UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL REVIEW AND
ASSESSMENT

July 20, 2017

Keith Lannom
Forest Supervisor
Payette National Forest
500 North Mission Street
McCall, Idaho 83638

Dear Mr. Lannom:

The U.S. Environmental Protection Agency has reviewed the Notice of Intent for the proposed Stibnite gold mine located on the Payette and Boise National Forests in Valley County, Idaho (EPA Project Number 17-0013-AFS). The NOI is based on a Plan of Restoration and Operation submitted by Midas Gold Corp (the Project Applicant) to the U.S. Forest Service, Payette National Forest in September, 2016. The Payette National Forest is the lead agency for the EIS and the NEPA process. Our review was conducted in accordance with EPA responsibilities under the National Environmental Policy Act and Section 309 of the Clean Air Act.

The EPA will be a cooperating agency for the development of the EIS due to special expertise related to implementation of the Clean Water Act, as well as our NEPA compliance obligations associated with the issuance of a new source[3] National Pollutant Discharge Elimination System (NPDES) permit for the project. Midas Gold has indicated they intend to apply for an NPDES permit for wastewater discharges from the proposed project. Pursuant to Section 511(c)(1) of the CWA and EPA's regulations for implementing the procedural provisions of NEPA at 40 CFR Part 6, EPA's issuance of a NPDES permit for the proposed project is considered a major federal action subject to NEPA compliance. EPA intends to adopt the USFS' EIS for this project in support of our decision making process for the NPDES permit.

Another key CWA permit related to EPA's role is our responsibility to review and comment on the U.S. Army Corps of Engineers' public notice of the Clean Water Act Section 404 permit application to allow the discharge of fill material into waters of the U.S. In addition, the EPA has been involved with the Forest Service and the State of Idaho in past CERCLA site assessment and removal actions associated with previous mining activities at the Stibnite gold mine site. Midas' plan proposes restoration of several legacy mine facilities. EPA has special technical expertise related to mine cleanup and an interest in ensuring the integrity of past CERCLA work.

The Plan of Restoration and Operations includes mining of existing facilities, as well as additional new mine related activities. Together these include: three open-pits, tailings storage facility and dam, waste rock disposal, mill processing facility, employee camp, and road construction/maintenance.

[3] New Source is defined at 40 CFR 122.2 and 122.29.

Identification of Issues

We appreciate the supplemental information provided in the Forest Service's scoping package, including the list of preliminary issues identified for the project. We agree the suite of issues presented are appropriate to fully analyze in the EIS. The following topics will be the main focus of our review and engagement on the project.

- Water Resources- surface and groundwater;
- Waters of the U.S. and CWA § 404 (b)(1) analysis;
- Geochemistry/characterization of ore, waste rock, and tailings;
- Geotechnical stability of the tailings facility;
- Predictive modeling of impacts to water, air, and aquatic resources (i.e., input parameters, uncertainty/sensitivity analyses, and modeled outputs);
- Air issues - particulate matter (fugitive dust), air emissions, hazardous air pollutants (mercury);
- Monitoring and contingency planning;
- Financial assurance to cover costs for reclamation, maintaining the site post-closure, and potential long-term water treatment;
- Tribal and cultural resources not limited to National Historic Preservation Act analyses; and
- Compliance with the Endangered Species Act and Magnuson Stevens Fishery Conservation and Management Act.

Our attached scoping comments include additional details regarding these key issues and other subjects we believe should be included in the NEPA analysis. We appreciate the Forest Service engaging with the EPA early in the NEPA process and for coordinating with all of the cooperating agencies on this project. We look forward to our ongoing coordination and to providing input on important issues as the EIS is being developed. If you have any questions, please contact me at (208) 378-5757 or via email at hood.lynne@epa.gov.

Sincerely,

Lynne Hood, NEPA Reviewer
Environmental Review and Sediment Management Unit

Enclosure:

1. U.S. Environmental Protection Agency Scoping Comments on the Proposed Stibnite Gold Mine Project

cc: IDEQ
USACE
IDL

US Environmental Protection Agency
Scoping Comments on the Proposed Stibnite Gold Mine

General Comments
We compliment and appreciate the Forest Service for coordinating with multiple agencies in the development of the EIS. In order to promote effective engagement and review of products in a timely manner, the EPA requests our schedules be considered when planning meetings involving our areas of concern. We acknowledge the challenge of this endeavor; however, engagement early and often will result in a better understanding of project components and will facilitate our review of supporting documents. For example, critical points to engage and consider EPA's availability include presentations of baseline and modeled effects to water and air resources, CWA § Section 404 considerations and options, geochemical characterization of and geotechnical stability of the tailings, ESA, and EFH related actions, and cooperating agency meetings.

Purpose and Need
The NEPA analysis should include a clear and concise statement of the underlying purpose and need for the proposed action, consistent with the implementing regulations for NEPA (see 40 CFR 1502.13). In presenting the purpose and need for the proposed action, the NEPA analysis should reflect not only the purpose, but also the broader public interest. While the purpose of the EIS is to respond to Midas' plan and applications, the purpose of the project is broader.

Range of Alternatives to Protect Water and Air Resources
EPA recommends that the NEPA analysis evaluate reasonable alternatives and mitigation measures to reduce or minimize adverse impacts to groundwater and surface water, with special attention to areas where they may be hydrologically connected, and minimize impacts to air.

We recommend that the NEPA process evaluate a range of alternatives and mitigation that consider opportunities to

- reduce the footprint of disturbance;
- consider habitat value and risks in siting project components;
- consider source control measures (effective management of waste rock and tailings to prevent acid generation and metal leaching) and containment (liners and covers);
- incorporate measures to reduce contact between mine waste materials and surface water and groundwater;
- reduce impacts of pit dewatering on groundwater and stream flows;
- incorporate treatment to ensure compliance with water quality standards; and
- to increase physical stability of structures (pit walls, waste rock facilities, tailings facility) during operations and closure, such as consideration of dry stack tailings.

The NEPA analysis should clearly outline the physical design of current and proposed facilities (including waste dumps, tailings areas, water storage and conveyance facilities), and address key questions related to water movement and water balance. In evaluating the proposed project, the analysis should include an evaluation of performance and effectiveness of proposed design features, environmental protection measures, and mitigation.

In order to coordinate and engage agencies on the development of alternatives, we suggest the Forest Service organize an alternatives workshop so that all cooperating agencies may discuss the potential alternatives comprehensively. As discussed below, we recommend development of

alternatives for this project under NEPA occur concurrently with determining the range of alternatives that would be evaluated under the CWA 404(b)(1) Guidelines for the Corps of Engineers' permitting process.

Water Resources

Surface Water/Groundwater Quality

Water quality is one of EPA's principal concerns at mine facilities due to the presence of acid generating and metal-leaching waste materials (waste rock, tailings, pit walls) that are exposed to the environment over long periods of time.

We support developing a thorough understanding of baseline surface and groundwater quality and quantity and groundwater/surface water interaction. The environmental impact analysis should evaluate the impacts of this proposed project to surface water, as well as ground water quantity and quality from all aspects of the proposed operations and alternatives. This includes pit dewatering and backfilling, waste rock and tailings management and disposal, water management, and transportation aspects.

Impaired Waters

The NEPA analysis should discuss current surface water quality and natural background conditions. CWA § 303(d) requires States to identify those waterbodies which are not meeting, or are not likely to meet, State water quality standards. The currently listed impaired water bodies that would be impacted by this project, along with the pollutants of concern, should be disclosed in the EIS.

The NEPA analysis should identify which water bodies may be impacted by the project, the nature of the potential impacts, and the specific pollutants likely to impact those waters. It should also include requirements to report those water bodies potentially affected by the project that are listed on the State's current 303(d) list and discuss relevant Idaho Department of Environmental Quality water quality restoration plans that exist - Total Maximum Daily Load (TMDL) for the waterbodies and the pollutants of concern. For example, the EIS should summarize and discuss the project's ability to meet targets allocated in the South Fork Salmon River Subbasin Temperature Total Maximum Daily Loads would apply to the project area[4].

For impaired streams where a TMDL has not been established for water bodies impacted by the proposed project, the analysis must include an evaluation of whether or the extent to which the project would prevent net degradation of water quality to the listed waters.

Existing Water Quality Data

Baseline data exists at Stibnite from previous studies and ongoing monitoring. It will be important to evaluate the existing data to ensure they are of the appropriate type and quality to support existing, as well as designated uses. It is also important to disclose background/current conditions and how elevated contaminants of concern (e.g., arsenic), which exist at the site will be addressed to ensure compliance with the CWA.

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[4] IDEQ. 2012. South Fork Salmon River Subbasin Temperature Total Maximum Daily Loads and Revised Sediment Targets: Addendum to the SF Salmon River Subbasin Assessment and TMDL. http://www.deq.idaho.gov/media/809319-south-fork-salmon-river-temperature-tmdls-addendum-0912.pdf

In addition, EPA's letter to the Forest Service Region 1, Regional Forester[5] (dated September 26, 2016) documents EPA's disapproval of Idaho's arsenic human health water quality criteria applicable to surface waters in Idaho. EPA has also communicated during the Stibnite cooperating agency meeting EPA anticipates a revision to the recommended copper criteria for surface water quality, and we recommend that appropriate data be collected for modeling purposes.

Waters of the U.S./404(b)(1) Guidelines

The proposed action includes impacts to waters of the U.S. associated with mining activities and construction of project features (e.g., tailings facility, waste rock storage areas, etc.). The NEPA analysis should include a map of surface waters, including wetlands, in the project area. The analysis should discuss how many lineal feet of streams, acres of wetlands and what type/function of wetlands would be impacted by the mine during operations and closure. We strongly recommend the 404 permit process and NEPA information and analysis be consistent and conducted concurrently to the extent possible.

There should be a discussion of how CWA § 404(b)(1) Guidelines requirements would be met for direct and indirect impacts to jurisdictional waters of the U.S., including any proposed compensatory mitigation. Potential indirect impacts include hydrologic changes due to open pit dewatering, diversions, and increases in impervious surfaces and impacts from fugitive dust. For purposes of the Guidelines it will be important to clearly demonstrate why the range of alternatives, which are carried forward are practicable. "Practicable" does not necessarily mean the most cost effective. Additionally, the evaluation of practicable alternatives occurs in light of the overall project purposes (40 CFR 23.10(a)(2)). Identifying the overall project purpose is a critical first step in determining the practicability of alternatives, as it establishes the sideboards for the alternatives analysis.

Since preparation of this EIS will also serve to satisfy NEPA requirements of the CWA § 404 permit issued by the U.S. Army Corps of Engineers, we recommend the 404(b)(1) analysis be conducted concurrently with the EIS, the range of alternatives developed for the analysis is consistent with the EIS range of alternatives, and the final EIS clearly demonstrate the selection of the least environmentally damaging practicable alternative. We will coordinate with the Corps through our joint review of the proposed project and alternatives developed, to evaluate ways to avoid and minimize impacts to waters of the U.S. For clarification, NEPA requires the evaluation of *reasonable* alternatives to the proposed action, whereas the Guidelines require the analysis of *practicable* alternatives. The alternatives analysis required by the Guidelines is not limited to the alternatives evaluated under NEPA.

Compliance with the Guidelines is required before a 404 permit can be issued by the Corps, and demonstrating compliance is the responsibility of the applicant. Failure to clearly demonstrate that there is no practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, in accordance with 40 CFR 230.10(a), renders the project noncompliant with the Guidelines.

NPDES and Water Management and Treatment

The EPA issues NPDES permits under CWA § 402. EPA's issuance of a new source[1] NPDES permit is considered a major federal action subject to NEPA compliance. The EPA will evaluate the content of the EIS to ensure it can be adopted to support the decision-making process for issuance of an NPDES permit.

[5] US EPA Region 10 letter to Ms. Leanne Martin, Region 1 Regional Forester. September 26, 2016. Re: Arsenic Human Health Water Quality Standards for Surface Waters in Idaho.

The NEPA analysis should explain the plans for water management and treatment during all phases of the project (construction, operations, and closure). The EIS should evaluate and disclose the adequacy, reliability, effectiveness, and operational uncertainty associated with proposed water management and treatment techniques over the range of operating and climatic conditions. The analysis should characterize chemical compositions and quantities of process waters, mine drainage, storm water, and treated and untreated effluents. This information should be supported by the results of treatability testing. Assumptions used in the analysis should be reasonably conservative. The EIS should identify the NPDES discharge locations, applicable water quality standards, an analysis of the discharge's likelihood and ability to meet applicable standards, and the direct, indirect and cumulative impacts of such discharges to the receiving waters. Water quality variance requests, site-specific criteria proposals, and any other planned or proposed water quality standard revisions should be disclosed in the EIS.

In addition, the EIS should disclose whether or not the project would require long-term water treatment and include this among the issues stated in the Executive Summary. Long-term water treatment has major implications on site management and need to establish financial assurance to cover costs in perpetuity to avoid any tax payer burden.

Geochemistry/Characterization of Ore, Waste Rock, and Tailings

In order to provide reliable projections of wastewater and solid wastes from the project, the physical and chemical characteristics of ore and wastes waste should be determined. Environmental samples used to support projections should represent a range of conditions that currently occur and that could occur in the future as a result of the project. Waste materials used for environmental projections should be representative of the material to be mined and related to the mine plan and proposed processing methods. Physical and chemical characterization should be conducted in a manner that provides environmentally conservative estimates of impacts.

We believe it may be helpful to consider EPA Region 10's Sourcebook for Hardrock Mining for our recommendations related to the NEPA analyses and Mining[6]. Regarding characterization of geologic and mineralogy setting/aqueous geochemistry, we suggest including the following:

- Whole rock analysis;
- Mineralogy;
- Drill core descriptions;
- Block model or similar model (a computerized estimate of the quantity and characteristics of ore and waste);
- Available literature on the ore deposit
- Mineral occurrences (e.g., on fracture surfaces, in groundmass, using hand specimens and thin section) with an emphasis on sulfides and carbonates
- Acid-base accounting;
- Startup of long-term kinetic testing; possible startup of test pads if sufficient material and access to site are available;
- Baseline surface and ground water quality and flows (including springs)
- Potentiometric surface for groundwater;
- Hydraulic properties (e.g., hydraulic conductivity, porosity, permeability) of soil, vadose zone, and groundwater aquifers, especially under proposed locations of mine facilities
- Examination of characteristics of similar mines in region/area; and

[6]U.S. EPA Region 10. 2003. EPA and Hardrock Mining: A Source Book for Industry in the Northwest and Alaska January 2003.

- Hydrogeochemical models for prediction of water quality.

Air Quality

The EIS should include baseline air quality design concentrations of criteria pollutants at the site and any affected Class I airshed. The EIS should also disclose current visibility conditions within any potentially affected Class I airshed. The EIS should contain a comprehensive emissions inventory of criteria pollutants (in tons per year), greenhouse gas (GHG) emissions (in metric tons CO_2 equivalents/yr.), and significant hazardous air pollutant (HAP) emissions. If projected emissions are significant, near-field and far-field air quality modeling should be conducted to assess project-related air quality and visibility impacts.

The EIS should disclose estimated fugitive dust emissions generated from mine operations and measures to mitigate impacts from particulate matter. The EIS should also identify any hazardous air pollutants resulting from fuel combustion and ore processing. In particular, the analysis should include a discussion of mercury emissions and control measures that will be used to avoid mercury deposition, which can also result in toxic mercury methylation in adjacent water bodies. We recommend the Forest Service coordinate with the State of Idaho, as well as EPA on potential modeling related to air impacts.

We recommend implementing measures to reduce criteria and GHG emissions and offer the following for consideration as components of a construction air pollutant emissions control plan.

- Evaluate the use of the latest on-road and non-road diesel engines with ultra-low sulfur diesel:
  - Diesel engines that meet the latest EPA Tier 4 regulation as listed in 40 CFR 1039
  - Retrofit non-compliant engines to achieve Tier 3/Tier 4 standards[7]
- Consider the use of alternative fuels[8]
- Establish idling limit (e.g., 5-10 minutes per hour) and install idle-reduction technologies (IRTs)[9]
- Prohibit any tampering with engines and require continuing adherence to manufacturers' recommendations.

Baseline Data Adequacy

We suggest categorizing and synthesizing existing data to ensure pertinent information is available for review. We acknowledge that baseline and technical reports are being shared via a project website and we believe this will be a good tool for making data, technical reports, and other documents related to the analysis available. To facilitate a user friendly share site, we recommend that documents be organized by resource area or project portion in a way that clearly shows which information is most relevant with a clear naming convention. It would also be useful to provide a summary of the referenced report and data in the EIS (or annotated). We recommend the Forest Service establish workgroups of Forest Service and cooperating agency subject matter experts for key areas (air, water, fisheries) to review the data for completeness and data gaps to ensure that any gaps are identified and filled in a timely manner.

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[7] A list of EPA verified diesel retrofit technologies can be found at https://www.epa.gov/verified-diesel-tech/verified-technologies-list-clean-diesel

[8] A list of alternative fuel resources can be found at https://www.epa.gov/state-and-local-transportation/clean-fuels-alternative-fuel-options-related-links-state-and-local

[9] A list of EPA verified idle-reduction technologies can be found at https://www.epa.gov/verified-diesel-tech/smartway-verified-list-idling-reduction-technologies-irts-trucks-and-school

Predictive Modeling
There should be a site-specific conceptual model that describes the system boundaries, time and length scales, hydraulic and chemical characteristics, sources of data and data gaps, and the mathematical relationships used to describe processes. The documentation should include:

- tables of parameter values used in the model;
- tables and graphs of results;
- uncertainty and sensitivity analyses;
- errors associated with both measured and assumed data; and
- recommendations for further analysis.

We recommend a discussion on modeling include a clear statement of the management objectives intended to be achieved by the modeling, the level of analysis required to meet the objectives, and uncertainties associated with modeled outcomes. For your reference, please refer to EPA's guidance that provides recommendations for the effective development, evaluation and use of models in environmental decision making[10].

We would recommend the EIS use caution in describing absolute outcomes based on modeling. Mathematical modeling used for describing the physical and chemical characteristics of the site and potential impacts includes a level of uncertainty; understanding these uncertainties and associated risks are necessary for informed decision making. We recommend when developing the study plan for the analysis that the plan clearly states the purpose, questions of concern, method, data, and limitations of the model to generate valuable interpretations. We also strongly recommend an appropriately conservative approach be taken with modeling and a range of predictive outcomes be discussed (e.g., most likely case, reasonable worst case, and reasonable best case scenarios) that reflect a range of climatic settings and critical hydrogeologic and geochemical input values. Including a reasonable range of outcomes allows the agencies to make better informed plans for mitigation, adaptive management, and contingencies to respond to reasonably foreseeable adverse impacts

Physical Stability of Structures
The NEPA analysis should describe the geotechnical stability of the tailings facility, waste rock storage facilities, and open pit walls during operations and closure. This would include a description of how these facilities are designed and how they would be operated, and closed to ensure stability. In addition, we recommend that a Failure Modes Effects Analysis (FMEA) be conducted with the results summarized in the EIS. FMEA considers potential modes of failure and identifies the relative likelihood and consequences of the failure modes. The NEPA analysis should incorporate mitigation or alternatives to improve stability should FMEA identify failure modes, which are anything other than a tolerable risk.

Financial Assurance
NEPA provides for the disclosure to the public and decision-makers of all information concerning the environmental consequences of a proposed action before decisions are made and actions are taken. A key component in determining the environmental impacts of a mine is the effectiveness of closure and reclamation activities, including long-term water management. The amount and viability of financial assurance are critical factors in determining the effectiveness of reclamation and closure activities and, therefore, the significance of the environmental impacts.

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[10] *Guidance Document on the Development, Evaluation and Application of Environmental Models* (PDF). EPA/100/K-09/003. March 2009. http://www.epa.gov/crem/cremlib.html

The EIS should disclose the estimated cost to reclaim and close the site in a manner that achieves reclamation goals and post-mining land use objectives. The EIS should identify proposed financial assurance mechanisms and demonstrate these mechanisms would ensure necessary reclamation work is completed. The analysis should disclose costs associated with implementing the reclamation plan, as well as costs associated with implementing contingency measures to deal with reasonably foreseeable but not specifically predicted outcomes. This is necessary to inform the public and decision-makers of the financial risk to the public posed by conditions at the site. These financial assurances should be in a form that protects the public interest in the event a company is unable to implement contingency measures or perform long-term operation and maintenance at a closed mine site.

The EPA is available and interested in further conversations about the level of detail to include in the document. Below are main elements we believe should be disclosed:
Site Reclamation (e.g., facility closure, earth moving/stabilization, revegetation, etc.):

- Phases of reclamation;
- Estimated cost (+/- percent) to reclaim and close the site in a manner that achieves reclamation goals and post-mining land use objectives;
- Criteria for determining success of reclamation activities for bond release; and
- Costs associated with implementing contingency measures to address reasonably foreseeable but not specifically predicted outcomes.

Long-Term Site Management, (post-closure water treatment, mitigation of aquatic resources, site maintenance, and monitoring):

- Itemized cost estimate (including reasonable contingencies) and appropriate economic variables to calculate the net present value of future expenses.
- If a trust fund is utilized, address the "mechanics" of the fund, including:
    - Trust fund mechanism (e.g., current value trust, net present value trust, etc.);
    - Requirements for timing of payments into the trust fund;
    - How /USFS would ensure the trust fund or other FA could not be claimed by one of the mine's creditors in the case of bankruptcy;
    - Acceptable financial instruments;
    - Tax status of the trust fund;
    - How trust management fees and taxes are paid;
    - Identity of the trust fund beneficiaries; and
    - Identity of the operator with responsibility/liability for FA.

Monitoring

The NEPA analysis should describe proposed monitoring for the project area. We recommend as a general rule the level of effort afforded monitoring be commensurate with the complexity of the project and the risk to and sensitivity of the affected environment if a project is permitted and/or approved. As a first step, we recommend the NEPA analysis clearly define the goals and objectives of monitoring, and present an overall monitoring strategy for the project. Second, the NEPA analysis should provide enough detail on the monitoring program for reviewers to evaluate whether the goals and objectives of monitoring will be achieved. This can generally be satisfied by providing summary information on monitoring (including a list of measurement parameters, methods, locations and frequency), data analysis, and reporting. In addition, we recommend that alternatives include clear requirements for regular analysis and reporting of data to oversight agencies, and include a requirement that the operator submit a full sampling and

quality assurance plan for agency approval. The NEPA analysis should discuss who will conduct monitoring, the frequency and how monitoring will direct management decisions.

Adaptive Management Planning

The NEPA analysis should describe the strategy for responding to unforeseen circumstances at the site. Adaptive management and contingency planning are particularly important project components that carry a high level of uncertainty in predicting environmental consequences. The strategy should include "trigger levels" (e.g., exceedance of ecological benchmarks) or observations (e.g., statistically significant trends in indicators, permit violations, water balance problems, changes in discharge or chemistry of springs/seeps) that would set in motion a follow-up action. This strategy or plan should be described so that reviewers may comment on its adequacy. This type of plan when coupled with the monitoring program is necessary to mitigate for uncertainties and risks associated with predictions of environmental outcomes, and will provide an early warning system of unexpected outcomes. Such plans are necessary to ensure that post-mining land use objectives can be achieved and sustained in the future.

Cumulative Impacts

A cumulative effects analysis should be done for the potential environmental impacts from the project due to potential foreseeable actions (e.g. expansion of the gold mine on private land or other ground disturbing action that could impact the environment) regardless of what agency (Federal or non-Federal) undertakes the action (40 CFR § 1508.7). We recommend projects covered by the proposed action utilize the best available science through effective watershed hierarchy and a watershed approach when identifying, quantifying and mitigating cumulative impacts. EPA has issued guidance on how we provide comments on the assessment of cumulative impacts[11]. The guidance is a good tool to assess the adequacy of the cumulative impacts assessment.

Roads and Transportation of Hazardous Materials

Road construction and reconstruction are of key concern to EPA because roads can be a large contributor of sediment to streams and interrupt the subsurface flow of water, particularly where roads cut into steep slopes. In addition, roads and their use contribute to habitat fragmentation, wildlife disturbance, the introduction or exacerbation of noxious weeds, and increased fire danger from recreational activities. The EIS should describe in detail the location of existing roads and proposed construction of roads and how stormwater would be managed to reduce impacts to surface water.

An additional concern at mine sites is related to transportation incidents involving hazardous materials, particularly where routes exist along adjacent streams. The NEPA analysis should characterize risks related to transportation incidents, and describe mitigation, response planning, and monitoring programs to mitigate for expected problems.

Fish and Wildlife, including Endangered Species Act (ESA) and Essential Fish Habitat (EFH)

The EIS should evaluate impacts to fish and wildlife from the proposed project and alternatives. In addition, special consideration should be given to listed and proposed species under the ESA and EFH under the Magnuson Stevens Fishery Conservation and Management Act (MSFCMA). The NEPA regulations require that EISs be prepared concurrently with environmental analyses required by the ESA and other environmental laws (40 CFR 1502.25). Both the MSFCMA

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[11] *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*, http://www.epa.gov/compliance/resources/policies/nepa/cumulative.pdf .

regulations (50 CFR 600.92 (c)(f)) and ESA regulations (50 CFR 402.06) encourage coordination with other environmental reviews.

We recommend the NEPA analysis clearly discuss and list in a table format the ESA listed species and EFH that occur in the project area. The EIS should describe impacts to ESA species and EFH and discuss what activities are being proposed to avoid, minimize, mitigate, and monitor listed and proposed species and EFH. We understand the US Forest Service is developing a biological assessment (BA) to evaluate impacts to ESA and EFH. The BA should be available and included with the draft EIS. EPA will have a separate obligation to comply with the ESA and MSFCMA for our NPDES permit decision, as will the Corps for its CWA 404 permit decision. We recommend the Federal action agencies work together to ensure that a single BA is developed that meets each agency's needs, and we also work together during the ESA and EFH consultation processes by having joint meetings with the US Fish and Wildlife Service and National Marine Fisheries Service.

Consultation with Native American Tribes

The NEPA analysis should not only discuss the historical structures that exist in the project area but also cultural resources and impacts to Native Americans. The NEPA analysis should identify Tribal concerns and issues and discuss how these will be mitigated.

The NEPA process should be conducted in consultation with all affected tribal governments, consistent with Executive Order (EO) 13175 (*Consultation and Coordination with Indian Tribal Governments)*. EO 13175 states the U.S. government will continue to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights. Documentation of these consultations should be included in the EIS. EPA will be initiating consultation with tribes upon receipt of an NPDES permit application. We are open to having joint consultation meetings with the US Forest Service if the tribes request such.

We are encouraged the Forest Service has invited potentially impacted tribes to be cooperating agencies consistent with the July 28, 1999 memorandum from the Council on Environmental Quality (CEQ) to Heads of Federal Agencies. This, in addition to consultation, would provide for a mechanism for addressing intergovernmental issues throughout the planning process.