UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
REGIONAL COUNSEL

September 13, 2019

VIA EMAIL (mlopez@nezperce.org)
Michael Lopez
Senior Staff Attorney
Office of Legal Counsel
Nez Perce Tribe
P.O. Box 305
Lapwai, Idaho 83540

Re: Stibnite Mine Site

Dear Mr. Lopez:

The Environmental Protection Agency (EPA) and the Nez Perce Tribe have discussed potential options for the Nez Perce Tribe to participate in negotiations among EPA Region 10, the State of Idaho, the United States Forest Service and Midas Gold Corporation. The intent of the negotiations would be reach agreement on the performance of a comprehensive remedial investigation and feasibility study (RI/FS) at the Stibnite Mine Site.

The following are a few options for participation of the Tribes in the negotiations. EPA would welcome any other ideas that the Nez Perce may have for participation in the negotiation.

- The Tribe could be a signatory to the administrative settlement agreement under Section 107 of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under this scenario, the Tribe would be directly involved in the negotiations with the other parties. The Tribe could seek the inclusion of provisions that would reimburse the Tribes directly for any past costs incurred pursuant to Section 107 of CERCLA, as well as reimbursement for costs incurred by the Tribe as a participant in the RI/FS implementation process. 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.

- If the Tribe chose not to be a signatory to the administrative settlement agreement, EPA could consult with the Tribe during the negotiations, but the Tribe would not have direct involvement in the negotiations. This would require EPA to resolve potential settlement negotiation confidentiality issues that may affect what information EPA can share with the Tribe. 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.

- The parties could explore the possibility of an administrative settlement agreement that provides for an integrated natural resource damages assessment and RI/FS. Under this approach, the Tribe could be a signatory to the administrative settlement agreement as a natural resource trustee (NRT) under CERCLA. The Tribe and other NRTs would need to coordinate a plan for an

integrated scope of work and propose that plan to EPA and the other parties to the settlement agreement.

Given the fact that there will be multiple parties involved in the negotiation, any option the Tribe wishes to pursue would need to be discussed and agreed to by all parties to the agreement. Regardless of what option the Tribe favors, EPA will uphold its trust responsibility to the Tribe and will continue to pursue an open dialogue with the Tribe as matters at the Site progress.

Sincerely,

Elizabeth McKenna
Assistant Regional Counsel

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