Nez Perce

TRIBAL EXECUTIVE COMMITTEE
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November 27, 2019

Sent via email: Hladick.Christopher@epa.gov

Mr. Christopher W. Hladick
Region 10 Administrator
U.S. Environmental Protection Agency
1200 Sixth Avenue, Ste. 155, M/S 21-B03
Seattle, WA 98101

Re: Nez Perce Tribe's comments on the draft Stibnite Mine Site Administrative Order on Consent and Statement of Work

Dear Mr. Hladick:

The Nez Perce Tribe ("Tribe") appreciates the opportunity to comment on the draft Statement of Work ("SOW") for the Stibnite Mine Remedial Investigation ("RI") and Feasibility Study ("FS"). The Tribe, however, cannot fully understand and provide feedback on a SOW without seeing the underlying and legally operative draft Administrative Order on Consent ("AOC"). For this reason, the Tribe also reviewed and is providing the Environmental Protection Agency ("EPA") with preliminary feedback on the draft AOC for the Stibnite site that Midas Gold recently filed in the Tribe's Clean Water Act litigation against the company and which the Tribe presumes is the most recent draft version.

The Tribe's paramount priority is to protect and advance its treaty-reserved rights and cultural interests in its aboriginal territory. As EPA is aware, the Stibnite mine site is located entirely within the Tribe's aboriginal territory and is subject to the rights that the Tribe reserved, and the United States secured, in its 1855 Treaty.[1] In addition to holding treaty-reserved rights at the Stibnite site, the site is located entirely within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission.[2] As a co-manager of its fishery, the Tribe also expends millions of dollars in hatchery supplementation, fishery research, and habitat restoration projects in the South Fork Salmon River watershed.

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[1] Treaty with the Nez Perces, June 11, 1855, 12 Stat. 957 (1859).

[2] *Nez Perce Tribe v. United States*, Docket # 175, 18 Ind. Cl. Comm. 1.

The Tribe is disappointed that the AOC and SOW appear to be tailored to limit Midas Gold's liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") while only actually addressing the eight point sources at the site that the company is liable for under the Clean Water Act ("CWA"). The AOC and SOW are therefore currently inadequate to address the legacy pollution at the Stibnite site in a timely and holistic manner that protects the Tribe's treaty-reserved rights and cultural interests. The AOC and SOW leave the Tribe with numerous questions as to how EPA plans, in real terms, to pursue what appears to be the novel task before it: the completion and implementation of an RI and FS at a site with a pending mine development proposal.

To better understand EPA's approach, the Tribe requests that the EPA provide it with an example of when and how an RI and FS have been conducted at a site that may be re-mined. The Tribe also requests a technical staff-to-staff meeting to discuss its comments and questions (appended here), followed by formal government-to-government consultation. Consistent with the applicable executive orders and EPA's consultation policies, the Tribe fully expects that this technical conversation and formal consultation will occur prior to EPA providing the Tribe with a final draft to review and prior to EPA opening the AOC and SOW to a 30-day public comment period.

Because the Tribe's treaty-reserved rights and natural and cultural resources are directly at issue at the Stibnite site, the Tribe offers the following narrative comments to assist the EPA with fulfilling its trust responsibilities to the Tribe. Attached to the Tribe's narrative comments are suggested edits to the SOW, reflected in track-changes, as well as a copy of the draft AOC reviewed by the Tribe.

Sincerely,

Shannon F. Wheeler
Chairman

cc: Ms. Elizabeth McKenna (McKenna.Elizabeth@epa.gov)

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Nez Perce Tribe's Comments on Stibnite Draft AOC & SOW

The Tribe is opposed to any CERCLA action at the Stibnite site that does not, in good faith, contemplate a site-wide and comprehensive cleanup of the site. The scale of past remedial actions has been inadequate in comprehensively and holistically addressing contamination at the Stibnite site. The Tribe cannot accept a repeat. The Tribe fully expects that if EPA invokes CERCLA for the Stibnite site, that it will use the statute to ensure that the full legacy of contamination at the Stibnite site is addressed. The Tribe, therefore, opposes the Stibnite AOC and SOW in their current form.

I. The AOC and SOW are Currently Inadequate to Protect the Tribe's Resources

Congress passed the CERCLA in 1980 as a strict liability statute to ensure that sites contaminated by hazardous substances would be efficiently investigated and cleaned up, thereby reducing risks to human health and the environment.[1] Unfortunately, the Stibnite draft AOC, which Midas Gold filed in Idaho District Court, Case No. 19-cv-00307-BLW, on November 13, 2019 ("11/13 AOC") appears more focused on using CERCLA as a liability shield for Midas Gold than ensuring rigorous protection of the human and environmental health. The 11/13 AOC and SOW together do not require Midas Gold to implement an efficient and comprehensive cleanup of the legacy contamination at the Stibnite site. Instead, both documents appear to act as a permission structure for Midas Gold's already planned gold mine, the Stibnite Gold Project, while requiring only a cursory cleanup of the point source discharges Midas is currently liable for under the CWA. In light of these glaring deficiencies, EPA would be abdicating its duty to protect the Tribe and the public were it to approve the AOC and associated SOW in their current state.

A. The AOC Must Require RI and FS Processes to Begin Immediately

The Tribe questions why the 11/13 AOC's effective date is tied to the Forest Service's issuance of a Record of Decision ("ROD") for the Midas Gold's Stibnite Gold Project.[2] EPA should not sign an agreement with Midas Gold only to delay initiation of actual cleanup work—i.e. the RI and FS processes. The RI and FS processes must begin immediately to ensure thorough work product and to ensure these processes are not unduly influenced by a permitted mining plan.

If EPA allows Midas Gold to wait until the Forest Service issues a ROD to begin the RI and FS processes (assuming the Forest Service even issues a ROD), years could pass before any CERCLA investigations begin, if investigations begin at all. Meanwhile, pollution discharges into the East Fork South Fork Salmon River and its tributaries will continue unstudied and unabated. Such a scenario is not in keeping with CERCLA's foundational intent and would be a betrayal of the public's trust.

The RI and FS processes should also be initiated as soon as the AOC is signed because they are complicated and involved processes that must be completed in a careful and thorough manner. The objective of the RI and FS process under CERCLA is to gather information to support an informed

[1] *Burlington Northern and Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 602, 608 (2009).
[2] 11/13 AOC at 31.

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risk management decision regarding remedies.[3] EPA guidance on developing and screening alternatives explains that remedy alternatives are typically developed concurrently with the RI site characterization, with the results of one influencing the other in an iterative fashion (i.e., RI site characterization data are used to develop alternatives and screen technologies, whereas the range of alternatives developed guides subsequent to site characterization and/or treatability studies). The RI and FS are to be conducted concurrently and the data collected in the RI influences the development of remedial alternatives in the FS, which in turn affects the data needs and scope of treatability studies and additional field investigations. This concept is essential to the phased RI/FS approach.[4]

Waiting until after the Forest Service has approved a mining plan to begin the RI process also means that the mining plan will inevitably become the starting point for the remedy alternatives considered and the ultimate remedy selected. The Tribe does not think that tiering the RI and FS processes off an approved mining plan is appropriate. The RI and FS process are supposed to be focused on protecting human health and the environment.[5] The Tribe strongly feels that the best way to accomplish this is to initially focus the RI and FS processes on a no-mine scenario for the Stibnite site.

The best way for EPA to ensure that the Stibnite site is efficiently and effectively cleaned up is to finalize an AOC prior to the Forest Service issuing a ROD for the Stibnite Gold Project and to complete an RI and FS for the site for a no-mine scenario, prior to Midas Gold commencing mine construction. If mining does not proceed, or does not proceed within a reasonable time frame of 3 years or less, then the no-mining remedy identified in the RI and FS should be implemented. If mining is permitted, then EPA can modify the AOC's remedy or, if necessary, the completed remedy can be modified to accommodate future mining.

This phased approach will ensure that there is a clear cleanup protocol in place for the Stibnite site should the Stibnite Gold project not be approved or should Midas Gold decide not to implement the approved project, in part or in full. This phased approach will also help ensure that the cleanup protocol has not been unduly influenced by Midas Gold's profit-motivated plans and that a comprehensive cleanup occurs, while sparing EPA that pain of trying to anticipate the contents of an as-of-yet unwritten and unissued ROD. And finally, this phased approach will ensure that the Forest Service can consider the RI and FS in its National Environmental Policy Act ("NEPA") analysis of the Stibnite Gold project and approve as a mining plan that facilitates a comprehensive cleanup at the site.

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[3] 1988 EPA Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, October 1998, U.S. EPA, at 1-3.
[4] *Id* at 4-3.
[5] 42 U.S.C. § 9621.

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B. The AOC Needs to Include Robust Financial Assurance

EPA needs to require robust financial assurance in the AOC for the cleanup of the Stibnite site, separate and apart from financial assurance for the full-scale mine. And, such financial assurance needs to be solid, so that EPA has the funds necessary to invoke the "Work Takeover" section of the AOC if need be.[6]

The Tribe is, therefore, adamantly opposed to Midas Gold providing financial assurance in the form of a corporate guarantee; Midas Gold must provide financial assurance in the form of a cash or surety bond. Also, when calculating the amount of financial assurance necessary for the AOC, the Tribe fully expects that EPA will use an accepted method such as the Standard Reclamation Cost Estimator. EPA should require the estimate to include long-term water management and treatment and long-term monitoring and maintenance. The Tribe also expects that EPA will require financial assurance for the legacy waste material at the Stibnite site. This is important because there is no assurance that the reclamation and closure plan contained in a future Forest Service ROD will successfully address all legacy pollution at the Stibnite site or that a future Forest Service ROD will include adequate financial assurance. Unaddressed legacy waste material could become commingled with new mining waste during mine construction and operation. Consequently, EPA must require financial assurance for all legacy waste material at the site. The Tribe is, therefore, opposed to an AOC clause that allows Midas Gold to request that EPA reduce its financial assurance prior to mine closure.

C. The AOC Must Include Stipulated Penalties for Non-Compliance

The AOC must include a stipulated penalties section. As EPA knows, a stipulated penalties section is a standard clause in EPA AOCs.

D. The SOW Must be Site-Wide and Comprehensive

The SOW's scope is currently too narrow. The SOW for the Stibnite site must be site-wide and comprehensive. Previous CERCLA actions at the site have only addressed a small fraction of the site's legacy contamination and, thereby, have failed to fulfill CERCLA's foundational purpose of protecting human health and the environment. A repeat of these past, inadequate actions is unacceptable to the Tribe. The Tribe and the public have tolerated legacy contamination and federal agency inaction at the site for far too long. EPA needs to require a cleanup of all legacy pollution at the Stibnite site, not simply the areas identified in the Tribe's CWA litigation against Midas Gold. Although the areas identified in the Tribe's litigation definitely need attention, they are simply a small portion of a larger problem; legacy contaminants exist all over the Stibnite site that may not be currently discharging pollutants, but which must be included in a RI and FS and, ultimately, be cleaned up.

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[6] 11/13 AOC at 23.

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EPA should have a willing partner in Midas Gold for a comprehensive cleanup. Midas Gold has repeatedly represented to the public and the Tribe that it wants to "restore" the Stibnite site. "Restoration," the act of bringing back to a former position or condition,[7] can only be accomplished through a site-wide cleanup. Restoration cannot be accomplished by limiting the SOW to the eight point sources in the Tribe's CWA lawsuit.

In addition to ensuring that the SOW is comprehensive and site-wide, EPA must ensure that the RI and FS are begun as soon as an AOC is signed by including a timeline for each of its six constituent tasks—project scoping, data collection, risk assessment, treatability studies, and analysis of alternatives[8]—as well as the remedial action work. EPA should also tailor the scope and timing of these activities to the nature and complexity of the problem and the response alternatives being considered.[9]

Since EPA reserves the right to conduct any aspect of the RI,[10] the Tribe also requests that EPA specify in the AOC that it will conduct the baseline assessment for the site. This is the most sensitive part of the RI to project proponent bias, and it is vital that the baseline assessment including impacts and risks to Tribal lifestyles.[11]

E. The Tribe's Outstanding Questions and Comments on the AOC and SOW

In order to understand EPA's thinking regarding cleanup at the Stibnite site, the Tribe also asks for clarification on the following points:

- When will point source pollution at the site actually be remediated?
- When will non-point source contamination at the site actually be remediated?
- When and how will Midas Gold be held accountable for compliance with the AOC?
- By linking the effective date of the AOC with the Forest Service's ROD, is EPA presupposing that Midas Gold's approved mining plan will be the preferred CERCLA remedy for the Stibnite site? If so, why is this appropriate prior to conducting the RI and FS?
- The national goal of the remedy selection process is to select remedies that are protective of human health and the environment, that maintain protection over time, and that minimize untreated waste.[12] How does EPA propose to reconcile this goal with Midas Gold's mining proposal? How does EPA propose to ensure that remedy selection is impartial and fact-

[7] Restoration [Def. 1] In *Merriam-Webster Online*, Retrieved November 25, 2019, (available at: http://www.merriam-webster.com/dictionary/restoration).
[8] 40 CFR § 300.430(a)(2).
[9] *Id.*
[10] The Remedial Investigation: Site Characterization and Treatability Studies, U.S. EPA, at 4 (available at: https://nepis.epa.gov/Exe/ZyPDF.cgi/600016JW.PDF?Dockey=600016JW.PDF).
[11] Consideration of Tribal Treaty Rights and Traditional Ecological Knowledge in the Superfund Remedial Program, 2017, U.S. EPA, at 4.
[12] 40 CFR § 300.430(a)(1).

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based, when it is proposing to delay the initiation of the RI and FS process to after Midas Gold has a permitted mine?

- Why doesn't EPA select a remedy for the site prior to the Forest Service issuing a ROD? Wouldn't the Forest Service benefit from a completed RI and FS in analyzing and approving a mine alternative? Wouldn't the Forest Service's incorporation of the AOC's selected remedy into its NEPA analysis and design of the approved mining project help ensure a comprehensive cleanup of the Stibnite site?
- Will EPA include in the AOC the legal basis for each signatory's participation in the AOC and each signatory's involvement in supervising and implementing the AOC?
- The AOC should clarify that ROD means Final ROD once all appeals or other legal challenges are resolved.
- What happens to the CERCLA clean-up under the current AOC if the Forest Service never issues a ROD for a mine at the Stibnite site?

II. EPA's Trust Responsibilities to the Tribe

In addition to holding treaty-reserved rights at the Stibnite site, the site is located entirely within the Tribe's area of exclusive use and occupancy, as adjudicated by the Indian Claims Commission.[13] EPA thus has a trust responsibility when negotiating this AOC and associated SOW to consult with the Tribe to ensure that its actions are fully consistent with the 1855 Treaty, executive orders, statues, regulations, EPA guidelines, and other federal laws implicating the United States' unique relationship with the Tribe. EPA also has a trust responsibility to inform and consult with the Tribe in order to avoid or mitigate impacts to culturally significant resources at the site.

A. Responsibility to Consult

EPA has a duty to engage and consult with the Tribe on the AOC and SOW discussions.[14] According to EPA guidance, "[c]onsultation consists of respectful, meaningful, and effective two-way communication."[15]

The Tribe fully expected that any serious engagement by EPA with the Tribe on the Stibnite AOC would come after EPA had negotiated a funding agreement with the Tribe and that EPA would provide the Tribe with sufficient time to review and prepare comments and feedback on the AOC negotiations. The Tribe is providing these comments under very different circumstances, since the Tribe and EPA have yet to negotiate a funding agreement and the Tribe is providing these comments under tight time constraints. The Tribe expects that EPA will engage the Tribe in a more respectful manner going forward.

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[13] *Nez Perce Tribe v. United States*, Docket # 175, 18 Ind. Cl. Comm. 1.

[14] Exec. Order 13175, 65 Fed. Reg. 67249 (2000); EPA Region 10 Tribal Consultation and Coordination Procedures, 2012, at 8-9 (available at: https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100FFEY.txt).

[15] EPA Region 10 Tribal Consultation and Coordination Procedures, 2012, at 5 (available at: https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100FFEY.txt).

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On September 13, 2019, Elizabeth McKenna, Assistant Regional Counsel for EPA, sent Michael Lopez, Staff Attorney for the Tribe, a letter outlining the Tribe's options for participating in AOC discussions between EPA, Idaho, the U.S. Forest Service, and Midas Gold. Ms. McKenna's letter stated: "If the Tribe chose not to be a signatory to the administrative settlement agreement, EPA could consult with the Tribe during the negotiations[.] [...] Under this option the parties could agree to negotiate terms for reimbursement of the Tribe's costs incurred by the Tribe as a participant in the RI/FS implementation process directly to the Tribe. Or, EPA could provide funds through a cooperative agreement with the Tribe, and EPA would negotiate terms that would provide for reimbursement of those costs to EPA." In a letter dated October 14, 2019, Mr. Lopez conveyed to EPA that the Tribe has elected to not be a signatory on the AOC and instead chose to "consult directly with EPA during the negotiations" and that "the Tribe would like EPA to provide funds through a cooperative agreement, and EPA would negotiate terms that would provide for reimbursement of those costs to EPA."

The Tribe has yet to negotiate or agree to a funding cooperative agreement with EPA. Despite this, Mr. Lopez was notified by Elizabeth McKenna on November 4, 2019, that the parties to the AOC would be submitting comments on November 12, 2019, and meeting on November 18, 2019, to discuss comments on the AOC and that the parties would also like to have the Nez Perce Tribe's comments by that date. This was the first time EPA asked the Tribe to provide comments by a date certain. Mr. Lopez informed Ms. McKenna that the Tribe could not provide comments on such a short timeline in light of the Nez Perce Tribal Executive Committee's schedule.

The Tribe is providing these comments on a very limited timeline and is working on this matter without the funding agreement EPA promised. The Tribe expects that EPA will ensure that a funding agreement is in place as soon as possible and will give the Tribe ample notice of deadlines going forward.

The Tribe also requests a technical staff-to-staff meeting to discuss its comments and questions followed by formal government-to-government consultation. Consistent with the applicable executive orders and EPA's consultation policies, the Tribe fully expects that this technical conversation and formal consultation will occur prior to EPA providing the Tribe with a final draft to review and prior to EPA opening the AOC and SOW to a 30-day public comment period.

B. Responsibility to Protect

EPA noted in its January 17, 2017, memorandum, Consideration of Tribal Treaty Rights and Traditional Ecological Knowledge in the Superfund Remedial Program 9 ("Memorandum"), that treaties have the same legal force as federal statutes and it is, therefore, EPA's duty to ensure that its actions are in accordance with tribal treaty rights, especially when "EPA decisions focused on specific geographic areas where tribal treaty rights relating to natural resources may exist in, or treaty-protected resources may rely upon, those areas."[16]

[16] Memorandum at 2.

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The Memorandum also states:

> Section 300.430(d)(2) of the [National Oil and Hazardous Substances Pollution Contingency Plan] indicates that, as part of the lead agency's efforts to characterize a site or to develop potential remedial options, it should assess a number of factors, including (v) "actual and potential exposure pathways through environmental media;" and (vii) "[o]ther factors, such as sensitive populations, that pertain to the characterization of the site or support the analysis of potential remedial action alternatives." Depending on the site-specific circumstances, as part of that analysis, regional Superfund Remedial Program offices should consider the human health and environmental risks to tribal members, treaty-protected resources and lifeways. In instances where the Agency determines that a Superfund remedial decision potentially affects tribal treaty rights or treaty-protected resources, EPA should identify the nature and extent of potential risks to tribal members exercising those rights. For example, as part of the baseline risk assessment, the tribal lifestyle may result in different risks, such as higher fish consumption rates due to subsistence fishing. Similarly, a portion of a site may be a sacred/ceremonial area or an area of cultural sensitivity that warrants consideration in remedy selection/implementation.[17]

EPA's Memorandum also points out just how complex, and at times precedent-setting, the legal and policy analyses concerning how to protect affected rights can be.[18]

The Stibnite site is an enormously complex site, in light of its significant Nez Perce use, legacy mining disturbance and contamination, and Midas Gold's current proposal to re-mine the site. Protecting the Tribe's rights and resources at such a site is, admittedly, not an easy task, but EPA needs to focus on the fact that the Tribe still actively uses and manages resources in the Stibnite watershed.[19] The site, including the waters that flow through it, provide important habitat for the Tribe's treaty-reserved resources. Not only is the habitat within the site degraded due to legacy disturbance and contamination, but the site continues to pollute the East Fork South Fork Salmon River and its tributaries, which support the Tribe's immensely important salmon fishery. Today,

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[17] *Id* at 4.

[18] *Id* at 4.

[19] The Tribe's Fisheries Department expends $2.5 million annually on work to support and increase salmon runs throughout the Salmon River watershed. This work includes moving some Chinook salmon every year above the fish passage blockage at the Stibnite mine site, created by the legacy mine pit known as the Glory Hole, to spawn. The resulting juvenile production from above the Glory Hole helps boost overall returns to the Salmon River watershed.

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Nez Perce Tribal members typically fish in the South Fork Salmon River watershed from mid-June through August and hunt and gather traditional their traditional resources at other times of the year.

The best way to protect the Tribe's resources is to provide a site-wide and comprehensive cleanup. Drawing small lines around point source discharges at the site is not sufficient to protect Nez Perce Tribal members and their treaty-reserved resources.

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Appendix 1

STATEMENT OF WORK FOR THE STIBNITE MINE REMEDIAL INVESTIGATION / FEASIBILITY STUDY
Valley County ID near Yellow Pine, ID

1. Introduction

a. 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 (see Figure 1). 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.

The SOW is attached to the AOC. Any discrepancies between the AOC and this SOW are unintended, and whenever necessary, the Order will control.

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 potential mining acitivities in the PRO, any modifications and subsequent remediation. ~~must be consistent with the PRO and the subsequent restoration~~. This will require flexibility in the RI/FS and could require a phased approach to accelerate certain activities.

Commented [A1]: As mining activities in part or whole cannot be guaranteed to occur in the future, the RI/FS should consider a full-range of alternatives that do not involve potential mining 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.

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2. Description and Current Status of the Site

The site is located in..... *Provide general description of the site in terms of location, size, elevation, primary use, water drainages. Describe general history of mining at site*

The Site includes~~is defined as~~ the ~~features~~ areas described below (general locations summarized on Figure 2) and the areal extent of contamination from those features and all suitable areas in ~~very~~ close proximity to the contamination necessary for response action implementation:

Commented [A2]: Site Boundary for RI/FS should be defined and shown on map. OU boundaries should be described as "general" boundaries.

Commented [A3]: Typically, the SOW would include Operable Units (OUs). Recommend determining OUs and revising SOW.

1. **Yellow Pine Pit (Figure 3)** – The Yellow Pine Pit (formerly known as "The Glory Hole") was actively mined during the 1930s through the 1950s for antimony, tungsten, gold and silver. The pit is located on Midas Gold patented land, and most of the waste rock dumps associated with the pit are adjacent to the pit; some of the waste rock dumps are located on USFS managed land. During active mining, the East Fork of the South Fork of the Salmon River (EFSFSR) was routed around the pit through the Bailey Tunnel but was allowed to return to its natural course through the pit after the Bailey Tunnel was abandoned in the mid-1950s. The EFSFSR now runs through the pit, but does not currently support fish passage to the headwaters. The Yellow Pine Pit, and the majority of waste rock dumps associated with it, are within the footprint of Midas Gold's proposed PRO.

2. **Bradley Tailings Pile (Figure 4)** – The Bradley Tailings Pile, also known as the Historical Tailings and Spent Ore Disposal Area, is located on Midas Gold patented land. Approximately 3 million tons of mine tailings generated during the 1940s and 1950s are stored in this area, and they are overlain by approximately 6 million tons of spent heap leach ore placed in the 1980s and 1990s. The downstream end of the Tailings Pile is constrained by a structure known as the Keyway Dam, and a wetland exists downgradient of the Keyway Dam, which is also referred to as the Keyway Marsh. Meadow Creek is diverted around the south side of the Tailings Pile. The Bradley Tailings Pile is within the footprint of Midas Gold's proposed PRO.

3. **Hangar Flats Tailings Pile (Figure 5)** – The Hangar Flats Tailings Pile, also known as the Hecla Heap Leach Facility, is a reclaimed heap-leach facility which was built and operated in the 1990s to extract oxide gold and silver. The facility is located on Midas Gold controlled patented land, and is within the footprint of Midas Gold's proposed PRO.

4. **Bailey Tunnel (Figure 6)** – The Bailey Tunnel was constructed in the early 1940s to divert the EFSFSR around the Yellow Pine Pit and into Sugar Creek to facilitate open pit mining operations. The tunnel was no longer used after the mid-1950s, following cessation of open pit mining activities. The Bailey Tunnel is on Midas Gold patented land, and is within the footprint of Midas Gold's proposed PRO.

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5. **DMEA Adit and Waste Rock Dump (Figure 7)** – The Defense Minerals Exploration Administration (DMEA) Adit and Waste Rock Dump are mining-related disturbances resulting from underground exploration activities during the 1950s. The adit and dump are located on USFS managed land, and are not within the footprint of the Midas Gold PRO.

6. **Bonanza Adit (Figure 8)** – The Bonanza Adit area is a mining-related disturbance in the Sugar Creek drainage resulting from underground exploration activities during the 1930s and 1940s. The Bonanza Adit area is located on USFS managed land, and is not within the footprint of the Midas Gold PRO.

7. **Cinnabar Tunnel (Figure 9)** – The Cinnabar Tunnel is a mining-related disturbance resulting from underground exploration activities during the late 1920s and early 1930s. The Tunnel is located on USFS managed land; the tunnel portal is within the footprint of the Midas Gold PRO.

8. **Meadow Creek Adit (Figure 10)** – The Meadow Creek Adit and associated waste rock dumps are mining-related disturbances that resulted from underground mining activities from the 1920s through the 1940s. The adit and waste rock dumps are located on Midas Gold controlled patented land, and are within the footprint of Midas Gold's proposed PRO.

Closure Management Units. Following completion of RI activities and any necessary risk assessment activities for a given OU, the OU structure shall conclude, and that portion of the site will be organized according to Closure Management Units (CMUs) for the remainder of the FS process and remedial design / remedial action (RD/RA). This reorganization into CMUs is intended to recognize that the remedial alternatives, and ultimately the remedial action will proceed in a manner that is likely to cross OU boundaries in order to take advantage of efficiencies derived from fewer mobilizations, and to maximize the utilization of on-site materials for filling, contouring, and capping. This allows for remedial alternatives to be developed and for the remedial action to ultimately proceed in a site-wide, holistic approach, rather than in a manner constrained by OU boundaries.

Commented [A4]: EPA should consider whether this might ultimately be needed, or something like it, given the site specific circumstances. Typically the CMUs are described as phases related to all or portions of OUs.

~~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 called the 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.~~

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Scope

The specific RI/FS activities to be conducted at the Site are set forth in ~~seven~~ six 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

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 & Health Act, Idaho Code§§ 39-101 to 39-130; the Hazardous Waste Management Act of ldaho, 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.

EPA's approval of deliverables is required, and allows Midas Gold to proceed to the next steps in implementing the Work. EPA's approval does not imply any warranty of performance, nor does it imply that the RI/FS, when completed, will be ultimately accepted by EPA. EPA retains the right to disapprove deliverables and require revision to meet EPA requirements. EPA may disapprove deliverables including, but not limited to, submissions concerning such matters as contractor selection, work plans, schedules, processes, sampling, or any other deliverables within the context of the Order. EPA may grant Midas Gold extensions of time on individual activity deadlines. As described in Section X of the Order (Submission and Approval of Deliverables), after initial review of any deliverable that is required to be submitted to EPA for approval under this SOW, 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.

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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).

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.

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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.

a. 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 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

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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.

b. *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

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.

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. The range of alternatives will also include both no-mining and mining activities as described by the PRO.

Midas Gold will develop the final RAOs and a list of potential ARARs based on the information provided in the final EPA approved RI Reports and the approved human health risk assessments and ecological risk assessments. Additionally, Midas Gold will develop RAOs that are consistent with the EPA Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA and the following provisions:

- Section 121(d) of CERCLA;
- National Contingency Plan (NCP) at 40 CFR § 300.430(e);
- Protective of human health and the environment, as generally defined for individual human exposure by an acceptable risk level for carcinogens between 10-4 and 10-6 (using 10-6 risk level as the point of departure for determining remediation goals for alternatives) and for non-carcinogens a Hazard Index of 1 or less, and no significant adverse impacts to ecological receptors consistent with the NCP at 40 CFR § 300.430(e)(2)(i)(A); See, 1995 Guidance, p.7;
- Ensure that groundwater is restored to its beneficial use, consistent with the NCP, 40 C.F.R. § 300.430(a)(1)(iii)(F), unless an ARARs waiver is justified

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consistent with the requirements of CERCLA section 121(d)(4)(c), 42 U.S.C. § 9621(d)(4), 40 C.F.R. § 300.430(f)(1)(ii)(C), or NAC 445A.22725; and

- Evaluate the extent to which Maximum Contaminant Level Goals or Maximum Contaminant Levels for groundwater established under the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., are considered legally ARARs under section 121(d)(2)(A)(i) of CERCLA for any portion of the affected groundwater aquifer that is a current or potential source of drinking water based on the factors in 40 C.F.R. § 300.400(g)(2) during selection of remedial action goals in the feasibility study. 40 C.F.R. §§ 300.430(e)(2)(i)(B),(C).

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.~~

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c. *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.

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 ~~fully account~~ take in to 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 baseline 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

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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).

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

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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.

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
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Boron
- Cadmium
- Calcium
- Chloride
- Chromium (III)
- Chromium (VI)
- Cobalt
- Copper
- Hardness

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- Iron
- Lead
- Magnesium
- Manganese
- Mercury
- Molybdenum
- Nickel
- Nitrogen, total Kjeldahl
- Phosphorus
- Potassium
- Selenium
- Silver
- Sodium
- Sulphate
- Thallium
- Tungsten
- Total Dissolved Solids
- Total Organic Carbon
- Total Suspended Solids
- Uranium
- Vanadium
- Zinc

Field Analyses
- Conductivity
- Dissolved Oxygen
- Flow
- pH
- Temperature

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
- Antimony
- Arsenic
- Cadmium

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- Chromium
- Copper
- Lead
- Manganese
- Mercury
- Nickel
- Selenium
- Silver
- Tungsten
- Vanadium
- Zinc

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

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
- Antimony

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

Laboratory Analyses
- Alkalinity
- Aluminum
- Antimony
- Arsenic
- Barium
- Beryllium
- Cadmium
- Calcium
- Chloride
- Chromium III
- Chromium VI
- Cobalt
- Copper
- Hardness
- Iron
- Magnesium
- Manganese

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- Mercury
- Molybdenum
- Nickel
- Nitrate/nitrite as N
- Nitrogen (TKN)
- Orthophosphate
- Potassium
- Selenium
- Silver
- Sodium
- Sulfate
- Thallium
- Total Dissolved Solids
- Total Suspended Solids
- Total Organic Carbon
- Tungsten
- Uranium
- Vanadium
- Zinc

Field Analyses

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

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 McCall, to house one copy of the administrative record. The CIPP will include providing online access to initial submissions and updates of deliverables, as well as providing online storage and access to all Site documents. 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.

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. 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

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Respondent shall provide a monthly progress report and participate in weekly meetings or conference calls at major points in the RI/FS.

a. *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.

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. 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.

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~~Describe~~ Delineate the nature and extent of contamination

The Respondent shall gather information to ~~describe~~ delineate the nature and extent of contamination as a final step during the field investigation. 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.

b. *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. 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).

c. *Data Management Procedures*

The Respondent shall consistently document the quality and validity of field and laboratory data compiled during the RI.

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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 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)

d. 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

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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.

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

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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.

a. 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 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

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treatability testing work plan or an amendment to the original Site work plan for EPA's review and approval.

b. *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" thetreatability 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

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full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

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.

a. 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.

<u>Refine and document remedial action objectives</u>

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).

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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.

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.

a. 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

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. Each alternative will be evaluated against the nine criteria contained in the National Contingency Plan (40 CFR Part 300.430(e)(9) (iii)). ~~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.

b. 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

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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.

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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.

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"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.

"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.

Attachments

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 SAP (FSP and QAPP)

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

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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~~Title Page~~

~~Table of Contents~~

~~1. Project Description~~

~~2. Project Organization and Responsibilities~~

~~3. QA Objectives for Measurement~~

~~4. Sampling Procedures~~

~~5. Sample Custody~~

~~6. Calibration Procedures~~

~~7. Analytical Procedures~~

~~8. Data Reduction, Validation, and Reporting~~

~~9. Internal Quality Control~~

~~10. Performance and Systems Audits~~

~~11. Preventative Maintenance~~

~~12. Data Assessment Procedures~~

~~13. Corrective Actions~~

~~14. Quality Assurance Reports~~

Attachment C – Suggested RI 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

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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:

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 Remedial Investigation and Feasibility Study (RI/FS) Statement of Work (SOW) Schedule

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

- 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.

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.

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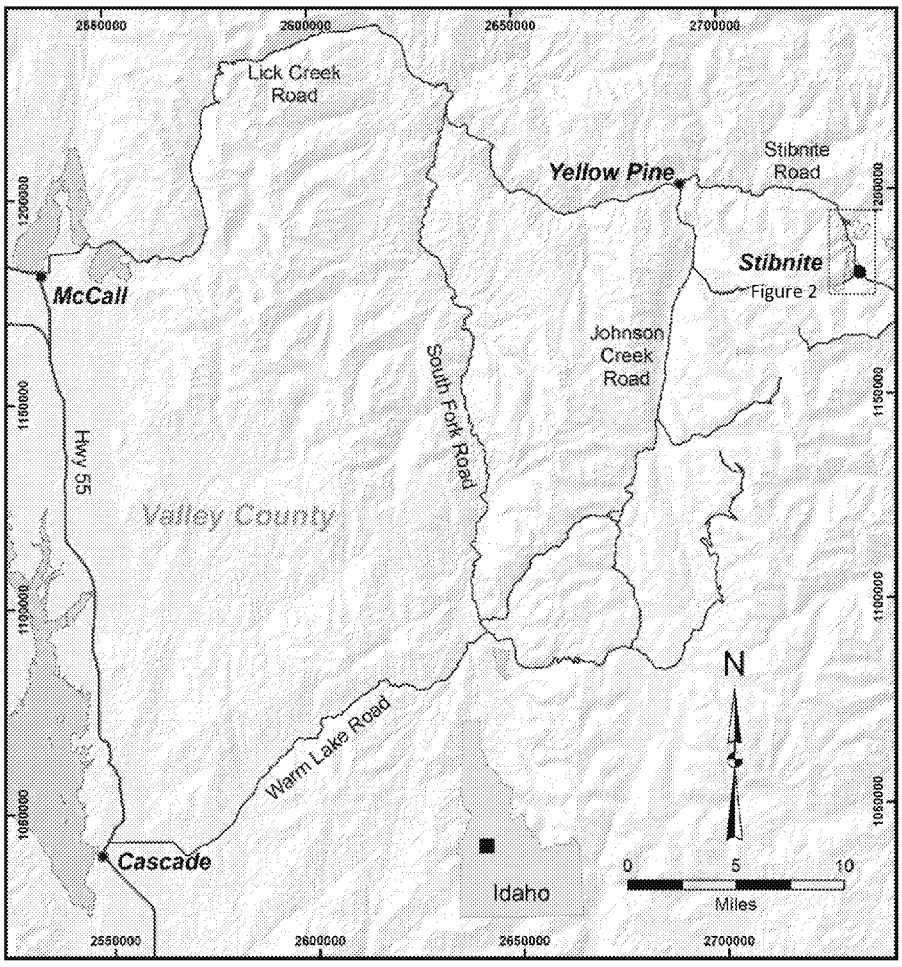

Figure 1 – Site Location

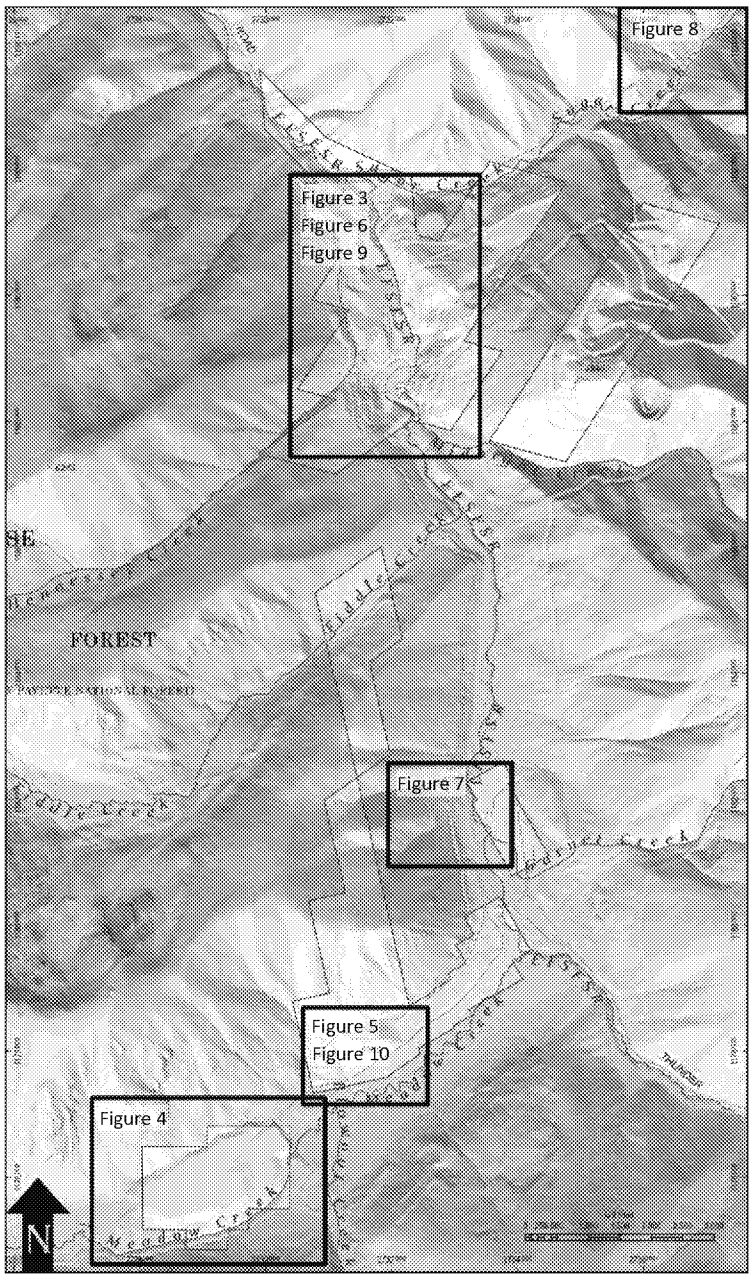

Figure 2 – Stibnite Mine Site

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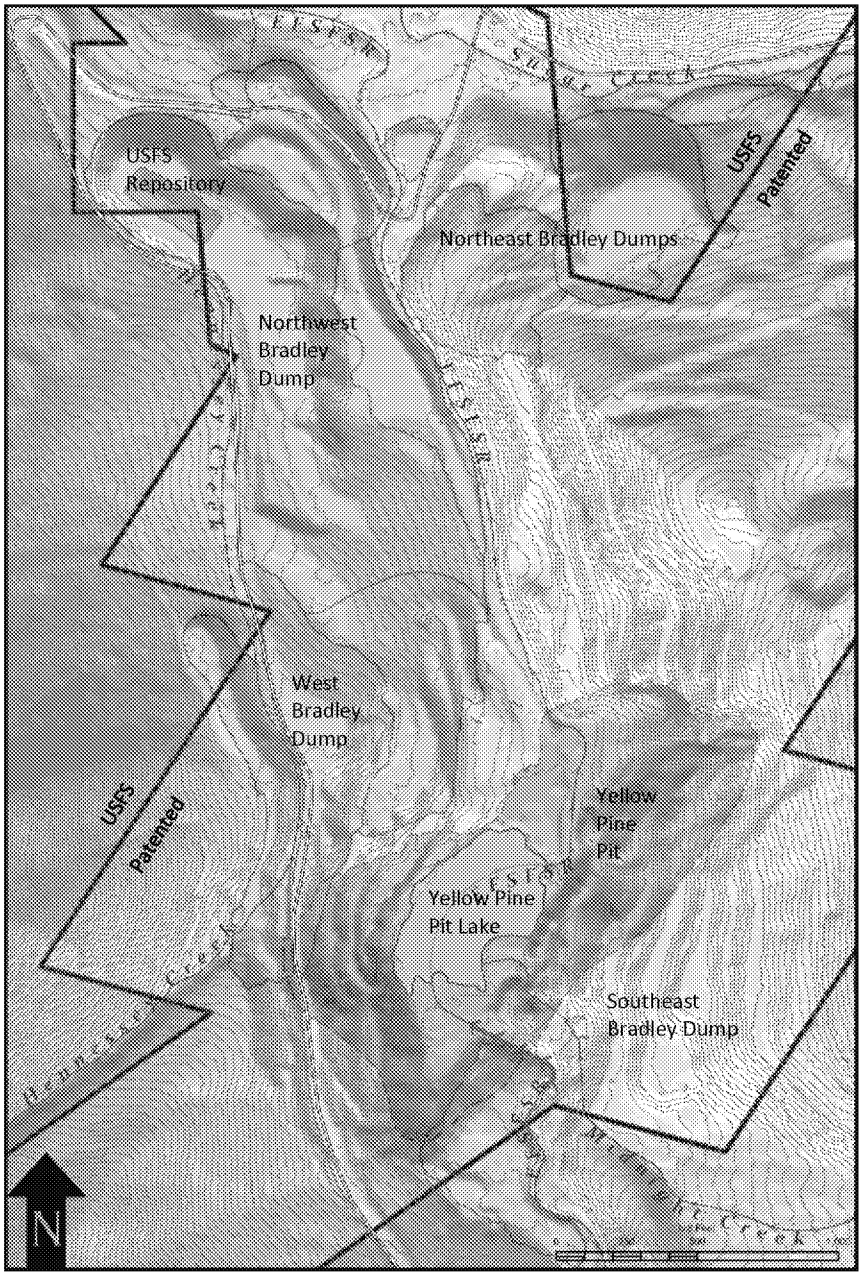

Figure 3 –Yellow Pine Pit

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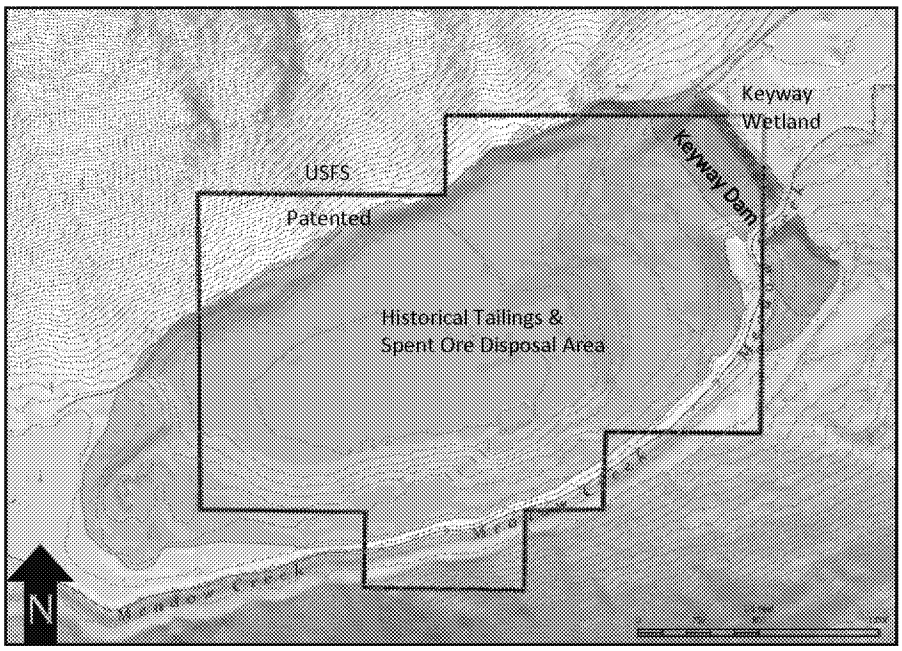

Figure 4 – Historical Tailings and Spent Ore Disposal Area

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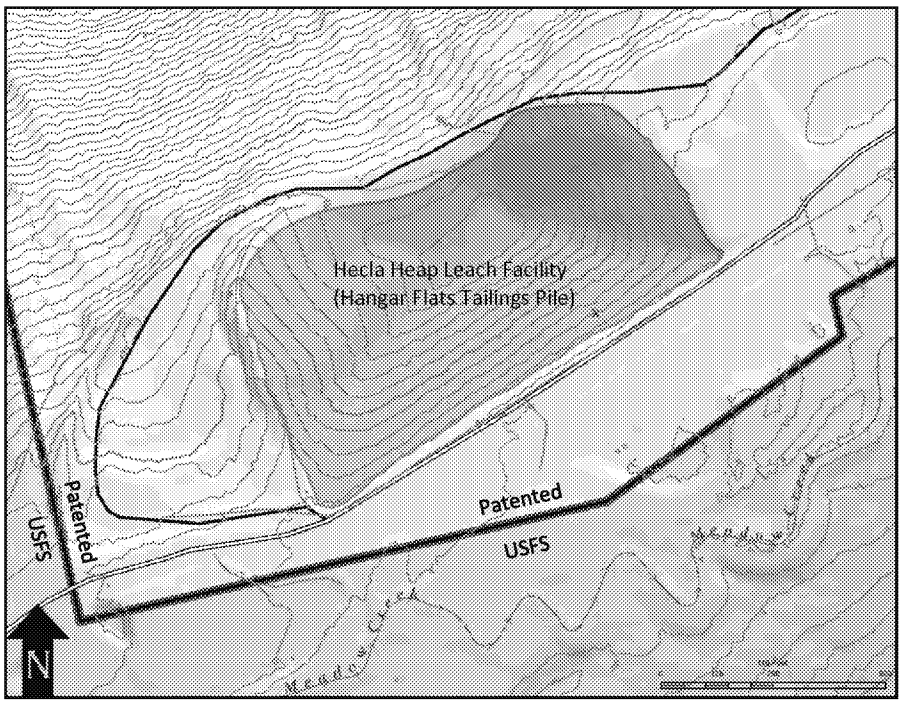

Figure 5 – Hecla Heap Leach Facility

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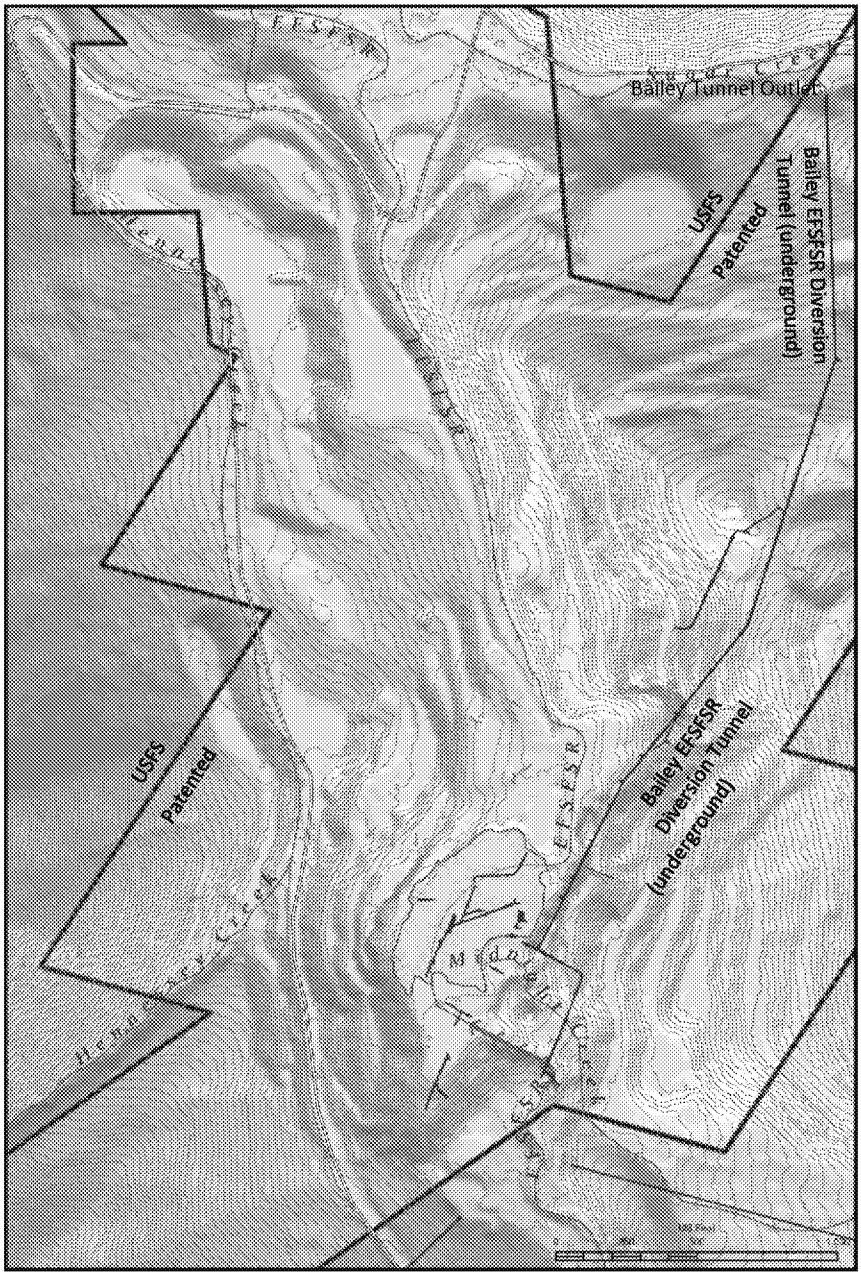

Figure 6 – Bailey Tunnel

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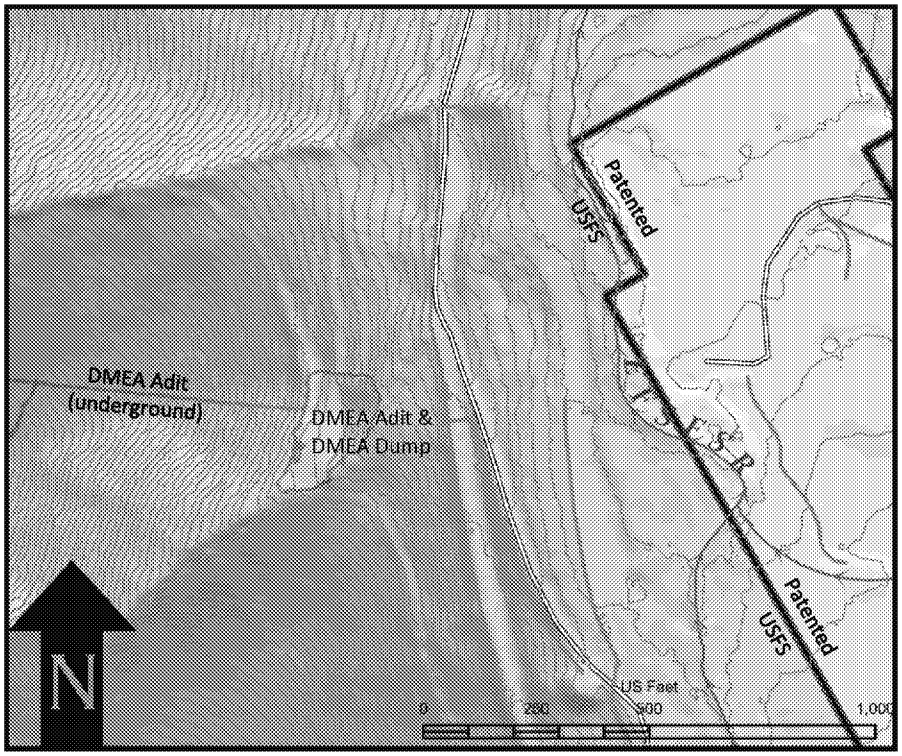

Figure 7 – Defense Minerals Exploration Administration Adit and Waste Rock Dump

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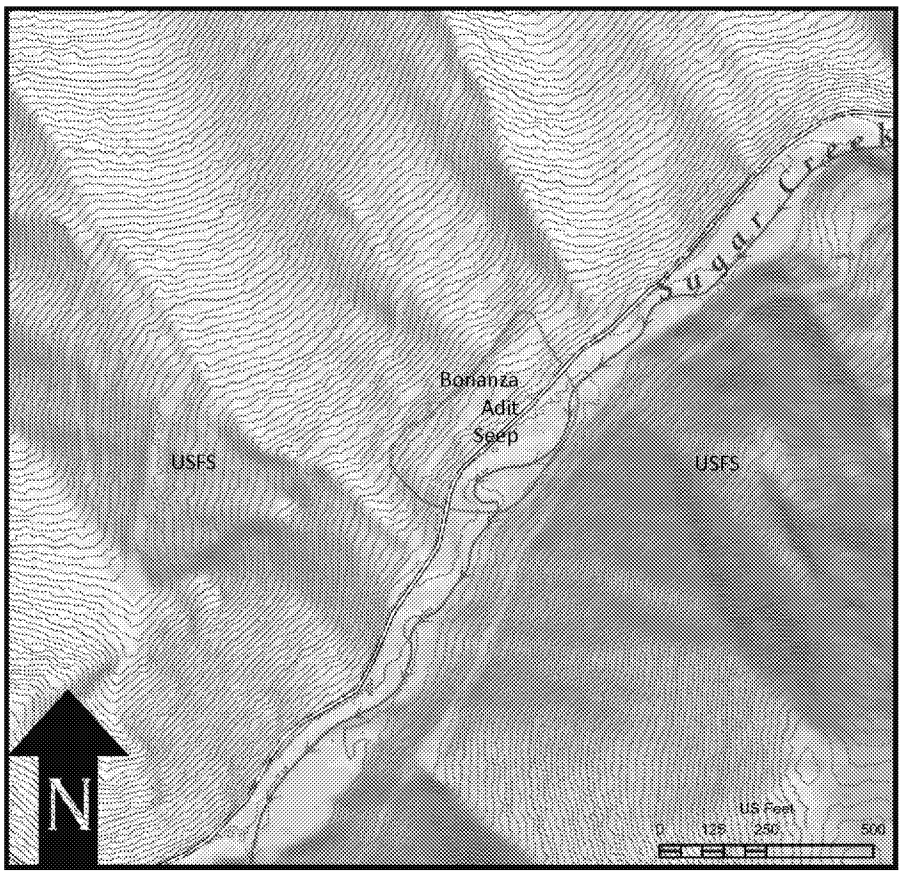

Figure 8 – Bonanza Adit

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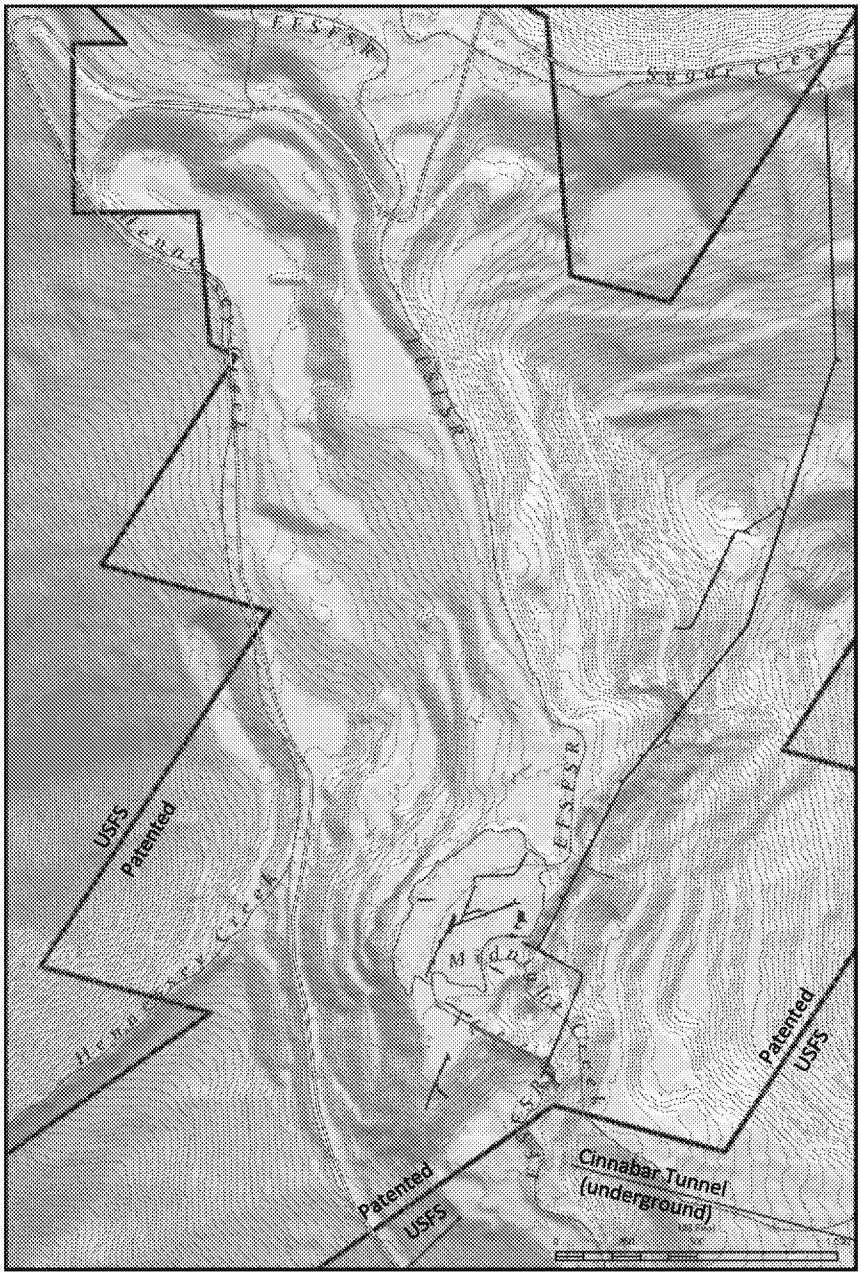

Figure 9 – Cinnabar Tunnel

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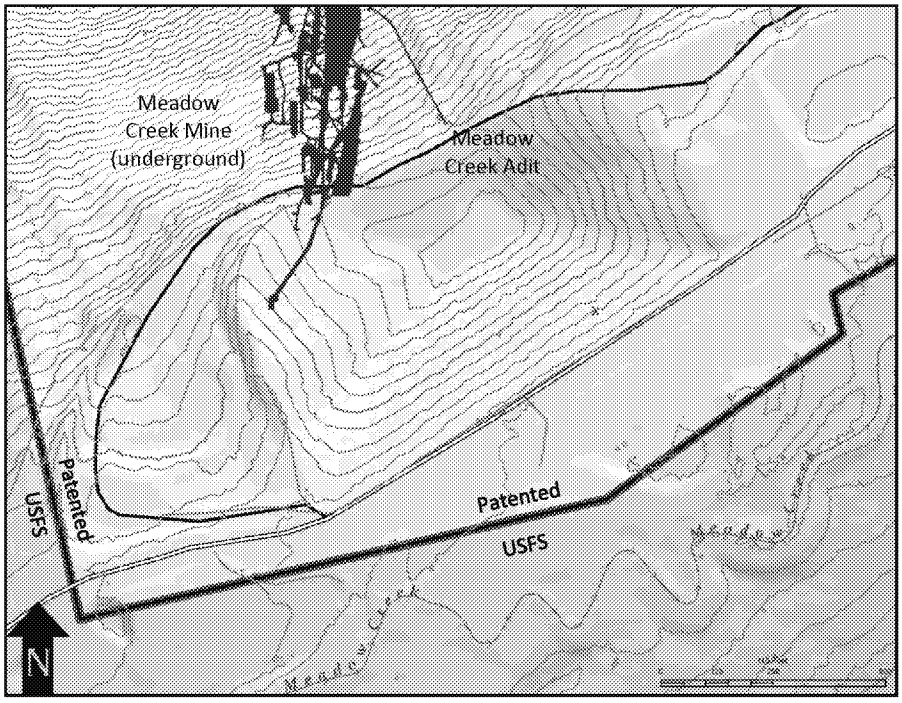

Figure 10 – Meadow Creek Adit

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EXHIBIT 4

to

Declaration of Michael Bogert

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10
AND
THE STATE OF IDAHO

IN THE MATTER OF: Stibnite Mine Site Stibnite, Idaho Midas Gold Idaho, Inc. [MGII/MGC] Proceeding Under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675	CERCLA Docket No. _____ **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR [REMOVAL] ACTIONS**

CONCEPT DRAFT

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), the State of Idaho (State) and Midas Gold Corp. (MGC) as the owner of Midas Gold Idaho, Inc. (MGII) and Idaho Gold Resources Company, LLC (IGRCLLC) IGRCLLC as the owner of Stibnite Gold Company (SGC), with MGII being the Site Operator and IGRCLLC and SGC being the owners of various patented, unpatented and mill site claims that comprise the property. This Settlement provides for the performance of Work by MGII in connection with the property located in Valley County, Idaho, known as the Stibnite Mine Site (Site).

2. This Settlement is issued under the authority vested in the President of the United States by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994). This Settlement is also entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States.

3. MGII, MGC, IGRCLLC and SGC represent that they will meet all of the BFPP provisions in CERCLA §§ 101(40)(A)-(H) and 107(r)(l), 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r)(l) and that they will continue to comply with these requirements during the time in which they have an operational and/or ownership interest in the Site. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the Site, and the risk of claims under CERCLA being asserted against MGII, MGC, IGRCLLC and SGC as a consequence of their activities at the Site pursuant to this Settlement, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section [INSERT] (Reservations of Rights by United States), any potential liability of MGII, MGC, IGRC and SGC under CERCLA for the Existing Contamination as defined by Paragraph 8 below.

4. EPA, MGII, MGC, IGRCLLC and SGC recognize that this Settlement has been negotiated in good faith. MGII, MGC, IGRCLLC and SGC agree to comply with and be bound by the terms of this Settlement and they further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon MGII, MGC, IGRCLLC, SGC and their successors and assigns. Any change in ownership or corporate status of MGII, MGC, IGRCLLC and SGC including, but not limited to, any transfer of assets or real or personal property shall not alter MGII, MGC, IGRCLLC or SGC's responsibilities under this Settlement.

6. Each undersigned representative of MGII, MGC, IGRCLLC and SGC certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind MGII, MGC, IGRCLLC and SGC to this Settlement.

7. MGII, as the Site Operator, shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing MGII 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 nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA 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:

"BFPP" shall mean a bona fide prospective purchaser as described 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 [INSERT].

"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, 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;

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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 and the State incur 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. Rates are available online at http://www.epa.gov/superfund/superfund-interest-rates.

"MGC" shall mean Midas Gold Corporation.

"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.

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA, the State, MGII, MGC, IGRCLLC and SGC.

"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).

"RPM" shall mean the Remedial Project Manager as defined in 40 C.F.R. § 300.5.

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"SGC" shall mean Stibnite Gold Company.

"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).

"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 Removal Action and all appendices attached hereto (listed in Section [INSERT] (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the Stibnite Mine Site, located in Stibnite, Idaho, approximately 15 miles east of Yellow Pine, Idaho in Valley County, Idaho, 78 miles from McCall, and depicted generally on the map attached as Appendix A.

"State" shall mean the State of Idaho.

"Statement of Work" or "SOW" shall mean the document describing the activities MGII must perform pursuant to this Settlement, as set forth in Appendix B, and any modifications made thereto in accordance with this Settlement.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"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 substances" under Idaho Chapter 34A-11.

"Work" shall mean all activities and obligations MGII is required to perform under this Settlement except those required by Section [INSERT] (Record Retention).

IV. STATEMENT OF FACTS

9. MGII is a wholly owned subsidiary of MGC. MGC is a Canadian company doing business in the State of Idaho through MGII. Pursuant to the United States Forest Service Plan of Restoration and Operations and 36 CFR 228.3 (b), MGII is an "operator," which is "[a] person conducting or proposing to conduct operations" on the Site.

10. IGRCLLC and SGC are owners of patented lode claims, patented mill site claims, unpatented federal lode claims and unpatented federal mill site claims which cover approximately 27,104 acres (approximately 42 square miles).

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11. The Stibnite Mine Site is located on the Payette National Forest in Valley County, Idaho, approximately 15 miles east of Yellow Pine, Idaho, 40 miles east of McCall, Idaho and 98 miles east of Boise, Idaho.

12. Mining at the Site began in the mid-1920s and continued into the 1950s. This first period of activity involved the mining of gold, silver, antimony, and tungsten mineralized materials by both underground and, later, open-pit mining methods.

13. 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-making, 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.

14. 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.

15. 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. Past additional actions 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.

17. The mining activity at the Site resulted in CERCLA remedial actions by EPA, the Forest Service and the State of Idaho. Among other actions, minor quantities of legacy tailings have been removed, Meadow Creek was re-channelized, and certain legacy tailings impoundments have been covered with clean fill.

18. 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).

19. 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).

20. Notwithstanding multiple completed response actions, legacy tailings and contamination remain buried and unremediated over much of the Stibnite Mine Site.

21. MGII's Plan of Restoration and Operations, as approved by the Forest Service, will disturb legacy areas at the Stibnite Mine Site. By entering into this Agreement, 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.

22. The general sequence of mining will be the Yellow Pine deposit first, Hangar Flats deposit second, and the West End deposit third. This mining sequence is guided by the restoration aspects of the Stibnite Gold Project, 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.

23. As a part of the reuse of legacy tailings and subsequent restoration of certain areas on the Site, MGII will become an "operator" of a "facility" and the execution of its PRO will involve the "arranging for disposal of hazardous substances" under CERCLA § 107(a)(1)-(4).

24. Accordingly, present releases or threats of future releases of hazardous substances exist on the Site.

25. The estimates for direct employment from the Stibnite Mine Site are 594 construction jobs; 583 operations jobs; 160 reclamation jobs; and 44 monitoring jobs.

V. DETERMINATIONS

26. Based on the Statement of Facts set forth above, EPA has determined that:

a. The Stibnite Mine 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. MGII is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Pursuant to the Plan of Restoration and Operations, MGII, IGRCLLC and SGC are the "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

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e. As the owner of MGII, MGC is a derivative "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

f. 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).

g. 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 be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP. [All on-Site actions required pursuant to this Agreement 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. [MGII] shall identify ARARs in the Work Plan subject to EPA approval.]]

VI. SETTLEMENT AGREEMENT AND ORDER

27. Based upon the Statements of Facts and Determinations set forth above, it is hereby Ordered and Agreed that MGII 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. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT MANAGER

28. MGII 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 7 days after the Effective Date or such date on which a contractor or subcontractor is proposed for selection, whichever date is later. MGII shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by MGII. If EPA disapproves of a selected contractor or subcontractor, MGII 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. With respect to any proposed contractor performing activities related to the Work, MGII 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. The

qualifications of the persons undertaking the Work for MGII 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.

29. MGII has designated, and EPA has approved, [INSERT NAME] as its Project Coordinator who shall be responsible for administration of all actions by MGII required by this Settlement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA and retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph [INSERT]. If EPA disapproves of the designated Project Coordinator, MGII shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 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 MGII's Project Coordinator shall constitute notice or communication to MGII.

30. EPA has designated [INSERT] the Superfund Remedial Program, as its Remedial Project Manager (RPM). EPA and MGII shall have the right, subject to Paragraph [INSERT], to change their respective designated RPM or Project Coordinator. MGII shall notify EPA 7 days before such a change is made. The initial notification by MGII may be made orally, but shall be promptly followed by a written notice.

31. The RPM shall be responsible for overseeing MGII's 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

32. MGII shall perform, at a minimum, all actions necessary to implement the SOW and approved Work Plans. A general description of the activities includes, but are not limited to, the following:

a. **SODA Area**.

(1) Approximately 3.5 million tons of legacy tailings in the SODA Area will be removed from their historical deposition areas in the Meadow Creek Valley to be reprocessed and disposed of within the tailings storage facility (TSF).

(2) Approximately 10.5 million tons of legacy spent ore in the SODA will be removed from their historical deposition areas in the Meadow Creek Valley to be reused in the construction of the TSF dam.

b. **Yellow Pine Pit Area**. During construction, the EFSFSR, Hennessy Creek, and other seeps and springs must be diverted around the

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perimeter of the Yellow Pine Pit in order to protect water quality and prevent water from filling the pit during operations. The Pit will be dewatered, and the river will be temporarily rerouted through a fish-friendly tunnel capable of providing fish passage to the EFSFSR and Meadow Creek while the river channel is being fully restored. Additionally, restoration for this element of Work includes response actions related to the impacts to the EFSFSR north of the Yellow Pine Pit, south of the Yellow Pine Pit to the confluence of Meadow Creek, and upstream to undisturbed areas of the EFSFSR from its confluence [at Meadow Creek].

c. **Plant Site Area**. Construction will require removal of contamination of the former Monday Camp shops, as well as the crusher buildings and will require management of seepage and runoff from various DRSF and former ore stockpiles. The removal activity will also require stabilization of former underground portals.

d. **West End Area**. West End Creek will be temporarily diverted around the West End Pit and West End DRSF during operations. The West End Pit will be mined until the end of operations; however, wetland mitigation projects in and adjacent to the Pit may run concurrently with the final phases of mining. Wetlands on benches around the perimeter of the West End Pit Lake will be created to provide a stable spillway channel through the historical development rock dump downstream of the lake outlet.

e. **Blowout Creek (East Fork of Meadow Creek) Restoration and Enhancement**. Blowout Creek (East Fork of Meadow Creek) will be restored to reduce sedimentation and restore wetland functionality. Action will enhance fish habitat in EFSFSR and Meadow Creek to provide salmon spawning beds and increase fish populations.

f. **Fiddle Creek Area**. Fiddle Creek will be diverted around the perimeter of the DRSF in a channel to protect water quality and prevent surface water from running onto the DRSF. Response action will be taken for the former north tunnel DRSF, and removal could require possible closure, stabilization of old portal and clean-up of the quarry site.

g. **Other**. [PLACEHOLDER FOR OTHER REMOVAL ACTIONS IF NECESSARY, SUCH AS NECESSARY INFRASTRUCTURE DISTURBANCES ON OR AROUND LEGACY AREAS]

33. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after MGII receives notification from EPA of the modification, amendment, or replacement.

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34. **Work Plans and Implementation**

a. Within 30 days after the Effective Date, in accordance with Paragraph [INSERT] (Submission of Deliverables), MGII shall submit to EPA for approval a draft work plan to implement the SOW generally described in Paragraph [INSERT] and [INSERT] above. The Work implementing the SOWs generally described in Paragraph [INSERT] is collectively referred to as the "Work Plans." The draft Work Plans shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

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, MGII shall submit a revised draft Work Plan within 7 days of receipt of EPA's notification of the required revisions, but 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 Plans, MGII shall, upon notification to EPA that appropriate funding and other preparation pursuant to this agreement is in place, commence implementation of the Work in accordance with the schedule included therein. MGII 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.

35. **Submission of Deliverables**

a. General Requirements for Deliverables

(1) Except as otherwise provided in this Settlement, MGII shall direct all submissions required by this Settlement to the RPM by email at [INSERT] or mail to:

and the State at:

MGII shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

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(2) MGII shall submit all deliverables in electronic form and paper copies of all final versions of reports, SAP, QAPP, maps and figures shall also be submitted to EPA and the State. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph [INSERT]. 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, MGII shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Submission of Environmental Data. [RESERVE FOR REGION 10 SPECIFICS]

36. Health and Safety Plan. In accordance with the schedule set forth in the SOW, MGII 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/HealthSafetvManual/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, MGII assumes full responsibility to adhere to applicable OSHA and MSHA regulations, as appropriate. MGII 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.

37. Quality Assurance, Sampling, and Data Analysis

a. MGII 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. Sampling and Analysis Plan. Within 7 days after the Effective Date or before commencing Work, MGII 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 Quality Assurance Project Plan (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. For current Region 8 QA requirements and guidance, refer to https://www.epa.gov/qualitv/managing-qualitv-environmental-data-epa-region-8.

c. MGII shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by MGII in implementing this Settlement. In addition, MGII 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. MGII 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-competencv-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 State, MGII may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) 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, 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. MGII 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.

e. Upon request, MGII shall provide split or duplicate environmental samples related to the Work to EPA and the State or their authorized representatives. MGII shall notify EPA and the State not less than 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 EPA or the State deem necessary. Upon request, EPA and the State shall provide to MGII split or duplicate samples of any samples they take as part of EPA's oversight of MGII's implementation of the Work.

f. Other than resource related data associated with the exploration activities, mine production and mill operations assays, MGII 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 MGII with respect to the Site and/or the implementation of this Settlement.

38. Progress Reports. MGII 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 30 days after the Effective Date until issuance of Notice of Completion of Work pursuant to Section [INSERT], 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.

39. Final Report. Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph [INSERT] (Notice of Completion), MGII 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 MGII or MGII's 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."

40. Off-Site Shipments and Wastes Generated On-Site

a. MGII may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. MGII will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if MGII obtains 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).

b. MGII may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This written 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. MGII also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. MGII shall provide the written notice after the award of the contract for the Work and before the Waste Material is shipped.

c. MGII 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. 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.

IX. PROPERTY REQUIREMENTS

41. MGII agrees to provide the State, EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Site and to any other property owned or controlled by MGII, IGRC, and SGC to which access is required for the implementation of response actions at the Site. EPA agrees to provide reasonable notice to MGII, IGRC, and SGC of the timing of response actions to be undertaken at the Site and other areas owned or controlled by MGII.

42. For so long as MGII is an operator of the Property, 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 State, EPA, its 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.

43. 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.

44. Notwithstanding any provision of this Settlement, EPA and the State retain 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.

X. ACCESS TO INFORMATION

45. MGII shall, subject to the record retention period in Paragraph [INSERT] and, if necessary, in accordance with Paragraph [INSERT], provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) within MGII's possession or control as of or after the Effective Date relating to Work 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 (hereinafter referred to as "Records"). MGII shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

46. Privileged and Protected Claims

a. MGII may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided MGII complies with Paragraph [INSERT], and except as provided in Paragraph [INSERT].

b. If MGII asserts such a privilege or protection, it 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, MGII shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. MGII shall retain all Records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in MGII's favor.

c. Except for Business Confidential Claims permitted in Paragraph [INSERT], MGII 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 MGII is required to create or generate pursuant to this Settlement.

47. Business Confidential Claims. MGII may assert that all or part of a Record provided to EPA and the State under this Section or Section [INSERT] (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). MGI shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which MGII asserts business confidentiality claims. Records that MGI claims 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 MGII 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 MGII.

48. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

49. Until ten (10) years after EPA provides MGII with notice, pursuant to Section [INSERT] (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, MGII shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to MGII's 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, however, that a party who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. MGII 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 (including Records in electronic form) 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 MGII (and its 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 retention requirements shall apply regardless of any corporate retention policy to the contrary.

50. At the conclusion of the document retention period, MGII shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by

EPA, and except as provided in Paragraph [INSERT] (Privileged and Protected Claims), MGII shall deliver any such Records to EPA.

51. MGII certifies that, as of the Effective Date and to the best of its knowledge and belief, after thorough 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.

XII. COMPLIANCE WITH OTHER LAWS

52. Nothing in this Settlement limits MGII's 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. MGII shall identify ARARs in the Work Plan subject to EPA approval.]

53. 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, MGII shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. MGII may seek relief under the provisions of Section [INSERT] (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 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.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

54. 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, MGII shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. MGII shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. MGII shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer of the incident or Site conditions. The MGII shall also notify the State in accordance with Section

[INSERT] (Notices). In the event that MGII fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, MGII shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section [INSERT] (Payment of Future Response Costs).

55. Release Reporting. Upon the occurrence of any event during performance of the Work that MGII is 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, MGII shall immediately orally notify the RPM or, in the event of his/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.

56. For any event covered under this Section, MGII shall submit a written report to EPA within 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.

XIV. PAYMENT OF FUTURE RESPONSE COSTS

57. Payment of Sum for Future Response Costs. Within 60 days prior to commencing Work, MGII shall pay to EPA $ ____ for Oversight Costs.

a. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to MGII by EPA Region 10 and shall be accompanied by a statement identifying the name and address of MGII, the Site name, the EPA Region and Site/Spill ID Number ____, and the EPA docket number for this action.

b. The total amount to be paid by MGII pursuant to Paragraph [INSERT] shall be deposited by EPA in the EPA Hazardous Substance Superfund.] [The total amount to be paid by MGII pursuant to [INSERT] shall be deposited by EPA in the [Site Name] Special Account within the EPA Hazardous Substance Superfund to be retained and used to finance Oversight Costs.]

c. 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.]

d. Return of Excess Sum Certain Oversight Cost Payment. After EPA issues its Notice of Completion pursuant to Section [INSERT] and has performed a final accounting of Oversight Costs, EPA shall remit and return to MGII any unused amount of the funds paid by MGII pursuant to Paragraph [INSERT] above.

58. Contesting Future Response Costs. MGII may initiate the procedures of Section [INSERT] (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph [INSERT] (Payments 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, MGII shall submit a Notice of Dispute in writing to the RPM within 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 [INSERT], 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. MGII 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 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 52. If MGII prevails 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 [INSERT]. MGII shall be disbursed any balance of the escrow account within 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 [INSERT] (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding MGII's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

59. 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.

60. Informal Dispute Resolution. If MGII objects 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 14 days after such action or MGII becoming aware of such action, whichever is later. EPA and MGII shall have 30 days from EPA's receipt of MGII's 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.

61. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, MGII shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within 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 MGII. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. MGII shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

62. Except as provided in Paragraph [INSERT] (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 MGII under this Settlement. Except as provided in Paragraph [INSERT], 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 MGII does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section [INSERT] (Stipulated Penalties).

XVI. FORCE MAJEURE

63. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of MGII, of any entity controlled by MGII, or of MGII's contractors that delays or prevents the performance of any obligation under this Settlement despite MGII's best efforts to fulfill the obligation. The requirement that MGII 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.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which MGII intends or may intend to assert a claim of force majeure, MGII shall notify EPA's RPM orally or, in their absence, EPA Region 10, within 10 days of when MGII first knew that the event might cause a delay. Within 5 days thereafter, MGII 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; MGII's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of MGII, such event may cause or contribute to an endangerment to public health or welfare, or the environment. MGII shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. MGII shall be deemed to know of any circumstance of which MGII, any entity controlled by MGII, or MGII's contractors knew or should have known. Failure to comply with the

above requirements regarding an event shall preclude MGII 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 [INSERT] and whether MGII has exercised their best efforts under Paragraph [INSERT], EPA may, in its unreviewable discretion, excuse in writing MGII's failure to submit timely or complete notices under this Paragraph.

65. 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 MGII in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify MGII in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

66. If MGII elects to invoke the dispute resolution procedures set forth in Section [INSERT] (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, MGII 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 MGII complied with the requirements of Paragraphs [INSERT]. If MGII carries this burden, the delay at issue shall be deemed not to be a violation by MGII of the affected obligation of this Settlement identified to EPA.

67. 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, MGII may seek relief under this Section.

XVII. CERTIFICATION

68. By entering into this Settlement, MGII certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA as well as the lead and cooperating Federal agencies involved in approving the PRO all material information known to MGII, MGC, IGRC and SGC and all material information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement. MGII, MGC, IGRCLLC and SGC also certify that to the best of their knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. MGII further certifies to the representations made under Paragraph 3.

XVIII. COVENANTS BY UNITED STATES AND THE STATE

69. Except as provided in Section [INSERT] (Reservations of Rights by United States), the United States and the State covenants not to sue or to take administrative action against MGII pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Existing Contamination, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by MGII of their obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA by MGII relating to MGII's Work at the Site and the certification made by MGII in Paragraph [INSERT]. This covenant extends only to MGII and does not extend to any other person.

70. 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 State to seek or obtain further relief from MGII, if the information provided to EPA by MGII relating to MGII's Work at the Site, or the certification made by MGII in Paragraph [INSERT], is false or in any material respect, inaccurate.

XIX. RESERVATIONS OF RIGHTS BY UNITED STATES AND THE STATE

71. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the United States and/or the State 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 and/or the State 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.

72. The covenants set forth in Section [INSERT] (Covenants by the United States and the State) do not pertain to any matters other than those expressly identified therein. The United States and the State reserve, and this Settlement is without prejudice to, all rights against MGII with respect to all other matters, including, but not limited to:

a. liability for failure by MGII to meet a requirement of this Settlement;

b. criminal liability;

c. liability for violations of federal or state law that occur during or after implementation of the Work;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. 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;

f. liability resulting from exacerbation of Existing Contamination not associated with the Work by MGII, its successors and assigns; and

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

73. With respect to any claim or cause of action asserted by the United States, MGII 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 MGII has complied with all of the requirements of 42 U.S.C. §§ 9601 (40)(A)-(H) and 9607(r)(l).

74. Work Takeover

a. In the event EPA determines that MGII: (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is 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 MGII. 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 MGII a period of 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 [INSERT] MGII has 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 (Work Takeover). EPA will notify MGII in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph [INSERT].

c. MGII may invoke the procedures set forth in Section [INSERT] (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph [INSERT]. However, notwithstanding MGII 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 [INSERT] until the earlier of (1) the date that MGII remedies, 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 [INSERT] (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.

XX. COVENANTS BY MGII

75. MGII covenants not to sue and agrees not to assert any claims or causes of action against the State, the United States, or its contractors or employees, with respect to Existing Contamination, the Work, Future 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.

76. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section [INSERT] (Reservations of Rights by the United States and the State), other than in Paragraph [INSERT] (liability for failure to meet a requirement of the Settlement), 77.b (criminal liability), or [INSERT] (violations of federal/state law during or after implementation of the Work), but only to the extent that MGII's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

77. 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).

78. MGII reserves, 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.

79. MGII reserves, and this Settlement is without prejudice to, arguments that any claim or cause of action, or part thereof, is attributable solely to Existing

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Contamination and that MGII has complied with all of the requirements of 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r)(l).

XXI. OTHER CLAIMS

80. By issuance of this Settlement, the United States, the State, and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of MGII. The United States, the State, and EPA shall not be deemed a party to any contract entered into by MGII or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

81. Except as expressly provided in Section [INSERT] (Covenants by the United States and the State), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against MGII 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.

82. 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).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

83. 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 [INSERT] (Covenants by MGII), 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).

84. If a suit or claim for contribution is brought against MGII with respect to Existing Contamination (including any claim based on the contention that MGII 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 MGII has, 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, and Future Response Costs.

85. MGII 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. MGII 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, MGII 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.

XXIII. INDEMNIFICATION

86. The United States and the State do not assume any liability by entering into this Settlement or by virtue of any designation of MGII 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). MGII shall indemnify, save, and hold harmless the United States and the State, their 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 MGII, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on MGII's behalf or under their control, in carrying out activities pursuant to this Settlement. Further, MGII agrees 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 MGII, 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 and the State 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 MGII nor any such contractor shall be considered an agent of the United States or the State.

87. The United States shall give MGII notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with MGII prior to settling such claim.

88. MGII covenants not to sue and agree not to assert any claims or causes of action against the United States or the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of MGII and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

89. In addition, MGII shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between MGII and any person for

performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

90. No later than 14 days before commencing any on-site Work, MGII 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 MGII pursuant to this Settlement. In addition, for the duration of the Settlement, MGII shall provide EPA with certificates of such insurance and a copy of each insurance policy. MGII 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, MGII 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 MGII in furtherance of this Settlement. If MGII demonstrates 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, MGII need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. MGII shall ensure that all submittals to EPA under this Paragraph identify the Stibnite Mine Site name and the EPA docket number for this action.

XXV. FINANCIAL ASSURANCE [TO BE REVIEWED TO CONSOLIDATE WITH STATE AND USFS FINANCIAL ASSURANCE AND AVOID DUPLICATION]

91. In order to ensure completion of the Work, MGII shall secure financial assurance, initially in the amount of $[INSERT] (Estimated Cost of the Work), [for the benefit of EPA.] 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. MGII 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; [BOOKMARK FOR DEVELOPMENT OF LANGUAGE FOR RECLAMATION SECURITY TRUST/QUALIFYING ENVIRONMENTAL TRUST W/EPA, STATE AND USFS AS BENEFICIARIES]

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;

92. MGII shall submit such mechanisms and documents to the Regional financial assurance specialist at the following address:

[INSERT]

93. MGII shall diligently monitor the adequacy of the financial assurance. If MGII becomes 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, such MGII shall notify EPA of such information within 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 the MGII of such determination. MGII shall, within 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 the MGII, 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 60 days. MGII shall follow the procedures of Paragraph 98 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. MGII's inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of MGII to complete the Work in accordance with the terms of this Settlement.

94. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph [INSERT], 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 in accordance with Paragraph [INSERT].

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the MGII fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to

the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph [INSERT].

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph [INSERT], 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 [INSERT], then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. MGII shall, within 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 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 under Section [INSERT] (Payments for Response Costs).

95. Modification of Amount, Form, or Terms of Financial Assurance. MGII 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 MGII of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. MGII 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 [INSERT] (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 MGII pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 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, MGII shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph [INSERT].

96. Release. Cancellation, or Discontinuation of Financial Assurance. MGII 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 XXVIII (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 XV (Dispute Resolution).

XXVI. MODIFICATION

97. 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.

98. If MGII seeks permission to deviate from any approved Work Plan or schedule or the SOW, MGII's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. MGII may not proceed with the requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph [INSERT].

99. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by MGII shall relieve MGII 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.

XXVII. NOTICE OF COMPLETION OF WORK

100. 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 MGII. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify MGII, provide a list of the deficiencies, and require that MGII modify the Work Plans if appropriate in order to correct such deficiencies. MGII shall implement the modified and approved Work Plans and shall submit a modified Final Report in accordance with the EPA notice. Failure by MGII to implement the approved modified Work Plan shall be a violation of this Settlement.

XXVIII. PUBLIC COMMENT

101. 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.

XXIX. INTEGRATION/APPENDICES

102. 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.

XXX. EFFECTIVE DATE

103. 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. If, by the time EPA issues such notice to MGII, and MGII has not yet had its Plan of Restoration and Operation approved by the United States Forest Service through a record of decision (ROD), the effective date of this Settlement shall be the date upon which MGII receives final approval by the Forest Service for the Plan of Restoration and Operations through a ROD.

104. Notwithstanding any other provision in this 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.

XXXI. DISCLAIMER

105. 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.

XXXII. NOTICES AND SUBMISSIONS

106. 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 MGII shall be addressed to:

CONFIDENTIAL DRAFT

With copies to:

and

Submissions to MGC shall be addressed to:

Submissions to IGRCLLC shall be addressed to:

Submissions to SGC shall be addressed to:

All submissions to U.S. EPA shall be addressed to:

With electronic copies to:

All submissions to the State shall be addressed to:

With electronic copies to

CONCEPT DRAFT

IT IS SO AGREED:
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BY:

_____

_____

CONCEPT DRAFT

IT IS SO AGREED:
STATE OF IDAHO
BY:

_____

_____

CONCEPT DRAFT

The undersigned representative of MGII certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____
Name (MGII) Date

The undersigned representative of MGC certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____
Name (MGC) Date

The undersigned representative of IGRC LLC certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____
Name (IGRCLLC) Date

CONCEPT DRAFT

The undersigned representative of SGC certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:
BY:

_____

Name (SGC) Date

CONCEPT DRAFT

Dated this ____ day of [INSERT].

By:_____

CONCEPT DRAFT

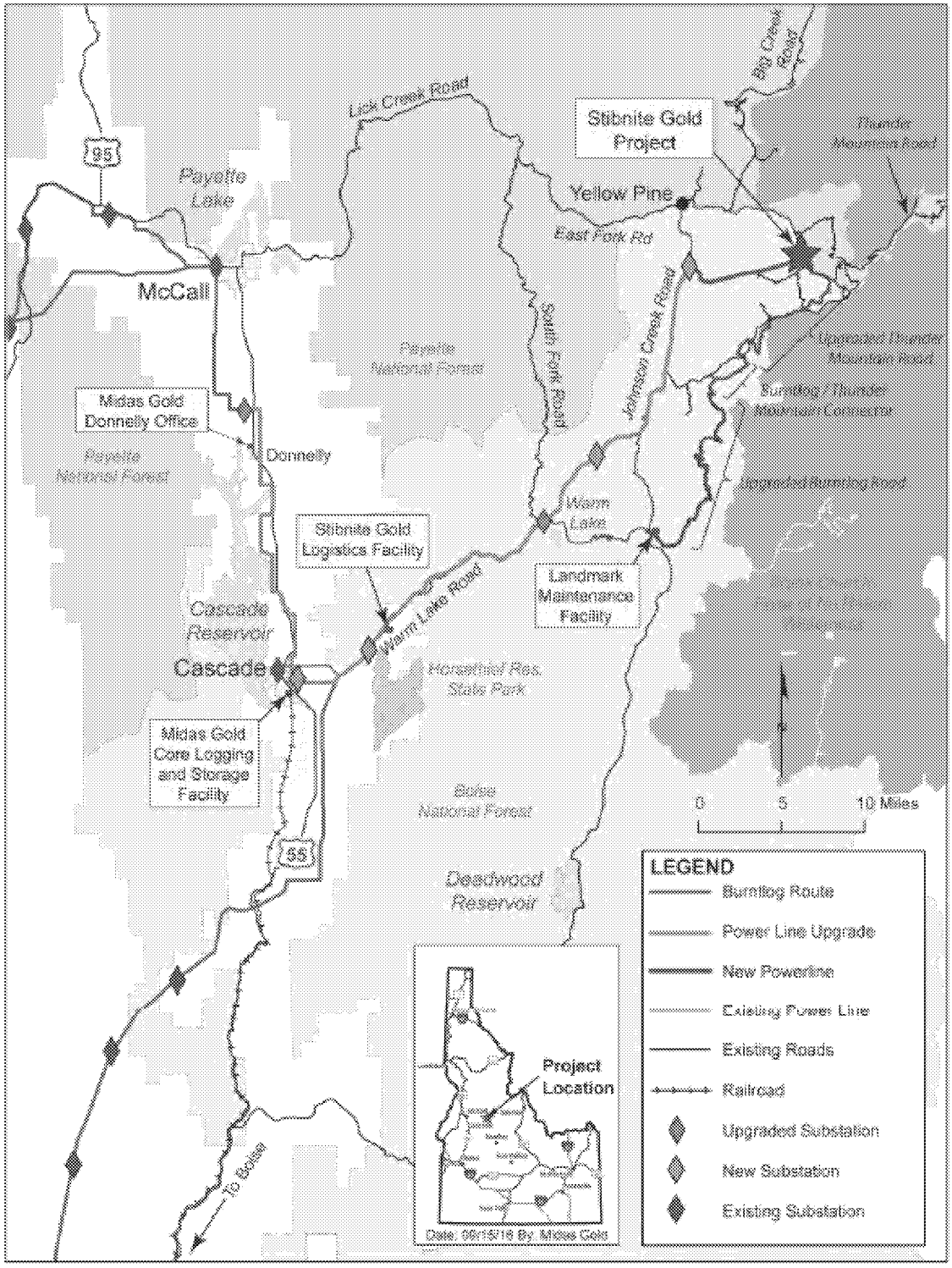
CERTIFICATE OF SERVICE

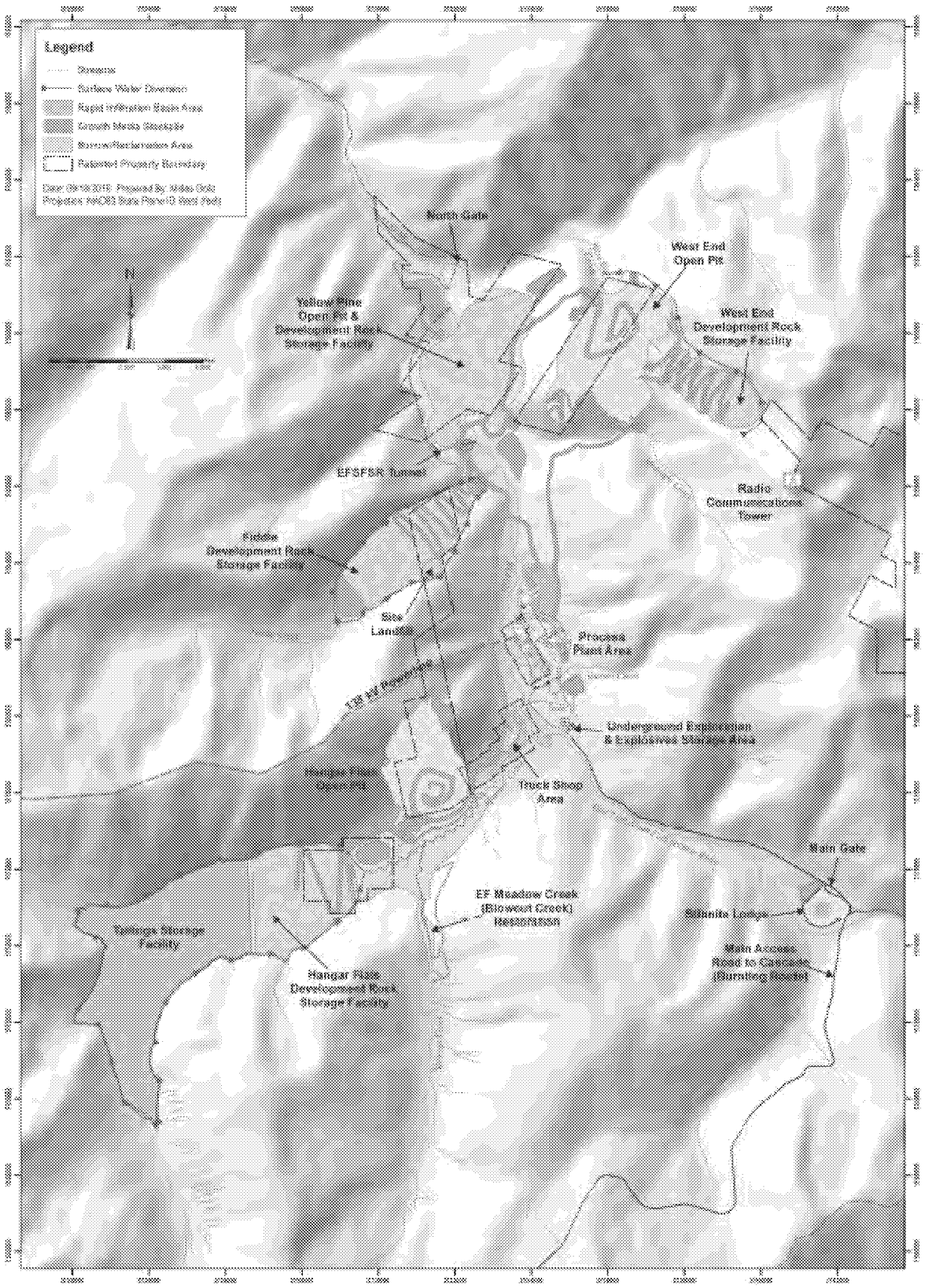
The undersigned hereby certifies that a true and correct copy of the foregoing was served on the following parties listed below by United States mail, postage prepaid, this ___ day of _____, [INSERT].

CONCEPT DRAFT

APPENDIX A

PROJECT SITE




Legend
Streams
Surface Water Diversion
Rapid Infiltration Basin Area
Growth Media Stockpile
Borrow/Reclamation Area
Patented Property Boundary
North Gate
West End Open Pit
Yellow Pine Open Pit & Development Rock Storage Facility
West End Development Rock Storage Facility
EFSFSR Tailings
Radio Communications Tower
Fiddle Development Rock Storage Facility
Site Landfill
Process Plant Area
138 kV Powerline
Underground Exploration & Explosives Storage Area
Hangar Flats Open Pit
Truck Shop Area
Main Gate
EF Meadow Creek (Blowout Creek) Reservoir
Stibnite Lodge
Tailings Storage Facility
Main Access Road to Cascade (Burntlog Route)
Hangar Flats Development Rock Storage Facility

APPENDIX B

STATEMENT OF WORK
REMOVAL AND RESTORATION ACTIONS FOR STIBNITE MINE SITE

I. PURPOSE

The purpose and objective of the work described by this Statement of Work is to undertake Site response activity in areas of previous contamination while the Plan of Restoration and Operations is executed by MGII as the Stibnite Project Operator.

Further details of work activities, including the sequencing of actions, will be included in work plans that will be approved by the [RPM] in consultation with the Project Coordinator.

II. STATEMENT OF WORK

A. SODA Area

1. Bradley Tailings Removal

(1) Approximately 3.5 million tons of legacy tailings in the SODA Area will be removed from their historical deposition areas in the Meadow Creek Valley to be reprocessed and disposed of within the tailings storage facility (TSF).

(2) Approximately 10.5 million tons of legacy spent ore in the SODA will be removed from their historical deposition areas in the Meadow Creek Valley to be reused in the construction of the TSF dam.

Removal of the materials, which are currently in stored in an unconstrained and unlined valley fill, and reprocessing and reuse, as appropriate, of these materials will improve water quality in Meadow Creek where legacy metals loading in to the creek is present and would minimize the need to excavate new material for construction purposes.

The Hecla Heap leach area will be disturbed in order to develop TSF construction material, beginning with Hangar Flats Pit development. The removal activity will require actions related to a buried mill, smelter waste, tailings removal and heap leach wastes and possibly management of potential contaminated water effluent from the former underground mine portals.

2. Stream Diversion

Construction of the TSF in the Meadow Creek valley requires diverting the stream around the TSF to protect water quality and manage runoff. The diversion will intercept water from upstream drainages, seeps and springs, and includes a lined channel capable of passing high flows during snow melt runoff and keeping water from reaching the TSF. Approximately 21,000 linear-feet (LF) of diversion channel will be constructed initially to capture the flow from both sides of the drainage.

CONCEPT DRAFT

Meadow Creek must be diverted around the south side of Hangar Flats Pit to enable mining the Hangar Flats mineral resource. Early in operations and prior to mining the portion of the Hangar Flats Pit below the valley bottom, Meadow Creek would be diverted around the Hangar Flats pit in a meandering channel similar to the previously-constructed Meadow Creek channel, but with a more favorable gradient (1-2%) for Chinook salmon spawning. A low permeability liner would be provided under the stream bed material to prevent loss of water into the adjacent pit. The reconstructed channel is intended to provide optimal spawning habitat during operations for running Chinook salmon that will be able to naturally access Meadow Creek (via the future Yellow Pine Tunnel) for the first time since 1938, and permanently via a newly-created surface channel on the closure of the Yellow Pine Pit.

B. Yellow Pine Pit Area

1. Draining and Excavation of the Yellow Pine Pit

Drainage of the existing Yellow Pine Pit Lake will require response to contaminated sediment and debris in former open pit, as well as closure and stabilization of old portals (Monday, Cinnabar, and former Bradley Mining Company workings). Excavation of the Pit for mining will disturb hazardous substances and removal will include control actions for runoff, seepage and fugitive dust.

2. Stream Diversion

During the construction of the Tunnel (see below), the East Fork South Fork Salmon River (EFSFSR), Hennessy Creek, and other seeps and springs must be diverted around the perimeter of the Yellow Pine Pit in order to protect water quality and prevent water from filling the Pit during operations. Additionally, a former subsurface diversion of Hennessy Creek will be reclaimed. Response action will include controls for potential groundwater impacts for as-yet uncharacterized metals in legacy areas.

3. East Fork South Fork Salmon River Tunnel Installation

The existing legacy Yellow Pine pit was mined from the 1930s through the 1950s. Following diversion of the EFSFSR into a ditch in 1938 and later into a diversion tunnel in 1942, the anadromous fish passage was blocked, initially due to the nature of the diversion features and, following closure of the tunnel, from the EFSFSR flowing into the Yellow Pine pit over the steep slopes of the south rim of the pit.

During the construction period, the EFSFSR will be relocated from its current location within the Yellow Pine Pit, where a steep segment upstream of the existing pit lake has prevented upstream fish passage since approximately 1938. The EFSFSR will be diverted through a tunnel (.8 miles long, "Tunnel") capable of protecting water quality and providing fish passage from the EFSFSR below the Yellow Pine Pit to reaches of the EFSFSR above the Yellow Pine Pit to its headwaters and to Meadow Creek. The Tunnel will be designed with engineered fish-friendly features so as to mimic natural habitat including lighting and resting pools, among others. A natural channel will be restored upon closure and restoration of the Yellow Pine Pit and select fish habitat enhancement projects between the Yellow Pine Pit and the confluence with Meadow Creek will be implemented as well as upstream of the confluence to the headwaters of the EFSFSR.

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Construction activities will remove, as encountered, portions of legacy rock dumps that presently lie directly atop and adjacent to the banks of the EFSFSR and other potentially-contaminated material from the EFSFSR Valley.

C. Plant Site Area

During the construction of the Tunnel, construction will require removal of contamination of the former Monday Camp shops, as well as the crusher buildings and will require management of seepage and runoff from various development rock storage facility (DRSF) and former ore stockpiles. The removal activity will also require stabilization of former underground portals.

D. West End Area

Development of the West End Open Pit and the West End DRSF will necessarily encounter contaminated legacy areas.

1. West End Creek Diversion

West End Creek has been heavily impacted by legacy mining and mining-related activities, including development rock deposition over the stream channel, diversion of the stream into a French drain, and mining out of portions of the stream channel. West End Creek will be temporarily diverted around the West End pit and West End DRSF during operations. Diverting West End Creek away from the historical West End development rock dumps will improve water quality and prevent clean runoff from entering the West End Pit.

2. West End Pit Lake

The West End pit will be mined until the end of operations; however, wetland mitigation projects in and adjacent to the pit may run concurrently with the final phases of mining. Wetlands on benches around the perimeter of the West End Pit Lake will be created to provide a stable spillway channel through the historical development rock dump downstream of the lake outlet.

E. Blowout Creek (East Fork Meadow Creek) Restoration and Enhancement

Blowout Creek (East Fork Meadow Creek) has been severely impacted as a result of legacy mining-related activities and by the subsequent failure of the legacy water dam that had been constructed across its stream channel. Blowout Creek will be rehabilitated to control sediment from the incised and eroded stream regions, which is the single largest source of sediment, to the EFSFSR). As a part of its construction and operation activities, a phased approach to address the multiple environmental impacts associated with the 1965 failure of the Blowout Creek water reservoir will be undertaken.

A French Drain will be constructed in the main erosional gully feature, which is a major sediment contribution source for the basin. This constructed drain would convey that portion of Blowout Creek and disconnect erosional areas from the main stream, with the intent of controlling the ongoing erosion of the channel banks. Features near the old dam location to raise the Blowout Creek Valley water table to enhance the existing wetlands in the valley will be constructed in order to restore the pre-reservoir hydrologic conditions to support substantially

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enhanced wetlands and riparian features in the upper Blowout Creek Valley. The base level will be raised to prevent further head-cutting and bank erosion in Blowout Creek upstream of the former dam site. Incised and eroded stream segments in the upper meadow will be improved to accelerate the natural channel recovery processes that are supported by the restored, higher base level.

F. Fiddle Creek Area

Fiddle Creek is currently cut off from the EFSFSR as a result of legacy mining operations, road construction and culvert installation. In addition, the drainage was the site of a legacy water storage reservoir that has left portions of the drainage in an unnatural state.

As a part of construction, Fiddle Creek will be diverted around the perimeter of the DRSF in a channel to protect water quality and prevent surface water from running onto the DRSF. Response action will be taken for the former north tunnel DRSF, and removal could require possible closure, stabilization of old portal and clean-up of the quarry site.

G. Other

[PLACEHOLDER FOR OTHER REMOVAL ACTIONS IF NECESSARY, SUCH AS NECESSARY INFRASTRUCTURE DISTURBANCES ON OR AROUND LEGACY AREAS]

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