, IDEQ, and USFS have completed their review of Midas' proposed statement of work. I have attached a letter that sets forth their thoughts on the proposal. Feel free to call if you would like to discuss the letter and next steps.

- Elizabeth

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

OFFICE OF
REGIONAL COUNSEL

June 13, 2019

Midas Gold Idaho, Inc.
P.O. Box 429
13181 Hwy 55
Donnelly, ID 83615

VIA ELECTRONIC MAIL ONLY

Re: Stibnite Mine

Dear Brad,

On April 30, 2019, Midas Gold Corporation provided the Environmental Protection Agency Region 10 (EPA) and the Idaho Department of Environmental Quality (IDEQ) with a proposed settlement agreement to undertake a limited initial investigation into existing contamination at the Forest Service Smelter Waste Cell and the Defense Minerals Exploration Administration Dump (DMEA Dump) at the Stibnite Mine Site (Site). This letter pertains to the technical proposal set forth in the statement of work attached to the proposed settlement agreement. As we have discussed, if the government agencies and Midas can agree on the appropriate technical work to be done, we will need to discuss restructuring the agreement so that terms reflect EPA's standard administrative orders on consent. In addition, Midas has not yet substantiated its claim that it is a bona fide prospective purchaser.

On May 17, 2019, Midas met with EPA and IDEQ to explain its technical proposal to the agencies. Midas stated that the goal of performing the work proposed is to discover the sources of elevated levels of arsenic, antimony, and mercury in ground water and/or surface water at the Site. During the meeting, EPA and IDEQ agreed to evaluate the proposal to determine whether the work was appropriate.

After the meeting, EPA invited the United States Forest Service (USFS) to participate in the technical discussions with EPA and IDEQ because the proposed investigatory work involves USFS land. (For the same reason, USFS will need to be a signatory to any final agreement.) We have collectively evaluated the proposal and have concerns that the investigatory work will not achieve the stated purpose. The agencies do not believe that the USFS-constructed repository on the Northwest Bradley Waste Rock Dump is a significant source of the elevated arsenic concentrations measured in monitoring well MWH-A19. The repository was constructed on an elevated portion of the dump that does not contact groundwater. In addition, the repository was constructed with a low-permeability Geosynthetic Clay Liner (GCL) cover to minimize infiltration and percolation through the materials. Groundwater elevation contour data provided by Midas Gold indicates a northerly flow direction, such that MWH-A19 may not be directly downgradient from the repository. Finally, the downgradient monitoring well SRK-GM-03S shows no similarly elevated arsenic or selenium concentrations, which would be expected if the repository were a significant groundwater contaminant source.

ED_004715_00094045-00001

As we discussed during the May 17th meeting, the agencies do not believe that Midas Gold's exploration soil sampling data are appropriate for determining background concentrations of metals in surface soils. Midas Gold collected samples from 0–16 inches below ground surface (bgs), with an average and median depth of 9 and 12 inches bgs, respectively. This exceeds the recommended 0–6 inches bgs sampling depth for assessing risk to human health and wildlife. The agencies recommend using the data sets presented in the 1998 Stibnite Site Characterization Report to establish site-specific background concentrations for mineralized and non-mineralized areas. Analysis of the Woodward-Clyde samples indicate an average of 6.99 ppm arsenic for non-mineralized areas. This is consistent with regional norms. The mineralized areas have an average of 87.51 ppm arsenic.

The agencies have discussed other potential projects that may be more successful in achieving the goal of determining the sources of arsenic, antimony and mercury. For instance, additional groundwater, storm event surface water, and sediment samples near the Bradley Waste Rock Dumps, the Keyway Wetland, Upper Wetland, and stream channels of the East Fork South Fork Salmon River, and tributaries upstream of the Sugar Creek confluence would be important work to perform to understand the sources of contamination. We would be happy to discuss in more detail what options the agencies have considered as alternatives to the investigatory work proposed by Midas Gold. Please let me know if you and your client are interested in meeting to have further technical discussions.

Best regards,

Elizabeth McKenna

cc: Lisa O'Hara, Deputy Attorney General IDEQ
Gary Fremerman, USDA OGC

ED_004715_00094045-00002

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 10/29/2019 9:51:08 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Stibnite Mine

Elizabeth:
Do you have time today at 4 or later for a call about our Friday meeting on the Stibnite mine? If not, then perhaps tomorrow?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 10/24/2019 8:57:27 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Meeting

Sorry, I'm (b) (6) Ex. 6 Personal Privacy (PP) . Will get you answers by Monday. There will be Midas folks present. Probably Andy Koulermos and John Meyer and me. I view this as more of an organizational meeting than a "presentation," since everyone except the Sho-Bans have had multiple presentations. I'd just be sure everyone has the SOW as we last left it, and discuss timeline for completing, open or new issues, perhaps a data repository. I'll think more about it over the weekend and call Monday to finalize personnel, agenda. Ok with you?

Sent from my iPhone

On Oct 24, 2019, at 4:47 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Hi Brad. Do you know if Midas is planning to present materials on line for our meeting next Friday? If so, would Midas be able to provide the electronic forum for that? Also, does anyone from Midas plan to be here in person? I am reserving a conference room, but need to know how big it should be. I will also provide the conference call in number if Midas does not plan to present materials online.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image001.png>

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 11/7/2019 7:52:26 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Model AOC -- Stibnite

Elizabeth:

Can you please send me the Model AOC you are going to work from in drafting the Midas AOC, as we discussed last night? Also, I looked at the Gay Mine AOC you sent and agree that there is some relevant language there as well. Based on our conversation, my understanding is that you have what you need to turn around an AOC draft by November 15, as we agreed, but if there is anything you need from me, please let me know. Thanks

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Message

From: Elizabeth Mckenna Ex. 6 Personal Privacy (PP)
Sent: 7/27/2019 4:25:57 PM
To: bmarten@martenlaw.com
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Stibnite Mine

Hi Brad. Just got Kathy's email forwarding your email. I'm not able to check my work email, so you can email me on my personal email. Ex. 6 Personal Privacy (PP)
I'll give you a call and leave my land line number for you so that we can talk about scheduling a call next week.

Elizabeth

Message

From: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Sent: 7/26/2019 12:39:17 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; John Meyer [JMeyer@midasgoldcorp.com]
CC: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Aaron.Scheff@deq.idaho.gov; Albert Crawshaw [Albert.Crawshaw@deq.idaho.gov]; Zamba, Kathy -FS [kathy.zamba@usda.gov]; Lisa.O'Hara@deq.idaho.gov
Subject: Draft SOW
Attachments: 2019-07-25 Draft Stibnite SOW.docx

Please see the attached response to the Stibnite draft SOW.

Thank you

Kathryn Cerise

Kathryn Cerise
Region 10 Remedial Project Manager
1200 6th Ave,
Seattle, WA 98101
Mail Code: 12 D12 1
Phone: 206-553-2589

Appendix 1

STATEMENT OF WORK FOR THE
STIBNITE MINE REMEDIAL INVESTIGATION / FEASIBILITY STUDY
Valley County ID near Yellow Pine, ID

Purpose

This Statement of Work (SOW) sets forth the requirements for conducting a Remedial Investigation and Feasibility Study (RI/FS) at the Stibnite Mine Site ("Site") located in northwest Idaho approximately 14 miles from the town of Yellow Pine (see Figure 1). The purpose of the RI/FS is to investigate the nature and extent of contamination at the Site and to develop and evaluate remedial alternatives, as appropriate. This SOW provides an overview of Work that will be carried out by Midas Gold Idaho, Inc. ("Midas Gold" or "Respondent") as it implements the RI/FS at the Site.

In September 2016, Midas Gold filed a Plan of Restoration and Operations ("PRO") with the United States Forest Service ("USFS") for the redevelopment of Stibnite, and plans to undertake mining, mineral processing and restoration activities on portions of the Site that will result in landscape-scale changes to many of the existing Site features. As such, the scope and timing of sampling and other elements of the RI/FS will consider potential mining acitivies in the PRO, any modifications and subsequent remediation ~~must be consistent with the PRO and the subsequent restoration~~. This will require flexibility in the RI/FS and could require a phased approach to accelerate certain activities.

The Site is defined as the ~~features~~ areas described below (general locations summarized on Figure 2) and the areal extent of contamination from those features and all suitable areas in ~~very~~ close proximity to the contamination necessary for response action implementation:

1. **Yellow Pine Pit (Figure 3)** – The Yellow Pine Pit (formerly known as "The Glory Hole") was actively mined during the 1930s through the 1950s for antimony, tungsten, gold and silver. The pit is located on Midas Gold patented land, and most of the waste rock dumps associated with the pit are adjacent to the pit; some of the waste rock dumps are located on USFS managed land. During active mining, the East Fork of the South Fork of the Salmon River (EFSFSR) was routed around the pit through the Bailey Tunnel but was allowed to return to its natural course through the pit after the Bailey Tunnel was abandoned in the mid-1950s. The EFSFSR now runs through the pit, but does not currently support fish passage to the headwaters. The Yellow Pine Pit, and the majority of waste rock dumps associated with it, are within the footprint of Midas Gold's proposed PRO.

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2. **Bradley Tailings Pile (Figure 4)** – The Bradley Tailings Pile, also known as the Historical Tailings and Spent Ore Disposal Area, is located on Midas Gold patented land. Approximately 3 million tons of mine tailings generated during the 1940s and 1950s are stored in this area, and they are overlain by approximately 6 million tons of spent heap leach ore placed in the 1980s and 1990s. The downstream end of the Tailings Pile is constrained by a structure known as the Keyway Dam, and a wetland exists downgradient of the Keyway Dam, which is also referred to as the Keyway Marsh. Meadow Creek is diverted around the south side of the Tailings Pile. The Bradley Tailings Pile is within the footprint of Midas Gold's proposed PRO.

3. **Hangar Flats Tailings Pile (Figure 5)** – The Hangar Flats Tailings Pile, also known as the Hecla Heap Leach Facility, is a reclaimed heap-leach facility which was built and operated in the 1990s to extract oxide gold and silver. The facility is located on Midas Gold controlled patented land, and is within the footprint of Midas Gold's proposed PRO.

4. **Bailey Tunnel (Figure 6)** – The Bailey Tunnel was constructed in the early 1940s to divert the EFSFSR around the Yellow Pine Pit and into Sugar Creek to facilitate open pit mining operations. The tunnel was no longer used after the mid-1950s, following cessation of open pit mining activities. The Bailey Tunnel is on Midas Gold patented land, and is within the footprint of Midas Gold's proposed PRO.

5. **DMEA Adit and Waste Rock Dump (Figure 7)** – The Defense Minerals Exploration Administration (DMEA) Adit and Waste Rock Dump are mining-related disturbances resulting from underground exploration activities during the 1950s. The adit and dump are located on USFS managed land, and are not within the footprint of the Midas Gold PRO.

6. **Bonanza Adit (Figure 8)** – The Bonanza Adit area is a mining-related disturbance in the Sugar Creek drainage resulting from underground exploration activities during the 1930s and 1940s. The Bonanza Adit area is located on USFS managed land, and is not within the footprint of the Midas Gold PRO.

7. **Cinnabar Tunnel (Figure 9)** – The Cinnabar Tunnel is a mining-related disturbance resulting from underground exploration activities during the late 1920s and early 1930s. The Tunnel is located on USFS managed land; the tunnel portal is within the footprint of the Midas Gold PRO.

8. **Meadow Creek Adit (Figure 10)** – The Meadow Creek Adit and associated waste rock dumps are mining-related disturbances that resulted from underground mining activities from the 1920s through the 1940s. The adit and waste rock dumps are located on Midas Gold controlled patented land, and are within the footprint of Midas Gold's proposed PRO.

This RI/FS SOW is attached to and is incorporated into the Settlement Agreement and Administrative Order on Consent (AOC) for the Site. Technical work described in this

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SOW is intended to provide more information to the Respondent for the purpose of implementing the AOC and is not intended to change the meaning of any AOC language. This SOW is also consistent with both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the [HYPERLINK "http://www.epa.gov/oilspill/pdfs/40cfr300.pdf" \h] [HYPERLINK "http://www.epa.gov/oilspill/pdfs/40cfr300.pdf" \h]commonly called the National Contingency Plan (NCP), 40 CFR 300. The AOC and this SOW are hereafter referred to interchangeably as the "AOC." Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the AOC will control any interpretive disputes.

Scope

The specific RI/FS activities to be conducted at the Site are set forth in ~~seven~~ six separate tasks.

Task 1 – Scoping

Task 2 – Community Relations

Task 3 – Site Characterization

Task 4 – Treatability Studies

Task 5 – Feasibility Study

Task 6 – Detailed Analysis of Remedial Alternatives

Oversight

Work conducted under the AOC is intended to satisfy the legal requirements for the RI/FS established under both Section 104(a)(l) of CERCLA and Idaho's Environmental Protection & Health Act, Idaho Code§§ 39-101 to 39-130; the Hazardous Waste Management Act of ldaho, Idaho Code§§ 39-4401 to 39-4432; and Idaho's Water Quality Act, Idaho Code§§ 39-3601 et seq. As such, oversight of the Respondent's Work conducted under the SOW will be carried out by EPA, the USFS, and the IDEQ (the Agencies) in a manner to assure the satisfaction of all federal and state requirements. The Respondent shall support the Agencies' initiation and conduct of activities related to the implementation of oversight activities.

Respondent shall submit all documents or deliverables required as part of this SOW to EPA, for EPA's review and approval. All work products submitted to EPA are subject to EPA approval, including but not limited to, submissions specified in the Work Plan(s) or Settlement Agreement and additional work products that may be required under Work Plan modifications. Respondent shall ensure that all plans, reports, and records are comprehensive, accurate, and consistent in content and format with the NCP and relevant EPA guidance.

Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA to aid in project planning. These reports must document the status of all work products under development. These reports shall describe the actions and decisions taken, and problems encountered during the previous quarter, and activities

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scheduled during the upcoming reporting period. Progress reports shall also summarize the extent to which the procedures and dates set forth in the AOC and the Work Plan are being met. These reports shall be submitted according to the Schedule included as Attachment E.

Schedule

Refer to Attachment E for the primary and potential secondary deliverables and associated schedules.

Guidance

The Respondent shall conduct the RI/FS, and produce technical reports that are in accordance with the AOC, SOW, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (RI/FS Guidance) (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance relevant to conducting an RI/FS. A list of the pertinent guidance documents is included at the end on this SOW. Attachments A, B, C, and D include suggested document formats for the Work Plan, Sampling and Analysis Plan, RI Report, and FS Report, respectively. The RI/FS guidance describes the required report contents.

Roles and Responsibilities

The Respondent shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the RI/FS, except as otherwise specified in the AOC. At the completion of the RI/FS, EPA will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision (ROD).

Remedy Requirements

The remedial action alternative selected by the EPA will meet the cleanup standards specified in Section 121 of CERCLA. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements (ARARs) of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS report including the baseline risk assessment (BLRA), as adopted by the EPA, will, with the administrative record, form the basis for the selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

TASK 1 - SCOPING

Scoping is the initial planning process of the RI/FS. Respondent shall document the specific project scope in the RI/FS Work Plan. During the scoping process, the Site-specific objectives of the RI/FS, including the identification of potential preliminary remediation goals (PRGs) will be proposed by the Respondent and approved by EPA. In

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addition to developing the Site-specific objectives of the RI/FS, Respondent shall define a general project management approach for the Site, which shall be documented by the Respondent in a draft Work Plan. Because the Work required to perform an RI/FS is not fully known at the outset and is phased in accordance with a Site's complexity and the amount of available information, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study. When scoping the specific aspects of this project, Respondent shall meet with EPA either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site.

The following activities shall be performed by the Respondent as a function of the project planning process.

a. Site Background

The Respondent shall gather, analyze, and present existing Site background information and shall conduct a work session to assist in planning the scope of the RI/FS.

Collect and analyze existing data and document the need for additional data

Before planning RI/FS activities, all existing Site data shall be thoroughly compiled and reviewed by the Respondent. Historical data shall be submitted electronically according to EPA Region 10 specifications. The Respondent shall refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources. Specifically, this must include presently available data relating to the varieties and quantities of hazardous substances at the Site, and past disposal practices. This must also include results from any previous sampling events that may have been conducted. Only data that is determined by EPA to be of appropriate type and quality to support specific intended uses shall be utilized in the RI/FS. This includes data utilized to develop the BLRA, to identify additional data needs to better characterize the Site, to better define potential applicable or relevant and appropriate requirements (ARARs), and to develop a range of preliminarily identified remedial alternatives. Data Quality Objectives (DQOs) shall be established, subject to EPA's approval, which shall be used to assess the usefulness of existing data and to direct future data gathering efforts. Decisions regarding the necessary data needs and DQOs will be made by EPA. Guidance on systematic planning using the data quality objectives process (EPA QA/G-4). Washington, D.C.: 121. [HYPERLINK "http://www.epa.gov/quality/qs-docs/g4-final.pdf"], U.S. EPA (2006)

Conduct site visit

The Respondent and EPA shall conduct a Site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of contamination as well as potential exposure pathways and receptors at the Site. During the Site visit the Respondent shall observe the Site's physiography, hydrology, geology, and demographics, as well as natural resource, ecological, and cultural resources. This information shall be utilized to better scope the project and

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to determine the extent of additional data necessary to characterize the Site, better define potential ARARs, and assist in identifying potential remedial alternatives.

b. Project Planning

Once the Respondent has collected and analyzed existing data and conducted a Site visit, the specific project scope shall be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols. The Respondent shall meet with EPA's Remedial Project Manager (RPM) regarding the following activities and before drafting the scoping deliverables listed below.

Preliminary conceptual site model

Information on the waste sources, pathways, receptors, cultural resources, and other information concerning the Site is used to develop a conceptual understanding of the Site which helps to evaluate potential risks to human health and the environment. The Conceptual Site Model (CSM) should include known and suspected sources of contamination, types of contamination and affected media/resources, known and potential routes of migration, and known or potential human and environmental receptors. This effort, in addition to assisting in identification of locations where sampling is necessary, will also assist in the identification of potential remedial technologies. Additional information for evaluating exposure concerns through the use of a CSM is provided in the DQO Guidance. The CSM must be updated as new information becomes available.

The preliminary CSM associated with the ecological risk assessment (ERA) must include species and their habitats that could be impacted by Site-related contamination based on information generated from a historical review and a cultural resource audit and will show the relationships among species and potential exposure pathways. The Respondent shall provide assistance to the RPM in collecting this information as requested. If information is not provided to the Respondent within the timeframe specified by EPA, the RPM will notify the Respondent in writing either to proceed with the preparation of the RI/FS Work Plan without the information or to delay its submittal pending receipt of the information. The preliminary CSM for the human health risk assessment (HHRA) must identify potential receptor populations and potential exposure pathways.

Refine and document preliminary remedial action objectives and alternatives

Once existing Site information has been analyzed and an understanding of the potential Site risks have been determined, the Respondent shall review and, if necessary, refine the Remedial Action Objectives (RAOs) that have been identified by EPA for each actually or potentially contaminated medium. The revised RAOs must be documented in a technical memorandum and subject to EPA's approval.

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The Respondent shall then identify a preliminary comprehensive range of potential remedial action alternatives and associated technologies. The range of potential alternatives shall encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative.

Document the need for treatability studies

Respondent shall conduct bench and/or pilot studies as necessary to determine the suitability of various remedial technologies to Site conditions and problems. Technologies that may be suitable to the Site should be identified as early as possible to determine whether there is a need to conduct treatability studies to better estimate costs and performance capabilities. Should treatability studies be determined to be necessary, a testing plan identifying the types and goals of the studies, the level of effort needed, a schedule for completion, and the data management guidelines should be submitted to EPA for review and approval. Upon EPA approval, a test facility and any necessary equipment, vendors, and analytical services will be procured by the contractor.

When the treatability studies are completed, Respondent shall evaluate the results to assess the technologies with respect to the goals identified in the test plan. A report summarizing the testing program and its results shall be prepared by the Respondent and presented in the final RI/FS report. The Respondent shall implement all management and quality control review activities for this task. If remedial actions involving treatment have been identified by the Respondent or EPA, treatability studies shall be required, except where the Respondent can demonstrate to the satisfaction of EPA that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) should be planned to occur concurrently with Site characterization activities.

Begin preliminary identification of potential ARARs

The Respondent shall conduct a preliminary identification of potential ARARs (chemical-specific, location-specific, and action-specific) to assist in the refinement of the RAOs and the initial identification of remedial alternatives. ARAR identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.

c. *Scoping Deliverables*

At the conclusion of the project planning phase, the Respondent shall submit an RI/FS Work Plan, a Sampling and Analysis Plan (SAP) consisting of a Field Sampling Plan (FSP) and Quality Assurance Project Plan (QAPP), and a Site Health and Safety Plan (HASP). These plans must be reviewed and approved by EPA prior to the initiation of field activities.

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RI/FS Work Plan

A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM for review and approval. The Work Plan will ~~fully account~~ take in to consideration for the timing and scope of potential mining and processing activities associated with the PRO. This could include a phased approach to focus on issues of most concern or requiring early action. The Work Plan shall be developed in conjunction with the SAP and the Site HASP, although each plan may be delivered under separate cover. The Work Plan shall include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan shall include the rationale for performing the required activities. Specifically, the Work Plan must present a statement of the problem(s) and potential problem(s) posed by the Site and the objectives of the RI/FS. Furthermore, the plan must include a Site background summary setting forth the Site description including the geographic location of the Site, and to the extent possible, a description of the Site's physiography, hydrology, hydrogeology, geology, demographics, ecological, cultural, and natural resource features; a synopsis of the Site history and a description of previous responses that have been conducted at the Site by local, state, federal, or private parties; and a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified, and their distribution among the environmental media at the Site. In addition, the plan must include a description of the Respondent's Site management strategy developed during scoping and a preliminary identification of remedial alternatives and data needs for evaluation of remedial alternatives. The plan must reflect coordination with treatability study requirements, if treatability studies are initiated. It must include a process for and manner of identifying potential ARARs (chemical-specific, location-specific, and action-specific).

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Finally, the major part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task and for the BLRA, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the RPM. This includes the deliverables set forth in the remainder of this SOW; a schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to the RPM and meetings and presentations to EPA and the Support Agencies at the conclusion of each major phase of the RI/FS. The Respondent must refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required Work Plan, and a suggested format can be found in Attachment A.

Sampling and Analysis Plan

The Respondent shall prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and

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that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a FSP and a QAPP. A suggested format for the SAP (inclusive of the FSP and QAPP) is provided in Attachment B. The SAP, FSP, and QAPP shall be prepared in accordance with EPA DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006).

The FSP must define in detail the sampling and data-gathering methods that will be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytic methods to identify contamination and remediate contamination consistent with the levels for remedial action objectives identified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), pages 51425-26 and 51433 (December 21, 1988). The QAPP shall be prepared in accordance with requirements in EPA QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision) and specifically should contain the twenty-four elements specified in Table 11 – List of QA Project Plan Elements, EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Investigations, and EPA QA/G-4 Guidance for the Data Quality Objective Process. All sampling and analyses performed pursuant to this SOW shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain-of-custody procedures. In addition, the QAPP must address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

Field personnel must be trained and conduct work in accordance with EPA and OSHA requirements and guidance. The Respondent shall demonstrate, in advance and to the satisfaction of EPA, that each laboratory they may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by EPA will be used. If the laboratory is not in the CLP program, a laboratory QA program must be submitted for EPA's review and approval. EPA may require that the Respondent submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment, and material specifications. The Respondent shall provide assurances that EPA has access to laboratory personnel, equipment, and records for sample collection, transportation, and analysis.

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Potential Target Analytes

The following list of chemicals include the initial Chemicals of Potential Concern (COPCs). The initial COPC list includes, but is not limited to, the analytes listed below. The Respondent shall review this list for surface water, groundwater, sediments, soils, and vegetation analytes relative to ARARs, preliminary remediation goals (PRGs), screening levels, Site-specific risk assessment data needs, treatability study data needs, feasibility study data needs, and other potential performance standards. All metal analytes (aqueous) shall be analyzed for total and dissolved constituents unless otherwise approved by EPA. Analytes may be added and/or removed from further consideration or monitored at varying frequencies based upon Site-specific factors such as dry or wet year hydrologic cycles as approved or otherwise directed by EPA.

Chemicals/Analytes of Potential Concern for Surface Water

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for surface water sampling stations during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph. A minimum of two storm event sampling events shall be conducted.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Boron
- Cadmium
- Calcium
- Chloride
- Chromium (III)
- Chromium (VI)
- Cobalt
- Copper
- Hardness
- Iron
- Lead
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel

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- Nitrogen, total Kjeldahl
- Phosphorus
- Potassium
- Selenium
- Silver
- Sodium
- Sulphate
- Thallium
- Tungsten
- Total Dissolved Solids
- Total Organic Carbon
- Total Suspended Solids
- Uranium
- Vanadium
- Zinc

Field Analyses
- Conductivity
- Dissolved Oxygen
- Flow
- pH
- Temperature

The Respondent shall review the results of the first year's surface water sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent surface water sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent surface water sampling events.

Chemicals/Analytes of Potential Concern for Sediments:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for sediment sampling stations.

Laboratory Analyses
- Antimony
- Arsenic
- Cadmium
- Chromium
- Copper
- Lead
- Manganese
- Mercury
- Nickel
- Selenium

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- Silver
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Soils/Waste Rock:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for soils/waste rock sampling.

Laboratory Analyses
- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Uranium
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Vegetation:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for vegetation sampling stations.

Laboratory Analyses
- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Lead

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- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Groundwater

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for groundwater sampling stations and shall be sampled at a minimum during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph and the low flow sampling shall be conducted at all groundwater sampling stations as close as possible to the low point of the surface water flow hydrograph.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Calcium
- Chloride
- Chromium III
- Chromium VI
- Cobalt
- Copper
- Hardness
- Iron
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrate/nitrite as N
- Nitrogen (TKN)
- Orthophosphate
- Potassium

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- Selenium
- Silver
- Sodium
- Sulfate
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Total Organic Carbon
- Tungsten
- Uranium
- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen or ORP
- Ferric Iron
- Ferrous Iron
- Nitrite
- pH
- Temperature

The Respondent shall review the results of the first year's groundwater sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent groundwater sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent groundwater sampling events.

Site Health and Safety Plan

A HASP shall be prepared in conformance with the Respondent's health and safety program, and in compliance with OSHA regulations and protocols. It should be noted that EPA does not "approve" the Respondent's health and safety plan, but rather EPA reviews it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

TASK 2 - COMMUNITY RELATIONS

The development and implementation of community relations activities are the responsibility of EPA. The critical community relations planning steps performed by EPA include conducting community interviews and developing a community relations plan. Although implementation of the community relations plan is the responsibility of EPA, the Respondent may assist by providing information regarding the Site's history, participating in public meetings, and preparing fact sheets for distribution to the general public. In addition, the Respondent shall establish a community information repository, at or near the City of McCall, to house one copy of the administrative record. The extent of community

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relations activities involvement by potentially responsible parties (PRPs) is left to the discretion of EPA. The Respondent's community relations responsibilities, if any, are specified in the community relations plan. Any PRP-conducted community relations activities will be subject to oversight by EPA.

TASK 3 - SITE CHARACTERIZATION

As part of the RI, the Respondent shall perform the activities described in this task, including the preparation of a Site characterization summary and a RI report. The overall objective of Site characterization is to describe areas of a Site that may pose a threat to human health or the environment. This is accomplished by first determining a Site's physiography, geology, and hydrology/hydrogeology. Surface and subsurface pathways of migration must be defined. The Respondent shall identify the sources of contamination and define the nature, extent, and volume of the sources of contamination, including their physical and chemical constituents as well as their background concentrations at incremental locations in the affected media. The Respondent shall also investigate the extent of migration of this contamination as well as its volume and any changes in its physical or chemical characteristics, to provide for a comprehensive understanding of the nature and extent of contamination at the Site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the Work Plan, SAP, and HASP are implemented. Field data are collected and analyzed to provide the information required to accomplish the objectives of the study. The Respondent shall notify the RPM at least two weeks in advance of the field work regarding the planned dates for field activities, including ecological field surveys, field layout of the sampling grid, excavation, installation of wells, initiating sampling, installation and calibration of equipment, pump tests, and initiation of analysis and other field investigation activities. The Respondent shall demonstrate that the laboratory and type of laboratory analyses that will be utilized during Site characterization meet the specific QA/QC requirements and the DQOs of the Site investigation as specified in the SAP. In view of the unknown Site conditions, activities are often iterative, and to satisfy the objectives of the RI/FS, it may be necessary for the Respondent to supplement the work specified in the initial Work Plan. In addition to the deliverables below, the Respondent shall provide a monthly progress report and participate in weekly meetings or conference calls at major points in the RI/FS.

a. Field Investigation

The field investigation shall include the gathering of data to define Site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. These activities shall be performed by the Respondent in accordance with the Work Plan and SAP. At a minimum, this shall address the following:

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Implement and document field support activities

The Respondent shall initiate field support activities following approval of the Work Plan and SAP. Field support activities may include obtaining access to the Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondent shall notify the RPM at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM upon completion of field support activities.

Investigate and define site physical and biological characteristics

The Respondent shall collect data on the physical and biological characteristics of the Site and its surrounding areas, including the physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information must be ascertained through a combination of physical measurements, observations, and sampling efforts, and will be utilized to define potential transport pathways and human, cultural, and ecological receptor populations. In defining the Site's physical characteristics, the Respondent shall also obtain sufficient engineering data (such as the effects of contaminated media weathering and ground and surface water contaminant loading) to aid in the projection of contaminant fate and transport, and the development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination

The Respondent shall locate each source of contamination and define the areal extent and depth of contamination associated with each source in all media. The physical characteristics and chemical constituents and their concentrations must be determined for all known and discovered sources of contamination. The Respondent shall conduct sufficient sampling to define the boundaries of the contaminant sources consistent with the QAPP and DQOs.

Defining the source of contamination must include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence over time, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

~~Describe~~ Delineate the nature and extent of contamination

The Respondent shall gather information to ~~describe~~ delineate the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondent must utilize the information and site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondent shall then implement an iterative monitoring program and any study program identified in the work plan or SAP such that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration

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of contaminants through the various media at the Site can be determined. In addition, the Respondent shall gather data for calculations of contaminant fate and transport. This process must be continued until the area and depth of contamination are known. This information will be used to determine the level of risk presented by the Site and to help develop appropriate remedial action alternatives for evaluation.

b. Data Analyses

Evaluate Site characteristics

The Respondent shall analyze and evaluate the data to describe: (1) Site physical and biological characteristics; (2) contaminant source characteristics; (3) nature and extent of contamination; and (4) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The evaluation must include the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to EPA together with a sensitivity analysis. The RI data shall be presented in a format (i.e., computer disc or equivalent) to facilitate the preparation of the BLRA. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. The Respondent shall then collect any data required to address data gaps identified by EPA as needed to complete the BLRA. This evaluation shall also provide information relevant to Site characteristics necessary to evaluate the need for remedial action in the BLRA and to aid in the development and evaluation of remedial alternatives. Analyses of data collected for Site characterization must meet the DQOs developed in the QA/QC plan stated in the SAP (or as revised during the RI).

c. Data Management Procedures

The Respondent shall consistently document the quality and validity of field and laboratory data compiled during the RI.

Document field activities

Information gathered during Site characterization shall be consistently documented and adequately recorded by the Respondent in well-maintained field logs and laboratory reports. The method(s) of documentation must be specified in the work plan and/or the SAP. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document sample custody, analytical responsibility,

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analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking

The Respondent shall maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that only validated analytical data are reported and utilized in the development and evaluation of remedial alternatives. Analytical results developed under the Work Plan must not be included in any Site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, the Respondent shall establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

Data validation management

All validated data shall be made available to EPA in electronic format. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. Field and validated analytical data results for all media sampled shall be submitted to EPA by uploading the data to the Water Quality Exchange (WQX) using the Central Data Exchange (CDX). Field and laboratory samples must include information on the sampling locations which will also be submitted to WQX via CDX. (See [HYPERLINK "http://www.epa.gov/storet/wqx.hmtl)" \h]

d. Site Characterization Deliverables

The Respondent shall prepare the preliminary Site characterization summary and the RI report.

Data Summary Reports

After completing each annual field season's sampling and analysis (i.e., at the end of the field season each calendar year), the Respondent shall prepare a concise Site characterization Data Summary Report (DSR). This report must review the investigative activities that have taken place and describe and display Site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, including the affected media, locations, types, physical state, concentrations of contaminants and quantities. In addition, reports shall document the location, dimensions, physical condition and varying concentrations of each contaminant for each source and the extent of contaminant migration through each of the affected media. Each DSR must also evaluate data gaps and identify additional and/or modified sampling and analysis that shall be included in modifications to the SAP for each subsequent field season. If acceptable to EPA, the DSR following the final field season of data collection can be eliminated as a separate deliverable, and the information collected during the final field season can be presented in the RI report.

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Remedial Investigation Report (RI)

The Respondent shall prepare and submit a draft RI report to the RPM for review and approval. This report shall summarize results of field activities to characterize the Site, sources of contamination, nature and extent of contamination, and the fate and transport of contaminants. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and contents, and a suggested format for the RI report can be found in Attachment C. Following comment by EPA, the Respondent shall prepare a final RI report satisfactorily addressing the comments.

Baseline Risk Assessment (BLRA)

The Respondent shall conduct a BLRA to assess the potential human health, and environmental risks posed by the Site in the absence of any remedial action, but will consider implementation of the PRO. This effort will involve four components: contaminant identification, exposure assessment, toxicity assessment, and risk characterization.

Contaminant Identification – The Respondent shall review available information on all hazardous substances present at the Site and identify the major contaminants of concern. Contaminants of concern should be selected based on their intrinsic toxicological properties because they are present in large quantities, and/or because they are currently in, or potentially may migrate into, critical exposure pathways (e.g., drinking water).

Exposure Assessment – The Respondent shall identify actual or potential exposure pathways, characterize potentially exposed populations, and evaluate the actual or potential extent of exposure.

Toxicity Assessment – The Respondent shall provide a toxicity assessment of those chemicals found to be of concern during Site investigation activities. This will involve an assessment of the types of adverse health or environmental effects associated with chemical exposures, the relationship between magnitude of exposures and adverse effects, and the related uncertainties for contaminant toxicity, (e.g., weight of evidence for a chemical's carcinogenicity). EPA has prepared chemical screening tables with updated toxicity values and Preliminary Remediation Goals for various land uses available from: [HYPERLINK "https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables"]

Risk Characterization – The Respondent shall integrate information developed during the exposure and toxicity assessments to characterize the current or potential risk to human health and/or the environment posed by the Site. This characterization should identify the potential for adverse health or environmental effects for the chemicals of concern and identify any uncertainties associated with contaminant(s), toxicity(ies), and /or exposure assumptions.

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TASK 4 - TREATABILITY STUDIES

If potential remedial actions involving treatment have been identified by Respondent or EPA, Respondent shall conduct treatability studies except where Respondent can demonstrate to the satisfaction of EPA that they are not needed. The following activities shall be performed by the Respondent to support all treatability studies.

a. Determination of Candidate Technologies and of Need for Testing

The Respondent shall identify in a technical memorandum, subject to EPA review and approval, candidate technologies for a treatability studies program during project planning (Task 1). The listing of candidate technologies must cover the range of technologies required for the development and analysis of alternatives (Task 5 and 6) The specific data requirements for the testing program will be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 3, 5, and 6).

Conduct literature survey and determine the need for treatability testing

The Respondent shall conduct a literature survey to gather information of performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. If practical candidate technologies have not been sufficiently demonstrated or cannot be adequately evaluated for this Site based on available information, treatability testing must be conducted. Where it is determined by EPA that treatability testing is required, and unless the Respondent can demonstrate to EPA's satisfaction that it is not needed, the Respondent shall submit a SOW to the RPM outlining the steps and data necessary to evaluate and initiate the treatability testing program.

Evaluation of treatability studies

Once a decision has been made to perform treatability studies, the Respondent and EPA will decide the types of treatability testing to utilize (e.g., bench and/or pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing should be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, the Respondent shall either submit to the RPM a treatability testing work plan or an amendment to the original Site work plan for EPA's review and approval.

b. Treatability Testing and Deliverables

The deliverables that are required, in addition to the memorandum identifying candidate technologies, where treatability testing is conducted, include a work plan, a sampling and analysis plan, and a final treatability evaluation report. EPA may also require a treatability study health and safety plan, where appropriate.

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Treatability testing work plan

The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's review and approval, describing the Site background, remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The DQOs for treatability testing must be documented as well. If pilot scale treatability testing is to be performed, the pilot scale work plan will describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-site, permitting requirements must be addressed.

Treatability study SAP

If the original QAPP or FSP does not address activities to be performed during the treatability tests, a separate treatability study SAP or amendment to the original Site SAP must be prepared by the Respondent for EPA's review and approval. Task 1, Item c. of this statement of work provides additional information on the requirements of the SAP.

Treatability study HASP

If the original HASP is not adequate for defining the activities to be performed during the treatment tests, a separate or amended HASP must be developed by the Respondent. Task 1, Item c, of this SOW provides additional information on the requirements of the health and safety plan. EPA does not "approve" the treatability study HASP.

Treatability study evaluation report

Following completion of treatability testing, the Respondent shall analyze and interpret the testing results in a technical report to EPA. Depending on the sequence of activities, this report may be a part of the RI/FS report or a separate deliverable. The report must evaluate each technology's effectiveness, implementability, cost, and actual results as compared with predicted results. The report must also evaluate full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 5 - FEASIBILITY STUDY

The Feasibility Study is comprised of two primary activities: (1) the development and screening of alternatives, and (2) the detailed analysis of alternatives. The alternatives surviving the screening process will be subject to the detailed analysis process. The FS Report must document the results of these two components of FS. Interim deliverables associated with these activities will be identified in the RI/FS Work Plan. The RI and FS

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are interactive and will be conducted concurrently, to the extent practicable, in a manner that allows information and data collected during the RI to influence the development of remedial alternatives during the FS, which in turn affect additional information and data needs and the scope of any necessary treatability studies and risk assessments.

a. Remedial Alternative Development

The Respondent shall develop and evaluate a range of appropriate waste management options that, at a minimum, will remediate or control any contaminated media (soil, surface water, ground water, sediments) remaining at the Site, as deemed necessary in the RI to ensure protection of human health and the environment and comply with ARARs, concurrent with the RI site characterization task.

A range of remedial alternatives must be developed to identify and provide a variety of waste management options which then can be evaluated. This range of alternatives must include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which varies in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed. Options involving containment with little or no treatment must be included, as well as options involving both treatment and containment, and a no-action alternative. The following activities shall be performed by the Respondent during the development of remedial alternatives.

Refine and document remedial action objectives

Based on the BLRA, the Respondent shall review, and if necessary, modify the Site-specific remedial action objectives (RAOs) and the list of applicable preliminary remediation goals (PRGs). The modified PRGs shall be documented in a technical memorandum that will be reviewed and approved by EPA. These modified PRGs must specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

Develop general response actions

The Respondent shall develop a range of general response actions for each medium of interest addressing containment, treatment, excavation, pumping, or any other actions, singly or in combination, that may be utilized to satisfy the remedial action objectives for the Site.

Identify areas or volumes of media

The Respondent shall identify volumes and/or areas of media to which general response actions might be applied, taking into account the requirements for protectiveness as identified in the RAOs and the chemical and physical characterization of the Site.

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Identify, screen, and document remedial technologies

The Respondent shall identify and evaluate potential remedial technologies applicable to each general response action. The Respondent shall identify various alternatives for implementing each remedial technology. These alternatives must be evaluated and screened based upon their effectiveness, implementability, and cost factors. Generally, this screening is only necessary when there are many feasible alternatives available for detailed analysis. If necessary, the screening of alternatives shall be conducted to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening must preserve the range of treatment and containment alternatives that was initially developed insuring that the alternatives will meet RAOs, ARARs and all other identified performance standards. The range of remaining alternatives must include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondent shall prepare a technical memorandum summarizing the results and reasoning employed in screening and arraying alternatives that remain after screening. In addition, a description of the remedial technology alternatives which were eliminated from further consideration as well as the reasons for eliminating the alternatives must be included in the memorandum.

Assemble and document alternatives

The Respondent shall assemble selected representative technologies into a range of alternatives for each affected medium or operable unit. Together, all of the alternatives will represent treatment and containment combinations that will address either all of the Site or operable units. A summary of the assembled alternatives and their related action-specific ARARs must be prepared for EPA by the Respondent for inclusion in a technical memorandum.

TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES

The detailed analysis of alternatives shall be conducted by the Respondent to provide EPA with the information needed to allow for the selection of a Site remedy. This analysis is the final task to be performed by the Respondent during the FS.

a. Detailed Analysis of Alternatives

The Respondent shall conduct a detailed analysis of alternatives which must consist of an analysis of each option against a set of nine evaluation criteria and a comparative analysis of all options using the same evaluation criteria as a basis for comparison. EPA has developed the nine evaluation criteria to address the statutory requirements and preferences of CERCLA

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Apply nine criteria and document analysis

The Respondent shall apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) costs; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: Criteria 8 and 9 are considered after the RI/FS report has been released to the general public). For each alternative, the Respondent must provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative; and (2) a discussion of the individual criterion assessment.

Compare alternatives against each other and document the comparison of alternatives

The Respondent shall perform a comparative analysis between the remedial alternatives. That is, each alternative must be compared against the others using the evaluation criteria as a basis of comparison. Identification and selection of the preferred alternative are reserved by EPA. The Respondent shall prepare a technical memorandum summarizing the results of the comparative analysis.

b. *Detailed Analysis Deliverables*

In addition to the technical memorandum summarizing the results of the comparative analysis, the Respondent shall submit a draft FS report to the RPM for review and approval. Once EPA's comments have been addressed by the Respondent to the satisfaction of EPA, the final FS report may be bound with the final RI report.

Feasibility Study report

The Respondent shall submit a draft FS report for EPA and the Support Agencies' review and comment. This report, as ultimately adopted or amended by EPA, provides a basis for remedy selection by EPA, and documents the development and analysis of remedial alternatives. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and the required report content, and a suggested format for the report can be found in Attachment D. The Respondent shall prepare a final FS report which satisfactorily addresses the comments.

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REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process.

The (revised) National Oil and Hazardous Substance Pollution Contingency Plan (NCP).

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA", U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3.

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"A Compendium of Superfund Field Operations Methods", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.

U.S. EPA, NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA -330/9-78-991-R.

"Data Quality Objectives for Remedial Response Activities", U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.

"Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Research and Development, Cincinnati, Ohio, QAMS-004/80, December 29, 1980.

"QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision), EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Studies, and EPA QA/G-4 Guidance for the Data Quality Objective Process"

"Interim Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.

"Users Guide to the Lead Agency(ies) Contract Laboratory Program, U.S. EPA, Sample Management Office, August 1982.

"Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements", U.S. EPA, Office of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.

"CERCLA Compliance with Other Laws Manual", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.

"Guidance on Remedial Actions for Contaminated Groundwater at Superfund Sites", U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.

"Draft Guidance on the Lead Agency(ies) Superfund Decision Documents", U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02.

"Risk Assessment Guidance for Superfund--Volume I, Human Health Evaluation Manual (Part A)", December 1989, EPA/540/1-89/002.

"Risk Assessment Guidance for Superfund--Volume II Environmental Evaluation Manual", March 1989, EPA /540/1-89/001.

"Guidance for Data Usability in Risk Assessment", October 1990, EPA /540/G-90/008. "Performance of Risk Assessments in Remedial Investigation/ Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)", August 28, 1990, OSWER Directive No. 9835.15.

"Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions", April 22, 1991, OSWER Directive No. 9355.0-30.

"Health and Safety Requirements of Employees Employed in Field Activities", U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

"Interim guidance on Administrative Records for Selection of CERCLA Response Actions", U.S. EPA, Office of Waste Programs Enforcement, March 1, 1989, OSWER Directive No. 9833.3A.

"Community Relations in Superfund: A Handbook", U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9320.0-03B.

"Community Relations During Enforcement Activities and Development of the Administrative Record", U.S. EPA, Office of Waste Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1A.

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Attachments

Attachment A – Suggested RI/FS Work Plan Format

Executive Summary

1. Introduction
2. Site Background and Setting
3. Initial Evaluation
   - Types and volumes of waste present
   - Potential pathways of contaminant migration/preliminary public health and environmental impacts
   - Preliminary identification of operable units
   - Preliminary identification of response objectives and remedial action alternatives
4. Work Plan Rationale
   - DQO needs
   - Work Plan approach
5. RI/FS Tasks
6. Cost and Key Assumptions
7. Schedule
8. Project Management
   - Staffing
   - Coordination
9. References

Appendices

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Attachment B – Suggested Format for SAP (FSP and QAPP)

FSP

1. Site Background
2. Sampling Objectives
3. Sample Location and Frequency
4. Sample Designation
5. Sampling Equipment and Procedures
6. Sample Handling and Analysis

QAPP

Project Management
A1 Title and Approval Sheet
A2 Table of Contents
A2 Distribution List
A4 Project/Task Organization
A5 Problem Definition/Background
A6 Project/Task Description
A7 Quality Objectives and Criteria
A8 Special Training/Certifications
A9 Documentation and Records

Data Generation and Acquisition

B1 Sampling Process Design (Experimental Design)
B2 Sampling Methods
B3 Sample Handling and Custody
B4 Analytical Methods
B5 Quality Control
B6 Instrument/Equipment Testing, Inspection, and Maintenance
B7 Instrument/Equipment Calibration and Frequency
B8 Inspection/Acceptance of Supplies and Consumables
B9 Non-direct Measurements
B10 Data Management

Assessment and Oversight
C1 Assessments and Response Actions
C2 Reports to Management

Data Validation and Usability
D1 Data Review, Verification, and Validation
D2 Verification and Validation Methods
D3 Reconciliation with User Requirements

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~~Title Page~~

~~Table of Contents~~

~~1. Project Description~~

~~2. Project Organization and Responsibilities~~

~~3. QA Objectives for Measurement~~

~~4. Sampling Procedures~~

~~5. Sample Custody~~

~~6. Calibration Procedures~~

~~7. Analytical Procedures~~

~~8. Data Reduction, Validation, and Reporting~~

~~9. Internal Quality Control~~

~~10. Performance and Systems Audits~~

~~11. Preventative Maintenance~~

~~12. Data Assessment Procedures~~

~~13. Corrective Actions~~

~~14. Quality Assurance Reports~~

Attachment C – Suggested RI Report Format

Executive Summary

1. Introduction
   - 1.1 Purpose of Report
   - 1.2 Site Background
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Previous Investigations
   - 1.3 Report Organization
2. Study Area Investigation
   - 2.1 Includes field activities associated with site characterization. These may include physical and chemical monitoring of some, but not necessarily all, of the following:
     - 2.1.1 Surface Features (topographic mapping, etc.) (natural and manmade features)
     - 2.1.2 Contaminant Source Investigations
     - 2.1.3 Meteorological Investigations
     - 2.1.4 Surface-Water and Sediment Investigations
     - 2.1.5 Geological Investigations
     - 2.1.6 Soil and Vadose Zone Investigations
     - 2.1.7 Ground-Water Investigations
     - 2.1.8 Human Population Surveys
     - 2.1.9 Ecological Investigations
   - 2.2 If technical memoranda documenting field activities were prepared, they may be included in an appendix and summarized in this report chapter
3. Physical Characteristics of the Study Area
   - 3.1 Includes results of field activities to determine physical characteristics. These may include some, but not necessarily all, of the following:
     - 3.1.1 Surface Features
     - 3.1.2 Meteorology
     - 3.1.3 Surface-Water Hydrology
     - 3.1.4 Geology
     - 3.1.5 Soils
     - 3.1.6 Hydrogeology
     - 3.1.7 Demography and Land Use
     - 3.1.8 Ecology
4. Nature and Extent of Contamination

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4.1 Presents the results of Site characterization, both natural and chemical components and contaminants in some, but not necessarily all, of the following media:

4.1.1 Sources (lagoons, sludges, tanks, etc.)

4.1.2 Soils and Vadose Zone

4.1.3 Ground Water

4.1.4 Surface Water and Sediments

4.1.5 Air

5. Contaminant Fate and Transport

5.1 Potential Routes of Migration (i.e., air, groundwater, etc.)

5.2 Contaminant Persistence

5.2.1 If they are applicable (i.e., for organic contaminants), describe estimated persistence in the study area environment and physical, chemical, and/or biological factors of importance for the media of interest

5.3 Contaminant Migration

5.3.1 Discuss factors affecting contaminant migration for the media of important (e.g., sorption onto soils, solubility in water, movement of ground water, etc.)

5.3.2 Discuss modeling methods and results, if applicable

6. Baseline Risk Assessment

6.1 Human Health Evaluation

6.1.1 Exposure Assessment

6.1.2 Toxicity Assessment

6.1.3 Risk Characterization

6.2 Environmental Evaluation

7. Summary and Conclusions

7.1 Summary

7.1.1 Nature and Extent of Contamination

7.1.2 Fate and Transport

7.1.3 Risk Assessment

7.2 Conclusions

7.2.1 Data Limitations and Recommendations for Future Work

7.2.2 Recommended Remedial Action Objectives

Appendices

A. Technical Memorandum on Field Activities (if available)

B. Analytical Data and QA/QC Evaluation Results

C. Risk Assessment Methods

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Attachment D – Suggested Format for Feasibility Study Report

Executive Summary

1. Introduction
   - 1.1 Purpose and Organization Report
   - 1.2 Background Information (Summarized from RI Report)
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Nature and Extent of Contamination
     - 1.2.4 Contaminant Fate and Transport
     - 1.2.5 Baseline Risk Assessment
2. Identification and Screening of Technologies
   - 2.1 Introduction
   - 2.2 Remedial Action Objectives – Presents the development of remedial action objectives for each medium of interest (i.e., ground water, soil, surface water, air, etc.) For each medium, the following should be discussed:
     - Contaminants of interest
     - Allowable exposure based on risk assessment (including ARARs) Development of remediation goals
   - 2.3 General Response Actions – For each medium of interest, describes the estimation of areas or volumes to which treatment, containment, or exposure technologies may be applied.
   - 2.4 Identification and Screening of Technology Types and Process Options – For each medium of interest, describe:
     - 2.4.1 Identification and Screening of Technologies
     - 2.4.2 Evaluation of Technologies and Selection of Representative Technologies
3. Development and Screening of Alternatives
   - 3.1 Development of Alternatives – Describes rationale for combination of technologies/media into alternatives. Note: This discussion may be by medium or for the Site as a whole.
   - 3.2 Screening of Alternatives (if conducted)
     - 3.2.1 Introduction
     - 3.2.2 Alternative 1
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.2 Alternative 2
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.3 Alternative 3

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3.2.3.1 Description
3.2.3.2 Evaluation
4. Detailed Analysis of Alternatives
4.1 Introduction
4.2 Individual Analysis of Alternatives
4.2.1 Alternative 1
4.2.1.1 Description
4.2.1.2 Evaluation
4.2.2 Alternative 2
4.2.2.1 Description
4.2.2.2 Evaluation
4.2.3 Alternative 3
4.2.3.1 Description
4.2.3.2 Evaluation
4.3 Comparative Analysis

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Attachment E – Stibnite Mine Remedial Investigation and Feasibility Study (RI/FS) Statement of Work (SOW) Schedule

RI/FS Work Plan/Sampling and Analysis Plan (WP/SAP):

- Draft due within 120 days after the Effective Date of the Settlement Agreement/CO.
- Final Work Plan due within 90 days of receipt of consolidated Agency comments.

Data Summary Reports (DSRs):

- Draft DSRs due within 120 days completion of each season's field work or within 90 days of the receipt of final laboratory data, whichever is earlier. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the completion date. Within 5 days of the receipt of final laboratory data for the preceding field season, Respondent shall provide written notification to EPA identifying the receipt date of final laboratory data.
- Final DSRs due within 30 days of receipt of consolidated Agency comments.

Remedial Investigation Report (RI):

- Submit draft RI within 120 days after receipt of laboratory data from the final field season. Within 5 days of receipt of final laboratory data, Respondent shall provide written notification to EPA identifying receipt date of final laboratory data.
- Final RI due within 60 days of receipt of consolidated Agency comments.

Baseline Risk Assessment Report (BLRA):

- Submit draft BLRA within 60 days after submittal of Final RI.
- Final BLRA due within 60 days of receipt of consolidated Agency comments.

Feasibility Study (FS):

- Submit draft FS within 120 days after submittal of BLRA Report.
- Final FS due within 90 days of receipt of consolidated Agency comments.

Data Validation Summaries (DVSs):

- DVSs due within 120 days from the date of collection of the last sample from each sampling event. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the date of collection of the last sample from each sampling event.

ED_004715_00094306-00034

Interim Deliverables

- Draft Interim Deliverables (i.e., Technical Memoranda for Treatability Studies Preliminary Remedial Goals, Remedial Action Objectives, etc.) as identified in the SOW, or as required by EPA, shall be due within 30 days receipt of notice by Respondent that said Deliverable is required.
- Final Interim Deliverables due within 60 days of receipt of consolidated Agency comments.

Quarterly Progress Reports

- Quarterly Progress Reports shall be due 15 days after the end of the previous calendar quarter.

[1]Documents may initially be released as "draft final" pending final resolution of issues.

ED_004715_00094306-00035

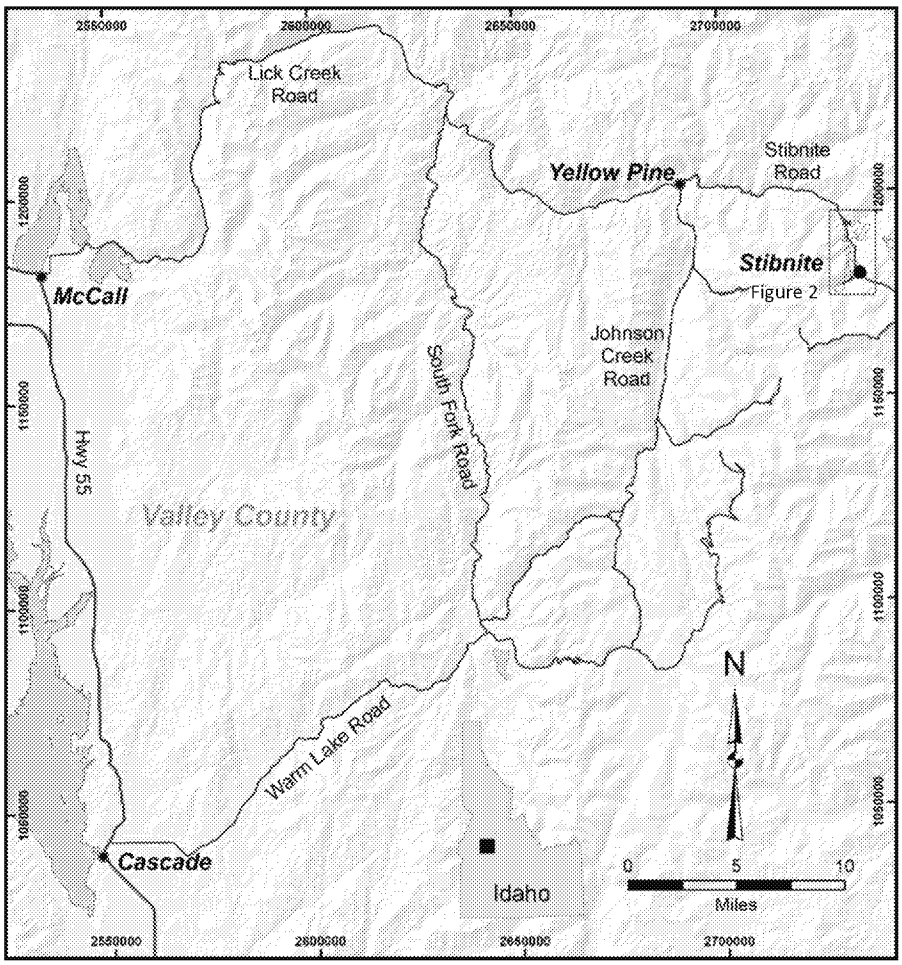

Figure 1 – Site Location

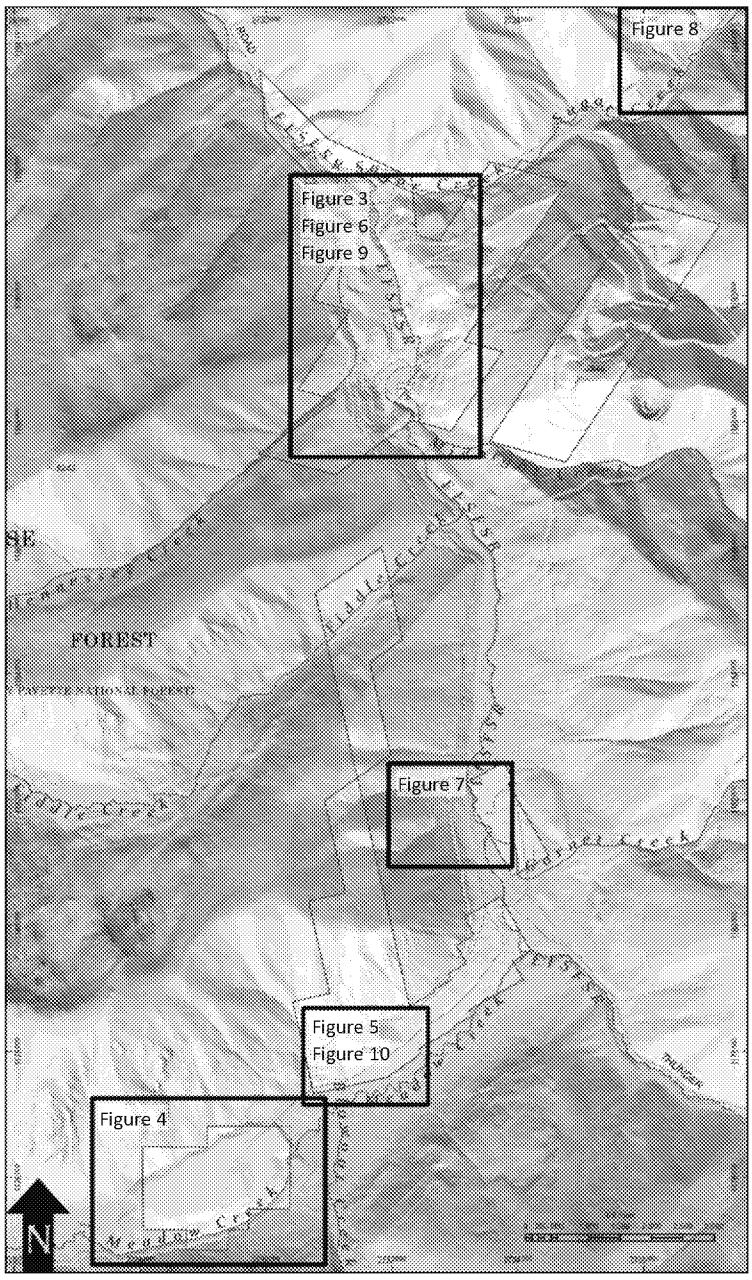

Figure 2 – Stibnite Mine Site

ED_004715_00094306-00037

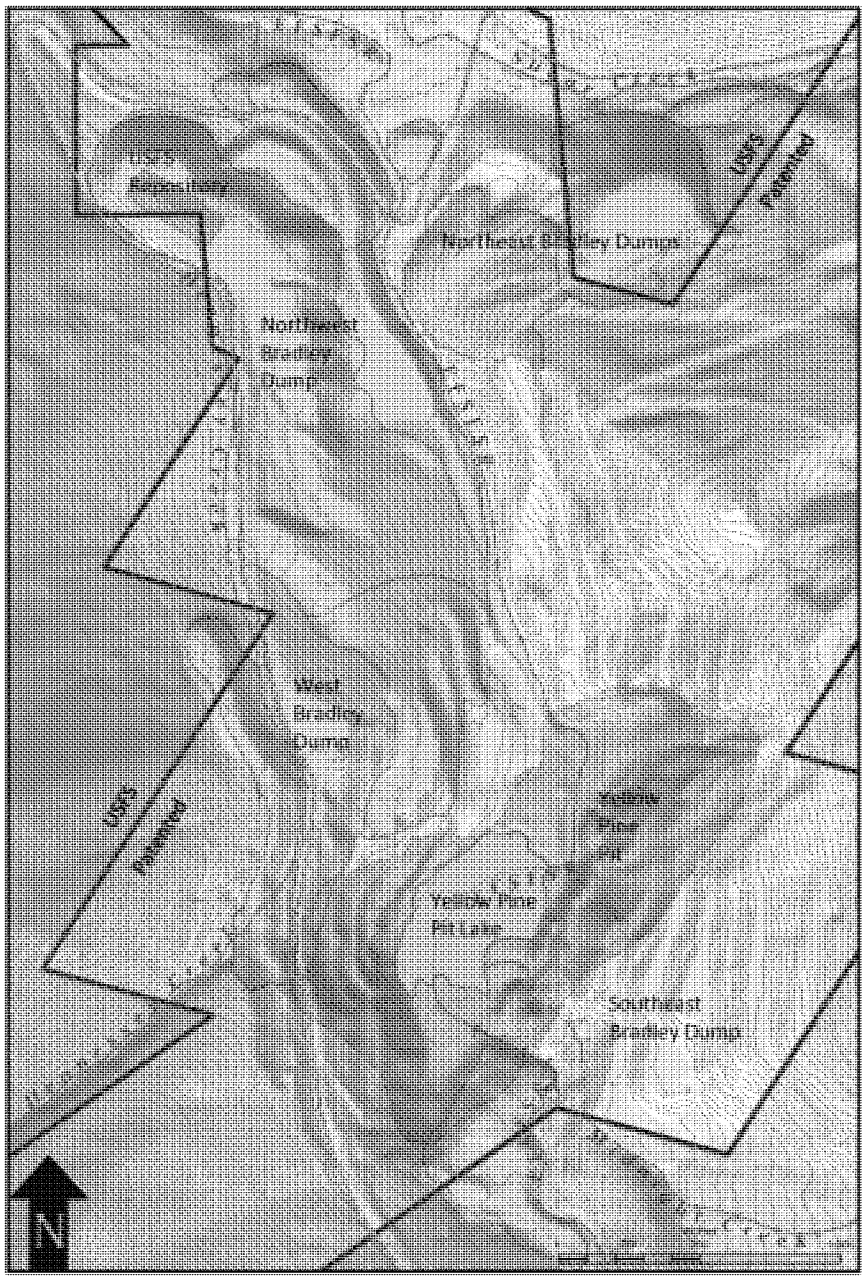

Figure 3 –Yellow Pine Pit

ED_004715_00094306-00038

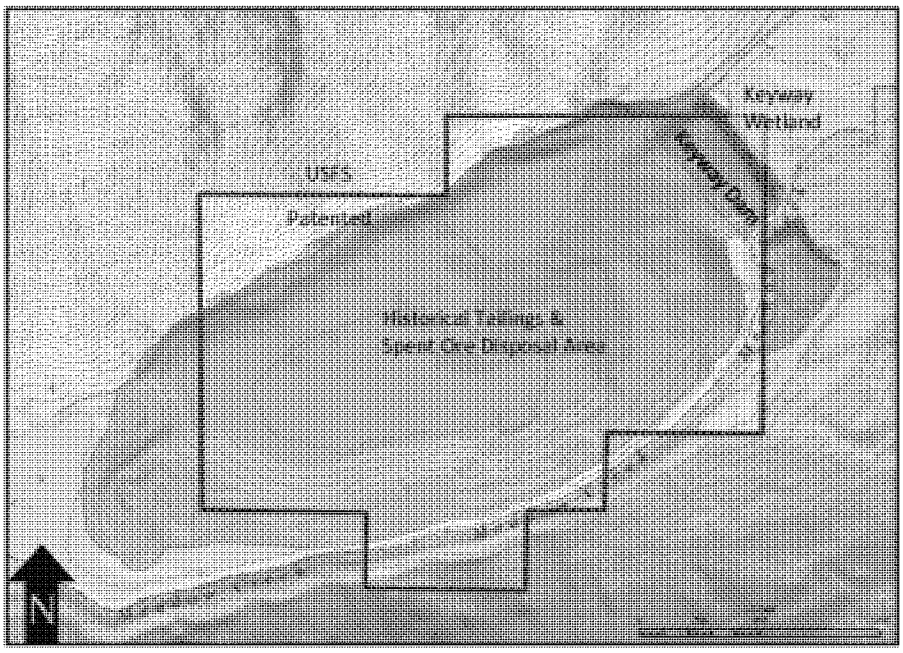

Figure 4 – Historical Tailings and Spent Ore Disposal Area

ED_004715_00094306-00039

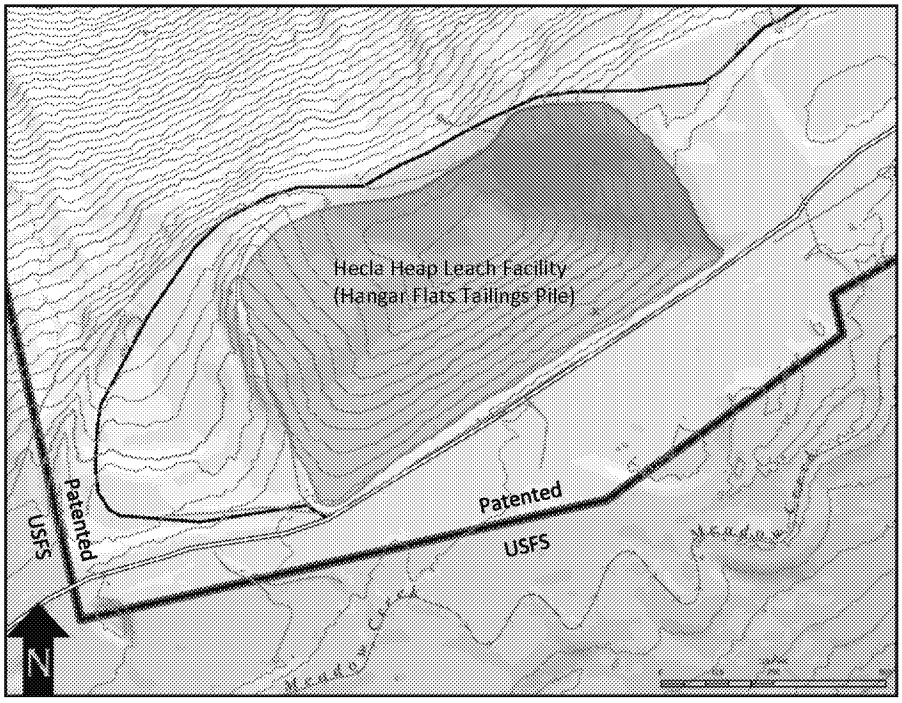

Figure 5 – Hecla Heap Leach Facility

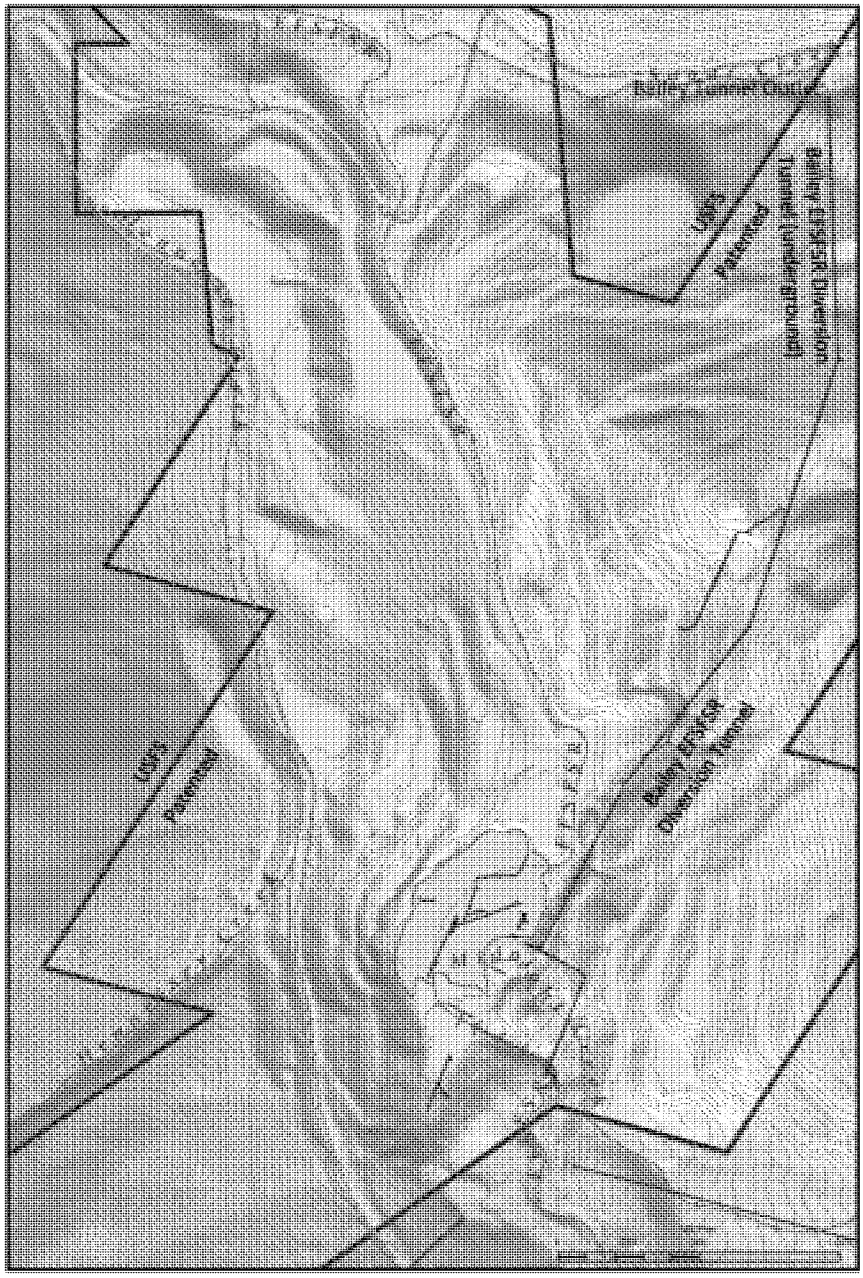

Figure 6 – Bailey Tunnel

ED_004715_00094306-00041

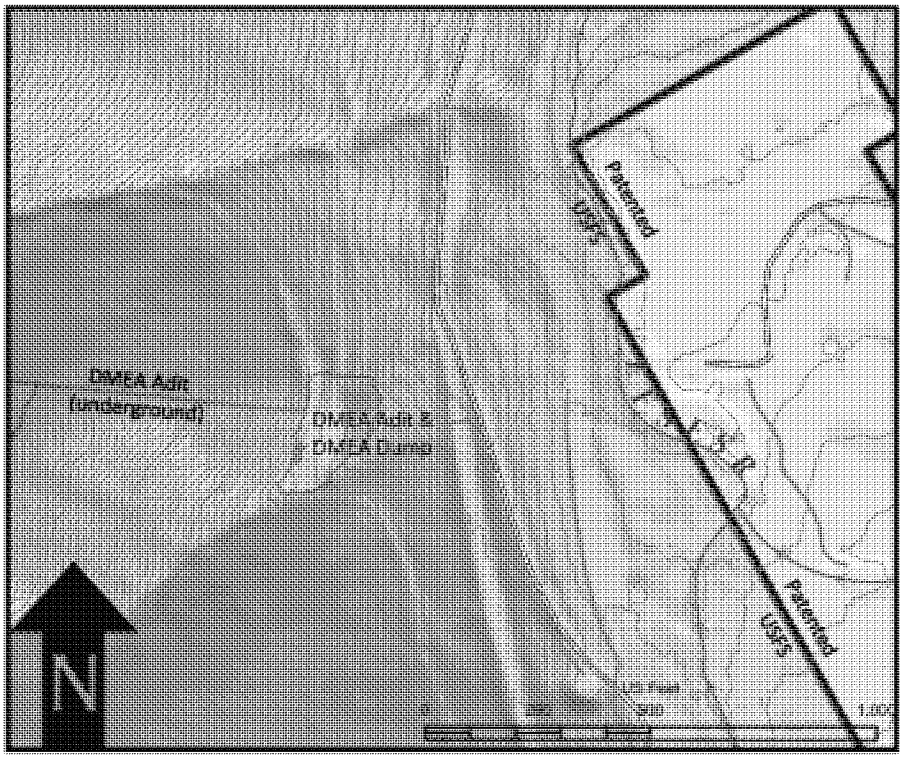

Figure 7 – Defense Minerals Exploration Administration Adit and Waste Rock Dump

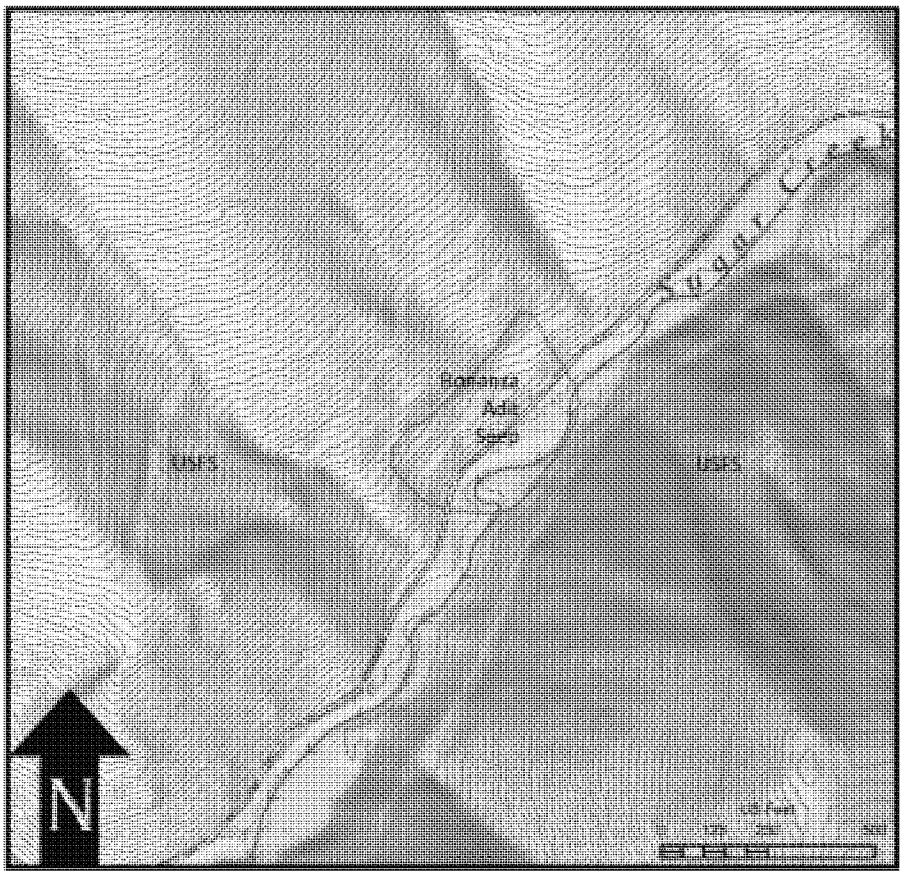

Figure 8 – Bonanza Adit

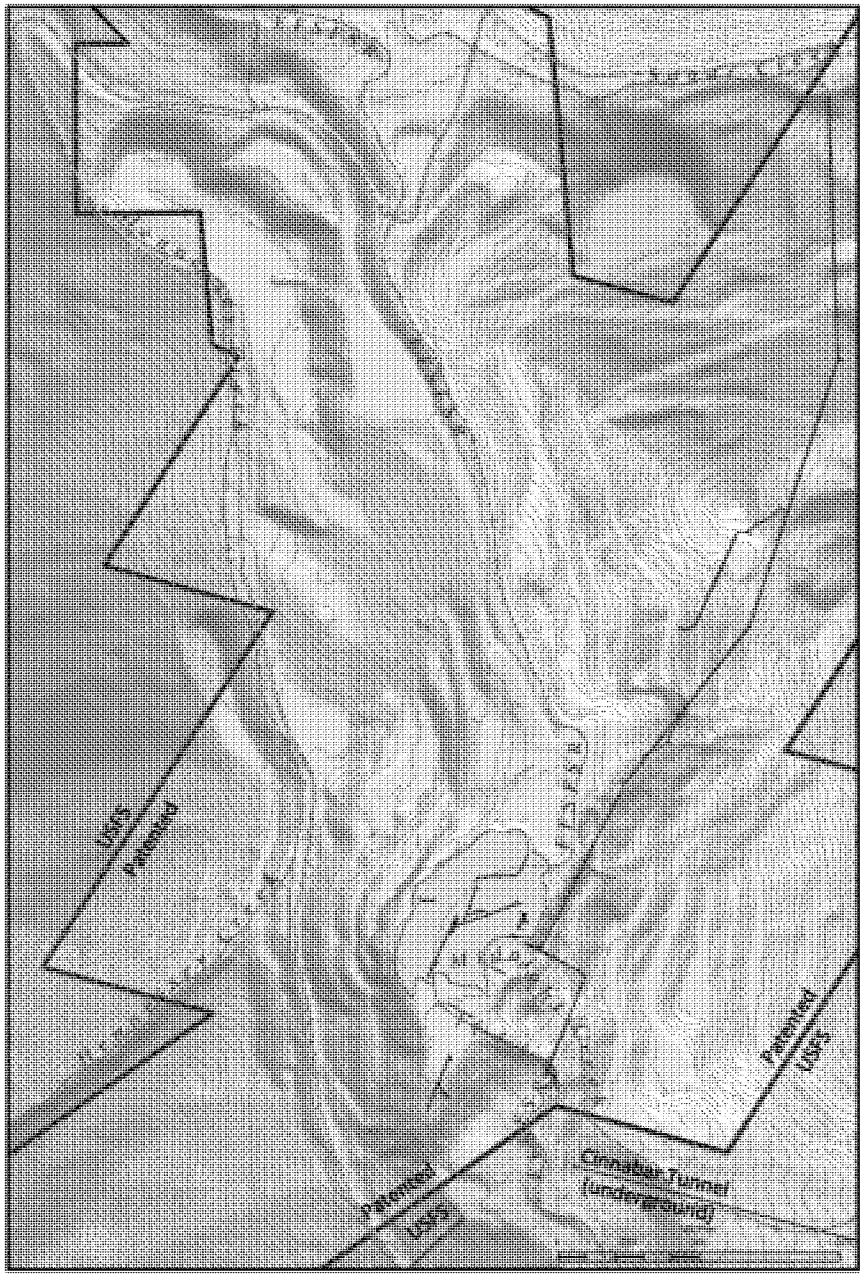

Figure 9 – Cinnabar Tunnel

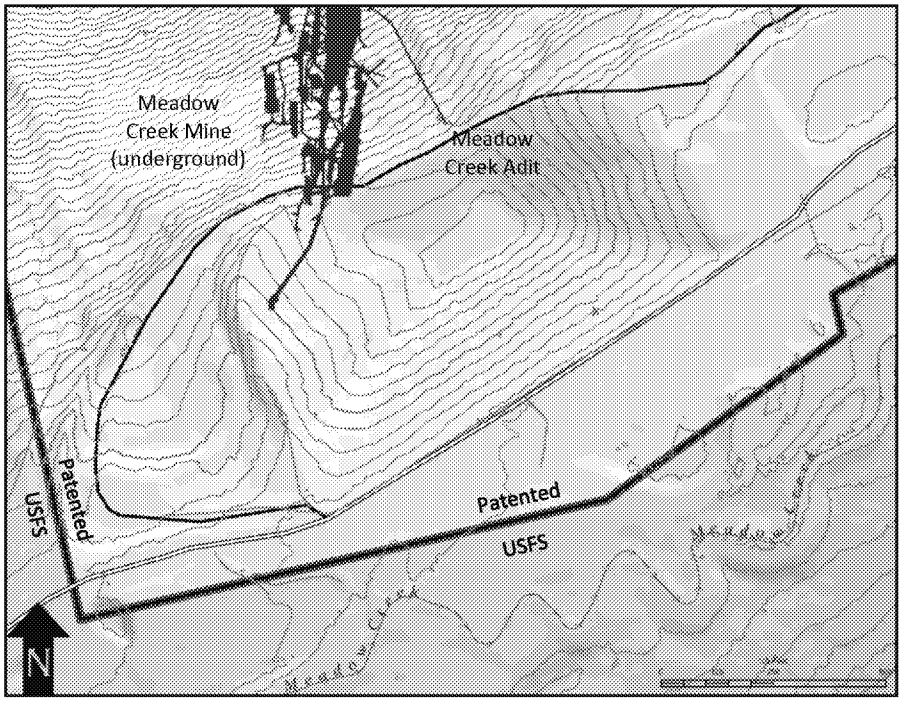

Figure 10 – Meadow Creek Adit

Appointment

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 7/1/2019 6:51:13 PM
To: gary.fremerman@usda.gov; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Lisa.O'Hara@deq.idaho.gov; Lisa.Carlson@deq.idaho.gov; Terry T. Uhling [tuhling@martenlaw.com]

Subject: Midas Gold Call
Location: Conference Call

Start: 7/2/2019 6:30:00 PM
End: 7/2/2019 7:30:00 PM
Show Time As: Tentative

Call-in Number

Ex. 6 Personal Privacy (PP)

Passcode: Ex. 6 Personal Privacy (PP)

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Message

From: Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]
Sent: 7/23/2019 6:01:56 PM
To: Bradley M. Marten [bmarten@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
CC: Zamba, Kathy -FS [kathy.zamba@usda.gov]; Cerise, Kathy [Cerise.Kathryn@epa.gov]; Mcclain, Ronald - OGC, Washington, DC [ronald.mcclain@usda.gov]
Subject: Stibnite

Brad/Elizabeth/Lisa – just FYI, I will be out Ex. 6 Personal Privacy (PP) without access to phone or email communications from July 29 until August 9. My OGC colleague Ron McClain (copied) will represent the Forest Service on the CERCLA-related legal issues while I am out. Please include Ron on all communications relating to this matter until I am back. The best way to reach Ron is via email. Ron's direct work line is: 202-720-4500. Thanks.

Gary M. Fremerman
Senior Counsel
Natural Resources and Environment Division
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Ave., S.W., Rm 2013-S
Washington, D.C. 20250
202-720-8041 (voice)
202-631-4881 (mobile)
844-354-1119 (fax)
gary.fremerman@usda.gov

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Appointment

From: Merissa A. Moeller [mmoeller@martenlaw.com]
Sent: 6/12/2019 12:46:03 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]

Subject: Accepted: Fwd: Stibnite Mine
Location: I'll call you

Start: 6/12/2019 7:30:00 PM
End: 6/12/2019 8:00:00 PM
Show Time As: Busy

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Message

From: Jill Grant [jgrant@jillgrantlaw.com]
Sent: 11/18/2019 4:03:35 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
CC: Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Lisa.O'Hara@deq.idaho.gov; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: RE: Agenda for Nov 18 call

Thank you. I didn't receive the meeting invite – I think I may have been left off the distribution list, and wonder if you could fix that.

From: Bradley M. Marten [mailto:bmarten@martenlaw.com]
Sent: Monday, November 18, 2019 11:01 AM
To: Jill Grant <jgrant@jillgrantlaw.com>
Cc: Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Lisa.O'Hara@deq.idaho.gov; McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Agenda for Nov 18 call

Thanks, Jill. Here's the call in info.

All,

A Zoom meeting has been set up for next week's Stibnite Mine AOC Technical Meeting.

To participate via computer audio and video please use:

Ex. 6 Personal Privacy (PP)

For audio only in the USA use:

Ex. 6 Personal Privacy (PP)
Meeting ID: Ex. 6 Personal Privacy (PP)

For audio only in Canada use:

Ex. 6 Personal Privacy (PP)
Meeting ID: Ex. 6 Personal Privacy (PP)

Regards,

John

Sent from my iPhone

On Nov 18, 2019, at 7:56 AM, Jill Grant <jgrant@jillgrantlaw.com> wrote:

I forgot to add that I'm available for an attorney call on Monday next week but not the rest of the week.

From: Jill Grant
Sent: Monday, November 18, 2019 10:53 AM
To: 'Bradley M. Marten' <bmarten@martenlaw.com>; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Lisa.O'Hara@deq.idaho.gov; McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: Michael Bogert <mbogert@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Laurel Sayer <lsayer@midasgoldinc.com>; Jonathan E. Rackoff <rackoff@martenlaw.com>
Subject: RE: Agenda for Nov 18 call

Good morning all,

What is the call-in number for our conference call today?

I agree that it makes sense to go through everyone's comments, and I appreciate Brad taking the time to address some of the Shoshone-Bannock Tribes' comments in advance (below). However, not all of the Tribes' comments are addressed – not just the technical comments, but also comments regarding tribal community meetings, location of administrative record, and some proposed edits related to consistency with the NCP – so I think it would be helpful to go through them.

Thanks,

Jill

Jill Grant & Associates, LLC
1319 F Street NW
Suite 300
Washington, DC 20004
Tel: 202-821-1950
Fax: 202-459-9558
jgrant@jillgrantlaw.com
www.jillgrantlaw.com

<image001.png>

<image003.jpg>

From: Bradley M. Marten [mailto:bmarten@martenlaw.com]
Sent: Sunday, November 17, 2019 5:07 PM
To: Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Lisa.O'Hara@deq.idaho.gov; McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>; Jill Grant <jgrant@jillgrantlaw.com>
Cc: Michael Bogert <mbogert@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Laurel Sayer <lsayer@midasgoldinc.com>; Jonathan E. Rackoff <rackoff@martenlaw.com>
Subject: Agenda for Nov 18 call

Elizabeth, Jill, Gary and Lisa:

My thought for the call tomorrow at 10 am is to go through the comments filed by the Shoshone Bannock Tribe, the State of Idaho and the US Forest Service one by one, and to get any comments from EPA and from Midas out on the table and resolved. We should also set up a call to review any additional comments, if any, received from the Nez Perce Tribe. My understanding is that they have been promised, but not before Nov. 26th, which is essentially the end of the short Thanksgiving holiday week. Perhaps we can set a call for Monday, December 2 with the goal of finalizing the SOW. Please advise of your availability, at 10 am PST.

Midas will be prepared to have an attorney call next week to discuss the AOC Elizabeth circulated late Friday night. Please let me know your availability Thanksgiving week and we will coordinate schedules.

For ease of reference, I attach the three sets of comments received (as revised or updated), and Midas's comments (sent Saturday, Nov. 16) below. The attachments are from the Forest Service (titled "Stibnite SOW"), the State (titled 2019-07-25 Draft)" and the Shoshone Bannock Tribe (titled 2019-11-13 SBT Comments").

Talk to you tomorrow.

Jill and Lisa:

Thanks for your comments on the Statement of Work we have been working on with you, EPA and the US Forest Service. In advance of our call on Monday, I am providing these preliminary responses, in order to expedite our call. I anticipate that we can complete the call in an hour or less.

- Shoshone Bannock Tribe comments:

    - Scope

    The scope of the RI/FS investigation are the eight areas identified in the "Purpose" section, pp. 1-2. Midas Gold and EPA recognize that implementation of the PRO, once approved, may broaden the scope and EPA (Kathy Cerise) has proposed language to reflect this, to be added to the second paragraph of the Purpose section, which would read as follows:

    > *In September 2016, Midas Gold filed a Plan of Restoration and Operations ("PRO") with the United States Forest Service ("USFS") for the redevelopment of Stibnite, and plans to undertake mining, mineral processing and restoration activities on portions of the Site that will result in landscape-scale changes to many of the existing Site features. As such, the scope and timing of sampling and other elements of the RI/FS will consider potential mining activities in the PRO, any modifications and subsequent remediation.. This will require flexibility in the RI/FS and could require a phased approach to accelerate certain activities.*

    We believe that EPA's proposed language addresses your comment. With respect to the request for "some time to review the PRO in its entirety," Midas Gold of course has no objection and is happy to facilitate your review.

    - Role of the Tribe in Review Process

    In several places, the comments include clarification as to the role of the Tribe (and presumably the other Participants) in reviewing documents submitted under the SOW. The Tribe is correct

in concluding that all documents will be submitted for review by the Participants. We understand this to be the understanding of all Participants, and will ask to confirm this on Monday.

- Human Health Risk Assessment

The Tribe has asked to confirm that the human health risk assessment will include "a tribal scenario." Midas Gold has no objection.

- Uranium and Daughter Products

We will defer to EPA on this comment

- Vegetation Results

Seems fine to include these, but we defer to EPA.

- State Comments

We read these as largely consistent with the Tribe's comment on its role in the review process, and have the same understanding as above, to be confirmed on Monday.

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 11/16/2019 1:18:42 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Mine AOC Draft

Thank you, Elizabeth.

Sent from my iPhone

On Nov 16, 2019, at 2:22 AM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Attached is a rough first draft of the Settlement Agreement. Given my workload this past two weeks, I did not have time to provide a draft to the other governmental agencies before I sent it to Midas. As a result, there will need to be adjustments in certain sections such as cost reimbursement of the various parties, and sections where I did not have needed information from the other Parties. I have written the settlement agreement with EPA as the lead agency/decision maker and IDEQ and the Tribes as the support agencies. EPA and USFS need to work out where to use "EPA determines that…" versus "EPA and USFS determine…", or "the United States determine…" because USFS retains its decision making authority on USFS land. For example, there is a statement in the agreement that says, "Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law." USFS and EPA will discuss whether this statement will read, "The United States (or EPA and the USFS) retain all authority…). The Support Agencies and the Federal agencies will need to talk about editing the document to adequately describe the involvement of the Support Agencies. We need to work out with the Support Agencies the best way to communicate their role. I think it is too cumbersome to say "in consultation with the Support Agencies" each time EPA or EPA/USFS makes a decision. I would prefer to have one statement in the beginning of the document that says EPA or EPA/USFS will consult with the Support Agencies when making decisions pursuant to this agreement. I have made an attempt at that language in the attached draft.

There are gaps in the Findings of Fact that EPA is working to fill. I have taken information from different sources/authors to fill that section in, so feel free to make suggestions/corrections.

The draft currently has Midas submitting documents only to EPA. The next draft will be modified to have documents sent to all of the parties so that EPA does not have to distribute them. I don't currently have all of the contact information I need to make that change, so we can do that in the next draft.

There may be a need to add language to the agreement to reflect modifications that are made to the SOW.

Again, this is a rough draft and I expect that there will be many corrections. EPA reserves the right to make changes to the document proposed and encourages all of the Parties to comment and suggest corrections and modifications.

Please forward my email to your respective teams.

Thank you.

- Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image002.png>

<Draft #1 11-15-2019.docx>

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Delivery Report

From: postmaster@usdagcc.onmicrosoft.com [postmaster@usdagcc.onmicrosoft.com]
Sent: 11/16/2019 10:22:36 AM
To: Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]
Subject: Delivered: Stibnite Mine AOC Draft
Attachments: Stibnite Mine AOC Draft

Your message
To: Bradley M. Marten; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC; Jill Grant
CC: Cerise, Kathy
Subject: Stibnite Mine AOC Draft
Sent: 11/16/2019 10:21:29 AM

Your message has been delivered to the following recipients:

Fremerman, Gary - OGC, Washington, DC (gary.fremerman@usda.gov)

Subject: Stibnite Mine AOC Draft

Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 11/16/2019 10:21:29 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jill Grant [jgrant@jillgrantlaw.com]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: Stibnite Mine AOC Draft

Delivery Report

From: postmaster@martenlaw.com [postmaster@martenlaw.com]
Sent: 11/16/2019 10:22:24 AM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: Delivered: Stibnite Mine AOC Draft
Attachments: Stibnite Mine AOC Draft

Your message
To: Bradley M. Marten; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC; Jill Grant
CC: Cerise, Kathy
Subject: Stibnite Mine AOC Draft
Sent: 11/16/2019 10:21:29 AM

Your message has been delivered to the following recipients:

Bradley M. Marten (bmarten@martenlaw.com)

Subject: Stibnite Mine AOC Draft

Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 11/16/2019 10:21:29 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jill Grant [jgrant@jillgrantlaw.com]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: Stibnite Mine AOC Draft

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 9/10/2019 8:51:59 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: RE: Call with Tribe

OK, thanks.

I'm still in [redacted] Ex. 6 Personal Privacy (PP) returning in the morning, back at work (maybe) Thursday, definitely Friday. Would appreciate an update on whether the Tribe has agreed to consult on the AOC, or not, when you can. Sending the Midas letter written to Mike Lopez and Amanda, regarding the request to consent to a stay, in a moment.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

-----Original Message-----
From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Tuesday, September 10, 2019 9:46 AM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Call with Tribe

Hi Brad. Mike and I are trying to find a time that works to talk today.

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

-----Original Message-----
From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, September 09, 2019 1:13 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Call with Tribe

Elizabeth- were you able to reach Mike Lopez about the Tribe's 1) consultative role in the development of the AOC and 2) decision whether to stay the CWA lawsuit pending the AOC negotiations?

Sent from my iPhone

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Delivery Report

From: Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]
Sent: 11/16/2019 10:21:33 AM
To: Lisa.O'Hara@deq.idaho.gov
Subject: Relayed: Stibnite Mine AOC Draft
Attachments: Stibnite Mine AOC Draft

Your message
To: Bradley M. Marten; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC; Jill Grant
CC: Cerise, Kathy
Subject: Stibnite Mine AOC Draft
Sent: 11/16/2019 10:21:29 AM

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Lisa.O'Hara@deq.idaho.gov (Lisa.O'Hara@deq.idaho.gov)

Subject: Stibnite Mine AOC Draft

To: Bradley M. Marten[bmarten@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov[Lisa.O'Hara@deq.idaho.gov]; Fremerman, Gary - OGC, Washington, DC[gary.fremerman@usda.gov]; Jill Grant[jgrant@jillgrantlaw.com]
Cc: Cerise, Kathy[Cerise.Kathryn@epa.gov]
From: McKenna, Elizabeth[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: Sat 11/16/2019 10:21:29 AM (UTC)
Subject: Stibnite Mine AOC Draft

Delivery Report

From: Microsoft Outlook [MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@usepa.onmicrosoft.com]
Sent: 11/16/2019 10:21:31 AM
To: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: Delivered: Stibnite Mine AOC Draft
Attachments: Stibnite Mine AOC Draft

Your message
To: Bradley M. Marten; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC; Jill Grant
CC: Cerise, Kathy
Subject: Stibnite Mine AOC Draft
Sent: 11/16/2019 10:21:29 AM

Your message has been delivered to the following recipients:

Cerise, Kathy (Cerise.Kathryn@epa.gov)

Subject: Stibnite Mine AOC Draft

Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 11/16/2019 10:21:29 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jill Grant [jgrant@jillgrantlaw.com]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: Stibnite Mine AOC Draft
Attachments: Draft #1 11-15-2019.docx

Attached is a rough first draft of the Settlement Agreement. Given my workload this past two weeks, I did not have time to provide a draft to the other governmental agencies before I sent it to Midas. As a result, there will need to be adjustments in certain sections such as cost reimbursement of the various parties, and sections where I did not have needed information from the other Parties. I have written the settlement agreement with EPA as the lead agency/decision maker and IDEQ and the Tribes as the support agencies. EPA and USFS need to work out where to use "EPA determines that…" versus "EPA and USFS determine…", or "the United States determine…" because USFS retains its decision making authority on USFS land. For example, there is a statement in the agreement that says, "Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law." USFS and EPA will discuss whether this statement will read, "The United States (or EPA and the USFS) retain all authority…). The Support Agencies and the Federal agencies will need to talk about editing the document to adequately describe the involvement of the Support Agencies. We need to work out with the Support Agencies the best way to communicate their role. I think it is too cumbersome to say "in consultation with the Support Agencies" each time EPA or EPA/USFS makes a decision. I would prefer to have one statement in the beginning of the document that says EPA or EPA/USFS will consult with the Support Agencies when making decisions pursuant to this agreement. I have made an attempt at that language in the attached draft.

There are gaps in the Findings of Fact that EPA is working to fill. I have taken information from different sources/authors to fill that section in, so feel free to make suggestions/corrections.

The draft currently has Midas submitting documents only to EPA. The next draft will be modified to have documents sent to all of the parties so that EPA does not have to distribute them. I don't currently have all of the contact information I need to make that change, so we can do that in the next draft.

There may be a need to add language to the agreement to reflect modifications that are made to the SOW.

Again, this is a rough draft and I expect that there will be many corrections. EPA reserves the right to make changes to the document proposed and encourages all of the Parties to comment and suggest corrections and modifications.

Please forward my email to your respective teams.

Thank you.

- Elizabeth

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Seattle, WA 98101
(206) 553-0016

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION ___

IN THE MATTER OF:	)	
	)	CERCLA Docket No. ____
[Site Name and Location]	)	
	)	
[Names of Respondents (if many, reference attached list)],	)	
	)	
Respondents	)	**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY**
	)	
Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622.	)	

MODEL ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION / FEASIBILITY STUDY

AOC Draft #1 11-15-2019

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), the United States Department of Agriculture Forest Service (USFS), the Idaho Department of Environmental Quality (IDEQ), the Shoshone-Bannock Tribes, and Midas Gold Corp., a Canadian corporation, and related Respondents Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc. (hereinafter collectively referred to as Respondents). The EPA, USFS, IDEQ, the Shoshone Bannock Tribes (Tribes), and Respondents are collectively referred to as the "Parties" and may be singularly referred to as a "Party." This Settlement provides for the performance of a remedial investigation and feasibility study (RI/FS) by Respondents and the payment of certain response costs incurred by EPA and USFS, IDEQ, and the Shoshone Bannock Tribes at or in connection with the Stibnite Mine Site (the "Site") generally located about fourteen (14) miles east of the town of Yellow Pine in Valley County, Idaho.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923-26 (1987), and the Secretary of the United States Department of Agriculture ("Secretary") by Executive Order 12580, 52 Fed. Reg. 2926 (January 23, 1987),3 C.F.R., 1987 Compilation, p. 193. The authority was further delegated to the EPA Regional Administrators on September 13, 1987, by EPA Delegation Nos. 14-14-A, 14-14-B, 14-14-C and 14-14-D. This authority has been redelegated by the Regional Administrator, EPA Region 10, and to the Office of Superfund Environmental Management Division Director. The Secretary's authority was further delegated to the Chief of the USFS by 7 C.F.R. § 2.60(a)(39). The Secretary's authority was re-delegated by the Chief of the FS to the FS Region 4 Regional Forester.

Commented [A1]: Check to see of updated delegation.

3. Consistent with EO 12580 and the NCP, EPA will be the lead agency for response actions involving the private portions of the Site, and the Forest Service will be the lead for response actions involving the NFS portions of the Site. Nevertheless, the parties have agreed that it is appropriate, for fiscal and efficiency reasons, for EPA to take the principal responsibility for implementation of the response action as a whole.

4. The State enters into this Settlement pursuant to Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. §§ 9620(f) and 9621(f) and will serve as Support Agency under this Settlement and will review response data and documents and consult with EPA and the USFS on decisions and approvals made under the Settlement.

5. The Tribes are a federally-recognized Indian Tribe with a governing body known as the Fort Hall Business Council. The Tribes assert that they are exercising their authorities pursuant to their inherent sovereign powers, the Fort Bridger Treaty (15 Stat. 673) the Fort Bridger Treaty (15 Stat. 673), and the Constitution and By-Laws of 1936. The Tribes will serve as a support agency under this Settlement and will review response data and documents and consult with EPA and the USFS on decisions approvals made under the Settlement.

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6. The EPA RPM and the other governmental parties' Project Coordinators shall coordinate with each other to implement response actions at the Site. This coordination shall include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings with contractors, consultants, the state, trustees, or other participating third parties related to the Site, or any significant on-Site activities. In most cases, reasonable prior notice shall be considered seven (7) days. In the event that a meeting needs to be scheduled on shorter notice, the EPA RPM shall use their best efforts to contact their governmental parties' counterparts and shall determine the counterparts availability prior to scheduling the meeting.

7. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Section [REF _Ref364854851 \r \h] (Findings of Fact) and [REF _Ref364854871 \r \h] (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

8. This Settlement is binding upon EPA, the USFS, IDEQ, the Shoshone Bannock Tribe and upon Respondents and their heirs, successors and assigns. Any change in ownership or corporate status of a Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Settlement.

9. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

10. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

11. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into under this Settlement upon performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

12. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall

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have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section [REF _Ref326220092 \r \h].

"Engineering Controls" shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. §9507.

"IDEQ" shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the Support Agencies incur in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section [REF _Ref378061137 \r \h * MERGEFORMAT] (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section [REF _Ref326220129 \r \h] (Emergency Response and Notification of Releases), Paragraph [REF _Ref408837399 \r \h] (Work Takeover), Paragraph [REF _Ref362014500 \r \h] (Access to Financial Assurance)], Paragraph [REF _Ref377733374 \r \h * MERGEFORMAT] (Community Involvement Plan), including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)], Section [REF _Ref364855795 \r \h] (Dispute Resolution), the costs of any cooperative agreements under Section 104(d)(1), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site, and all Interest on Past Response Costs.

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action pursuant to this Settlement; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at [HYPERLINK "https://www.epa.gov/superfund/superfund-interest-rates"].

"Stibnite Mine Site Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site from [x date] to the Effective Date of the Settlement, plus Interest on all such costs through such date.]

Commented [A2]: This date will be the date on which Midas first met with EPA HQ regarding a CERCLA settlement.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Respondents" shall mean Midas Gold Corp., a Canadian corporation, and related Respondents Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc.

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section [REF _Ref408929826 \w \h] (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean all area within the Stibnite Mining District in which Respondent has ownership interest in land or mining claims, and/or has conducted mine exploration drilling activities.

"State" shall mean the State of Idaho

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to develop the RI/FS for the Site, as set forth in Appendix __ to this Settlement. The Statement of Work is incorporated into this Settlement and is an enforceable part of this Settlement as are any modifications made thereto in accordance with this Settlement.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"Tribe" shall mean the Shoshone Bannock Tribes.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any hazardous wastes as defined in the Idaho Hazardous Waste Management Act, Idaho Code 39-4403(8); (e) "pollutants" as defined in IDAPA 58.01.02.010.731; (f) "contaminants" as defined in IDAPA 58.01.11.007.10; (g) "hazardous materials" as defined in IDAPA58.01.02.010.40; or "deleterious materials" as defined in IDAPA 58.01.02.010.16.

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement, except those required by Section [REF _Ref326220583 \w \h] (Record Retention).

IV. FINDINGS OF FACT

Commented [A3]: Note that the Findings of Fact are a work in progress. EPA is reviewing background information to fill in sections on types, levels, locations and effects of contamination at the Site and relevant history of the Site. I have taken these paragraphs from multiple documents by varying authors. Please let me know if there are inaccuracies.

13. The Stibnite Mining Site ("Site") is about fourteen (14) miles east of the town of Yellow Pine in Valley County, Idaho. The Site includes both National Forest Service lands and private lands, although most of the mining and processing areas are on patented (private) claims. The Site comprises a number of hazardous substances source areas resulting from mining along Meadow Creek and East Fork South Fork ("EFSF') Salmon River.

14. The Site is comprised of private, federal, and state land. Approximately 2,932 acres are under USFFS jurisdiction, 895 acres are private lands including lands owned by Midas Gold, 25 acres are administered by the Bureau of Reclamation, and 37 acres are administered by the State of Idaho.

15. The Site is located within the historic Stibnite Mining District (District). Mining operations began in the District in the 1920s and continued through the 1990s. Historical mining in the District mostly occurred in three general areas named Hangar Flats, Yellow Pine, and West End. Mining operations in the 1920s through the 1950s focused in the area of the proposed Hangar Flats and Yellow Pine pits. Mining operations in the late 1970s through mid-1990s were focused in the West End deposit and a pit known as the Homestake pit located within the area of disturbance for Midas Gold's proposed Yellow Pine pit. Past mining, development, and reclamation activities in the District include: exploration, road construction, underground and surface mining, milling, tailings disposal, smelting, ore heap leaching, spent ore disposal, waste rock disposal, hydro- power development, water retention dam construction, saw mill, housing camps, a townsite, transmission line, and other associated infrastructure.

16. Antimony, tungsten and gold were mined at the Site. Most ore was mined by Bradley Mining Company using open-pit methods, although underground methods were used from 1927 to 1943. During World War II the mining area gained significance as the largest producer of strategic metals, specifically antimony and tungsten, which had many uses during the war. Early mining involved hauling ore rock from the underground workings to a mill site at the town of Stibnite where antimony and tungsten concentrates were separated from the pit-run ore in a mill using a selective flotation process. In 1943, Bradley Mining abandoned the underground workings and began the Yellow Pine Pit Mine. Waste tailings produced in the milling process were deposited in Meadow Creek above the mill site at the south end of the valley, using the upstream method tailings dam, and in areas along the creek downstream of the main tailings deposition area. A smelter was constructed at Stibnite in 1948 to process low grade gold and gold-antimony ore. The smelter existed at the site until 1955, when it was dismantled and moved to another mine.

17. Exploration of gold reserves in the area resumed in 1970. Mining operations in the late 1970s through mid-1990s were focused in the West End deposit and a pit known as the Homestake pit located adjacent to the historical Yellow Pine pit within the area of disturbance for Midas Gold's proposed Yellow Pine pit. Processing occurred primarily by heap leaching using both one-time use pads and on/off pads where the ore was loaded on, leached and then removed to allow the next load of ore to be placed. The leaching occurred primarily in the Meadow Creek valley. The use of a cyanide heap-leaching process to recover gold from low-grade ore was initiated and full-scale operation began in 1982. Heap-leach facilities were constructed along the north side of Meadow Creek to recover gold from low-grade ore.

18. There are several contaminant sources in the area including mill and smelter tailings, spent ore from heap leaching operations, contaminated soils in the smelter area, open pit mines, abandoned adits, tailings, and waste rock dumps.

19. [Place holder: insert hazardous substances at the Site. EPA reviewing information to summarize.]

20. A Preliminary Assessment/Site Investigation was conducted on public lands administered by the USFS in 2001. The Site was proposed for listing on the National Priorities

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List in 2001 (Federal Register, Vol. 66, No. 178, Thursday, September 13, 2001). There has been no change in the status since 2001, and the Stibnite/Yellow Pine Mining area, which includes the mine site, remains as "proposed" status on the NPL.

21. [Identification of the populations at risk, both human and non-human.]

22. [Health/environmental effects of some major contaminants.]

23. [Whether the Site is on the [proposed] National Priorities List. Sample language follows:

24. Beginning in 1982, the IDEQ began monitoring the Site. The IDEQ sampled surface water and groundwater for hazardous substances generated by mining operations. Sampling results showed exceedances of cyanide for the EPA quality criteria for water for fresh water aquatic organisms.

25. On September 25, 1991, the EPA placed the Yellow Pine Mine Area on the Federal Facilities Docket. The Forest Service initiated a CERCLA Section 104 and 107 response and enforcement action at the Site.

26. In 1995, former owner/operator Stibnite Mine, Inc. entered into an Administrative Order on Consent (AOC) with the EPA Region 10 to mitigate environmental problems associated with the historic Bradley tailings in the upper Meadow Creek Valley. The AOC required Stibnite Mine, Inc. to stabilize the upper Meadow Creek Diversion Channel and to treat the flow exiting the diversion to meet water quality standards.

27. In 1999, the Forest Service completed a time-critical removal action at the pilot plant. The action consisted of covering and capping ponds constructed by Canadian Superior Mining (U.S.) Limited in 1979 and were used as a pilot test for processing gold. The pilot test used cyanide-leaching technology for ore extracted from the site (Forest Service 2004).

28. By the end of 1999, most of the SMI facilities and haul roads were reclaimed under a reclamation plan approved by IDEQ, IDL, and the Forest Service and implemented by IDL. Reclamation and closure continued in 2000.

29. In 2002, the Forest Service completed two time-critical removal actions (TCR). The first was to remove tailings from the Poison Pond area. The Poison Ponds were located along Meadow Creek south of Hecla's heap leach pad. Approximately 2,500 cubic yards were removed and placed in a repository cell located on the northwest Bradley waste dump. The second TCR was in the smelter stack area. This action consisted of removing the wood flume and ash to an off-site EPA approved facility. This TCR also included removal and placement of 400 cubic yards of soil in the same repository cell located on the northwest Bradley waste dump. The soil was removed from below the smelter stack flume.

30. The Forest Service, IDL, IDEQ, and EPA have performed several removal actions in the Stibnite/Yellow Pine Mining Area including removal of minor quantities of legacy tailings and the smelter stack in 2003, re-channelization of lower Meadow Creek in 2005, and covering certain legacy tailings-related impoundments with clean fill in 2009.

31. In the summer of 2003, the USFS and IDEQ found mine wastes containing very high levels of arsenic at the Stibnite Mine. These arsenic "hot spots" were in the northwest Bradley waste dump, which was an unsecured area with unrestricted public access. In 2004, EPA through its contractor, Environmental Quality Management (EQM), implemented a removal of the contaminated waste, regrading of the removal area, and soil placed on top. The area was later seeded with native plants and covered with straw. Excavated waste was placed in the on-site Forest Service "repository cell", an area designed to safely store the waste and prevent exposure to the public.

32. In 2004, a Meadow Creek Engineering Evaluation/Cost Analysis (EE/CA) was completed under a Forest Service contract by Science Applications International Corporation (SAIC), including specifications and design of the recommended alternative. Also, in 2004, a Biological Assessment (BA) was completed, as required by the Endangered Species Act (ESA), and submitted to the USFWS and National Marine Fisheries Service.

33. In 2005, the Forest Service and EPA completed a CERCLA removal action in Meadow Creek between Blowout Creek and its confluence with the EFSFSR. Legacy tailings that were contributing elevated levels of arsenic to the stream were excavated from a 19-acre area and placed in an engineered repository in the SODA and 3,500 feet of stream channel was reconstructed, providing habitat suitable for salmonid spawning.

34. In 2009, Respondents began acquiring land and mineral interests at the Site and is currently has ownership and operational control over the lands and mining claim(s) at the Site. Midas Gold has conducted exploratory drilling and is currently seeking a mine operating permit through the National Environmental Policy Act process.

35. Respondent proposes to develop and operate a mining operation that produces gold and silver doré, and antimony concentrates from ore deposits associated with Midas Gold's mining claims and rights in the project area. In addition, Respondents' proposed mining plan states that Respondents will undertake cleanup and reclamation at the Site before, during, and after the proposed mining.

36. In general, Midas Gold's proposed development of the mineral resources would include construction of access and haul roads within the mine site; construction of supporting infrastructure for the mine site (e.g., worker housing and support facilities); open pit mining; ore processing at the mine site for the recovery of gold, silver, and antimony; placement of tailings in a composite- lined TSF; and placement of development rock in engineered and designed facilities.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

37. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Stibnite Mine Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondents ares "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondents are responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondents are the "owners" and/or "operators" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in Paragraphs ___ of the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The actions required by this Settlement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

g. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement.

VI. SETTLEMENT AGREEMENT AND ORDER

38. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

39. **Selection of Contractors, Personnel**. All Work performed under this Settlement shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, Respondents shall notify EPA in writing of the names, titles, addresses, telephone numbers, email addresses, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. If, after the commencement of Work, Respondents retain additional contractors or subcontractors, Respondents shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least __ days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications

Commented [A4]: EPA will be the lead agency and will be the primary point of contact with Midas. However, please suggest areas where IDEQ, Tribes, USFS should be inserted instead of just EPA.

within ___ days after EPA's disapproval. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," EPA/240/B-01/002 (Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

Commented [A5]: The governments need to discuss whether each mention of EPA approval needs to be "EPA/USFS approval". Also, does it make sense to have one statement in the beginning of the document that says something to the effect that "EPA will consult with the IDEQ and the Tribes when making a decision/approving documents" rather than putting in the consulting language each and every time we say EPA will do something?

40. Within 30 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of a designated Project Coordinator who does not meet the requirements of Paragraph [REF _Ref461736563 \r \h * MERGEFORMAT] (Selection of Contractors, Personnel). If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within ___ days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to all Respondents.

41. EPA has designated Kathy Cerise of the Superfund Emergency Management Division in EPA Region 10 as its Remedial Project Manager (RPM). EPA will notify Respondents of a change of its RPM. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Settlement, shall be directed to the EPA RPM in accordance with Paragraph [REF _Ref446583619 \r \h * MERGEFORMAT].

42. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's RPM shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action when s/he determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the EPA RPM from the area under study pursuant to this Settlement shall not be cause for stoppage or delay of Work.

VIII. WORK TO BE PERFORMED

43. Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at [HYPERLINK "https://semspub.epa.gov/src/document/11/128301"

], "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at [HYPERLINK "http://semspub.epa.gov/src/document/11/156756"], and guidance referenced therein, and guidance referenced in the SOW. If a mine operating permit is not issued and/or mining does not occur at the Site, Respondents remain obligated to perform the Work. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, evaluating and proposing early actions based on the results of the human health and ecological risk assessments, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

44. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

45. **Activities and Deliverables**

a. Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at [HYPERLINK "https://semspub.epa.gov/src/document/11/128301"], "Guidance for Data Useability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at [HYPERLINK "http://semspub.epa.gov/src/document/11/156756"], and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation (RI) shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study (FS) shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40

C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

46. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section [REF _Ref364855414 \r \h * MERGEFORMAT] (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

47. **Modification of the RI/FS Work Plan**

a. If at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to EPA's Project Coordinator within ___ days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify EPA's RPM by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the RI/FS Work Plan, EPA shall modify the RI/FS Work Plan in writing accordingly or direct Respondents to modify and submit the modified RI/FS Work Plan to EPA for approval. Respondents shall perform the RI/FS Work Plan as modified.

c. EPA may determine that, in addition to tasks defined in the initially approved RI/FS Work Plan, other additional work may be necessary to accomplish the objectives of the RI/FS. Respondents shall perform these response actions in addition to those required by the initially approved RI/FS Work Plan, including any approved modifications, if EPA determines that such actions are necessary for a thorough RI/FS.

d. Respondents shall confirm their willingness to perform the additional work in writing to EPA within 7 days after receipt of the EPA request. If Respondents object to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section [REF _Ref364855795 \r \h * MERGEFORMAT] (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondents shall complete the additional work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan or written RI/FS Work Plan supplement. EPA reserves the right to conduct the work itself, to seek reimbursement from Respondents for the costs incurred in performing the work, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

48. **Off-Site Shipments**

a. Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the RI/FS and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

49. **Meetings**. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the preparation of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

50. **Progress Reports**. In addition to the deliverables set forth in this Settlement, Respondents shall submit written monthly progress reports to EPA by the ▒ day of the following month. At a minimum, with respect to the preceding month, these progress reports shall:

a. describe the actions that have been taken to comply with this Settlement;

b. include all results of sampling and tests and all other data received by Respondents;

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c. describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion; and

d. describe all problems encountered in complying with the requirements of this Settlement and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

IX. SUBMISSION AND APPROVAL OF DELIVERABLES

51. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to EPA's RPM at1200 6th Avenue, Seattle, Washington 98101, (206) 553-2589, cerise.kathy@epa.gov and to the State at [**insert contact information**]. Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph [REF _Ref425414746 \w \h * MERGEFORMAT]. All other deliverables shall be submitted in the electronic form specified by EPA's RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (i) in the ESRI File Geodatabase format; and (ii) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at [HYPERLINK "https://edg.epa.gov/EME/"].

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult [HYPERLINK "https://www.epa.gov/geospatial/geospatial-policies-and-standards"] for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

52. **Approval of Deliverables**

a. **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Settlement EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmissions**. Upon receipt of a notice of disapproval under Paragraph [REF _Ref446931551 \r \h * MERGEFORMAT].[REF _Ref422321426 \r \h * MERGEFORMAT] (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph [REF _Ref446931551 \r \h * MERGEFORMAT].[REF _Ref422321426 \r \h * MERGEFORMAT], Respondents shall, within __ days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation**. Upon approval, approval upon conditions, or modification by EPA under Paragraph [REF _Ref446931551 \r \h * MERGEFORMAT].[REF _Ref447018382 \r \h * MERGEFORMAT] (Initial Submissions) or Paragraph [REF _Ref322533499 \w \h * MERGEFORMAT] (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (ii) Respondents shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section [REF _Ref447018476 \r \h] (Stipulated Penalties) for violations of this Settlement.

53. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

54. In the event that EPA takes over some of the tasks, but not the preparation of the Remedial Investigation Report ("RI Report") or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into those reports.

55. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: RI/FS Work Plan; Sampling and Analysis Plan; draft RI Report; Treatability Testing Work Plan; Treatability Testing Sampling and Analysis Plan; Treatability Testing Health and Safety Plan; and draft FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement.

56. For all remaining deliverables not listed in Paragraph [REF _Ref446931936 \r \h * MERGEFORMAT], Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

57. **Material Defects**. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph [REF _Ref447018382 \r \h * MERGEFORMAT] (Initial Submissions) or [REF _Ref322533499 \r \h * MERGEFORMAT] (Resubmissions) due to such material defect, Respondents shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation as provided in Section [REF _Ref447018476 \r \h] (Stipulated Penalties).

58. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

X. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

59. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

60. **Laboratories**

a. Respondents shall ensure that EPA, the USFS, IDEQ, and the Shoshone Bannock Tribes' personnel and its their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the Quality Assurance Project Plan (QAPP) for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at [HYPERLINK "https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures"]. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions," available at [HYPERLINK "https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements"], and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program ([HYPERLINK "https://www.epa.gov/superfund/programs/clp/"]), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" ([HYPERLINK "https://www.epa.gov/hw-sw846"]), "Standard Methods for the Examination of Water and Wastewater" ([HYPERLINK "http://www.standardmethods.org/"]), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" ([HYPERLINK "https://www.epa.gov/ttnamti1/airtox.html)"].

b. Upon approval by EPA, after a reasonable opportunity for review and comment by the USFS, the State, and the Shoshone Bannock Tribes, Respondents may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc.

c. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality Management Systems for Environmental Information and Technology Programs – Requirements With Guidance for Use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements.

d. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the approved QAPP.

61. **Sampling**

a. Upon request, Respondents shall provide split or duplicate samples to EPA. Respondents shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondents split or duplicate samples of any samples they take as part of EPA's oversight of Respondents' implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. Respondents shall submit to EPA, in the next monthly progress report as described in Paragraph [REF _Ref425418789 r \h * MERGEFORMAT] (Progress Reports) the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

c. Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

XI. PROPERTY REQUIREMENTS

62. **Agreements Regarding Access and Non-Interference**. If the Site, or any other property where access is needed to implement this Settlement, is owned or controlled by Respondents, Respondents shall, commencing on the Effective Date, provide EPA, USFS, IDEQ, and the Shoshone Bannock Tribes, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, as may be needed to implement this Settlement. Beginning on the Effective Date of this Settlement, USFS shall permit access to the portions of the Site located on federally managed land to Respondents and its authorized representatives, as necessary to perform the Work required under this Settlement.

63. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents (other than the Parties), Respondents shall use best efforts to secure an agreement, enforceable by Respondents and the United States, providing that such owner shall (i) provide EPA, USFS, IDEQ, the Shoshone Bannock Tribes and Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Settlement; and refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or] interfere with or adversely affect the implementation or integrity of the Work. Respondents shall provide a copy of such access agreement(s) to EPA.

64. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable

sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section [REF _Ref326224281 \w \h] (Payment of Response Costs).

65. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's efforts to secure and ensure compliance with such Institutional Controls.

XII. ACCESS TO INFORMATION

66. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondents' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

67. **Privileged and Protected Claims**

a. Respondents may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph [REF _Ref358288570 \w \h * MERGEFORMAT], and except as provided in Paragraph [REF _Ref383005108 \w \h * MERGEFORMAT].

b. If Respondents assert a claim of privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other

Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

68. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA under this Section or Section [REF _Ref326220583 \w \h * MERGEFORMAT] (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA [and the State], or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

69. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION

70. Until 10 years after EPA provides Respondents with notice, pursuant to Section [REF _Ref326220653 \r \h] (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, each Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

71. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph [REF _Ref358291431 \r \h] (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA.

72. Each Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA, USFS, or the State and that it has fully

complied with any and all EPA, USFS, and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIV. COMPLIANCE WITH OTHER LAWS

73. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section [REF _Ref364856006 \r \h * MERGEFORMAT] (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

74. **Emergency Response**. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify EPA's RPM or, in the event of his/her unavailability, the Regional Duty Officer at (206) 553-1263 and the National Response Center at (800) 424-8802 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section [REF _Ref326224281 \r \h] (Payment of Response Costs).

75. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify EPA's RPM or, in the event of his/her unavailability, the Regional Duty Officer at (206) 553-1263, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

76. For any event covered under this Section, Respondents shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XVI. PAYMENT OF EPA, USFS, IDEQ, and TRIBES' RESPONSE COSTS

Commented [A6]: USFS, State, Tribe need to add their cost provisions in this section

77. **Payment for EPA Past Response Costs**

a. Within 30 days after the Effective Date, Respondents shall pay to EPA $____ for Past Response Costs. Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

For ACH payment:

Respondents shall make payment to EPA by Automated Clearinghouse (ACH) to:

500 Rivertech Court
Riverdale, Maryland 20737
Contact – John Schmid 202-874-7026 or REX, 1-866-234-5681
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number _____ and the EPA docket number for this action.

For online payment:

Respondents shall make payment at [HYPERLINK "https://www.pay.gov"] to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.]

b. At the time of payment, Respondents shall send notice that payment has been made to Kathy Cerise, 1200 Sixth Avenue, MC____, Seattle, WA 98101, and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number ▒▒▒ and the EPA docket number for this action.

c. **Deposit of EPA Past Response Costs Payments**. The total amount to be paid by Respondents pursuant to Paragraph [REF _Ref326155583 \w \h * MERGEFORMAT] shall be deposited by EPA in the Stibnite Mine Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. **Payments for EPA Future Response Costs**. Respondents shall pay to EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis EPA will send Respondents a bill requiring payment that includes a cost summary. Respondents shall make all payments within thirty (30) days of receipt of each bill requiring payment. Respondents shall make all payments required by this Paragraph in the manner required by Paragraph 76, with notice as required by Subparagraph 76.b. The total amount paid will be deposited by EPA in the Stibnite Mine Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

78. **Interest**. In the event that any payment for Past Response Costs or Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section [REF _Ref364855845 \r \h] (Stipulated Penalties).

79. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section [REF _Ref364855795 \w \h] (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph [REF _Ref326154300 \r \h * MERGEFORMAT] (Payments for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such a dispute, Respondents shall submit a Notice of Dispute in writing to EPA's Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h *

MERGEFORMAT], and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to EPA's Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h * MERGEFORMAT]. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph [REF _Ref326154300 \r \h * MERGEFORMAT]. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section [REF _Ref364855795 \w \h] (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XVII. NATURAL RESOURCE DAMAGES

80. For the purposes of Section 113(g)(1) of CERCLA, the Parties agree that, upon the Effective Date of this Settlement for performance of an RI/FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action.

XVIII. DISPUTE RESOLUTION

Commented [A7]: For IDEQ, USFS, Shoshone Bannock Tribes: discuss DR for disputes over non-EPA costs.

81. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

82. **Informal Dispute Resolution**. If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, or, in the case of disputes between Settling Defendant and the USFS, IDEQ, or the Tribes under Paragraphs [payment of costs], they shall send EPA, or if applicable, another Party, a written Notice of Dispute describing the objection(s) within 20 days after such action. Respondents shall have 20 days from EPA's or another Party's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period maybe extended at the sole discretion of the Party with whom Respondents raised the dispute. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

Commented [A8]: Sean to check if this is OK. I'm imagining disputes over State-incurred costs.

83. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 30 days after the end of the Negotiation

Period, submit a statement of position to EPA's RPM, or if applicable, to another Party's Project Manager. The Party with whom Respondents raised the dispute may, within 30 days thereafter, submit a statement of position. Thereafter, a management official at the appropriate supervisory level will issue a written decision on the dispute to Respondents. EPA's or another Party's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's or another Party's decision, whichever occurs.

84. Except as provided in Paragraph [REF _Ref326155627 \w \h * MERGEFORMAT] (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph [REF _Ref408928773 \r \h * MERGEFORMAT], stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [REF _Ref364855845 \w \h] (Stipulated Penalties).

XIX. FORCE MAJEURE

85. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

86. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondents shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Emergency Management Division, EPA Region 10, within 24 hours of when Respondents first knew that the event might cause a delay. Within 5 days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above

requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph [REF _Ref408928929 \w \h * MERGEFORMAT] and whether Respondents have exercised their best efforts under Paragraph [REF _Ref408928929 \w \h * MERGEFORMAT], EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

87. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

88. If Respondents elect to invoke the dispute resolution procedures set forth in Section [REF _Ref364855795 \w \h * MERGEFORMAT] (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs [REF _Ref408928929 \w \h * MERGEFORMAT] and [REF _Ref408929054 \w \h * MERGEFORMAT]. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

89. The failure by EPA, USFS, IDEQ, or the Tribes to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XX. STIPULATED PENALTIES

90. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs [REF _Ref453850196 \r \h * MERGEFORMAT] and [REF _Ref377733892 \w \h * MERGEFORMAT] for failure to comply with the obligations specified in Paragraphs [REF _Ref462842168 \r \h * MERGEFORMAT] and [REF _Ref377733892 \r \h * MERGEFORMAT], unless excused under Section [REF _Ref364856006 \w \h * MERGEFORMAT] (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

91. **Stipulated Penalty Amounts: Payments, Financial Assurance, Major Deliverables, and Other Milestones**

Penalty Per Violation Per Day	Period of Noncompliance
$ 5,000	1st through 14th day
$ 7,500	15th through 30th day
$ 10,000	31st day and beyond

Commented [A9]: Tentative numbers. Need management approval.

a. **Obligations**

(1) Payment of any amount due under Section [REF _Ref326224281 \w \h] (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section [REF _Ref453851067 \w \h] (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph [REF _Ref326155627 \w \h] (Contesting Future Response Costs).

(4) [Will insert list of major deliverables and milestones when SOW is finalized.]

92. **Stipulated Penalty Amounts: Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required by this Settlement, other than those specified in Paragraph [REF _Ref462842168 \w \h]:

Penalty Per Violation Per Day	Period of Noncompliance
$ 2,500	1st through 14th day
$ 5,000	15th through 30th day
$ 7,500	31st day and beyond

Commented [A10]: Tentative numbers.

93. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph [REF _Ref408837399 \w \h * MERGEFORMAT] (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of _____. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs [REF _Ref408837399 \r \h * MERGEFORMAT] (Work Takeover) and [REF _Ref362014500 \w \h * MERGEFORMAT] (Access to Financial Assurance).]

Commented [A11]: EPA will be calculating this number.

94. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section [REF _Ref408930226 \w \h * MERGEFORMAT] (Submission and Approval of Deliverables), during the period, if any, beginning on the 31st day

after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the appropriate EPA Management Official, under Paragraph [REF _Ref408843896 \w \h * MERGEFORMAT] (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

95. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

96. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section [REF _Ref364855795 \r \h * MERGEFORMAT] (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph [REF _Ref326154300 \w \h * MERGEFORMAT] (Payments for Future Response Costs).

97. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph [REF _Ref408928773 \w \h * MERGEFORMAT] until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph [REF _Ref408929252 \w \h * MERGEFORMAT] until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

98. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement.

99. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph [REF _Ref408837399 \w \h * MERGEFORMAT] (Work Takeover).

100. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XXI. COVENANTS BY THE UNITED STATES

Commented [A12]: Add covenants by IDEQ and Tribes?

101. Except as provided in Section [REF _Ref364856274 \w \h * MERGEFORMAT] (Reservations of Rights by the United States), the United States covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work , Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

XXII. RESERVATIONS OF RIGHTS BY THE UNITED STATES

Commented [A13]: Add reservations for IDEQ and Tribes?

102. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

103. The covenant not to sue set forth in Section [REF _Ref364857586 \r \h * MERGEFORMAT] (Covenants by the United States) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement;

b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

104. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in Paragraph [REF _Ref408843613 \w \h * MERGEFORMAT], Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT]. Funding of Work Takeover costs is addressed under Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] (Access to Financial Assurance).]

c. Respondents may invoke the procedures set forth in Section [REF _Ref364855795 \r \h * MERGEFORMAT] (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT]. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT] until the earlier of (1) the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph [REF _Ref408843896 \w \h * MERGEFORMAT] (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY RESPONDENTS

105. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement, including, but not limited to:

Commented [A14]: State and Tribes, please insert appropriate language for covenants by Responsent.

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Past Response Costs, Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Idaho Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law;

106. Except as provided in Paragraph [REF _Ref408843999 \w \h * MERGEFORMAT] (Waiver of Claims by Respondents) these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section [REF _Ref364856274 \r \h * MERGEFORMAT] (Reservations of Rights by EPA), other than in Paragraph [REF _Ref377734500 \w \h * MERGEFORMAT] (liability for failure to meet a requirement of the Settlement), [REF _Ref377734512 \w \h * MERGEFORMAT] (criminal liability), or [REF _Ref424916441 \r \h * MERGEFORMAT] (liability for violations of federal or state law), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

107. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

108. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

109. **Waiver of Claims by Respondents**

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) **De Micromis Waiver**. For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for

disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

b. **Exception to Waiver**

The waiver under this Paragraph 108 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such Respondent.

XXIV. OTHER CLAIMS

110. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

111. Except as expressly provided in Paragraphs [REF _Ref408843999 \w \h] (Waiver of Claims by Respondents) and Section [REF _Ref364857586 \w \h] (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

112. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXV. EFFECT OF SETTLEMENT/CONTRIBUTION

113. Except as provided in Paragraphs [REF _Ref408843999 \w \h] (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section [REF _Ref364855096 \w \h] (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

114. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, Past Response Costs, and Future Response Costs.

115. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

116. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

117. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA and/or the USFS, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section [REF _Ref364857586 \w \h] (Covenants By the United States).

118. Effective upon signature of this Settlement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from such Respondent the payments required by Paragraphs [REF _Ref326155588 \w \h * MERGEFORMAT] (Payment for Past Response Costs) and, if any, Section [REF _Ref364855845 \w \h] (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph [REF _Ref326219447 \r \h * MERGEFORMAT] and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the United States gives notice to Respondents that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by the United States.

XXVI. INDEMNIFICATION

119. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA and the USFS's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

120. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

121. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVII. INSURANCE

122. No later than 30 days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section [REF _Ref326220653 \r \h] (Notice of Completion of Work), commercial general liability insurance with limits of liability of $1 million per occurrence, automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming the EPA and USFS as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy.

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Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA and the USFS that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to the contractor or subcontractor, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Stibnite Mine Site, Idaho and the EPA docket number for this action.

XXVIII. FINANCIAL ASSURANCE

123. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $ [ ] ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at [HYPERLINK "https://cfpub.epa.gov/compliance/models/"], and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

Commented [A15]: EPA is working with EPA HQ to determine the appropriate amount of FA.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

124. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from

EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondents shall follow the procedures of Paragraph [REF _Ref362014481 \w \h] (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

[NOTE REGARDING PARAGRAPH [REF _Ref362014500 \r \h] (Access to Financial Assurance): Case teams should make sure that the "trigger" for obtaining funds and/or work under the financial assurance mechanism is consistent with the trigger in the Settlement, e.g., if the Settlement allows EPA to access the funds in the event of a Work Takeover or a Respondent's failure to provide alternative financial assurance 30 days prior to an impending mechanism cancellation, the mechanism should contain equivalent language.]

125. **Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT], then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph [REF _Ref362014763 \w \h * MERGEFORMAT].

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph [REF _Ref362014763 \w \h * MERGEFORMAT].

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph [REF _Ref404343990 \w \h * MERGEFORMAT], either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraphs [REF _Ref362014207 \w \h * MERGEFORMAT] or [REF _Ref362014209 \w \h * MERGEFORMAT], then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within __ days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured

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by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Stibnite Mine Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph [REF _Ref362014500 \w \h * MERGEFORMAT] must be reimbursed as Future Response Costs under Section [REF _Ref326224281 \w \h * MERGEFORMAT] (Payment of Response Costs).

126. **Modification of Amount, Form, or Terms of Financial Assurance**. Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph [REF _Ref362014176 \r \h * MERGEFORMAT], and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section [REF _Ref364855795 \w \h] (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph [REF _Ref362014176 \r \h * MERGEFORMAT].

127. **Release, Cancellation, or Discontinuation of Financial Assurance**. Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section [REF _Ref326220653 \w \h] (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section [REF _Ref364855795 \w \h] (Dispute Resolution).

XXIX. MODIFICATION

128. EPA's RPM may modify any plan or schedule or the SOW]in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of EPA's RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

129. If Respondents seek permission to deviate from any approved work plan or schedule or the SOW, Respondents' RPM shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph [REF _Ref326219627 \r \h * MERGEFORMAT].

130. No informal advice, guidance, suggestion, or comment by EPA's RPM or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXX. NOTICE OF COMPLETION OF WORK

131. When EPA determines that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of Future Response Costs and Record Retention, EPA will provide written notice to Respondents. If EPA determines that any Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Work Plan, if appropriate, in order to correct such deficiencies. Respondents shall implement the modified and approved RI/FS Work Plan and shall submit a modified draft RI Report and/or FS Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified RI/FS Work Plan shall be a violation of this Settlement.

XXXI. INTEGRATION/APPENDICES

132. This Settlement [and its appendices] constitute[s] the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. [The following appendices are attached to and incorporated into this Settlement:

a. "Appendix _" is the description and/or map of the Site

b. "Appendix _" is the SOW.

XXXII. ADMINISTRATIVE RECORD

133. EPA and the USFS will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to EPA documents developed during the course of the RI/FS upon which selection of the remedial action may be based. Upon request of EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondents shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the

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remedial action, and all communications between Respondents and state, local, or other federal authorities concerning selection of the remedial action.

XXXIII. EFFECTIVE DATE

134. This Settlement shall be effective on the date that it has been signed by all of the Parties [and concurred on by the United States Attorney General].

Commented [A16]: I think the AG needs to sign agreements with multiple federal agenices, but I'm not sure.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Commented [A17]: Need to add signature pages for IDEQ and Tribe.

_____
Dated

_____
[Name]
Regional Administrator (or designee/delegatee), Region __

Signature Page for Settlement Regarding _____ Superfund Site

FOR _____:
[Print name of Respondent]

_____
Dated

_____
[Name]
[Title]
[Company]
[Address]

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 9/10/2019 5:15:17 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Call with Tribe

Ok. Sending you a letter that went out to him earlier today asking whether Tribe consents to a stay or not, and setting a deadline. Seems reasonable to ask for a decision. Midas made the request a month ago.

Sent from my iPhone

> On Sep 10, 2019, at 6:46 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:
>
> Hi Brad. Mike and I are trying to find a time that works to talk today.
>
> Elizabeth McKenna
> Assistant Regional Counsel
> U.S. EPA
> 1200 Sixth Avenue
> Seattle, WA 98101
> (206) 553-0016
> Cell: (206) 402-9963
>
> -----Original Message-----
> From: Bradley M. Marten <bmarten@martenlaw.com>
> Sent: Monday, September 09, 2019 1:13 PM
> To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
> Subject: Call with Tribe
>
> Elizabeth- were you able to reach Mike Lopez about the Tribe's 1) consultative role in the development of the AOC and 2) decision whether to stay the CWA lawsuit pending the AOC negotiations?
>
> Sent from my iPhone
> ---
>
> This e-mail may contain confidential and privileged information and is sent for the sole use of the intended recipient. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.
>
> IRS CIRCULAR 230 NOTICE: To the extent that this message or any attachment concerns tax matters, it is not intended to be used and cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law.
>

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IRS CIRCULAR 230 NOTICE: To the extent that this message or any attachment concerns tax matters, it is not intended to be used and cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law.

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 8/26/2019 11:38:55 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Midas

Flag: Follow up

Sorry to have missed you (again). Know you tried. Before you head off to Target and Bed, Bath & Beyond, can you try me on my cell? Ex. 6 Personal Privacy (PP) Thanks

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Friday, August 23, 2019 2:25 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Midas

Yes. Are you free around 4? Are you referring to the site visit?

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Friday, August 23, 2019 12:56 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Midas

Elizabeth:

Do you have a few moments this afternoon to follow up on recent events in the Midas matter?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com

martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 8/25/2019 3:52:39 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Midas

Sorry I missed you on Friday. Are you in on Monday?

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Friday, August 23, 2019 at 2:25 PM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: RE: Midas

Yes. Are you free around 4? Are you referring to the site visit?

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Friday, August 23, 2019 12:56 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Midas

Elizabeth:

Do you have a few moments this afternoon to follow up on recent events in the Midas matter?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

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Appointment

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 7/9/2019 8:41:56 PM
To: John Meyer [JMeyer@midasgoldcorp.com]

Subject: Meeting Forward Notification: FW: Stibnite Gold Project Technical Meeting

Start: 7/9/2019 9:00:00 PM
End: 7/9/2019 9:30:00 PM
Show Time As: Busy

Your meeting was forwarded

McKenna, Elizabeth has forwarded your meeting request to additional people.

Meeting

FW: Stibnite Gold Project Technical Meeting

Meeting Time

Wednesday, July 10, 2019 10:00 AM - Wednesday, July 10, 2019 11:00 AM

Recipients

Fremerman, Gary - OGC, Washington, DC

All times listed are in the following time zone: (UTC-08:00) Pacific Time (US & Canada)

Appointment

From: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Sent: 8/19/2019 10:39:50 PM
To: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]; Kathryn French [ksfrench1977@gmail.com]; Philip, Jeffrey [Philip.Jeff@epa.gov]; Cerise, Kathy [Cerise.Kathryn@epa.gov]; Hood, Lynne [Hood.Lynne@epa.gov]; Griffith, Christen CIV CENWW CENWD (US) [Christen.M.Griffith@usace.army.mil]; Bujak, Charissa [bujak.charissa@epa.gov]; Aaron.Scheff@deq.idaho.gov; Diane Green [DGreen@idl.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; Zamba, Kathy -FS [kathy.zamba@usda.gov]; Leeds, Todd - FS [todd.leeds@usda.gov]; Crawford, Tom -FS [tom.crawford@usda.gov]; Alan Haslam [ahaslam@midasgoldinc.com]; Porter, Valerie [valerie.porter@aecom.com]

Subject: FW: SGP - site visit (CERCLA group)
Attachments: OHSF-001_2019 Tour Orientation.pdf
Location: Stibnite, ID

Start: 8/22/2019 1:00:00 PM
End: 8/22/2019 11:30:00 PM
Show Time As: Busy

Make sure you print his out and bring a signed copy

-----Original Appointment-----
From: Goessel, Kathryn M -FS <kathryn.goessel@usda.gov>
Sent: Monday, August 19, 2019 3:40 PM
To: Goessel, Kathryn M -FS; Cerise, Kathy; Hood, Lynne; Griffith, Christen CIV CENWW CENWD (US); Bujak, Charissa; Aaron.Scheff@deq.idaho.gov; Diane Green; Maley, Timothy; Zamba, Kathy -FS; Leeds, Todd - FS; Crawford, Tom -FS; Philip, Jeffrey; Alan Haslam; Porter, Valerie
Subject: SGP - site visit (CERCLA group)
When: Thursday, August 22, 2019 7:00 AM-5:30 PM (UTC-07:00) Mountain Time (US & Canada).
Where: Stibnite, ID

Hi everyone – in order to accomplish the intended agenda on the CERCLA side, please plan to *start 30 minutes earlier* than originally suggested and to do some hiking (wear sturdy field boots, long pants, sleeves, eye protection). Please bring a field lunch and PPE required on Midas Gold property (note MGII can provide hard hats/high viz vests). Agency POCs, I believe I caught everyone expected for the CERCLA group (see also table below) but please forward and copy me and Alan Haslam know, if not. Here is the planned itinerary:

7:00 AM – Agencies meet at Payette NF Supervisor Office (500 N Mission St, Bldg 2 McCall, ID)
7:15 AM – Depart McCall (PNF SO)
9.30-9:45 AM – Meet MGII personnel at vault toilets in Yellow Pine (site safety briefing)
10.15-11:00 AM – NW Bradley Dumps and USFS Repository
11:15-11:45 AM – Yellow Pine Pit Overlook (Cinnabar tunnel, Bailey tunnel, Bonanza adit)
12:00-2:00 PM – Meadow Creek area (Bradley Tailings, Hecla heap, Meadow Creek adit, Keyway dam & wetlands,)
2:15- 3:15 PM – DMEA Adit and Waste Rock Dump
3:30-6:00 PM – Travel to McCall

Please review the attached safety orientation/liability release documentation, which will need to be executed by each attendee (if you haven't already completed one this year) and returned to MGII at Yellow Pine. See also attached maps.

Name	Agency	Depart Pt	Vehicle	
Todd Leeds	fs	McCall	FS Hydro	Driver
Kathy Zamba	fs	McCall	FS Hydro	

Kathy Cerise	epa	McCall	FS Hydro	
Jeffery Philip	epa	McCall	FS Hydro	
Tim Maley	epa	McCall	FS Hydro	
Tom Crawford	fs	McCall	FS 5050	Driver
Marve Griffith	usace	McCall	FS 5050	
Charissa Bujak	epa	McCall	FS 5050	
Lynne Hood	epa	McCall	FS 5050	
Aaron Scheff	deq	Yellow Pine	FS 5050	
Diane Green	idl	McCall	IDL	Driver

Thanks!

Piper Goessel
Physical Scientist
Forest Service
Payette National Forest
p: 208-634-0760
f: 208-634-0744
kathryn.goessel@usda.gov
500 N Mission St, Bldg 2
McCall, ID 83638
www.fs.fed.us

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Welcome to the Stibnite Project. The following orientation information is designed to help you have a safe and enjoyable visit to Midas Gold facilities. Please read this entire document carefully. Please Initial each category that you have read, ask your presenter if you have any questions or concerns about your visit.

_____ ***Site Description***

The exploration camp for the Stibnite Gold Project is located approximately 95 miles north east of Boise and 37 miles east of McCall near the historic town of Stibnite, Idaho. Stibnite has offices, shops for drilling operations, repairs, and quick-log geological core logging.

Employee and visitor guidelines include policies for drugs and alcohol, general behavior, radio communication, health and safety, emergency response, housing, winter driving, and wild animal encounters.

_____ ***Site Tours***

All visitors are required to stay with their guide or group leader, wear appropriate personal protective equipment, and comply with Midas Gold's Health and Safety Plan. Do not wander away from the tour group. Maintain a safe distance from operating vehicles, drills, and equipment.

_____ ***Wildlife***

The Stibnite Gold Project has wildlife in the area. These can include Bears, Wolves, Fox, Elk, Deer and various rodents. Do not feed or approach any wild animals. Firearms are not allowed on tours, in camp or on the project site.

_____ ***Photography or Other Visual Recordings by Visitors***

While inside Midas Gold buildings or facilities, visitors may not photograph or record images or sounds, though Midas Gold does not restrict visitors from photographing or recording images or sounds outside the buildings or facilities. During a site tour, Midas Gold may photograph or record images or sounds at its facilities, including taking photographs or recordings of visitors.

_____ ***Personal Protective Equipment***

Personal Protective Equipment (PPE) is required at Stibnite Gold Operation areas. Minimum PPE for tours when visiting the project area are sturdy shoes (close toed, no sandals or flip-flops), long pants and no sleeveless shirts. Hard hats, high-visibility vests and safety glasses will be provided.

_____ ***Communications***

Camp management and operations are maintained through the use of telephone, base station, and hand-held radios. To dial out on the telephones, dial 1 followed by the area code and number. Radio communications operate on channel 1 (for the road from Yellow Pine to Stibnite and Site Operations), channel 2 (alternate site operations), channel 3 (open) channel 4 (helicopter) and Channel 7 in Yellowpine to connect with channel 1.

Verizon cell phone service is available in the core shack areas. Wireless internet is also available. Please ask for password.

_____ ***Emergency Response Procedures***

A first aid kit and AED are located in the Stibnite Core Shack area.

The emergency response channel is channel 1. To alert Midas Gold staff of an emergency, call "Emergency, Emergency, Emergency" and give your location and nature of the incident.

In the event of injury, the injured person will be examined by Wilderness First Aid trained personnel for treatment and stabilization. If evacuation is required, the injured person will be transferred to Yellow Pine, Cascade, or Boise for further treatment. In serious cases and weather permitting, Life Flight will be called for transporting patients.

In the event of fire, notify any persons in the area by announcing "Fire, Fire, Fire!" If you have a radio, announce "Fire, Fire, Fire!" on Channel 1. Fire extinguishers are located in camp, shop areas, and vehicles. If the fire is too large to put out easily, evacuate the building and proceed to the Muster Point. Muster Point #1 is located at SODA; Muster Point #2

is located at the flat area beginning at Yellow Pine road to the Yellow Pine Pit; and Muster Point #3 is located at the gate just outside the office and equipment yard. Report to a site management representative so that he or she can account for your whereabouts and safety.

_____ ***Hazard Recognition***

Various levels of hazards exist depending on what areas of operation are visited. Minimal hazards exist in the office areas beyond household cleaning chemicals and slips, trips, and falls. Additional hazards are identified in Chapter 6 of the Midas Gold Health and Safety Plan. They include, but are not limited to, heavy equipment, diesel and gasoline-powered vehicles, rotating drill steel, inclined or rough terrain, slippery surfaces, fire, water sumps, and electrical, mechanical, chemical, and environmental hazards.

Safety data sheets (SDS) are provided for chemicals in use by the work staff, in the repair shops, and in the geology shop. SDS's can be found in the Midas Gold Environmental Health and Safety Office and in the public mess area.

Visitors or other site employees who enter the work zone should:

- Follow guide and group leader instructions;
- Stay behind marked boundaries;
- Wear appropriate PPE, including when making temporary or brief observations;
- Assess conditions, be alert for potential hazards, and approach sites cautiously; and
- Avoid startling or distracting people engaged in activities within the work zone.

_____ ***Drug Screening***

Midas Gold maintains a ZERO tolerance policy for alcohol and illegal drugs. Any persons found to be in possession of alcohol or illegal drugs will face immediate expulsion from Midas Gold facilities. This includes job site, vehicles and tours

Any employee or visitor involved in an accident that causes bodily harm or equipment damage may be asked to submit to a Non-DOT drug screening at the discretion of Midas Gold management.

The signature below certifies that the appropriate elements have been discussed to the satisfaction of both parties, and that both Midas Gold and visitor accept responsibility for maintaining a safe and healthful work environment.

Date: _____

SIGNATURE

Visitor Signature: _____
Name Printed: _____
Address: _____
_____
Phone: _____

E-mail: _____

WAIVER AND RELEASE OF LIABILITY

PLEASE READ CAREFULLY!

THIS IS A LEGAL DOCUMENT THAT AFFECTS YOUR LEGAL RIGHTS!

This Waiver and Release of Liability (this "Release") is executed by the undersigned in favor of Midas Gold Idaho, Inc., an Idaho corporation, and its directors, officers, employees, volunteers, agents, contractors, and affiliates (collectively, "Midas Gold"). I desire to participate in certain activities and events offered by Midas Gold, including but not limited to, travel to, touring of, and travel from various facilities and properties related to Midas Gold's present and future operations (collectively, the "Activities"). Midas Gold will not allow me to participate in any of the Activities without this Release, and therefore I freely and voluntarily execute this Release to participate in the Activities.

- **Waiver and Release.** I understand that the Activities present risks of personal injury, illness, death, disability, expense, loss, or damage. Some risks may be inherent in the Activities (e.g., travel, flight, and any drilling or other operational activates), some may arise from environmental conditions (e.g., altitude, weather, terrain, chemicals or pollutants, and casualty events), some may arise from the negligence of Midas Gold, and some may arise from the negligence or intentional acts of others, such as other participants in the Activities. I hereby assume all risks associated with the Activities, and I hereby waive, release, discharge, and hold Midas Gold harmless from any and all injury, illness, death, disability, expense, loss, or damage of any kind or nature whatsoever, either in law or in equity that may arise from or be related to the Activities, my presence at any Midas Gold facility or Activity, or in travel related to any Midas Gold facility or Activities, even if the same is caused in whole or in part by any negligence of Midas Gold or any negligence or intentional acts of others. I understand that I am not required to participate in any particular Activity and that I am responsible for ceasing any Activity if I experience any pain or discomfort related thereto or if I become uncomfortable with any potential risks of such Activity.
- **Consent to Medical Treatment.** I authorize Midas Gold to provide or authorize any medical treatment or other care that it deems appropriate in any circumstance where, in Midas Gold's judgment, I do not have, or do not readily appear to have, the ability to make reasonable medical treatment and care decisions for myself. I hereby waive, release, discharge, and hold Midas Gold harmless from any injury, illness, death, expense, loss, or damage whatsoever that may arise from or may be related to such medical treatment or other care, even if the same is, in whole or in part, caused by or related to any negligence of Midas Gold. I understand that Midas Gold does not provide medical insurance and that I am responsible for the cost of any medical treatment or other care that I receive.
- **Conduct.** I understand that I must fully and faithfully abide by all rules and requirements of Midas Gold and obey the directives of any Midas Gold staff.
- **Appearance Release.** I understand that Midas Gold may take photographs or make video or audio recordings of me during the Activities and that the same may be used by Midas Gold for informational or educational materials and other company purposes.

This Release is intended to be as broad and inclusive as permitted by law. If any clause or provision of this Release is held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect the remaining provisions of this Release, which shall continue to be fully enforceable.

_____
Signature

_____ _____
Printed Name Date

Parent/Guardian Authorization. If the person above is a minor (i.e., under the age of 18 years old), the undersigned, being the parent or guardian of the above minor with custody, has read this Release, agrees to its terms, and authorizes the above minor to participate in the Activities on the terms above.

_____
Signature

_____ _____
Printed Name Date

1. Revision History

The revision history table must be updated whenever this SOP is changed.

Table 1 Revision History

Revision Date	Revised By	Description of Revision
02-13-19	Cindy Kneen	Added Header, Footer and Document Number
07-23-2019	**Kyle Fend**	**Adjusted header and formatting**

Message

From: Goessel, Kathryn M -FS [kathryn.goessel@usda.gov]
Sent: 8/13/2019 4:02:33 PM
To: Nadeau, Tracie-Lynn [Nadeau.Tracie@epa.gov]; Bujak, Charissa [bujak.charissa@epa.gov]; Hood, Lynne [Hood.Lynne@epa.gov]; Griffith, Christen CIV CENWW CENWD (US) [Christen.M.Griffith@usace.army.mil]; Leeds, Todd - FS [todd.leeds@usda.gov]; Porter, Valerie [valerie.porter@aecom.com]; Aaron.Scheff@deq.idaho.gov; Diane Green [DGreen@idl.idaho.gov]; Gordon Cruickshank [glc55@frontier.com]; Manuel Rauhut [manuel.rauhut@idwr.idaho.gov]; Marde.Mensinger@oer.idaho.gov; mark_c_nelson@fws.gov; jeremy_n_moore@fws.gov; Ally_Turner@fws.gov; Zamba, Kathy -FS [kathy.zamba@usda.gov]; Craig, Belle A -FS [belle.craig@usda.gov]; Brummett, Tawnya -FS [tawnya.brummett@usda.gov]
CC: Torrealday, Heidie -FS [heidie.torrealday@usda.gov]; Lau, Sarah -FS [sarah.lau@usda.gov]; Cerise, Kathy [Cerise.Kathryn@epa.gov]; Myers, Casey A. [myers.casey@epa.gov]; Todd Drage [tdrage@idl.idaho.gov]; Mick Thomas [mthomas@idl.idaho.gov]; Karen.Jackson@deq.idaho.gov; Fritz.Durham@deq.idaho.gov; julia.achabal@deq.idaho.gov; kati.carberry@deq.idaho.gov; Eric Wilson [EWilson@idl.idaho.gov]; Roehner, Clayton - FS [clayton.roehner@usda.gov]; Strohmeyer, Jake M -FS [jake.strohmeyer@usda.gov]; daniel_nolfi@fws.gov; Philip, Jeffrey [Philip.Jeff@epa.gov]; Todd.Crutcher@deq.idaho.gov; Adam.McMahon@deq.idaho.gov; Brady.Johnson@deq.idaho.gov; Klasner, Paul H -FS [paul.klasner@usda.gov]; Kathryn.Elliott@deq.idaho.gov; James.Craft@deq.idaho.gov; Alan Haslam [ahaslam@midasgoldinc.com]; Porter, Valerie [valerie.porter@aecom.com]
Subject: SGP - August 22 field trip(s)
Attachments: ATT52078; ATT91181; ATT71441; ATT97880

Hi everyone – just an update on what I know so far. It looks like there will be two separate agendas/itineraries next Thursday but let's all plan on meeting by 1015 at the vault toilets in Yellow Pine for a site safety briefing from Midas Gold. We also could plan to seat folks in the right vehicles depending on their role(s) before heading up to the site. I expect we may all start out at the Yellow Pine Pit (Glory Hole) overlook and then split up from there. In any case, please arrive at Yellow Pine with your field lunch and PPE (boots, long pants, hard hat, high-viz vest, safety glasses) at 1015.

I will update the calendar invite by early next week with any more specific logistics I can obtain. Thanks!

Piper Goessel
Physical Scientist
Forest Service
Payette National Forest
p: 208-634-0760
f: 208-634-0744
kathryn.goessel@usda.gov
500 N Mission St, Bldg 2
McCall, ID 83638
www.fs.fed.us
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-----Original Appointment-----
From: Goessel, Kathryn M -FS
Sent: Monday, June 3, 2019 9:51 AM
To: Goessel, Kathryn M -FS; Nadeau, Tracie-Lynn; Bujak, Charissa; Lynne Hood (hood.lynne@epa.gov); Griffith, Christen CIV CENWW CENWD (US); Leeds, Todd - FS; Porter, Valerie; Aaron.Scheff@deq.idaho.gov; Diane Green; Gordon Cruickshank; Manuel Rauhut; Marde.Mensinger@oer.idaho.gov; 'mark_c_nelson@fws.gov'; 'jeremy_n_moore@fws.gov'; Ally_Turner@fws.gov; Zamba, Kathy -FS; Craig, Belle A -FS; Brummett, Tawnya -FS
Cc: Torrealday, Heidie -FS; Lau, Sarah -FS; 'Cerise, Kathy'; Myers, Casey A.; Todd Drage; Mick Thomas;

Karen.Jackson@deq.idaho.gov; Fritz.Durham@deq.idaho.gov; Julia.Achabal@deq.idaho.gov; Kati.Carberry@deq.idaho.gov; Eric Wilson; Roehner, Clayton - FS; Strohmeyer, Jake M -FS; daniel_nolfi@fws.gov; Philip, Jeffrey; Todd.Crutcher@deq.idaho.gov; Adam.McMahon@deq.idaho.gov; Brady.Johnson@deq.idaho.gov; Klasner, Paul H -FS; Kathryn.Elliott@deq.idaho.gov; James.Craft@deq.idaho.gov
Subject: SGP - 404-focus field trip
When: Thursday, August 22, 2019 12:00 AM to Friday, August 23, 2019 12:00 AM (UTC-07:00) Mountain Time (US & Canada).
Where: Stibnite, ID

Hello everyone – please accept/decline and forward so we can get a clean head count. Will be sending details/itinerary as we firm up. Thanks!

<< OLE Object: Picture (Device Independent Bitmap) >>

Piper Goessel
Physical Scientist
Forest Service
Payette National Forest
p: 208-634-0760
f: 208-634-0744
kathryn.goessel@usda.gov
500 N Mission St, Bldg 2
McCall, ID 83638
www.fs.fed.us
<< OLE Object: Picture (Device Independent Bitmap) >> << OLE Object: Picture (Device Independent Bitmap) >> << OLE Object: Picture (Device Independent Bitmap) >>
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Message

From: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 5/14/2020 1:23:26 PM
To: Laurel Sayer [lsayer@midasgoldinc.com]
CC: Bodine, Susan [bodine.susan@epa.gov]
Subject: RE: Midas Gold AOC Offer

Thanks for sharing, Laurel.

From: Laurel Sayer <lsayer@midasgoldinc.com>
Sent: Wednesday, May 13, 2020 7:50 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>
Subject: FW: Midas Gold AOC Offer

Brittany,

I overlooked including you on this distribution. Thank you for the courtesy of speaking with me last week with Susan. The below e-mail was forwarded to the Regional Administrator and to Susan Bodine yesterday. As a courtesy follow-up to our meeting, I thought I should include you also.

Laurel

Laurel Sayer
President & CEO
Midas Gold Idaho

JOIN US TODAY. WWW.SUPPORTSTIBNITE.COM

MIDAS GOLD IDAHO
405 S 8th St. Boise, ID 83702
T: 208.901.3050
M: 208.521.2987
E: lsayer@midasgoldinc.com

MAX.TSX / MDRPF.OTCQX
www.facebook.com/midasgoldidaho
@MidasIdaho
www.midasgoldidaho.com

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From: Laurel Sayer
Sent: Tuesday, May 12, 2020 3:48 PM
To: Hladick.christopher@epamail.epa.gov
Cc: Gahner.Pamela@epa.gov; L. Michael Bogert <mbogert@midasgoldinc.com>; bodine.susan@epa.gov; wright.peter@epa.gov; Stephen Quin <SQuin@midasgoldcorp.com>; L. Michael Bogert <mbogert@midasgoldinc.com>
Subject: Midas Gold AOC Offer

Mr. Hladick:
Please see the attached.

Regards,

Laurel Sayer
President & CEO
Midas Gold Idaho

JOIN US TODAY. WWW.SUPPORTSTIBNITE.COM

MIDAS GOLD

MIDAS GOLD IDAHO
405 S 8th St. Boise, ID 83702
T: 208.901.3050
M: 208.521.2987
E: lsayer@midasgoldinc.com

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@MidasIdaho
W www.midasgoldidaho.com

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Message

From: Laurel Sayer [lsayer@midasgoldinc.com]
Sent: 5/20/2020 8:40:55 PM
To: Hladick.christopher@epamail.epa.gov
CC: Bodine, Susan [bodine.susan@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Wright, Peter [wright.peter@epa.gov]; Gahner, Pamela [gahner.pamela@epa.gov]
Subject: Stibnite Gold Project
Attachments: ATT00001.txt

Dear Mr. Hladick:

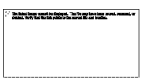
Early last week I electronically sent you our offer on a proposed Administrative Order on Consent (ACO) related to the Stibnite Mining District. I can assure you that our Midas Gold team dedicated significant resources and worked diligently to bring this offer forward.

Since we have had no response from Region X, can you let me know (a) if you received my email of May 12, 2020 and (b) if there is interest from you or your team in receiving a briefing on our offer? It is my hope that we move these discussions forward in a timely manner. As we mentioned in my letter of transmission, concluding the AOC promptly could facilitate important AOC-related work occurring even during this summer 2020 work season and, as a start-up company where Stibnite is our only project, continued progress is important to our overall viability.

Thank you for your attention to this matter and I look forward to hearing from you by the end of this week if possible.

Laurel Sayer
President & CEO
Midas Gold Idaho

JOIN US TODAY. WWW.SUPPORTSTIBNITE.COM



MIDAS GOLD IDAHO
405 S 8th St. Boise, ID 83702
T: 208.901.3050
M: 208.521.2987
E: lsayer@midasgoldinc.com

MAX.TSX / MDRPF.OTCQX
www.facebook.com/midasgoldidaho
@MidasIdaho
www.midasgoldidaho.com

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Message

From: Jolene Stevens [jstevens@midasgoldcorp.com]
Sent: 4/30/2020 3:59:05 PM
To: Bodine, Susan [bodine.susan@epa.gov]
Subject: Stibnite Gold Project
Attachments: 2020-04-28 MG-Hladick Ltr-FINAL.pdf

Dear Ms. Bodine,

On behalf of Laurel Sayer, President and CEO of Midas Gold Idaho, Inc., I am forwarding the attached letter that was sent to Mr. Hladick on which you were cc'd.

If you wish to discuss the matter, please contact Laurel directly. Thank you.

Regards,
Jolene

Jolene Boyd Stevens
Executive Assistant

MIDAS GOLD
405 S. 8th Street
Suite 201
Boise, ID 83702-7100
T: 208.901.3044
M: 208.866.6173
E: Stevens@midasgoldinc.com

MAX.TSX / MDRPF.OTCQX
www.facebook.com/midasgoldidaho
@MidasIdaho
W www.midasgoldidaho.com

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Appointment

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 5/6/2020 4:40:06 PM
To: Laurel Sayer [lsayer@midasgoldinc.com]

Subject: Accepted: Briefing Stibnite Gold Project

Start: 5/6/2020 5:00:00 PM
End: 5/6/2020 5:30:00 PM

Recurrence: (none)

Appointment

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 3/23/2020 10:50:21 PM
To: John Meyer [JMeyer@midasgoldcorp.com]; Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Stibnite Mine AOC Technical Meeting
Location: https://zoom.us/j/2822089706

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Busy

Recurrence: (none)

John Meyer is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://zoom.us/j/ Ex. 6 Personal Privacy (PP)

Meeting ID: Ex. 6 Personal Privacy (PP)

One tap mobile
+ Ex. 6 Personal Privacy (PP) US (Houston)
+ Ex. 6 Personal Privacy (PP) US (San Jose)

Dial by your location
Ex. 6 Personal Privacy (PP) (Houston)
+ Ex. 6 Personal Privacy (PP) San Jose)
Ex. 6 Personal Privacy (PP) Chicago)
+ Ex. 6 Personal Privacy (PP) S (New York)
Ex. 6 Personal Privacy (PP)
Ex. 6 Personal Privacy (PP)

Appointment

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 3/23/2020 8:12:21 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]; Albert Crawshaw (Albert.Crawshaw@deq.idaho.gov) [Albert.Crawshaw@deq.idaho.gov]; ally_turner@fws.gov; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Derek Young (derek.young@deq.idaho.gov) [derek.young@deq.idaho.gov]; Elizabeth McKenna [Mckenna.Elizabeth@epa.gov]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jeremy Moore (jeremy_n_moore@fws.gov) [jeremy_n_moore@fws.gov]; Jill Grant (jgrant@jillgrantlaw.com) [jgrant@jillgrantlaw.com]; Kathy Zamba (kathy.zamba@usda.gov) [kathy.zamba@usda.gov]; Kelly Wright (kwright@sbtribes.com) [kwright@sbtribes.com]; Lisa O'Hara (lisa.ohara@deq.idaho.gov) [lisa.ohara@deq.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) [Nathalie.Doherty@sol.doi.gov]; Susan Hanson (susanthanson9@icloud.com) [susanthanson9@icloud.com]; Todd Leeds (todd.leeds@usda.gov); John Meyer [meyer@midasgoldinc.com]
CC: John Meyer [JMeyer@midasgoldcorp.com]; Fisher, Sandi [sandi_fisher@fws.gov]; Gene Bosley [bosley@midasgoldinc.com]; Andy Koulermos [akoulermos@formationenv.com]; Chris Dail [Dail@midasgoldinc.com]; Koda Merkley [kmerkley@midasgoldinc.com]; Kyle Fend [fend@midasgoldinc.com]; Bradley M. Marten [bmarten@martenlaw.com]

Subject: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Busy

New! Agenda below. Scroll down for the Zoom Meeting Link.

Agenda:

1. Introductions (5 minutes)
2. Meeting goals (5 minutes)
3. Stibnite mine site virtual flyover (20 minutes)
4. Questions and answers related to proposed Early Actions (30 minutes)
5. Discussion (20 minutes)
6. Next steps (10 minutes)

Note: Midas has prepared a virtual flyover of the mine in lieu of a slide deck. Hopefully this will work for everyone. If bandwidth is an issue for you, best to log off other networks and close unneeded programs before you join the Zoom meeting. EPA employees – please sign out of the agency's VPN before you connect to the Zoom meeting.

John Meyer is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
Ex. 6 Personal Privacy (PP)

Meeting ID: Ex. 6 Personal Privacy (PP)

One tap mobile
Ex. 6 Personal Privacy (PP) US (Houston)

+ Ex. 6 Personal Privacy (PP) # US (San Jose)

Dial by your location

Ex. 6 Personal Privacy (PP) (Houston)

+ Ex. 6 Personal Privacy (PP) (San Jose)

Ex. 6 Personal Privacy (PP) (Chicago)

+ (New York)

+ Ex. 6 Personal Privacy (PP)

+

Appointment

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 4/7/2020 8:17:12 PM
To: John Meyer [JMeyer@midasgoldcorp.com]; Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Stibnite Mine AOC Technical Discussion
Location: https://zoom.us/j/2822089706

Start: 4/9/2020 11:00:00 PM
End: 4/10/2020
Show Time As: Busy

Recurrence: (none)

Helen,

As discussed, a Zoom video conference has been setup for this Thursday afternoon. To connect to the call, please use the following information:

Join Zoom Meeting
https://zoom.us/j/ Ex. 6 Personal Privacy (PP)

Meeting ID: Ex. 6 Personal Privacy (PP)

One tap mobile
Ex. 6 Personal Privacy (PP) US (Houston)
Ex. 6 Personal Privacy (PP) US (San Jose)

I will forward your invitation to the Midas Gold participants once you have sent out an invitation.

Regards,

John

Appointment

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 4/7/2020 8:17:06 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Stibnite Mine AOC Technical Discussion
Location: https://zoom.us/j/2822089706

Start: 4/9/2020 11:00:00 PM
End: 4/10/2020
Show Time As: Tentative

Recurrence: (none)

Helen,

As discussed, a Zoom video conference has been setup for this Thursday afternoon. To connect to the call, please use the following information:

Join Zoom Meeting
Ex. 6 Personal Privacy (PP)

Meeting ID: 282 208 9706

One tap mobile
Ex. 6 Personal Privacy (PP) US (Houston)
Ex. 6 Personal Privacy (PP) US (San Jose)

I will forward your invitation to the Midas Gold participants once you have sent out an invitation.

Regards,

John

Message

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 3/25/2020 11:07:48 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: Meeting Agenda
Attachments: ATT00001.txt

Helen,
Provided below is a simple, proposed agenda for the meeting tomorrow.
Rather than a PowerPoint to review some of the Early Action areas we developed a virtual flyover. Hopefully all the participants are connecting via computer rather than their phones.
If you are okay with this, please distribute to the meeting attendees.
Thanks,
John

Agenda:

1. Introductions (5 minutes)
2. Meeting goals (5 minutes)
3. Stibnite mine site virtual flyover (20 minutes)
4. Questions and answers related to proposed Early Actions (30 minutes)
5. Discussion (20 minutes)
6. Next steps (10 minutes)

John Meyer, P.Eng.
Vice President, Development

MAX.TSX / MDRPF.OTCQX
405 South 8th Street, Suite 201
Boise, Idaho 83702

T: 208.901.3063
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E: meyer@midasgoldinc.com

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Message

From: Chris Dail [Dail@midasgoldinc.com]
Sent: 2/14/2020 10:59:14 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: RE: Stibnite Mine - contact list

Thanks Helen

Christopher Dail
Manager, Exploration
Midas Gold Idaho, Inc.

MIDAS GOLD

MAX.TSX / MDRPF.OTCQX
13181 HWY 55, P.O. Box 429
Donnelly ID 83615
T: 208.901.3060
Direct: 509.795.3265
M: 509.939.2272
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www.facebook.com/midasgoldidaho
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From: Bottcher, Helen <Bottcher.Helen@epa.gov>
Sent: Friday, February 14, 2020 3:58 PM
To: Clabaugh, Charles D. <clabaugh.charles@epa.gov>; Ingemansen, Dean <Ingemansen.Dean@epa.gov>; Maley, Timothy <maley.timothy@epa.gov>; McGrath, Patricia <mcgrath.patricia@epa.gov>; McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>; Morrison, Kay <morrison.kay@epa.gov>; Nogi, Jill <nogi.jill@epa.gov>; Philip, Jeffrey <Philip.Jeff@epa.gov>; Stifelman, Marc <Stifelman.Marc@epa.gov>; Vaughan, Molly <Vaughan.Molly@epa.gov>; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Kevin Knesek (kevin.s.knesek@usda.gov) <kevin.s.knesek@usda.gov>; Leeds, Todd - FS <todd.leeds@usda.gov>; Zamba, Kathy -FS <kathy.zamba@usda.gov>; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) <Nathalie.Doherty@sol.doi.gov>; Sandi Fisher <sandi_fisher@fws.gov>; Jeremy Moore (jeremy_n_moore@fws.gov) <jeremy_n_moore@fws.gov>; Johnna.Sandow@noaa.gov; Jill Grant <jgrant@jillgrantlaw.com>; kwright@sbtribes.com; Susan Hanson <susanthanson9@icloud.com>; Albert Crawshaw <Albert.Crawshaw@deq.idaho.gov>; michael.mccurdy@deq.idaho.gov; Lisa.OHara@deq.idaho.gov; Aaron Scheff (Aaron.Scheff@deq.idaho.gov)

<Aaron.Scheff@deq.idaho.gov>; dana.swift@deq.idaho.gov; Derek.Young@deq.idaho.gov; L. Michael Bogert <mbogert@midasgoldinc.com>; Gene Bosley <bosley@midasgoldinc.com>; Chris Dail <Dail@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Andy Koulermos (akoulermos@formationenv.com) <akoulermos@formationenv.com>; Bradley M. Marten <bmarten@martenlaw.com>; Koda Merkley <kmerkley@midasgoldinc.com>; John Meyer <JMeyer@midasgoldcorp.com>; Austin Zinsser <zinsser@midasgoldinc.com>
Subject: Stibnite Mine - contact list

Good afternoon, everyone.

I pulled together a contact list for the Stibnite Mine CERCLA project. Hope this is helpful for you.

Regards,

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

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Message

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 2/14/2020 5:49:05 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: RE: Points of contact at Midas Gold

Great.
I will call you at 1:00 PM PST.
John

From: Bottcher, Helen <Bottcher.Helen@epa.gov>
Sent: Friday, February 14, 2020 10:46 AM
To: John Meyer <JMeyer@midasgoldcorp.com>
Subject: RE: Points of contact at Midas Gold

Thanks, John. I have a meeting at 10:30 that I need to prepare for, but am free after that meeting. Let's plan for a 1 PM call if that works for you.

Regards,

Helen

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Friday, February 14, 2020 9:05 AM
To: Bottcher, Helen <Bottcher.Helen@epa.gov>
Cc: L. Michael Bogert <mbogert@midasgoldinc.com>
Subject: RE: Points of contact at Midas Gold

Helen,
I apologize for not getting this to you sooner.
I have edited your email below with the appropriate additional or modified information in red text.
FYI, most general correspondence amongst the AOC Participants only needs to come to me and Michael Bogert (from Midas Gold) and we can distribute internally.
Do you have time for a call today? If so, could you suggest a time?
Regards,
John

From: Bottcher, Helen <Bottcher.Helen@epa.gov>
Sent: Thursday, February 13, 2020 4:51 PM
To: John Meyer <JMeyer@midasgoldcorp.com>
Subject: Points of contact at Midas Gold

Hi, John.

I'm still working on a contact list for the project. It's coming together, but I'm missing info for the Midas team members. Can you fill in / correct as needed my partial list below? Thanks!

Michael Bogert
General Counsel
Midas Gold Idaho, Inc.
405 South 8th Street, Suite 201

Boise, Idaho 83702
mbogert@midasgoldinc.com
Desk: (208) 901-3095

Gene Bosley
Senior Civil Engineer
Midas Gold Idaho, Inc.
405 South 8th Street, Suite 201
Boise, Idaho 83702
bosley@midasgoldinc.com
Desk: (208) 901-3097

Christopher (Chris) Dail
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Manager, Exploration
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dail@midasgoldinc.com
Desk: (509) 939-2272

Kyle Fend
Midas Gold Idaho, Inc.
Field Operations Manager
405 South 8th Street, Suite 201
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Andy Koulermos
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Brad Marten
Marten Law
Partner
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John Meyer
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Cell: (208) 608-3543

Austin Zinsser
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Senior Resource Geologist
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Koda Merkley
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Geologist
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Boise, Idaho 83702
kmerkley@midasgoldinc.com
Desk: (208) 901-3094

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

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Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 7/17/2020 9:34:44 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: Stibnite

Just learned from HQ that Ron and Susan had a conversation in which Ron committed to getting a draft AOC to EPA on Tuesday. We will review Midas' draft and may incorporate language from Midas' draft into the draft we are developing.

Elizabeth

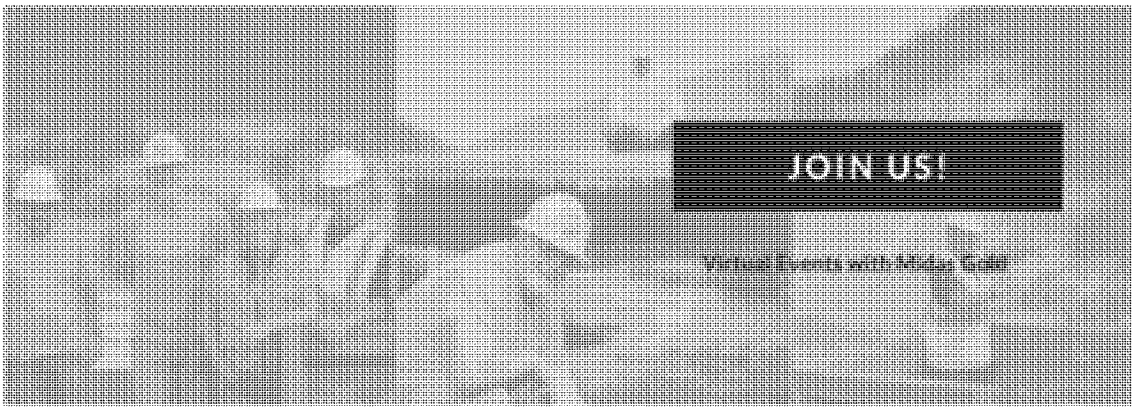
Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: Midas Gold Idaho [community@midasgoldinc.com]
Sent: 5/6/2020 3:51:22 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: Join Us! Virtual Events Hosted by Midas Gold

Our team cannot wait to connect with you soon!

View this email in your browser



The coronavirus may temporarily be keeping us apart but that will not stop the Midas Gold team from bringing you information about the Stibnite Gold Project. To stay connected, we are launching a free webinar series. This is your chance to hear directly from some of the experts working on our project. We are also hosting virtual office hours, so we can answer your questions and share our latest updates with you. We hope you'll join us soon for one of our upcoming events.

RSVP for Upcoming Events

SEE THE FULL LIST OF EVENTS ON OUR WEBSITE

MIDAS GOLD

Virtual Office Hours

Thursday, May 7 | Noon

This is your chance to ask our team any questions you have about the Stibnite Gold Project.

Short & Long-Term Fish & Water Management Webinar

Wednesday, May 20 | Noon

Fish habitat near the Stibnite Gold Project is in rough shape. Learn about our plans to

RSVP

Project Overview Webinar

Wednesday, June 10 | Noon

Learn how Midas Gold plans to use modern mining to restore the environment, create more than 500 jobs and benefit local communities.

RSVP

improve future conditions at site.

RSVP

Permitting Webinar

Wednesday, June 17 | 4 Noon

Get the facts on what it takes to permit a mine in America and find out exactly where Midas Gold is in the permitting process for the Stibnite Gold Project and how the community can get involved.

RSVP

Copyright © 2021 Midas Gold Idaho, All rights reserved.
You are receiving this email because you opted in on Midas Gold's website. We send emails to keep you informed about critical project updates and let you know how you can help restore the site and bring jobs to rural Idaho.

Our mailing address is:
Midas Gold Idaho
PO Box 429
Donnelly, ID 83615-0429

Add us to your address book

unsubscribe from this list update subscription preferences

mailchimp

Appointment

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/25/2020 8:45:55 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Busy

Recurrence: (none)

Message

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 3/31/2020 4:07:23 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: Re: Stibnite - additional considerations for CERCLA settlement discussions

Great Helen.
If you have any questions on the information I sent let me know.
John

From: Helen Bottcher <Bottcher.Helen@epa.gov>
Date: Tuesday, March 31, 2020 at 9:34 AM
To: John Meyer <JMeyer@midasgoldcorp.com>
Subject: RE: Stibnite - additional considerations for CERCLA settlement discussions

Good morning, John.

Response received. I'll get this out to our team and tee up a discussion on our weekly call next Monday. I'll be in touch Monday or Tuesday morning to let you know our initial reactions and discuss next steps.

I'm teleworking all this week – feel free to reach out by phone or email if there's anything you want to discuss in the meantime.

Regards,

Helen

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Monday, March 30, 2020 7:14 PM
To: Bottcher, Helen <Bottcher.Helen@epa.gov>
Cc: L. Michael Bogert <mbogert@midasgoldinc.com>
Subject: Re: Stibnite - additional considerations for CERCLA settlement discussions

Helen,

We have reviewed the table you provided on March 17. We converted the Adobe file into an MS Excel file, and it is included as Columns A through I in the attached file. We have included some minor proposed edits to your table, and they are shown in red text.

From your table, we have attempted to provide a roadmap of commitments to early action that we think are feasible and cost-effective. To develop this roadmap, we compiled some summary-level surface water quality and flow information, area history, technical considerations and recommendations for each area of historical mining impacts, and that information is provided adjacent to your table in columns K through Y. To complement the table, we have attached a figure that we hope you find useful, that illustrates the historical mine features referenced in the table.

We will post these files to the SharePoint site tomorrow, but wanted to get the information to you first. We can distribute the files to the rest of the AOC Participants via SharePoint, or you can distribute if you prefer. Just let me know.

Once you and your team have had a chance to review this information, we would like to take you up on your offer to review the table in detail via video conference at your first available opportunity. We can host the video conference.

As with my previous early action proposal to you in late January, I am advised by our lawyers that while this document is intended to be distributed to the AOC Participant Group, nothing presented in the action or accompanying narrative constitutes a concession by Midas Gold that it is a potentially responsible party ("PRP") under CERCLA. We are attempting to work through technical issues on potential actions on Site and, fortunately, we will leave the liability discussions to our legal counsel.

Contact me anytime.

Regards,

John

John Meyer, P.Eng.
Vice President, Development

MAX.TSX / MDRPF.OTCQX
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From: Helen Bottcher <Bottcher.Helen@epa.gov>
Date: Tuesday, March 17, 2020 at 5:15 PM
To: John Meyer <JMeyer@midasgoldcorp.com>
Cc: Albert Crawshaw <Albert.Crawshaw@deq.idaho.gov>, "ally_turner@fws.gov" <ally_turner@fws.gov>, Charles Clabaugh <clabaugh.charles@epa.gov>, "Derek Young (derek.young@deq.idaho.gov)" <derek.young@deq.idaho.gov>, "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>, "Fremerman, Gary - OGC, Washington, DC" <gary.fremerman@usda.gov>, "Jeremy Moore (jeremy_n_moore@fws.gov)" <jeremy_n_moore@fws.gov>, Jill Grant <jgrant@jillgrantlaw.com>, "Zamba, Kathy -FS" <kathy.zamba@usda.gov>, "kwright@sbtribes.com" <kwright@sbtribes.com>, "Lisa O'Hara (lisa.ohara@deq.idaho.gov)" <lisa.ohara@deq.idaho.gov>, "Maley, Timothy" <maley.timothy@epa.gov>, "McGrath, Patricia" <mcgrath.patricia@epa.gov>, "Nathalie Doherty (Nathalie.Doherty@sol.doi.gov)" <Nathalie.Doherty@sol.doi.gov>, Susan Hanson <susanthanson9@icloud.com>, "Leeds, Todd - FS" <todd.leeds@usda.gov>
Subject: Stibnite - additional considerations for CERCLA settlement discussions

Hi, John.

I am attaching a table listing areas of existing contamination that EPA and our government team partners have developed. We would like to focus our settlement discussions on addressing ongoing sources of contamination, rather than attempting to design an RI/FS over the life of the mine, because of the complexity of integrating an RI/FS with an active mine, and the financial uncertainty a long-term RI/FS would cause for Midas.

We want this to work for Midas, so we chose early actions that would not interfere with mining and in some cases would get a jump start on actions described in the PRO. This proposal would not result in permanent solutions for all the source areas of concern.

Our proposal also recognizes the extensive research that Midas has completed in order to develop the mine permit. This information, viewed through a CERCLA lens, should allow Midas to develop a site characterization and data gaps report, from which CERCLA workplans for RD/RA or area-specific removal actions could be developed in the future.

The basic technical elements of our new proposal for settlement are:

- Site Characterization and Data Gaps Report (site-wide)
    - Analyze and present available data on the site's physical features as well as contaminant source areas and contaminant fate and transport
    - Identify and describe data gaps that would need to be filled in a potential future site-wide remedial investigation
    - Provide all data available to Midas in electronic format (databased and GIS files, not just PDF files)
- No requirement in this agreement to conduct an RI/FS. Recognizing that a long-term RI/FS would create financial uncertainty for Midas for a long period of time, the negotiating parties are proposing to focus, instead, on concrete early actions that can be performed in a finite amount of time.
- Early actions:
    - Collect data and conduct evaluations necessary to develop designs for early actions
    - Complete designs for early actions
    - Implement early actions
    - Monitor effectiveness of early actions and implement any needed repairs

See the attached table for our full list of proposed early actions. This list includes the three early actions suggested by Midas in your January 23, 2020 memorandum. It also includes recommended studies and actions to address, or partially address, many of the other significant sources of metals to the EFSFSR. As stated above, we believe some of the work in the table aligns nicely with work that Midas has already proposed in the PRO. We also believe this proposal is consistent with Midas' public statements that Midas will clean up legacy contamination and that a majority of the cleanup will happen early in the life of the project.

Note that the Nez Perce Tribe has not yet had the opportunity to provide its input on the proposal. The Tribe expects to provide input to EPA by March 20th. The Tribe's input is important to the parties and may result in a modified approach.

There's a lot here to digest. I'd be happy to answer your immediate questions. EPA and the negotiating parties are ready to discuss the list of actions with you once you've had a chance to review it. I'm assuming we'll want to meet remotely, so I'll investigate VTC capabilities at EPA.

Regards,

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

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Appointment

From: Kyle Fend [fend@midasgoldinc.com]
Sent: 3/25/2020 8:20:42 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Busy

Recurrence: (none)

Appointment

From: Koda Merkley [kmerkley@midasgoldinc.com]
Sent: 3/25/2020 6:30:11 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Busy

Recurrence: (none)

Message

From: Midas Gold Idaho [community@midasgoldinc.com]
Sent: 1/14/2020 10:14:44 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: Op-Ed: Mining Project Follows Three-Plus Decades of ESA Procedures

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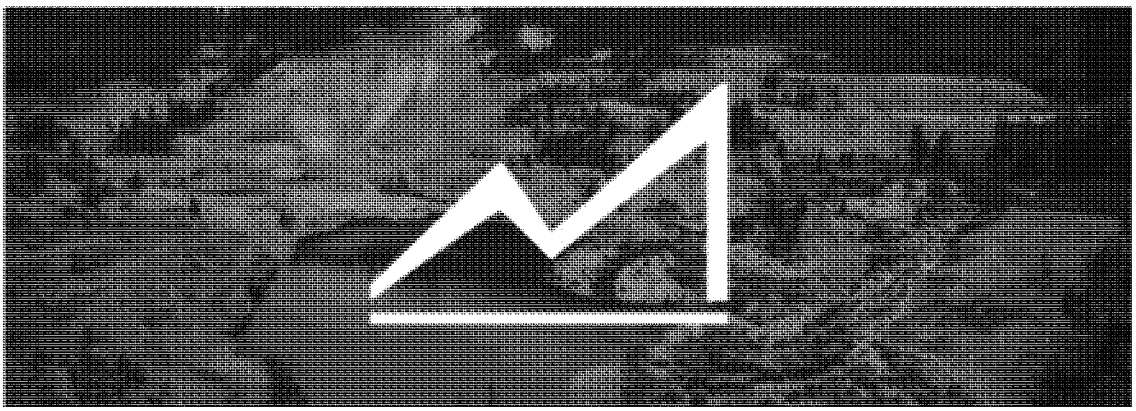

Inside Sources published a story validating our role helping to create the *draft* biological assessment for our project, a process that has been encouraged for over 34 years and across six presidential administrations.

The piece was written by Murray Feldman, an attorney with more than 30 years of experience representing project developers and state and local governments in high-profile Endangered Species Act, National Environmental Policy Act and other environmental litigation, permitting, and counseling matters.

Feldman agrees our role in the process is helping make for a more comprehensive and inclusive review and that federal regulators are not abdicating any responsibility or duties in the process.

Here is a look at some of what he had to say:

"A project applicant being designated as a non-federal representative to prepare a

biological assessment is a normal occurrence, and for good reason. The ESA consultation process is built on the foundation of good information. As Congress recognized, sometimes the project applicant is a key source of that information and needs to be included."

You can read his entire article for yourself here. If you want more information, we encourage you to read our blog or briefing paper on this issue.

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You are receiving this email because you opted in on Midas Gold's website. We send emails to keep you informed about critical project updates and let you know how you can help restore the life and bring jobs to rural Idaho.

Our mailing address is:
Midas Gold Idaho
PO Box 429
Donnelly, ID 83615-0429

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Message

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 1/28/2020 12:24:30 AM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: RE: draft agenda for Thursday meeting

Helen,

I was just about to call you, so your email is well timed.

The agenda looks great.

Regarding video conferencing (by Zoom), I too would like to make sure everything is working smoothly before the meeting begins, so I will plan to arrive 30 minutes before the meeting starts if that works for you. FYI, we used zoom for the last two meetings in your offices, and it worked well.

The Video Conferencing information you need to include in the meeting invitation is as follows:

> To join the Zoom Meeting by computer audio and/or video use:
> https://zoom.us/ Ex. 6 Personal Privacy (PP)
>
> To join the meeting by telephone audio only use:
> Ex. 6 Personal Privacy (PP) US (San Jose)
> Ex. 6 Personal Privacy (PP) US (New York)
>
> Meeting ID: Ex. 6 Personal Privacy (PP) 6
>
> You can also join the Zoom meeting by one tap mobile dialing using:
> + Ex. 6 Personal Privacy (PP) US (San Jose)
> + Ex. 6 Personal Privacy (PP) US (New York)

I am planning to have Austin Zinsser and Chris Dail join me from Midas Gold; Austin developed all the geochemical analyses that were included in the memo, and Chris Dail has a very detail understanding of the site history and geology. We will likely have a few other folks from Midas Gold join via Zoom, including Michal Bogert (General Counsel); Brad Marten with Marten Law will also join us at your office.

We are looking forward to meeting with you to discuss the Project.

Thanks,

John

From: Bottcher, Helen <Bottcher.Helen@epa.gov>
Sent: Monday, January 27, 2020 5:01 PM
To: John Meyer <JMeyer@midasgoldcorp.com>
Subject: draft agenda for Thursday meeting

Hi, John. Please see the attached DRAFT agenda and let me know if you have any comments or additions. I may have some changes on my end – I just sent this to our team.

You mentioned setting up a video meeting. I'm a bit worried that could take a while to get up and running on our end. If you want to do that, send me the remote access meeting details so I can include them in the agenda, and plan to get here early so we have time to troubleshoot the IT. I checked and the room does support VTC.

See you Thursday --

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

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Appointment

From: Chris Dail [Dail@midasgoldinc.com]
Sent: 3/25/2020 6:16:27 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Busy

Recurrence: (none)

Appointment

From: Andy Koulermos [akoulermos@formationenv.com]
Sent: 3/25/2020 6:16:15 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: [POSSIBLE SPAM] FW: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Busy

Recurrence: (none)

Appointment

From: Gene Bosley [bosley@midasgoldinc.com]
Sent: 3/25/2020 6:15:32 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Busy

Recurrence: (none)

Message

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 1/2/2020 4:36:10 PM
To: Koda Merkley [kmerkley@midasgoldinc.com]
CC: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: SharePoint Access
Attachments: ATT00001.txt

Koda,
As discussed, please provide Helen Bottcher (copied) with access to the Stibnite Mining District RI/FS SharePoint site. In addition, please upload the PowerPoint presentation you developed to summarize the historical mining impacts at the site.
Thanks,
John

John Meyer, P.Eng.
Vice President, Development

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Boise, Idaho 83702

T: 208.901.3063
M: 208.608.3543
E: meyer@midasgoldinc.com

www.facebook.com/midasgoldidaho
@MidasIdaho
W www.midasgoldidaho.com

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Message

From: Koda Merkley [kmerkley@midasgoldinc.com]
Sent: 2/10/2020 10:05:26 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
CC: John Meyer [JMeyer@midasgoldcorp.com]
Subject: RE: SharePoint Access

Helen,

It is great to hear that you were able to get onto the site and give it a tour. You are correct that it is mostly unpopulated as of yet. We wanted your approval of the site before we began the process of posting information.

I do have an ask for you. Could you aid me in developing a list of users for the site? I would like to get the user base established so that it can be a functional repository for the data as soon as possible.

Sincerely,
Koda

From: Bottcher, Helen <Bottcher.Helen@epa.gov>
Sent: Friday, February 7, 2020 5:17 PM
To: Koda Merkley <kmerkley@midasgoldinc.com>
Subject: RE: SharePoint Access

Hi, Koda. Thanks for following up with me – you're right; I hadn't dug down far enough in the email backlog to get to your original invitation. The site seems to work fine; I had no trouble navigating through the folders. Many of them are empty, though. As long as that's correct – you've built the shelves but haven't added a lot of books to the library yet, then I think we're in good shape. As a test, I opened and was able to download the Legacy Features map.

Regards,

Helen Bottcher

From: Koda Merkley <kmerkley@midasgoldinc.com>
Sent: Thursday, February 06, 2020 7:00 AM
To: John Meyer <JMeyer@midasgoldcorp.com>
Cc: Bottcher, Helen <Bottcher.Helen@epa.gov>
Subject: RE: SharePoint Access

Ms. Bottcher,

I am following up on this invitation I sent you last month. I believe you had just left on vacation so I suspect it was buried in your inbox. I want to make sure you gain access to the site so we can begin using it for data transfers for all of the involved parties. I will send a new invitation to the SharePoint site that will land in your inbox shortly following this one.

Koda Merkley P.G.
Geologist
MIDAS GOLD

MAX.TSX / MDRPF.OTCQX
405 S. 8th St., Ste. 201

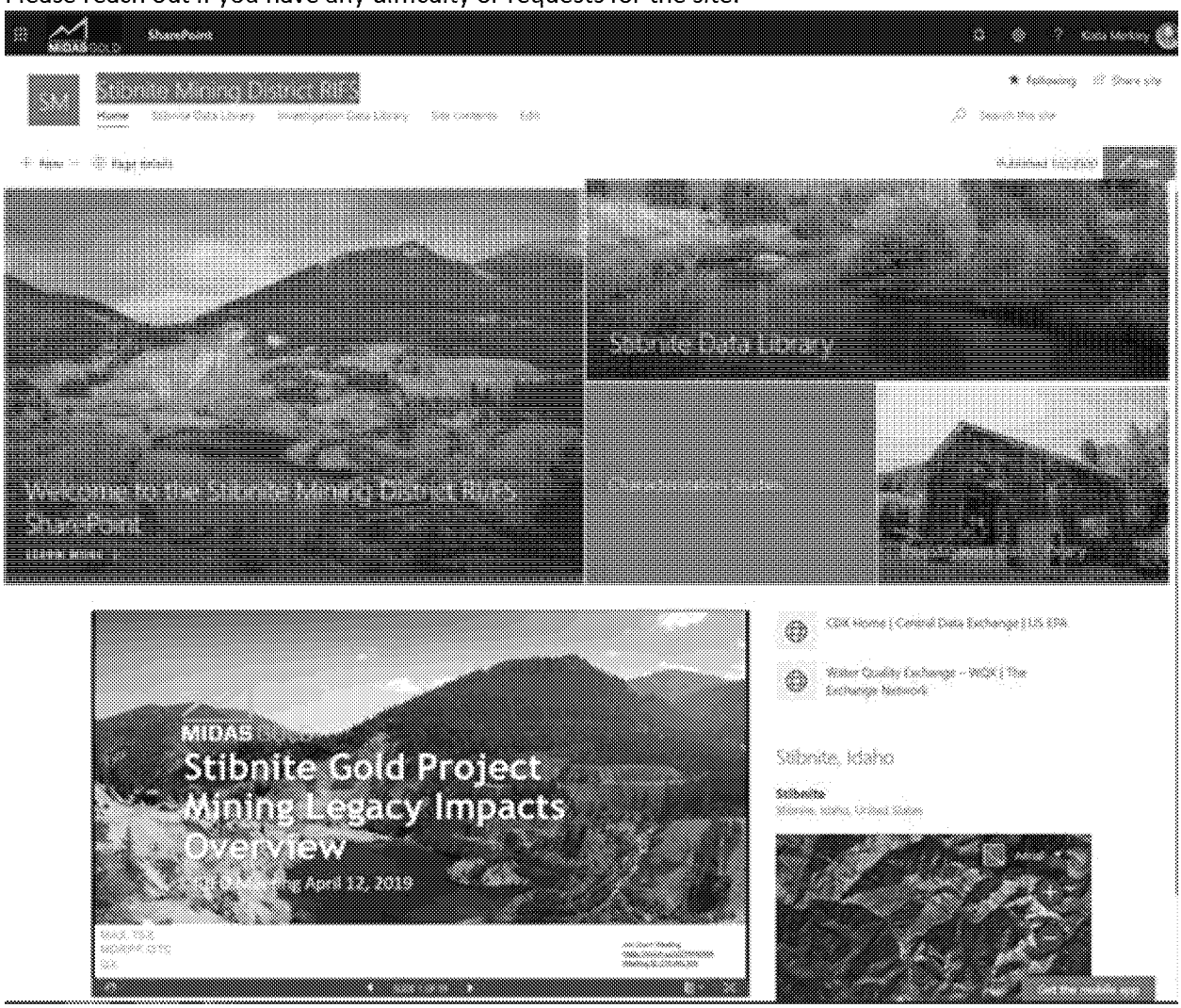
Boise, ID 83702
T: 208.901.3094
W www.midasgoldidaho.com

From: Koda Merkley
Sent: Thursday, January 2, 2020 10:48 AM
To: John Meyer <JMeyer@midasgoldcorp.com>
Cc: Bottcher, Helen <Bottcher.Helen@epa.gov>
Subject: RE: SharePoint Access

Ms. Bottcher,

I have sent you an invitation to the Stibnite Mining District RIFS SharePoint site. I would like for you to confirm for me that you are able to gain access to the site. It should look like the screenshot attached below. Once you have access I would also ask you to review the structure of the site and the data libraries to ensure that they will suit our needs. Once that is complete I will begin populating the site. I would also like to know who else from the EPA that you would like me to add to the site.

Please reach out if you have any difficulty or requests for the site.



Best regards,

Koda Merkley P.G.
Geologist

MIDAS GOLD

MAX.TSX / MDRPF.OTCQX
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Boise, ID 83702
T: 208.901.3094
W www.midasgoldidaho.com

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Thursday, January 2, 2020 9:36 AM
To: Koda Merkley <kmerkley@midasgoldinc.com>
Cc: Bottcher, Helen <Bottcher.Helen@epa.gov>
Subject: SharePoint Access

Koda,
As discussed, please provide Helen Bottcher (copied) with access to the Stibnite Mining District RI/FS SharePoint site. In addition, please upload the PowerPoint presentation you developed to summarize the historical mining impacts at the site.
Thanks,
John

John Meyer, P.Eng.
Vice President, Development

MIDAS GOLD

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W www.midasgoldidaho.com

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Warning: This email originated externally. **DO NOT CLICK** links if the sender is unknown.

Appointment

From: Andy Koulermos [akoulermos@formationenv.com]
Sent: 4/9/2020 2:54:08 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: [POSSIBLE SPAM] FW: Stibnite: Midas response to Gov't Parties Table
Location: Zoom meeting

Start: 4/9/2020 11:00:00 PM
End: 4/10/2020
Show Time As: Busy

Recurrence: (none)

Appointment

From: Gene Bosley [bosley@midasgoldinc.com]
Sent: 4/9/2020 2:47:52 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: Stibnite: Midas response to Gov't Parties Table
Location: Zoom meeting

Start: 4/9/2020 11:00:00 PM
End: 4/10/2020
Show Time As: Busy

Recurrence: (none)

Appointment

From: Chris Dail [Dail@midasgoldinc.com]
Sent: 1/30/2020 1:57:24 AM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: Stibnite Mine early actions
Location: EPA Seattle office with remote participation by Zoom Meeting

Start: 1/30/2020 4:30:00 PM
End: 1/30/2020 8:00:00 PM
Show Time As: Busy

Recurrence: (none)

Appointment

From: Chris Dail [Dail@midasgoldinc.com]
Sent: 4/9/2020 2:47:03 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: Stibnite: Midas response to Gov't Parties Table
Location: Zoom meeting

Start: 4/9/2020 11:00:00 PM
End: 4/10/2020
Show Time As: Busy

Recurrence: (none)

Message

From: Bottcher, Helen [Bottcher.Helen@epa.gov]
Sent: 1/30/2020 1:09:46 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Maley, Timothy [maley.timothy@epa.gov]; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; John Meyer [JMeyer@midasgoldcorp.com]; Austin Zinsser [zinsser@midasgoldinc.com]; L. Michael Bogert [mbogert@midasgoldinc.com]; Dail@midasgoldinc.com; bmarten@martenlaw.com; Gary.Fremerman@usda.gov; Leeds, Todd - FS [todd.leeds@usda.gov]; kevin.knesek@usda.gov; Zamba, Kathy -FS [kathy.zamba@usda.gov]; Derek.Young@deq.idaho.gov; kwright@sbtribes.com
CC: Philip, Jeffrey [Philip.Jeff@epa.gov]; Vaughan, Molly [Vaughan.Molly@epa.gov]; Aaron.Scheff@deq.idaho.gov
Subject: Stibnite Mine - NEW (!) dial-in instructions for January 30 meeting
Attachments: Agenda Stibnite early actions Jan 30.docx

Hello, everyone. Attached please find a draft agenda for our Stibnite Mine call tomorrow, January 30, starting at 8:30 AM Pacific Time. We'll be discussing possible early actions to address ongoing contaminant releases.

For remote participants, Midas has offered use of their video and audio conference system. Instructions to join the meeting remotely are on the attached agenda and I've also pasted them below:

To join the Zoom Meeting by computer audio and/or video use:

https://zoom.us/j/1 Ex. 6 Personal Privacy (PP)

To join the meeting by telephone audio only use:
Ex. 6 Personal Privacy (PP) 5 (San Jose)
Ex. 6 Personal Privacy (PP) (New York)

Meeting ID: Ex. 6 Personal Privacy (PP)

ing by one tap mobile dialing using:
Ex. 6 Personal Privacy (PP) (San Jose)
Ex. 6 Personal Privacy (PP) (New York)

Regards,

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Stibnite Mine Project Meeting – Potential Early Actions

When: Thursday, January 30, 2020
8:30 AM to 12:00 PM

Where: EPA Region 10 Seattle Office
1200 Sixth Avenue
"Stehekin" conference room – 20th floor

Dial-in: To join the Zoom Meeting by computer audio and/or video use:
[HYPERLINK "https://zoom.us/j/2822089706"]

To join the meeting by telephone audio only use:

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Ex. 6 Personal Privacy (PP) (New York)

Meeting ID: Ex. 6 Personal Privacy (PP)

You can also join the Zoom meeting by one tap mobile dialing using:
Ex. 6 Personal Privacy (PP) US (San Jose)
Ex. 6 Personal Privacy (PP) US (New York)

Agenda

8:30 – 8:45	Introductions
8:45 – 9:00	Discussion of meeting goals
9:00 – 10:15	Midas Gold team – possible early actions and schedule/proposed actions to address ongoing releases at the Site that are not addressed by Midas' proposed interim actions
10:15 – 10:30	Break
10:30 – 11:15	All -- clarifying questions and discussion
11:15 – 11:45	Identification of next steps
12:00	Adjourn

Visitor information / logistics

EPA's office is on the southeast corner of 6th Avenue and University Street in downtown Seattle. Parking is available in the building's garage (half day is ~$22, payable by credit card only; no cash). Please arrive at least 10 minutes early as you will need to clear security and be escorted to the meeting room. Weapons including pocketknives are prohibited. Coffee and light breakfast items are available from the VOXX coffee shop just outside the building's main entrance. If you want coffee, best to get it before you go through security.

If you arrive late and need an escort upstairs, contact Helen Bottcher, cell phone / text 206-817-8911

Appointment

From: Koda Merkley [kmerkley@midasgoldinc.com]
Sent: 4/9/2020 2:46:33 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]

Subject: Accepted: Stibnite: Midas response to Gov't Parties Table
Location: Zoom meeting

Start: 4/9/2020 11:00:00 PM
End: 4/10/2020
Show Time As: Busy

Recurrence: (none)

Appointment

From: Bottcher, Helen [Bottcher.Helen@epa.gov]
Sent: 1/30/2020 1:15:39 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Maley, Timothy [maley.timothy@epa.gov]; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; John Meyer [JMeyer@midasgoldcorp.com]; Austin Zinsser [zinsser@midasgoldinc.com]; L. Michael Bogert [mbogert@midasgoldinc.com]; Dail@midasgoldinc.com; bmarten@martenlaw.com; Gary.Fremerman@usda.gov; Leeds, Todd - FS [todd.leeds@usda.gov]; kevin.knesek@usda.gov; Zamba, Kathy -FS [kathy.zamba@usda.gov]; Derek.Young@deq.idaho.gov; kwright@sbtribes.com
CC: Philip, Jeffrey [Philip.Jeff@epa.gov]; Vaughan, Molly [Vaughan.Molly@epa.gov]; Aaron.Scheff@deq.idaho.gov

Subject: Stibnite Mine early actions
Location: EPA Seattle office with remote participation by Zoom Meeting

Start: 1/30/2020 4:30:00 PM
End: 1/30/2020 8:00:00 PM
Show Time As: Tentative

Recurrence: (none)

Stibnite Mine Project Meeting – Potential Early Actions

When: Thursday, January 30, 2020
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https://zoom.us/ Ex. 6 Personal Privacy (PP)

To join the meeting by telephone audio only use:
Ex. 6 Personal Privacy (PP) S (San Jose)
Ex. 6 Personal Privacy (PP) S (New York)

Meeting ID: 282 208 9706

You can also join the Zoom meeting by one tap mobile dialing using:
Ex. 6 Personal Privacy (PP) (San Jose)
Ex. 6 Personal Privacy (PP) (New York)

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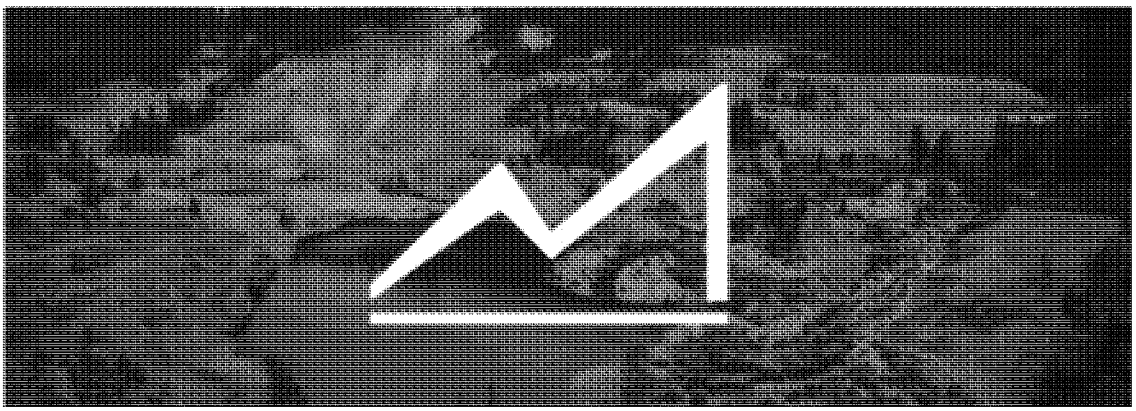
If you arrive late and need an escort upstairs, contact Helen Bottcher, cell phone / text 206-817-8911

Message

From: Midas Gold Idaho [community@midasgoldinc.com]
Sent: 3/9/2020 10:32:48 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: Solidifying America's National Security With Mining

View this email in your browser



While most know mining helps collect the minerals that make up important everyday items – like our cell phones and cars – many don't know about the role these resources play outside consumer goods, namely our nation's national security.

Recently, Retired U.S. Army Major General James "Spider" Marks authored a column in the *Washington Times* discussing how America should prioritize the domestic production of antimony, a critical mineral found in both consumer goods and many military related products. You can read the full article below.

Domestic mining of antimony is key to U.S. defense and its economy

The strength of a nation is determined by an array of factors: Honesty in global engagements, sharing ideas, finding compromise without loss of identity,

unequivocal leadership, developing and nurturing global partnerships, economic largesse, military readiness, predictability under stress, and magnanimity.

Once established, strength diminishes unless it's applied. Applying strength when it's necessary — not just when it's conveniently needed — can only be sustained by reliable access to resources required to power its economy and military. The United States, as an unquestioned global superpower, has long excelled in this — a source of strength that has only grown over the last decade as domestic energy production has surged.

The strategic significance of the United States' emerging energy dominance is difficult to overstate. Growth in both traditional and renewable energy production enables us to rely less on foreign trading partners, to insulate ourselves from global price and supply volatility, and advance our geopolitical goals. Simultaneously, however, our nation has grown weaker, almost anemic, regarding strategic supply chains.

Critical minerals such as antimony are the building blocks of our modern economy and play an indispensable role in everything from consumer electronics and renewable energy to petroleum refining and the chemical industry.

Thanks to its fire-retardant properties, antimony is used in nearly all plastics and paints, and its anti-corrosion properties strengthen everything from batteries and wind turbines to ships and nuclear energy facilities. It also helps with the clarity of glass and is essential to production of solar panels, computer screens and smartphones.

These are important applications, but this mineral's role reaches beyond consumer goods and industrial production. Antimony is also vital to our military's effectiveness and has been since it was labeled as crucial to the war effort during World War II. Antimony is a key ingredient in communication equipment, night vision goggles, explosives, ammunition, nuclear weapons, submarines, warships, optics, laser sighting, and much more.

Yet, despite holding extensive domestic reserves, the United States is 100 percent dependent on imports of antimony. This is a grievous self-inflicted strategic wound

not only of geography but also of today's volatile trade landscape, creating dependence often on adversarial foreign powers.

China is currently the world's leading producer of antimony, and the United States meets most of its antimony needs through Chinese imports. History — along with today's trade headlines — demonstrates the risk inherent to this dynamic.

The threat has been around for generations, and it's no less prevalent today than it was 75 years ago when Japan invaded China and cut off the United States from its main source of antimony. In 2013, China restricted the export of its antimony over a period of several years — a move that shook the antimony supply chain and not surprisingly pushed prices upward. And today, as trade negotiations between the United States and China continue, the idea of adding additional restrictions to antimony directly influence the debate.

The U.S. government has long recommended a significant strategic stockpiling exercise for antimony as a guard against supply-chain uncertainty, but to date no such stockpiling has taken place. The U.S. military and our global economy remain as vulnerable to supply interruption as ever.

The good news is that we are not, by any means, without known antimony reserves. The Stibnite Mining District in Idaho — which incidentally was our stopgap source of antimony during World War II — is home to at least 180 million pounds of antimony. And while production in the Stibnite has been dormant for many years, a plan for development is moving forward.

The development plan, proposed by Midas Gold, a company of scientists, engineers, environmentalists and community leaders in Idaho, is already deep into the permitting and approval process with the U.S. Forest Service and other authorities.

This project will produce sustainable mining of antimony and gold, which is also found at Stibnite. Midas' plan will exponentially increase domestic production of antimony, reducing reliance on China and making the United States less vulnerable to the unpredictable exigencies of global markets.

What's more, the plan also includes extensive reclamation that will remedy the harm caused by antiquated mining procedures used for many decades. This reclamation will be paid by Midas; there will be no expense to the taxpayer.

The value proposition of the project is high. Thankfully, earlier this year permitting officials overseeing FAST-41, a program aimed at streamlining the timeliness and transparency of federal environmental reviews for critical infrastructure projects, opted to include non-energy mining as a newly-covered infrastructure sector to realize the goal of greater domestic development of critical minerals. The Stibnite Gold Project should be first on the list.

Domestic production of critical and strategic minerals like antimony represents an opportunity for the U.S. to strengthen its strategic position, reducing supply vulnerability and adding stability and predictability to its defense and economic strength.

• *James "Spider" Marks is a retired U.S. Army major general.*

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PO Box 429
Donnelly, ID 83615-0429

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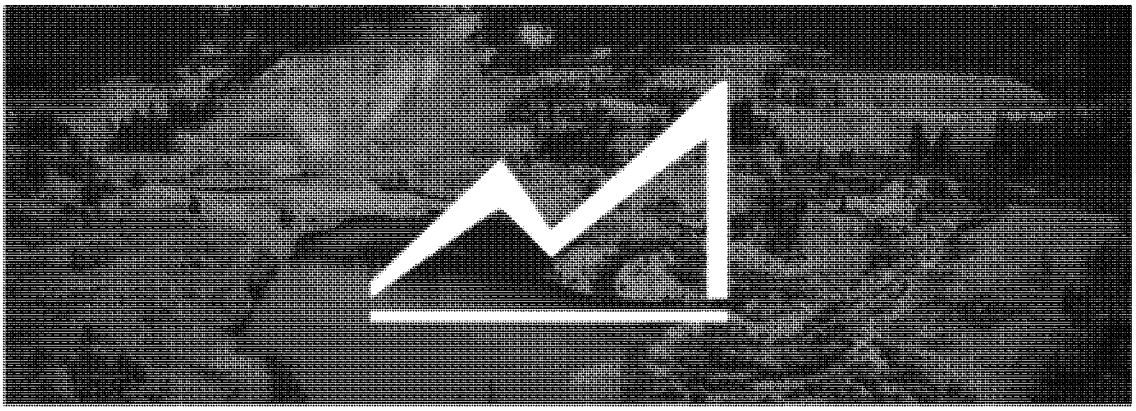
Message

From: Midas Gold Idaho [community@midasgoldinc.com]
Sent: 4/4/2020 6:49:37 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: USFS Commits to New Permitting Schedule

Read our 2019 Sustainability Report!

View this email in your browser



This week, the team at Midas Gold received an updated permitting schedule from the U.S. Forest Service and other regulators working on the Stibnite Gold Project.

The draft Environmental Impact Statement for the Stibnite Gold Project will be released in the third quarter of 2020.

The team at the USFS updated the schedule after a comprehensive internal review by federal and state regulators identified improvements to make the draft Environmental Impact Statement more accessible to the community. The USFS is dedicating additional resources to review and finalize the draft Environmental Impact Statement for the Stibnite Gold Project. A number of key milestones have been built into the updated timeline to keep everyone working on the project on track and on schedule.

It is our team's hope (and the intention of the U.S. Forest Service) that the additional time will make the draft Environmental Impact Statement easier for the public to review, understand and provide feedback on. Our team remains committed to providing regulators with the support and information they need to ensure they develop the best alternatives possible for the Stibnite Gold Project.

Learn more about these new developments on our blog.

Help us spread the world! Share this news with other supporters of the Stibnite Gold Project and remember to encourage your friends to sign up for alerts on our project.

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You are receiving this email because you opted in on Midas Gold's website. We send emails to keep you informed about critical project updates and let you know how you can help restore the site and bring jobs to rural Idaho.

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Cornelia, ID 83619-0429

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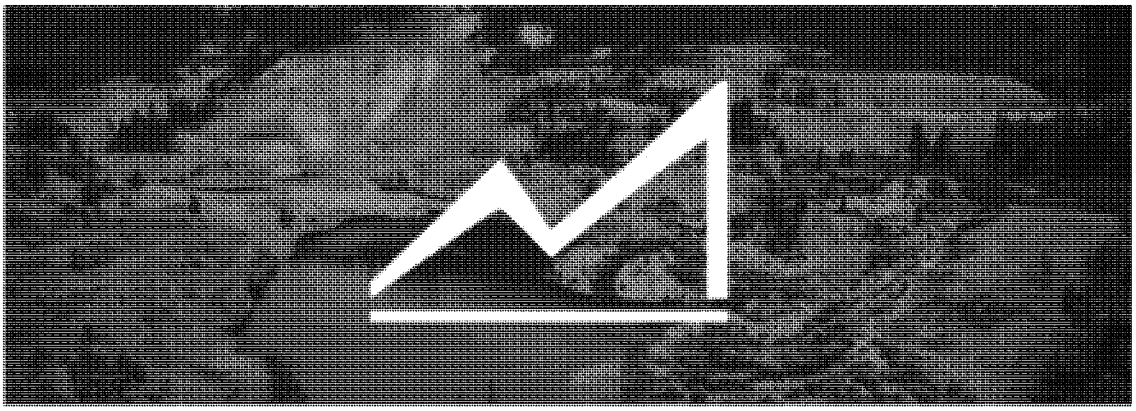
Message

From: Midas Gold Idaho [community@midasgoldinc.com]
Sent: 3/30/2020 7:53:07 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
Subject: Sustainability Has a New Meaning in this Moment

Read our 2019 Sustainability Report!

View this email in your browser



Read our 2019 Sustainability Report!

Sustainability is as much about taking care of each other and our communities as it is taking care of the environment. To us, they are inseparable. After all, sustainability is about an organization's economic, environmental and social impact.

While we are excited to share our 2019 Sustainability Report with you, we feel it is important to talk about what is happening in our world at this moment.

Right now, people around the globe are looking for ways to take care of each other and their communities. We are too. Over the last three weeks, we've prioritized the health and safety of our employees by transitioning people to work from home, where possible, and adjusting projects to make sure every employee has consistent work and a consistent paycheck. We are also letting our communities know we are here to help during this time of uncertainty however they might need

us. And we will be here when all of this is over, working to be part of the solution and helping our country recover from the severe economic and employment impacts of this current crisis.

We feel so grateful our team is healthy and our company is continuing to progress through the permitting process.

The world is changing. Sometimes that is unsettling. So, for now, we find great relief in focusing on what we know won't change. We know the men and women of Idaho will always be determined and resilient. We know that working together always brings better outcomes. We know families will always work hard to take care of the ones they love. We know we have an incredible opportunity to bring the Stibnite Gold Project to life, provide economic opportunity for hundreds of Idahoans and bring environmental attention to an area that desperately needs it. And most of all, we know our dedication to people and the environment will remain constant.

As you find time, we encourage you to take a look at our 2019 Sustainability Report. We could not be more proud of our team or more confident of the opportunities the Stibnite Gold Project will bring to Idaho.

Please stay home, stay safe and stay in touch.

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You are receiving this email because you opted in on Midas Gold's website. We send emails to keep you informed about critical project updates and let you know how you can help restore the site and bring jobs to rural Idaho.

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Midas Gold Idaho
PO Box 429
Donnelly, ID 83615-0429

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mailchimp

Appointment

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 4/7/2020 10:47:20 PM
To: Albert Crawshaw (Albert.Crawshaw@deq.idaho.gov) [Albert.Crawshaw@deq.idaho.gov]; ally_turner@fws.gov; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Derek Young (derek.young@deq.idaho.gov) [derek.young@deq.idaho.gov]; Elizabeth McKenna [Mckenna.Elizabeth@epa.gov]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jeremy Moore (jeremy_n_moore@fws.gov) [jeremy_n_moore@fws.gov]; Jill Grant (jgrant@jillgrantlaw.com) [jgrant@jillgrantlaw.com]; Kathy Zamba (kathy.zamba@usda.gov) [kathy.zamba@usda.gov]; Kelly Wright (kwright@sbtribes.com) [kwright@sbtribes.com]; Lisa O'Hara (lisa.ohara@deq.idaho.gov) [lisa.ohara@deq.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) [Nathalie.Doherty@sol.doi.gov]; Susan Hanson (susanthanson9@icloud.com) [susanthanson9@icloud.com]; Todd Leeds (todd.leeds@usda.gov); John Meyer (meyer@midasgoldinc.com) [meyer@midasgoldinc.com]; Austin Zinsser (zinsser@midasgoldinc.com) [zinsser@midasgoldinc.com]

Subject: Stibnite: Midas response to Gov't Parties Table
Location: Zoom meeting

Start: 4/9/2020 11:00:00 PM
End: 4/10/2020
Show Time As: Tentative

Hi, everyone. Sorry for scheduling so late in the day, but this time worked best for most of the team. Guess we're all busy with Skype and Zoom calls these days. John Meyer will explain Midas' additions to the table of early actions that we sent. Austin Zinsser will be on the call to explain Midas' loading estimates, and they'll both be happy to take our questions. If you have a specific question or there's something you hope is covered, please let John and Austin know.

EPA staff – please sign off the agency's VPN before joining the Zoom meeting.

Here are the Zoom meeting instructions:

As discussed, a Zoom video conference has been setup for this Thursday afternoon. To connect to the call, please use the following information:

Join Zoom Meeting
https://zoom.us/ Ex. 6 Personal Privacy (PP)

Meeting ID: Ex. 6 Personal Privacy (PP)

One tap mobile
+1 Ex. 6 Personal Privacy (PP) Houston)
Ex. 6 Personal Privacy (PP) an Jose)

Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 2/13/2020 11:50:31 PM
To: John Meyer [JMeyer@midasgoldcorp.com]
Subject: Points of contact at Midas Gold

Hi, John.

I'm still working on a contact list for the project. It's coming together, but I'm missing info for the Midas team members. Can you fill in / correct as needed my partial list below? Thanks!

Michael Bogart
General Counsel
Midas Gold Inc.
mbogert@midasgoldinc.com

Gene Bosley(?)

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Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 3/17/2020 11:14:54 PM
To: John Meyer [JMeyer@midasgoldcorp.com]
CC: Albert Crawshaw (Albert.Crawshaw@deq.idaho.gov) [Albert.Crawshaw@deq.idaho.gov]; ally_turner@fws.gov; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Derek Young (derek.young@deq.idaho.gov) [derek.young@deq.idaho.gov]; Elizabeth McKenna [Mckenna.Elizabeth@epa.gov]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jeremy Moore (jeremy_n_moore@fws.gov) [jeremy_n_moore@fws.gov]; Jill Grant (jgrant@jillgrantlaw.com) [jgrant@jillgrantlaw.com]; Kathy Zamba (kathy.zamba@usda.gov) [kathy.zamba@usda.gov]; Kelly Wright (kwright@sbtribes.com) [kwright@sbtribes.com]; Lisa O'Hara (lisa.ohara@deq.idaho.gov) [lisa.ohara@deq.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) [Nathalie.Doherty@sol.doi.gov]; Susan Hanson (susanthanson9@icloud.com) [susanthanson9@icloud.com]; Todd Leeds (todd.leeds@usda.gov) [todd.leeds@usda.gov]
Subject: Stibnite - additional considerations for CERCLA settlement discussions
Attachments: 03.05 Legacy sites contributing significant load trimmed.pdf

Hi, John.

I am attaching a table listing areas of existing contamination that EPA and our government team partners have developed. We would like to focus our settlement discussions on addressing ongoing sources of contamination, rather than attempting to design an RI/FS over the life of the mine, because of the complexity of integrating an RI/FS with an active mine, and the financial uncertainty a long-term RI/FS would cause for Midas.

We want this to work for Midas, so we chose early actions that would not interfere with mining and in some cases would get a jump start on actions described in the PRO. This proposal would not result in permanent solutions for all the source areas of concern.

Our proposal also recognizes the extensive research that Midas has completed in order to develop the mine permit. This information, viewed through a CERCLA lens, should allow Midas to develop a site characterization and data gaps report, from which CERCLA workplans for RD/RA or area-specific removal actions could be developed in the future.

The basic technical elements of our new proposal for settlement are:

- Site Characterization and Data Gaps Report (site-wide)
    - Analyze and present available data on the site's physical features as well as contaminant source areas and contaminant fate and transport
    - Identify and describe data gaps that would need to be filled in a potential future site-wide remedial investigation
    - Provide all data available to Midas in electronic format (databased and GIS files, not just PDF files)
- No requirement in this agreement to conduct an RI/FS. Recognizing that a long-term RI/FS would create financial uncertainty for Midas for a long period of time, the negotiating parties are proposing to focus, instead, on concrete early actions that can be performed in a finite amount of time.
- Early actions:
    - Collect data and conduct evaluations necessary to develop designs for early actions
    - Complete designs for early actions
    - Implement early actions
    - Monitor effectiveness of early actions and implement any needed repairs

See the attached table for our full list of proposed early actions. This list includes the three early actions suggested by Midas in your January 23, 2020 memorandum. It also includes recommended studies and actions to address, or partially address, many of the other significant sources of metals to the EFSFSR. As stated above, we believe some of the work in the table aligns nicely with work that Midas has already proposed in the PRO. We also believe this proposal is consistent

with Midas' public statements that Midas will clean up legacy contamination and that a majority of the cleanup will happen early in the life of the project.

Note that the Nez Perce Tribe has not yet had the opportunity to provide its input on the proposal. The Tribe expects to provide input to EPA by March 20th. The Tribe's input is important to the parties and may result in a modified approach.

There's a lot here to digest. I'd be happy to answer your immediate questions. EPA and the negotiating parties are ready to discuss the list of actions with you once you've had a chance to review it. I'm assuming we'll want to meet remotely, so I'll investigate VTC capabilities at EPA.

Regards,

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Table 1. Early actions to reduce arsenic load to surface waters from legacy mining features at Stibnite.

Location	Type	Feature	Relative Arsenic Load	Status under PRO Mining Permit	Year Modified (if mining occurs per PRO)	Land Status	Early Action Candidate Site Work Descriptions	Regulatory Mechanism
Early Action Sites Suggested by Midas (Year 1)								
Near EFSRSR & Sugar Ck confluence	Waste (divert sfc water)	Bradley Dump	2	Partially removed by PRO	2-10	Unpatented	Divert Hennessey Creek around Bradley Dump (Midas, 2020).	CERCLA TCRA
Meadow Creek above EFSFSR	Waste (divert sfc water)	BMC Meadow Creek Mill+Smelter Site	5	Removed by PRO	2-10	Patented	Divert upgradient water around mineralized backfill materials (Midas, 2020).	CERCLA TCRA
EFSFSR above Fiddle Creek	Waste (divert sfc water)	SW flow from DMEA waste rock pile	13	N/A		Unpatented	Divert unnamed stream around DMEA waste rock pile (Midas, 2020).	CERCLA TCRA
Candidate Studies to Support Future Control of Adit Discharge (Year 1)								
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bailey Tunnel Adit Seep	8	Minimized by PRO dewatering	3	Patented	For bulkhead basis of design, monitor site weather station continuously, and collect continuous flow and water quality data. Use data to design collection system (sumps or interceptor trenches with transfer pumps to holding tanks for baseflow (minimum to average flowrates)) and to evaluate treatment options (haul to treatment plant, sulfate bioreactor or vertical wetlands). Evaluate adit for access and scope (Year 2) geotechnical study (Best Practices for Preventing Sudden, Uncontrolled Fluid Mining Waste Releases, EPA, 2017, OLEM 9200.3-118).	N/A - study informing NTCRA EE/CA
Meadow Creek above EFSFSR	Adit Discharge	SW flow from Meadow Creek Mine adit seep	9	N/A		Patented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Cinnabar Tunnel adit seep	10	N/A		Unpatented		
EFSFSR above Fiddle Creek	Adit Discharge	SW flow from DMEA Adit seep	18	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bonanza Adit Seep	19	N/A		Unpatented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Monday Tunnel adit seep	20	N/A		Unpatented		
Candidate Studies to Support Future In-Water Work (Year 1)								
Meadow Creek above EFSFSR	Surface Water	SW flow from pond downgradient of Yellow Pine Pit	3	Mitigated during dewatering	3	Patented	Evaluate flow and water quality into and out of the pond.	N/A - study informing CERCLA TCRA
Meadow Creek above EFSFSR	Surface Water	SW flow from Keyway Marsh Outlet	7	N/A		Mixed, mostly Unpantented.	Evaluate flow and water quality into and out of the marsh. Collect data necessary to characterize substrate, vegetation, groundwater exchange, hydraulic residence time and loading rate, evapotranspiration and water balance within the marsh. Evaluate whether marsh can be enhanced to treat effluent to target concentrations.	N/A - study informing CERCLA TCRA
EFSFSR below Sugar Creek	Waste Rock	Seepage from Lower West End DRSF	6	Minimized by PRO dewatering	3	Mixed	To support in-water work planning and engineering requirements: map wetlands and Ordinary High Water Mark around waste rock piles and stream; prepare vicinity map, plan view and cross-section view of waste rock removal project; prepare plans and specifications for protection of fish life; prepare wetlands mitigation table where necessary.	N/A - study informing CERCLA TCRA
EFSFSR below Sugar Creek	Waste Rock	Seepage from BMC NW DRSF	12	Removed by PRO	2-10	Patented		
EFSFSR above Fiddle Creek	Waste Rock	CSM-PMC-SMI Upper ManCamp DRSF	16	N/A		Unpatented		
EFSFSR below Yellow Pine Pit	Waste Rock	Seepage from BMC NE Oxide stockpile #1	17	N/A		Unpatented		
EFSFSR above Fiddle Creek	Seep	SW flow from Garnet pit seep	14	N/A		Unpatented	For vertical wetlands evaluation, monitor site weather station continuously, and install Modified Parshall Flume near adit and collect flow and water quality data.	N/A - study informing CERCLA TCRA
Candidate Early Action Site Pilot Studies (Year 2)								
Meadow Creek above EFSFSR	Surface Water	SW flow from pond downgradient of Yellow Pine Pit	3	Mitigated during dewatering	3	Patented	Construct batch treatment plant and intake and conduct pilot test treatment of flow from pond.	Pilot Test for TCRA EE/CA
Meadow Creek above EFSFSR	Surface Water	SW flow from Keyway Marsh Outlet	7	N/A		Mixed	Based upon Year 1 evaluations, pilot test marsh enhancements or construct a pilot test of a vertical wetlands to treat discharge from the marsh.	Pilot test under CERCLA TCRA
EFSFSR above Fiddle Creek	Seep	SW flow from Garnet pit seep	14	N/A		Unpatented	Construct a pilot test of a vertical wetlands to treat discharge from the pit.	Pilot test under CERCLA TCRA
EFSFSR above Fiddle Creek	Adit Discharge	SW flow from DMEA Adit seep	18	N/A		Unpatented	For adits install collection system with baseflow to holding tanks and bypass to existing stream. Based upon Year 1 evaluations pilot test bioreactor or vertical wetlands, or complete road work necessary to haul baseflow to batch plant for treatment prior to discharge. Conduct geotechnical studies to support bulkhead design.	Pilot test and geotech study informing NTCRA EE/CA
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Cinnabar Tunnel adit seep	10	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bonanza Adit Seep	19	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bailey Tunnel Adit Seep	8	Minimized by PRO dewatering	3	Unpatented		
Meadow Creek above EFSFSR	Adit Discharge	SW flow from Meadow Creek Mine adit seep	9	N/A		Patented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Monday Tunnel adit seep	20	N/A		Unpatented		
Candidate Early Action Removal Actions (Year 2)								
EFSFSR below Sugar Creek	Waste Rock	Seepage from Lower West End DRSF	6	Minimized by PRO dewatering	3	Mixed	Move waste rock to (upland) staging area for one of the PRO DRSFs.	CERCLA TCRA
EFSFSR below Sugar Creek	Waste Rock	Seepage from BMC NW DRSF	12	Removed by PRO	2-10	Patented		
EFSFSR above Fiddle Creek	Waste Rock	CSM-PMC-SMI Upper ManCamp DRSF	16	N/A		Unpatented		
EFSFSR below Yellow Pine Pit	Waste Rock	Seepage from BMC NE Oxide stockpile #1	17	N/A		Unpatented		
EFSFSR above Fiddle Creek	Waste Rock	Bradley Dumps	2	Partially removed by PRO	2-10	Unpatented	Move in-water waste rock to (upland) staging area for one of the PRO DRSFs.	CERCLA TCRA
EFSFSR below Yellow Pine Pit	Waste Rock	BMC Meadow Creek Mill+Smelter Site	5	Removed by PRO	2-10	Mixed		
Candidate Early Remedial Actions (Year 3)								
Meadow Creek above EFSFSR	Surface Water	SW flow from pond downgradient of Yellow Pine Pit	3	Mitigated during dewatering	3	Patented	Ramp up intake volumes to batch plant to treat average flows, automate with winterization and shutdown capabilities to operate with minimal maintenance during winter months.	TCRA
Meadow Creek above EFSFSR	Surface Water	SW flow from Keyway Marsh Outlet	7	N/A		Mixed	Based on results of Year 2 work, enhance Keyway Marsh with substrate, vegetation and drainage features to optimize hydraulic residence time and loading rate, or construct full-scale vertical wetlands treatment system discharge from marsh.	CERCLA TCRA
EFSFSR above Fiddle Creek	Adit Discharge	SW flow from DMEA Adit seep	18	N/A		Unpatented	Continue baseline flow and water quality studies to support bulkhead design, complete geotechnical data gap investigations, ramp up treatment systems to treat average flows, and automate with winterization and shutdown capabilities to operate with minimal maintenance during winter months.	NTCRA EE/CA
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Cinnabar Tunnel adit seep	10	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bonanza Adit Seep	19	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bailey Tunnel Adit Seep	8	Minimized by PRO dewatering	3	Unpatented		
Meadow Creek above EFSFSR	Adit Discharge	SW flow from Meadow Creek Mine adit seep	9	N/A		Patented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Monday Tunnel adit seep	20	N/A		Unpatented		
EFSFSR above Fiddle Creek	Seep	SW flow from Garnet pit seep	14	N/A		Unpatented	Ramp up intake volumes to batch plant to treat average flows, automate with winterization and shutdown capabilities to operate with minimal maintenance during winter months.	CERCLA TRCA

Table 1. Early actions to reduce arsenic load to surface waters from legacy mining features at Stibnite.

Location	Type	Feature	Relative Arsenic Load	Status under PRO Mining Permit	Year Modified (if mining occurs per PRO)	Land Status	Early Action Candidate Site Work Descriptions	Regulatory Mechanism

DRSF - Development Rock Storage Facility (Waste Rock)
IPDES - Idaho Pollutant Discharge Elimination System
PRO - Midas proposed mining Alternatives 1, 2 or 4.
sfc - surface; SW - surface water
N/A - Not Applicable (i.e., not modified by actions in the mining proposal).
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act (a.k.a. Superfund)
TCRA - Time Critical Removal Action
NTCRA - Non-Time Critical Removal Action
ROD/RA - CERCLA Record of Decision / Remedial Action
RI/FS - CERCLA Remedial Investigation/Feasibility Study
EE/CA - Engineering Evaluation/Cost Analysis (NTCRA under CERCLA)
CWA / NPDES - Clean Water Act / National Pollutant Discharge Elimination System (permit)

EPA, 2017, Best Practices for Preventing Sudden, Uncontrolled Fluid Mining Waste Releases, OLEM 9200.3-118
Midas, 2020, Proposed Early Actions - Midas Gold Stibnite Mine Site, Memo from John Meyer to Brad Marten, 24 pages.
Johnson, 1963, Modified Parshall Flume, USGS Open-File Report, 8 pages.

Notes: Early treatment of Yellow Pine Pit Lake deferred because of current function of Lake as sediment trap. Early treatment of seeps and springs associated with Meadow Creek tailings and DRSFs that are not in floodpain, and installation of bulkheads, deferred until disposition of PRO is known.
Year 1 Cost estimate total (not including Midas proposed early actions) - 680K; Year 2 -16.2M; Year 3 (including O&M) - 4.8M

Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 4/11/2020 12:25:06 AM
To: John Meyer [JMeyer@midasgoldcorp.com]
Subject: RE: Revised Early Actions Table

Hi, John. I was having network troubles earlier today, but was able to log in and download the two tables just now. Thanks very much.

Hope you have a lovely weekend – Helen

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Friday, April 10, 2020 3:15 PM
To: Bottcher, Helen <Bottcher.Helen@epa.gov>
Cc: L. Michael Bogert <mbogert@midasgoldinc.com>; Austin Zinsser <zinsser@midasgoldinc.com>; Gene Bosley <bosley@midasgoldinc.com>; Koda Merkley <kmerkley@midasgoldinc.com>; Kyle Fend <fend@midasgoldinc.com>; Chris Dail <Dail@midasgoldinc.com>; Andy Koulermos <akoulermos@formationenv.com>; Bradley Marten <bmarten@martenlaw.com>
Subject: Revised Early Actions Table

Helen,

As promised, we have updated the ***Stibnite Mine Legacy Areas Early Action Table*** with details concerning the arsenic load calculations for each candidate site. This document has been uploaded to the Stibnite Mining District RIFS SharePoint site and can be access via:

https://midasgold.sharepoint.com/:f:/r/sites/StibniteAreaDataLibrary/Investigation_Results/06_Analysis_of%20Remedial_Actions/20200410%20Early%20Proposed%20Actions%20Table%20Loading%20Calculation%20Response?csf=1&web=1&e=W3y6ra

We have also uploaded the MS Excel workbook developed to calculate the loading terms, ***Sample event loads for AOC group,*** which may be of interest to Don Clabaugh and Todd Leeds and others in their efforts to validate our loading estimates.

If you have any questions or comments contact us anytime.

Regards,

John

John Meyer, P.Eng.
Vice President, Development

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Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 5/12/2020 10:58:09 PM
To: John Meyer [JMeyer@midasgoldcorp.com]
Subject: RE: Midas Gold AOC Offer

I appreciate the heads up, John. Letter would probably take a day or two to make its way to me.

Hope you are staying well.

Helen

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Tuesday, May 12, 2020 2:52 PM
To: Bottcher, Helen <Bottcher.Helen@epa.gov>
Subject: FW: Midas Gold AOC Offer

Helen,

The CEO of Midas Gold Idaho, Laurel Sayer, sent out the attached letter and draft AOC to Regional Administrator Hladick this afternoon.

I wanted you to be aware of the correspondence as soon as possible.

If you have any questions on the draft AOC please contact me at your convenience.

Regards,

John

John Meyer
Vice President, Development

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From: Laurel Sayer <lsayer@midasgoldinc.com>
Date: Tuesday, May 12, 2020 at 3:48 PM
To: "Hladick.christopher@epamail.epa.gov" <Hladick.christopher@epamail.epa.gov>
Cc: "Gahner.Pamela@epa.gov" <Gahner.Pamela@epa.gov>, "L. Michael Bogert" <mbogert@midasgoldinc.com>, "bodine.susan@epa.gov" <bodine.susan@epa.gov>, "wright.peter@epa.gov" <wright.peter@epa.gov>, Stephen Quin <SQuin@midasgoldcorp.com>, "L. Michael Bogert" <mbogert@midasgoldinc.com>
Subject: Midas Gold AOC Offer

Mr. Hladick:
Please see the attached.

Regards,

Laurel Sayer
President & CEO
Midas Gold Idaho

JOIN US TODAY. WWW.SUPPORTSTIBNITE.COM

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Appointment

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 3/26/2020 12:21:34 AM
To: Albert Crawshaw (Albert.Crawshaw@deq.idaho.gov) [Albert.Crawshaw@deq.idaho.gov]; ally_turner@fws.gov; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Derek Young (derek.young@deq.idaho.gov) [derek.young@deq.idaho.gov]; Elizabeth McKenna [Mckenna.Elizabeth@epa.gov]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jeremy Moore (jeremy_n_moore@fws.gov) [jeremy_n_moore@fws.gov]; Jill Grant (jgrant@jillgrantlaw.com) [jgrant@jillgrantlaw.com]; Kathy Zamba (kathy.zamba@usda.gov) [kathy.zamba@usda.gov]; Kelly Wright (kwright@sbtribes.com) [kwright@sbtribes.com]; Lisa O'Hara (lisa.ohara@deq.idaho.gov) [lisa.ohara@deq.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) [Nathalie.Doherty@sol.doi.gov]; Susan Hanson (susanthanson9@icloud.com) [susanthanson9@icloud.com]; Todd Leeds (todd.leeds@usda.gov); John Meyer (meyer@midasgoldinc.com) [meyer@midasgoldinc.com]
CC: John Meyer [JMeyer@midasgoldcorp.com]; Fisher, Sandi [sandi_fisher@fws.gov]; Gene Bosley [bosley@midasgoldinc.com]; Andy Koulermos [akoulermos@formationenv.com]; Chris Dail [Dail@midasgoldinc.com]; Koda Merkley [kmerkley@midasgoldinc.com]; Kyle Fend [fend@midasgoldinc.com]; Bradley M. Marten [bmarten@martenlaw.com]

Subject: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Tentative

New! Agenda below. Scroll down for the Zoom Meeting Link.

Agenda:

1. Introductions (5 minutes)
2. Meeting goals (5 minutes)
3. Stibnite mine site virtual flyover (20 minutes)
4. Questions and answers related to proposed Early Actions (30 minutes)
5. Discussion (20 minutes)
6. Next steps (10 minutes)

Note: Midas has prepared a virtual flyover of the mine in lieu of a slide deck. Hopefully this will work for everyone. If bandwidth is an issue for you, best to log off other networks and close unneeded programs before you join the Zoom meeting. EPA employees – please sign out of the agency's VPN before you connect to the Zoom meeting.

John Meyer is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://zoom.us/j/ Ex. 6 Personal Privacy (PP)

Meeting ID: Ex. 6 Personal Privacy (PP)

One tap mobile
Ex. 6 Personal Privacy (PP) (Houston)
(San Jose)

Dial by your location

Ex. 6 Personal Privacy (PP) (Houston)
(San Jose)
(Chicago)
(New York)

Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 3/26/2020 12:13:24 AM
To: John Meyer [JMeyer@midasgoldcorp.com]
Subject: RE: Meeting Agenda

Thanks for putting this together, John. It looks good. I'll add to it the meeting invite and re-send.

Helen

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Wednesday, March 25, 2020 4:08 PM
To: Bottcher, Helen <Bottcher.Helen@epa.gov>
Subject: Meeting Agenda

Helen,
Provided below is a simple, proposed agenda for the meeting tomorrow.
Rather than a PowerPoint to review some of the Early Action areas we developed a virtual flyover. Hopefully all the participants are connecting via computer rather than their phones.
If you are okay with this, please distribute to the meeting attendees.
Thanks,
John

Agenda:

1. Introductions (5 minutes)
2. Meeting goals (5 minutes)
3. Stibnite mine site virtual flyover (20 minutes)
4. Questions and answers related to proposed Early Actions (30 minutes)
5. Discussion (20 minutes)
6. Next steps (10 minutes)

John Meyer, P.Eng.
Vice President, Development

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Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 4/7/2020 3:59:22 PM
To: John Meyer [JMeyer@midasgoldcorp.com]
Subject: RE: Stibnite - your availability if we have questions next week

Hi, John. It went fine. But as anticipated, several folks on the team would like to have you walk them through the table and your thinking. Similar to what you did for EPA, but this time for FS, FWS, DEQ and Tribal staff as well. For all but the top three items, I think people would appreciate hearing your bottom-line recommendation and the key reason(s) why Midas does not think early implementation makes sense.

I polled the group and the date and time that works for most is this Thursday, April 9 from 4:00 to 5:00 PM Pacific time. Sorry – I know this will make for a long day. Would this work for you?

Regards,

Helen

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Monday, April 06, 2020 4:07 PM
To: Bottcher, Helen <Bottcher.Helen@epa.gov>
Subject: Re: Stibnite - your availability if we have questions next week

Helen,
How did your meeting go today with the other AOC Participants?
Did you have any follow-up questions for us?
I am available to discuss anytime.
Regards,
John

From: Helen Bottcher <Bottcher.Helen@epa.gov>
Date: Friday, April 3, 2020 at 3:14 PM
To: John Meyer <JMeyer@midasgoldcorp.com>, "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>, Charles Clabaugh <clabaugh.charles@epa.gov>, Tim Maley <Maley.Timothy@epa.gov>
Subject: Stibnite - your availability if we have questions next week

Hi, John.

Thanks again for your time on Wednesday. Your explanation of the table and your thinking was helpful. I'm not sure we would have understood your response fully without that discussion.

We're planning to walk the other government parties through your updated table during our weekly call on Monday (April 6). If they have questions we can't answer, or want additional explanation from Midas, would you be willing to discuss your proposal with the parties sometime next week? If yes, do you have any particular schedule conflicts I would need to work around?

Hope you are staying safe --

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Warning: This email originated externally. **DO NOT CLICK** links if the sender is unknown.

Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 1/28/2020 12:01:05 AM
To: John Meyer [JMeyer@midasgoldcorp.com]
Subject: draft agenda for Thursday meeting
Attachments: Agenda Stibnite early actions Jan 30.docx

Hi, John. Please see the attached DRAFT agenda and let me know if you have any comments or additions. I may have some changes on my end – I just sent this to our team.

You mentioned setting up a video meeting. I'm a bit worried that could take a while to get up and running on our end. If you want to do that, send me the remote access meeting details so I can include them in the agenda, and plan to get here early so we have time to troubleshoot the IT. I checked and the room does support VTC.

See you Thursday --

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Stibnite Mine Project Meeting – Potential Early Actions

When: Thursday, January 30, 2020
8:30 AM to 12:00 PM

Where: EPA Region 10 Seattle Office
1200 Sixth Avenue
"Stehekin" conference room – 20th floor

Dial-in: Conference phone number: (b) (6)
Conference ID: (b) (6)

Draft Agenda

8:30 – 8:45	Introductions
8:45 – 9:00	Discussion of meeting goals
9:00 – 10:15	Midas Gold team – possible early actions
10:15 – 10:30	Break
10:30 – 11:15	EPA team – other possible actions not identified by Midas Gold
11:15 – 11:45	Discussion and identification of next steps
12:00	Adjourn

Visitor information / logistics

EPA's office is on the southeast corner of 6th Avenue and University Street in downtown Seattle. Parking is available in the building's garage (half day is ~$22, payable by credit card only; no cash). Please arrive at least 10 minutes early as you will need to clear security and be escorted to the meeting room. Weapons including pocketknives are prohibited. Coffee and light breakfast items are available from the VOXX coffee shop just outside the building's main entrance. If you want coffee, best to get it before you go through security.

If you arrive late and need to be escorted upstairs, contact Helen Bottcher by cell phone / text at (b) (6) - (b) (6)

Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 3/31/2020 3:34:38 PM
To: John Meyer [JMeyer@midasgoldcorp.com]
Subject: RE: Stibnite - additional considerations for CERCLA settlement discussions

Good morning, John.

Response received. I'll get this out to our team and tee up a discussion on our weekly call next Monday. I'll be in touch Monday or Tuesday morning to let you know our initial reactions and discuss next steps.

I'm teleworking all this week – feel free to reach out by phone or email if there's anything you want to discuss in the meantime.

Regards,

Helen

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Monday, March 30, 2020 7:14 PM
To: Bottcher, Helen <Bottcher.Helen@epa.gov>
Cc: L. Michael Bogert <mbogert@midasgoldinc.com>
Subject: Re: Stibnite - additional considerations for CERCLA settlement discussions

Helen,

We have reviewed the table you provided on March 17. We converted the Adobe file into an MS Excel file, and it is included as Columns A through I in the attached file. We have included some minor proposed edits to your table, and they are shown in red text.

From your table, we have attempted to provide a roadmap of commitments to early action that we think are feasible and cost-effective. To develop this roadmap, we compiled some summary-level surface water quality and flow information, area history, technical considerations and recommendations for each area of historical mining impacts, and that information is provided adjacent to your table in columns K through Y. To complement the table, we have attached a figure that we hope you find useful, that illustrates the historical mine features referenced in the table.

We will post these files to the SharePoint site tomorrow, but wanted to get the information to you first. We can distribute the files to the rest of the AOC Participants via SharePoint, or you can distribute if you prefer. Just let me know.

Once you and your team have had a chance to review this information, we would like to take you up on your offer to review the table in detail via video conference at your first available opportunity. We can host the video conference.

As with my previous early action proposal to you in late January, I am advised by our lawyers that while this document is intended to be distributed to the AOC Participant Group, nothing presented in the action or accompanying narrative constitutes a concession by Midas Gold that it is a potentially responsible party ("PRP") under CERCLA. We are attempting to work through technical issues on potential actions on Site and, fortunately, we will leave the liability discussions to our legal counsel.

Contact me anytime.

Regards,

John

John Meyer, P.Eng.
Vice President, Development

MAX.TSX / MDRPF.OTCQX
405 South 8th Street, Suite 201
Boise, Idaho 83702

T: 208.901.3063
M: 208.608.3543
E: meyer@midasgoldinc.com

www.facebook.com/midasgoldidaho
@MidasIdaho
W www.midasgoldidaho.com

The information contained in this e-mail is intended only for the individual or entity to whom it is addressed. Its contents (including any attachments) are confidential and may contain privileged information. If you are not an intended recipient you must not use, disclose, disseminate, copy or print its contents. If you receive this e-mail in error, please notify the sender by reply e-mail and delete and destroy this message.

From: Helen Bottcher <Bottcher.Helen@epa.gov>
Date: Tuesday, March 17, 2020 at 5:15 PM
To: John Meyer <JMeyer@midasgoldcorp.com>
Cc: Albert Crawshaw <Albert.Crawshaw@deq.idaho.gov>, "ally_turner@fws.gov" <ally_turner@fws.gov>, Charles Clabaugh <clabaugh.charles@epa.gov>, "Derek Young (derek.young@deq.idaho.gov)" <derek.young@deq.idaho.gov>, "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>, "Fremerman, Gary - OGC, Washington, DC" <gary.fremerman@usda.gov>, "Jeremy Moore (jeremy_n_moore@fws.gov)" <jeremy_n_moore@fws.gov>, Jill Grant <jgrant@jillgrantlaw.com>, "Zamba, Kathy -FS" <kathy.zamba@usda.gov>, "kwright@sbtribes.com" <kwright@sbtribes.com>, "Lisa O'Hara (lisa.ohara@deq.idaho.gov)" <lisa.ohara@deq.idaho.gov>, "Maley, Timothy" <maley.timothy@epa.gov>, "McGrath, Patricia" <mcgrath.patricia@epa.gov>, "Nathalie Doherty (Nathalie.Doherty@sol.doi.gov)" <Nathalie.Doherty@sol.doi.gov>, Susan Hanson <susanthanson9@icloud.com>, "Leeds, Todd - FS" <todd.leeds@usda.gov>
Subject: Stibnite - additional considerations for CERCLA settlement discussions

Hi, John.

I am attaching a table listing areas of existing contamination that EPA and our government team partners have developed. We would like to focus our settlement discussions on addressing ongoing sources of contamination, rather than attempting to design an RI/FS over the life of the mine, because of the complexity of integrating an RI/FS with an active mine, and the financial uncertainty a long-term RI/FS would cause for Midas.

We want this to work for Midas, so we chose early actions that would not interfere with mining and in some cases would get a jump start on actions described in the PRO. This proposal would not result in permanent solutions for all the source areas of concern.

Our proposal also recognizes the extensive research that Midas has completed in order to develop the mine permit. This information, viewed through a CERCLA lens, should allow Midas to develop a site characterization and data gaps report, from which CERCLA workplans for RD/RA or area-specific removal actions could be developed in the future.

The basic technical elements of our new proposal for settlement are:

- Site Characterization and Data Gaps Report (site-wide)
    - Analyze and present available data on the site's physical features as well as contaminant source areas and contaminant fate and transport
    - Identify and describe data gaps that would need to be filled in a potential future site-wide remedial investigation
    - Provide all data available to Midas in electronic format (databased and GIS files, not just PDF files)
- No requirement in this agreement to conduct an RI/FS. Recognizing that a long-term RI/FS would create financial uncertainty for Midas for a long period of time, the negotiating parties are proposing to focus, instead, on concrete early actions that can be performed in a finite amount of time.
- Early actions:
    - Collect data and conduct evaluations necessary to develop designs for early actions
    - Complete designs for early actions
    - Implement early actions
    - Monitor effectiveness of early actions and implement any needed repairs

See the attached table for our full list of proposed early actions. This list includes the three early actions suggested by Midas in your January 23, 2020 memorandum. It also includes recommended studies and actions to address, or partially address, many of the other significant sources of metals to the EFSFSR. As stated above, we believe some of the work in the table aligns nicely with work that Midas has already proposed in the PRO. We also believe this proposal is consistent with Midas' public statements that Midas will clean up legacy contamination and that a majority of the cleanup will happen early in the life of the project.

Note that the Nez Perce Tribe has not yet had the opportunity to provide its input on the proposal. The Tribe expects to provide input to EPA by March 20th. The Tribe's input is important to the parties and may result in a modified approach.

There's a lot here to digest. I'd be happy to answer your immediate questions. EPA and the negotiating parties are ready to discuss the list of actions with you once you've had a chance to review it. I'm assuming we'll want to meet remotely, so I'll investigate VTC capabilities at EPA.

Regards,

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Warning: This email originated externally. **DO NOT CLICK** links if the sender is unknown.

Appointment

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 1/27/2020 11:41:28 PM
To: John Meyer [JMeyer@midasgoldcorp.com]
BCC: R10Sea-Room-20Stehekin/R10-Rooms-Service-Center [R10Sea-Room-20Stehekin@epa.gov]

Subject: Stibnite Mine early actions
Location: R10Sea-Room-20Stehekin/R10-Rooms-Service-Center

Start: 1/30/2020 4:00:00 PM
End: 1/30/2020 8:30:00 PM
Show Time As: Tentative

Just blocking on my own calendar to ensure we have the conference room. Booking 30 minutes extra on either end for set-up / close-out.

Appointment

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 3/23/2020 11:44:57 PM
To: Albert Crawshaw (Albert.Crawshaw@deq.idaho.gov) [Albert.Crawshaw@deq.idaho.gov]; ally_turner@fws.gov; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Derek Young (derek.young@deq.idaho.gov) [derek.young@deq.idaho.gov]; Elizabeth McKenna [Mckenna.Elizabeth@epa.gov]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jeremy Moore (jeremy_n_moore@fws.gov) [jeremy_n_moore@fws.gov]; Jill Grant (jgrant@jillgrantlaw.com) [jgrant@jillgrantlaw.com]; Kathy Zamba (kathy.zamba@usda.gov) [kathy.zamba@usda.gov]; Kelly Wright (kwright@sbtribes.com) [kwright@sbtribes.com]; Lisa O'Hara (lisa.ohara@deq.idaho.gov) [lisa.ohara@deq.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) [Nathalie.Doherty@sol.doi.gov]; Susan Hanson (susanthanson9@icloud.com) [susanthanson9@icloud.com]; Todd Leeds (todd.leeds@usda.gov); John Meyer (meyer@midasgoldinc.com) [meyer@midasgoldinc.com]

Subject: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Tentative

Hi, everyone. Midas would like to join the government parties for an initial technical discussion of the Early Actions table that we sent last week. John Meyer set up a Zoom meeting, link is below. Regards, Helen

---

John Meyer is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://zoom.us/j/ Ex. 6 Personal Privacy (PP)

Meeting ID: Ex. 6 Personal Privacy (PP)

One tap mobile
Ex. 6 Personal Privacy (PP) US (Houston)
US (San Jose)

Dial by your location
Ex. 6 Personal Privacy (PP) Houston)
San Jose)
Chicago)
New York)

Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 3/23/2020 9:15:36 PM
To: John Meyer [JMeyer@midasgoldcorp.com]
CC: Elizabeth McKenna [Mckenna.Elizabeth@epa.gov]
Subject: Stibnite - next steps

Hi, John. I hope your review of the table I sent last week is going OK. I don't want to push you because I know we gave you a lot to think through. But please know the government parties are ready and willing to answer your questions. We have two times for a potential meeting blocked off in the near future:

- Thursday, March 26 -- 10:00 AM to 11:30 AM Pacific Time
- Monday, March 30 -- 1:00 PM to 2:30 PM Pacific Time

Please let me know if you want to schedule a joint meeting with Midas and the government parties on either date.

If we could see your questions and/or initial response in writing before a meeting, that would promote a productive discussion. But we're also happy to just listen if you want to talk us through your thinking in the meeting.

Regards,

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 2/14/2020 5:46:18 PM
To: John Meyer [JMeyer@midasgoldcorp.com]
Subject: RE: Points of contact at Midas Gold

Thanks, John. I have a meeting at 10:30 that I need to prepare for, but am free after that meeting. Let's plan for a 1 PM call if that works for you.

Regards,

Helen

From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Friday, February 14, 2020 9:05 AM
To: Bottcher, Helen <Bottcher.Helen@epa.gov>
Cc: L. Michael Bogert <mbogert@midasgoldinc.com>
Subject: RE: Points of contact at Midas Gold

Helen,
I apologize for not getting this to you sooner.
I have edited your email below with the appropriate additional or modified information in red text.
FYI, most general correspondence amongst the AOC Participants only needs to come to me and Michael Bogert (from Midas Gold) and we can distribute internally.
Do you have time for a call today? If so, could you suggest a time?
Regards,
John

From: Bottcher, Helen <Bottcher.Helen@epa.gov>
Sent: Thursday, February 13, 2020 4:51 PM
To: John Meyer <JMeyer@midasgoldcorp.com>
Subject: Points of contact at Midas Gold

Hi, John.

I'm still working on a contact list for the project. It's coming together, but I'm missing info for the Midas team members. Can you fill in / correct as needed my partial list below? Thanks!

Michael Bogert
General Counsel
Midas Gold Idaho, Inc.
405 South 8th Street, Suite 201
Boise, Idaho 83702
mbogert@midasgoldinc.com
Desk: (208) 901-3095

Gene Bosley
Senior Civil Engineer
Midas Gold Idaho, Inc.
405 South 8th Street, Suite 201

Boise, Idaho 83702
bosley@midasgoldinc.com
Desk: (208) 901-3097

Christopher (Chris) Dail
Midas Gold Idaho, Inc.
Manager, Exploration
405 South 8th Street, Suite 201
Boise, Idaho 83702
dail@midasgoldinc.com
Desk: (509) 939-2272

Kyle Fend
Midas Gold Idaho, Inc.
Field Operations Manager
405 South 8th Street, Suite 201
Boise, Idaho 83702
fend@midasgoldinc.com
Desk: (208) 901-3047

Andy Koulermos
Formation Environmental
Principal Consultant
2500 55th Street, Suite 200
Boulder, CO 80301
akoulermos@formationenv.com
Desk: (303) 396-0738

Brad Marten
Marten Law
Partner
1191 Second Ave, Suite 2200
Seattle, WA 98101
bmarten@martenlaw.com
Desk: 206-292-2604

John Meyer
Vice President, Development
Midas Gold Inc.
405 South 8th Street, Suite 201
Boise, Idaho 83702
meyer@midasgoldinc.com
Desk: (208) 901-3063
Cell: (208) 608-3543

Austin Zinsser
Midas Gold Idaho, Inc.
Senior Resource Geologist
405 South 8th Street, Suite 201
Boise, Idaho 83702
zinsser@midasgoldinc.com
Desk: (208) 901-3054
Cell: (970) 708-0873

Koda Merkley
Midas Gold Idaho, Inc.
Geologist
405 South 8th Street, Suite 201
Boise, Idaho 83702
kmerkley@midasgoldinc.com
Desk: (208) 901-3094

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

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Message

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 4/7/2020 10:50:55 PM
To: John Meyer [JMeyer@midasgoldcorp.com]
Subject: RE: Stibnite Mine AOC Technical Discussion

Got it. Thanks, John. Helen

-----Original Appointment-----
From: John Meyer <JMeyer@midasgoldcorp.com>
Sent: Tuesday, April 07, 2020 1:17 PM
To: Bottcher, Helen
Subject: Stibnite Mine AOC Technical Discussion
When: Thursday, April 09, 2020 5:00 PM-6:00 PM (UTC-07:00) Mountain Time (US & Canada).
Where: https://zoom.us/j/ Ex. 6 Personal Privacy (PP)

Helen,

As discussed, a Zoom video conference has been setup for this Thursday afternoon. To connect to the call, please use the following information:

Join Zoom Meeting
https://zoom.us/j/ Ex. 6 Personal Privacy (PP)

Meeting ID: Ex. 6 Personal Privacy (PP)

One tap mobile
Ex. 6 Personal Privacy (PP) US (Houston)
US (San Jose)

I will forward your invitation to the Midas Gold participants once you have sent out an invitation.

Regards,

John

Appointment

From: Bottcher, Helen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=097ADE740AA247288ACF3D056E29F49D-BOTTCHER, HELEN]
Sent: 4/7/2020 10:50:12 PM
To: John Meyer [JMeyer@midasgoldcorp.com]

Subject: Accepted: Stibnite Mine AOC Technical Discussion
Location: https://zoom.us/ Ex. 6 Personal Privacy (PP)

Start: 4/9/2020 11:00:00 PM
End: 4/10/2020
Show Time As: Busy

Appointment

From: Bottcher, Helen [Bottcher.Helen@epa.gov]
Sent: 3/31/2020 8:15:02 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]; John Meyer (meyer@midasgoldinc.com) [meyer@midasgoldinc.com]; Maley, Timothy [maley.timothy@epa.gov]
CC: Clabaugh, Charles D. [clabaugh.charles@epa.gov]; John Meyer [JMeyer@midasgoldcorp.com]

Subject: Walk through Midas table
Location: Skype Meeting

Start: 4/1/2020 7:00:00 PM
End: 4/1/2020 8:00:00 PM
Show Time As: Busy

Hi, Don. John offered to walk me through Midas' table and answer any initial questions. Feel free to join us if you have time.

Join Skype Meeting

Trouble Joining? Try Skype Web App

Join by phone

Toll number: Ex. 6 Personal Privacy (PP) (Dial-in Number) English (United States)

Find a local number

Conference ID: Ex. 6 Personal Privacy (PP)
Forgot your dial-in PIN? | Help

Appointment

From: Bottcher, Helen [Bottcher.Helen@epa.gov]
Sent: 3/23/2020 8:12:22 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]; Albert Crawshaw [Albert.Crawshaw@deq.idaho.gov]; ally_turner@fws.gov; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Derek Young (derek.young@deq.idaho.gov) [derek.young@deq.idaho.gov]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jeremy Moore (jeremy_n_moore@fws.gov) [jeremy_n_moore@fws.gov]; Jill Grant [jgrant@jillgrantlaw.com]; Zamba, Kathy -FS [kathy.zamba@usda.gov]; kwright@sbtribes.com; Lisa O'Hara (lisa.ohara@deq.idaho.gov) [lisa.ohara@deq.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) [Nathalie.Doherty@sol.doi.gov]; Susan Hanson [susanthanson9@icloud.com]; Leeds, Todd - FS [todd.leeds@usda.gov]; John Meyer (meyer@midasgoldinc.com) [meyer@midasgoldinc.com]
CC: John Meyer [JMeyer@midasgoldcorp.com]; Fisher, Sandi [sandi_fisher@fws.gov]; Gene Bosley [bosley@midasgoldinc.com]; Andy Koulermos [akoulermos@formationenv.com]; Chris Dail [Dail@midasgoldinc.com]; Koda Merkley [kmerkley@midasgoldinc.com]; Kyle Fend [fend@midasgoldinc.com]; Bradley M. Marten [bmarten@martenlaw.com]

Subject: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Busy

New! Agenda below. Scroll down for the Zoom Meeting Link.

Agenda:

1. Introductions (5 minutes)
2. Meeting goals (5 minutes)
3. Stibnite mine site virtual flyover (20 minutes)
4. Questions and answers related to proposed Early Actions (30 minutes)
5. Discussion (20 minutes)
6. Next steps (10 minutes)

Note: Midas has prepared a virtual flyover of the mine in lieu of a slide deck. Hopefully this will work for everyone. If bandwidth is an issue for you, best to log off other networks and close unneeded programs before you join the Zoom meeting. EPA employees – please sign out of the agency's VPN before you connect to the Zoom meeting.

John Meyer is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://zoom.us/ Ex. 6 Personal Privacy (PP)

Meeting ID: 282 208 9706

One tap mobile
Ex. 6 Personal Privacy (PP) (Houston)
(San Jose)

Dial by your location

(b) (6) US (Houston)
US (San Jose)
US (Chicago)
US (New York)
US
US

Message

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 3/17/2020 11:38:48 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]
CC: Albert Crawshaw [Albert.Crawshaw@deq.idaho.gov]; ally_turner@fws.gov; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Derek Young (derek.young@deq.idaho.gov) [derek.young@deq.idaho.gov]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jeremy Moore (jeremy_n_moore@fws.gov) [jeremy_n_moore@fws.gov]; Jill Grant [jgrant@jillgrantlaw.com]; Zamba, Kathy -FS [kathy.zamba@usda.gov]; kwright@sbtribes.com; Lisa O'Hara (lisa.ohara@deq.idaho.gov) [lisa.ohara@deq.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) [Nathalie.Doherty@sol.doi.gov]; Susan Hanson [susanthanson9@icloud.com]; Leeds, Todd - FS [todd.leeds@usda.gov]
Subject: Re: Stibnite - additional considerations for CERCLA settlement discussions
Attachments: 03.05 Legacy sites contributing significant load trimmed.pdf

Thanks Helen.
I will touch base with you later this week with our initial questions and comments on the additional considerations.
Regards,
John

From: Helen Bottcher <Bottcher.Helen@epa.gov>
Date: Tuesday, March 17, 2020 at 5:15 PM
To: John Meyer <JMeyer@midasgoldcorp.com>
Cc: Albert Crawshaw <Albert.Crawshaw@deq.idaho.gov>, "ally_turner@fws.gov" <ally_turner@fws.gov>, Charles Clabaugh <clabaugh.charles@epa.gov>, "Derek Young (derek.young@deq.idaho.gov)" <derek.young@deq.idaho.gov>, "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>, "Fremerman, Gary - OGC, Washington, DC" <gary.fremerman@usda.gov>, "Jeremy Moore (jeremy_n_moore@fws.gov)" <jeremy_n_moore@fws.gov>, Jill Grant <jgrant@jillgrantlaw.com>, "Zamba, Kathy -FS" <kathy.zamba@usda.gov>, "kwright@sbtribes.com" <kwright@sbtribes.com>, "Lisa O'Hara (lisa.ohara@deq.idaho.gov)" <lisa.ohara@deq.idaho.gov>, "Maley, Timothy" <maley.timothy@epa.gov>, "McGrath, Patricia" <mcgrath.patricia@epa.gov>, "Nathalie Doherty (Nathalie.Doherty@sol.doi.gov)" <Nathalie.Doherty@sol.doi.gov>, Susan Hanson <susanthanson9@icloud.com>, "Leeds, Todd - FS" <todd.leeds@usda.gov>
Subject: Stibnite - additional considerations for CERCLA settlement discussions

Hi, John.

I am attaching a table listing areas of existing contamination that EPA and our government team partners have developed. We would like to focus our settlement discussions on addressing ongoing sources of contamination, rather than attempting to design an RI/FS over the life of the mine, because of the complexity of integrating an RI/FS with an active mine, and the financial uncertainty a long-term RI/FS would cause for Midas.

We want this to work for Midas, so we chose early actions that would not interfere with mining and in some cases would get a jump start on actions described in the PRO. This proposal would not result in permanent solutions for all the source areas of concern.

Our proposal also recognizes the extensive research that Midas has completed in order to develop the mine permit. This information, viewed through a CERCLA lens, should allow Midas to develop a site characterization and data gaps report, from which CERCLA workplans for RD/RA or area-specific removal actions could be developed in the future.

The basic technical elements of our new proposal for settlement are:

- Site Characterization and Data Gaps Report (site-wide)
    - Analyze and present available data on the site's physical features as well as contaminant source areas and contaminant fate and transport
    - Identify and describe data gaps that would need to be filled in a potential future site-wide remedial investigation
    - Provide all data available to Midas in electronic format (databased and GIS files, not just PDF files)
- No requirement in this agreement to conduct an RI/FS. Recognizing that a long-term RI/FS would create financial uncertainty for Midas for a long period of time, the negotiating parties are proposing to focus, instead, on concrete early actions that can be performed in a finite amount of time.
- Early actions:
    - Collect data and conduct evaluations necessary to develop designs for early actions
    - Complete designs for early actions
    - Implement early actions
    - Monitor effectiveness of early actions and implement any needed repairs

See the attached table for our full list of proposed early actions. This list includes the three early actions suggested by Midas in your January 23, 2020 memorandum. It also includes recommended studies and actions to address, or partially address, many of the other significant sources of metals to the EFSFSR. As stated above, we believe some of the work in the table aligns nicely with work that Midas has already proposed in the PRO. We also believe this proposal is consistent with Midas' public statements that Midas will clean up legacy contamination and that a majority of the cleanup will happen early in the life of the project.

Note that the Nez Perce Tribe has not yet had the opportunity to provide its input on the proposal. The Tribe expects to provide input to EPA by March 20th. The Tribe's input is important to the parties and may result in a modified approach.

There's a lot here to digest. I'd be happy to answer your immediate questions. EPA and the negotiating parties are ready to discuss the list of actions with you once you've had a chance to review it. I'm assuming we'll want to meet remotely, so I'll investigate VTC capabilities at EPA.

Regards,

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

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Table 1. Early actions to reduce arsenic load to surface waters from legacy mining features at Stibnite.

Location	Type	Feature	Relative Arsenic Load	Status under PRO Mining Permit	Year Modified (if mining occurs per PRO)	Land Status	Early Action Candidate Site Work Descriptions	Regulatory Mechanism
Early Action Sites Suggested by Midas (Year 1)								
Near EFSRSR & Sugar Ck confluence	Waste (divert sfc water)	Bradley Dump	2	Partially removed by PRO	2-10	Unpatented	Divert Hennessey Creek around Bradley Dump (Midas, 2020).	CERCLA TCRA
Meadow Creek above EFSFSR	Waste (divert sfc water)	BMC Meadow Creek Mill+Smelter Site	5	Removed by PRO	2-10	Patented	Divert upgradient water around mineralized backfill materials (Midas, 2020).	CERCLA TCRA
EFSFSR above Fiddle Creek	Waste (divert sfc water)	SW flow from DMEA waste rock pile	13	N/A		Unpatented	Divert unnamed stream around DMEA waste rock pile (Midas, 2020).	CERCLA TCRA
Candidate Studies to Support Future Control of Adit Discharge (Year 1)								
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bailey Tunnel Adit Seep	8	Minimized by PRO dewatering	3	Patented	For bulkhead basis of design, monitor site weather station continuously, and collect continuous flow and water quality data. Use data to design collection system (sumps or interceptor trenches with transfer pumps to holding tanks for baseflow (minimum to average flowrates)) and to evaluate treatment options (haul to treatment plant, sulfate bioreactor or vertical wetlands). Evaluate adit for access and scope (Year 2) geotechnical study (Best Practices for Preventing Sudden, Uncontrolled Fluid Mining Waste Releases, EPA, 2017, OLEM 9200.3-118).	N/A - study informing NTCRA EE/CA
Meadow Creek above EFSFSR	Adit Discharge	SW flow from Meadow Creek Mine adit seep	9	N/A		Patented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Cinnabar Tunnel adit seep	10	N/A		Unpatented		
EFSFSR above Fiddle Creek	Adit Discharge	SW flow from DMEA Adit seep	18	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bonanza Adit Seep	19	N/A		Unpatented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Monday Tunnel adit seep	20	N/A		Unpatented		
Candidate Studies to Support Future In-Water Work (Year 1)								
Meadow Creek above EFSFSR	Surface Water	SW flow from pond downgradient of Yellow Pine Pit	3	Mitigated during dewatering	3	Patented	Evaluate flow and water quality into and out of the pond.	N/A - study informing CERCLA TCRA
Meadow Creek above EFSFSR	Surface Water	SW flow from Keyway Marsh Outlet	7	N/A		Mixed, mostly Unpantented.	Evaluate flow and water quality into and out of the marsh. Collect data necessary to characterize substrate, vegetation, groundwater exchange, hydraulic residence time and loading rate, evapotranspiration and water balance within the marsh. Evaluate whether marsh can be enhanced to treat effluent to target concentrations.	N/A - study informing CERCLA TCRA
EFSFSR below Sugar Creek	Waste Rock	Seepage from Lower West End DRSF	6	Minimized by PRO dewatering	3	Mixed	To support in-water work planning and engineering requirements: map wetlands and Ordinary High Water Mark around waste rock piles and stream; prepare vicinity map, plan view and cross-section view of waste rock removal project; prepare plans and specifications for protection of fish life; prepare wetlands mitigation table where necessary.	N/A - study informing CERCLA TCRA
EFSFSR below Sugar Creek	Waste Rock	Seepage from BMC NW DRSF	12	Removed by PRO	2-10	Patented		
EFSFSR above Fiddle Creek	Waste Rock	CSM-PMC-SMI Upper ManCamp DRSF	16	N/A		Unpatented		
EFSFSR below Yellow Pine Pit	Waste Rock	Seepage from BMC NE Oxide stockpile #1	17	N/A		Unpatented		
EFSFSR above Fiddle Creek	Seep	SW flow from Garnet pit seep	14	N/A		Unpatented	For vertical wetlands evaluation, monitor site weather station continuously, and install Modified Parshall Flume near adit and collect flow and water quality data.	N/A - study informing CERCLA TCRA
Candidate Early Action Site Pilot Studies (Year 2)								
Meadow Creek above EFSFSR	Surface Water	SW flow from pond downgradient of Yellow Pine Pit	3	Mitigated during dewatering	3	Patented	Construct batch treatment plant and intake and conduct pilot test treatment of flow from pond.	Pilot Test for TCRA EE/CA
Meadow Creek above EFSFSR	Surface Water	SW flow from Keyway Marsh Outlet	7	N/A		Mixed	Based upon Year 1 evaluations, pilot test marsh enhancements or construct a pilot test of a vertical wetlands to treat discharge from the marsh.	Pilot test under CERCLA TCRA
EFSFSR above Fiddle Creek	Seep	SW flow from Garnet pit seep	14	N/A		Unpatented	Construct a pilot test of a vertical wetlands to treat discharge from the pit.	Pilot test under CERCLA TCRA
EFSFSR above Fiddle Creek	Adit Discharge	SW flow from DMEA Adit seep	18	N/A		Unpatented	For adits install collection system with baseflow to holding tanks and bypass to existing stream. Based upon Year 1 evaluations pilot test bioreactor or vertical wetlands, or complete road work necessary to haul baseflow to batch plant for treatment prior to discharge. Conduct geotechnical studies to support bulkhead design.	Pilot test and geotech study informing NTCRA EE/CA
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Cinnabar Tunnel adit seep	10	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bonanza Adit Seep	19	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bailey Tunnel Adit Seep	8	Minimized by PRO dewatering	3	Unpatented		
Meadow Creek above EFSFSR	Adit Discharge	SW flow from Meadow Creek Mine adit seep	9	N/A		Patented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Monday Tunnel adit seep	20	N/A		Unpatented		
Candidate Early Action Removal Actions (Year 2)								
EFSFSR below Sugar Creek	Waste Rock	Seepage from Lower West End DRSF	6	Minimized by PRO dewatering	3	Mixed	Move waste rock to (upland) staging area for one of the PRO DRSFs.	CERCLA TCRA
EFSFSR below Sugar Creek	Waste Rock	Seepage from BMC NW DRSF	12	Removed by PRO	2-10	Patented		
EFSFSR above Fiddle Creek	Waste Rock	CSM-PMC-SMI Upper ManCamp DRSF	16	N/A		Unpatented		
EFSFSR below Yellow Pine Pit	Waste Rock	Seepage from BMC NE Oxide stockpile #1	17	N/A		Unpatented		
EFSFSR above Fiddle Creek	Waste Rock	Bradley Dumps	2	Partially removed by PRO	2-10	Unpatented	Move in-water waste rock to (upland) staging area for one of the PRO DRSFs.	CERCLA TCRA
EFSFSR below Yellow Pine Pit	Waste Rock	BMC Meadow Creek Mill+Smelter Site	5	Removed by PRO	2-10	Mixed		
Candidate Early Remedial Actions (Year 3)								
Meadow Creek above EFSFSR	Surface Water	SW flow from pond downgradient of Yellow Pine Pit	3	Mitigated during dewatering	3	Patented	Ramp up intake volumes to batch plant to treat average flows, automate with winterization and shutdown capabilities to operate with minimal maintenance during winter months.	TCRA
Meadow Creek above EFSFSR	Surface Water	SW flow from Keyway Marsh Outlet	7	N/A		Mixed	Based on results of Year 2 work, enhance Keyway Marsh with substrate, vegetation and drainage features to optimize hydraulic residence time and loading rate, or construct full-scale vertical wetlands treatment system discharge from marsh.	CERCLA TCRA
EFSFSR above Fiddle Creek	Adit Discharge	SW flow from DMEA Adit seep	18	N/A		Unpatented	Continue baseline flow and water quality studies to support bulkhead design, complete geotechnical data gap investigations, ramp up treatment systems to treat average flows, and automate with winterization and shutdown capabilities to operate with minimal maintenance during winter months.	NTCRA EE/CA
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Cinnabar Tunnel adit seep	10	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bonanza Adit Seep	19	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bailey Tunnel Adit Seep	8	Minimized by PRO dewatering	3	Unpatented		
Meadow Creek above EFSFSR	Adit Discharge	SW flow from Meadow Creek Mine adit seep	9	N/A		Patented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Monday Tunnel adit seep	20	N/A		Unpatented		
EFSFSR above Fiddle Creek	Seep	SW flow from Garnet pit seep	14	N/A		Unpatented	Ramp up intake volumes to batch plant to treat average flows, automate with winterization and shutdown capabilities to operate with minimal maintenance during winter months.	CERCLA TRCA

Table 1. Early actions to reduce arsenic load to surface waters from legacy mining features at Stibnite.

Location	Type	Feature	Relative Arsenic Load	Status under PRO Mining Permit	Year Modified (if mining occurs per PRO)	Land Status	Early Action Candidate Site Work Descriptions	Regulatory Mechanism

DRSF - Development Rock Storage Facility (Waste Rock)
IPDES - Idaho Pollutant Discharge Elimination System
PRO - Midas proposed mining Alternatives 1, 2 or 4.
sfc - surface; SW - surface water
N/A - Not Applicable (i.e., not modified by actions in the mining proposal).
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act (a.k.a. Superfund)
TCRA - Time Critical Removal Action
NTCRA - Non-Time Critical Removal Action
ROD/RA - CERCLA Record of Decision / Remedial Action
RI/FS - CERCLA Remedial Investigation/Feasibility Study
EE/CA - Engineering Evaluation/Cost Analysis (NTCRA under CERCLA)
CWA / NPDES - Clean Water Act / National Pollutant Discharge Elimination System (permit)

EPA, 2017, Best Practices for Preventing Sudden, Uncontrolled Fluid Mining Waste Releases, OLEM 9200.3-118
Midas, 2020, Proposed Early Actions - Midas Gold Stibnite Mine Site, Memo from John Meyer to Brad Marten, 24 pages.
Johnson, 1963, Modified Parshall Flume, USGS Open-File Report, 8 pages.

Notes: Early treatment of Yellow Pine Pit Lake deferred because of current function of Lake as sediment trap. Early treatment of seeps and springs associated with Meadow Creek tailings and DRSFs that are not in floodpain, and installation of bulkheads, deferred until disposition of PRO is known.
Year 1 Cost estimate total (not including Midas proposed early actions) - 680K; Year 2 -16.2M; Year 3 (including O&M) - 4.8M

Message

From: John Meyer [JMeyer@midasgoldcorp.com]
Sent: 4/3/2020 9:30:00 PM
To: Bottcher, Helen [Bottcher.Helen@epa.gov]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Maley, Timothy [maley.timothy@epa.gov]
Subject: Re: Stibnite - your availability if we have questions next week

Helen,
I'm glad our discussion this week was helpful.
I would be happy to answer any questions anyone has. I can make just about any time work next week, just let me know.
If you have any questions that you want a quicker response to, you can call me, or drop me an email anytime.
Have a good, safe weekend.
John

From: Helen Bottcher <Bottcher.Helen@epa.gov>
Date: Friday, April 3, 2020 at 3:14 PM
To: John Meyer <JMeyer@midasgoldcorp.com>, "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>, Charles Clabaugh <clabaugh.charles@epa.gov>, Tim Maley <Maley.Timothy@epa.gov>
Subject: Stibnite - your availability if we have questions next week

Hi, John.

Thanks again for your time on Wednesday. Your explanation of the table and your thinking was helpful. I'm not sure we would have understood your response fully without that discussion.

We're planning to walk the other government parties through your updated table during our weekly call on Monday (April 6). If they have questions we can't answer, or want additional explanation from Midas, would you be willing to discuss your proposal with the parties sometime next week? If yes, do you have any particular schedule conflicts I would need to work around?

Hope you are staying safe --

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Warning: This email originated externally. **DO NOT CLICK** links if the sender is unknown.

Message

From: Bottcher, Helen [Bottcher.Helen@epa.gov]
Sent: 4/3/2020 9:14:47 PM
To: John Meyer (meyer@midasgoldinc.com) [meyer@midasgoldinc.com]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Maley, Timothy [maley.timothy@epa.gov]
Subject: Stibnite - your availability if we have questions next week

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Thanks again for your time on Wednesday. Your explanation of the table and your thinking was helpful. I'm not sure we would have understood your response fully without that discussion.

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Hope you are staying safe --

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Appointment

From: Bottcher, Helen [Bottcher.Helen@epa.gov]
Sent: 3/31/2020 8:15:01 PM
To: John Meyer (meyer@midasgoldinc.com) [meyer@midasgoldinc.com]
CC: Clabaugh, Charles D. [clabaugh.charles@epa.gov]

Subject: Walk through Midas table
Location: Skype Meeting

Start: 4/1/2020 7:00:00 PM
End: 4/1/2020 8:00:00 PM
Show Time As: Tentative

Hi, Don. John offered to walk me through Midas' table and answer any initial questions. Feel free to join us if you have time.

Join Skype Meeting

Trouble Joining? Try Skype Web App

Join by phone

Toll number: Ex. 6 Personal Privacy (PP) (Dial-in Number) English (United States)
Find a local number

Conference ID: Ex. 6 Personal Privacy (PP)
Forgot your dial-in PIN? | Help

Message

From: Helen Bottcher [helen.bottcher@gmail.com]
Sent: 1/6/2020 6:55:13 PM
To: Clabaugh, Charles D. [clabaugh.charles@epa.gov]
CC: JMeyer@midasgoldcorp.com
Subject: Re: Seattle meeting on Stibnite Mine potential early actions

Thanks so much, Don! It should work for Midas -- they all responded to my Doodle poll. And I checked EPA calendars before I left, so unless people have accepted meetings in the last few days, that date should work for us.

Cheers -- Helen

On Mon, Jan 6, 2020 at 12:27 PM Clabaugh, Charles D. <clabaugh.charles@epa.gov> wrote:

> Helen is out of pocket and has asked me to coordinate a meeting to discuss potential early action items at Stibnite.
>
> I have reserved a room for January 30. Can you confirm that the 30th works for your group? Later we can refine the timing based upon your travel plans (i.e., all day, morning or afternoon).
>
> Thanks,
>
> **Don Clabaugh P.E.**
>
> Hydrogeologist\Environmental Engineer
>
> USEPA Region 10
>
> Laboratory Services and Applied Science Division
>
> Risk Evaluation Branch
>
> 1200 Sixth Ave., LSASD, Mail Stop14-J04
>
> Seattle, WA 98101
>
> phone: (206) 553-0682
>
> email: clabaugh.charles@epa.gov

Appointment

From: csnow@velaw.com [csnow@velaw.com]
Sent: 4/1/2020 2:50:05 PM
To: csnow@velaw.com; Fotouhi, David [fotouhi.david@epa.gov]

Subject: Updated: EPA/Midas Gold Corp. Call
Attachments: invite.ics
Location: https://bluejeans.com (b) (6)

Start: 4/3/2020 3:30:00 PM
End: 4/3/2020 4:00:00 PM
Show Time As: Busy

Recurrence: (none)

Corinne Snow has updated the information for your meeting.

Join Meeting
(Join from computer or phone)

Phone Dial-in
(b) (6)
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(Japan)
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exico)
Arabia)
l Arab Emirates)
(Global Numbers)

Meeting ID: (b) (6)

Room System
(b) (6)

Meeting ID: (b) (6)

Want to test your video connection?
(b) (6)

Appointment

From: csnow@velaw.com [csnow@velaw.com]
To: Fotouhi.David@epa.gov

Subject: EPA/Midas Gold Corp. Call
Location: https://bluejeans.com/[redacted]rc=calendarLink

Start: 4/3/2020 3:30:00 PM
End: 4/3/2020 4:00:00 PM
Show Time As: Tentative

Recurrence: (none)

To join the meeting on a computer or mobile phone: https://bluejeans.com/521384239?src=calendarLink

Phone Dial-in

[redacted]ited States)
[redacted]ited States)
[redacted]ted Kingdom)
[redacted]United Kingdom)
[redacted]ina)
[redacted] (Japan)
[redacted]co)
[redacted]Mexico)
[redacted]i Arabia)
[redacted]ed Arab Emirates)

Global Numbers: https://www.bluejeans.com/premium-numbers

Meeting ID: [redacted]

Room System
(b) (6)

Meeting ID: [redacted]

Want to test your video connection?
https://bluejeans.com/111

Message

From: Snow, Corinne [csnow@velaw.com]
Sent: 4/1/2020 2:49:44 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
CC: Tenpas, Ron [rtenpas@velaw.com]
Subject: RE: Time to talk?
Attachments: ATT00001.txt

Great, talk to you then. I'm setting it for an hour to be safe, but I don't think we will need nearly that much time.

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Wednesday, April 1, 2020 10:46 AM
To: Snow, Corinne <csnow@velaw.com>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: RE: Time to talk?

[EXTERNAL]

Yes, that works; thanks!

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Snow, Corinne <csnow@velaw.com>
Sent: Wednesday, April 1, 2020 10:42 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: RE: Time to talk?

Thanks David! Would 11:30 work ok? If so, I'll send out an invite.

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Wednesday, April 1, 2020 10:16 AM
To: Snow, Corinne <csnow@velaw.com>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: RE: Time to talk?

[EXTERNAL]

Sure. What about this Friday at 10am or 11am?

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel

U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Snow, Corinne <csnow@velaw.com>
Sent: Wednesday, April 1, 2020 10:02 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: Time to talk?

David,

I hope you're doing well, and staying safe. I wanted to follow up on a conversation we had a couple of weeks ago about the Midas Gold Corp. and a mining site they have in Idaho. Do you have some time over the next few days to jump on the phone with Ron Tenpas and me? If so, let us know what times would work best.

Corinne Snow
Counsel

E csnow@velaw.com
W +1.212.237.0157

Vinson & Elkins LLP
1114 Avenue of the Americas
32nd Floor
New York, NY 10036

bio | vcard | velaw.com

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Thank You.

Message

From: Snow, Corinne [csnow@velaw.com]
Sent: 4/1/2020 2:01:53 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
CC: Tenpas, Ron [rtenpas@velaw.com]
Subject: Time to talk?

Flag: Flag for follow up

David,

I hope you're doing well, and staying safe. I wanted to follow up on a conversation we had a couple of weeks ago about the Midas Gold Corp. and a mining site they have in Idaho. Do you have some time over the next few days to jump on the phone with Ron Tenpas and me? If so, let us know what times would work best.

Corinne Snow
Counsel

Vinson&Elkins

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Thank You.

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 4/3/2020 2:47:24 PM
To: Snow, Corinne [csnow@velaw.com]
Subject: RE: Updated: EPA/Midas Gold Corp. Call

If only! I have plenty of Skype meetings today.

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Snow, Corinne <csnow@velaw.com>
Sent: Friday, April 3, 2020 10:42 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: Updated: EPA/Midas Gold Corp. Call

"Blocked access" --- you mean you're still in your pjs hand haven't shaven?

Just kidding. Of course. Talk to you shortly.

Corinne Snow
Counsel

Vinson&Elkins

E csnow@velaw.com
W +1.212.237.0157

Vinson & Elkins LLP
1114 Avenue of the Americas
32nd Floor
New York, NY 10036

bio | vcard | velaw.com

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Friday, April 3, 2020 10:40 AM
To: Snow, Corinne <csnow@velaw.com>
Subject: RE: Updated: EPA/Midas Gold Corp. Call

[EXTERNAL]

Would it be okay if I joined this call through the dial-in number? I checked my connection to the bluejeans site and my laptop blocked my access to it.

David Fotouhi

Principal Deputy General Counsel

Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

-----Original Appointment-----
From: csnow@velaw.com <csnow@velaw.com>
Sent: Wednesday, April 1, 2020 10:50 AM
To: csnow@velaw.com; Fotouhi, David
Subject: Updated: EPA/Midas Gold Corp. Call
When: Friday, April 3, 2020 11:30 AM-12:00 PM America/New_York.
Where: https://bluejeans.com/521384239?src=calendarLink

Vinson&Elkins LLP

Corinne Snow has updated the information for your meeting.

Join Meeting
(Join from computer or phone)

Phone Dial-in

Ex. 6 Personal Privacy (PP)

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Meeting ID: Ex. 6 Personal Privacy (PP)

Room System
(b) (6)

Meeting ID Ex. 6 Personal Privacy (PP)

Want to test your video connection?
https://bluejeans.com/111

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Thank You.

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 4/3/2020 2:40:23 PM
To: csnow@velaw.com
Subject: RE: Updated: EPA/Midas Gold Corp. Call

Would it be okay if I joined this call through the dial-in number? I checked my connection to the bluejeans site and my laptop blocked my access to it.

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

-----Original Appointment-----
From: csnow@velaw.com <csnow@velaw.com>
Sent: Wednesday, April 1, 2020 10:50 AM
To: csnow@velaw.com; Fotouhi, David
Subject: Updated: EPA/Midas Gold Corp. Call
When: Friday, April 3, 2020 11:30 AM-12:00 PM America/New_York.
Where: https://bluejeans.com/521384239?src=calendarLink

Vinson&Elkins LLP

Corinne Snow has updated the information for your meeting.

Join Meeting
(Join from computer or phone)

Phone Dial-in

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Meeting ID: Ex. 6 Personal Privacy (PP)

Room System

Ex. 6 Personal Privacy (PP) (b) (6)

Meeting ID: Ex. 6 Personal Privacy (PP)

Want to test your video connection?
https://bluejeans.com/111

Appointment

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 4/1/2020 2:51:51 PM
To: csnow@velaw.com

Subject: Accepted: Updated: EPA/Midas Gold Corp. Call
Location: https://bluejeans.com (b) (6)

Start: 4/3/2020 3:30:00 PM
End: 4/3/2020 4:00:00 PM
Show Time As: Busy

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 4/1/2020 2:50:34 PM
To: Snow, Corinne [csnow@velaw.com]
CC: Tenpas, Ron [rtenpas@velaw.com]
Subject: RE: Time to talk?

Thanks. I have a hard stop at noon, but we can follow up if necessary at a later time.

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Snow, Corinne <csnow@velaw.com>
Sent: Wednesday, April 1, 2020 10:50 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: RE: Time to talk?

Great, talk to you then. I'm setting it for an hour to be safe, but I don't think we will need nearly that much time.

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Wednesday, April 1, 2020 10:46 AM
To: Snow, Corinne <csnow@velaw.com>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: RE: Time to talk?

[EXTERNAL]

Yes, that works; thanks!

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Snow, Corinne <csnow@velaw.com>
Sent: Wednesday, April 1, 2020 10:42 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: RE: Time to talk?

Thanks David! Would 11:30 work ok? If so, I'll send out an invite.

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Wednesday, April 1, 2020 10:16 AM
To: Snow, Corinne <csnow@velaw.com>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: RE: Time to talk?

[EXTERNAL]

Sure. What about this Friday at 10am or 11am?

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Snow, Corinne <csnow@velaw.com>
Sent: Wednesday, April 1, 2020 10:02 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: Time to talk?

David,

I hope you're doing well, and staying safe. I wanted to follow up on a conversation we had a couple of weeks ago about the Midas Gold Corp. and a mining site they have in Idaho. Do you have some time over the next few days to jump on the phone with Ron Tenpas and me? If so, let us know what times would work best.

Corinne Snow
Counsel

E csnow@velaw.com
W +1.212.237.0157

Vinson & Elkins LLP
1114 Avenue of the Americas
32nd Floor
New York, NY 10036

bio | vcard | velaw.com

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Thank You.

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 4/1/2020 2:46:11 PM
To: Snow, Corinne [csnow@velaw.com]
CC: Tenpas, Ron [rtenpas@velaw.com]
Subject: RE: Time to talk?

Yes, that works; thanks!

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Snow, Corinne <csnow@velaw.com>
Sent: Wednesday, April 1, 2020 10:42 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: RE: Time to talk?

Thanks David! Would 11:30 work ok? If so, I'll send out an invite.

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Wednesday, April 1, 2020 10:16 AM
To: Snow, Corinne <csnow@velaw.com>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: RE: Time to talk?

[EXTERNAL]

Sure. What about this Friday at 10am or 11am?

David Fotouhi

Principal Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Snow, Corinne <csnow@velaw.com>
Sent: Wednesday, April 1, 2020 10:02 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Tenpas, Ron <rtenpas@velaw.com>
Subject: Time to talk?

David,

I hope you're doing well, and staying safe. I wanted to follow up on a conversation we had a couple of weeks ago about the Midas Gold Corp. and a mining site they have in Idaho. Do you have some time over the next few days to jump on the phone with Ron Tenpas and me? If so, let us know what times would work best.

Corinne Snow
Counsel

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W +1.212.237.0157

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Thank You.

Message

From: Hladick, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B82D04419C42423A97BD7624A3A09908-HLADICK, CH]
Sent: 5/20/2020 9:39:00 PM
To: Laurel Sayer [lsayer@midasgoldinc.com]
CC: Pirzadeh, Michelle [Pirzadeh.Michelle@epa.gov]; Terada, Calvin [Terada.Calvin@epa.gov]
Subject: Re: Stibnite Gold Project

Ms Sayer:

Yes I received your communication. We have briefed Susan Bodine and Peter Wright. We will get back to you after further deliberation with HQ.

Thanks

Sent from my iPhone

On May 20, 2020, at 1:41 PM, Laurel Sayer <lsayer@midasgoldinc.com> wrote:

Dear Mr. Hladick:

Early last week I electronically sent you our offer on a proposed Administrative Order on Consent (ACO) related to the Stibnite Mining District. I can assure you that our Midas Gold team dedicated significant resources and worked diligently to bring this offer forward.

Since we have had no response from Region X, can you let me know (a) if you received my email of May 12, 2020 and (b) if there is interest from you or your team in receiving a briefing on our offer? It is my hope that we move these discussions forward in a timely manner. As we mentioned in my letter of transmission, concluding the AOC promptly could facilitate important AOC-related work occurring even during this summer 2020 work season and, as a start-up company where Stibnite is our only project, continued progress is important to our overall viability.

Thank you for your attention to this matter and I look forward to hearing from you by the end of this week if possible.

Laurel Sayer
President & CEO
Midas Gold Idaho

JOIN US TODAY. WWW.SUPPORTSTIBNITE.COM

MIDAS GOLD IDAHO
405 S 8th St. Boise, ID 83702
T: 208.901.3050
M: 208.521.2987
E: lsayer@midasgoldinc.com

MAX.TSX / MDRPF.OTCQX

<image002.png>
www.facebook.com/midasgoldidaho

<image003.png>
@MidasIdaho
www.midasgoldidaho.com

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Appointment

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 4/29/2020 5:00:46 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]

Subject: Stibnite Call
Location: https://zoom.us/j/(b) (6)

Start: 4/29/2020 10:30:00 PM
End: 4/29/2020 11:30:00 PM
Show Time As: Busy

Recurrence: (none)

Brad Marten is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://zoom.us/ Ex. 6 Personal Privacy (PP)

Meeting ID: 965 5871 1241
One tap mobile
Ex. 6 Personal Privacy (PP) (Tacoma)
(San Jose)

Dial by your location
Ex. 6 Personal Privacy (PP) k)
own)
Meeting ID: (b) (6)
Find your local number: https://zoom.us/u/azdA4zJWi

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 6/4/2020 6:14:58 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Midas/FOIA Request

Eiizabeth – do you have a moment today to talk about EPA's response to Midas's information request under FOIA? I'm free except for 1-3 pm.

Bradley M. Marten
Partner

M- 206-999-1808
D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/23/2020 11:18:05 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Draft Stibnite AOC (2.25.20)

Yes.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, March 23, 2020 4:17 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Draft Stibnite AOC (2.25.20)

Yes --- headed out on my walk. OK to call in 15-30?

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Monday, March 23, 2020 at 4:15 PM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: RE: Draft Stibnite AOC (2.25.20)

Thanks, Brad. Did you say that you wanted to talk at 3:30? Do we still need to talk?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, March 23, 2020 4:10 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Draft Stibnite AOC (2.25.20)

Elizabeth:

As requested, a “Word” version of the draft AOC for the Stibnite Mine site is attached.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/24/2020 1:45:07 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine Site

Hi Brad. I wanted to let you know that I am conferring with my management today regarding our discussion yesterday on legal issues in the settlement agreement. I am expecting to get you a list of the items we discussed later today. Thank you for the productive discussion.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Appointment

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/4/2020 8:36:57 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]

Subject: Accepted: Midas
Location: EPA Lobby -- Park Place

Start: 3/5/2020 9:00:00 PM
End: 3/5/2020 10:30:00 PM
Show Time As: Busy

Appointment

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 4/29/2020 4:59:56 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]

Subject: Accepted: Stibnite
Location: "Zoom Call"

Start: 4/29/2020 10:30:00 PM
End: 4/29/2020 11:00:00 PM
Show Time As: Busy

Appointment

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 4/29/2020 5:01:08 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]

Subject: Accepted: Stibnite Call
Location: https://zoom.us/j/ Ex. 6 Personal Privacy (PP)

Start: 4/29/2020 10:30:00 PM
End: 4/29/2020 11:30:00 PM
Show Time As: Busy

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 1/9/2020 7:56:12 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine Site

Hi Brad. I have meetings until 3:30. Do you want to talk then?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 1/10/2020 12:37:17 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine Site

Hi Brad. Can you please send me a copy of the Court's Order Denying the Motion for Stay? Thanks.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 1/21/2020 6:42:20 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine

It was informative.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Saturday, January 18, 2020 3:32 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Stibnite Mine

Elizabeth:

I just received a first draft of Midas's proposed interim actions and will be reviewing it tomorrow. Nothing in writing has gone to any of the AOC participants. My understanding is that there was a Friday meeting between Midas and the Shoshone Bannock Tribe (I didn't attend), that some of the proposed actions were discussed and that they were well received.

I'll be sending you the written proposal on the 23rd and will ask that you forward it to all AOC participants- the State, Forest Service and Shoshone Bannock Tribe.

Happy to discuss if you'd like.

How did your Draft EIS meeting go?

Sent from my iPhone

> On Jan 17, 2020, at 5:22 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:
>
> Just checking in because it sounded like Midas was prepared to share its interim action proposals with other parties and the longer EPA has to digest the ideas, the more productive the meeting on the 30th will be. If the proposals are not ready to share with the parties, then EPA will look forward to receiving them on the 23rd. Thanks very much.
>
> Elizabeth
>
> **Elizabeth McKenna** | Assistant Regional Counsel
> US Environmental Protection Agency, Region 10
> 1200 Sixth Avenue | Suite 155, M/S 11-C07

Seattle, WA 98101
(206) 553-0016
<image002.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Friday, January 17, 2020 5:11 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: Laurel Sayer <lsayer@midasgoldinc.com>; Bogert Michael <mbogert@midasgoldinc.com>
Subject: Re: Stibnite Mine

Elizabeth:

When we met on Monday, Midas committed to get its proposed list of projects to you in the 23rd - a week prior to our meeting on the 30th. We still plan to do so. Please let me know if you have any questions.

Sent from my iPhone

> On Jan 17, 2020, at 11:12 AM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:
>
> Hi Brad. I'm checking in to see if Midas will share its list of potential interim actions with EPA. I understand from other parties that Midas has offered to share the interim actions with them, and that Midas will be meeting with the Shoshone Bannock Tribes to discuss the interim actions next week. It would facilitate our discussion on the 30th Midas could send EPA the proposals as soon as possible. Thanks very much.
>
> Elizabeth
>
> **Elizabeth McKenna** | Assistant Regional Counsel
> US Environmental Protection Agency, Region 10
> 1200 Sixth Avenue | Suite 155, M/S 11-C07
> Seattle, WA 98101
> (206) 553-0016
> <image002.png>

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 1/24/2020 2:13:29 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Gold Mine Early Actions Memo

Thank you, Brad.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, January 23, 2020 5:48 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: mbogert@midasgoldinc.com; John Meyer <JMeyer@midasgoldcorp.com>; Laurel Sayer <lsayer@midasgoldinc.com>; akoulermos@FormationEnv.com
Subject: Stibnite Gold Mine Early Actions Memo

Elizabeth:

The attached file provides a memo that summarizes three Early Actions that Midas Gold proposes to undertake at the Stibnite Mine site. These early actions would be undertaken as a part of the Administrative Order on Consent (AOC) with EPA, USFS, IDEQ, and the Shoshone-Bannock Tribes (Participants), each of whom been have involved in the AOC negotiations. Please circulate this proposal to the other Participants.

In preparation for the meeting at EPA's Seattle office on January 30, we will develop a presentation for the AOC Participants that summarizes these proposed Early Actions.

If you have any questions, or comments on the memo please contact me directly. Thank you.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 1/29/2020 2:21:09 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite

Hi Brad. I will give you a call tomorrow. Sorry I could not call you earlier today. My schedule has been packed today. Talk to you tomorrow.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 1/29/2020 10:54:21 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Gold Mine Early Actions

Hi Brad. I've been on calls and in meetings all day. I now have a break until 3:30, when I have to leave the office to go to a meeting. Are you free now?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Wednesday, January 29, 2020 2:23 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Stibnite Gold Mine Early Actions

Elizabeth- What's a good time for you to catch up before our meeting tomorrow?

Sent from my iPhone

On Jan 23, 2020, at 6:13 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Thank you, Brad.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image003.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, January 23, 2020 5:48 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: mbogert@midasgoldinc.com; John Meyer <JMeyer@midasgoldcorp.com>; Laurel Sayer <lsayer@midasgoldinc.com>; akoulermos@FormationEnv.com
Subject: Stibnite Gold Mine Early Actions Memo

Elizabeth:

The attached file provides a memo that summarizes three Early Actions that Midas Gold proposes to undertake at the Stibnite Mine site. These early actions would be undertaken as a part of the Administrative Order on Consent (AOC) with EPA, USFS, IDEQ, and the Shoshone-Bannock Tribes

(Participants), each of whom been have involved in the AOC negotiations. Please circulate this proposal to the other Participants.

In preparation for the meeting at EPA's Seattle office on January 30, we will develop a presentation for the AOC Participants that summarizes these proposed Early Actions.

If you have any questions, or comments on the memo please contact me directly. Thank you.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

<image002.png>

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Sent: 1/29/2020 10:59:51 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Gold Mine Early Actions

Ok.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Wednesday, January 29, 2020 2:56 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Gold Mine Early Actions

Yep. In 2

Bradley M. Marten
Partner

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martenlaw.com
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Seattle, WA 98101

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<image003.png>

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Sent: Thursday, January 23, 2020 5:48 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: mbogert@midasgoldinc.com; John Meyer <JMeyer@midasgoldcorp.com>; Laurel Sayer <lsayer@midasgoldinc.com>; akoulermos@FormationEnv.com
Subject: Stibnite Gold Mine Early Actions Memo

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In preparation for the meeting at EPA's Seattle office on January 30, we will develop a presentation for the AOC Participants that summarizes these proposed Early Actions.

If you have any questions, or comments on the memo please contact me directly. Thank you.

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Sent: 2/6/2020 1:57:33 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite

Saw you called. On the phone with Helen. Then have to dash out. Let's talk tomorrow.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 2/12/2020 1:53:30 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: MIDAS -- How does 3:30, 4 or 4:30 pm this afternoon work for you for a call to catch up?

Hi Brad. I've been in meetings all afternoon and just saw this email. I just left you a voicemail. If you're still around, give me a call. If I don't hear from you in the next half hour, let me know what time you are available tomorrow. I am free after 1:00. Thanks.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, February 11, 2020 2:43 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: MIDAS -- How does 3:30, 4 or 4:30 pm this afternoon work for you for a call to catch up?

Bradley M. Marten
Partner

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E - bmarten@martenlaw.com
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Sent: 2/12/2020 4:35:16 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: MIDAS -- How does 3:30, 4 or 4:30 pm this afternoon work for you for a call to catch up?

That works for me.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, February 11, 2020 6:45 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: MIDAS -- How does 3:30, 4 or 4:30 pm this afternoon work for you for a call to catch up?

Elizabeth- How about 2 pm?

Sent from my iPhone

On Feb 11, 2020, at 5:53 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Hi Brad. I've been in meetings all afternoon and just saw this email. I just left you a voicemail. If you're still around, give me a call. If I don't hear from you in the next half hour, let me know what time you are available tomorrow. I am free after 1:00. Thanks.

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<image002.png>

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To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
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From: McKenna, Elizabeth[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: Tue 3/3/2020 1:27:05 AM (UTC)
Subject: Stibnite Mine Site

Midas Gold Announces US$35 Million Private Placement
February 27, 2020
Related Document

- View PDF

Funding to support the continued permitting and feasibility work on the Stibnite Gold Project, Idaho

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VANCOUVER, BRITISH COLUMBIA – Midas Gold Corp. (MAX:TSX / MDRPF:OTCQX, "Midas Gold" or the "Company") today announced that it has entered into funding agreements for gross proceeds of US$35 million to be used for funding continued work on the Stibnite Gold Project and for general working capital purposes.

Midas Gold has signed a binding term sheet with Paulson & Co. Inc., on behalf of the several investment funds and accounts managed by it ("Paulson"), pursuant to which Paulson will purchase Canadian dollar denominated 0.05% senior unsecured convertible notes (the "Notes") to be issued by a wholly-owned subsidiary of the Company (the "Issuer") on a private placement basis for gross proceeds of a minimum C$33,202,500 (the "Note Offering"), being the Canadian dollar equivalent of US$25 million[1]. In addition, Midas Gold and the Issuer have entered into an agreement with BMO Capital Markets and Sprott Capital Partners LP (as co-lead agents) and a syndicate of agents including Cormark Securities Inc. and Haywood Securities Inc. (collectively, the "Agents") in connection with a best efforts brokered private placement of Notes and/or common shares of the Company (the "Common Shares") at a price of C$0.53 per Common Share on a private placement basis (the "Brokered Offering") for total gross proceeds of up to C$13,281,000, being the Canadian dollar equivalent of US$10 million[1]. Upon completion of the Note Offering and the Brokered Offering (together, the "Offering") the Company and the Issuer would receive aggregate gross proceeds of C$46,483,500. To the extent that any portion of the Brokered Offering is not purchased by other investors, Paulson will subscribe for the remainder of the Brokered Offering amount in the form of additional Notes, thereby ensuring the Offering would be fully subscribed.

"Midas Gold appreciates the continued support of its investors, particularly Paulson & Co.," said Stephen Quin, President & CEO. "While our permitting process has been extended a number of times, driving costs higher, these investments recognize the significant economic and environmental opportunity presented by the Stibnite Gold Project, where redevelopment of a heavily impacted brownfields mine site will provide more than 500 long-term, well-paid jobs in rural Idaho and a long term supply of the critical mineral antimony, while funding the clean-up of decades of environmental impacts from decades of mining by prior owners and the restoration of the site, and particularly passage for salmon and bull trout to the headwaters of the East Fork of the South Fork of the Salmon River for the first time in more than 80 years."

[1]*Based on the Bank of Canada daily exchange rate on February 25, 2020 of US$1.00 = C$1.3281 or C$1.00 = US$0.7530.*

Note Terms

The Notes will mature seven years after issuance and are convertible by the holders thereof (the "Noteholders") at any time prior to the maturity of the Notes, into Common Shares at a conversion price of C$0.53 per Common Share (the "Conversion Price"). The Notes will be redeemable, at the option of the Issuer, at any time after the fourth anniversary of the initial issue date of the Notes, provided that the 20-day volume weighted average trading price ("VWAP") of the Common Shares on the Toronto Stock Exchange ("TSX") is not less than 200% of the Conversion Price at the time of redemption and subject to the conversion rights of the Noteholders.

The Notes will constitute a senior unsecured obligation of the Issuer, ranking equally with other existing and future senior unsecured indebtedness and ranking senior to any existing or future subordinated indebtedness, and will bear interest at a rate of 0.05% per year, payable annually, which may be paid in cash or Common Shares (based on the 5-day VWAP on the date that interest is due) at the Issuer's election, subject to TSX approval. The Notes will contain standard anti-dilution provisions. Upon a change of control, the Issuer will offer to repurchase the Notes at a price equal to 100% of the principal amount of the Notes plus accrued interest.

Brokered Offering

The Brokered Offering will be offered on a private placement basis to existing shareholders of the Company and other investors who are "accredited investors" under applicable securities laws. Subscribers will be entitled to purchase either Notes or Common Shares.The Agents will receive a cash commission of 5% of gross proceeds raised under the Brokered Offering. No commission will be paid on any proceeds received from Paulson.

Conditions to Closing

The completion of the Offering is subject to a number of conditions including obtaining any required regulatory approvals including approval of the TSX. All securities issued in the Offering will be subject to a hold period or seasoning period, as applicable, under

Canadian securities laws. All securities issued in the United States will be subject to resale restrictions under U.S. federal and state securities laws.

The Common Shares and Notes have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "1933 Act"), or any applicable securities laws of any state of the United States and may not be offered or sold in the United States absent registration or an applicable exemption from such registration requirements. This press release shall not constitute an offer to sell or the solicitation of an offer to buy any of the Common Shares or Notes, nor shall there be any offer or sale of the Common Shares or Notes in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

Background to the Offering

Over the past number of months, the Company has evaluated a number of options for additional funding, including issues of common shares, royalty and or streaming on antimony and further strategic investments. To date, none of those options have proven to be been available to the Company to a quantum of funding that would address the funding needs through to the anticipated completion of the permitting process. As a result, and having regard to the relatively weak equity market interest in gold development companies, despite higher gold prices, and the Company's immediate need for additional capital, Paulson made an initial non-binding indicative proposal (the "Initial Proposal") to the Company for a convertible notes financing similar in structure to that provided by Paulson to the Company in 2016, pursuant to its rights under the existing investor rights agreement between Paulson and the Company (the "Investor Rights Agreement"). The Initial Proposal was for US$35 million in convertible notes wholly taken up by Paulson. Following receipt of the Initial Proposal and consideration of other options available to the Company, including an offer by the Agents to complete the Brokered Offering, the Company and Paulson held discussions that ultimately led to the Offering described above.

Participation in the Offering by Paulson

Paulson's current security holdings of the Company consists of 9,664,520 Common Shares and outstanding convertible notes of the Issuer in the principal amount of C$34,502,500.13, representing 3.56% of the outstanding Common Shares of the Company (107,101,685 Common Shares or 29.03% on a partially diluted basis assuming conversion of the convertible notes currently held by Paulson). Upon completion of the Offering, Paulson will beneficially own 9,664,520 Common Shares, representing approximately 3.26% of the Company's outstanding common shares (169,747,911 Common Shares or 37.17% on a partially diluted basis, assuming conversion of all convertible securities held by Paulson and no other convertible securities, and 33.94% assuming conversion of all existing convertible notes of the Company; and also assuming all of the Brokered Offering is sold to existing shareholders and other investors as to Common Shares only and no Notes). If no portion of the Brokered Offering is purchased by other investors, Paulson would beneficially own up to approximately 3.56% of the Company's outstanding common shares (194,806,402 Common Shares or 42.66% on a partially diluted basis, assuming conversion of all convertible securities held by Paulson and no other convertible securities and 38.95% assuming conversion of all existing convertible notes of the Company).

The terms of the Convertible Notes under the Offering are on par with the Company's convertible note offering completed in March 2016, which received shareholder approval in 2016, except for the higher conversion price in the current Offering. As Paulson already holds more than 20% of the Company's outstanding securities on a partially diluted basis, the Offering would not materially affect control of the Company.

In connection with the Note Offering, the Company has agreed to amend the existing Investor Rights Agreement between the Company and Paulson to provide that Paulson will have the right to designate one of its director nominees as the Chair of the board of directors of the Company (the "Board") and the Company will designate a Lead Director of the Board who will be an independent director.

Total Securities Issuable

An aggregate of 87,704,717 Common Shares (or 32.30% of the Company's currently issued and outstanding Common Shares) will be issued or made issuable pursuant to the Offering, whether through the issuance of Common Shares, or the conversion of Notes, sold under the Offering.

A minimum of 62,646,226 Common Shares will be made issuable to insiders (being the number of Common Shares issuable upon the conversion of all Notes to be purchased by Paulson under the Note Offering). To the extent that any portion of the Brokered Offering is not purchased by other investors, up to a maximum of 87,704,717 Common Shares could be made issuable to insiders (being the maximum number of Common Shares issuable upon the conversion of all Notes purchased by Paulson in the event that there are no other subscribers under the Brokered Offering).

The Conversion Price of C$0.53 represents a 5% discount to the 5-day VWAP for the 5 trading days up to and including February 21, 2020 (being the last trading day prior to receipt of Paulson's offer in respect of the Note Offering and the Agents' offer in respect of the Brokered Offering).

Legal Advisors

The Company has consulted and obtained advice from its corporate counsel, the law firm of Miller Thomson LLP, in regard to the TSX's requirements and the requirements of applicable securities legislation (including corporate governance requirements) and has considered their input in selecting the most appropriate path the Company should take in light of its financial situation.

Special Committee and its Advisors

The Board appointed a special committee of the Board consisting entirely of members of the Board who are independent of

Paulson and management, and who have no direct or indirect interest in the Offering (the "Special Committee"). The Board granted a broad mandate to the Special Committee to review the proposed Offering, as well as to consider and review possible alternative financing options that might be available to the Company. The Special Committee retained independent legal counsel, Paul L. Goldman Law Corporation, to assist it in carrying out its obligations pursuant to the mandate from the Board.

The Special Committee also retained Fort Capital Partners ("Fort Capital") as its independent financial advisor to review the terms and conditions of Paulson's Initial Proposal, consider available financing alternatives, recommend the best financing alternative available to the Company, and provide a fairness opinion in connection with the recommended alternative.

The Special Committee met on several occasions and oversaw the negotiations that led to the Offering.

Following their detailed consideration of available financing alternatives to the Company, having regard to the Company's current circumstances and the state of financial markets, Fort Capital recommended to the Special Committee that Paulson's Initial Proposal was the best financing alternative available to the Company and the terms are fair, from a financial point of view, to the shareholders of the Company other than Paulson.

The Company subsequently received an offer from the Agents to complete the Brokered Offering on a best efforts basis. Following discussions with Paulson, Paulson's Initial Proposal was amended to allow for existing shareholders and other investors to participate in the financing through the Brokered Offering.

The Special Committee noted that, due to the time that would be required to obtain shareholder approval and the financial condition of the Company, the Note Offering proposal was only open to acceptance by the Company until March 4, 2020 and was subject to shareholder approval not being required due to the time required relative to the Company's limited available working capital.

Based on their review and analysis of the Paulson final proposal, and having regard to the limited alternatives available to the Company, its financial position, as well as, but not limited to, their consideration of the report and conclusions of Fort Capital, the Special Committee concluded that the Offering is fair to shareholders and in the best interests of the Company and unanimously recommended to the Board to accept, and subject to all necessary regulatory approvals, to proceed to expedite the closing of the Offering at the earliest possible date.

After receipt of the recommendation by the Special Committee, the Board reviewed the terms and conditions of the Note Offering and the Brokered Offering in detail. Following their review, the Board determined that the Offering is in the Company's best interests and approved both the Note Offering and the Brokered Offering. Each of Paulson's nominees on the Board did not attend or participate in any of the deliberations of the Special Committee or the Board in connection with their consideration of the Offering.

Regulatory Exemptions

As the aggregate number of securities to be issued or made issuable pursuant to the Offering (i) would exceed 25% of the currently issued and outstanding Common Shares on a non-diluted basis; and (ii) to insiders would exceed 10% of the currently issued and outstanding Common Shares on a non-diluted basis, the Company would ordinarily be required to obtain shareholder approval under the TSX Company Manual (the "Manual"). However, the Company has applied to the TSX under Section 604(e) of the Manual for a "financial hardship" exemption from the requirement to obtain shareholder approval. The independent members of the Board, who are free from any interest in the Offering and are unrelated to the investors, have authorized such application on the basis of their determination that the Company would be in serious financial difficulty without the Offering and the Offering is designed to improve the Company's financial situation and is reasonable for the Company in the circumstances.

As Paulson is an insider of the Company, the Offering is a "related party transaction" within the meaning of Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions* ("MI 61-101"). However, as neither the fair market value of the securities acquired by the Paulson, nor the consideration for the securities paid by Paulson, exceeds 25% of the Company's market capitalization, the issuance of securities is exempt from the formal valuation requirements of Section 5.4 of MI 61-101 pursuant to Subsection 5.5(a) of MI 61-101 and exempt from the minority approval requirements of Section 5.6 of MI 61-101 pursuant to Subsection 5.7(1)(a) of MI 61-101.

Financial Considerations

If the Company does not complete the Offering, the Company has approximately US$4.6 million of available working capital available to meet ongoing operating costs after providing for certain existing legal obligations of the Company that would be required were the Company not to continue as a going concern. Under the current Board-approved budget, this amount would be depleted before the end of April 2020. Absent a financing, Midas Gold would face near-term insolvency and/or loss of all progress made to date in the extensive and expensive permitting process (with US$53 million invested to date in permitting alone) and which has been ongoing since 2016. The permitting process, once interrupted, will be expensive and difficult to restart and there is serious doubt as to whether it can be resumed in a timely manner or at all. In addition, a break in the continuity in baseline environmental data collection could result in having to restart this data collection process (a two to three year endeavour).

Use of Proceeds

The proceeds from the Offering are reasonably forecast to enable the Company to be funded through to the next major milestone, being the final environmental impact statement and final record of decision on its Stibnite Gold Project. Upon receipt of the proceeds from the Offering (US$35 million less an estimated up to US$0.9 million in transaction costs and Agents' commission in respect of the Brokered Offering), along with the expected current working capital as at March 1, 2020 (US$9.0 million, which is the

US$4.6 million plus an amount of US$4.4 million which is reserved for legal obligations (which would no longer be required to be reserved as the Company continues as a going concern)) the Company would have working capital of approximately US$43.1 million. With the proceeds of the Offering, the Company anticipates that it would be able to continue its work on its key corporate objectives through the end of 2021, assuming currently forecast rates of expenditures.

Listing Review

As a consequence of relying upon the financial hardship exemption under Section 604(e) of the TSX Company Manual, the Company expects that the TSX will commence a remedial de-listing review, which is normal practice when a listed Company seeks to rely on this exemption. Although the Company believes that it will be in compliance with all of the TSX listing requirements following completion of the Offering, no assurance can be provided as to the outcome of such review and, therefore, the Company's continued qualification for listing on the TSX.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/3/2020 11:28:22 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine

I'm sorry, Brad. My meeting that was supposed to end a couple of hours ago just ended and I'm being pulled into another matter. Can we talk tomorrow? Again, my apologies.

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Sent: 3/3/2020 11:32:07 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine

I have a call from 12 – 1:00. I can meet at 1:15 tomorrow.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, March 03, 2020 3:31 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Mine

Just saw this. No worries. How about coffee at 11 am or 1 pm?

Sent from my iPhone

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Sent: 3/3/2020 11:36:00 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: Re: Stibnite Mine

Sounds good.

Sent from my iPhone

On Mar 3, 2020, at 3:34 PM, Bradley M. Marten <bmarten@martenlaw.com> wrote:

That's a plan. Meet in your lobby and walk over to City Centre? They have or one, but two Starbucks.

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Sent: 3/3/2020 11:59:47 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine

I have a meeting that I have to be back for at 2:00 tomorrow, so we won't have a ton of time to talk.

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US Environmental Protection Agency, Region 10
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Sent: 3/4/2020 2:35:42 AM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine

Thursday I am free between 1-2:30.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, March 03, 2020 4:21 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Mine

Not worth rushing. What's a better time tomorrow or Thursday? My Thursday is pretty wide open. Have to wrap up Wednesday by 3:30

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Sent: 3/5/2020 8:17:26 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine

Yes.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, March 05, 2020 11:49 AM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Mine

Still OK for 1 pm?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Tuesday, March 3, 2020 6:36 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Stibnite Mine

Thursday I am free between 1-2:30.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
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<image002.png>

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Sent: 3/5/2020 8:53:41 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine

Yes.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, March 05, 2020 12:21 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Mine

OK – see you then. I'll bring along a copy of the SOW and the AOC. Can you do the same?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Thursday, March 5, 2020 12:17 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Stibnite Mine

Yes.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, March 05, 2020 11:49 AM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Mine

Still OK for 1 pm?

Bradley M. Marten
Partner

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MARTEN LAW

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Sent: Tuesday, March 3, 2020 6:36 PM
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Sent: 3/11/2020 7:57:31 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine Site

Hi Brad. Do you have time this afternoon to talk? I'd like to give you an update. Thanks.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/11/2020 11:30:52 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine Site

Just got off my phone calls. Can you talk now?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Wednesday, March 11, 2020 2:10 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Mine Site

Anytime after 2:30 pm. What works?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Wednesday, March 11, 2020 12:58 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: Stibnite Mine Site

Hi Brad. Do you have time this afternoon to talk? I'd like to give you an update. Thanks.

Elizabeth McKenna | Assistant Regional Counsel
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Sent: 3/16/2020 1:15:29 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine Site

Good morning, Brad. Can you please send me a Word version of the AOC that you sent me? Thank you.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Appointment

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 2/26/2020 6:23:19 PM
To: Bradley M. Marten [bmarten@martenlaw.com]

Subject: Stibnite Mine Site

Start: 2/26/2020 11:00:00 PM
End: 2/26/2020 11:30:00 PM
Show Time As: Tentative

Hi Brad. Wanted to check in with you on all things Stibnite. Can you talk at this time? If not, feel free to send an alternative time to talk. Thanks.

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/17/2020 11:40:24 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
BCC: Ingemansen, Dean [Ingemansen.Dean@epa.gov]
Subject: FW: Stibnite - additional considerations for CERCLA settlement discussions
Attachments: 03.05 Legacy sites contributing significant load trimmed.pdf

Hi Brad. I'm forwarding you Helen's message to John Meyer regarding the government entity's new proposal for a settlement agreement. Just left you a voicemail. Feel free to call and discuss. I will be around tomorrow.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bottcher, Helen <Bottcher.Helen@epa.gov>
Sent: Tuesday, March 17, 2020 4:15 PM
To: John Meyer <JMeyer@midasgoldcorp.com>
Cc: Albert Crawshaw <Albert.Crawshaw@deq.idaho.gov>; ally_turner@fws.gov; Clabaugh, Charles D. <clabaugh.charles@epa.gov>; Derek Young (derek.young@deq.idaho.gov) <derek.young@deq.idaho.gov>; McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>; Fremerman, Gary - OGC, Washington, DC <gary.fremerman@usda.gov>; Jeremy Moore (jeremy_n_moore@fws.gov) <jeremy_n_moore@fws.gov>; Jill Grant <jgrant@jillgrantlaw.com>; Zamba, Kathy -FS <kathy.zamba@usda.gov>; kwright@sbtribes.com; Lisa O'Hara (lisa.ohara@deq.idaho.gov) <lisa.ohara@deq.idaho.gov>; Maley, Timothy <maley.timothy@epa.gov>; McGrath, Patricia <mcgrath.patricia@epa.gov>; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) <Nathalie.Doherty@sol.doi.gov>; Susan Hanson <susanthanson9@icloud.com>; Leeds, Todd - FS <todd.leeds@usda.gov>
Subject: Stibnite - additional considerations for CERCLA settlement discussions

Hi, John.

I am attaching a table listing areas of existing contamination that EPA and our government team partners have developed. We would like to focus our settlement discussions on addressing ongoing sources of contamination, rather than attempting to design an RI/FS over the life of the mine, because of the complexity of integrating an RI/FS with an active mine, and the financial uncertainty a long-term RI/FS would cause for Midas.

We want this to work for Midas, so we chose early actions that would not interfere with mining and in some cases would get a jump start on actions described in the PRO. This proposal would not result in permanent solutions for all the source areas of concern.

Our proposal also recognizes the extensive research that Midas has completed in order to develop the mine permit. This information, viewed through a CERCLA lens, should allow Midas to develop a site characterization and data gaps report, from which CERCLA workplans for RD/RA or area-specific removal actions could be developed in the future.

The basic technical elements of our new proposal for settlement are:

- Site Characterization and Data Gaps Report (site-wide)
    - Analyze and present available data on the site's physical features as well as contaminant source areas and contaminant fate and transport
    - Identify and describe data gaps that would need to be filled in a potential future site-wide remedial investigation
    - Provide all data available to Midas in electronic format (databased and GIS files, not just PDF files)
- No requirement in this agreement to conduct an RI/FS. Recognizing that a long-term RI/FS would create financial uncertainty for Midas for a long period of time, the negotiating parties are proposing to focus, instead, on concrete early actions that can be performed in a finite amount of time.
- Early actions:
    - Collect data and conduct evaluations necessary to develop designs for early actions
    - Complete designs for early actions
    - Implement early actions
    - Monitor effectiveness of early actions and implement any needed repairs

See the attached table for our full list of proposed early actions. This list includes the three early actions suggested by Midas in your January 23, 2020 memorandum. It also includes recommended studies and actions to address, or partially address, many of the other significant sources of metals to the EFSFSR. As stated above, we believe some of the work in the table aligns nicely with work that Midas has already proposed in the PRO. We also believe this proposal is consistent with Midas' public statements that Midas will clean up legacy contamination and that a majority of the cleanup will happen early in the life of the project.

Note that the Nez Perce Tribe has not yet had the opportunity to provide its input on the proposal. The Tribe expects to provide input to EPA by March 20th. The Tribe's input is important to the parties and may result in a modified approach.

There's a lot here to digest. I'd be happy to answer your immediate questions. EPA and the negotiating parties are ready to discuss the list of actions with you once you've had a chance to review it. I'm assuming we'll want to meet remotely, so I'll investigate VTC capabilities at EPA.

Regards,

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Table 1. Early actions to reduce arsenic load to surface waters from legacy mining features at Stibnite.

Location	Type	Feature	Relative Arsenic Load	Status under PRO Mining Permit	Year Modified (if mining occurs per PRO)	Land Status	Early Action Candidate Site Work Descriptions	Regulatory Mechanism
Early Action Sites Suggested by Midas (Year 1)								
Near EFSRSR & Sugar Ck confluence	Waste (divert sfc water)	Bradley Dump	2	Partially removed by PRO	2-10	Unpatented	Divert Hennessey Creek around Bradley Dump (Midas, 2020).	CERCLA TCRA
Meadow Creek above EFSFSR	Waste (divert sfc water)	BMC Meadow Creek Mill+Smelter Site	5	Removed by PRO	2-10	Patented	Divert upgradient water around mineralized backfill materials (Midas, 2020).	CERCLA TCRA
EFSFSR above Fiddle Creek	Waste (divert sfc water)	SW flow from DMEA waste rock pile	13	N/A		Unpatented	Divert unnamed stream around DMEA waste rock pile (Midas, 2020).	CERCLA TCRA
Candidate Studies to Support Future Control of Adit Discharge (Year 1)								
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bailey Tunnel Adit Seep	8	Minimized by PRO dewatering	3	Patented	For bulkhead basis of design, monitor site weather station continuously, and collect continuous flow and water quality data. Use data to design collection system (sumps or interceptor trenches with transfer pumps to holding tanks for baseflow (minimum to average flowrates)) and to evaluate treatment options (haul to treatment plant, sulfate bioreactor or vertical wetlands). Evaluate adit for access and scope (Year 2) geotechnical study (Best Practices for Preventing Sudden, Uncontrolled Fluid Mining Waste Releases, EPA, 2017, OLEM 9200.3-118).	N/A - study informing NTCRA EE/CA
Meadow Creek above EFSFSR	Adit Discharge	SW flow from Meadow Creek Mine adit seep	9	N/A		Patented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Cinnabar Tunnel adit seep	10	N/A		Unpatented		
EFSFSR above Fiddle Creek	Adit Discharge	SW flow from DMEA Adit seep	18	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bonanza Adit Seep	19	N/A		Unpatented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Monday Tunnel adit seep	20	N/A		Unpatented		
Candidate Studies to Support Future In-Water Work (Year 1)								
Meadow Creek above EFSFSR	Surface Water	SW flow from pond downgradient of Yellow Pine Pit	3	Mitigated during dewatering	3	Patented	Evaluate flow and water quality into and out of the pond.	N/A - study informing CERCLA TCRA
Meadow Creek above EFSFSR	Surface Water	SW flow from Keyway Marsh Outlet	7	N/A		Mixed, mostly Unpantented.	Evaluate flow and water quality into and out of the marsh. Collect data necessary to characterize substrate, vegetation, groundwater exchange, hydraulic residence time and loading rate, evapotranspiration and water balance within the marsh. Evaluate whether marsh can be enhanced to treat effluent to target concentrations.	N/A - study informing CERCLA TCRA
EFSFSR below Sugar Creek	Waste Rock	Seepage from Lower West End DRSF	6	Minimized by PRO dewatering	3	Mixed	To support in-water work planning and engineering requirements: map wetlands and Ordinary High Water Mark around waste rock piles and stream; prepare vicinity map, plan view and cross-section view of waste rock removal project; prepare plans and specifications for protection of fish life; prepare wetlands mitigation table where necessary.	N/A - study informing CERCLA TCRA
EFSFSR below Sugar Creek	Waste Rock	Seepage from BMC NW DRSF	12	Removed by PRO	2-10	Patented		
EFSFSR above Fiddle Creek	Waste Rock	CSM-PMC-SMI Upper ManCamp DRSF	16	N/A		Unpatented		
EFSFSR below Yellow Pine Pit	Waste Rock	Seepage from BMC NE Oxide stockpile #1	17	N/A		Unpatented		
EFSFSR above Fiddle Creek	Seep	SW flow from Garnet pit seep	14	N/A		Unpatented	For vertical wetlands evaluation, monitor site weather station continuously, and install Modified Parshall Flume near adit and collect flow and water quality data.	N/A - study informing CERCLA TCRA
Candidate Early Action Site Pilot Studies (Year 2)								
Meadow Creek above EFSFSR	Surface Water	SW flow from pond downgradient of Yellow Pine Pit	3	Mitigated during dewatering	3	Patented	Construct batch treatment plant and intake and conduct pilot test treatment of flow from pond.	Pilot Test for TCRA EE/CA
Meadow Creek above EFSFSR	Surface Water	SW flow from Keyway Marsh Outlet	7	N/A		Mixed	Based upon Year 1 evaluations, pilot test marsh enhancements or construct a pilot test of a vertical wetlands to treat discharge from the marsh.	Pilot test under CERCLA TCRA
EFSFSR above Fiddle Creek	Seep	SW flow from Garnet pit seep	14	N/A		Unpatented	Construct a pilot test of a vertical wetlands to treat discharge from the pit.	Pilot test under CERCLA TCRA
EFSFSR above Fiddle Creek	Adit Discharge	SW flow from DMEA Adit seep	18	N/A		Unpatented	For adits install collection system with baseflow to holding tanks and bypass to existing stream. Based upon Year 1 evaluations pilot test bioreactor or vertical wetlands, or complete road work necessary to haul baseflow to batch plant for treatment prior to discharge. Conduct geotechnical studies to support bulkhead design.	Pilot test and geotech study informing NTCRA EE/CA
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Cinnabar Tunnel adit seep	10	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bonanza Adit Seep	19	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bailey Tunnel Adit Seep	8	Minimized by PRO dewatering	3	Unpatented		
Meadow Creek above EFSFSR	Adit Discharge	SW flow from Meadow Creek Mine adit seep	9	N/A		Patented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Monday Tunnel adit seep	20	N/A		Unpatented		
Candidate Early Action Removal Actions (Year 2)								
EFSFSR below Sugar Creek	Waste Rock	Seepage from Lower West End DRSF	6	Minimized by PRO dewatering	3	Mixed	Move waste rock to (upland) staging area for one of the PRO DRSFs.	CERCLA TCRA
EFSFSR below Sugar Creek	Waste Rock	Seepage from BMC NW DRSF	12	Removed by PRO	2-10	Patented		
EFSFSR above Fiddle Creek	Waste Rock	CSM-PMC-SMI Upper ManCamp DRSF	16	N/A		Unpatented		
EFSFSR below Yellow Pine Pit	Waste Rock	Seepage from BMC NE Oxide stockpile #1	17	N/A		Unpatented		
EFSFSR above Fiddle Creek	Waste Rock	Bradley Dumps	2	Partially removed by PRO	2-10	Unpatented	Move in-water waste rock to (upland) staging area for one of the PRO DRSFs.	CERCLA TCRA
EFSFSR below Yellow Pine Pit	Waste Rock	BMC Meadow Creek Mill+Smelter Site	5	Removed by PRO	2-10	Mixed		
Candidate Early Remedial Actions (Year 3)								
Meadow Creek above EFSFSR	Surface Water	SW flow from pond downgradient of Yellow Pine Pit	3	Mitigated during dewatering	3	Patented	Ramp up intake volumes to batch plant to treat average flows, automate with winterization and shutdown capabilities to operate with minimal maintenance during winter months.	TCRA
Meadow Creek above EFSFSR	Surface Water	SW flow from Keyway Marsh Outlet	7	N/A		Mixed	Based on results of Year 2 work, enhance Keyway Marsh with substrate, vegetation and drainage features to optimize hydraulic residence time and loading rate, or construct full-scale vertical wetlands treatment system discharge from marsh.	CERCLA TCRA
EFSFSR above Fiddle Creek	Adit Discharge	SW flow from DMEA Adit seep	18	N/A		Unpatented	Continue baseline flow and water quality studies to support bulkhead design, complete geotechnical data gap investigations, ramp up treatment systems to treat average flows, and automate with winterization and shutdown capabilities to operate with minimal maintenance during winter months.	NTCRA EE/CA
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Cinnabar Tunnel adit seep	10	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bonanza Adit Seep	19	N/A		Unpatented		
EFSFSR below Sugar Creek	Adit Discharge	SW flow from Bailey Tunnel Adit Seep	8	Minimized by PRO dewatering	3	Unpatented		
Meadow Creek above EFSFSR	Adit Discharge	SW flow from Meadow Creek Mine adit seep	9	N/A		Patented		
EFSFSR above Yellow Pine Pit	Adit Discharge	SW flow from Monday Tunnel adit seep	20	N/A		Unpatented		
EFSFSR above Fiddle Creek	Seep	SW flow from Garnet pit seep	14	N/A		Unpatented	Ramp up intake volumes to batch plant to treat average flows, automate with winterization and shutdown capabilities to operate with minimal maintenance during winter months.	CERCLA TRCA

Table 1. Early actions to reduce arsenic load to surface waters from legacy mining features at Stibnite.

Location	Type	Feature	Relative Arsenic Load	Status under PRO Mining Permit	Year Modified (if mining occurs per PRO)	Land Status	Early Action Candidate Site Work Descriptions	Regulatory Mechanism

DRSF - Development Rock Storage Facility (Waste Rock)
IPDES - Idaho Pollutant Discharge Elimination System
PRO - Midas proposed mining Alternatives 1, 2 or 4.
sfc - surface; SW - surface water
N/A - Not Applicable (i.e., not modified by actions in the mining proposal).
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act (a.k.a. Superfund)
TCRA - Time Critical Removal Action
NTCRA - Non-Time Critical Removal Action
ROD/RA - CERCLA Record of Decision / Remedial Action
RI/FS - CERCLA Remedial Investigation/Feasibility Study
EE/CA - Engineering Evaluation/Cost Analysis (NTCRA under CERCLA)
CWA / NPDES - Clean Water Act / National Pollutant Discharge Elimination System (permit)

EPA, 2017, Best Practices for Preventing Sudden, Uncontrolled Fluid Mining Waste Releases, OLEM 9200.3-118
Midas, 2020, Proposed Early Actions - Midas Gold Stibnite Mine Site, Memo from John Meyer to Brad Marten, 24 pages.
Johnson, 1963, Modified Parshall Flume, USGS Open-File Report, 8 pages.

Notes: Early treatment of Yellow Pine Pit Lake deferred because of current function of Lake as sediment trap. Early treatment of seeps and springs associated with Meadow Creek tailings and DRSFs that are not in floodpain, and installation of bulkheads, deferred until disposition of PRO is known.
Year 1 Cost estimate total (not including Midas proposed early actions) - 680K; Year 2 -16.2M; Year 3 (including O&M) - 4.8M

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/23/2020 6:57:20 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: Stibnite Mine Site

I forgot that I have a call at 2:30. Should not go longer than a half hour.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/23/2020 8:24:16 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine Site

Ok.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, March 23, 2020 1:21 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Mine Site

I'll call you at 3:30-3:45

Sent from my iPhone

On Mar 23, 2020, at 11:57 AM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

I forgot that I have a call at 2:30. Should not go longer than a half hour.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
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<image002.png>

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/23/2020 8:36:04 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Stibnite Mine Site

Helen will be contacting John to propose the following times and dates that work for all of the government parties to talk with Midas:

Thursday, the 26th 10:00 PT to 11:30 AM PT, or
Monday, the 30th 1:00 PM PT to 2:30 PM PT

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, March 23, 2020 1:21 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Mine Site

I'll call you at 3:30-3:45

Sent from my iPhone

On Mar 23, 2020, at 11:57 AM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

I forgot that I have a call at 2:30. Should not go longer than a half hour.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 3/23/2020 11:15:54 PM
To: 'Bradley M. Marten' [bmarten@martenlaw.com]
Subject: RE: Draft Stibnite AOC (2.25.20)

Thanks, Brad. Did you say that you wanted to talk at 3:30? Do we still need to talk?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, March 23, 2020 4:10 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Draft Stibnite AOC (2.25.20)

Elizabeth:

As requested, a "Word" version of the draft AOC for the Stibnite Mine site is attached.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
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E - bmarten@martenlaw.com
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1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 2/12/2020 2:44:50 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: MIDAS -- How does 3:30, 4 or 4:30 pm this afternoon work for you for a call to catch up?

Elizabeth- How about 2 pm?

Sent from my iPhone

On Feb 11, 2020, at 5:53 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Hi Brad. I've been in meetings all afternoon and just saw this email. I just left you a voicemail. If you're still around, give me a call. If I don't hear from you in the next half hour, let me know what time you are available tomorrow. I am free after 1:00. Thanks.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image002.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, February 11, 2020 2:43 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: MIDAS -- How does 3:30, 4 or 4:30 pm this afternoon work for you for a call to catch up?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 1/18/2020 11:31:38 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Stibnite Mine

Elizabeth:

I just received a first draft of Midas's proposed interim actions and will be reviewing it tomorrow. Nothing in writing has gone to any of the AOC participants. My understanding is that there was a Friday meeting between Midas and the Shoshone Bannock Tribe (I didn't attend), that some of the proposed actions were discussed and that they were well received.

I'll be sending you the written proposal on the 23rd and will ask that you forward it to all AOC participants- the State, Forest Service and Shoshone Bannock Tribe.

Happy to discuss if you'd like.

How did your Draft EIS meeting go?

Sent from my iPhone

On Jan 17, 2020, at 5:22 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Just checking in because it sounded like Midas was prepared to share its interim action proposals with other parties and the longer EPA has to digest the ideas, the more productive the meeting on the 30th will be. If the proposals are not ready to share with the parties, then EPA will look forward to receiving them on the 23rd. Thanks very much.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image002.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Friday, January 17, 2020 5:11 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: Laurel Sayer <lsayer@midasgoldinc.com>; Bogert Michael <mbogert@midasgoldinc.com>
Subject: Re: Stibnite Mine

Elizabeth:

When we met on Monday, Midas committed to get its proposed list of projects to you in the 23rd - a week prior to our meeting on the 30th. We still plan to do so. Please let me know if you have any questions.

Sent from my iPhone

On Jan 17, 2020, at 11:12 AM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Hi Brad. I'm checking in to see if Midas will share its list of potential interim actions with EPA. I understand from other parties that Midas has offered to share the interim actions with them, and that Midas will be meeting with the Shoshone Bannock Tribes to discuss the interim actions next week. It would facilitate our discussion on the 30th Midas could send EPA the proposals as soon as possible. Thanks very much.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 1/17/2020 7:12:53 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: Stibnite Mine

Hi Brad. I'm checking in to see if Midas will share its list of potential interim actions with EPA. I understand from other parties that Midas has offered to share the interim actions with them, and that Midas will be meeting with the Shoshone Bannock Tribes to discuss the interim actions next week. It would facilitate our discussion on the 30th Midas could send EPA the proposals as soon as possible. Thanks very much.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 6/29/2020 11:35:11 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite

Yep. Just headed out on my walk. I'll call you in an hour.

Sent from my iPhone

On Jun 29, 2020, at 4:34 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

All my calls are going over this afternoon. Going to push back my run by a half hour. Can we talk from 5:30 -6:00 instead?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image001.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, June 29, 2020 3:25 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite

I'll call you at 5. Hopefully from my walk!

Bradley M. Marten
Partner

M- 206-999-1808
D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

<image005.png>

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Monday, June 29, 2020 at 3:22 PM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: Stibnite

Hi Brad. Following up on your request to talk about Stibnite. I have a call at 4 that may last an hour. Then I have from 5 – 5:30 free. Are you open then? If my call at 4 is shorter than I expect, I can call you before 5.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image002.png>

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Appointment

From: Bottcher, Helen [Bottcher.Helen@epa.gov]
Sent: 3/23/2020 11:44:57 PM
To: Albert Crawshaw [Albert.Crawshaw@deq.idaho.gov]; ally_turner@fws.gov; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Derek Young (derek.young@deq.idaho.gov) [derek.young@deq.idaho.gov]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jeremy Moore (jeremy_n_moore@fws.gov) [jeremy_n_moore@fws.gov]; Jill Grant [jgrant@jillgrantlaw.com]; Zamba, Kathy -FS [kathy.zamba@usda.gov]; kwright@sbtribes.com; Lisa O'Hara (lisa.ohara@deq.idaho.gov) [lisa.ohara@deq.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) [Nathalie.Doherty@sol.doi.gov]; Susan Hanson [susanthanson9@icloud.com]; Leeds, Todd - FS [todd.leeds@usda.gov]; John Meyer (meyer@midasgoldinc.com) [meyer@midasgoldinc.com]

Subject: Stibnite call with Midas and Govt Parties
Location: Video conference via ZOOM

Start: 3/26/2020 5:00:00 PM
End: 3/26/2020 6:30:00 PM
Show Time As: Tentative

Hi, everyone. Midas would like to join the government parties for an initial technical discussion of the Early Actions table that we sent last week. John Meyer set up a Zoom meeting, link is below. Regards, Helen

---

John Meyer is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://zoom.us/j/ Ex. 6 Personal Privacy (PP)

Meeting ID: 282 208 9706

One tap mobile
Ex. 6 Personal Privacy (PP) US (Houston)
US (San Jose)

Dial by your location
Ex. 6 Personal Privacy (PP) Houston)
San Jose)
Chicago)
New York)

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/23/2020 11:16:31 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Draft Stibnite AOC (2.25.20)

Yes --- headed out on my walk. OK to call in 15-30?

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Monday, March 23, 2020 at 4:15 PM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: RE: Draft Stibnite AOC (2.25.20)

Thanks, Brad. Did you say that you wanted to talk at 3:30? Do we still need to talk?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, March 23, 2020 4:10 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Draft Stibnite AOC (2.25.20)

Elizabeth:

As requested, a "Word" version of the draft AOC for the Stibnite Mine site is attached.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
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martenlaw.com
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MARTEN LAW

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/23/2020 11:09:49 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Draft Stibnite AOC (2.25.20)
Attachments: Draft Stibnite AOC (2.25.20) (CLEAN for EPA).docx

Elizabeth:

As requested, a "Word" version of the draft AOC for the Stibnite Mine site is attached.

Bradley M. Marten
Partner

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:	)	
	)	
Stibnite Mine Site,	)	CERCLA Docket No.
Midas Gold Corp.,	)	
Idaho Gold	)	
Resources	)	
Company, LLC,	)	
Stibnite Gold	)	
Company, and	)	
Midas Gold Idaho,	)	
Inc.	)	
	)	
Respondents	)	
	)	
	)	

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ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION / FEASIBILITY STUDY
AND REMOVAL ACTIONS

TABLE OF CONTENTS

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I. JURISDICTION & GENERAL PROVISIONS

1. This Settlement is entered into voluntarily by EPA, USFS, IDEQ, the Tribes, and Respondents. The Settlement provides for the performance by Respondents of an RI/FS and for certain response actions to be taken at the Site.

2. This Settlement is issued under the authority vested in the President of the United States under Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606, 9607, and 9622, as amended ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923-26 (1987), and to the Secretary of the United States Department of Agriculture ("Secretary") by Executive Order 12580, 52 Fed. Reg. 2926 (January 23, 1987), 3 C.F.R. 13308, 1987 Compilation, p. 193. It was then further delegated to EPA Regional Administrators on September 13, 1987, in and through EPA Delegation Nos. 14-14-A, 14-14-B, 14-14-C and 14-14-D. This authority has since been redelegated by the Regional Administrator, EPA Region 10, to the Office of Superfund Environmental Management Division Director. The Agriculture Secretary's authority has likewise been delegated to the Chief of the USFS by 7 C.F.R. § 2.60(a)(39), and then re-delegated by the Chief of the USFS to the USFS Region 4 Regional Forester.

3. This Settlement has been negotiated in good faith, and actions undertaken in accordance with this Settlement do not constitute an admission of any liability by any party. Solely for the limited purpose of carrying out the terms of this Settlement, Respondents agree not to challenge the jurisdiction of the Parties to enter into it, and further agree to comply with and be bound by the terms of this Settlement. They further agree not to contest the legal basis or validity of this Settlement or any of its terms.

4. The purposes of this Settlement are to guide the conduct of (1) a remedial investigation and feasibility study of the Site not inconsistent with the NCP and (2) certain accelerated response actions, as collectively identified and described in the Statement of Work ("SOW") attached as Appendix B.

5. Consistent with Executive Order 12580 and the NCP, EPA is the lead agency for response actions involving the privately owned/operated portions of the Site, while the USFS is the lead agency for response actions involving the USFS portions of the Site. Notwithstanding that division, the parties agree that it is appropriate, given fiscal and efficiency priorities, for EPA to take principal responsibility for implementation of the entire response action. The State enters into this Settlement pursuant to Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. §§ 9620(f) and 9621(f), and will serve as Support Agency under this Settlement. It will review response data and documents and consult with EPA and the USFS

on decisions and approvals made under the Settlement. Likewise, the Tribes, which are federally recognized and have a governing body known as the Fort Hall Business Council that is asserting exercise of authority pursuant to inherent sovereign power, the Fort Bridger Treaty (15 Stat. 673), and the Constitution and By-Laws of 1936—will serve as a support agency under this Settlement. The Tribes will review response data and documents and consult with the EPA and USFS regarding decisions or approvals made under this Settlement.

II. PARTIES BOUND

6. This Settlement is binding upon the Parties and their heirs, successors, and assigns. Any change in ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter their responsibilities under this Settlement.

7. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute this Settlement. Respondents agree that each of them is jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

8. MGII, as the Site Operator for purposes of this Settlement, shall act on behalf of Respondents in carrying out the terms of this Settlement and has been designated to act on their behalf. When the term "Respondents" is used in this Settlement, the Parties understand that MGII is acting on behalf of all Respondents, and that all Respondents will be bound by MGII's actions.

9. MGII will provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any of the Respondents with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. MGII or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. MGII shall be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement, terms used herein are defined in and by CERCLA or implementing regulations promulgated thereunder shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply. Singular form shall be construed to include the plural and vice versa, unless the context requires otherwise:

"BFPP" shall mean a bona fide prospective purchaser as defined in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

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"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXXIV.

"EFSFSR" shall mean the East Fork of the South Fork of the Salmon River.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, offices, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Existing Contamination" shall mean:

a. any hazardous substances, pollutants, contaminants or Waste Materials present or existing on or under the Site as of the Effective Date;

b. any hazardous substances, pollutants, contaminants or Waste Materials that migrated from the Site prior to the Effective Date; and

c. any hazardous substances, pollutants, contaminants or Waste Materials presently at the Site that migrate onto or under or from the Site after the Effective Date.

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"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, not inconsistent with the NCP, that the United States, the State and the Tribes incur after the Effective Date in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs.

"IDEQ" shall mean the Idaho Department of Environmental Quality and any successor departments or agencies of the State.

"IGRCLLC" shall mean Idaho Gold Resources Company, LLC.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Applicable dates are available at *http://www.epa.gov/superfund/superfund-interest-rates*.

"MGC" shall mean Midas Gold Corp.

"MGII" shall mean Midas Gold Idaho, Inc.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of

CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Non-Respondent Parties" shall mean the United States, the IDEQ, the Tribes,

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

"Parties" shall mean the EPA, USFS, IDEQ, the Tribes, and Respondents.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the Parties paid at or in connection with the Sites through the Effective Date, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Plan of Restoration and Operations" or "PRO" shall mean the approved plan of operations by the United States Forest Service pursuant to 36 C.F.R. § 228.5.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Records" shall mean records, reports, documents, and other information, including in electronic form.

"Respondents" shall mean Midas Gold Corp., and related Respondents Idaho Gold Resources Company, LLC, Stibnite Gold Company, and Midas Gold Idaho, Inc.

"RI/FS" shall mean the RI and FS described in Paragraph 48.

"RPM" shall mean the Remedial Project Manager as defined in 40 C.F.R. § 300.5.

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study and Removal Action and all appendices attached hereto (listed in Section XXXII (Integration & Appendices)).

"SGC" shall mean Stibnite Gold Company.

"Site" encompasses both National Forest Service lands and private lands, including all areas within the Stibnite Mining District—located in Stibnite, Idaho, approximately 15 miles east of Yellow Pine, Idaho in Valley County, Idaho, 78 miles from McCall—in which any Respondent has ownership interest in land or holds patented or unpatented mining claims, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for response action implementation and materials handling. For purposes of this Settlement, the Site is intended to include, but is not limited to, all alleged point sources identified in the Complaint in *Nez Perce Tribe v. Midas Gold*, No. 01:19-cv-307, filed in the U.S. District Court for the District of Idaho on August 8, 2019. The Site is depicted generally on the map attached as Appendix A.

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"State" shall mean the State of Idaho.

"Statement of Work" or "SOW" shall mean Appendix B to this Settlement, the document describing the activities MGII must perform pursuant to this Settlement, including any modifications made thereto in accordance with this Settlement.

"Stibnite Mining District" is the area of historically significant mining located in Valley County, Idaho, east of the community of Yellow Pine near the EFSFSR, where Respondents hold patented and unpatented mining claims.

"Stibnite Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"Tribes" shall mean the Shoshone Bannock Tribes.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and USFS.

"USFS" shall mean the United States Forest Service, an agency of the United States Department of Agriculture, and its successor departments, agencies, offices, or instrumentalities.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any hazardous wastes as defined in the Idaho Hazardous Waste Management Act, Idaho Code 39-4403(8); (e) "pollutants" as defined in IDAPA 58.01.02.010.731; (f) "contaminants" as defined in IDAPA 58.01.11.007.10; (g) "hazardous materials" as defined in IDAPA 58.01.02.010.40; or "deleterious materials" as defined in IDAPA 58.01.02.010.16.

"Work" shall mean all activities and obligations MGII commits to on behalf of Respondents and that Respondents are required to perform under this Settlement, except those required by Section [XIV] (Record Retention).

"Work Plan" shall mean any plan to be approved by EPA for performance of the Work.

IV. FINDINGS OF FACT

11. MGII is a wholly owned subsidiary of MGC Pursuant to the USFS Plan of Restoration and Operations and 36 C.F.R. § 228.3 (b), MGII is an "operator," as defined by the regulation, which is "[a] person conducting or proposing to conduct operations" on the Site.

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12. The majority of the mining and processing activity proposed by Respondents will take place is on patented claims.

13. The Site contains a number of hazardous substances source areas resulting from previous mining along Meadow Creek and EFSFSR. Historical mining in the Stibnite Mining District mostly occurred in three general areas named Hangar Flats, Yellow Pine, and West End. Mining operations began in the Stibnite Mining District in the 1920s and continued through the 1950s. During this initial period of mining activity, the mining of gold, silver, antimony, and tungsten mineralized materials was achieved by both underground and, later, open-pit mining methods.

14. In November 1952, the Defense Minerals Exploration Administration ("DMEA") awarded the Bradley Mining Company ("Bradley") two contracts to explore and develop metals deposits at the Yellow Pine and Meadow Creek mines. During World War II, the Site is estimated to have produced more than 90% of the Nation's antimony and 65% of the Nation's tungsten, materials that were used in advancing the war effort, including munitions, steel, fire retardants, and other purposes. Strategic mining operations continued through much of the Korean War, and antimony, gold, and tungsten mining and milling ceased in 1952, near the end of the Korean War.

15. A second major period of activity at the Site began with exploration activities in 1972 and was followed by open-pit mining and seasonable on-off heap leaching and one-time heap leaching from 1982 to 1997. With ore provided by multiple operators from a number of locations, and processed in adjacent heap-leaching facilities, over 10 million tons of ore were mined and processed. During the years of production, millions of cubic yards of mine tailings were deposited at locations within the Site, and in some cases, spent ore was permanently placed over historical Stibnite mill tailings that had previously been discarded.

16. The Site has been subject to substantial cost recovery litigation under CERCLA, and several consent decrees emerged from these actions including *Mobil Oil v. United States*, Civ. No. 99-1467-A (D. Virginia) (consent decree filed June 26, 2000); *United States v. Oberbillig* (D. Idaho) (consent decree filed March 18, 2004); and *United States v. Bradley Mining Company*, Case No. 3:08-CV-03968 TEH and *United States v. Bradley Mining Company*, Case No. 3:08-CV-05501 TEH (N.D. Ca.) (consent decree filed April 19, 2012). In some of the above-noted cost recovery litigation, the Site has been alleged to be a CERCLA "facility" as defined by Section 101 (9) of CERCLA, 42 U.S.C. § 9601 (9). In *Bradley Mining Company*, the EPA extended CERCLA covenants not to sue to the USFS, United States Department of Defense, United States Department of the Interior, EPA, and United States General Services Administration.

17. The prior mining activity at the Site resulted in CERCLA remedial actions by EPA, the USFS and the IDEQ. Among other actions, minor quantities of legacy tailings were removed, Meadow Creek was re-channelized in 2005, and certain legacy tailings impoundments were covered with clean fill in 2009. Past additional events at the Site include building removal, equipment removal, the 1965 failure of a hydropower dam on the East Fork of Meadow Creek (commonly referred to as "Blowout Creek"), and the creation and storage of Waste Materials deposited at locations within the Site. Notwithstanding multiple completed response actions, legacy tailings and contamination remain buried over much of the Site.

18. Beginning in 1982, IDEQ began monitoring the Site. IDEQ sampled surface water and groundwater for hazardous substances generated by mining operations. Sampling

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results showed exceedances of cyanide for the EPA quality criteria for water for fresh-water aquatic organisms.

19. On September 25, 1991, the EPA placed the Yellow Pine Mine Area on the Federal Facilities Docket. The Yellow Pine Mining Area site is located along the EFSFSR, 14 miles southeast of the town of Yellow Pine in Valley County, Idaho, in the Payette National Forest, where antimony and gold mining operations took place from the early 1900s until the late 1990s The USFS initiated a CERCLA Section 104 and 107 response and enforcement action at the Site.

20. In 1995, former owner/operator Stibnite Mine, Inc. ("SMI") entered into an Administrative Order on Consent ("AOC") with EPA Region 10 to mitigate environmental problems associated with the historic Bradley tailings in the upper Meadow Creek Valley. The AOC required SMI to stabilize the upper Meadow Creek Diversion Channel and to treat the flow exiting the diversion to meet water quality standards.

21. In 1999, the USFS completed a time-critical removal action at the pilot plant. The action consisted of covering and capping ponds constructed by Canadian Superior Mining (U.S.) Limited in connection with a gold-processing pilot test. The pilot test used cyanide-leaching technology for ore extracted from the site. By the end of 1999, most of the SMI facilities and haul roads were reclaimed under a reclamation plan approved by the USFS and IDEQ. Reclamation and closure continued in 2000.

22. In 2002, the USFS completed two time-critical removal actions ("TCRAs"). The first was to remove tailings from the Poison Pond area. The Poison Ponds were located along Meadow Creek south of Hecla's heap leach pad. Approximately 2,500 cubic yards were removed and placed in a repository cell located on the northwest Bradley waste dump. The second TCRA was in the smelter stack area. This action consisted of removing the wood flume and ash to an off-site EPA approved facility. This TCRA also included removal and placement of 400 cubic yards of soil in the same repository cell located on Respondents' patented lands in the northwest Bradley waste dump. The soil was removed from below the smelter stack flume and placed in an unlined trench.

23. These arsenic "hot spots" were in the northwest Bradley waste dump, which was an unsecured area with unrestricted public access. In 2004, EPA through its contractor, Environmental Quality Management ("EQM"), implemented a removal action which included excavation of contaminated waste, regrading of the removal area, and placement of clean soil on top. The area was later seeded with native plants and covered with straw. Excavated waste was placed in the on-site USFS "repository cell", an area designed to safely store the waste and prevent exposure to the public.

24. In 2004, a Meadow Creek Engineering Evaluation/Cost Analysis ("EE/CA") was completed under a USFS contract by Science Applications International Corporation ("SAIC"), including specifications and design of the recommended alternative. Also, in 2004, a Biological Assessment was completed, as required by the Endangered Species Act, and submitted to the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

25. In 2005, the USFS and EPA completed a CERCLA removal action in Meadow Creek between Blowout Creek and its confluence with the EFSFSR. Legacy tailings that were contributing elevated levels of arsenic to the stream were excavated from a 19-acre area and placed in an engineered unlined repository covered with waste rock in the Spent Ore

Disposal Area ("SODA") and 3,500 feet of stream channel was reconstructed, providing habitat potentially suitable for salmonid spawning.

26. Elevated arsenic, antimony, and mercury levels have been detected in sampling locations located near the DMEA dump area associated with tunnel construction by Bradley pursuant to a contract and loan by the United States and supervised by the DMEA.

27. Since the construction of the SODA repository by the USFS and EPA, elevated levels of arsenic and antimony in the Meadow Creek Valley area in locations downgradient from the SODA have been identified. Alluvial groundwater sampled in groundwater wells regularly show arsenic concentrations of 1,000 – 3,000 µg/L; groundwater in well MWH-A07 regularly shows antimony concentrations of 600-1,600 µg/L. One alluvial monitoring well (MWH-A19) near the repository cell constructed by the USFS has measured particularly high arsenic concentrations; typically ranging from 3,000 to 6,000 µg/L and as high as 6,670 µg/L from a sample gathered in 2018. Similar levels of arsenic are consistently indicated, with a reading of 6,230 µg/L from a sample gathered in late May 2019. This same well has measured 4,650 µg/L of arsenic from a sample gathered on April 19, 2013; 6,020 µg/L from a sample gathered on May 31, 2014; 5,400 µg/L from a sample gathered on May 31, 2015; 5,500 µg/L from a sample gathered on June 8, 2016; 7,520 µg/L arsenic from a sample collected on June 21, 2017; and 6,670 µg/L arsenic from a sample gathered on July 4, 2018. The current Water Quality Summary Reports prepared by Respondents show a range of arsenic readings from 839-12,100 µg/L and 148-2,990 µg/L arsenic. Total antimony reported in groundwater during this same time frame ranges from 48.6-2090 µg/L.

28. In 2009, Respondents or their predecessors began acquiring land and mineral interests at the Site. MGII is currently seeking a mine operating permit and approval of a Plan of Restoration and Operations ("PRO") through the National Environmental Policy Act ("NEPA") process, with the USFS as the lead agency.

29. The United States provided public notice of the above-noted consent decrees before they were entered by the court.

30. Respondents have never constructed or operated a mine on the Site. MGII submitted a proposed PRO that proposes to develop and operate a mining operation that produces gold and silver doré, and antimony concentrates from ore deposits in the project area. Activities proposed in the PRO will disturb legacy areas at the Site. As set forth in the PRO, MGII will undertake cleanup and reclamation at the Site before, during, and after the proposed mining. By entering into this Settlement, the Parties understand that it is the intent of MGII to remove and then productively mine certain legacy tailings that have been previously deposited in areas of the Site. In some cases, such as the spent heap leach ore disposal area SODA/Bradley tailings, remediation has previously been undertaken under CERCLA.

31. In general, MGII proposed development of the mineral resources would include construction of fish passage around legacy blockage of the Yellow Pine Pit; placement of tailings in a composite- lined tailings storage facility ("TSF"); placement of development rock in engineered and designed facilities; and reclamation and restoration of the Site, including backfill of the Yellow Pine Pit and subsequent reestablishment of the surface waters of the EFSFSR. It is the Parties' intent that, to the degree possible, this Settlement be interpreted and implemented in accordance with Respondents' proposed plan of operations as reflected in the PRO and as may be amended or adjusted from time to time.

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32. The general sequence of mining will be guided by the restoration aspects of the PRO, which includes backfilling the Yellow Pine Pit with West End development rock to restore the approximate original gradient of the EFSFSR, to provide permanent fish passage, and facilitate aquatic habitat enhancement.

33. The estimates for direct employment from the activity described in the PRO are 594 construction jobs; 583 operations jobs; 160 reclamation jobs; and 44 monitoring jobs.

V. CONCLUSIONS OF LAW

34. Based on the Statement of Facts set forth above, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The conditions described in the Statements of Facts above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

d. The actions required by this Settlement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

e. The Work required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will not be inconsistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

f. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement.

35. The Parties intend for this Settlement to address every claim raised by the Complaint in *Nez Perce Tribe v. Midas Gold*, No. 01:19-cv-307, filed in the U.S. District Court for the District of Idaho on August 8, 2019 ("Complaint"), including the discharge of pollutants at the Site regulated under CERCLA and/or the Clean Water Act from all point sources and pollutants alleged in the Complaint.

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VI. SETTLEMENT AGREEMENT & ORDER

36. Based upon the Findings of Fact and Conclusions of Law set forth above, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. CONTRACTOR, PROJECT COORDINATOR, & REMEDIAL PROJECT MANAGER

37. All Work performed under this Settlement shall be under the direction and supervision of qualified personnel. Respondents may retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within seven (7) days after the Effective Date or such date on which a contractor or subcontractor is proposed for selection, whichever date is later.

38. If, after the commencement of Work, Respondents retain additional contractors or subcontractors, Respondents shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors.

39. The qualifications of the persons undertaking the Work shall be subject to EPA's review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

40. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications as soon as practicable after EPA's disapproval.

41. With respect to any proposed contractor performing activities related to the Work, Respondents shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA.

42. Within thirty (30) days after the Effective Date of this Settlement, Respondents shall designate a Project Coordinator who shall be responsible for administration of the Work required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications.

43. Respondents have designated, and EPA has approved, [_____] as its Project Coordinator, who shall be responsible for administration of all actions by Respondents required by this Settlement. To the greatest extent possible, Respondents' Project Coordinator shall be present on Site or readily available during Site work.

44. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within seven (7) days following EPA's disapproval or such date on which a different Project Coordinator is proposed for selection, whichever date is later. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to Respondents.

45. EPA has designated Helen Bottcher of the Superfund Emergency Management Division in EPA Region 10 as its Remedial Project Manager ("RPM"). EPA will notify Respondents of a change of its RPM. Communications between Respondents and EPA, and all documents concerning the activities performed pursuant to this Settlement, shall be directed to the EPA RPM.

46. EPA and Respondents shall have the right to change their respective designated RPM or Project Coordinator. Respondents shall notify EPA seven (7) days before such a change is made. The initial notification by Respondents may be made orally but shall be promptly followed by formal written notice.

47. The RPM shall be responsible for overseeing Respondents' implementation of this Settlement. The RPM shall have the authority stated in the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

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VIII. WORK TO BE PERFORMED

48. Respondents shall conduct the RI/FS and prepare all plans in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance"), OSWER Directive # 9355.3-01 (October 1988), available at https://semspub.epa.gov/src/document/11/128301, "Guidance for Data Usability in Risk Assessment (Part A), Final," OSWER Directive #9285.7-09A, PB 92-963356 (April 1992), available at http://semspub.epa.gov/src/document/11/156756, and guidance referenced therein, and guidance referenced in the SOW. The Remedial Investigation ("RI") shall consist of collecting data to characterize site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The Feasibility Study ("FS") shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

49. All written documents prepared by Respondents pursuant to this Settlement shall be submitted by Respondents in accordance with Section IX (Submission and Approval of Deliverables). With the exception of progress reports and the Health and Safety Plan, all such submittals will be reviewed and approved by EPA in accordance with Section IX (Submission and Approval of Deliverables). Respondents shall implement all EPA approved, conditionally-approved, or modified deliverables.

50. Respondents shall also perform "early action" response actions to expedite cleanup and will do so in accordance with approved Work Plans. A description of the response "early actions" as set out in the SOW includes the following: (1) Bradley Dumps and Hennessy Creek Area; (2) DMEA Adit and Waste Rock Dump Area; (3) Former Bradley Mill and Smelter Area.

51. ***Work Plan and Implementation***. Within thirty (30) days after the Effective Date, Respondents shall submit to EPA for approval a draft Work Plan describing the Work to implement the SOW. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

a. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify EPA's RPM by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify the Work Plan in writing accordingly or direct Respondents to modify and submit the modified Work Plan to EPA for approval. Respondents shall perform the RI/FS Work Plan as modified.

b. EPA may approve, disapprove, require revisions to, or modify each draft Work Plan in whole or in part, provided such disapproval is reasonable and not arbitrary and capricious. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within seven (7) days of receipt of EPA's notification of the required changes but such 7-day limit may be extended by EPA for good cause related to the extent and scope of matters addressed in the Work Plan. MGII shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Work Plan, Respondents shall, upon notification to EPA that appropriate funding and other preparation pursuant to this Settlement is in place, commence implementation of the Work in accordance with the schedule included therein. Respondents shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the SOW and/or Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

e. Nothing in the foregoing shall be construed to limit EPA's authority to require performance of further response actions at the Site consistent with law.

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52. ***Off-Site Shipments and Waste***. Respondents may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the RI/FS and before the Waste Material is shipped. Respondents may ship Investigation Derived Waste ("IDW") from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

53. ***Meeting Participation***. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the preparation of the Work Plan. Topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

54. ***Progress Reports***. In addition to the deliverables set forth in this Settlement, Respondents shall submit written monthly progress reports to EPA by the 15th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall: (1) describe the actions that have been taken to comply with this Settlement; (2) include all results of sampling and tests and all other data received by Respondents; (3) describe Work planned for the next two (2) months with schedules relating such Work to the overall project schedule for RI/FS completion; and (4) describe all problems encountered in complying with the requirements of this Settlement and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

IX. SUBMISSION & APPROVAL OF DELIVERABLES

55. ***General Requirements***. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the SOW and/or Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph. Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to the RPM at 1200 6th Avenue, Seattle, Washington 98101, [phone], [email] and to the State at [ID contact information]. Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved Work Plan in accordance with the schedule set forth in such plan. Respondents shall submit all deliverables in electronic form

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and paper copies of all final versions of reports, Sampling and Analysis Plan ("SAP"), Quality Assurance Project Plan ("QAPP"), maps and figures shall also be submitted to EPA and the State. All other deliverables shall be submitted to EPA in the form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5x11 inches, Respondents shall also provide EPA with paper copies of such exhibits.

56. ***Technical Specifications***. Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes. Spatial data, including spatially referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as un-projected geographic coordinates in decimal degree format using North American Datum 1983 or World Geodetic System 1984 as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor, complies with these FGDC and EPA metadata requirements and is available at https://edg.epa.gov/EME/. Each file must include an attribute name for each site unit or sub-unit submitted. Respondents shall consult https://www.epa.gov/geospatial/geospatial-policies-and-standards for any further available guidance on attribute identification and naming. Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

57. ***Initial Submissions***. After review of any deliverable that is required to be submitted for EPA approval under this Settlement EPA shall: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) disapprove, in whole or in part, the submission; or (4) any combination of the foregoing. EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

58. ***Resubmissions***. Upon receipt of a notice of disapproval under Paragraph 57 ("Initial Submissions"), or if required by a notice of approval upon specified conditions under Paragraph 57, Respondents shall, within forty-five (45) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Respondents to correct the deficiencies; or (5) any combination of the foregoing.

59. ***Implementation***. Upon approval, approval upon conditions, or modification by EPA under Paragraph 57 ("Initial Submissions") or Paragraph 58 ("Resubmissions"), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (2) Respondents shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section XIX ("Stipulated Penalties") for violations of this Settlement. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. In the event

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that EPA takes over some of the tasks, but not the preparation of the Remedial Investigation Report ("RI Report") or the FS Report, Respondents shall incorporate and integrate information supplied by EPA into those reports. Respondents shall not proceed with any activities or tasks dependent on the following deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: RI/FS Work Plan; Sampling and Analysis Plan; draft RI Report; Treatability Testing Work Plan; Treatability Testing Sampling and Analysis Plan; Treatability Testing Health and Safety Plan; and draft FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, Respondents shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement. For all remaining deliverables, Respondents shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

60. ***Material Defects***. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA due to such material defect, Respondents shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondents may be subject to penalties for such violation. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

X. HEALTH & SAFETY

61. In accordance with the schedule set forth in the SOW, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at http://www.epa.gov/nscep, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaosc.org/HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning for potential mine impacted water releases. EPA may comment and make recommendation to the Health and Safety Plan, however, Respondents assume full responsibility to adhere to applicable OSHA and Mine Safety and Health Administration ("MSHA") regulations, as appropriate. Respondents shall incorporate all changes to the plan recommended by EPA provided such recommendations are reasonable and not arbitrary and capricious and shall implement the plan during the pendency of the response action.

XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

62. ***Quality.***

a. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all environmental samples collected related to the Work consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)"

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EPA/240/R-02/009 (December 2002), or "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. Within seven (7) days after the Effective Date or before commencing Work, Respondents shall submit a Sampling and Analysis Plan related to the Work to EPA for review and approval. This plan shall consist of a Field Sampling Plan ("FSP") and a QAPP that is consistent with the SOW, the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)"EPA 240/B-01/003 (March 2001, reissued May 2006), or "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondents shall ensure that EPA, the USFS, IDEQ, and the Tribes personnel and authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze pursuant to this Settlement all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that environmental sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P- 02.1 (9/23/2014) available a[HYPERLINK "http://www.epa.gov/innpoli8/epa-qa-field-activities-procedures" \h] Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at[HYPERLINK "http://www.epa.gov/measurements/documents-about-measurement-competencv-under-" \h]acquisition-agreements and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program ([HYPERLINK "http://www.epa.gov/clp)" \h] SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" ([HYPERLINK "http://www3.epa.gov/epawaste/lrazard/testmethods/" \h] sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" ([HYPERLINK "http://www.standardmethods.org/)" \h]40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" ([HYPERLINK "http://www3.epa.gov/ttnamtil/airtox.html)" \h]

d. However, upon approval by EPA, after a reasonable opportunity for review and comment by the USFS, State, and Tribes, Respondents may use other appropriate analytical method(s), so long as (1) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (2) the analytical method(s) are at least as stringent as the methods listed above, and (3) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, *e.g.*, EPA, ASTM, National Institute for Occupational Safety and Health ("NIOSH"), OSHA, MSHA, etc. MGII shall ensure that all

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laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network ("ERLN") laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP"), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

63. ***Samples***. Upon request, Respondents shall provide split or duplicate environmental samples related to the Work to EPA, USFS, the State, and the Tribes, or their authorized representatives. Respondents shall notify the parties not less than seven (7) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples related to the Work that the parties deem necessary. Upon request, EPA shall provide to Respondents split or duplicate samples of any samples its takes as part of EPA's oversight of their implementation of the Work. Other than resource related data associated with the exploration activities, mine production and mill operations assays, Respondents shall submit to EPA and the State results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

64. ***Progress***. Respondents shall submit a quarterly written progress report to EPA and the State concerning actions undertaken pursuant to this Settlement, or as otherwise requested by EPA, from thirty (30) days after the Effective Date until issuance of Notice of Completion of Work pursuant to Section XXX, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

65. ***Final Report***. Within sixty (60) days after completion of all Work required by this Settlement, other than continuing obligations listed in Section XXX (Notice of Completion of Work), Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The format of the final report or reports is included in the SOW. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP titled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant and material documentation generated during the Work (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the

following certification signed by a responsible corporate official of Respondents or their Project Coordinator:

> *"I certify under penalty of law that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this document and all attachments, the information submitted is true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

XII. PROPERTY REQUIREMENTS

66. If the Site, or any other property where access is needed to implement this Settlement, is owned or controlled by one of the Respondents, MGII agrees to provide the Non-Respondent Parties, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, as may be needed to implement this Settlement.

67. MGII shall require that assignees, successors in interest, and any other parties with rights to use the property shall provide access and cooperation to the Non-Respondent Parties, and their authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight. MGII shall require that assignees, successors in interest and other parties with rights to use the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with the Work, and not contest EPA's authority to enforce any land use restrictions and institutional controls on the Site. MGII shall provide a copy of this Settlement to any current and other party with rights to use the Site as of the Effective Date.

68. EPA agrees to provide reasonable notice to Respondents of the timing of response actions to be undertaken at the Site and other areas owned or controlled by MGII.

69. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than MGII (other than the Parties), Respondents shall use best efforts to secure an agreement, enforceable by Respondents and the United States, providing that such owner shall provide the Parties, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Settlement; and refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or unduly interfere with or adversely affect the implementation or integrity of the Work. MGII shall provide a copy of such access agreement(s) to EPA.

70. To the extent any action under this Settlement Agreement is to be performed in areas owned by or in possession of USFS, USFS shall cooperate with MGII to allow MGII to perform the Work, including by executing an agreement with MGII as described in Paragraph 69 agreeing to provide the Parties, and their representatives, contractors, and subcontractors with access at all reasonable times to such property to conduct any activity regarding the Settlement; and refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or unduly interfere with or adversely affect the implementation or integrity of the Work.

71. Notwithstanding any provision of this Settlement, EPA retains all of their access authorities and rights, as well as all of its rights to require land, water or other resource use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. ACCESS TO INFORMATION

72. Respondents shall provide to EPA, upon request, copies of all Records within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

73. Respondents may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record. If Respondents assert such a privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (*e.g.*, company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

74. Respondents may assert that all or part of a Record provided to EPA and the State under this Section or Section [XIV] (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which they assert business confidentiality claims. Records that Respondents claim to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

75. Except for business confidential claims, Respondents may make no claim of privilege or protection regarding: (1) any data, other than non-environmental data, regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

76. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

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XIV. RECORD RETENTION

77. Until ten (10) years after EPA provides Respondents with notice that all Work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non- identical copies of Records now in their possession or control, or that come into their possession or control, that relate in any manner to Respondents' representations of the BFPP provisions of CERCLA §§ 101(40)(A)-(H) and 107(r)(l), 42 U.S.C. §§ 9601 (40)(A)-(H) and 9607(r)(l), with regard to the Site, provided, and, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondents must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Respondents (and their contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

78. At the conclusion of the document retention period, Respondents shall notify EPA at least ninety (90) days prior to the destruction of any such Records, and, upon request by EPA, and except as otherwise provided, Respondents shall deliver any such Records to EPA.

79. Respondents certify that, as of the Effective Date and to the best of their knowledge and belief, after reasonably diligent inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to the Site and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

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XV. COMPLIANCE WITH OTHER LAWS

80. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plan subject to EPA approval.

81. Respondents assert that they have established a defense from liability under CERCLA because they are BFPPs pursuant to 42 U.S.C. Section 9601(40) and that Respondents have not, by virtue of any prior activity, become owners or operators of the Site. The Non-Respondent Parties takes no position on whether Respondents have established a BFPP defense but agree, for purposes of this Settlement, that such a determination is not necessary to implement the terms of this Settlement; provided Respondents agree not to contest the jurisdiction of the United States to enforce the terms of this Settlement.

82. Notwithstanding the above paragraph, pursuant to Section 4 of the Idaho Pollutant Discharge Elimination System [IPDES] User's Guide to Permitting and Compliance (April, 2017), IDEQ and MGII will engage in Clean Water Act permitting compliance assistance for the Site.

83. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section [XX] (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

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XVI. EMERGENCY RESPONSE & NOTIFICATION OF RELEASES

84. ***Emergency Response***. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer of the incident or Site conditions. Respondents shall also notify the State in accordance with Section XXXVI (Notices & Submissions). In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Paragraph 87 (Payment of Sum for Future Response Costs).

85. ***Release Reporting***. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify the RPM or, in the event of her unavailability, the Regional Duty Officer at 303-293-1788, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

86. For any event covered under this Section, Respondents shall submit a written report to EPA within seven (7) days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XVII. PAYMENT OF NON-RESPONDENTS' RESPONSE COSTS

87. ***Payment of Sum for Future Response Costs***. On a periodic basis EPA will send Respondents a bill requiring payment that includes a cost summary for Future Response Costs incurred by Non-Respondent Parties. Within sixty (60) days of receipt, Respondents shall make all payments as follows:

a. [$] to EPA by Fedwire Electronic Funds Transfer (EFT) to: "Federal Reserve Bank of New York, ABA = 021030004, Account = 68010727, SWIFT address = FRNYUS33, 33 Liberty Street, New York, NY 10045, Field Tag 4200 of the Fedwire message should read 'D 68010727 Environmental Protection Agency' and shall reference Site/Spill ID Number [____] and the EPA docket number for this action." At the time of payment, MGII shall send notice that payment has been made to [insert names and mailing addresses of Regional Financial Officer and any other receiving officials at EPA].

b. [$] to USFS by [_____]. At the time of payment, Respondents shall send notice that payment has been made to [insert names and mailing addresses of receiving officials at USFS.] At the time of payment, Respondents shall send notice that payment has been made to [insert names and mailing addresses of Regional Financial Officer and any other receiving officials at EPA.]

c. [$] to IDEQ by [_____]. At the time of payment, MGII shall send notice that payment has been made to [insert names and mailing addresses of receiving officials at IDEQ.]

d. [$] to The Tribes by [_____]. At the time of payment, MGII shall send notice that payment has been made to [insert names and mailing addresses of receiving officials at the Tribes.]

88. ***Interest***. In the event that any payment for Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance, beginning to accrue as of the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties.

89. ***Return of Excess***. After the Notices of Completion are issued pursuant to Section XXX and the parties have performed their final accounting, they shall each remit and return to MGII any unused amount of the funds paid by Respondents.

90. ***Contesting Future Response Costs***. Respondents may initiate the procedures of Section XVIII (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 87 (Payment of Sum for Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the RPM within thirty (30) days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If MGII submits a Notice of Dispute, MGII shall within the 30-day period, also as a requirement for initiating the dispute,

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(a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 87, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC") and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within five (5) days after the resolution of the dispute, the escrow agent shall release the sums due (with accrued Interest) to EPA in the manner described in Paragraph 87. If Respondents prevail concerning any aspect of the contested costs, the escrow agent shall release that portion of the costs (plus associated accrued Interest) for which they did not prevail to EPA in the manner described in Paragraph 87. Respondents shall be disbursed any balance of the escrow account within five (5) days after the resolution of the dispute. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

91. ***Past Response Costs.***

The Parties irrevocably surrender any right or entitlement to and reciprocally commit as a condition precedent to execution not to seek recovery of any of their Past Response Costs from or against any other Party to this Settlement.

XVIII. DISPUTE RESOLUTION

92. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

93. ***Informal Dispute Resolution***. If Respondents object to any EPA action taken pursuant to this Settlement, including providing Notice of Completion of Work or matters pertaining to Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within fourteen (14) days after such action or on the date Respondents first became aware of such action, whichever is later. EPA and Respondents shall have thirty (30) days from EPA's receipt of their Notice of Dispute to resolve the dispute through informal negotiations (the Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

94. ***Formal Dispute Resolution***. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, an EPA management official at the Supervisory level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

95. Except where contesting future response costs or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph 103, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIX (Stipulated Penalties).

XIX. STIPULATED PENALTIES

96. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth below for failure to comply with the obligations specified herein, unless excused under Section XX (Force Majeure).

97. "Comply," as used in the previous paragraph, includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

98. ***Stipulated Penalty Amounts***.

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$2,500	15th through 30th day
$5,000	31st day and beyond

99. ***Obligations***. Respondents are obligated to pay any sum properly due under Paragraph 87 (Payment of Sum for Future Response Costs); to establish and maintain financial assurance in accord with Section XXVIII; establish an escrow account to hold any disputed Future Response Costs under Paragraph 90 (Contesting Future Response Costs); and achieve major deliverables and milestones under the SOW.

100. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 121 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of [$_____].

101. Stipulated penalties under this Paragraph are in addition to other remedies available to EPA under Paragraphs 121 (Work Takeover) and 141 (Access to Financial Assurance).

102. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period and shall be paid within fifteen (15) days after the agreement or the receipt of EPA's decision.

103. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission or during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the appropriate EPA Management Official, under Paragraph 94 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the

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Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

104. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

105. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XVIII (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 87 (Payment of Sum for Future Response Costs).

106. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 102 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 102 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

107. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement.

108. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that EPA shall not seek civil penalties pursuant Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 121 (Work Takeover).

109. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XX. FORCE MAJEURE

110. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondents or Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential

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force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

111. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify EPA's RPM orally or, in their absence, EPA Region 10, within ten (10) days of when Respondents first knew that the event might cause a delay. Within five (5) days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents or their contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event; provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 110 and whether Respondents have exercised their best efforts under Paragraph 110, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

112. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

113. If Respondents elect to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs [_____]. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

114. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents MGII from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

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XXI. COVENANTS BY THE NON-RESPONDENT PARTIES

115. Except as provided in Section XXII (Reservations of Rights by United States), the Non-Respondent Parties covenant not to sue or to take administrative action against Respondents for the Work, Existing Contamination, and Past Response Costs including pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a).

116. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA by Respondents relating to Respondents' Work at the Site and the certification made by Respondents in Paragraph 65. This covenant extends only to Respondents and does not extend to any other persons.

117. Nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, or the IDEQ to seek or obtain further relief from Respondents, if the information provided to EPA by Respondents relating to Respondent's Work at the Site, or the certification made by Respondents in Paragraph 65, is false or in any material respect, inaccurate.

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XXII. RESERVATIONS OF RIGHTS BY THE UNITED STATES

118. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary.

119. The covenants set forth in Section XXI (Covenants by the Non-Respondent Parties) do not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to: (1) liability for failure by Respondents to meet a requirement of this Settlement; (2) criminal liability; (3) liability for violations of federal or state law that occur during or after implementation of the Work; (4) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; (5) liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination; (6) liability resulting from exacerbation of Existing Contamination not associated with the Work by Respondents, its successors and assigns; and (7) liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

120. With respect to any claim or cause of action asserted by the United States, Respondents shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Respondents have complied with all of the requirements of 42 U.S.C. §§ 9601 (40)(A)-(H) and 9607(r)(l).

121. ***Work Takeover.***

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work, (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of fifteen (15) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 15-day notice period specified in Paragraph [____] Respondents have not remedied or begun to remedy to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary. EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph.

c. Respondents may invoke the procedures set forth in Paragraph 94 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph [____]. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph [____] until the earlier of (1) the date that Respondents remedy, to EPA 's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 94 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY RESPONDENTS

122. Respondents agree not to assert any claims or causes of action against EPA, USFS, the State, the Tribes or their contractors or employees, with respect to Existing Contamination, the Work, Past Response Costs, and this Settlement—including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of Idaho Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

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c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding, the Work, Future Response Costs, and this Settlement.

123. These covenants not to sue shall not apply in the event the United States, the States or the Tribes bring a cause of action or issues an order pursuant to any of the reservations set forth in Section XXII (Reservations of Rights by the United States), other than in Paragraph [____] (liability for failure to meet a requirement of the Settlement), [____] (criminal liability), or [____] (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

124. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

125. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of MGII's deliverables or activities.

126. Respondents reserve, and this Settlement is without prejudice to, arguments that any claim or cause of action, or part thereof, is attributable solely to Existing Contamination and that Respondents have complied with all of the requirements of 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r)(l).

XXIV. OTHER CLAIMS

127. By issuance of this Settlement, the United States assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

128. Except as expressly provided in Section XXI (Covenants by the Non-Respondent Parties), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

129. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXV. EFFECT OF SETTLEMENT/CONTRIBUTION

130. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XXIII (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

131. If a suit or claim for contribution is brought against Respondents with respect to Existing Contamination (including any claim based on the contention that Respondents is liable as a result of response actions taken in compliance with this Settlement or at the direction of EPA's RPM), the Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondents have, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C.§§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, Existing Contamination, Past Response Costs and Future Response Costs.

132. Respondents shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondents shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, Respondents shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

XXVI. INDEMNIFICATION

133. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on

negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of MGII in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States or the State.

134. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

135. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

136. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

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XXVII. INSURANCE

137. No later than fourteen (14) days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section [INSERT] (Notice of Completion of Work), commercial general liability insurance with limits of $1 million per occurrence, and automobile liability insurance with limits of liability of $1 million per accident, and umbrella liability insurance with limits of liability of $5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Stibnite Mine Site name and the EPA docket number for this action.

XXVIII. FINANCIAL ASSURANCE

138. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of $5,000,000. The financial assurance must be one or more

of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at https://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

139. Respondents shall diligently monitor the adequacy of the financial assurance. If Respondents become aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondents shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondents of such determination. Respondents shall, within thirty (30) days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Respondents, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

140. Respondents shall submit such mechanisms and documents to the Regional financial assurance specialist at the following address: [____]

141. ***Access to Financial Assurance.***

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 121, then in accordance with any applicable financial assurance mechanism EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid.

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b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Respondents fail to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation.

c. If, upon issuance of a notice of implementation of a Work Takeover, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under Paragraph 138, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within seven (7) days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Stibnite Mine Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs, not inconsistent with the NCP, and not paid under this Paragraph must be reimbursed as Future Response Costs.

142. ***Modification of Amount, Form, or Terms of Financial Assurance.*** Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 99 and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XVIII (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within thirty (30) days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism.

143. ***Release. Cancellation, or Discontinuation of Financial Assurance.*** Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXX (Notice of Completion of Work); (b) in accordance with EPA's approval of such release,

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cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XVIII (Dispute Resolution).

XXIX. MODIFICATION

144. EPA's RPM may modify any plan or schedule or the SOW in writing or by oral direction. Any modification will not be arbitrary and capricious and will be of fair cost. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any modification will be subject to modification that may be required of the PRO or other agency authorization for the Work concerned. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties.

145. If Respondents seek permission to deviate from any approved Work Plan or schedule or the SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM.

146. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by Respondent shall relieve it of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXX. NOTICE OF COMPLETION OF WORK

147. When EPA, in consultation with the State, determines, after review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement.

XXXI. PUBLIC COMMENT

148. This Settlement shall be subject to a thirty (30) day public comment period, after which EPA may modify or withdraw its consent to this Settlement if comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

XXXII. INTEGRATION & APPENDICES

149. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained

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in this Settlement. The following appendices are attached to and incorporated into this Settlement.

a. Appendix A is a map of the Site.

b. Appendix B is the SOW.

XXXIII. HEADINGS

150. The headings and captions in this Settlement have been inserted for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

XXXIV. EFFECTIVE DATE

151. The effective date of this Settlement shall be the date upon which EPA issues written notice to MGII that EPA has fully executed the Settlement after review of and response to any public comments received. Notwithstanding any other provision in this Settlement, EPA agrees that the performance obligations under this Settlement cannot proceed in the absence of applicable required permits and other authorizations issued by the appropriate government agencies.

XXXV. DISCLAIMER

152. This Settlement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

XXXVI. NOTICES & SUBMISSIONS

153. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement, shall be deemed submitted either when an email is transmitted and received, it is hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile. Submissions to Respondents shall be addressed in care of:

Midas Gold Idaho, Inc.
[address]
with copies to:

With Copies To:

Midas Gold Corp:
[address]

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With electronic copies to

IT IS SO AGREED:
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BY:

_____

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IT IS SO AGREED:
STATE OF IDAHO
BY:

_____

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The undersigned representative of each Respondent certifies that they are fully authorized to enter into the terms and conditions of this Settlement and to bind the party represented to this document.

IT IS SO AGREED:
BY:

Midas Gold Idaho, Inc Date

Idaho Gold Resources Co.

Stibnite Gold Co.

Stibnite Gold Co.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following parties listed below by United States mail, postage prepaid, this ___ day of_____, [INSERT].

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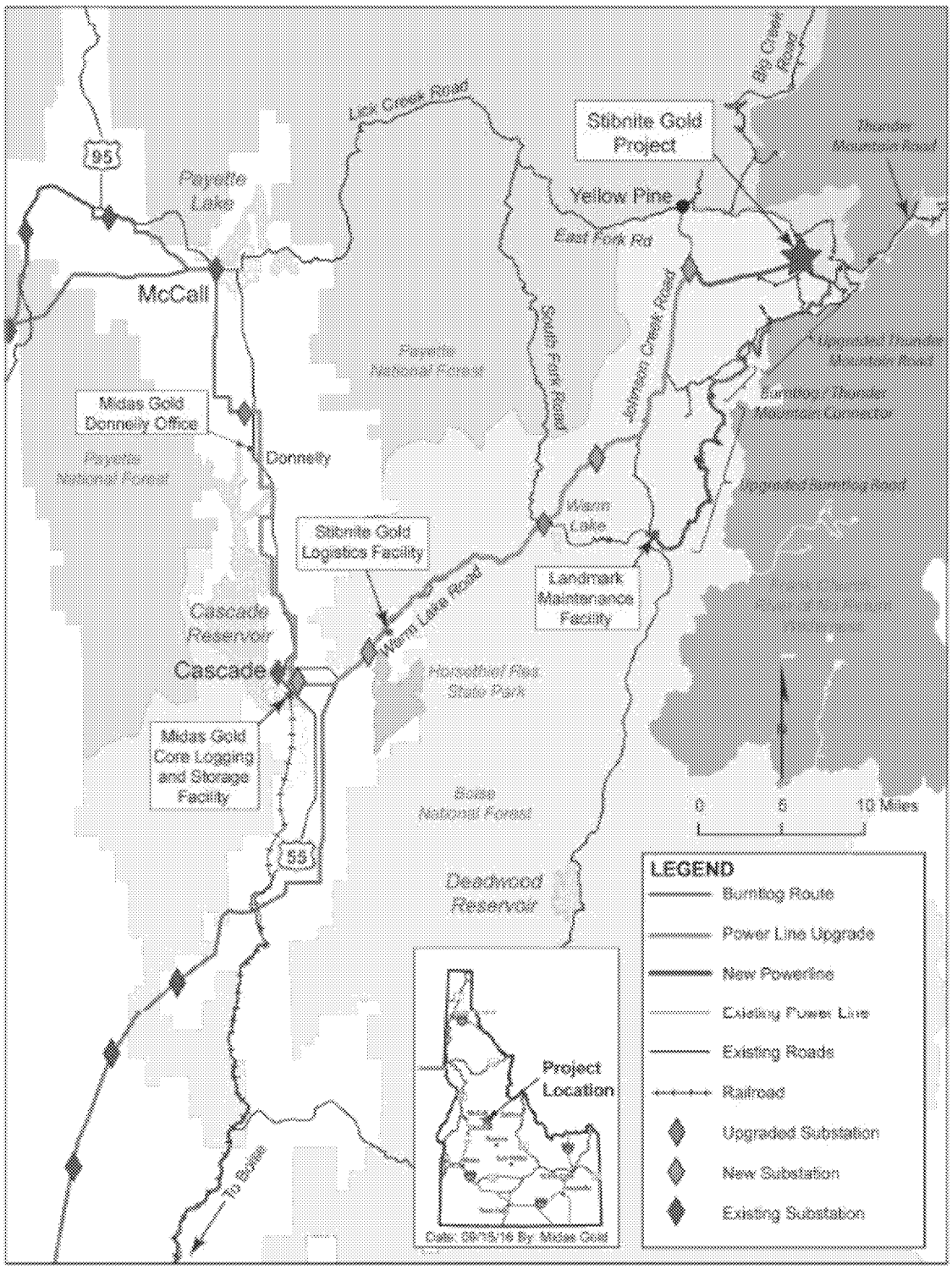
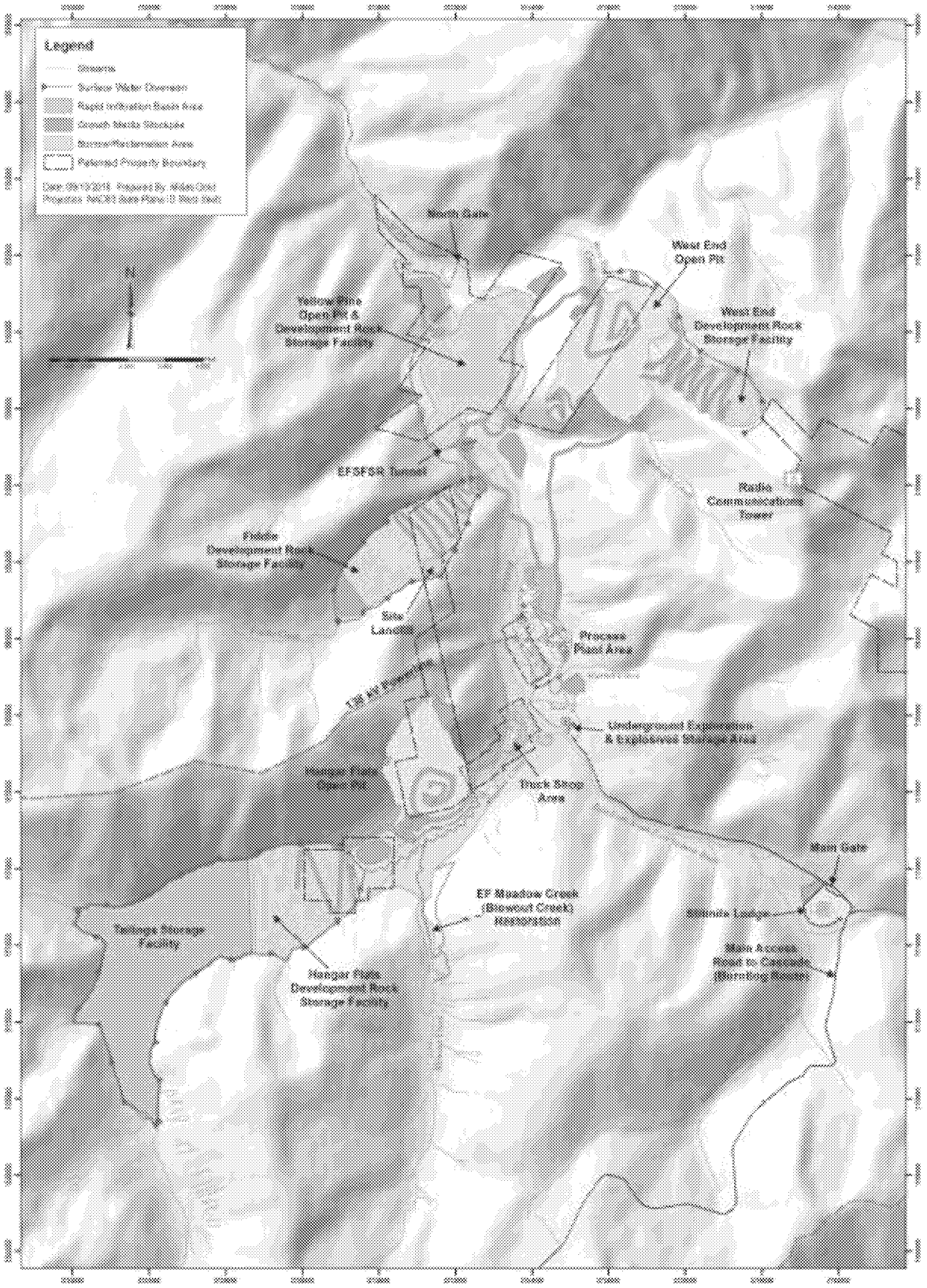
APPENDIX A

PROJECT SITE




Legend
North Gate
West End
Open Pit
Yellowjacket
Open Pit &
Development Rock
Storage Facility
West End
Development Rock
Storage Facility
EFSFSR Tailings
Radio
Communications
Tower
Fiddler
Development Rock
Storage Facility
Site
Laydown
Process
Plant Area
Underground Exploration
& Explosives Storage Area
Hangar Flats
Open Pit
Truck Shop
Area
Main Gate
EF Meadow Creek
(Blowout Creek)
Restoration
Tailings Storage
Facility
Main Access
Road to Cascade
(Borrow Source)
Hangar Flats
Development Rock
Storage Facility

APPENDIX B

STATEMENT OF WORK FOR THE
STIBNITE MINE REMEDIAL INVESTIGATION / FEASIBILITY STUDY
Valley County ID near Yellow Pine, ID

Purpose

This SOW sets forth the requirements for conducting an RI/FS at the Site located in northwest Idaho approximately 14 miles from the town of Yellow Pine. The purpose of the RI/FS is to investigate the nature and extent of contamination at the Site and to develop and evaluate remedial alternatives, as appropriate. This SOW provides an overview of Work that will be carried out by MGII, which may also be referred to as "Respondent," as it implements the RI/FS at the Site.

In September 2016, MGII filed a PRO with the USFS for the redevelopment of Stibnite, and plans to undertake mining, mineral processing and restoration activities on portions of the Site that will result in landscape-scale changes to many of the existing Site features. As such, the scope and timing of sampling and other elements of the RI/FS will consider potential mining activities in the PRO, any modifications and subsequent remediation. This will require flexibility in the RI/FS and could require a phased approach to accelerate certain activities.

This RI/FS SOW is attached to and is incorporated into the Settlement Agreement and Administrative Order on Consent ("AOC") for the Site. Technical work described in this SOW is intended to provide more information to the Respondent for the purpose of implementing the AOC and is not intended to change the meaning of any AOC language. This SOW is also consistent with both CERCLA, 42 U.S.C. § 9601 et seq., and the [HYPERLINK "http://www.epa.gov/oilspill/pdfs/40cfr300.pdf" \h] [HYPERLINK "http://www.epa.gov/oilspill/pdfs/40cfr300.pdf" \h]commonly called the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. The AOC and this SOW are hereafter referred to interchangeably as the "AOC." Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the AOC will control any interpretive disputes.

Scope

The specific RI/FS activities to be conducted at the Site are set forth in seven separate tasks.

Task 1 – Scoping
Task 2 – Community Relations
Task 3 – Site Characterization
Task 4 – Treatability Studies
Task 5 – Feasibility Study
Task 6 – Detailed Analysis of Remedial Alternatives
Task 7 – Early Actions

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Oversight

Work conducted under the AOC is intended to satisfy the legal requirements for the RI/FS established under both Section 104(a)(l) of CERCLA and Idaho's Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130; the Hazardous Waste Management Act of Idaho, Idaho Code §§ 39-4401 to 39-4432; and Idaho's Water Quality Act, Idaho Code §§ 39-3601 et seq. As such, oversight of the Respondent's Work conducted under the SOW will be carried out by EPA, the USFS, and the IDEQ (collectively the "Agencies") in a manner to assure the satisfaction of all federal and state requirements. The Respondent shall support the Agencies' initiation and conduct of activities related to the implementation of oversight activities.

Respondent shall submit all documents or deliverables required as part of this SOW to EPA, for EPA's review and approval. All work products submitted to EPA are subject to EPA approval, including but not limited to, submissions specified in the Work Plan(s) or Settlement Agreement and additional work products that may be required under Work Plan modifications. Respondent shall ensure that all plans, reports, and records are comprehensive, accurate, and consistent in content and format with the NCP and relevant EPA guidance.

Throughout the process of developing the RI/FS, the Respondent shall prepare and submit Quarterly Progress Reports to EPA to aid in project planning. These reports must document the status of all work products under development. These reports shall describe the actions and decisions taken, and problems encountered during the previous quarter, and activities scheduled during the upcoming reporting period. Progress reports shall also summarize the extent to which the procedures and dates set forth in the AOC and the Work Plan are being met. These reports shall be submitted according to the Schedule included as Attachment E.

Schedule

Refer to Attachment E for the primary and potential secondary deliverables and associated schedules.

Guidance

The Respondent shall conduct the RI/FS and produce technical reports that are in accordance with the AOC, SOW, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (RI/FS Guidance) (U.S. EPA, Office of Emergency and Remedial Response, October 1988), and any other guidance relevant to conducting an RI/FS. A list of the pertinent guidance documents is included at the end on this SOW. Attachments A, B, C, and D include suggested document formats for the Work Plan, Sampling and Analysis Plan, RI Report, and FS Report, respectively. The RI/FS guidance describes the required report contents.

Roles and Responsibilities

The Respondent shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the RI/FS, except as otherwise specified in the AOC. At the completion of the RI/FS, EPA will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision ("ROD").

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Remedy Requirements

The remedial action alternative selected by the EPA will meet the cleanup standards specified in Section 121 of CERCLA. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or ARARs of other laws, will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource recovery technologies, to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS report including the baseline risk assessment ("BLRA"), as adopted by the EPA, will, with the administrative record, form the basis for the selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

TASK 1 - SCOPING

Scoping is the initial planning process of the RI/FS. Respondent shall document the specific project scope in the RI/FS Work Plan. During the scoping process, the Site-specific objectives of the RI/FS, including the identification of potential preliminary remediation goals ("PRGs") will be proposed by the Respondent and approved by EPA. In addition to developing the Site-specific objectives of the RI/FS, Respondent shall define a general project management approach for the Site, which shall be documented by the Respondent in a draft Work Plan. Because the Work required to perform an RI/FS is not fully known at the outset and is phased in accordance with a Site's complexity and the amount of available information, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study. When scoping the specific aspects of this project, Respondent shall meet with EPA either in person or telephonically to discuss all project planning decisions and special concerns associated with the Site. For the avoidance of doubt, the RI/FS shall cover, at a minimum, the point sources alleged in the Complaint.

The following activities shall be performed by the Respondent as a function of the project planning process.

Site Background

The Respondent shall gather, analyze, and present existing Site background information and shall conduct a work session to assist in planning the scope of the RI/FS.

<u>Collect and analyze existing data and document the need for additional data</u>

Before planning RI/FS activities, all existing Site data shall be thoroughly compiled and reviewed by the Respondent. Historical data shall be submitted electronically according to EPA Region 10 specifications. The Respondent shall refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources. Specifically, this must include presently available data relating to the varieties and quantities of hazardous substances at the Site, and past disposal practices. This must also include results from any previous sampling events that may have been conducted. Only data that is determined by EPA to be of appropriate type and quality to support specific intended uses shall be utilized in the RI/FS. This includes data utilized to develop the BLRA, to identify additional data needs to better characterize the Site, to better define potential ARARs, and to develop a range of preliminarily identified remedial alternatives. Data Quality Objectives ("DQOs") shall be established, subject to EPA's approval, which shall be used to assess the usefulness of existing data and to direct future data gathering efforts. Decisions regarding the necessary data needs and DQOs

will be made by EPA. Guidance on systematic planning using the data quality objectives process (EPA QA/G-4). Washington, D.C.: 121. [HYPERLINK "http://www.epa.gov/quality/qs-docs/g4-final.pdf"], U.S. EPA (2006).

Conduct site visit

The Respondent and EPA shall conduct a Site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of contamination as well as potential exposure pathways and receptors at the Site. During the Site visit, to the extent not already defined through existing data and accepted by EPA, the Respondent shall observe the Site's physiography, hydrology, geology, and demographics, as well as natural resource, ecological, and cultural resources. This information shall be utilized to better scope the project and to determine the extent of additional data necessary to characterize the Site, better define potential ARARs, and assist in identifying potential remedial alternatives.

Project Planning

Once the Respondent has collected and analyzed existing data and conducted a Site visit, the specific project scope shall be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a work plan, designing a data collection program, and identifying health and safety protocols. The Respondent shall meet with EPA's RPM regarding the following activities and before drafting the scoping deliverables listed below.

Preliminary conceptual site model

Information on the waste sources, pathways, receptors, cultural resources, and other information concerning the Site is used to develop a conceptual understanding of the Site which helps to evaluate potential risks to human health and the environment. The Conceptual Site Model ("CSM") should include known and suspected sources of contamination, types of contamination and affected media/resources, known and potential routes of migration, and known or potential human and environmental receptors. This effort, in addition to assisting in identification of locations where sampling is necessary, will also assist in the identification of potential remedial technologies. Additional information for evaluating exposure concerns through the use of a CSM is provided in the DQO Guidance. The CSM must be updated as new information becomes available.

The preliminary CSM associated with the ecological risk assessment ("ERA") must include species and their habitats that could be impacted by Site-related contamination based on information generated from a historical review and a cultural resource audit and will show the relationships among species and potential exposure pathways. The Respondent shall provide assistance to the RPM in collecting this information as requested. If information is not provided to the Respondent within the timeframe specified by EPA, the RPM will notify the Respondent in writing either to proceed with the preparation of the RI/FS Work Plan without the information or to delay its submittal pending receipt of the information. The preliminary CSM for the human health risk assessment ("HHRA") must identify potential receptor populations and potential exposure pathways.

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Refine and document preliminary remedial action objectives and alternatives

Once existing Site information has been analyzed and an understanding of the potential Site risks have been determined, the Respondent shall review and, if necessary, refine the Remedial Action Objectives ("RAOs") that have been identified by EPA for each actually or potentially contaminated medium. The revised RAOs must be documented in a technical memorandum and subject to EPA's approval. The Respondent shall then identify a preliminary comprehensive range of potential remedial action alternatives and associated technologies. The range of potential alternatives shall encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative.

Document the need for treatability studies

Respondent shall conduct bench and/or pilot studies as necessary to determine the suitability of various remedial technologies to Site conditions and problems. Technologies that may be suitable to the Site should be identified as early as possible to determine whether there is a need to conduct treatability studies to better estimate costs and performance capabilities. Should treatability studies be determined to be necessary, a testing plan identifying the types and goals of the studies, the level of effort needed, a schedule for completion, and the data management guidelines should be submitted to EPA for review and approval. Upon EPA approval, a test facility and any necessary equipment, vendors, and analytical services will be procured by the contractor.

When the treatability studies are completed, Respondent shall evaluate the results to assess the technologies with respect to the goals identified in the test plan. A report summarizing the testing program and its results shall be prepared by the Respondent and presented in the final RI/FS report. The Respondent shall implement all management and quality control review activities for this task. If remedial actions involving treatment have been identified by the Respondent or EPA, treatability studies shall be required, except where the Respondent can demonstrate to the satisfaction of EPA that they are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) should be planned to occur concurrently with Site characterization activities.

Begin preliminary identification of potential ARARs

The Respondent shall conduct a preliminary identification of potential ARARs (chemical-specific, location-specific, and action-specific) to assist in the refinement of the RAOs and the initial identification of remedial alternatives. ARAR identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.

Scoping Deliverables

At the conclusion of the project planning phase, the Respondent shall submit an RI/FS Work Plan, a Sampling and Analysis Plan ("SAP") consisting of a Field Sampling Plan ("FSP") and Quality Assurance Project Plan ("QAPP"), and a Site Health and Safety Plan ("HASP"). These plans must be reviewed and approved by EPA prior to the initiation of field activities.

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RI/FS Work Plan

A Work Plan documenting the decisions and evaluations completed during the scoping process shall be submitted to the RPM for review and approval. The Work Plan will take into consideration for the timing and scope of potential mining and processing activities associated with the PRO. This could include a phased approach to focus on issues of most concern or requiring early action. The Work Plan shall be developed in conjunction with the SAP and the Site HASP, although each plan may be delivered under separate cover. The Work Plan shall include a comprehensive description of the work to be performed, including the methodologies to be utilized, as well as a corresponding schedule for completion. In addition, the Work Plan shall include the rationale for performing the required activities. Specifically, the Work Plan must present a statement of the problem(s) and potential problem(s) posed by the Site and the objectives of the RI/FS. Furthermore, the Work Plan must include a Site background summary setting forth the Site description including the geographic location of the Site, and to the extent possible, a description of the Site's physiography, hydrology, hydrogeology, geology, demographics, ecological, cultural, and natural resource features; a synopsis of the Site history and a description of previous responses that have been conducted at the Site by local, state, federal, or private parties; and a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified, and their distribution among the environmental media at the Site. In addition, the plan must include a description of the Respondent's Site management strategy developed during scoping and a preliminary identification of remedial alternatives and data needs for evaluation of remedial alternatives. The Work Plan must reflect coordination with treatability study requirements, if treatability studies are initiated. It must include a process for and manner of identifying potential ARARs (chemical-specific, location-specific, and action-specific).

Finally, the major part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task and for the BLRA, information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the RPM. This includes the deliverables set forth in the remainder of this SOW; a schedule for each of the required activities which is consistent with the RI/FS guidance; and a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to the RPM and meetings and presentations to EPA and the Support Agencies at the conclusion of each major phase of the RI/FS. The Respondent must refer to Appendix B of the RI/FS Guidance for a comprehensive description of the contents of the required Work Plan, and a suggested format can be found in Attachment A [of the RI/FS Guidance].

Sampling and Analysis Plan

The Respondent shall prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of an FSP and a QAPP. A suggested format for the SAP (inclusive of the FSP and QAPP) is provided in Attachment B. The SAP, FSP,and QAPP shall be prepared in accordance with EPA DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006).

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The FSP must define in detail the sampling and data-gathering methods that will be used on the project. It must include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analysis. The QAPP must describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytic methods to identify contamination and remediate contamination consistent with the levels for remedial action objectives identified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), pages 51425-26 and 51433 (December 21, 1988). The QAPP shall be prepared in accordance with requirements in EPA QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision) and specifically should contain the twenty-four elements specified in Table 11 – List of QA Project Plan Elements, EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Investigations, and EPA QA/G-4 Guidance for the Data Quality Objective Process. All sampling and analyses performed pursuant to this SOW shall conform to EPA direction, approval, and guidance regarding sampling, QA/QC, data validation, and chain-of-custody procedures. In addition, the QAPP must address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

Field personnel must be trained and conduct work in accordance with EPA and OSHA requirements and guidance. The Respondent shall demonstrate, in advance and to the satisfaction of EPA, that each laboratory they may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP for the Site by EPA. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program ("CLP") is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by EPA will be used. If the laboratory is not in the CLP program, a laboratory QA program must be submitted for EPA's review and approval. EPA may require that the Respondent submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including information on personnel qualifications, equipment, and material specifications. The Respondent shall provide assurances that EPA has access to laboratory personnel, equipment, and records for sample collection, transportation, and analysis.

Potential Target Analytes

The following list of chemicals include the initial Chemicals of Potential Concern ("COPCs"). The initial COPC list includes, but is not limited to, the analytes listed below. The Respondent shall review this list for surface water, groundwater, sediments, soils, and vegetation analytes relative to ARARs, preliminary remediation goals (PRGs), screening levels, Site-specific risk assessment data needs, treatability study data needs, feasibility study data needs, and other potential performance standards. All metal analytes (aqueous) shall be analyzed for total and dissolved constituents unless otherwise approved by EPA. Analytes may be added and/or removed from further consideration or monitored at varying frequencies based upon Site-specific factors such as dry or wet year hydrologic cycles as approved or otherwise directed by EPA.

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Chemicals/Analytes of Potential Concern for Surface Water

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for surface water sampling stations during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph. A minimum of two storm event sampling events shall be conducted.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Boron
- Cadmium
- Calcium
- Chloride
- Chromium (III)
- Chromium (VI)
- Cobalt
- Copper
- Cyanide
- Hardness
- Iron
- Lead
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrogen, total Kjeldahl
- Phosphorus
- Potassium
- Selenium
- Silver
- Sodium
- Sulphate
- Thallium
- Tungsten
- Total Dissolved Solids
- Total Organic Carbon
- Total Suspended Solids
- Uranium

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- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen
- Flow
- pH
- Temperature

The Respondent shall review the results of the first year's surface water sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent surface water sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent surface water sampling events.

Chemicals/Analytes of Potential Concern for Sediments:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for sediment sampling stations.

Laboratory Analyses

- Antimony
- Arsenic
- Cadmium
- Chromium
- Copper
- Cyanide
- Iron
- Lead
- Manganese
- Mercury
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Soils/Waste Rock:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for soils/waste rock sampling.

Laboratory Analyses

- Aluminum
- Antimony

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- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Cyanide
- Iron
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten
- Uranium
- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Vegetation:

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for vegetation sampling stations.

Laboratory Analyses

- Aluminum
- Antimony
- Arsenic
- Boron
- Cadmium
- Chromium
- Cobalt
- Copper
- Cyanide
- Iron
- Lead
- Manganese
- Mercury
- Molybdenum
- Nickel
- Selenium
- Silver
- Thallium
- Tungsten

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- Vanadium
- Zinc

Chemicals/Analytes of Potential Concern for Groundwater

The preliminary COPC list is shown below. These COPCs will be screened in the initial data compilation and review process to identify the COPC list for groundwater sampling stations and shall be sampled at a minimum during the first high flow (spring runoff) and the first low flow (fall) sampling events conducted following signing of the AOC. The spring runoff sampling event shall be conducted as close as possible to the peak of the spring runoff hydrograph and the low flow sampling shall be conducted at all groundwater sampling stations as close as possible to the low point of the surface water flow hydrograph.

Laboratory Analyses

- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Calcium
- Chloride
- Chromium III
- Chromium VI
- Cobalt
- Copper
- Cyanide
- Hardness
- Iron
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrate/nitrite as N
- Nitrogen (TKN)
- Orthophosphate
- Potassium
- Selenium
- Silver
- Sodium
- Sulfate
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Total Organic Carbon

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- Tungsten
- Uranium
- Vanadium
- Zinc

Field Analyses

- Conductivity
- Dissolved Oxygen or ORP
- Ferric Iron
- Ferrous Iron
- Nitrite
- pH
- Temperature

The Respondent shall review the results of the first year's groundwater sampling, shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend COPCs to be eliminated from the above list for subsequent groundwater sampling events. Upon approval by EPA, the COPCs eliminated by this process do not need to be included in the analyses for subsequent groundwater sampling events.

Site Health and Safety Plan

A HASP shall be prepared in conformance with the Respondent's health and safety program, and in compliance with OSHA regulations and protocols. It should be noted that EPA does not "approve" the Respondent's health and safety plan, but rather EPA reviews it to ensure that all necessary elements are included, and that the plan provides for the protection of human health and the environment.

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TASK 2 - COMMUNITY RELATIONS

The development and implementation of community relations activities are the responsibility of EPA. The critical community relations planning steps performed by EPA include conducting community interviews and developing a community relations plan. Although implementation of the community relations plan is the responsibility of EPA, the Respondent may assist by providing information regarding the Site's history, participating in public meetings, and preparing fact sheets for distribution to the general public. In addition, the Respondent shall establish a community information repository, at or near the City of McCall, to house one copy of the administrative record. The extent of community relations activities involvement by potentially responsible parties (PRPs) is left to the discretion of EPA. The Respondent's community relations responsibilities, if any, are specified in the community relations plan. Any PRP-conducted community relations activities will be subject to oversight by EPA.

TASK 3 - SITE CHARACTERIZATION

As part of the RI, the Respondent shall perform the activities described in this task, including the preparation of a Site characterization summary and a RI report. The overall objective of Site characterization is to describe areas of a Site that may pose a threat to human health or the environment. This is accomplished by first determining a Site's physiography, geology, and

hydrology/hydrogeology. Surface and subsurface pathways of migration must be defined. The Respondent shall identify the sources of contamination and define the nature, extent, and volume of the sources of contamination, including their physical and chemical constituents as well as their background concentrations at incremental locations in the affected media. The Respondent shall also investigate the extent of migration of this contamination as well as its volume and any changes in its physical or chemical characteristics, to provide for a comprehensive understanding of the nature and extent of contamination at the Site. Using this information, contaminant fate and transport is then determined and projected.

During this phase of the RI/FS, the Work Plan, SAP, and HASP are implemented. Field data are collected and analyzed to provide the information required to accomplish the objectives of the study. The Respondent shall notify the RPM at least two weeks in advance of the field work regarding the planned dates for field activities, including ecological field surveys, field layout of the sampling grid, excavation, installation of wells, initiating sampling, installation and calibration of equipment, pump tests, and initiation of analysis and other field investigation activities. The Respondent shall demonstrate that the laboratory and type of laboratory analyses that will be utilized during Site characterization meet the specific QA/QC requirements and the DQOs of the Site investigation as specified in the SAP. In view of the unknown Site conditions, activities are often iterative, and to satisfy the objectives of the RI/FS, it may be necessary for the Respondent to supplement the work specified in the initial Work Plan. In addition to the deliverables below, the Respondent shall provide a monthly progress report and participate in weekly meetings or conference calls at major points in the RI/FS.

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a. Field Investigation

The field investigation shall include the gathering of data to define Site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. These activities shall be performed by the Respondent in accordance with the Work Plan and SAP. At a minimum, this shall address the following:

Implement and document field support activities

The Respondent shall initiate field support activities following approval of the Work Plan and SAP. Field support activities may include obtaining access to the Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondent shall notify the RPM at least two weeks prior to initiating field support activities so that EPA may adequately schedule oversight tasks. The Respondent shall also notify the RPM upon completion of field support activities.

Investigate and define site physical and biological characteristics

The Respondent shall collect data on the physical and biological characteristics of the Site and its surrounding areas, including the physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information must be ascertained through a combination of physical measurements, observations, and sampling efforts, and will be utilized to define potential transport pathways and human, cultural, and ecological receptor populations. In defining the Site's physical characteristics, the Respondent shall also obtain sufficient engineering data (such as the effects of contaminated media weathering and ground and surface water contaminant loading) to aid in the projection of contaminant fate and

transport, and the development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination

The Respondent shall locate each source of contamination and define the areal extent and depth of contamination associated with each source in all media. The physical characteristics and chemical constituents and their concentrations must be determined for all known and discovered sources of contamination. The Respondent shall conduct sufficient sampling to define the boundaries of the contaminant sources consistent with the QAPP and DQOs.

Defining the source of contamination must include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence over time, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

Delineate the nature and extent of contamination

The Respondent shall gather information to delineate the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondent must utilize the information and site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondent shall then implement an iterative monitoring program and any study program identified in the work plan or SAP such that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration of contaminants through the various media at the Site can be determined. In addition, the Respondent shall gather data for calculations of contaminant fate and transport. This process must be continued until the area and depth of contamination are known. This information will be used to determine the level of risk presented by the Site and to help develop appropriate remedial action alternatives for evaluation.

Data Analyses

Evaluate Site characteristics

The Respondent shall analyze and evaluate the data to describe: (1) Site physical and biological characteristics; (2) contaminant source characteristics; (3) nature and extent of contamination; and (4) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The evaluation must include the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to EPA together with a sensitivity analysis. The RI data shall be presented in a format (i.e., computer disc or equivalent) to facilitate the preparation of the BLRA. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. The Respondent shall then collect any data required to address data

gaps identified by EPA as needed to complete the BLRA. This evaluation shall also provide information relevant to Site characteristics necessary to evaluate the need for remedial action in the BLRA and to aid in the development and evaluation of remedial alternatives. Analyses of data collected for Site characterization must meet the DQOs developed in the QA/QC plan stated in the SAP (or as revised during the RI).

Data Management Procedures

The Respondent shall consistently document the quality and validity of field and laboratory data compiled during the RI.

Document field activities

Information gathered during Site characterization shall be consistently documented and adequately recorded by the Respondent in well-maintained field logs and laboratory reports. The method(s) of documentation must be specified in the work plan and/or the SAP. Field logs must be utilized to document observations, measurements, and significant events that have occurred during field activities. Laboratory reports must document sample custody, analytical responsibility, analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking

The Respondent shall maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that only validated analytical data are reported and utilized in the development and evaluation of remedial alternatives. Analytical results developed under the Work Plan must not be included in any Site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. In addition, the Respondent shall establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation.

Data validation management

All validated data shall be made available to EPA in electronic format. The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 90 calendar days from the date of collection of the last sample from each sampling event. Field and validated analytical data results for all media sampled shall be submitted to EPA by uploading the data to the Water Quality Exchange (WQX) using the Central Data Exchange (CDX). Field and laboratory samples must include information on the sampling locations which will also be submitted to WQX via CDX. (See [HYPERLINK "http://www.epa.gov/storet/wqx.hmtl.)"]

Site Characterization Deliverables

The Respondent shall prepare the preliminary Site characterization summary and the RI report.

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Data Summary Reports

After completing each annual field season's sampling and analysis (i.e., at the end of the field season each calendar year), the Respondent shall prepare a concise Site characterization Data Summary Report (DSR). This report must review the investigative activities that have taken place and describe and display Site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, including the affected media, locations, types, physical state, concentrations of contaminants and quantities. In addition, reports shall document the location, dimensions, physical condition and varying concentrations of each contaminant for each source and the extent of contaminant migration through each of the affected media. Each DSR must also evaluate data gaps and identify additional and/or modified sampling and analysis that shall be included in modifications to the SAP for each subsequent field season. If acceptable to EPA, the DSR following the final field season of data collection can be eliminated as a separate deliverable, and the information collected during the final field season can be presented in the RI report.

Remedial Investigation Report (RI)

The Respondent shall prepare and submit a draft RI report to the RPM for review and approval. This report shall summarize results of field activities to characterize the Site, sources of contamination, nature and extent of contamination, and the fate and transport of contaminants. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and contents, and a suggested format for the RI report can be found in Attachment C. Following comment by EPA, the Respondent shall prepare a final RI report satisfactorily addressing the comments.

Baseline Risk Assessment (BLRA)

The Respondent shall conduct a BLRA to assess the potential human health, and environmental risks posed by the Site in the absence of any remedial action, but will consider implementation of the PRO. This effort will involve four components: contaminant identification, exposure assessment, toxicity assessment, and risk characterization.

Contaminant Identification – The Respondent shall review available information on all hazardous substances present at the Site and identify the major contaminants of concern. Contaminants of concern should be selected based on their intrinsic toxicological properties because they are present in large quantities, and/or because they are currently in, or potentially may migrate into, critical exposure pathways (e.g., drinking water).

Exposure Assessment – The Respondent shall identify actual or potential exposure pathways, characterize potentially exposed populations, and evaluate the actual or potential extent of exposure.

Toxicity Assessment – The Respondent shall provide a toxicity assessment of those chemicals found to be of concern during Site investigation activities. This will involve an assessment of the types of adverse health or environmental effects associated with chemical exposures, the relationship between magnitude of exposures and adverse effects, and the related uncertainties for contaminant toxicity, (e.g., weight of evidence for a chemical's carcinogenicity). EPA has prepared chemical screening tables with updated toxicity values and Preliminary Remediation Goals for various land uses

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available from: [HYPERLINK "https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables"].

Risk Characterization – The Respondent shall integrate information developed during the exposure and toxicity assessments to characterize the current or potential risk to human health and/or the environment posed by the Site. This characterization should identify the potential for adverse health or environmental effects for the chemicals of concern and identify any uncertainties associated with contaminant(s), toxicity(ies), and /or exposure assumptions.

TASK 4 - TREATABILITY STUDIES

If potential remedial actions involving treatment have been identified by Respondent or EPA, Respondent shall conduct treatability studies except where Respondent can demonstrate to the satisfaction of EPA that they are not needed. The following activities shall be performed by the Respondent to support all treatability studies.

a. Determination of Candidate Technologies and of Need for Testing

The Respondent shall identify in a technical memorandum, subject to EPA review and approval, candidate technologies for a treatability studies program during project planning (Task 1). The listing of candidate technologies must cover the range of technologies required for the development and analysis of alternatives (Task 5 and 6) The specific data requirements for the testing program will be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 3, 5, and 6).

Conduct literature survey and determine the need for treatability testing

The Respondent shall conduct a literature survey to gather information of performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. If practical candidate technologies have not been sufficiently demonstrated or cannot be adequately evaluated for this Site based on available information, treatability testing must be conducted. Where it is determined by EPA that treatability testing is required, and unless the Respondent can demonstrate to EPA's satisfaction that it is not needed, the Respondent shall submit a SOW to the RPM outlining the steps and data necessary to evaluate and initiate the treatability testing program.

Evaluation of treatability studies

Once a decision has been made to perform treatability studies, the Respondent and EPA will decide the types of treatability testing to utilize (e.g., bench and/or pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing should be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, the Respondent shall either submit to the RPM a treatability testing work plan or an amendment to the original Site work plan for EPA's review and approval.

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Treatability Testing and Deliverables

The deliverables that are required, in addition to the memorandum identifying candidate technologies, where treatability testing is conducted, include a work plan, a sampling and analysis plan, and a final treatability evaluation report. EPA may also require a treatability study health and safety plan, where appropriate.

Treatability testing work plan

The Respondent shall prepare a treatability testing work plan or amendment to the original Site Work Plan for EPA's review and approval, describing the Site background, remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The DQOs for treatability testing must be documented as well. If pilot scale treatability testing is to be performed, the pilot scale work plan will describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-site, permitting requirements must be addressed.

Treatability study SAP

If the original QAPP or FSP does not address activities to be performed during the treatability tests, a separate treatability study SAP or amendment to the original Site SAP must be prepared by the Respondent for EPA's review and approval. Task 1, Item c. of this statement of work provides additional information on the requirements of the SAP.

Treatability study HASP

If the original HASP is not adequate for defining the activities to be performed during the treatment tests, a separate or amended HASP must be developed by the Respondent. Task 1, Item c, of this SOW provides additional information on the requirements of the health and safety plan. EPA does not "approve" the treatability study HASP.

Treatability study evaluation report

Following completion of treatability testing, the Respondent shall analyze and interpret the testing results in a technical report to EPA. Depending on the sequence of activities, this report may be a part of the RI/FS report or a separate deliverable. The report must evaluate each technology's effectiveness, implementability, cost, and actual results as compared with predicted results. The report must also evaluate full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 5 - FEASIBILITY STUDY

The Feasibility Study is comprised of two primary activities: (1) the development and screening of alternatives, and (2) the detailed analysis of alternatives. The alternatives surviving the screening process will be subject to the detailed analysis process. The FS Report must document the results of these two components of FS. Interim deliverables associated with these activities will be identified

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in the RI/FS Work Plan. The RI and FS are interactive and will be conducted concurrently, to the extent practicable, in a manner that allows information and data collected during the RI to influence the development of remedial alternatives during the FS, which in turn affect additional information and data needs and the scope of any necessary treatability studies and risk assessments.

a. Remedial Alternative Development

The Respondent shall develop and evaluate a range of appropriate waste management options that, at a minimum, will remediate or control any contaminated media (soil, surface water, ground water, sediments) remaining at the Site, as deemed necessary in the RI to ensure protection of human health and the environment and comply with ARARs, concurrent with the RI site characterization task.

A range of remedial alternatives must be developed to identify and provide a variety of waste management options which then can be evaluated. This range of alternatives must include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which varies in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed. Options involving containment with little or no treatment must be included, as well as options involving both treatment and containment, and a no-action alternative. The following activities shall be performed by the Respondent during the development of remedial alternatives.

<u>Refine and document remedial action objectives</u>

Based on the BLRA, the Respondent shall review, and if necessary, modify the Site-specific remedial action objectives (RAOs) and the list of applicable preliminary remediation goals (PRGs). The modified PRGs shall be documented in a technical memorandum that will be reviewed and approved by EPA. These modified PRGs must specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

<u>Develop general response actions</u>

The Respondent shall develop a range of general response actions for each medium of interest addressing containment, treatment, excavation, pumping, or any other actions, singly or in combination, that may be utilized to satisfy the remedial action objectives for the Site.

<u>Identify areas or volumes of media</u>

The Respondent shall identify volumes and/or areas of media to which general response actions might be applied, taking into account the requirements for protectiveness as identified in the RAOs and the chemical and physical characterization of the Site.

<u>Identify, screen, and document remedial technologies</u>

The Respondent shall identify and evaluate potential remedial technologies applicable to each general response action. The Respondent shall identify various alternatives for implementing each remedial technology. These alternatives must be evaluated and screened based upon their effectiveness, implementability, and cost factors. Generally, this screening is only necessary when there are many feasible alternatives available for detailed analysis. If

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necessary, the screening of alternatives shall be conducted to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening must preserve the range of treatment and containment alternatives that was initially developed insuring that the alternatives will meet RAOs, ARARs and all other identified performance standards. The range of remaining alternatives must include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondent shall prepare a technical memorandum summarizing the results and reasoning employed in screening and arraying alternatives that remain after screening. In addition, a description of the remedial technology alternatives which were eliminated from further consideration as well as the reasons for eliminating the alternatives must be included in the memorandum.

Assemble and document alternatives

The Respondent shall assemble selected representative technologies into a range of alternatives for each affected medium or operable unit. Together, all of the alternatives will represent treatment and containment combinations that will address either all of the Site or operable units. A summary of the assembled alternatives and their related action-specific ARARs must be prepared for EPA by the Respondent for inclusion in a technical memorandum.

TASK 6 - DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES

The detailed analysis of alternatives shall be conducted by the Respondent to provide EPA with the information needed to allow for the selection of a Site remedy. This analysis is the final task to be performed by the Respondent during the FS.

a. Detailed Analysis of Alternatives

The Respondent shall conduct a detailed analysis of alternatives which must consist of an analysis of each option against a set of nine evaluation criteria and a comparative analysis of all options using the same evaluation criteria as a basis for comparison. EPA has developed the nine evaluation criteria to address the statutory requirements and preferences of CERCLA.

Apply nine criteria and document analysis

The Respondent shall apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the environment; will be in compliance with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) costs; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: Criteria 8 and 9 are considered after the RI/FS report has been released to the general public). For each alternative, the Respondent must provide: (1) a description of the alternative that outlines the waste management strategy involved and

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identifies the key ARARs associated with each alternative; and (2) a discussion of the individual criterion assessment.

Compare alternatives against each other and document the comparison of alternatives

The Respondent shall perform a comparative analysis between the remedial alternatives. That is, each alternative must be compared against the others using the evaluation criteria as a basis of comparison. Identification and selection of the preferred alternative are reserved by EPA. The Respondent shall prepare a technical memorandum summarizing the results of the comparative analysis.

Detailed Analysis Deliverables

In addition to the technical memorandum summarizing the results of the comparative analysis, the Respondent shall submit a draft FS report to the RPM for review and approval. Once EPA's comments have been addressed by the Respondent to the satisfaction of EPA, the final FS report may be bound with the final RI report.

Feasibility Study report

The Respondent shall submit a draft FS report for EPA and the Support Agencies' review and comment. This report, as ultimately adopted or amended by EPA, provides a basis for remedy selection by EPA, and documents the development and analysis of remedial alternatives. The Respondent shall refer to the RI/FS Guidance for an outline of the report format and the required report content, and a suggested format for the report can be found in Attachment D. The Respondent shall prepare a final FS report which satisfactorily addresses the comments.

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TASK 7 – EARLY ACTIONS

EPA and the Respondent have identified three Early Actions (EAs) to be performed at the Site. It is the common goal to implement these actions in 2020, if possible.

a. Description and Scope of Early Actions

The three EAs are as follows:

1) Bradley Dumps and Hennessy Creek Area

The Northwest Bradley Dumps consist of extensive legacy waste rock dumps covering over 30 acres situated along the East Fork of the South Fork of the Salmon River (EFSFSR) southwest of the confluence with Sugar Creek. The EA will entail lining and rerouting the Hennessy Creek diversion to a more direct route into the EFSFSR. This would eliminate the majority of the water (0.72 square miles catchment area, lowest measured baseflow 0.15 cubic feet per second, estimated 25-year runoff peak 11 cubic feet per second) that presently leaks from the existing ditch system and flows in the subsurface through the dumps west of the Yellow Pine open pit and the Northwest Bradley Dumps. Without the perennial flow from Hennessy Creek, wet- and dry-season metals loading to the EFSFSR associated with the Northwest Bradley Dumps would decrease. Additional wet season decreases in loading

would be accomplished by rerouting and piping the existing ditch in the vicinity of the USFS Smelter Debris Repository to reduce the infiltration of water from the remaining catchment (0.16 square miles catchment area, estimated baseflow 0.03 cubic feet per second, estimated 25-year runoff peak 2.5 cubic feet per second) through the dump and/or repository. Rerouting the main Hennessy Creek diversion (Figures 1 and 2) would be accomplished with a pipeline leading from the present water collection pond along the Stibnite Road, into the Yellow Pine pit to discharge into the existing pit lake (into deep water to avoid causing turbidity). Route options include a direct route eastward down the highwall directly into the lake, or a longer but flatter route along a historical conveyor corridor and roads.

The pipe intake structure would allow overflow into the existing ditch system in the event of a plugged pipe or extreme flood event. An existing earthen diversion dam upgradient of the proposed pipeline intake would continue to manage most debris and bedload, though the pipe intake structure includes a trash rack to prevent either from plugging the pipe. After the main Hennessy Creek diversion rerouting is accomplished, the existing ditch near the repository would be rerouted west of the Stibnite Road in a pipe, to discharge to another existing, unlined diversion ditch beyond the point at which re-infiltrated water could interact with the dump.

2) Defense Minerals Exploration Administration (DMEA) Adit and Waste Rock Dump Area

The DMEA Adit and Waste Rock Dump Area consists of a portal to an underground exploration drift and associated waste rock dumps and access roads located on the western side of the EFSFSR valley approximately 0.75 miles south of Fiddle Creek. The EA will consist of separation of upgradient water (0.11 square miles catchment area, lowest measured baseflow 0.0004 cubic feet per second, estimated 25-year runoff peak 1.6 cubic feet per second) from the DMEA dump by installation of a culvert alongside the dump, generally along the alignment of the present high-flow channel (Figure 3). The culvert intake would include a trash rack to prevent the pipe plugging with debris, and the upstream end of the pipe installed trenched-in sufficiently deep to prevent backwater from the culvert entrance from forcing water into the dump materials. The remainder of the pipe would be laid within or along the present surface channel, with ballast as needed to fix the pipe in place. The outlet would feature riprap erosion protection.

3) Former Bradley Mill and Smelter Area

The Bradley Mill and Smelter Area is the site of former legacy mineral processing activities in Meadow Creek valley approximately 0.75 miles southwest of the EFSFSR confluence and is adjacent to Hecla heap leach pad. The EA will entail installation of a geosynthetic lined ditch and pipe to divert upgradient water around mineralized backfill materials west of Hecla's former heap leach pad (Figure 4). A ditch at the upstream end of the new diversion would allow collection of the principal catchments (0.16 square miles catchment area, estimated baseflow 0.006 cubic feet per second, estimated 25-year runoff peak 2.4 cubic feet per second) draining to this area. The lower portion of the diversion would utilize a pipeline for more effective containment, faster construction, and avoidance of excavating potentially contaminated materials in the vicinity of the old smelter stack. Together, the ditch and pipe system would re-establish the effective diversion system that was backfilled in 2009-2010. The pipe outfall would report to an existing ditch that leads to a culvert, which then drains to

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the Keyway Marsh – with a potential ancillary benefit of providing additional water to support wetland function.

b. Design

Draft Early Action Design Report/Early Action Work Plan

Within sixty (60) days after the Effective Date of the Settlement Agreement/CO the Respondent will submit a Draft Early Action Design Report ("EADR")/Early Action Work Plan ("EAWP") for each of the three EAs documenting the complete draft design. The reports will contain, at a minimum, the following:

1. A statement of the problem(s) and potential problem(s) posed by the EA Project Area.
2. A background summary setting forth: (a) a brief description of the Project Area including the geographic location and a description of the physiographic, hydrologic, geologic, demographic, ecological, cultural, and natural resource features of the Site; (b) a brief synopsis of the history of the Project Area including a summary of past disposal practices and a description of previous responses that have been conducted by local, State, Federal, or private parties; and (c) a summary of the existing data including physical and chemical characteristics of the contaminants identified and their distribution among the environmental media at the Project Area
3. A cultural resource survey for the areal extent of the Project Area which shall include: A cultural resource review of records on file at the Idaho State Historic Preservation Office ("SHPO") to determine potential locations of prior cultural resources inventories and previously recorded cultural resource sites in the Project Area vicinity; and an on-the-ground identification of potential cultural resources within the Project Area. Respondent shall coordinate the cultural resource survey with the Agencies.
4. A Bird Nest Survey, Mitigation, and Monitoring Plan for the areal extent of the Project Area, if needed, based on the following:

   To avoid impacts to migratory birds and their nesting, ground clearing of vegetation should be completed before or after the nesting period for the site (approximately May 15th through August 15th). The EPA may grant exceptions to this if erosion, sedimentation, weed infestation, important timing conflicts, or other unacceptable impacts would occur. If an exception is granted a, Bird Nest Survey, Mitigation, and Monitoring Plan would be required and additional mitigation measures would apply in the event active nests are present.

5. The technical parameters upon which the design will be based. Specifically, the design assumptions and parameters, including (1) waste characterization for hazardous waste that leaves the Site; (2) performance standards for diversion structures; (3) compliance with ARARs, pertinent codes, and standards; (4) technical factors of importance to the design and construction, including use of currently accepted environmental control measures, constructability of the design, and use of currently acceptable construction practices and techniques.

In addition, the Draft EADR will include:

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a. Preliminary Construction Schedule appropriate to the size and complexity of the project.
b. Plans, Drawings, and Specifications. A complete set of construction drawings, including Project Area representations, engineering drawings for grading, structural, and cover construction, including a detailed topographic map of the Project Area and specifications (general specifications, drawings, and schematics), shall be submitted. Plans and specifications shall conform to acceptable standards. All specifications shall conform to CSI format. Plans and specifications shall include specifications for construction, installation, Project Area preparation, and field work standards. General correlation between drawings and technical specifications is a basic requirement of any set of working construction plans and specifications. The design plans and specifications must be consistent with the technical requirements of all ARARs identified for this project. Before submitting the project specifications, Respondent shall coordinate and cross-check the specifications and drawings and complete the proofing of the specifications and the cross-checking of all drawings and specifications. The submittals shall include a complete set of construction drawings and specifications, as well as a set of one-half size reduction of drawings.
c. Basis of Design Section including a detailed description of the evaluations conducted to propose the design approach. This section shall include a Summary and Detailed Justification of Assumptions. This summary shall include (1) calculations supporting the assumptions; (2) a detailed evaluation of how all ARARs identified for this project will be met; (3) a plan for minimizing environmental and public impacts; and (4) a plan for satisfying permitting requirements.
d. Health and Safety Plan ("HASP"). Prepare a Site-specific HASP that specifies employee training, protective equipment, medical surveillance requirements, standard operating procedures, and a contingency plan in accordance with 40 CFR 300.150 of the NCP and 29 CFR 1910.120 (l)(1) and (l)(2).
e. Quality Assurance Project Plan ("QAPP"). The QAPP will specify all sampling and chemical analyses to be and shall meet the requirements of EPA's National Functional Guidelines for Inorganic Data Review, (EPA 540-R-10-011, OSWER 9240.1-51, January 2010) and shall be consistent with the requirements of EPA's Contract Laboratory Program ("CLP") for laboratories proposed outside of the CLP. The QAPP shall contain third party data validation procedures to ensure data is of known quality.
f. Sampling and Analyses Plan ("SAP"). Prepare a SAP that defines the sampling and data collection methods that shall be used for the project. The SAP shall include sampling objectives; sample locations and frequency; sampling equipment and procedures; disposal of investigatory derived waste; sample shipment; sample handling and analyses; and a breakdown of samples to be analyzed through a CLP-equivalent laboratory, as well as the justification for those decisions. The SAP shall consider the use of all existing data and shall justify the need for additional data whenever existing data will meet the same objective. The SAP shall be written so that a field sampling team unfamiliar with the Site would be able to gather the samples and field information required.

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g. Storm Water Pollution Prevention Plan ("SWPPP"). The EAWP will include a description of the applicable BMPs that will be implemented to maintain surface water quality during the EA construction.

h. Construction Quality Assurance Plan. The Respondent shall submit as part of the EAWP a Construction Quality Assurance ("CQA") Plan. The CQA Plan shall include, but not be limited to, the inspection of the installation of any pipe, turf reinforcement mat, silt fence and other erosion-control devices, seed and mulch, precast concrete structures, grout, geotextiles, and other miscellaneous materials, required geotechnical testing of earthwork and various materials, and construction reporting and communications. The CQA Plan shall include but not be limited to construction inspection, verification sampling and testing of earthwork and various materials, review of material submittals, and reporting and communications pertaining to the CQA process. At a minimum, the CQA Plan shall provide requirements for the following elements:

   i. Responsibility and authority of Respondent and all contractors involved in the EA construction.

   ii. CQA Personnel Qualifications. The Respondent shall establish the minimum qualifications of the CQA Officer and supporting inspection personnel.

   iii. Inspection Activities. The Respondent shall establish the observations and tests that will be required to monitor the construction and/or installation of the components of the EA. The plan shall include the scope and frequency of each type of inspection to be conducted. Inspections shall be required to verify compliance with environmental requirements. Inspections shall also ensure compliance with all health and safety procedures.

   iv. Sampling requirements. The Respondent shall establish proposed requirements for sampling activities, sample size, sample locations, frequency of testing, criteria for acceptance and rejection, and plans for correcting problems as addressed in the project specifications.

   v. Documentation. The Respondent shall describe the reporting requirements for CQA activities. This shall include such items as daily summary reports and inspection data sheets.

i. Preliminary Cost Estimate of the costs of all the elements of the Early Action.

The EAWP shall include a detailed description of the technical approach for the construction activities. The necessary procedures, inspections, deliverables, and schedules shall be specified. A comprehensive construction management schedule for completion of each major activity and deliverable shall also be included. It is intended to serve as a field reference for both the Respondent and Agencies' personnel as the EA is implemented. The EAWP will include:

1. The Respondent's technical approach to each task to be performed, including a detailed description of each task; the assumptions used; the information needed for each task; any information to be produced during and at the conclusion of each task, and a description of the work products that will be submitted to the Agencies.

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2. Construction schedule.
3. An organizational structure which outlines the responsibilities and authority of all organizations and key personnel involved in the EA. A description of Respondent's key project personnel's qualifications (Project Coordinator, Resident Engineer, quality assurance official, etc.) shall also be provided. The organizational structure shall include the Respondent, the Agencies and their respective contractors.
4. Statement of qualifications for Respondent's subcontractors. The Respondent will provide written acknowledgement that any subcontractors working on the RA have received and read a copy of the Settlement Agreement and this SOW at least 15 days prior to onset of work.
5. Best Management Practices ("BMPs") shall be implemented during construction to minimize erosion, sedimentation, and dust generation. The BMPs shall include, but not be limited to silt fences, straw bales, fuel storage/handling and/or waste staging/storage areas, temporary sedimentation ponds, and watering to control dust generation, as needed.
6. Process for requesting and obtaining approval for any modifications to the final design prior to initiation of such modifications.
7. Process for documenting approved modifications to the final design.
8. Waste Management Procedures that outline the process, procedures, and safeguards that will be used to ensure hazardous substances, pollutants, or contaminants are not released on- or off-Site during the implementation of the EA. Any plans and procedures prepared during the design should be referenced or adapted whenever possible (i.e. sediment and erosion control plan).
9. Procedure for addressing any unexpected archaeological and/or paleontological discoveries encountered during construction.
10. Inspection Activities. The Respondent shall establish the observations and tests that will be required to monitor the construction and/or installation of the components of the EA. The plan shall include the scope and frequency of each type of inspection to be conducted. Inspections shall be required to verify compliance with environmental requirements and include, but not be limited to, air quality and emissions monitoring records, and waste disposal records. Inspections shall also ensure compliance with all health and safety procedures and BMPs.
11. Identification of post-construction Operations, Maintenance and Monitoring requirements.
12. Schedule and content of weekly progress reports.

<u>Final Early Action Design Report/Early Action Work Plan</u>

Respondent shall submit a proposed Final EADR/EAWP within 45 days after receipt of the Agencies' comments on the draft report. If the Agencies require revisions to the proposed Final EADR/EAWP, Respondent shall resubmit a proposed Final EADR/EAWP within 30 days after receipt of the Agencies' comments. EPA will notify Respondent of the approval of the EADR/EAWP and authorization to implement the EA.

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c. Early Action Implementation

Respondent shall implement the EA in accordance with the specifications, plans, and schedule set forth in the approved EADR/EAWP. The Respondent shall notify the Agencies no less than 5 Working Days prior to initiating construction activities. Other notifications may be requested by the EPA project manager (i.e. stop work, etc.).

d. Project Completion and Close Out

The purpose of the project completion and close-out activities is for the Respondent to conduct the necessary inspections to verify completed work and prepare a Final Early Action Report. In addition, the post-construction monitoring and effectiveness evaluation requirements are established. Project completion and close-out will consist of the following activities:

1. Removal of Temporary facilities. The Respondent shall dismantle, pack up, and move off-Site any temporary facilities (i.e. trailers) or equipment installed and used during the course of the EA.
2. Site Restoration. The Respondent shall restore the physical appearance of the Site according to the approved design (i.e. road restoration, fence removal, reseeding with approved seed mix, etc.).
3. Make Pre-Final/Final Construction Inspection. The Respondent shall conduct a Pre-final Construction Inspection with the Respondent's Project Coordinator, Design Engineer, the contractor, Third Party Oversight Engineer, EPA, and Support Agency representatives. The Pre-Final Construction Inspection shall occur 30 days prior to Respondent's projected date for construction completion. This Pre-Final Construction Inspection will be used to develop a punch list of outstanding construction items and deficiencies. The Respondent shall prepare and submit a Pre-Final Construction Inspection Technical Memorandum ("TM") which includes the list of outstanding construction items, deficiencies, completion dates for outstanding items and deficiencies, and the date for the Final Inspection to determine if punch list and all terms of the design have been satisfied. The Pre-Final Construction Inspection TM shall be submitted within 30 days after the Pre-Final Construction Inspection. The Final Construction Inspection shall occur within 30 days after completion of outstanding items identified by the Pre-Final Construction Inspection. The Construction Inspection Report shall be submitted within 90 days after completion of the Final Construction Inspection.
4. The Draft Early Action Report shall be submitted within ninety (90) days after the submittal of the Construction Inspection Report. The Draft Final Early Action Report shall be submitted within 30 days after receipt of the Agencies' comments. The Final Early Action Report shall be submitted within 30 days after receipt of the Agencies comments on the Draft Early Action Report.
5. An addendum to the RI work plan will be submitted to describe the effectiveness monitoring required for each EA, which will be operated and maintained for the duration of the RI/FS. The performance will be assessed in the FS to support identification of a Site remedy.

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REFERENCES FOR CITATION

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process.

The (revised) National Oil and Hazardous Substance Pollution Contingency Plan (NCP).

"Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA", U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01.

"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3.

"Interim Guidance on Potentially Responsible Party Participation in Remedial Investigation and Feasibility Studies", U.S. EPA, Office of Waste Programs Enforcement, Appendix A to OSWER Directive No. 9355.3-01.

"A Compendium of Superfund Field Operations Methods", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14.

U.S. EPA, NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA -330/9-78-991-R.

"Data Quality Objectives for Remedial Response Activities", U.S. EPA, Office of Emergency and Remedial Response and Office of Waste Programs Enforcement, EPA/540/G-87/003, March 1987, OSWER Directive No. 9335.0-7B.

"Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Research and Development, Cincinnati, Ohio, QAMS-004/80, December 29, 1980.

"QA/R-5 *EPA Requirements for Quality Assurance Project Plans* (latest draft or revision) and EPA QA/G-5 *EPA Guidance for Quality Assurance Project Plans* (latest draft or revision), EPA QA/G-4HW Data Quality Objectives Process for Hazardous Waste Site Studies, and EPA QA/G-4 Guidance for the Data Quality Objective Process"

"Interim Guidelines and Specifications for the Lead Agency(ies) Quality Assurance Project Plans", U.S. EPA, Office of Emergency and Remedial Response, QAMS-005/80, December 1980.

"Users Guide to the Lead Agency(ies) Contract Laboratory Program, U.S. EPA, Sample Management Office, August 1982.

"Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements", U.S. EPA, Office of Emergency and Remedial Response, July 9, 1987, OSWER Directive No. 9234.0-05.

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"CERCLA Compliance with Other Laws Manual", Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02.

"Guidance on Remedial Actions for Contaminated Groundwater at Superfund Sites", U.S. EPA, Office of Emergency and Remedial Response, (draft), OSWER Directive No. 9283.1-2.

"Draft Guidance on the Lead Agency(ies) Superfund Decision Documents", U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02.

"Risk Assessment Guidance for Superfund--Volume I, Human Health Evaluation Manual (Part A)", December 1989, EPA/540/1-89/002.

"Risk Assessment Guidance for Superfund--Volume II Environmental Evaluation Manual", March 1989, EPA /540/1-89/001.

"Guidance for Data Usability in Risk Assessment", October 1990, EPA /540/G-90/008. "Performance of Risk Assessments in Remedial Investigation/ Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs)", August 28, 1990, OSWER Directive No. 9835.15.

"Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions", April 22, 1991, OSWER Directive No. 9355.0-30.

"Health and Safety Requirements of Employees Employed in Field Activities", U.S.EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2.

OSHA Regulations in 29 CFR 1910.120 (Federal Register 45654, December 19, 1986).

"Interim guidance on Administrative Records for Selection of CERCLA Response Actions", U.S. EPA, Office of Waste Programs Enforcement, March 1, 1989, OSWER Directive No. 9833.3A.

"Community Relations in Superfund: A Handbook", U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9320.0-03B.

"Community Relations During Enforcement Activities and Development of the Administrative Record", U.S. EPA, Office of Waste Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1A.

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Attachments

Attachment A – Suggested RI/FS Work Plan Format

Executive Summary

1. Introduction
2. Site Background and Setting
3. Initial Evaluation
   - Types and volumes of waste present
   - Potential pathways of contaminant migration/preliminary public health and environmental impacts
   - Preliminary identification of operable units
   - Preliminary identification of response objectives and remedial action alternatives
4. Work Plan Rationale
   - DQO needs
   - Work Plan approach
5. RI/FS Tasks
6. Cost and Key Assumptions
7. Schedule
8. Project Management
   - Staffing
   - Coordination
9. References

Appendices

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Attachment B – Suggested Format for SAP (FSP and QAPP)

FSP

1. Site Background
2. Sampling Objectives
3. Sample Location and Frequency
4. Sample Designation
5. Sampling Equipment and Procedures
6. Sample Handling and Analysis

QAPP

Project Management

A1 Title and Approval Sheet
A2 Table of Contents
A2 Distribution List
A4 Project/Task Organization
A5 Problem Definition/Background
A6 Project/Task Description
A7 Quality Objectives and Criteria
A8 Special Training/Certifications
A9 Documentation and Records

Data Generation and Acquisition

B1 Sampling Process Design (Experimental Design)
B2 Sampling Methods
B3 Sample Handling and Custody
B4 Analytical Methods
B5 Quality Control
B6 Instrument/Equipment Testing, Inspection, and Maintenance
B7 Instrument/Equipment Calibration and Frequency
B8 Inspection/Acceptance of Supplies and Consumables
B9 Non-direct Measurements
B10 Data Management

Assessment and Oversight

C1 Assessments and Response Actions
C2 Reports to Management

Data Validation and Usability

D1 Data Review, Verification, and Validation
D2 Verification and Validation Methods
D3 Reconciliation with User Requirements

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Attachment C – Suggested RI Report Format

Executive Summary

1. Introduction
   - 1.1 Purpose of Report
   - 1.2 Site Background
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Previous Investigations
   - 1.3 Report Organization
2. Study Area Investigation
   - 2.1 Includes field activities associated with site characterization. These may include physical and chemical monitoring of some, but not necessarily all, of the following:
     - 2.1.1 Surface Features (topographic mapping, etc.) (natural and manmade features)
     - 2.1.2 Contaminant Source Investigations
     - 2.1.3 Meteorological Investigations
     - 2.1.4 Surface-Water and Sediment Investigations
     - 2.1.5 Geological Investigations
     - 2.1.6 Soil and Vadose Zone Investigations
     - 2.1.7 Ground-Water Investigations
     - 2.1.8 Human Population Surveys
     - 2.1.9 Ecological Investigations
   - 2.2 If technical memoranda documenting field activities were prepared, they may be included in an appendix and summarized in this report chapter
3. Physical Characteristics of the Study Area
   - 3.1 Includes results of field activities to determine physical characteristics. These may include some, but not necessarily all, of the following:
     - 3.1.1 Surface Features
     - 3.1.2 Meteorology
     - 3.1.3 Surface-Water Hydrology
     - 3.1.4 Geology
     - 3.1.5 Soils
     - 3.1.6 Hydrogeology
     - 3.1.7 Demography and Land Use
     - 3.1.8 Ecology
4. Nature and Extent of Contamination
   - 4.1 Presents the results of Site characterization, both natural and chemical components and contaminants in some, but not necessarily all, of the following media:
     - 4.1.1 Sources (lagoons, sludges, tanks, etc.)
     - 4.1.2 Soils and Vadose Zone

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4.1.3 Ground Water

4.1.4 Surface Water and Sediments

4.1.5 Air

5. Contaminant Fate and Transport

5.1 Potential Routes of Migration (i.e., air, groundwater, etc.)

5.2 Contaminant Persistence

5.2.1 If they are applicable (i.e., for organic contaminants), describe estimated persistence in the study area environment and physical, chemical, and/or biological factors of importance for the media of interest

5.3 Contaminant Migration

5.3.1 Discuss factors affecting contaminant migration for the media of important (e.g., sorption onto soils, solubility in water, movement of ground water, etc.)

5.3.2 Discuss modeling methods and results, if applicable

6. Baseline Risk Assessment

6.1 Human Health Evaluation

6.1.1 Exposure Assessment

6.1.2 Toxicity Assessment

6.1.3 Risk Characterization

6.2 Environmental Evaluation

7. Summary and Conclusions

7.1 Summary

7.1.1 Nature and Extent of Contamination

7.1.2 Fate and Transport

7.1.3 Risk Assessment

7.2 Conclusions

7.2.1 Data Limitations and Recommendations for Future Work

7.2.2 Recommended Remedial Action Objectives

Appendices

A. Technical Memorandum on Field Activities (if available)

B. Analytical Data and QA/QC Evaluation Results

C. Risk Assessment Methods

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Attachment D – Suggested Format for Feasibility Study Report

Executive Summary

1. Introduction
   - 1.1 Purpose and Organization Report
   - 1.2 Background Information (Summarized from RI Report)
     - 1.2.1 Site Description
     - 1.2.2 Site History
     - 1.2.3 Nature and Extent of Contamination
     - 1.2.4 Contaminant Fate and Transport
     - 1.2.5 Baseline Risk Assessment
2. Identification and Screening of Technologies
   - 2.1 Introduction
   - 2.2 Remedial Action Objectives – Presents the development of remedial action objectives for each medium of interest (i.e., ground water, soil, surface water, air, etc.) For each medium, the following should be discussed:
     - Contaminants of interest
     - Allowable exposure based on risk assessment (including ARARs) Development of remediation goals
   - 2.3 General Response Actions – For each medium of interest, describes the estimation of areas or volumes to which treatment, containment, or exposure technologies may be applied.
   - 2.4 Identification and Screening of Technology Types and Process Options – For each medium of interest, describe:
     - 2.4.1 Identification and Screening of Technologies
     - 2.4.2 Evaluation of Technologies and Selection of Representative Technologies
3. Development and Screening of Alternatives
   - 3.1 Development of Alternatives – Describes rationale for combination of technologies/media into alternatives. Note: This discussion may be by medium or for the Site as a whole.
   - 3.2 Screening of Alternatives (if conducted)
     - 3.2.1 Introduction
     - 3.2.2 Alternative 1
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.2 Alternative 2
       - 3.2.2.1 Description
       - 3.2.2.2 Evaluation
     - 3.2.3 Alternative 3
       - 3.2.3.1 Description
       - 3.2.3.2 Evaluation

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4. Detailed Analysis of Alternatives
    - 4.1 Introduction
    - 4.2 Individual Analysis of Alternatives
        - 4.2.1 Alternative 1
            - 4.2.1.1 Description
            - 4.2.1.2 Evaluation
        - 4.2.2 Alternative 2
            - 4.2.2.1 Description
            - 4.2.2.2 Evaluation
        - 4.2.3 Alternative 3
            - 4.2.3.1 Description
            - 4.2.3.2 Evaluation
    - 4.3 Comparative Analysis

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Attachment E – Stibnite Mine Remedial Investigation and Feasibility Study (RI/FS) Statement of Work (SOW) Schedule

Early Actions (separate documents will be submitted for each of the three Early Actions)

- Draft Early Action Design Report/Early Action Work Plan due within 30 days after the Effective Date of the Settlement Agreement/CO.
- Proposed Final Early Action Design Report/Early Action Work Plan due within 45 days after receipt of consolidated Agency comments on the draft.
- Final Early Action Design Report/Early Action Work Plan due within 30 days after receipt of consolidated Agency comments on the proposed final.
- EA construction: notify the Agencies 5 working days before start of construction
- Pre-Final Construction Inspection: 30 days prior to projected Project Completion.
- Pre-Final Construction Inspection TM due within 30 days after the Pre-Final Construction Inspection
- Final Construction Inspection due within 30 days after completion of outstanding items identified by the pre-final construction inspection.
- Construction Inspection Report due within 90 days after the Final Construction Inspection
- Draft Early Action Report due within 90 days of Agency comments on the Construction Inspection Report
- Draft Final Early Action Report due within 30 days of Agency comments on the Draft Early Action Report
- Final Early Action Report due within 30 days of Agency comments on the Draft Final Early Action Report
- Performance Monitoring – to be submitted as an RI Work Plan Addendum due concurrently with the Final Early Action Design Report/Early Action Work Plan

RI/FS Work Plan/Sampling and Analysis Plan (WP/SAP):

- Draft due within 120 days after the Effective Date of the Settlement Agreement/CO.
- Final Work Plan due within 90 days of receipt of consolidated Agency comments.

Data Summary Reports (DSRs):

- Draft DSRs due within 120 days completion of each season's field work or within 90 days of the receipt of final laboratory data, whichever is earlier. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the completion date. Within 5 days of the receipt of final laboratory data for the preceding field season, Respondent shall provide written notification to EPA identifying the receipt date of final laboratory data.
- Final DSRs due within 30 days of receipt of consolidated Agency comments.

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Remedial Investigation Report (RI):

- Submit draft RI within 120 days after receipt of laboratory data from the final field season. Within 5 days of receipt of final laboratory data, Respondent shall provide written notification to EPA identifying receipt date of final laboratory data.
- Final RI due within 60 days of receipt of consolidated Agency comments.

Baseline Risk Assessment Report (BLRA):

- Submit draft BLRA within 60 days after submittal of Final RI.
- Final BLRA due within 60 days of receipt of consolidated Agency comments.

Feasibility Study (FS):

- Submit draft FS within 120 days after submittal of BLRA Report.
- Final FS due within 90 days of receipt of consolidated Agency comments.

Data Validation Summaries (DVSs):

- DVSs due within 120 days from the date of collection of the last sample from each sampling event. Within 5 days of the completion of each season's field work, Respondent shall provide written notification to EPA identifying the date of collection of the last sample from each sampling event.

Interim Deliverables

- Draft Interim Deliverables (i.e., Technical Memoranda for Treatability Studies Preliminary Remedial Goals, Remedial Action Objectives, etc.) as identified in the SOW, or as required by EPA, shall be due within 30 days receipt of notice by Respondent that said Deliverable is required.
- Final Interim Deliverables due within 60 days of receipt of consolidated Agency comments.

Quarterly Progress Reports

- Quarterly Progress Reports shall be due 15 days after the end of the previous calendar quarter.

[1]Documents may initially be released as "draft final" pending final resolution of issues.

DRAFT

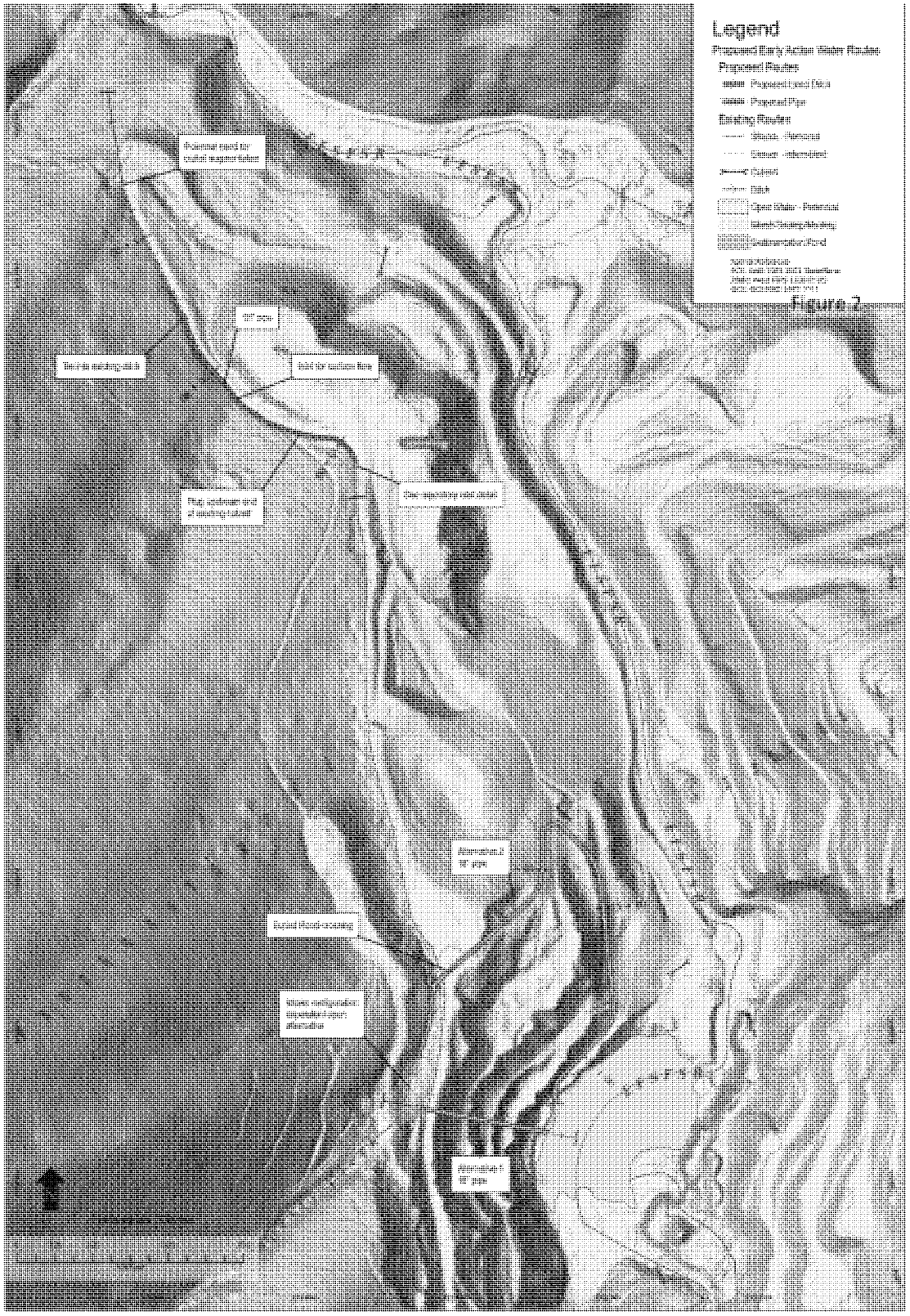

Figure 1 – Early Action Water Diversion Plan for Hennessy Creek

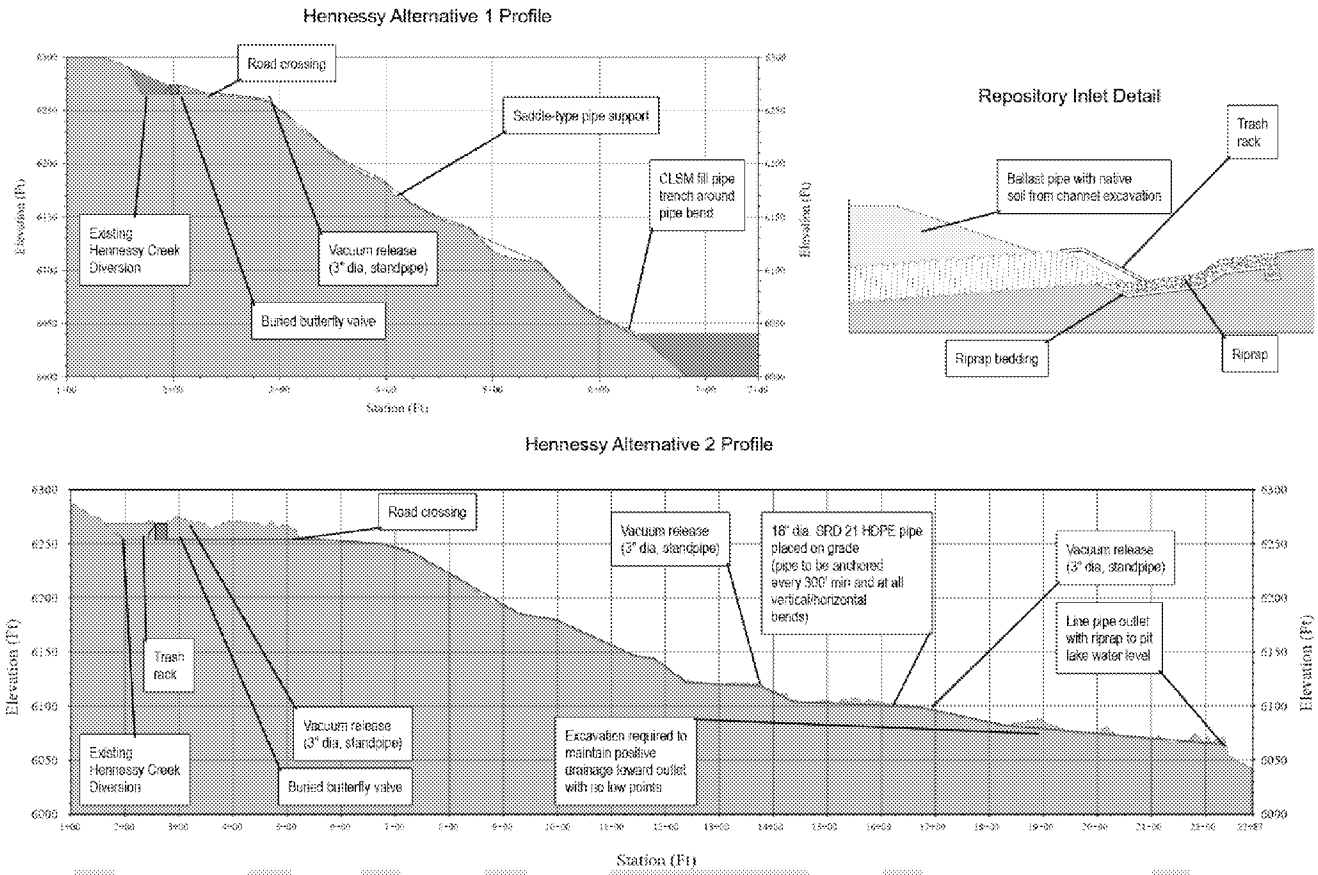

Figure 2 – Early Action Water Diversion Details for Hennessy Creek

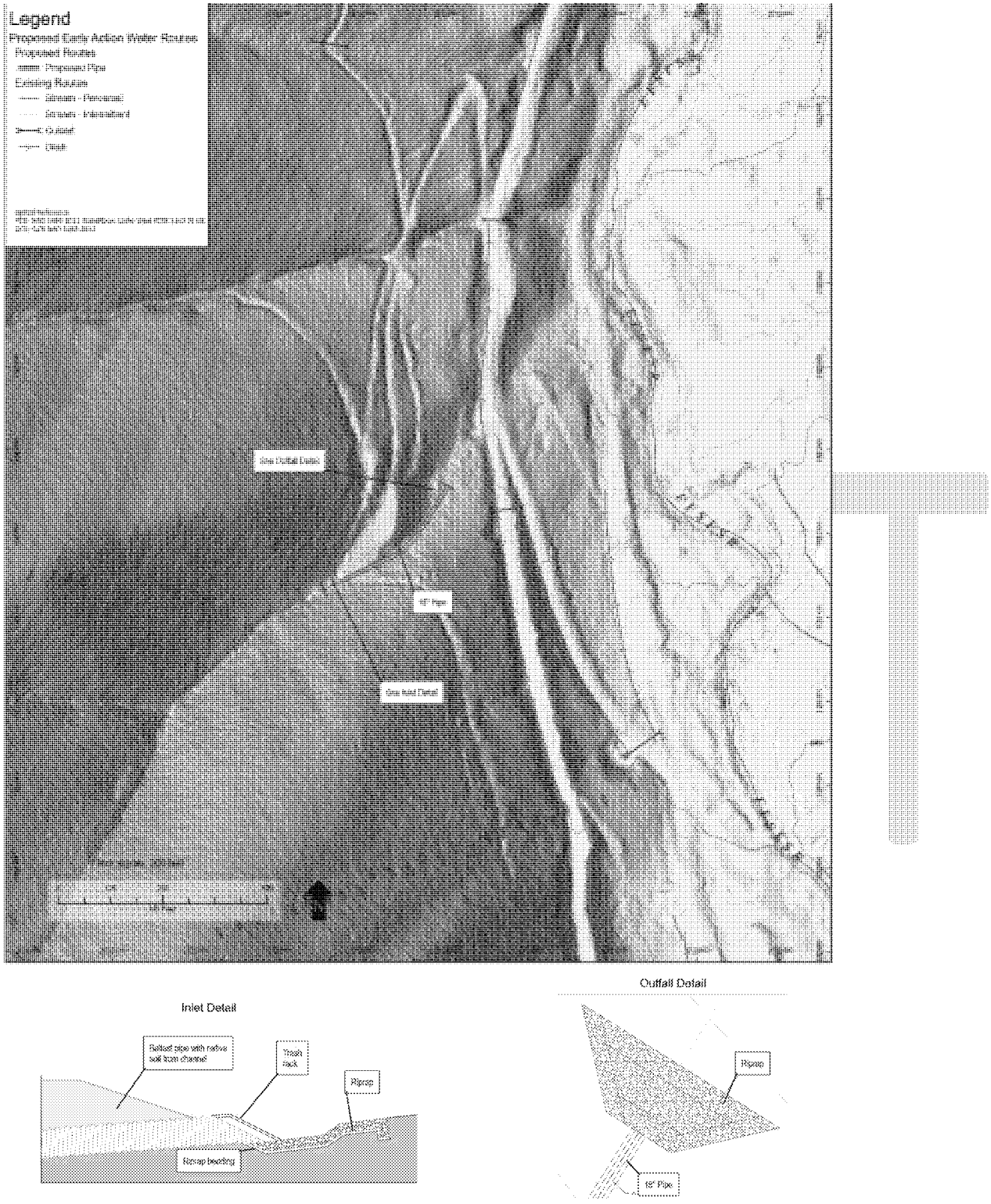

Figure 3 – Early Action Water Diversion Design for DMEA Waste Rock Dump Area

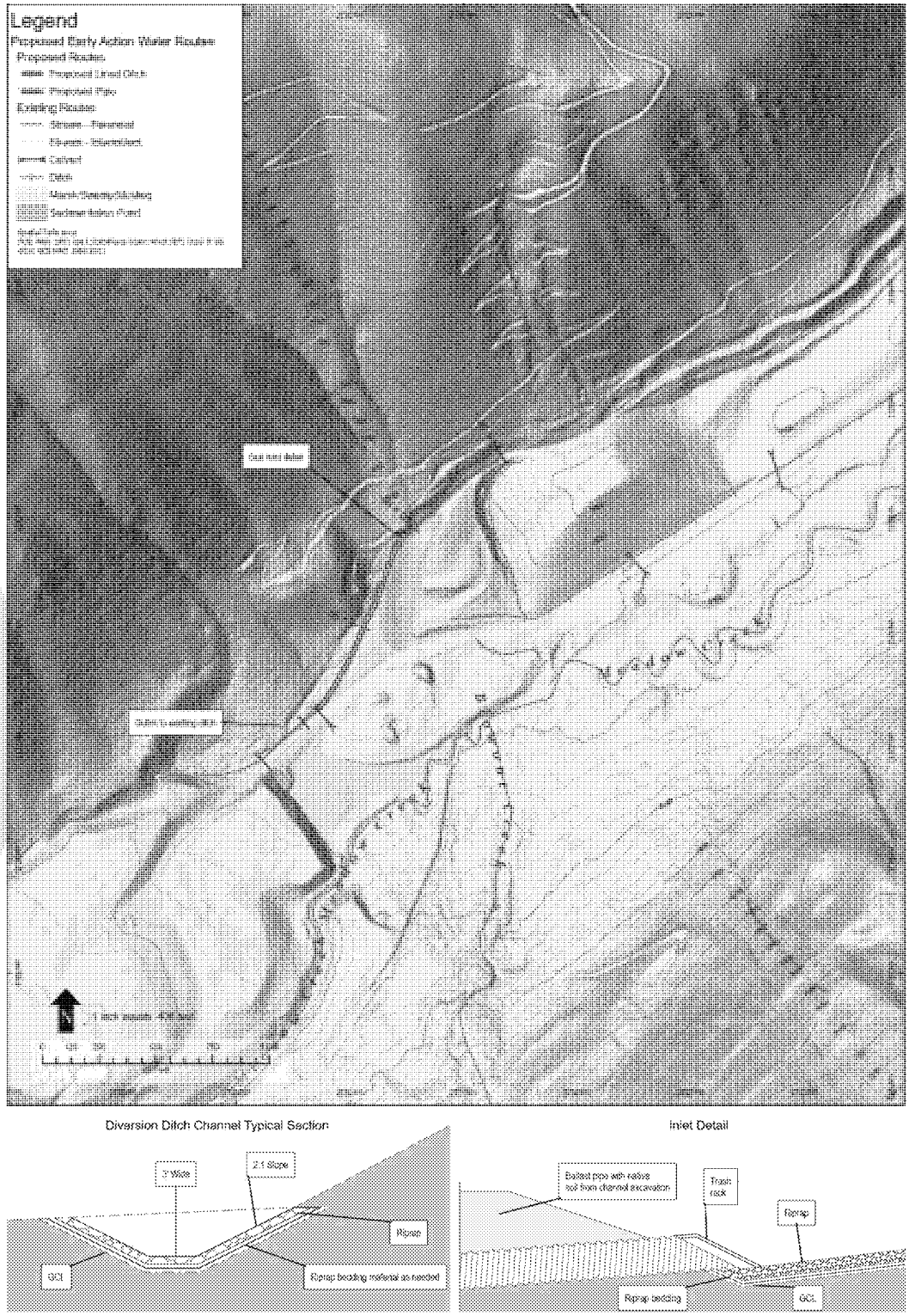

Figure 4 – Early Action Water Diversion Plan for Former Bradley Mill and Smelter Area

DRAFT

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/5/2020 8:20:49 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: RE: Stibnite Mine

OK – see you then. I'll bring along a copy of the SOW and the AOC. Can you do the same?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Thursday, March 5, 2020 12:17 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Stibnite Mine

Yes.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, March 05, 2020 11:49 AM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Mine

Still OK for 1 pm?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Tuesday, March 3, 2020 6:36 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Stibnite Mine

Thursday I am free between 1-2:30.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, March 03, 2020 4:21 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Mine

Not worth rushing. What's a better time tomorrow or Thursday? My Thursday is pretty wide open. Have to wrap up Wednesday by 3:30

Sent from my iPhone

> On Mar 3, 2020, at 3:59 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:
>
> I have a meeting that I have to be back for at 2:00 tomorrow, so we won't have a ton of time to talk.
>
> **Elizabeth McKenna** | Assistant Regional Counsel
> US Environmental Protection Agency, Region 10
> 1200 Sixth Avenue | Suite 155, M/S 11-C07
> Seattle, WA 98101
> (206) 553-0016
> <image001.png>
>
> **From:** Bradley M. Marten <bmarten@martenlaw.com>
> **Sent:** Tuesday, March 03, 2020 3:34 PM
> **To:** McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
> **Subject:** Re: Stibnite Mine
>
> That's a plan. Meet in your lobby and walk over to City Centre? They have or one, but two Starbucks.
>
> Sent from my iPhone
>
> > On Mar 3, 2020, at 3:32 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

I have a call from 12 – 1:00. I can meet at 1:15 tomorrow.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image002.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, March 03, 2020 3:31 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Mine

Just saw this. No worries. How about coffee at 11 am or 1 pm?

Sent from my iPhone

> On Mar 3, 2020, at 3:28 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:
>
> I'm sorry, Brad. My meeting that was supposed to end a couple of hours ago just ended and I'm being pulled into another matter. Can we talk tomorrow? Again, my apologies.
>
> **Elizabeth McKenna** | Assistant Regional Counsel
> US Environmental Protection Agency, Region 10
> 1200 Sixth Avenue | Suite 155, M/S 11-C07
> Seattle, WA 98101
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> <image001.png>

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 4/4/2020 3:07:30 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Mine Site

The "preliminary assessment" that "we are still very far apart from a technical standpoint" will come as a surprise to Midas based on the e-mail exchange below between the technical leads. No need to respond. I'll call you over the weekend to learn more.

---

rom: John Meyer <JMeyer@midasgoldcorp.com>
Date: Friday, April 3, 2020 at 3:29 PM
To: Helen Bottcher <Bottcher.Helen@epa.gov>, "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>, Charles Clabaugh <clabaugh.charles@epa.gov>, Tim Maley <Maley.Timothy@epa.gov>
Subject: Re: Stibnite - your availability if we have questions next week

Helen,
I'm glad our discussion this week was helpful.
I would be happy to answer any questions anyone has. I can make just about any time work next week, just let me know.
If you have any questions that you want a quicker response to, you can call me, or drop me an email anytime.
Have a good, safe weekend.
John

From: Helen Bottcher <Bottcher.Helen@epa.gov>
Date: Friday, April 3, 2020 at 3:14 PM
To: John Meyer <JMeyer@midasgoldcorp.com>, "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>, Charles Clabaugh <clabaugh.charles@epa.gov>, Tim Maley <Maley.Timothy@epa.gov>
Subject: Stibnite - your availability if we have questions next week

Hi, John.

Thanks again for your time on Wednesday. Your explanation of the table and your thinking was helpful. I'm not sure we would have understood your response fully without that discussion.

We're planning to walk the other government parties through your updated table during our weekly call on Monday (April 6). If they have questions we can't answer, or want additional explanation from Midas, would you be willing to discuss your proposal with the parties sometime next week? If yes, do you have any particular schedule conflicts I would need to work around?

Hope you are staying safe --

Helen Bottcher | U.S. Environmental Protection Agency, Region 10
1200 Sixth Ave, Suite 155 (12-D12-1) | Seattle, WA 98101 | 206.553.6069 | bottcher.helen@epa.gov

Bradley M. Marten
Partner

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martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Friday, April 3, 2020 at 5:34 PM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: Stibnite Mine Site

HI Brad,
I wanted to give you an update on EPA's review of Midas' counter proposal. The material Midas provided in response to our proposal was not easily interpretable. It requires significant explanation from Midas in order to make sense of the documents Midas provided. The discussion that Helen, Don, and Tim had with John this week was useful. We have our weekly government Stibnite call on Monday. Helen, Don, and Tim will be doing their best to explain to the parties what they understand of the settlement proposal during that meeting. I'm guessing our government partners and EPA will need to engage in discussions next week with Midas to fully understand Midas' offer.

EPA's preliminary assessment of the proposal is that we are still very far apart from a technical standpoint. I'm happy to discuss the overarching legal issues set forth in my March 24, 2020 email to you, but at this point, I think it is premature to exchange redlines of an AOC until we are confident that we are close to agreement on the technical issues. Of course, we will be happy to engage in those discussions and exchange draft AOC's when we believe we are on the same page on the scope and timing of the work to be performed.

Hope you are staying well.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/5/2020 7:48:43 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: RE: Stibnite Mine

Still OK for 1 pm?

Bradley M. Marten
Partner

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T - 206 . 292 . 2600
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martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Tuesday, March 3, 2020 6:36 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Stibnite Mine

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Elizabeth McKenna | Assistant Regional Counsel
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To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
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From: Bradley M. Marten <bmarten@martenlaw.com>
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Subject: Re: Stibnite Mine

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Sent from my iPhone

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>
> **From:** Bradley M. Marten <bmarten@martenlaw.com>
> **Sent:** Tuesday, March 03, 2020 3:31 PM
> **To:** McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/23/2020 8:21:23 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Mine Site

I'll call you at 3:30-3:45

Sent from my iPhone

On Mar 23, 2020, at 11:57 AM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

I forgot that I have a call at 2:30. Should not go longer than a half hour.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image002.png>

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/13/2020 10:18:51 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Comments on AOC/SOW -- Midas Gold

Thanks, Elizabeth.

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Friday, March 13, 2020 at 3:04 PM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: RE: Comments on AOC/SOW -- Midas Gold

Hi Brad. Our intent is to send Midas, on Tuesday, a broad outline of our new technical proposal for settlement along with the table we have developed listing areas of existing contamination that we are proposing be included in the settlement agreement. We will not be providing specific comments on the SOW at this time because our new proposal would impact the SOW, but we have included in our table the early actions that Midas has proposed. I will also have general comments on the AOC ready for you to review on Tuesday.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Friday, March 13, 2020 1:59 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Comments on AOC/SOW -- Midas Gold

Elizabeth:

Is the plan still to send comments on the AOC and SOW from the Participants to Midas on Monday?

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Appointment

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 2/26/2020 7:24:18 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]

Subject: Accepted: Stibnite Mine Site

Start: 2/26/2020 11:00:00 PM
End: 2/26/2020 11:30:00 PM
Show Time As: Busy

Recurrence: (none)

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 2/26/2020 7:26:13 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Midas/Stibnite

3 pm is good. I have an hour or more if we need it.

Bradley M. Marten
Partner

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martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Appointment

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/4/2020 8:34:09 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Bradley M. Marten [bmarten@martenlaw.com]

Subject: Midas
Location: EPA Lobby -- Park Place

Start: 3/5/2020 9:00:00 PM
End: 3/5/2020 10:30:00 PM
Show Time As: Tentative

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/25/2020 1:37:37 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Mine Site

Thank you. Will be in touch tomorrow

Sent from my iPhone

On Mar 24, 2020, at 5:27 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Hi Brad. I'm following up on the conversation we had yesterday regarding legal issues that EPA and its government partners have identified in the draft agreement you provided us on behalf of Midas. The broad issues are discussed below. I will also be providing you an edited version of the settlement agreement that will address more specific concerns. We have not yet received comments from the Nez Perce Tribe. Once we receive those comments, we will have a discussion regarding any new issues that are raised.

- Definition of "Site" – The parties will need to define "Site" after we agree on the scope of work.
- Past Costs – The EPA and the USFS are willing to engage in discussions regarding past costs and the scope of a covenant for past costs. There may be flexibility in the amount of past costs we seek through the agreement, depending on Midas' willingness to perform the work proposed by the EPA, USFS, IDEQ and the Shoshone-Bannock Tribes. We will strike paragraph 91 with the intent that our discussion on past costs will result in appropriate language.
- Paragraph 31 - "It is the Parties' intent that, to the degree possible, this Settlement be interpreted and implemented in accordance with Respondents' proposed plan of operations as reflected in the PRO and as may be amended or adjusted from time to time." This statement is not necessary since the agreement will not include an RI/FS and the work proposed is not expected to interfere with mining. In addition, we cannot agree to interpret and implement the agreement in accordance with a final mine plan that does not exist at this point.
- Existing contamination covenant – EPA cannot provide an existing contamination covenant to Midas. Existing contamination covenants are available only to certain parties qualify as contiguous property owners, bona fide prospective purchasers, and innocent landowners. The government parties propose deleting paragraph 126 regarding existing contamination.
- BFPP – Our revised AOC will delete references to the term "bona fide prospective purchaser."
- Statements about the effect of the settlement on the CWA lawsuit – The government parties will not include statements in the agreement regarding the effect of this settlement on the ongoing litigation.
- Permits – The government parties will be adding clarifying language with respect to the CERCLA section 121(e) permit exemption. For example, it must be clear that the permit exemption applies only to the work performed under the settlement agreement and not to mining activities.
- Financial Assurance – The government parties are working on developing FA estimates to propose to Midas.
- Successors and Assigns – The government parties will be proposing additional specific language to ensure that the obligations in the agreement will obligate successors and assigns.
- Compliance Assistance – The government parties would like to understand what the language in Paragraph 82 means. Is Midas intending to initiate the IDPES permitting process?

These items, along with the technical proposal the government parties developed, should keep us busy in our negotiation until the we are able to provide you with a redlined agreement and until we hear from the Nez Perce. This should not be construed as a final and complete list of the issues we will need to resolve. The government parties are ready to discuss these issues with Midas.

- Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
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Seattle, WA 98101
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<image002.png>

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Appointment

From: Bottcher, Helen [Bottcher.Helen@epa.gov]
Sent: 4/7/2020 10:47:20 PM
To: Albert Crawshaw [Albert.Crawshaw@deq.idaho.gov]; ally_turner@fws.gov; Clabaugh, Charles D. [clabaugh.charles@epa.gov]; Derek Young (derek.young@deq.idaho.gov) [derek.young@deq.idaho.gov]; McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jeremy Moore (jeremy_n_moore@fws.gov) [jeremy_n_moore@fws.gov]; Jill Grant [jgrant@jillgrantlaw.com]; Zamba, Kathy -FS [kathy.zamba@usda.gov]; kwright@sbtribes.com; Lisa O'Hara (lisa.ohara@deq.idaho.gov) [lisa.ohara@deq.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Nathalie Doherty (Nathalie.Doherty@sol.doi.gov) [Nathalie.Doherty@sol.doi.gov]; Susan Hanson [susanthanson9@icloud.com]; Leeds, Todd - FS [todd.leeds@usda.gov]; John Meyer (meyer@midasgoldinc.com) [meyer@midasgoldinc.com]; Austin Zinsser (zinsser@midasgoldinc.com) [zinsser@midasgoldinc.com]

Subject: Stibnite: Midas response to Gov't Parties Table
Location: Zoom meeting

Start: 4/9/2020 11:00:00 PM
End: 4/10/2020
Show Time As: Tentative

Hi, everyone. Sorry for scheduling so late in the day, but this time worked best for most of the team. Guess we're all busy with Skype and Zoom calls these days. John Meyer will explain Midas' additions to the table of early actions that we sent. Austin Zinsser will be on the call to explain Midas' loading estimates, and they'll both be happy to take our questions. If you have a specific question or there's something you hope is covered, please let John and Austin know.

EPA staff – please sign off the agency's VPN before joining the Zoom meeting.

Here are the Zoom meeting instructions:

As discussed, a Zoom video conference has been setup for this Thursday afternoon. To connect to the call, please use the following information:

Join Zoom Meeting
https://zoom.us/ Ex. 6 Personal Privacy (PP)

Meeting ID: Ex. 6 Personal Privacy (PP)

One tap mobile
Ex. 6 Personal Privacy (PP) S (Houston)
S (San Jose)

Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/4/2020 2:46:27 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Mine

Works for me. See you in your lobby in Park Place?

Sent from my iPhone

On Mar 3, 2020, at 6:35 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Thursday I am free between 1-2:30.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image002.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, March 03, 2020 4:21 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Mine

Not worth rushing. What's a better time tomorrow or Thursday? My Thursday is pretty wide open. Have to wrap up Wednesday by 3:30

Sent from my iPhone

On Mar 3, 2020, at 3:59 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

I have a meeting that I have to be back for at 2:00 tomorrow, so we won't have a ton of time to talk.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image001.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, March 03, 2020 3:34 PM

To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Mine

That's a plan. Meet in your lobby and walk over to City Centre? They have or one, but two Starbucks.

Sent from my iPhone

On Mar 3, 2020, at 3:32 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

I have a call from 12 – 1:00. I can meet at 1:15 tomorrow.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image002.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, March 03, 2020 3:31 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Mine

Just saw this. No worries. How about coffee at 11 am or 1 pm?

Sent from my iPhone

On Mar 3, 2020, at 3:28 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

I'm sorry, Brad. My meeting that was supposed to end a couple of hours ago just ended and I'm being pulled into another matter. Can we talk tomorrow? Again, my apologies.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 1/29/2020 2:23:38 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: RE: Stibnite

Sounds good. Thx

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Tuesday, January 28, 2020 6:21 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: Stibnite

Hi Brad. I will give you a call tomorrow. Sorry I could not call you earlier today. My schedule has been packed today. Talk to you tomorrow.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/11/2020 11:51:41 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Mine Site

Will be at my desk in 3

Sent from my iPhone

On Mar 11, 2020, at 4:30 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Just got off my phone calls. Can you talk now?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image003.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Wednesday, March 11, 2020 2:10 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Mine Site

Anytime after 2:30 pm. What works?

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

<image002.png>

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Wednesday, March 11, 2020 12:58 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: Stibnite Mine Site

Hi Brad. Do you have time this afternoon to talk? I'd like to give you an update. Thanks.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10

1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image005.png>

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 2/6/2020 2:10:35 AM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: RE: Stibnite

OK, thanks

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Wednesday, February 5, 2020 5:58 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: Stibnite

Saw you called. On the phone with Helen. Then have to dash out. Let's talk tomorrow.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/11/2020 11:49:55 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Mine Site

Yes

Sent from my iPhone

On Mar 11, 2020, at 4:30 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Just got off my phone calls. Can you talk now?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image003.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Wednesday, March 11, 2020 2:10 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: RE: Stibnite Mine Site

Anytime after 2:30 pm. What works?

Bradley M. Marten
Partner

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T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

<image002.png>

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Wednesday, March 11, 2020 12:58 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: Stibnite Mine Site

Hi Brad. Do you have time this afternoon to talk? I'd like to give you an update. Thanks.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10

1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/3/2020 11:34:08 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Mine

That's a plan. Meet in your lobby and walk over to City Centre? They have or one, but two Starbucks.

Sent from my iPhone

On Mar 3, 2020, at 3:32 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

I have a call from 12 – 1:00. I can meet at 1:15 tomorrow.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image002.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, March 03, 2020 3:31 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite Mine

Just saw this. No worries. How about coffee at 11 am or 1 pm?

Sent from my iPhone

On Mar 3, 2020, at 3:28 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

I'm sorry, Brad. My meeting that was supposed to end a couple of hours ago just ended and I'm being pulled into another matter. Can we talk tomorrow? Again, my apologies.

Elizabeth McKenna | Assistant Regional Counsel
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1200 Sixth Avenue | Suite 155, M/S 11-C07
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(206) 553-0016
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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/11/2020 9:10:25 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: RE: Stibnite Mine Site

Anytime after 2:30 pm. What works?

Bradley M. Marten
Partner

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martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Wednesday, March 11, 2020 12:58 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: Stibnite Mine Site

Hi Brad. Do you have time this afternoon to talk? I'd like to give you an update. Thanks.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 3/3/2020 11:30:42 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Re: Stibnite Mine

Just saw this. No worries. How about coffee at 11 am or 1 pm?

Sent from my iPhone

> On Mar 3, 2020, at 3:28 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:
>
> I'm sorry, Brad. My meeting that was supposed to end a couple of hours ago just ended and I'm being pulled into another matter. Can we talk tomorrow? Again, my apologies.
>
> **Elizabeth McKenna** | Assistant Regional Counsel
> US Environmental Protection Agency, Region 10
> 1200 Sixth Avenue | Suite 155, M/S 11-C07
> Seattle, WA 98101
> (206) 553-0016
> <image001.png>

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 1/29/2020 10:55:41 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: RE: Stibnite Gold Mine Early Actions

Yep. In 2

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Sent: Wednesday, January 29, 2020 2:54 PM
To: Bradley M. Marten <bmarten@martenlaw.com>
Subject: RE: Stibnite Gold Mine Early Actions

Hi Brad. I've been on calls and in meetings all day. I now have a break until 3:30, when I have to leave the office to go to a meeting. Are you free now?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Wednesday, January 29, 2020 2:23 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Stibnite Gold Mine Early Actions

Elizabeth- What's a good time for you to catch up before our meeting tomorrow?

Sent from my iPhone

> On Jan 23, 2020, at 6:13 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:
>
> Thank you, Brad.
>
> **Elizabeth McKenna** | Assistant Regional Counsel

US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image003.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, January 23, 2020 5:48 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: mbogert@midasgoldinc.com; John Meyer <JMeyer@midasgoldcorp.com>; Laurel Sayer <lsayer@midasgoldinc.com>; akoulermos@FormationEnv.com
Subject: Stibnite Gold Mine Early Actions Memo

Elizabeth:

The attached file provides a memo that summarizes three Early Actions that Midas Gold proposes to undertake at the Stibnite Mine site. These early actions would be undertaken as a part of the Administrative Order on Consent (AOC) with EPA, USFS, IDEQ, and the Shoshone-Bannock Tribes (Participants), each of whom been have involved in the AOC negotiations. Please circulate this proposal to the other Participants.

In preparation for the meeting at EPA's Seattle office on January 30, we will develop a presentation for the AOC Participants that summarizes these proposed Early Actions.

If you have any questions, or comments on the memo please contact me directly. Thank you.

Bradley M. Marten
Partner

D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Message

From: Bradley M. Marten [bmarten@martenlaw.com]
Sent: 1/29/2020 10:23:06 PM
To: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Subject: Stibnite Gold Mine Early Actions

Elizabeth- What's a good time for you to catch up before our meeting tomorrow?

Sent from my iPhone

On Jan 23, 2020, at 6:13 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

Thank you, Brad.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image003.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, January 23, 2020 5:48 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Cc: mbogert@midasgoldinc.com; John Meyer <JMeyer@midasgoldcorp.com>; Laurel Sayer <lsayer@midasgoldinc.com>; akoulermos@FormationEnv.com
Subject: Stibnite Gold Mine Early Actions Memo

Elizabeth:

The attached file provides a memo that summarizes three Early Actions that Midas Gold proposes to undertake at the Stibnite Mine site. These early actions would be undertaken as a part of the Administrative Order on Consent (AOC) with EPA, USFS, IDEQ, and the Shoshone-Bannock Tribes (Participants), each of whom been have involved in the AOC negotiations. Please circulate this proposal to the other Participants.

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If you have any questions, or comments on the memo please contact me directly. Thank you.

Bradley M. Marten
Partner

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martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 7/17/2020 10:20:33 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: Stibnite

Apparently Ron circled back a few minutes ago with Susan after having been forwarded my email. We are still on the same track. I will consider Midas' proposal as I draft the AOC.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Friday, July 17, 2020 3:17 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite

OK, thanks. Have a good weekend.

Bradley M. Marten
Partner

M- 206-999-1808
D - 206 . 292 . 2604
T - 206 . 292 . 2600
E - bmarten@martenlaw.com
martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

MARTEN LAW

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Friday, July 17, 2020 at 2:34 PM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: Stibnite

Just learned from HQ that Ron and Susan had a conversation in which Ron committed to getting a draft AOC to EPA on Tuesday. We will review Midas' draft and may incorporate language from Midas' draft into the draft we are developing.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel

US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 7/17/2020 8:50:07 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: Stibnite Mine

Hi Brad. Wanted to let you know that HQ has asked me to draft the ASAOC and we are expecting to get it to you by the end of July. I didn't want Midas to waste resources drafting the ASAOC.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/4/2020 10:35:55 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: Any chance...

Ok. Thanks for being flexible.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, June 04, 2020 3:33 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Any chance...

If it's easier for you, that's fine with me. I can also talk later today if you find you have the time. I'll be out on my walk after 5 pm, and around all evening. Ex. 6 Personal Privacy (PP)

Bradley M. Marten
Partner

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martenlaw.com
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Seattle, WA 98101

MARTEN LAW

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Thursday, June 4, 2020 at 3:25 PM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: Any chance...

Our call can wait until tomorrow? I have a Stibnite deadline that I'm scrambling to meet right now.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
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(206) 553-0016

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/4/2020 10:25:22 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: Any chance...

Our call can wait until tomorrow? I have a Stibnite deadline that I'm scrambling to meet right now.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/29/2020 11:36:07 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: Stibnite

ok

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, June 29, 2020 4:35 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite

Yep. Just headed out on my walk. I'll call you in an hour.

Sent from my iPhone

On Jun 29, 2020, at 4:34 PM, McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov> wrote:

All my calls are going over this afternoon. Going to push back my run by a half hour. Can we talk from 5:30 -6:00 instead?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016
<image001.png>

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, June 29, 2020 3:25 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite

I'll call you at 5. Hopefully from my walk!

Bradley M. Marten
Partner

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martenlaw.com
1191 Second Ave, Suite 2200
Seattle, WA 98101

<image005.png>

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Monday, June 29, 2020 at 3:22 PM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: Stibnite

Hi Brad. Following up on your request to talk about Stibnite. I have a call at 4 that may last an hour. Then I have from 5 – 5:30 free. Are you open then? If my call at 4 is shorter than I expect, I can call you before 5.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
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<image002.png>

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/4/2020 7:27:06 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: Midas/FOIA Request

Phone works better for me.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, June 04, 2020 12:15 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Midas/FOIA Request

OK – by phone or Zoom?

Bradley M. Marten
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Seattle, WA 98101

MARTEN LAW

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Thursday, June 4, 2020 at 11:32 AM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: RE: Midas/FOIA Request

Hi Brad. Let's plan on talking at 4.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Thursday, June 04, 2020 11:15 AM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Midas/FOIA Request

Eiizabeth – do you have a moment today to talk about EPA's response to Midas's information request under FOIA? I'm free except for 1-3 pm.

Bradley M. Marten
Partner

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MARTEN LAW

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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/29/2020 11:34:16 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: Stibnite

All my calls are going over this afternoon. Going to push back my run by a half hour. Can we talk from 5:30 -6:00 instead?

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Monday, June 29, 2020 3:25 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Re: Stibnite

I'll call you at 5. Hopefully from my walk!

Bradley M. Marten
Partner

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Seattle, WA 98101

MARTEN LAW

From: "McKenna, Elizabeth" <Mckenna.Elizabeth@epa.gov>
Date: Monday, June 29, 2020 at 3:22 PM
To: Bradley Marten <bmarten@martenlaw.com>
Subject: Stibnite

Hi Brad. Following up on your request to talk about Stibnite. I have a call at 4 that may last an hour. Then I have from 5 – 5:30 free. Are you open then? If my call at 4 is shorter than I expect, I can call you before 5.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel

US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
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Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 6/29/2020 10:22:00 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: Stibnite

Hi Brad. Following up on your request to talk about Stibnite. I have a call at 4 that may last an hour. Then I have from 5 – 5:30 free. Are you open then? If my call at 4 is shorter than I expect, I can call you before 5.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 7/15/2020 8:07:16 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: Stibnite

Hi Brad. I left you a voicemail, but I'm following up with an email in case you see this first. I am checking in regarding the agreement we had with Midas that settlement communications would be shared with the Shoshone-Banock Tribes and the Nez Perce. HQ did not realize that we had established the protocol of sharing communications with the Tribes when it sent the settlement proposal to Midas and did not copy the Tribes on the letter. Can you please confirm that Midas would not object to HQ sharing EPA's proposal with the Tribes? Thank you.

Elizabeth

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 5/12/2020 11:01:57 PM
To: Bradley M. Marten [bmarten@martenlaw.com]
Subject: RE: Midas Gold AOC Offer

Thanks, Brad. We had already received it.

Elizabeth McKenna | Assistant Regional Counsel
US Environmental Protection Agency, Region 10
1200 Sixth Avenue | Suite 155, M/S 11-C07
Seattle, WA 98101
(206) 553-0016

From: Bradley M. Marten <bmarten@martenlaw.com>
Sent: Tuesday, May 12, 2020 3:49 PM
To: McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>
Subject: Midas Gold AOC Offer

Elizabeth:

Copying you on correspondence from Midas to the Regional Administrator. Let's discuss after you have the opportunity to review.

Bradley M. Marten
Partner

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MARTEN LAW

From: Laurel Sayer <lsayer@midasgoldinc.com>
Sent: Tuesday, May 12, 2020 3:48 PM
To: Hladick.christopher@epamail.epa.gov
Cc: Gahner.Pamela@epa.gov; L. Michael Bogert <mbogert@midasgoldinc.com>; bodine.susan@epa.gov; wright.peter@epa.gov; Stephen Quin <SQuin@midasgoldcorp.com>; L. Michael Bogert <mbogert@midasgoldinc.com>
Subject: Midas Gold AOC Offer

Mr. Hladick:

Please see the attached.

Regards,

Laurel Sayer
President & CEO
Midas Gold Idaho

JOIN US TODAY. WWW.SUPPORTSTIBNITE.COM

MIDAS GOLD IDAHO
405 S 8th St. Boise, ID 83702
T: 208.901.3050
M: 208.521.2987
E: lsayer@midasgoldinc.com

MAX.TSX / MDRPF.OTCQX
www.facebook.com/midasgoldidaho
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www.midasgoldidaho.com

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Message

From: Aaron.Scheff@deq.idaho.gov [Aaron.Scheff@deq.idaho.gov]
Sent: 7/16/2019 6:53:26 PM
To: Cerise, Kathy [Cerise.Kathryn@epa.gov]; bmarten@martenlaw.com
CC: Zamba, Kathy -FS [kathy.zamba@usda.gov]; Albert Crawshaw [Albert.Crawshaw@deq.idaho.gov]; Maley, Timothy [maley.timothy@epa.gov]; Lisa.O'Hara@deq.idaho.gov; gary.fremerman@usda.gov; Philip, Jeffrey [Philip.Jeff@epa.gov]
Subject: RE: EPA response to Midas draft SOW

I don't see anything objectionable in the email string below.

Aaron Scheff | Administrator
Idaho Department of Environmental Quality | Boise Regional Office
1445 North Orchard Street
Boise, Idaho 83706
Office: (208) 373-0420
Cell: (208) 949-7033
Email: aaron.scheff@deq.idaho.gov
http://www.deq.idaho.gov/

Our mission is to protect human health and the quality of Idaho's air, land, and water.

From: Cerise, Kathy [mailto:Cerise.Kathryn@epa.gov]
Sent: Monday, July 15, 2019 11:23 AM
To: Bradley M. Marten
Cc: Aaron Scheff; Zamba, Kathy -FS; Albert Crawshaw; Maley, Timothy; Lisa O'Hara; Fremerman, Gary - OGC, Washington, DC; Philip, Jeffrey
Subject: EPA response to Midas draft SOW

Brad,

Please see Elizabeth's response below. USFS has concurred. The State has not yet had the opportunity to review this language.

Thanks

Kathy

From: McKenna, Elizabeth
Sent: Saturday, July 13, 2019 4:13 PM

Hello, Brad. EPA has reviewed Midas' July 10th markup of EPA's July 3rd draft SOW for the Stibnite Mine Site. EPA is interested in pursuing conversations with Midas to come to an understanding of the scope of the remedial investigation and feasibility study (RI/FS). EPA is willing to consider narrowing the scope of the RI/FS to the eight areas identified in the Nez Perce's Clean Water Act Notice of Intent.

Both Midas and EPA have an interest in addressing the releases of hazardous substances at the Site. Midas' goal is to avoid CWA litigation over unpermitted discharges at the Site. To achieve that goal, it must evaluate potential response

actions that would address those discharges. The purpose of the RI is to characterize the nature and extent of risks posed by hazardous substances for evaluating potential response actions. Midas' proposal to conduct only an RI, without a risk assessment and concurrent feasibility study would not achieve its own goal of developing a solution to the discharges and releases that could result in avoiding CWA litigation. A scope of work that includes an RI, baseline risk assessment, treatability studies, and evaluation of alternatives is necessary to meet Midas' objectives and to have a CERCLA compliant agreement.

The RI/FS Guidance outlines the tasks that must be performed during the RI/FS and the EPA's draft SOW incorporates these tasks. The determination of the nature and extent of surface and subsurface contamination must include an assessment of all potential source area(s) and contaminants of concern potentially affecting surficial soil, subsurface soil, surface water, sediment, air, groundwater, and subsurface structures. The RI/F Guidance also outlines a process in which the RI and FS are conducted concurrently such that the data collected during the RI influences the development of remedial alternatives in the FS, which in turn affects the scope and additional data needs related to treatability studies and reducing data gaps. We understand that Midas' planned mining and reclamation activities will need to be considered in designing an RI/FS.

EPA would like to work with Midas to develop an approach that meets the needs of all parties involved. We are available to meet next week to continue our discussions.

Elizabeth McKenna
Assistant Regional Counsel
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101
(206) 553-0016
Cell: (206) 402-9963

Message

From: no-reply@sharepointonline.com [no-reply@sharepointonline.com]
Sent: 3/27/2020 4:08:50 PM
To: Philip, Jeffrey [Philip.Jeff@epa.gov]
CC: kmerkley@midasgoldinc.com
Subject: Koda Merkley wants to share Stibnite Mining District RIFS

Office 365

Hello,

Welcome to the SMD RIFS. The SharePoint site uses Microsoft credentials. If you are using a Microsoft email and account you will only need to log in using the link provided in the invitation to gain access to the site. Otherwise you will need to register your email address using the "Create a Microsoft account, it's quick and easy" link found by following the link from the invitation. This will allow you to logon to the SharePoint site using your email with a password you setup.

Go To Stibnite Mining District RIFS

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Microsoft Office
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Redmond, WA
98052-6399 USA

Microsoft