Message

From: McKenna, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=859179A8CB0547BC974DC0241E973D37-MCKENNA, ELIZABETH]
Sent: 1/12/2021 3:18:33 PM
To: Li, Helen (ENRD) [helen.li2@usdoj.gov]; Albert, Eric (ENRD) [Eric.Albert@usdoj.gov]; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]
Subject: FW: Stibnite Mine ASAOC and SOW
Attachments: Stibnite ASAOC 1-8-2021 - Midas Gold proposed nits (2).DOCX; Stibnite SOW 1-8-2021 v2 Midas Gold nits.docx

Hi Helen, Eric, and Gary. Please take a look at Midas' changes if you have the time. Here are my thoughts that I sent to the EPA team. I did not look closely at the edits. I plan to look at them more closely tomorrow morning. I sent out some preliminary thoughts to the EPA team that I am sharing with you. It's late, so I'm not sure my thoughts make any sense. But, I felt I needed to get something out to the HQ folks letting them know we are considering the edits before they just accept them all.

Below the email that I sent is Ron Tenpas' message transmitting the documents.

From: McKenna, Elizabeth
Sent: Monday, January 11, 2021 10:18 PM
To: Mackey, Cyndy <Mackey.Cyndy@epa.gov>; Li, Beverly <Li.Beverly@epa.gov>; Ingemansen, Dean <Ingemansen.Dean@epa.gov>; Bruce Kulpan <Kulpan.Bruce@epa.gov>; Sciretta, Nicholas <sciretta.nicholas@epa.gov>
Cc: Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: Stibnite Mine

Kathy and I are reviewing the ASAOC and SOW changes from Midas. One of the things I'd like everyone to think about is Midas' request to change the language on the deadlines to opt into phases and to submit deliverables. For instance, Midas prefers we say "no later than thirty days after issuance of the Phase 1 completion report." We had "within thirty days of issuance of the Phase 1 completion report." There are a couple of places where we were inconsistent with our language. The model uses "within __ days following EPA's disapproval.´ Nick and Bruce, do you have any knowledge about why the model is written the way it is? I'm sure there were about 20 EPA lawyers deliberating over this language. Perhaps you can talk to a model expert and get their opinion?

Midas' rationale is: "Under the language in the prior sentence, Midas Gold has the ability to submit its written commitment "no later than 30 days after the Agencies' issuance" of the completion report, which gives Midas Gold the ability to submit this request much sooner (i.e. before the issuance of the report) if it wishes. Midas Gold prefers this formation also for electing into Phase 2, as it could reduce the risk that subsequent phases have delays in approvals that impact the timelines for subsequent phases. The language here that we have requested be changed -- "within 30 days" of finishing a phase to elect -- might be read as preventing Midas Gold from making an earlier commitment, such as even before finishing the prior Phase 1. "

I'm don't think we would allow Midas to commit to a subsequent phase before they get a notice of completion for the previous phase. The system was designed such that Midas would not be allowed to start a subsequent phase until the work in the previous phase was complete. What if we allowed them to commit to the Bridge phase (beneficial to Midas to keep their 113(h), but they never satisfactorally complete Phase 1? We wouldn't take that risk. I don't really understand his argument about delays in approvals.

I may also ask DOJ for their opinion.

Kathy and I spoke this evening about Midas' edit to the schedule in the SOW. Midas' change may actually result in them having an extra year to complete a phase of work. I'm thinking we should change the table so that we no longer include references to years. Instead, we should simply say that Phase 1 will be completed within 4 years from the effective date and the Bridge Phase, if conducted, will be completed within one year of the Agencies' initial comments on the TCRA Bridge Phase Work Plan. This will be instead of the years in the table (note – the redline is Midsa'). If the Effective Date

is January 12th/2021, then Phase 1 will be completed by January 12th, 2025 and the Bridge Phase will begin in February 2025. Since we do not know if any extensions will be given, or if work will be completed early in a particular phase, it seems safer to simply key the schedule off of the number of years from date of the Agencies' initial comments on the work plan. Let me know if you disagree.

ASAOC Phase	First AOC Year	Estimated Calendar Years	Mining Schedule Under PRO
1	1	2021 - 2025	Mine permitting & construction (if approvals & permits received)
Bridge	5	~~2025~~2026	Bridge phase if permits are not received by end of Phase 1

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From: Tenpas, Ron <rtenpas@velaw.com>
Sent: Monday, January 11, 2021 7:49 PM
To: Bodine, Susan <bodine.susan@epa.gov>; John C. Cruden (jcruden@bdlaw.com) <jcruden@bdlaw.com>
Cc: Wright, Peter <wright.peter@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Hladick, Christopher <hladick.christopher@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; stephen.vaden@ogc.usda.gov; Tom.Mariani@usdoj.gov; Branning, Hannah <Branning.Hannah@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Stalcup, Dana <Stalcup.Dana@epa.gov>; Li, Beverly <Li.Beverly@epa.gov>; bruce.gelber@usdoj.gov; Cook, Steven <cook.steven@epa.gov>; McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: RE: Stibnite Mine ASAOC and SOW

Assistant Administrator Bodine,

Thank you for the draft ASAOC and SOW you sent on January 9. The attached red-lines show a variety of what might be characterized as "nits" that we found. Certainly some are significant to make sure we have a clear and correct agreement – for example, we think we've found several places where paragraph cross-references within the document were not correct as a likely remnant of various changes and adjustments over time. Thus by "nits" I mean our corrections tend to be the kinds of things that are spotted through close proofreading as a document reaches its potential finalization, rather than edits introducing major substantive changes. Where we thought the reason for a change might not be obvious, we included a short comment bubble to further explain. All are offered in the spirit of insuring the document is internally consistent and putting the agreement closer to a final "signature ready."

Regards,

Ron Tenpas

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From: Bodine, Susan <bodine.susan@epa.gov>
Sent: Saturday, January 9, 2021 10:20 AM
To: Tenpas, Ron <rtenpas@velaw.com>; John C. Cruden (jcruden@bdlaw.com) <jcruden@bdlaw.com>
Cc: Wright, Peter <wright.peter@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Hladick, Christopher <hladick.christopher@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; stephen.vaden@ogc.usda.gov; Tom.Mariani@usdoj.gov; Branning, Hannah <Branning.Hannah@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Stalcup, Dana <Stalcup.Dana@epa.gov>; Li, Beverly <Li.Beverly@epa.gov>; bruce.gelber@usdoj.gov; Cook, Steven <cook.steven@epa.gov>; McKenna, Elizabeth <Mckenna.Elizabeth@epa.gov>; Cerise, Kathy <Cerise.Kathryn@epa.gov>
Subject: Stibnite Mine ASAOC and SOW

[EXTERNAL]

Dear Messrs. Cruden and Tenpas,

After consideration of comments on the December 11, drafts, the federal agencies have revised the Administrative Agreement and Order on Consent (ASAOC) and the Statement of Work (SOW) for implementing phased removal actions at the Stibnite Mining District. Those revised documents are attached.

Sincerely,

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

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Thank You.