To: jrcollins@ndep.nv.gov[jrcollins@ndep.nv.gov]; 'Micheline N. Fairbank'[MFairbank@ag.nv.gov]; 'Frederick J. Perdomo'[FPerdomo@ag.nv.gov]; Herrera, Angeles[Herrera.Angeles@epa.gov]; Ball, Harold[Ball.Harold@epa.gov]; 'Gene Seidlitz (gseidlit@blm.gov)'[gseidlit@blm.gov]; 'rthomas@blm.gov'[rthomas@blm.gov]; 'bamme@blm.gov'[bamme@blm.gov]; 'Brian S. Johnson (brian.s.johnson@bp.com)'[brian.s.johnson@bp.com]; 'Cohen, Adam (Adam.Cohen@dgslaw.com)'[Adam.Cohen@dgslaw.com]; 'Block, Nathan (Nathan.Block@bp.com)'[Nathan.Block@bp.com]; 'Kryska, Eric G (eric.kryska@bp.com)'[eric.kryska@bp.com]
Cc: Jeryl Gardner[JGARDNER@ndep.nv.gov]; Collins, Jim[Collins.Jim@epa.gov]; Minor, Dustin[Minor.Dustin@epa.gov]; 'Gallery, Patricia A'[patricia.gallery@bp.com]; Maldonado, Lewis[Maldonado.Lewis@epa.gov]; 'David Davis (drdavis@blm.gov)'[drdavis@blm.gov]; Seter, David[Seter.David@epa.gov]
From: Greg Lovato
Sent: Fri 12/23/2016 11:05:39 PM
Subject: RE: Anaconda NPL Deferral - EPA/BLM/NDEP/ARC

Correction below --- discussion was during our December 14 meeting...

From: Greg Lovato
Sent: Friday, December 23, 2016 3:02 PM
To: Jeff R. Collins; Micheline N. Fairbank; Frederick J. Perdomo; Angeles Herrera; Ball, Harold; Gene Seidlitz (gseidlit@blm.gov); rthomas@blm.gov; bamme@blm.gov; Brian S. Johnson (brian.s.johnson@bp.com); Cohen, Adam (Adam.Cohen@dgslaw.com); Block, Nathan (Nathan.Block@bp.com); Kryska, Eric G (eric.kryska@bp.com)
Cc: Jeryl Gardner; 'Collins, Jim'; 'Minor, Dustin'; 'Gallery, Patricia A'; 'Maldonado, Lewis'; David Davis (drdavis@blm.gov); seter.david@epa.gov
Subject: RE: Anaconda NPL Deferral - EPA/BLM/NDEP/ARC

All,

As discussed during our December 14 meeting, please find attached a draft schedule for a potential NPL Deferral path for the Anaconda Mine Site. We tried to capture the main points of discussion in relation to next steps and the preferred sequence of activities. I provide below some additional information to help explain the attached schedule. My apologies if any major points we discussed are not included. After we receive input from all parties, NDEP proposes to revise and provide an updated schedule to EPA as support for requesting postponement of the March 2017 NPL final listing decision while a deferral path is pursued.

In response, I request that you provide a single consolidated response for each organization (EPA, ARC, or BLM) to me by **Wednesday January 11.**

EPA identified the following threshold issues for resolution prior to proceeding with negotiating a Deferral Agreement and postponing a final listing decision until September 2017: 1) ARC request for federal covenants not to sue and resolution of EPA past costs; and 2) Consistency with CERCLA/NCP for groundwater (including off-site) remedy selection and implementation. BLM will also evaluate its options for deferring or coordinating with NDEP under CERCLA and how that would work in practice if EPA agrees to defer listing and NDEP lead. These are the threshold concerns for proceeding with postponement of NPL listing to September 2017, but there are other concerns that would need to be

addressed prior to execution of a Deferral Agreement.

We anticipate the EPA threshold issues would be addressed in January as Tasks 1 and 2 on the attached schedule. Specifically, ARC will provide its final decision with respect to federal covenants not to sue and EPA past costs and how those affect ARC's decision to proceed with deferral under the NDEP/ARC Framework for Agreement. NDEP will review EPA's concerns related to groundwater remedy selection and implementation language in the NDEP/ARC Framework for Agreement. NDEP will further clarify the groundwater language, and if needed, revise it with ARC concurrence (Task 2). In parallel, NDEP will outline the scope of a draft NDEP/EPA deferral agreement (Task 3a), but not release it until consensus is reached between EPA and ARC on a path forward on federal covenants not to sue and EPA past costs.

If those initial steps are successful, NDEP suggests that EPA provide a letter in February 2017 that documents EPA's decision to postpone a final listing decision until September along with any conditions already identified as essential to reaching a deferral agreement. This is reflected as Task 3b in attached.

If EPA postpones a final listing decision until September, NDEP will proceed with community and tribal outreach (Task 3c) as part of documenting community acceptance for an eventual formal request to EPA for deferral (Task 3d).

On parallel paths, the following activities would occur:

- Task 3 - NDEP and EPA would negotiate and exchange updated versions of Deferral Agreement language
- Task 4 - EPA and ARC would negotiate and reach agreement as needed related to existing EPA Orders and Past Costs
- Task 5 - NDEP and ARC would negotiate the Interim AOC (or other agreements) needed for completion of FS at OUs 1 through 7 and implementation of final remedy selected for OU-8

These efforts would result in Draft Final documents that would be shared between all parties as shown on the attached schedule, and then executed together in July of 2017.

If these efforts are successful, execution of the Deferral Agreement would defer NPL listing while ARC proceeds with actions under the Interim AOC or other agreements under NDEP oversight.

NDEP suggests that after the Deferral Agreement is signed, the MOU between the Agencies will be revised to reflect updated Agency roles and responsibilities.

Please pass this e-mail along to others who attended the December 12 meeting but not copied on this e-mail.

Best wishes to everyone in the Holiday season and we will be in touch in the New Year.

Thanks,
Greg

Greg Lovato, Deputy Administrator
NV Division of Environmental Protection

P: 775-687-9373
E: glovato@ndep.nv.gov

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<< File: 161223_NDEP Draft Deferral Path Schedule.xlsx >>