MARTEN LAW

February 26, 2020

FRE 408 Communication
Confidential

Via E-Mail and U.S. Mail

Elizabeth McKenna, Assistant Regional Counsel
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RE: Stibnite Gold Project: Transmittal of Draft Administrative Order on Consent for RI/FS and Removal Actions

Dear Elizabeth:

On behalf of Midas Gold Idaho, Inc., and its corporate parent, Midas Gold Corporation (collectively, "Midas Gold" or the "Company"), and as we have discussed, I am forwarding for your review the Company's proposed Administrative Order on Consent for RI/FS and Removal Actions ("draft AOC") at the Stibnite mine site in Idaho. This draft AOC, which includes an attached Statement of Work ("SOW"), is a confidential settlement proposal to be shared only among the parties who have been working on the document. We ask for your confirmation that it will not be shared with the Nez Perce Tribe, with whom, as you know, the Company is in litigation, or with any other non-party. The Company regards this draft AOC as privileged, confidential, and subject to the protections afforded by Rule 408 of the Federal Rules of Evidence (FRE).

I look forward to discussing this draft with you. If possible, I would appreciate the opportunity to have a call or meeting with you next week to discuss your proposed edits to the AOC and SOW.

Sincerely,

Bradley M. Marten

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Enclosures: Draft AOC and SOW

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

I. JURISDICTION & GENERAL PROVISIONS 3
II. PARTIES BOUND 3
III. DEFINITIONS 4
IV. FINDINGS OF FACT 7
V. CONCLUSIONS OF LAW 11
VI. SETTLEMENT AGREEMENT & ORDER 11
VII. CONTRACTOR, PROJECT COORDINATOR, & REMEDIAL PROJECT MANAGER 11
VIII. WORK TO BE PERFORMED 13
IX. SUBMISSION & APPROVAL OF DELIVERABLES 15
X. HEALTH & SAFETY 17
XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS 17
XII. PROPERTY REQUIREMENTS 19
XIII. ACCESS TO INFORMATION 20
XIV. RECORD RETENTION 21
XV. COMPLIANCE WITH OTHER LAWS 22
XVI. EMERGENCY RESPONSE & NOTIFICATION OF RELEASES 23
XVII. PAYMENT OF NON-RESPONDENTS' RESPONSE COSTS 23
XVIII. DISPUTE RESOLUTION 25
XIX. STIPULATED PENALTIES 25
XX. FORCE MAJEURE 27
XXI. COVENANTS BY THE NON-RESPONDENT PARTIES 28
XXII. RESERVATIONS OF RIGHTS BY THE UNITED STATES 29
XXIII. COVENANTS BY RESPONDENTS 30
XXIV. OTHER CLAIMS 31
XXV. EFFECT OF SETTLEMENT/CONTRIBUTION 31
XXVI. INDEMNIFICATION 32
XXVII. INSURANCE 33
XXVIII. FINANCIAL ASSURANCE 33
XXIX. MODIFICATION 35
XXX. NOTICE OF COMPLETION OF WORK 36
XXXI. PUBLIC COMMENT 36
XXXII. INTEGRATION & APPENDICES 36
XXXIII. HEADINGS 36
XXXIV. EFFECTIVE DATE 36
XXXV. DISCLAIMER 37
XXXVI. NOTICES & SUBMISSIONS 37
CERTIFICATE OF SERVICE 44
APPENDIX A 45
APPENDIX B 47

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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

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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.

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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.

"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.

"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

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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.

"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.

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"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.

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.

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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 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.

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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

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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.

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.

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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.

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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.

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.

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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.

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

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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.

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

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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 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

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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 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.

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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)" 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.

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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 at http://www.epa.gov/innpoli8/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 http://www.epa.gov/measurements/documents-about-measurement-competency-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 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 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.

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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.

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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.

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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.

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

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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.

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

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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.

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].

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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, (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

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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).

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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 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).

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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 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

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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.

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

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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.

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

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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

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).

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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).

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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.

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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.

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.

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XXVIII. FINANCIAL ASSURANCE

138. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of [$_____]. 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.

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

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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, 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

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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 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

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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

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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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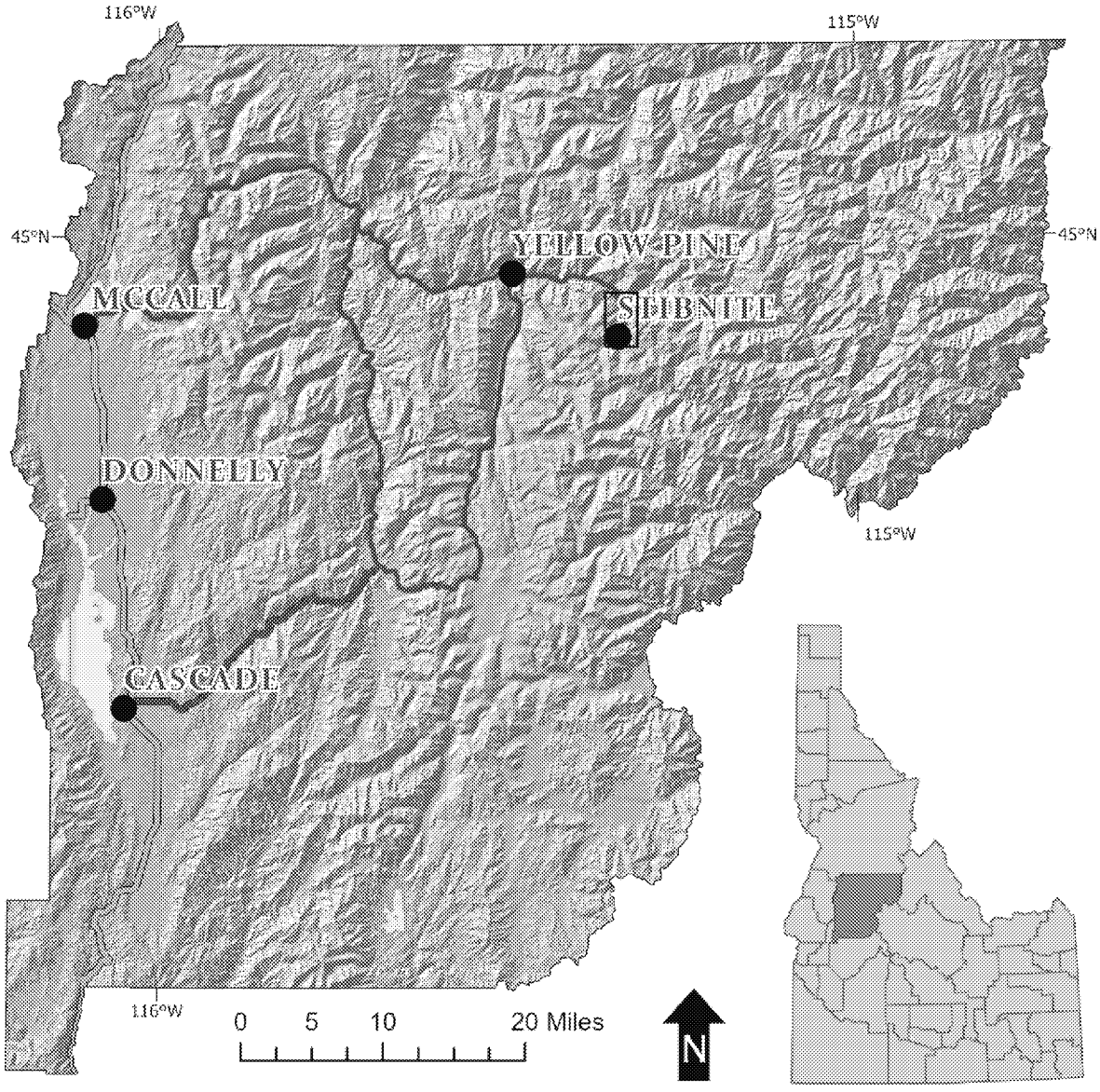
APPENDIX A

PROJECT SITE



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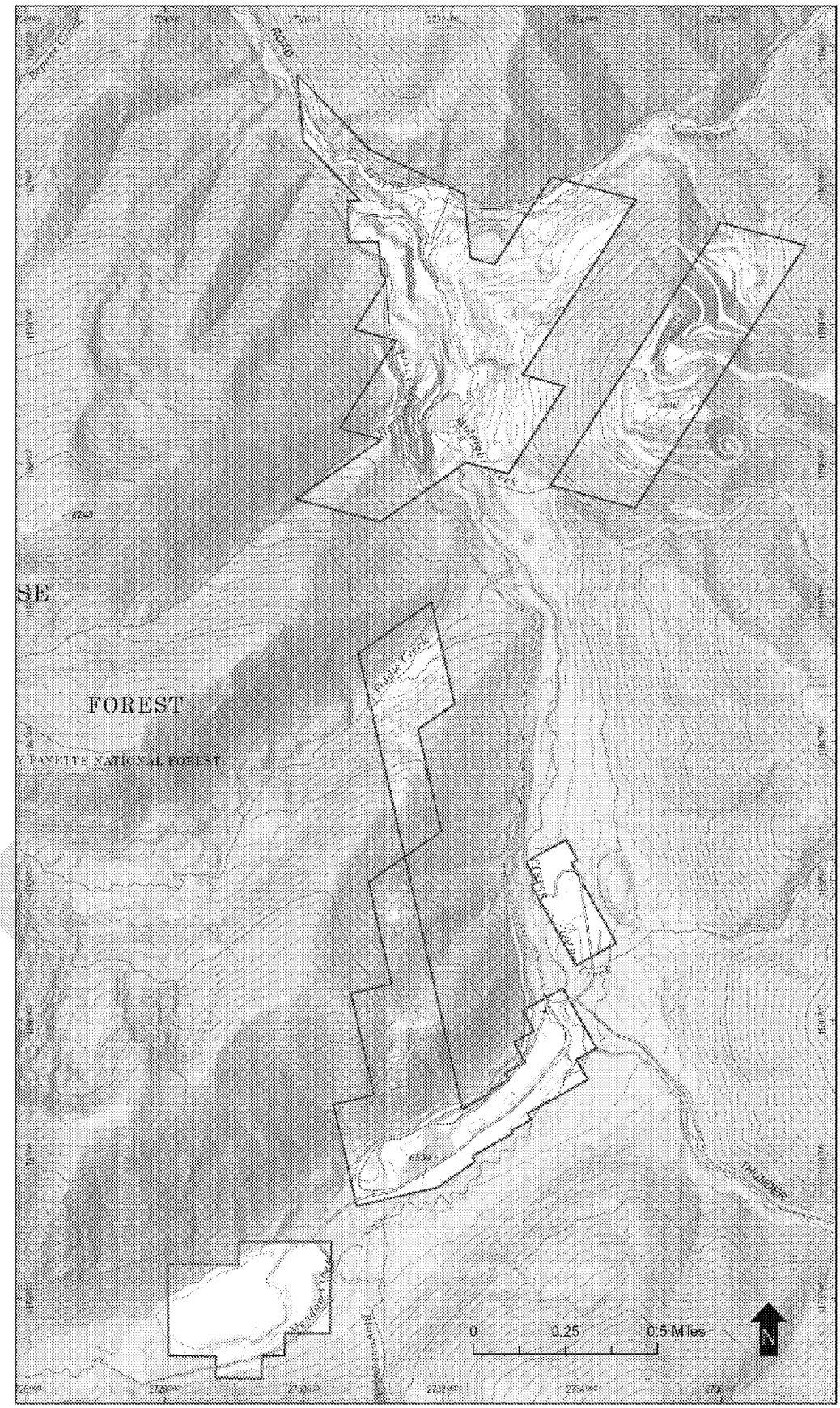
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APPENDIX B

STATEMENT OF WORK FOR THE STIBNITE MINE REMEDIAL INVESTIGATION / FEASIBILITY STUDY

TABLE OF CONTENTS

SECTION **PAGE**

1 PURPOSE 49
2 SCOPE 49
3 OVERSIGHT 49
4 SCHEDULE 50
5 GUIDANCE 50
6 ROLES AND RESPONSIBILITIES 50
7 REMEDY REQUIREMENTS 51
8 TASK 1 – SCOPING 51
8.1 Site Background 51
8.2 Project Planning 52
8.3 Scoping Deliverables 53
9 TASK 2 – COMMUNITY RELATIONS 58
10 TASK 3 – SITE CHARACTERIZATION 59
10.1 Field Investigation 59
10.2 Data Analyses 60
10.3 Data Management Procedures 61
10.4 Site Characterization Deliverables 62
11 TASK 4 – TREATABILITY STUDIES 63
11.1 Determination of Candidate Technologies and of Need for Testing 63
11.2 Treatability Testing and Deliverables 64
12 TASK 5 – FEASIBILITY STUDY 65
12.1 Remedial Alternative Development 65
13 TASK 6 – DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES 66
13.1 Detailed Analysis of Alternatives 66
13.2 Detailed Analysis Deliverables 67
14 TASK 7 – EARLY ACTIONS 67
14.1 Description and Scope of Early Actions 68
14.2 Design 69
14.3 Early Action Implementation 73
14.4 Project Completion and Close Out 73
15 REFERENCES FOR CITATION 74
ATTACHMENT A – SUGGESTED RI/FS WORK PLAN FORMAT 82
ATTACHMENT B – SUGGESTED FORMAT FOR SAMPLING AND ANALYSIS PLAN 83

DRAFT

ATTACHMENT C – SUGGESTED REMEDIAL INVESTIGATION REPORT FORMAT 84
ATTACHMENT D – SUGGESTED FORMAT FOR FEASIBILITY STUDY REPORT.....86
ATTACHMENT E – STIBNITE MINE RI/FS STATEMENT OF WORK SCHEDULE 88

DRAFT

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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. 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 existing field data and analyses, mining activities proposed in the PRO, and 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 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.

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

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 &

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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 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 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.

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

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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 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.

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.

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 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).

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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.

ED_005488A_00071840-00057

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	Copper	Selenium
Aluminum	Cyanide	Silver
Antimony	Hardness	Sodium
Arsenic	Iron	Sulfate
Barium	Lead	Thallium
Beryllium	Magnesium	Tungsten
Boron	Manganese	Total Dissolved Solids
Cadmium	Mercury	Total Organic Carbon
Calcium	Molybdenum	Total Suspended Solids
Chloride	Nickel	Uranium
Chromium (III)	Nitrogen (TKN)	Vanadium
Chromium (VI)	Phosphorus	Zinc
Cobalt	Potassium	

Field Analyses

Conductivity	Flow	Temperature
Dissolved Oxygen	pH	

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

Aluminum	Cyanide	Selenium
Antimony	Iron	Silver
Arsenic	Lead	Thallium
Cadmium	Manganese	Tungsten
Chromium	Mercury	Vanadium
Copper	Nickel	Zinc

ED_005488A_00071840-00058

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	Cyanide	Silver
Antimony	Iron	Thallium
Arsenic	Lead	Tungsten
Boron	Manganese	Uranium
Cadmium	Mercury	Vanadium
Chromium	Molybdenum	Zinc
Cobalt	Nickel	
Copper	Selenium	

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	Copper	Nickel
Antimony	Cyanide	Selenium
Arsenic	Iron	Silver
Boron	Lead	Thallium
Cadmium	Manganese	Tungsten
Chromium	Mercury	Vanadium
Cobalt	Molybdenum	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.

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Laboratory Analyses

Alkalinity	Cyanide	Silver
Aluminum	Hardness	Sodium
Antimony	Iron	Sulfate
Arsenic	Magnesium	Thallium
Barium	Manganese	Total Dissolved Solids
Beryllium	Mercury	Total Organic Carbon
Cadmium	Molybdenum	Total Suspended Solids
Calcium	Nickel	Tungsten
Chloride	Nitrate/nitrite as N	Uranium
Chromium (III)	Nitrogen (TKN)	Vanadium
Chromium (VI)	Orthophosphate	Zinc
Cobalt	Potassium	
Copper	Selenium	

Field Analyses

Conductivity	Ferrous Iron	Temperature
Dissolved Oxygen or ORP	Nitrite	
Ferric Iron	pH	

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 Cascade, 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 to the extent that it has not already been determined through existing data. 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.

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.

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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, to the extent that it has not already been determined through existing data. 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 the extent that it has not already been determined through existing data. 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 to the extent that it has not already been determined through

ED_005488A_00071840-00062

existing data. 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

ED_005488A_00071840-00063

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)

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, 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.

ED_005488A_00071840-00064

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.

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

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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.

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.

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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.

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.

ED_005488A_00071840-00067

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.

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.

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.

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.

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Description and Scope of Early Actions

The three EAs are as follows:

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.

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.

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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 the Keyway Marsh – with a potential ancillary benefit of providing additional water to support wetland function.

Design

Draft Early Action Design Report/Early Action Work Plan

Within 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

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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:

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

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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 Contract Laboratory Program (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.

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

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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.
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.

Final Early Action Design Report/Early Action Work Plan

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

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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.

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.).

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 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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FIGURES

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Figure 1 – Early Action Water Diversion Plan for Hennessy Creek

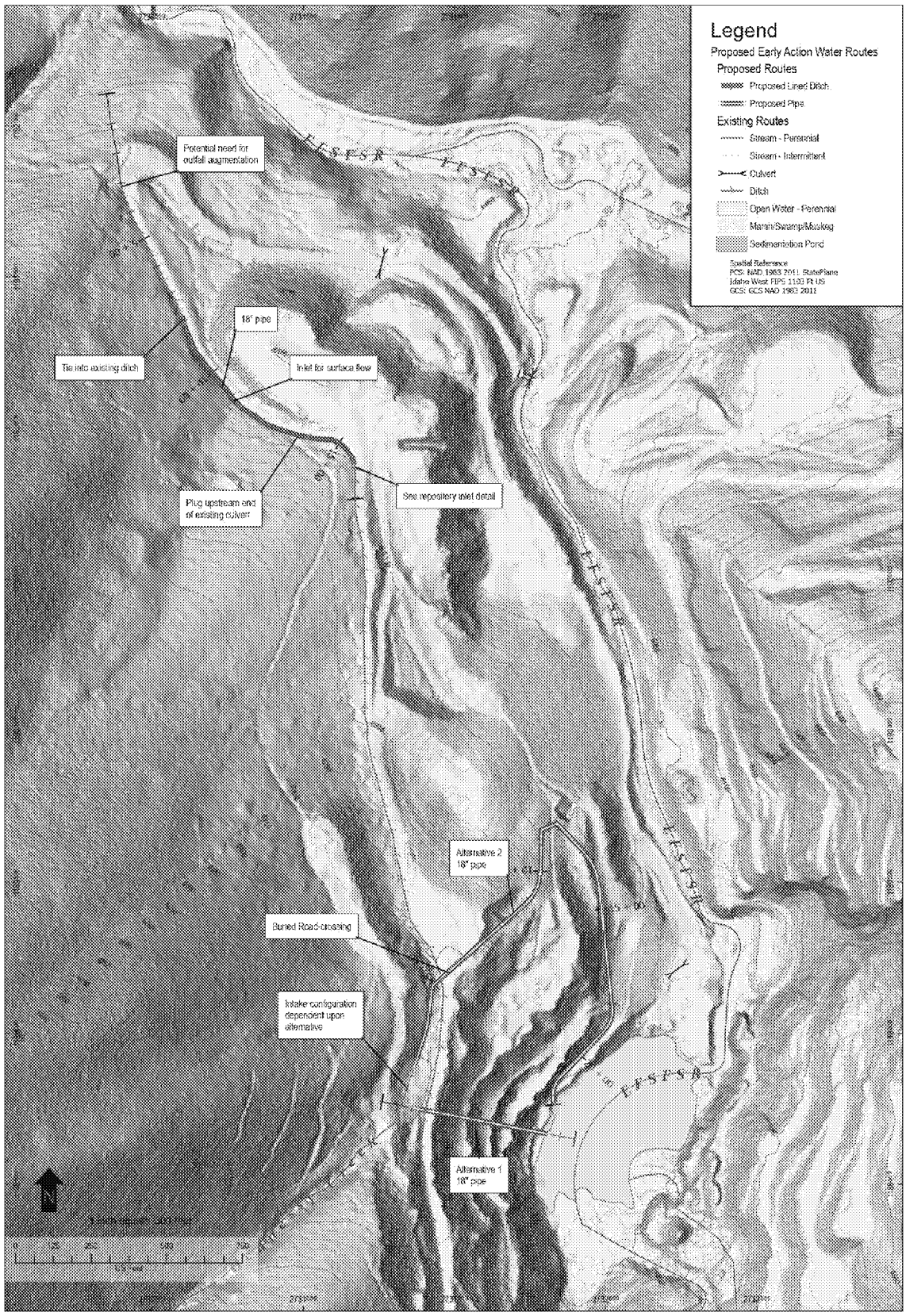


Figure 2 – Early Action Water Diversion Details for Hennessy Creek

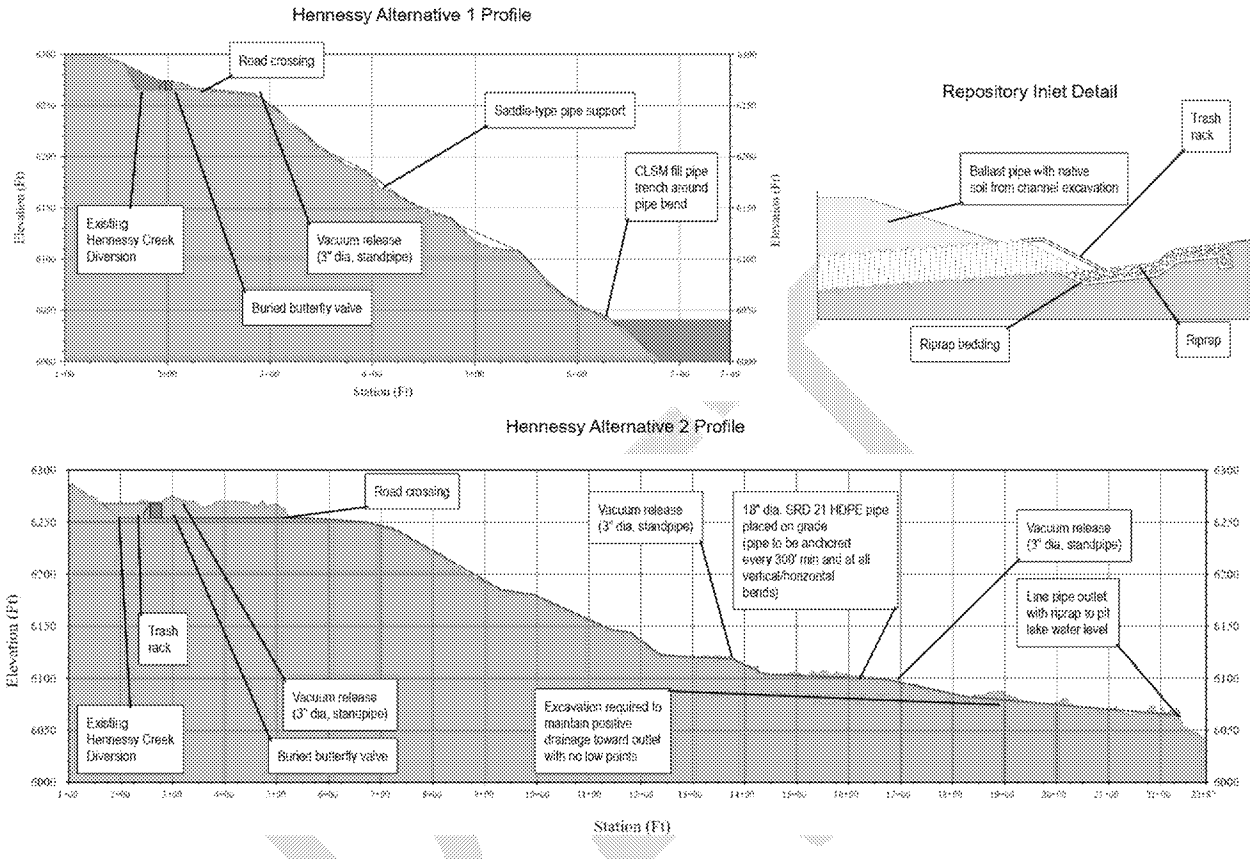


Figure 3 – Early Action Water Diversion Design for DMEA Waste Rock Dump Area

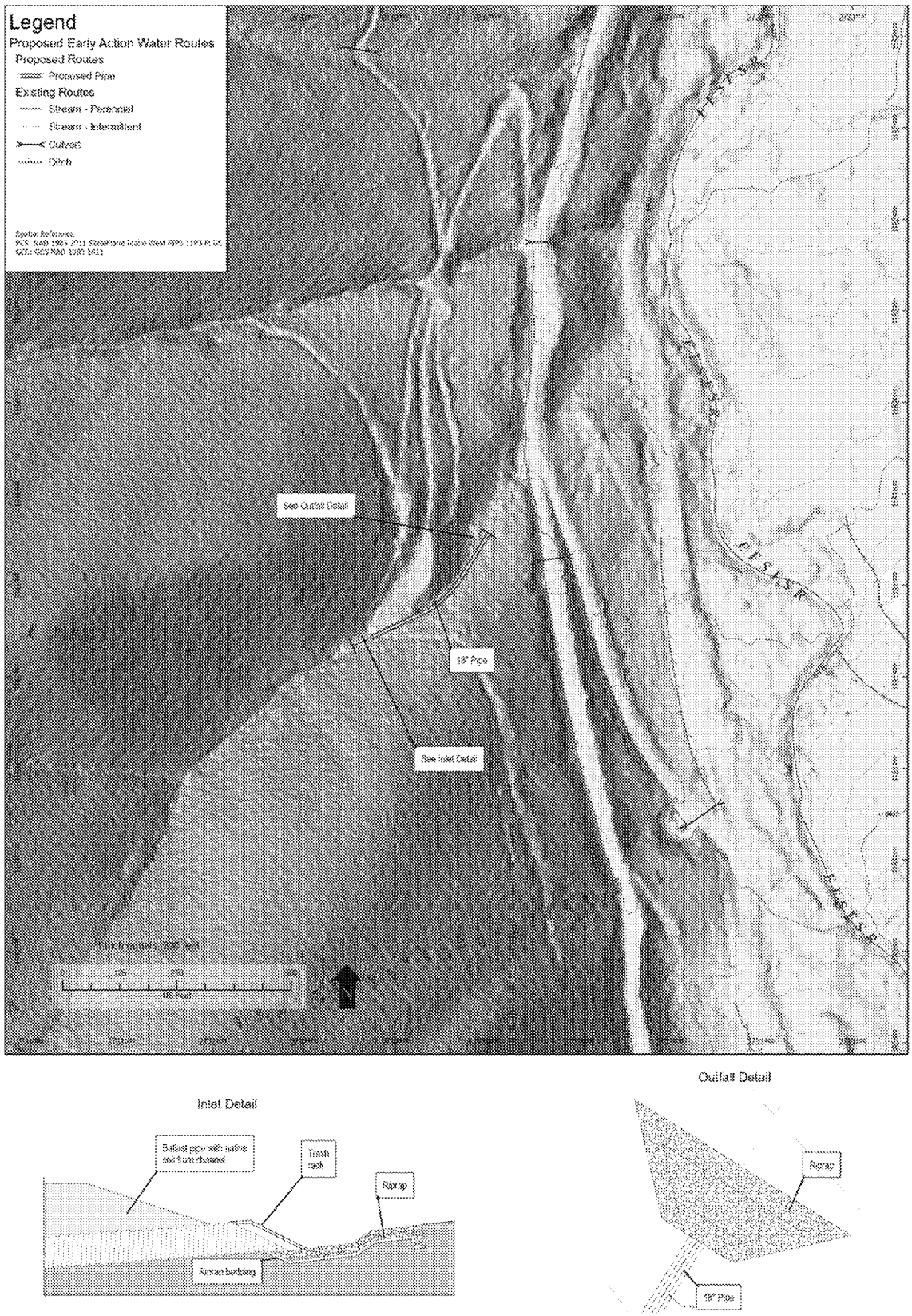
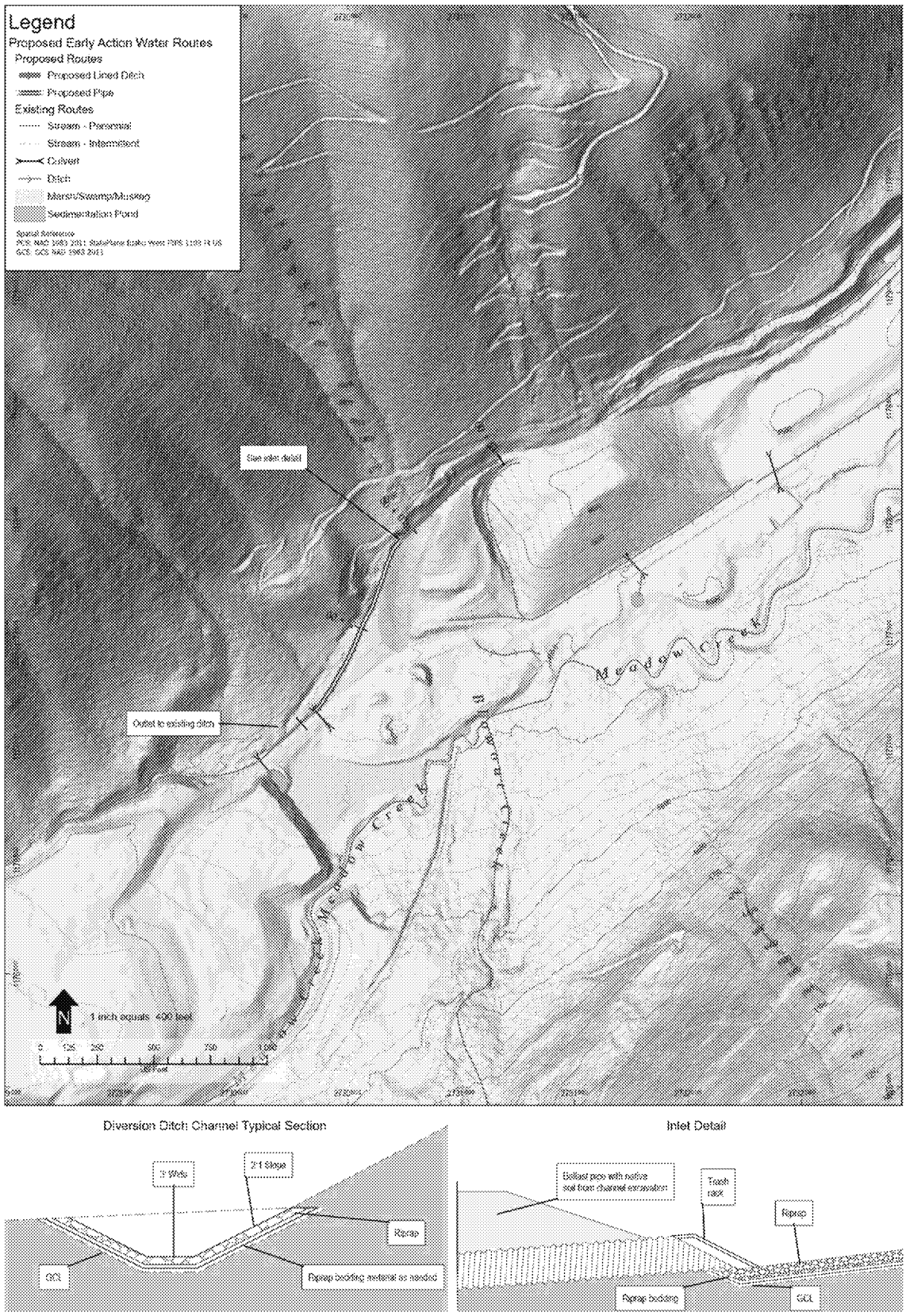


Figure 4 – Early Action Water Diversion Plan for Former Bradley Mill and Smelter Area



ATTACHMENTS

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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 Sampling and Analysis Plan

Field Sampling Plan (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

Quality Assurance Project Plan (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 Remedial Investigation 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:

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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 RI/FS Statement of Work Schedule

Early Actions (separate documents will be submitted for each Early Action)

- 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

<u>RI/FS Work Plan/Sampling and Analysis Plan (WP/SAP):</u>

- 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.

ED_005488A_00071840-00091