Message

From: McKenna, Elizabeth [Mckenna.Elizabeth@epa.gov]
Sent: 11/16/2019 10:21:29 AM
To: Bradley M. Marten [bmarten@martenlaw.com]; Lisa.O'Hara@deq.idaho.gov; Fremerman, Gary - OGC, Washington, DC [gary.fremerman@usda.gov]; Jill Grant [jgrant@jillgrantlaw.com]
CC: Cerise, Kathy [Cerise.Kathryn@epa.gov]
Subject: Stibnite Mine AOC Draft
Attachments: Draft #1 11-15-2019.docx

Attached is a rough first draft of the Settlement Agreement. Given my workload this past two weeks, I did not have time to provide a draft to the other governmental agencies before I sent it to Midas. As a result, there will need to be adjustments in certain sections such as cost reimbursement of the various parties, and sections where I did not have needed information from the other Parties. I have written the settlement agreement with EPA as the lead agency/decision maker and IDEQ and the Tribes as the support agencies. EPA and USFS need to work out where to use "EPA determines that…" versus "EPA and USFS determine…", or "the United States determine…" because USFS retains its decision making authority on USFS land. For example, there is a statement in the agreement that says, "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." USFS and EPA will discuss whether this statement will read, "The United States (or EPA and the USFS) retain all authority…). The Support Agencies and the Federal agencies will need to talk about editing the document to adequately describe the involvement of the Support Agencies. We need to work out with the Support Agencies the best way to communicate their role. I think it is too cumbersome to say "in consultation with the Support Agencies" each time EPA or EPA/USFS makes a decision. I would prefer to have one statement in the beginning of the document that says EPA or EPA/USFS will consult with the Support Agencies when making decisions pursuant to this agreement. I have made an attempt at that language in the attached draft.

There are gaps in the Findings of Fact that EPA is working to fill. I have taken information from different sources/authors to fill that section in, so feel free to make suggestions/corrections.

The draft currently has Midas submitting documents only to EPA. The next draft will be modified to have documents sent to all of the parties so that EPA does not have to distribute them. I don't currently have all of the contact information I need to make that change, so we can do that in the next draft.

There may be a need to add language to the agreement to reflect modifications that are made to the SOW.

Again, this is a rough draft and I expect that there will be many corrections. EPA reserves the right to make changes to the document proposed and encourages all of the Parties to comment and suggest corrections and modifications.

Please forward my email to your respective teams.

Thank you.

- Elizabeth

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