Interim
Record of Decision (ROD) Amendment, Upper Basin of the Coeur d'Alene River

Bunker Hill Mining
and Metallurgical Complex
Superfund Site

Part 3 Section 4.0
Responses to Individual Comments

United States
Environmental Protection
Agency Region 10

August 2012

Responses to Individual Comments

This section presents EPA's responses to individual comments received on the Proposed Plan. EPA received comments in various forms including letters, emails, and oral testimony at community meetings. The comments and EPA's responses are organized into the following attachments (the attachments are provided in electronic format):

- **Attachment A**: Index of Commenters and Responses
- **Attachment B**: Master Comment List
- **Attachment C**: Responses to Federal Agency Comments
- **Attachment D**: Responses to State Agency Comments
- **Attachment E**: Responses to Native American Tribe Comments
- **Attachment F**: Responses to Local Jurisdiction Comments
- **Attachment G**: Responses to Local Community/Special Interest Organization Comments
- **Attachment H**: Responses to Business Comments
- **Attachment I**: Responses to Individual Comments

Attachment A presents an Index of all comments sorted in two methods. First, all commenters are listed alphabetically by the last name of the person or the organization providing the comments. It provides the locations (Attachment and page number) of the comments and EPA's responses. Second, all comment are listed alphabetically/numerically by the comment number, along with the locations of the comments and responses.

Many comments address similar issues. In these cases, the response for a given issue is provided once. Responses to later comments on the same issue refer to the master comment list where this response is provided. These responses are referred to as "master comment responses" and are found in Attachment B. When using Attachment B, the user may find that the referenced response addresses more issues than he or she raised. In these cases, it is expected that the user will be able to identify those parts of the referenced response that apply. In other cases, a comment may raise multiple issues. In such cases, the user may be referred to several master comment responses for a complete response to all issues raised. An overview of the issues raised and EPA's responses is provided in Part 3, Section 3.0, Responsiveness Summary.

In Attachments C through I, the comments and responses are sorted alphabetically by the last name of the commenter. Each comment letter, email, and oral testimony comment was assigned a unique identification number (e.g., 1365213). Each comment was assigned a unique comment number (e.g., LJ36-1). Many commenters submitted more than one comment letter. In these cases, a separate identification number and comment number were assigned for each set of comments. This approach helped EPA ensure that all comments were addressed.

In Attachments C through I, an image of the original comment is shown on the left side of the page and includes EPA's delineation. The right side of the page presents EPA's response to that comment.

A number of commenters' names were illegible, and these commenters are listed as "Unknown." EPA has included their comments in Attachment I and has responded to the comments where possible.

As provided in the CERCLA statute, Section 117(b), EPA is only responsible for providing responses to each of the "significant" comments, criticisms, and new data. Comments not meeting this statutory criterion have nonetheless been recorded in this section, and responses have been provided to the extent possible.

ATTACHMENT G

Responses to Local Community/Special Interest Organization Comments

Contents

Arcadis, LC17, Letter 617581

No comments

Comments on the USEPA Region 10, July 12, 2010, Proposed Plan for the Upper Basin of the Coeur d'Alene River, Bunker Hill Mining and Metallurgical Complex Superfund Site and Supporting Documentation

Prepared by ARCADIS U.S., Inc.

November 18, 2010

617581

November 18, 2010

Comments on the USEPA Region 10, July 12, 2010, Proposed Plan for the Upper Basin of the Coeur d'Alene River, Bunker Hill Mining and Metallurgical Complex Superfund Site and Supporting Documentation

1. Introduction

ARCADIS, U.S., Inc. (ARCADIS) has reviewed the Proposed Plan (EPA, 2010) and the Draft Final Focused Feasibility Study (FFS) (CH2M Hill, 2010a) and available supporting documents for the Upper Basin of the Coeur d'Alene River, Bunker Hill Mining and Metallurgical Complex Superfund Site and has prepared the following specific issues discussions with technical comments. Section 2 presents an overview of compliance issues relative to the 1990 National Oil and Hazardous Substances Pollution Contingency Plan (NCP). Section 3 presents technical comments to the Proposed Plan and FFS relative to the NCP. Section 4 presents "functional equivalent" issues associated with Proposed Plan and Draft Final FFS. Section 5 presents ARCADIS' conclusions.

LC17-1 ARCADIS' review of the Proposed Plan and the available supporting documentation has identified numerous flaws and shortcomings in EPA's mammoth, $1.3B preferred alternative for 50-90 years of Superfund cleanup in the Upper Coeur d'Alene River Basin. These comments demonstrate that the Proposed Plan encompasses too large of an area, over too long a duration, such that, as even EPA concedes, there is no certainty as to whether or when ARARs can or will be met. The plan prescribes remedial activities that are not implementable at costs that are not proportional to the benefits of the remedy, and does not demonstrate that what is being proposed will be successful or protective. In addition, the public has not been given access to sufficient information to understand the proposed response action and alternative response actions. Similarly, agency decision- makers are making decisions without sufficient information to compare alternatives with regard to the nine evaluation criteria specified in the 1990 NCP. The following sections address the most significant omissions and failures in this remedy selection process. The discussions presented extend over a wide variety of administrative and technical aspects of the Proposed Plan.

2

Response to comment LC17-1

The commenter provides summary statements regarding perceived shortcomings in EPA's Proposed Plan, and then further discusses them in more detail in the remainder of the document that follows. EPA's responses to these detailed comments are provided below.

2. Overview of NCP Compliance Issues

ARCADIS has reviewed the Focused Feasibility Study, Proposed Plan and supporting documentation for the Upper Basin of the Coeur d'Alene River in conjunction with the public comment period attendant to selection of a remedy by EPA Region 10. The Bunker Hill Mining and Metallurgical Complex is an extremely large and complex Superfund site with the anticipated remediation costs far exceeding the $50 million often associated with the classification of a "megasite". In that context, the Upper Basin is a "Super megasite" as EPA estimates the cost of its proposed remedy to be approximately $1.3 billion.

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and various EPA guidance documents provide for a process to identify the nature and extent of contamination at sites and to screen and evaluate potential alternatives for selection and implementation. CERCLA (as amended by SARA) requires that the public, which includes the potentially responsible parties, be provided with a reasonable opportunity to comment and provide information during this process (CERCLA § 113 (b) (ii)). The information to be made available to the public "shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered." (CERCLA § 117 (a)) The 1988 NCP proposed rule and the 1990 final rule provide the pertinent regulations and preamble discussions of the requirements for the remedy selection process including the requirements for the administrative record and public participation. The EPA has published numerous guidance documents regarding the remedy selection process such as the 1988 Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies at Superfund Sites and the 1999 Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Documents.

LC17-2

Considering the available guidance and regulations, it is inexplicable that EPA Region 10 has significantly failed to develop and make available adequate information to provide a basis for the remedy included in the Proposed Plan for the Upper Basin. The omissions and failures are in most cases omissions or failures by choice since the agency has been involved at the site since the early 1980s. The Proposed Plan is clearly inconsistent with the requirements of the NCP and relevant EPA guidance and is arbitrary and capricious and not in accordance with law.

In addition, because of these omissions and failures, the public has not been given access to sufficient information to understand the proposed plan and alternative proposals. For that matter decision-makers have not been provided with sufficient information to compare alternatives with regard to the nine evaluation criteria specified

Response to comment LC17-2

The comment contends the Proposed Plan is inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and relevant EPA guidance, arbitrary and capricious and not in accordance with law. EPA disagrees with these conclusions. As described at length in the Proposed Plan and ROD Amendment, EPA's remedy selection process was carefully conducted in a manner consistent with the NCP, and therefore was not arbitrary and capricious and was in accordance with law. Furthermore, guidance documents were used where appropriate. EPA responses to specific NCP compliance comments are provided below.

in the 1990 NCP. (55FR8712 and 8719, RI/FS Guidance § 4.1.2.2) In many cases the necessary information has not been generated and considered, and where the need for more information is acknowledged, development and evaluation of the necessary
LC17-2 information is deferred to some future date. As a result, EPA has not afforded the public including the PRPs, the meaningful opportunity for public input that is required by CERCLA and the NCP and as prescribed by EPA's own guidance for selecting a remedy. The following discussions address the most egregious omissions and failures of the EPA. These discussions extend over a wide variety of technical and administrative aspects of the proposed plan. A separate discussion of technical and administrative issues is provided and includes references to one or more of the following NCP compliance failures.

NCP COMPLIANCE ISSUES

1) **The proposed plan and available supporting documentation do not provide for a reasonable opportunity for the public to comment.** EPA has not provided adequate information regarding the proposed plan and alternative response options as required by CERCLA Section 113 (k) (2) (B) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) sections 300.430(f), 300.800, 300.810 and 300.815. Accordingly, the attendant opportunities for input to the remedy formulation, screening and comparison process have not been made available to the public.

The NCP establishes the minimum requirements for a public participation program to permit meaningful participation in the selection of a remedy by the President. The administrative record file must contain the required documentation and establish that the remedy selection process as required by CERCLA and prescribed by the NCP and relevant guidance has been followed. The administrative record file must be complete so that the administrative record (that will ultimately support the Record of Decision) will
LC17-3 contain all documents which form the basis for the selection of the preferred response action. (CERCLA § 117, 50FR51395, 53FR8799) "The administrative record file for the selection of a remedial action *shall* (emphasis added) be made available for public inspection at the commencement of the remedial investigation phase." (NCP § 300.815 (a)) "The work plan for a site begins the administrative record, which is available for review by the public." (55FR8799) The purpose of the administrative record is to facilitate public involvement. As a result of "EPA's strong commitment to keeping the affected public, including PRP's, informed and providing the opportunity for public involvement to response decision making" (55FR8801) the NCP encourages EPA to conduct appropriate public meetings and to maintain the administrative record file locally so that the public (which includes PRPs) can be aware of the response actions under consideration and provide input for consideration during the remedy screening

Response to comment LC17-3

The comment contends EPA's process for involving the public in the remedy selection process has been inadequate. On the contrary, EPA's process for incorporating public input has been both extensive and consistent with the NCP. See ROD Amendment, Part 3, Section 3.1.1 as well as Section 3.11.2. The commenter quotes from the Federal Register: "State and community acceptance are also assessed, although definitive assessments of these factors cannot be completed until the public comment period on the RI/FS and proposed plan is completed." Despite this clear acknowledgement that assessments of state and community acceptance cannot be completed until after the Proposed Plan (i.e,. the ROD Amendment), the commenter criticizes EPA for not analyzing this in the Proposed Plan. Section 8.0 of the Proposed Plan notes "the two Modifying Criteria will be evaluated in the ROD Amendment following the receipt of state agency, Tribal, and public comments on the FFS Report and the Proposed Plan." Consistent with the NCP, EPA presented its definitive assessments of state and community acceptance in the ROD Amendment.

process. The 1988 preamble to the NCP notes that "the Congress directed EPA to ensure that the affected communities would be involved from the outset in *developing and selecting* (emphasis added) the actions necessary at a site" and that EPA would "ensure that the concerns of the public are considered and addressed." (50FR51450) "Community comments are taken into account throughout the RI/FS process' and "EPA places the highest priority on comments received from the community to which the site potentially or actually poses a human health or environmental risk." (FR558723)

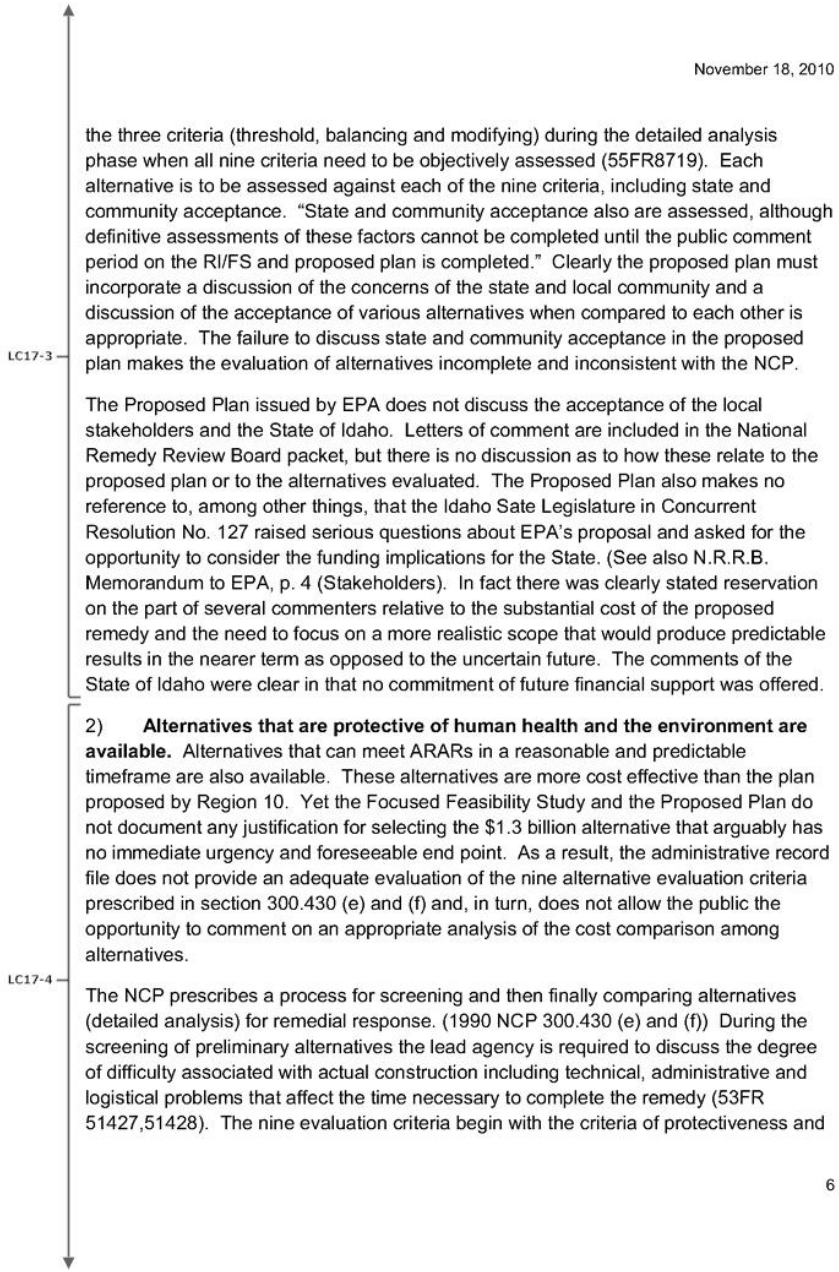
Involving the public in a meaningful way is important for many reasons, not the least of which is the requirement that public acceptance be considered while evaluating the final alternatives that survive the initial screening prescribed in the remedy selection process (Discussed in issue 2, below). Holding meetings or soliciting input to check a "Public Participation" box is inadequate, if key questions and information are not presented to the public.

The preamble to the 1990 NCP indicates that members of the community may request more opportunities for participation and involvement if they feel the need. (55FR8757) The preamble to the 1990 NCP also states that the administrative record file will include comments submitted that are not supportive of the agency's preferred remedy and that the file will not be edited to contain only information supportive of the proposed plan. (55FR8800 and 8805). Accordingly, public meetings must provide for an information exchange and, at the time the proposed plan is issued, the administrative record file must include a discussion of negative or opposing comments, which whether accommodated or not, are part of the basis for remedy selection. (50FR51529, 51429) The preamble to the 1988 NCP in discussing public information and community relations on page 51402 indicates that the agency has obligations "that extend beyond merely informing the public." The agency is expected to enter into and maintain a true dialogue with the public, including PRPs. In discussing Community Acceptance, the preamble to the 1988 proposed rule (53FR51529) indicates that the comments of the public "are taken into account throughout the RI/FS process" and that the detailed analysis may summarize preliminary comments received from the public. While a formal response to comments is not required until the final selection of a remedy (incorporated in the responsiveness summary of the ROD), the NCP clearly envisions that public input will be received and incorporated into the evaluation of alternatives. The 1988 proposed rule (53FR51429) states that the input of the state is to be received and considered and that the proposed plan should reflect consideration of modifying criteria (state and community acceptance) even though it may be only informal and incomplete.

LC17-3

The 1990 NCP clarifies this discussion through modification of the consideration of the nine evaluation criteria. EPA concluded that the nine criteria should not be divided into

No comments



November 18, 2010

the three criteria (threshold, balancing and modifying) during the detailed analysis phase when all nine criteria need to be objectively assessed (55FR8719). Each alternative is to be assessed against each of the nine criteria, including state and community acceptance. "State and community acceptance also are assessed, although definitive assessments of these factors cannot be completed until the public comment period on the RI/FS and proposed plan is completed." Clearly the proposed plan must incorporate a discussion of the concerns of the state and local community and a discussion of the acceptance of various alternatives when compared to each other is appropriate. The failure to discuss state and community acceptance in the proposed plan makes the evaluation of alternatives incomplete and inconsistent with the NCP.

LC17-3

The Proposed Plan issued by EPA does not discuss the acceptance of the local stakeholders and the State of Idaho. Letters of comment are included in the National Remedy Review Board packet, but there is no discussion as to how these relate to the proposed plan or to the alternatives evaluated. The Proposed Plan also makes no reference to, among other things, that the Idaho Sate Legislature in Concurrent Resolution No. 127 raised serious questions about EPA's proposal and asked for the opportunity to consider the funding implications for the State. (See also N.R.R.B. Memorandum to EPA, p. 4 (Stakeholders). In fact there was clearly stated reservation on the part of several commenters relative to the substantial cost of the proposed remedy and the need to focus on a more realistic scope that would produce predictable results in the nearer term as opposed to the uncertain future. The comments of the State of Idaho were clear in that no commitment of future financial support was offered.

2) **Alternatives that are protective of human health and the environment are available.** Alternatives that can meet ARARs in a reasonable and predictable timeframe are also available. These alternatives are more cost effective than the plan proposed by Region 10. Yet the Focused Feasibility Study and the Proposed Plan do not document any justification for selecting the $1.3 billion alternative that arguably has no immediate urgency and foreseeable end point. As a result, the administrative record file does not provide an adequate evaluation of the nine alternative evaluation criteria prescribed in section 300.430 (e) and (f) and, in turn, does not allow the public the opportunity to comment on an appropriate analysis of the cost comparison among alternatives.

LC17-4

The NCP prescribes a process for screening and then finally comparing alternatives (detailed analysis) for remedial response. (1990 NCP 300.430 (e) and (f)) During the screening of preliminary alternatives the lead agency is required to discuss the degree of difficulty associated with actual construction including technical, administrative and logistical problems that affect the time necessary to complete the remedy (53FR 51427,51428). The nine evaluation criteria begin with the criteria of protectiveness and

6

Response to comment LC17-4

The comment first suggests that there are alternative approaches that would meet applicable or relevant and appropriate requirement (ARARs) and be protective of human health and the environment that EPA did not evaluate. However, the commenter does not provide any information about the alternatives, and by consequence the comment is a conclusory statement that cannot be evaluated beyond EPA's determination that it evaluated an adequate set of alternatives prior to proposing and selecting remedial actions. The comment poses that EPA has not adequately evaluated remedial alternatives using the nine NCP criteria. EPA disagrees with this conclusion. As described in detail in the Proposed Plan and ROD Amendment, the process EPA used to select its remedy for the Upper Basin was conducted in a manner consistent with the NCP. Furthermore, in response to public comments, EPA reduced the scope of the Preferred Alternative as identified in the Proposed Plan, and did not include all of the remedial actions that were identified in its Preferred Alternative. Therefore, the Selected Remedy is not intended to fully address surface water contamination in all locations in the Upper Basin. Nor is it intended to fully address groundwater contamination. Thus, the Selected Remedy is an interim remedy for the Upper Basin. The Selected Remedy will address many significant sources of contamination in the Upper Basin and will be sufficiently protective of human health and the environment within the context of its scope. The Selected Remedy will result in significant improvements to surface water quality in the Upper Basin and may achieve ambient water quality criteria (AWQC) ARARs under the Clean Water Act in many locations following periods of natural recovery; however, it may not achieve these ARARs in all locations. Furthermore, although the Selected Remedy will result in significant improvement to groundwater quality, it is not intended to achieve groundwater maximum contaminant level (MCL) ARARs under the Safe Drinking Water Act throughout the Upper Basin. Similarly, although the Selected Remedy will provide additional safe habitat for special-status species and may achieve ARARs under the Migratory Bird Treaty Act (MBTA) and Endangered Species Act (ESA) where remedial actions are taken, it will not achieve these ARARs in all locations. The remedial actions included in the Selected Remedy will also result in the achievement of cleanup goals for soil and sediments where actions are taken.

The Selected Remedy satisfies CERCLA's protectiveness criteria as applied to an interim remedy. The level of protectiveness provided by an interim remedy is evaluated by the scope of its actions. Accordingly, the Selected Remedy, by its nature, need not be as protective as the final remedy is required to be under the statute. The Selected Remedy is designed to provide significant improvements to surface water and groundwater, and to significantly reduce risks posed to human health and the environment within the Upper Basin. Thus, the level of protection that the Selected Remedy will provide is commensurate to the scope of the Selected Remedy, and the Selected Remedy is deemed to be sufficiently protective in the context of its scope, even though it does not, by itself, meet the statutory protectiveness standard that a final remedy would meet. In summary, although the Selected Remedy will address many significant sources of contamination in the Upper Basin, it is an interim, not a final, remedy. Consequently, achieving certain ARARs, including AWQC, MCLs, MBTA, and ESA, and fully protecting human health and the environment in all areas of the Upper Basin is outside its scope. Consistent with 40 Code of Federal Regulations (CFR) 300.430(a)(ii)(B) and 40 CFR 300.430(f)(1)(ii)(C)(1), this Selected Remedy, an interim action, is neither inconsistent with nor precludes implementation of a final remedy that will attain ARARs. The final remedy will be identified in subsequent decision documents.

meeting ARARs. Similarly, the discussions of short-term effectiveness in the 1988 and 1990 proposed and final rule as well as the discussions in the 1988 RI/FS guidance all indicate that the time to achieve protection, ARARs or other response objectives, is an integral requirement of short term effectiveness analysis. The fact that EPA has not or cannot project the achievement of ARARs is a clear flaw in complying with the NCP. Among other things, to adequately assess projected costs, the statute anticipates that operation and maintenance costs "for the entire period during which such activities will be required" will be included in the cost analysis (CERCLA § 121 (a)).

That the question of timing on ARAR compliance is dismissed in the Proposed Plan results not only in a failure to comply with the requirements of the NCP but also denies the public an opportunity to comment on the whole issue of the length of the project which has enormous implications to local stakeholders. How can the public (or EPA for that matter) evaluate the benefits, impacts and cost-effectiveness of remedial alternatives without any information on "time to achieve ARARs"? What is the utility of a prediction that a remedy will meet, or in this case, get close to ARARs, if there is no prediction "when"?

LC17-4

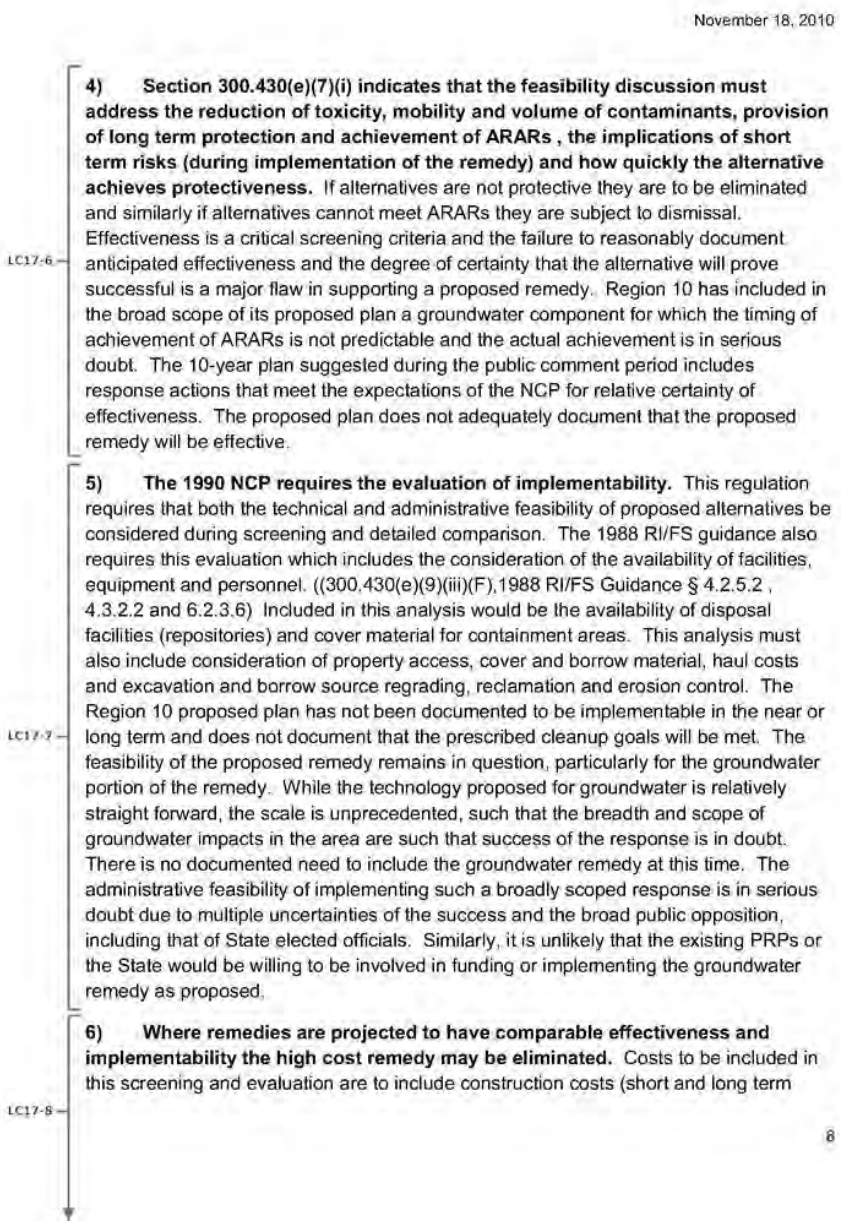
If ARARs are not to be met there are clear provisions for waivers. CERCLA § 121 (b) (4) addresses waivers, including waivers for technical impracticability. If an ARAR cannot be achieved, or it is uncertain that a cleanup standard will not be achieved, a discussion of the possible need for waivers is required per the statute and the NCP. (300.430(f)(1)(ii)(C)) Similarly, RI/FS guidance requires such consideration. Failing to provide an estimate of whether and when ARARs will be met and to provide the required discussion denies the public a vitally important opportunity to reasonably understand the comparison of alternatives and the proposed response action. EPA has not provided a reasonable explanation of the proposed plan and the alternative proposals. (CERCLA § 117). Accordingly, the opportunity to comment on meeting waivers and the need for waivers is curtailed, if not denied althogether.

3) **CERCLA envisions that the selected remedy, and therefore the proposed alternative, will be cost effective**. The preambles to the NCP make it clear that there is no single optimum remedy for a Superfund site. Rather, the NCP defines a process for screening and comparing possible alternatives based on nine evaluation criteria. In considering cost while evaluating remedies, the costs for the selected remedy must be proportional to their overall benefit (53 FR 51423, 55FR8727, and 8728). The 1990 NCP indicates that the decision maker should seek the remedy that provides a reasonable value for the money (55FR8728). One of the critical failures of the Proposed Plan is that EPA fails to discuss how its excessive cost will be matched by a proportional improvement in the environment in comparison to dismissed alternatives.

LC17-5

Response to comment LC17-5

The comment poses that EPA has not conducted a comparison of the costs versus environmental benefits of the remedial alternatives evaluated. EPA disagrees with this conclusion. The NCP requires that EPA evaluate remedial alternatives using nine criteria. These evaluations are described in Sections 8 of the Proposed Plan and Section 10 of the ROD Amendment, Part 2. As described in the ROD Amendment, Part 2, Section 13.0, EPA determined that the Selected Remedy is cost effective, consistent with the NCP.



November 18, 2010

4) Section 300.430(e)(7)(i) indicates that the feasibility discussion must address the reduction of toxicity, mobility and volume of contaminants, provision of long term protection and achievement of ARARs , the implications of short term risks (during implementation of the remedy) and how quickly the alternative achieves protectiveness. If alternatives are not protective they are to be eliminated and similarly if alternatives cannot meet ARARs they are subject to dismissal. Effectiveness is a critical screening criteria and the failure to reasonably document anticipated effectiveness and the degree of certainty that the alternative will prove successful is a major flaw in supporting a proposed remedy. Region 10 has included in the broad scope of its proposed plan a groundwater component for which the timing of achievement of ARARs is not predictable and the actual achievement is in serious doubt. The 10-year plan suggested during the public comment period includes response actions that meet the expectations of the NCP for relative certainty of effectiveness. The proposed plan does not adequately document that the proposed remedy will be effective.

LC17-6

5) The 1990 NCP requires the evaluation of implementability. This regulation requires that both the technical and administrative feasibility of proposed alternatives be considered during screening and detailed comparison. The 1988 RI/FS guidance also requires this evaluation which includes the consideration of the availability of facilities, equipment and personnel. ((300.430(e)(9)(iii)(F),1988 RI/FS Guidance § 4.2.5.2 , 4.3.2.2 and 6.2.3.6) Included in this analysis would be the availability of disposal facilities (repositories) and cover material for containment areas. This analysis must also include consideration of property access, cover and borrow material, haul costs and excavation and borrow source regrading, reclamation and erosion control. The Region 10 proposed plan has not been documented to be implementable in the near or long term and does not document that the prescribed cleanup goals will be met. The feasibility of the proposed remedy remains in question, particularly for the groundwater portion of the remedy. While the technology proposed for groundwater is relatively straight forward, the scale is unprecedented, such that the breadth and scope of groundwater impacts in the area are such that success of the response is in doubt. There is no documented need to include the groundwater remedy at this time. The administrative feasibility of implementing such a broadly scoped response is in serious doubt due to multiple uncertainties of the success and the broad public opposition, including that of State elected officials. Similarly, it is unlikely that the existing PRPs or the State would be willing to be involved in funding or implementing the groundwater remedy as proposed.

LC17-7

6) Where remedies are projected to have comparable effectiveness and implementability the high cost remedy may be eliminated. Costs to be included in this screening and evaluation are to include construction costs (short and long term

LC17-8

8

Response to comment LC17-6

The comment poses that EPA has not adequately evaluated the effectiveness of remedial alternatives (NCP Section 300.430(e)(7)(i)). EPA disagrees with this conclusion. As described in the Proposed Plan and ROD Amendment, EPA analyzed the CERCLA remedy evaluation criteria, including effectiveness, in a manner consistent with the NCP. Regarding ARARs and protectiveness, and their relationship to the Selected Remedy, see response above to Comment No. LC17-4. The comment also lends support to "the 10-year plan," presumably a reference to the Hecla 10-Year Plan. EPA has evaluated this plan (see the ROD Amendment, Part 3, Section 3.10.4) and found it to be inadequate to address the significant contamination in the Upper Basin.

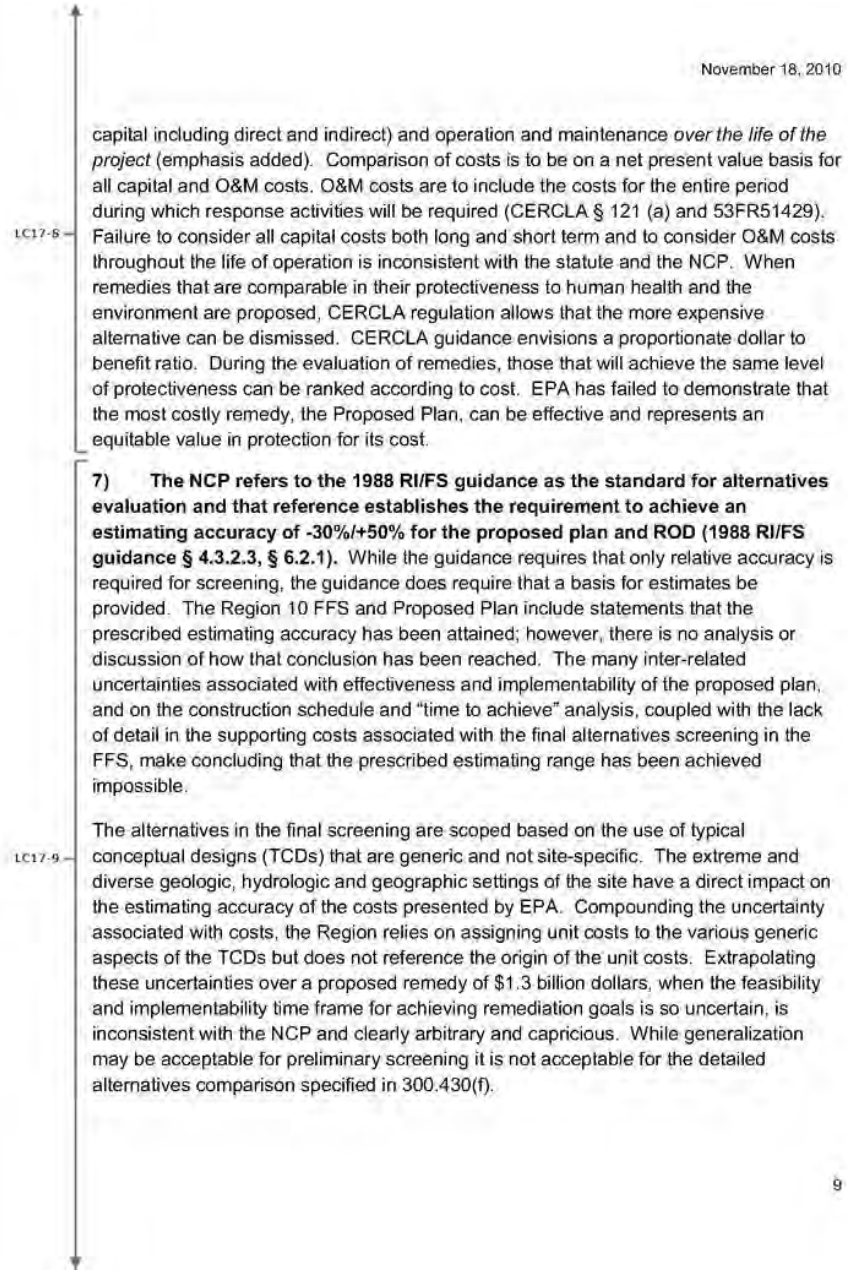
Response to comment LC17-7

The comment questions the adequacy of EPA's evaluation of the implementability criterion. EPA conducted evaluations of implementability of remedial alternatives in the Focused Feasibility Study (FFS) Report, Proposed Plan, and ROD Amendment in a manner consistent with the NCP. Furthermore, in response to comments, EPA has significantly reduced the scope of the Selected Remedy and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. As described in detail in ROD Amendment, Part 3, Section 2.0, this reduction in scope has in turn modified the groundwater portion of the remedy. EPA is confident the Selected Remedy, including portions related to groundwater, is readily implementable.

Response to comment LC17-8

The comment questions whether EPA adequately considered costs in its remedy selection process and further questions whether the Preferred Alternative of the Proposed Plan can be effective and represents an equitable value in protection for its cost. As described in the FFS, Proposed Plan, and ROD Amendment, EPA prepared estimated remedial costs in a manner consistent with the NCP. Costs were developed based upon principles outlined in EPA's *A Guide to Developing and Documenting Cost Estimates during the Feasibility Study* (EPA, 2000). As discussed above, EPA significantly reduced the scope of the Selected Remedy

from that of the Preferred Alternative in the Proposed Plan, and is not including all of the remedial actions that were identified in EPA's Preferred Alternative. Consistent with the NCP, EPA determined that the Selected Remedy is both effective and cost effective.



November 18, 2010

capital including direct and indirect) and operation and maintenance *over the life of the project* (emphasis added). Comparison of costs is to be on a net present value basis for all capital and O&M costs. O&M costs are to include the costs for the entire period during which response activities will be required (CERCLA § 121 (a) and 53FR51429).

LC17-8 Failure to consider all capital costs both long and short term and to consider O&M costs throughout the life of operation is inconsistent with the statute and the NCP. When remedies that are comparable in their protectiveness to human health and the environment are proposed, CERCLA regulation allows that the more expensive alternative can be dismissed. CERCLA guidance envisions a proportionate dollar to benefit ratio. During the evaluation of remedies, those that will achieve the same level of protectiveness can be ranked according to cost. EPA has failed to demonstrate that the most costly remedy, the Proposed Plan, can be effective and represents an equitable value in protection for its cost.

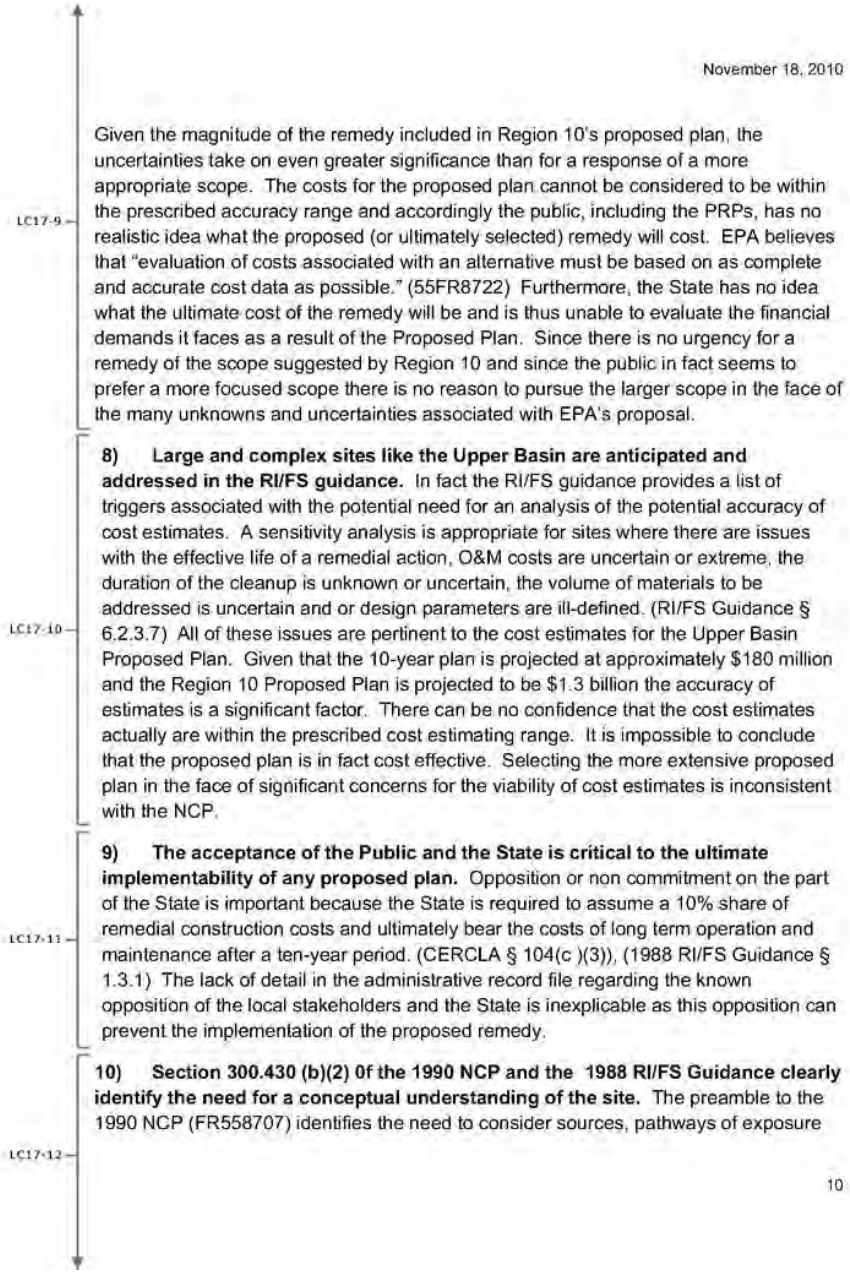
7) **The NCP refers to the 1988 RI/FS guidance as the standard for alternatives evaluation and that reference establishes the requirement to achieve an estimating accuracy of -30%/+50% for the proposed plan and ROD (1988 RI/FS guidance § 4.3.2.3, § 6.2.1).** While the guidance requires that only relative accuracy is required for screening, the guidance does require that a basis for estimates be provided. The Region 10 FFS and Proposed Plan include statements that the prescribed estimating accuracy has been attained; however, there is no analysis or discussion of how that conclusion has been reached. The many inter-related uncertainties associated with effectiveness and implementability of the proposed plan, and on the construction schedule and "time to achieve" analysis, coupled with the lack of detail in the supporting costs associated with the final alternatives screening in the FFS, make concluding that the prescribed estimating range has been achieved impossible.

LC17-9 The alternatives in the final screening are scoped based on the use of typical conceptual designs (TCDs) that are generic and not site-specific. The extreme and diverse geologic, hydrologic and geographic settings of the site have a direct impact on the estimating accuracy of the costs presented by EPA. Compounding the uncertainty associated with costs, the Region relies on assigning unit costs to the various generic aspects of the TCDs but does not reference the origin of the unit costs. Extrapolating these uncertainties over a proposed remedy of $1.3 billion dollars, when the feasibility and implementability time frame for achieving remediation goals is so uncertain, is inconsistent with the NCP and clearly arbitrary and capricious. While generalization may be acceptable for preliminary screening it is not acceptable for the detailed alternatives comparison specified in 300.430(f).

9

Response to comment LC17-9

The comment questions whether EPA adequately considered costs in its remedy selection process. As described in the FFS, Proposed Plan, and ROD Amendment, EPA prepared estimated remedial costs in a manner consistent with the NCP. Costs were developed based upon principles outlined in EPA's *A Guide to Developing and Documenting Cost Estimates during the Feasibility Study* (EPA, 2000). The cost estimate information is based on the best available information regarding the anticipated scope of the remedial actions. The estimates presented are expected to be within +50 to -30 percent of the actual project costs, consistent with CERCLA guidance. Changes in the cost components are likely to occur as a result of new information and data collected during engineering designs for the Selected Remedy. Such change may be documented, as appropriate, in the form of a memorandum to the administrative record file, an Explanation of Significant Differences, or another ROD Amendment.



November 18, 2010

Given the magnitude of the remedy included in Region 10's proposed plan, the uncertainties take on even greater significance than for a response of a more appropriate scope. The costs for the proposed plan cannot be considered to be within the prescribed accuracy range and accordingly the public, including the PRPs, has no realistic idea what the proposed (or ultimately selected) remedy will cost. EPA believes that "evaluation of costs associated with an alternative must be based on as complete and accurate cost data as possible." (55FR8722) Furthermore, the State has no idea what the ultimate cost of the remedy will be and is thus unable to evaluate the financial demands it faces as a result of the Proposed Plan. Since there is no urgency for a remedy of the scope suggested by Region 10 and since the public in fact seems to prefer a more focused scope there is no reason to pursue the larger scope in the face of the many unknowns and uncertainties associated with EPA's proposal.

LC17-9

8) Large and complex sites like the Upper Basin are anticipated and addressed in the RI/FS guidance. In fact the RI/FS guidance provides a list of triggers associated with the potential need for an analysis of the potential accuracy of cost estimates. A sensitivity analysis is appropriate for sites where there are issues with the effective life of a remedial action, O&M costs are uncertain or extreme, the duration of the cleanup is unknown or uncertain, the volume of materials to be addressed is uncertain and or design parameters are ill-defined. (RI/FS Guidance § 6.2.3.7) All of these issues are pertinent to the cost estimates for the Upper Basin Proposed Plan. Given that the 10-year plan is projected at approximately $180 million and the Region 10 Proposed Plan is projected to be $1.3 billion the accuracy of estimates is a significant factor. There can be no confidence that the cost estimates actually are within the prescribed cost estimating range. It is impossible to conclude that the proposed plan is in fact cost effective. Selecting the more extensive proposed plan in the face of significant concerns for the viability of cost estimates is inconsistent with the NCP.

LC17-10

9) The acceptance of the Public and the State is critical to the ultimate implementability of any proposed plan. Opposition or non commitment on the part of the State is important because the State is required to assume a 10% share of remedial construction costs and ultimately bear the costs of long term operation and maintenance after a ten-year period. (CERCLA § 104(c)(3)), (1988 RI/FS Guidance § 1.3.1) The lack of detail in the administrative record file regarding the known opposition of the local stakeholders and the State is inexplicable as this opposition can prevent the implementation of the proposed remedy.

LC17-11

10) Section 300.430 (b)(2) 0f the 1990 NCP and the 1988 RI/FS Guidance clearly identify the need for a conceptual understanding of the site. The preamble to the 1990 NCP (FR558707) identifies the need to consider sources, pathways of exposure

LC17-12

10

Response to comment LC17-10

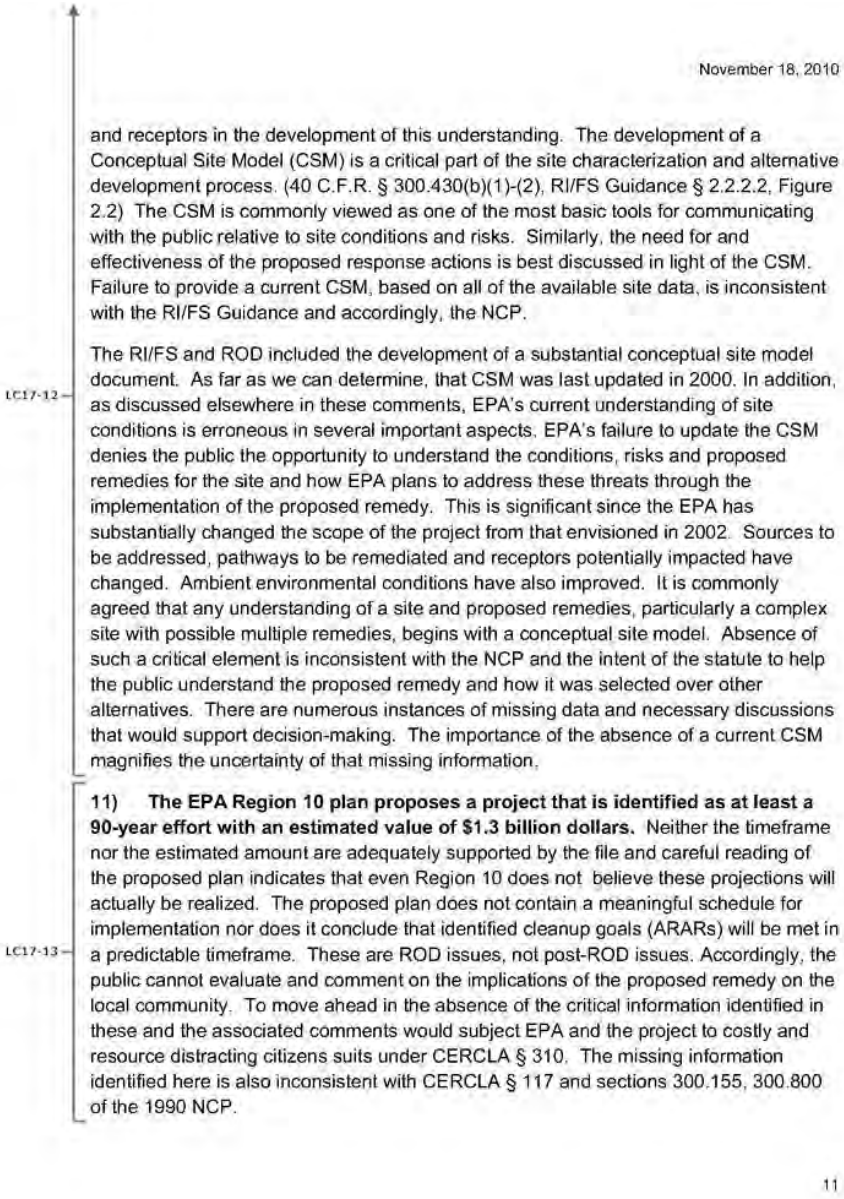
See response above to Comment No. LC17-9.

Response to comment LC17-11

See response above to Comment No. LC17-3. EPA' administrative record site file documents involvement by local stakeholders prior to issuance of the proposed plan that is critical and, in some instances, supportive of EPA's remedy selection process.

Response to comment LC17-12

The comment questions whether EPA has adequately updated its conceptual model for the site. EPA believes its conceptual model is indeed adequate for selecting a remedy. Regarding EPA's "conceptual understanding of the site," see extensive discussions in Part 2, Section 5.0 of the ROD Amendment.



November 18, 2010

and receptors in the development of this understanding. The development of a Conceptual Site Model (CSM) is a critical part of the site characterization and alternative development process. (40 C.F.R. § 300.430(b)(1)-(2), RI/FS Guidance § 2.2.2.2, Figure 2.2) The CSM is commonly viewed as one of the most basic tools for communicating with the public relative to site conditions and risks. Similarly, the need for and effectiveness of the proposed response actions is best discussed in light of the CSM. Failure to provide a current CSM, based on all of the available site data, is inconsistent with the RI/FS Guidance and accordingly, the NCP.

LC17-12 The RI/FS and ROD included the development of a substantial conceptual site model document. As far as we can determine, that CSM was last updated in 2000. In addition, as discussed elsewhere in these comments, EPA's current understanding of site conditions is erroneous in several important aspects. EPA's failure to update the CSM denies the public the opportunity to understand the conditions, risks and proposed remedies for the site and how EPA plans to address these threats through the implementation of the proposed remedy. This is significant since the EPA has substantially changed the scope of the project from that envisioned in 2002. Sources to be addressed, pathways to be remediated and receptors potentially impacted have changed. Ambient environmental conditions have also improved. It is commonly agreed that any understanding of a site and proposed remedies, particularly a complex site with possible multiple remedies, begins with a conceptual site model. Absence of such a critical element is inconsistent with the NCP and the intent of the statute to help the public understand the proposed remedy and how it was selected over other alternatives. There are numerous instances of missing data and necessary discussions that would support decision-making. The importance of the absence of a current CSM magnifies the uncertainty of that missing information.

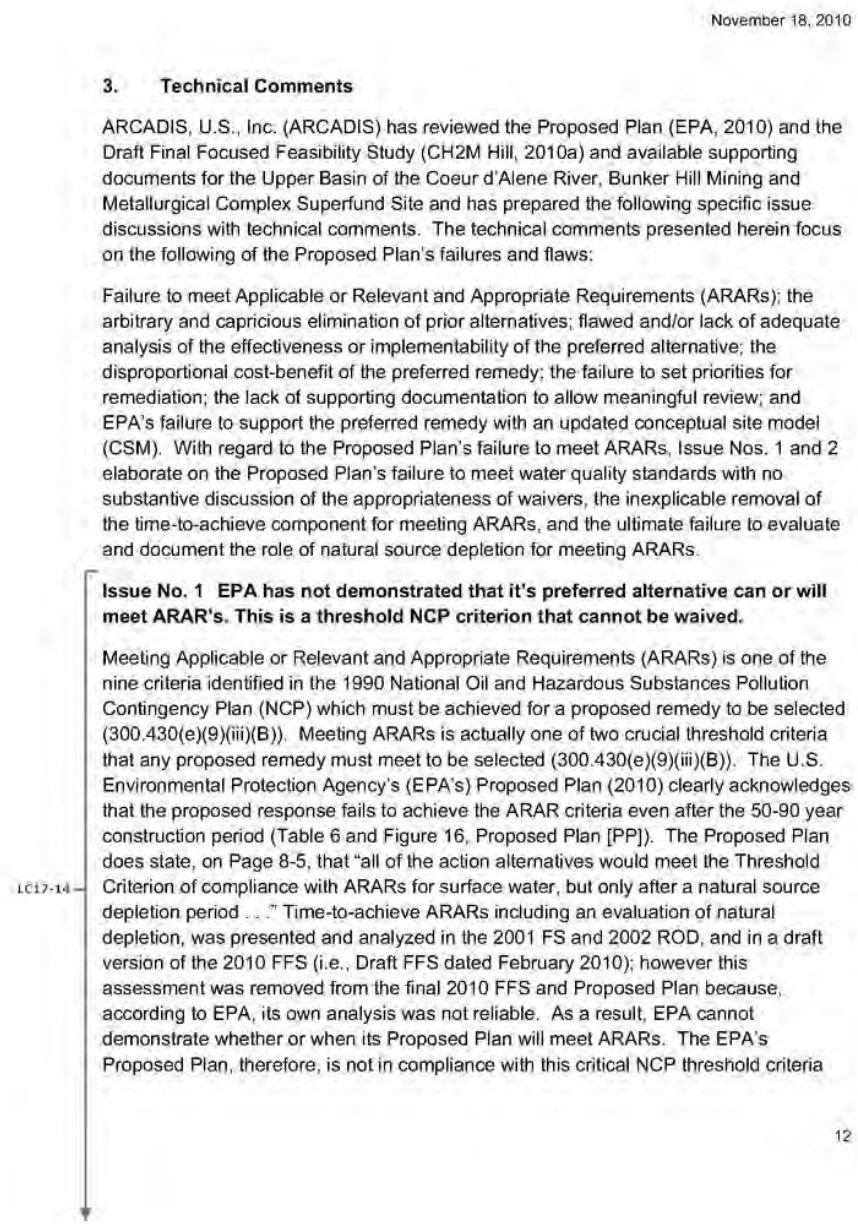
11) **The EPA Region 10 plan proposes a project that is identified as at least a 90-year effort with an estimated value of $1.3 billion dollars.** Neither the timeframe nor the estimated amount are adequately supported by the file and careful reading of the proposed plan indicates that even Region 10 does not believe these projections will actually be realized. The proposed plan does not contain a meaningful schedule for implementation nor does it conclude that identified cleanup goals (ARARs) will be met in

LC17-13 a predictable timeframe. These are ROD issues, not post-ROD issues. Accordingly, the public cannot evaluate and comment on the implications of the proposed remedy on the local community. To move ahead in the absence of the critical information identified in these and the associated comments would subject EPA and the project to costly and resource distracting citizens suits under CERCLA § 310. The missing information identified here is also inconsistent with CERCLA § 117 and sections 300.155, 300.800 of the 1990 NCP.

11

Response to comment LC17-13

The comment questions the certainty of the estimated implementation period and cost of remedy. Regarding cost and duration of the remedy, see ROD Amendment, Part 3, Sections 3.9.1 and 3.10.1, respectively. Furthermore, in response to comments, EPA has significantly reduced the scope of the Selected Remedy and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. This is described in detail in ROD Amendment, Part 3, Section 2.0. The comment also questions the implementation schedule for cleanup and achievement of ARARs. As to EPA's intentions regarding an implementation plan for the cleanup, see ROD Amendment, Part 3, Section 3.11. Regarding the issue of ARARs, see response above to Comment No. LC17-4.



November 18, 2010

3. Technical Comments

ARCADIS, U.S., Inc. (ARCADIS) has reviewed the Proposed Plan (EPA, 2010) and the Draft Final Focused Feasibility Study (CH2M Hill, 2010a) and available supporting documents for the Upper Basin of the Coeur d'Alene River, Bunker Hill Mining and Metallurgical Complex Superfund Site and has prepared the following specific issue discussions with technical comments. The technical comments presented herein focus on the following of the Proposed Plan's failures and flaws:

Failure to meet Applicable or Relevant and Appropriate Requirements (ARARs); the arbitrary and capricious elimination of prior alternatives; flawed and/or lack of adequate analysis of the effectiveness or implementability of the preferred alternative; the disproportional cost-benefit of the preferred remedy; the failure to set priorities for remediation; the lack of supporting documentation to allow meaningful review; and EPA's failure to support the preferred remedy with an updated conceptual site model (CSM). With regard to the Proposed Plan's failure to meet ARARs, Issue Nos. 1 and 2 elaborate on the Proposed Plan's failure to meet water quality standards with no substantive discussion of the appropriateness of waivers, the inexplicable removal of the time-to-achieve component for meeting ARARs, and the ultimate failure to evaluate and document the role of natural source depletion for meeting ARARs.

Issue No. 1 EPA has not demonstrated that it's preferred alternative can or will meet ARAR's. This is a threshold NCP criterion that cannot be waived.

Meeting Applicable or Relevant and Appropriate Requirements (ARARs) is one of the nine criteria identified in the 1990 National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which must be achieved for a proposed remedy to be selected (300.430(e)(9)(iii)(B)). Meeting ARARs is actually one of two crucial threshold criteria that any proposed remedy must meet to be selected (300.430(e)(9)(iii)(B)). The U.S. Environmental Protection Agency's (EPA's) Proposed Plan (2010) clearly acknowledges that the proposed response fails to achieve the ARAR criteria even after the 50-90 year construction period (Table 6 and Figure 16, Proposed Plan [PP]). The Proposed Plan does state, on Page 8-5, that "all of the action alternatives would meet the Threshold Criterion of compliance with ARARs for surface water, but only after a natural source depletion period . . ." Time-to-achieve ARARs including an evaluation of natural depletion, was presented and analyzed in the 2001 FS and 2002 ROD, and in a draft version of the 2010 FFS (i.e., Draft FFS dated February 2010); however this assessment was removed from the final 2010 FFS and Proposed Plan because, according to EPA, its own analysis was not reliable. As a result, EPA cannot demonstrate whether or when its Proposed Plan will meet ARARs. The EPA's Proposed Plan, therefore, is not in compliance with this critical NCP threshold criteria

LC17-14

12

Response to comment LC17-14

The comment concludes that EPA has not demonstrated the Preferred Alternative identified in the Proposed Plan can or will meet ARARs. Regarding the issue of ARARs, see response above to Comment No. LC17-4 above.

November 18, 2010

and, absent some basis for an ARARs waiver (which would clearly trigger a redesign of the remedy), EPA cannot select its preferred alternative as a final remedy.

Technical Comments

- In 2002 and in 2010 the EPA's preferred remedy admittedly fails to achieve ARAR's post-construction without significant and lengthy natural depletion.
- In 2002 the preferred remedy required centuries of natural source depletion to achieve ARARs. In 2010, no similar time-to-achieve analysis is presented in the 2010 FFS or Proposed Plan.
    - Figure 10.2-3 of the 2002 ROD indicates that the preferred alternative will achieve an AWQC ratio of approximately 3.1 post-remediation, whereas Alternative 6 (the Mining Company Plan) is predicted to achieve an AWQC ratio of approximately 8.5 post-remediation.
    - Alternative 3 is not expected to achieve the water quality ARAR until 400 years following remediation, at which time the surface water quality AWQC ratio achieved by Alternative 6,400 years' post-remediation, is approximately 2.8.

LC17-14 –

    - Page 10-3 of the 2002 ROD states "The time needed to achieve overall cleanup goals, including AWQC and risk-based sediment cleanup goals, will be lengthy and require a period of natural recovery for all the alternatives."
    - Page 10-8 of the 2002 ROD states "Although the Selected Remedy is not anticipated to be fully protective of the environment and achieve environmental ARARs, it represents what EPA believes is a significant step toward these goals."
    - Table 6 and Figure 16 of EPA's Proposed Plan (2010) and Table 7-21 of the 2010 Draft Final Focused Feasibility Study (FFS) (CH2M Hill, July 2010) state that the estimated post-remediation zinc AWQC ratio at Pinehurst of the preferred alternative (Alternative 3+(d)) is equal to 1.7 – or almost twice the site-specific water quality standard. These same tables and figures indicate that none of the alternatives achieve a post-remediation AWQC ratio equal to or less than 1.
    - The NAS voiced similar concerns. For instance, on Pages 465 and 466 of the NAS review it states "Even if the principal hypothesis used in the PMT was correct and the calculation of the immediate post-remediation

13

No comments

situation was adequately approximated, ***the treatment of time variation following remediation is incorrect***." (emphasis added)

- Nowhere within either the 2002 ROD or 2010 FFS does the EPA discuss or evaluate the benefits of the proposed action alternatives relative to natural source depletion or how the remediation activities will alter, either negatively or positively, this process.

- Page 10-8 of the 2002 ROD states "Although the Selected Remedy is not anticipated to be fully protective of the environment and achieve environmental ARARs, it represents what EPA believes is a significant step toward these goals." Due to the fact that Alternative 3+(d) in the 2010 Proposed Plan is only a slight modification of Alternative 3 in the 2002 ROD, it is reasonable to surmise that the above statement is applicable to the 2010 preferred alternative.

  - Taking steps toward the goal does not comply with the NCP and is not acceptable. If the selected alternative does not meet ARAR's a waiver must be justified. In this case, at a minimum, a Technical Impracticability (TI) waiver needs to be explored 300.4309f)(1)(ii)(C). If an alternative that does not meet ARAR's was acceptable to EPA in 2002, then the less costly and more focused alternatives (i.e., Alternatives 5 and 6) should also be acceptable. While Alternative 3+ facially may be more protective, these alternatives (5 and 6) have a greater certainty of success and the support of the local communities.

LC17-14

- The EPA in 2010 suggests that all of the response alternatives, including the "no action" alternative, as well as those alternatives which were discarded in 2002, would eventually meet ARARs but 1) does not describe when this will occur, 2) admits that no assessment of how ARARs would be met was performed and 3) states that any assessment regarding the time-to-achieve ARARs is too uncertain to be reliable.

  - On Page 8-2 of the Proposed Plan the EPA states "All of the remedial alternatives will eventually achieve AWQC (the principal chemical-specific ARAR) ratios of 1 after differing periods of natural source depletion, depending on the magnitude of the actions taken."

  - Page 8-5 of the 2010 Proposed Plan states that "the results of this analysis indicate that all of the action alternatives would meet the Threshold Criterion of compliance with ARARs for surface water, but only after a natural source depletion period, which is common to all of the alternatives." These statements are incorrect and unfounded as no such

No comments

analysis was presented in the 2010 FFS. In fact, EPA admits on Page 8-2 of the Proposed Plan and B-2/B-3 of the 2010 FFS that no such analysis was conducted: "The Predictive Analysis also includes a component that can be used to estimate the effects of natural source depletion on AWQC ratios over time as a function of a decay rate. ***However, the natural source depletion component was not used in the FFS analysis because the prediction of long-term water quality trends and specific water quality in the South Fork Coeur d'Alene River (SFCDR) Watershed in the distant future is subject to considerable uncertainty***." (emphasis added).

- Furthermore, there is no documentation within the 2010 FFS or Proposed Plan relative to the quantifiable consideration of natural source depletion, how the rates of natural source depletion vary by source material or by action alternative, or any detailed description of the relationship between natural source depletion and time-to-achieve ARARs.
- The uncertain nature of EPA's understanding of the time-to-achieve ARARs is indicated on Page 8-5 of the 2010 Proposed Plan which states "The relative period of time required between alternatives is ***expected*** to be related to the water quality improvements achieved upon the completion of remedial actions." (emphasis added). Note that this sentence says nothing about the significance of natural source depletion to those water quality improvements.

LC17-14

- In fact, the FFS states that no such analysis was conducted. On Page B-2 of the 2010 FFS it states "The Predictive Analysis Tool (PAT) also includes a component that can be used to estimate residual post-remediation loads over time, due to source depletion. ***The natural source depletion component of the PAT has not been used in the FFS analysis because the prediction of long-term water quality trends and specific water quality in the SFCDR watershed in the distant future is subject to considerable uncertainty*** . . ."

- No analysis is presented in the 2010 Proposed Plan or FFS with regard to time-to-achieve ARARs. As such, no evidence is presented indicating that the proposed alternative will comply with ARARs and there is no discussion of the time that will be required to meet that statutory requirement.
- Time-to-achieve was analyzed in the 2001 Feasibility Study (FS), 2002 ROD and presented in the Draft Focused Feasibility Study (CH2M Hill, February 2010),

No comments

November 18, 2010

however this analysis was removed from the Draft Final FFS (CH2M Hill, July 2010).

- Figure B-9a – Predicted Declines in AWQC Ratios for Pinehurst, Alternatives 3+(a) through 3+(e) shows AWQC ratios verses time (see below). In this figure, the preferred alternative 3+(d) reaches a AWQC ratio of 1 at Pinehurst in about 35 to 40 years compared to a time-to-achieve ARARs of over 400 years presented in the 2001 FS. ***Similarly, the time-to-achieve ARARs assuming the No Action alternative inexplicably decreased from approximately 1,000 years in 2001 to approximately 175 years in the Draft FFS (February 2010).***
- Because the time to fully implement the preferred alternative is estimated between 50 and 90 years followed by an additional 35 to 40 years required to achieve ARARs (combined total of between 85 and 130 years), based on Figure B-9a, there would only be a difference of 45 to 90 years in the time-to-achieve ARARs between the No Action alternative and the preferred Alternative (3+(d)).

LC17-14 –

- Factors influencing these different time-to-achieve estimates include: the effectiveness of the remedial actions since 2001, ongoing natural source depletion, the incorporation of the remedial actions both within the Box (OU2) and in the Upper Basin (OU3), and the changes made between 2001 and 2010 to account for the new site-specific AWQC value for dissolved zinc. However, the Draft FFS does not differentiate between, or rigorously evaluates, these changes and the whole issue of quantifying time-to-achieve is totally ignored in the Draft Final FFS (CH2M Hill, July 2010) with no explanation.

The remedy identified in the Proposed Plan and Preferred Alternative is required to achieve ARARs. (CERCLA 121 (d) (2)(A) The EPA has selected a remedy in both 2002 and 2010 that does not meet this statutory requirement and thus is not in compliance with the NCP, and cannot be selected as the preferred alternative. In 2001 the EPA analyzed the time-to-achieve ARARs and stated that the preferred alternative would not achieve surface water quality ARARs until 400 years of natural source depletion has taken place post-construction. In 2010 the EPA admittedly fails to address natural source depletion and the time-to-achieve ARARs at the same time relying upon natural source depletion for the selected remedy to achieve ARARs. Both the failure to achieve ARARs and the failure to reasonably predict a time-to-achieve ARARs is inconsistent with the expectations of CERCLA and the NCP (CERCLA 121(d)(2)(A) and (300.430(e)(9)(iii), respectively.

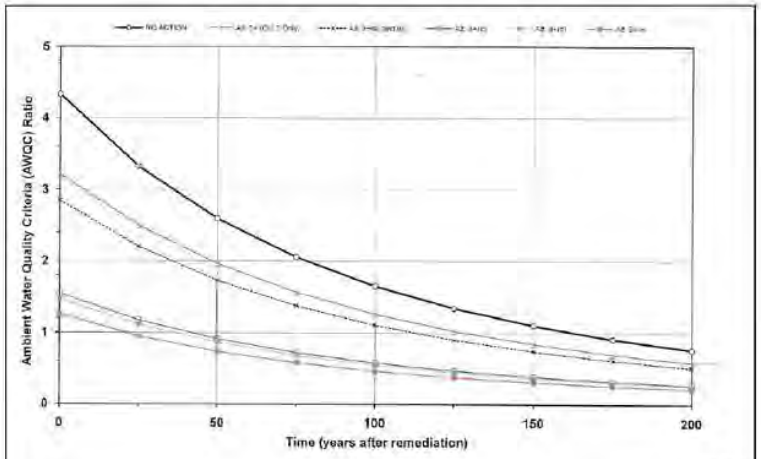
16

No comments

November 18, 2010

Despite over a decade of analysis indicating the proposed and preferred alternatives do not achieve ARARs, the EPA arbitrarily continues to refuse to address ARAR waivers as is required by CERCLA.(121(d)(4). The Region has proposed a remedy that will require almost 100 years to implement at an estimated cost (which is certainly underestimated; see Issue No. 4) of over $1.3B with unknown long-term effectiveness and while still not achieving stated water quality goals. The NCP requires that the time until protectiveness is achieved be considered in the assessment and comparison of potential alternatives (300.430(e)(9)9iii).

LC17-14

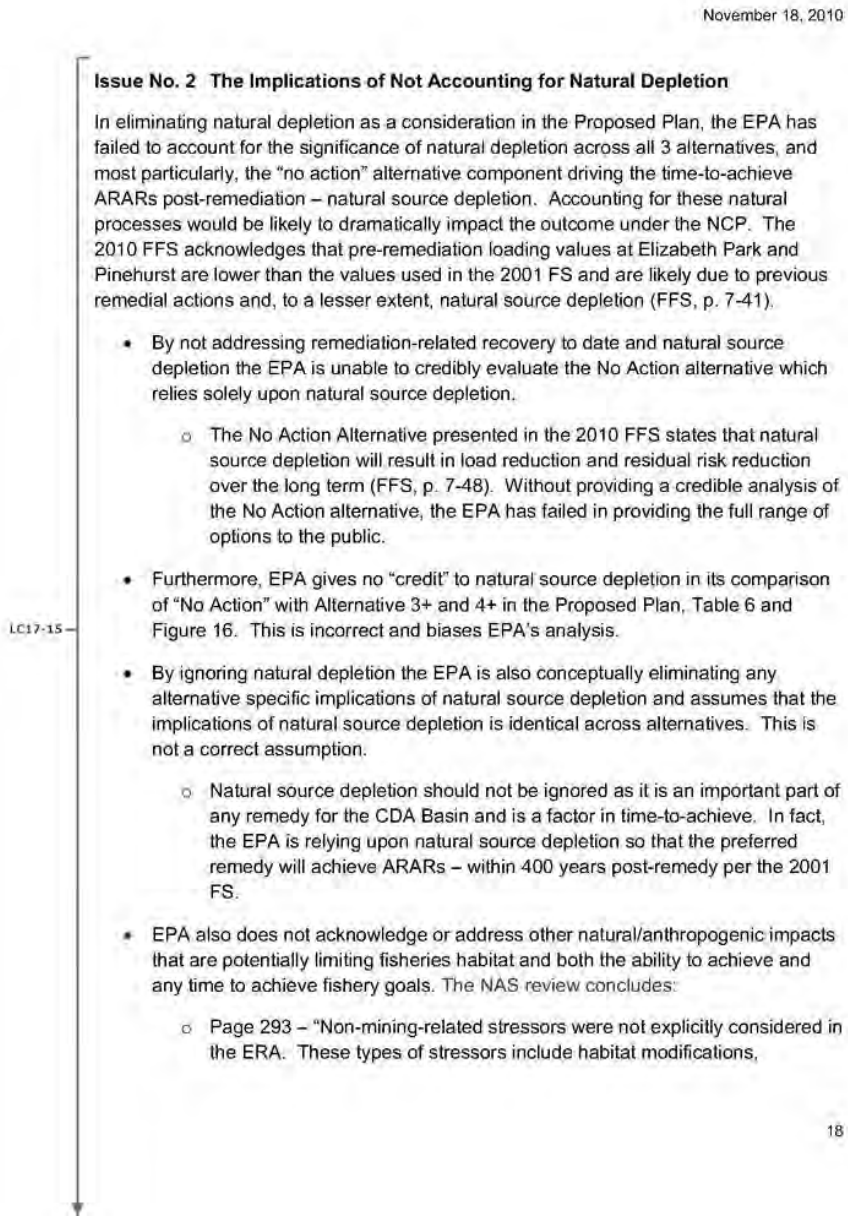


Taken from Feb. 2010 Draft FFS

Figure B-9a
Predicted Declines in AWQC Ratios for Pinehurst, Alternatives 3+(a) through 3+(e)
Focused Feasibility Study
Upper Basin of the Coeur d'Alene River
BUNKER HILL SUPERFUND SITE

17

No comments



November 18, 2010

Issue No. 2 The Implications of Not Accounting for Natural Depletion

In eliminating natural depletion as a consideration in the Proposed Plan, the EPA has failed to account for the significance of natural depletion across all 3 alternatives, and most particularly, the "no action" alternative component driving the time-to-achieve ARARs post-remediation – natural source depletion. Accounting for these natural processes would be likely to dramatically impact the outcome under the NCP. The 2010 FFS acknowledges that pre-remediation loading values at Elizabeth Park and Pinehurst are lower than the values used in the 2001 FS and are likely due to previous remedial actions and, to a lesser extent, natural source depletion (FFS, p. 7-41).

- By not addressing remediation-related recovery to date and natural source depletion the EPA is unable to credibly evaluate the No Action alternative which relies solely upon natural source depletion.
  - The No Action Alternative presented in the 2010 FFS states that natural source depletion will result in load reduction and residual risk reduction over the long term (FFS, p. 7-48). Without providing a credible analysis of the No Action alternative, the EPA has failed in providing the full range of options to the public.
- Furthermore, EPA gives no "credit" to natural source depletion in its comparison of "No Action" with Alternative 3+ and 4+ in the Proposed Plan, Table 6 and Figure 16. This is incorrect and biases EPA's analysis.
- By ignoring natural depletion the EPA is also conceptually eliminating any alternative specific implications of natural source depletion and assumes that the implications of natural source depletion is identical across alternatives. This is not a correct assumption.
  - Natural source depletion should not be ignored as it is an important part of any remedy for the CDA Basin and is a factor in time-to-achieve. In fact, the EPA is relying upon natural source depletion so that the preferred remedy will achieve ARARs – within 400 years post-remedy per the 2001 FS.
- EPA also does not acknowledge or address other natural/anthropogenic impacts that are potentially limiting fisheries habitat and both the ability to achieve and any time to achieve fishery goals. The NAS review concludes:
  - Page 293 – "Non-mining-related stressors were not explicitly considered in the ERA. These types of stressors include habitat modifications,

18

LC17-15

Response to comment LC17-15

The comment criticizes EPA's treatment of "natural depletion" in the remedy selection process. For EPA's response regarding "natural depletion," see response to Comment No. BU45-3 submitted by Formation Environmental on behalf of Hecla Mining. The comment also refers to water quality conditions in the basin following 2001 and their potential impact on remedy selection. Regarding water quality conditions in the Upper Basin following 2001 and implications to cleanup, see response to Comment No. BU45-6 submitted by Formation Environmental on behalf of Hecla Mining. As documented in the 2002 ROD, EPA rejected the No Action Alternative from further consideration. The evaluations conducted since that time and referenced in EPA's response to Comment No. BU45-6 concluded that unchanging trends, coupled with AWQC ratios significantly exceeding 1, suggest that conditions at the sampling stations with AWQC exceedances will likely continue to exceed AWQC without significant additional cleanup actions that target improvements in water quality. Such analyses continue to support the conclusion drawn at the time of the 2002 ROD for OU 3 (EPA, 2002; www.epa.gov/superfund/sites/rods/fulltext/r1002032.pdf) that a No Action Alternative will not be a viable alternative for dealing with the significant contamination problems documented in the FFS, Proposed Plan, and ROD Amendment. Hence, carrying forward the No Action Alternative was neither warranted for remedy selection in the 2002 ROD nor the ROD Amendment. The comment also criticizes EPA's treatment of "other natural/anthropogenic impacts" in the remedy selection process. For EPA's response, see response to Comment No. BU36-14 submitted by Temkin Wielga & Hardt LLP on behalf of Hecla Mining.

infrastructure development (roads and railways), and stream channelization."

- Page 294 – "Impacts of physical disturbance, including non-mining-related disturbances, would still have to be considered during remedy selection and implementation . . . "

LC17-15

The failure to adequately incorporate an analysis of natural source depletion makes the assessment and comparison of alternatives based on the nine criteria impossible. The implications of natural source depletion impact protectiveness and the achievement of ARARS, short and long term effectiveness, implementability and of course cost. The absence of this analysis makes the comparison of alternatives a general comparison at best. Furthermore the absence of the significance of non-mining impacts relative to aquatic life improvements prevents the public from having a reasonable understanding of the proposed alternatives and how (and importantly how long) they will impact the local community.

No comments

Issue No. 3 The Proposed Plan's Elimination of Alternatives 5 and 6 is Arbitrary and Capricious

Alternatives 5 and 6 were improperly eliminated in the 2001 FS and EPA's 2010 FFS and Proposed Plan perpetuates this fundamental error by simply relying upon the flawed analysis presented in the 2001 FS.

The 2001 FS Report (EPA, 2001b) developed and evaluated six alternatives. Of the six alternatives evaluated in the 2001 FS Report, only Ecological Alternatives 3 and 4 were determined to be compliant with the NCP. This is incorrect, as none of the alternatives presented in the 2001 FS Report, and carried forward to the 2010 FFS, were compliant with the NCP. That is, none of the alternatives were predicted to achieve ARARs post-implementation (see Figure 10.2-3 of the 2002 ROD and Page 10-3). No assessment of the time-to-achieve ARARs was assessed by the EPA in the Draft Final FFS. Furthermore, the basis for the effectiveness evaluations itself, and the time-to-achieve ARARs described in the 2001 FS, is fundamentally flawed as described by the National Academy of Sciences (NAS, 2005).

In addition, important differences exist in the assessment criteria employed by EPA between the 2001 FS and the 2010 FFS, including: 1) the geographic scope under consideration is drastically different between 2001 and 2010 (2001 included the Upper and Lower Basin, Lake Coeur d'Alene and the Spokane River; 2010 only discusses the Upper Basin) and 2) the primary surface water evaluation criterion (i.e., site specific dissolved zinc concentration) is drastically different.

LC17-16

Despite the significant failure in the 2001 assessment of alternatives and the critical differences between the 2001 and 2010 evaluation criteria, the EPA still, inexplicably, relied upon an evaluation of alternatives from 2001.

Technical Comments

- The basis for rejecting Alternatives 5 and 6 within the 2010 Proposed Plan relies upon the analysis presented in the 2002 ROD. In the 2002 ROD a primary reason for rejecting Alternatives 5 and 6 is "Longest time to achieve ARARs compliance among action alternatives. Estimated times to achieve AWQC were 205% and 253% longer than Alternative 4 at Pinehurst and Harrison, respectively." (2002 ROD, Table 10.2-1). This assessment is no longer valid and cannot be a basis for decision in 2010 because 1) Harrison is no longer a relevant point of compliance and 2) time-to-achieve ARARs is no longer analyzed in 2010 – as stated on Page 8-2 of the Proposed Plan and B-2/B-3 of the 2010 FFS, no such analysis was conducted. The EPA in both the 2001 FS and 2010 FFS relied in part, on the Probabilistic Model Tool (PMT) to evaluate alternative

Response to comment LC17-16

The comment contends that remedial alternatives 5 and 6 of the 2001 Feasibility Study (FS) (EPA, October 2001, *Final [Revision 2] Feasibility Study Report, Coeur d'Alene Basin Remedial Investigation/Feasibility Study*) were improperly eliminated, and should have been considered in the Proposed Plan. Consistent with the NCP, EPA examined a range of remedial alternatives. Regarding the elimination of remedial alternatives 5 and 6 of the 2001 FS, see response to Comment No. BU45-3 submitted by Formation Environmental on behalf of Hecla Mining. The NCP-consistent process that EPA used in selecting the remedy for the Upper Basin, including the evaluations employing the nine CERCLA criteria, is described in the Proposed Plan and ROD Amendment.

effectiveness and the time-to-achieve ARARs post-remediation. The NAS (page 463) states that "the PMT suffers from invalidating deficiencies in its formulation and application." The PMT does not provide the reliable information required for a meaningful comparison of alternatives.

- Significant portions of the alternative evaluation presented in the 2002 ROD and 2001 FS and relied upon within the 2010 FFS as the basis for discarding Alternatives 5 and 6 from further consideration is completely irrelevant and wholly inappropriate in 2010.
    - That is, in 2001/2002 all alternatives were evaluated with regard to human and ecological health protectiveness relative to: 1) Upper Basin at Pinehurst, 2) Lower Basin at Harrison, 3) Lake Coeur d'Alene, and 4) the Spokane River. The 2010 FFS and Proposed Plan are limited only to the Upper Basin above Pinehurst.
- With regard to Environmental Health, Table 9.2-1 and 9.2-8 of the 2002 ROD compares the ecological cleanup actions across all Alternatives within the Upper Basin. A summary of source control volume within the Upper Basin for all action alternatives is presented below (taken from Table 9.2-8 of the 2002 ROD). Based on these comparisons Alternatives 2, 5 and 6 are similar in the volume of tailings and waste rock remediated within the Upper Basin and in the pounds per day of zinc treated from adit controls within the Upper Basin. The principle difference between these alternatives is the volume of floodplain sediments addressed. Much of the difference in volume treated between Alternative 3 and 6 is within watersheds where the available data indicate that little to no remediation is necessary (i.e., Upper SFCDR above Mullan, Pine Creek, Big Creek and Moon Creek).

LC17-16

    - Despite these differences the 2001 FS (Page 5-167) concluded that "none of the alternatives will achieve surface water ARARs" and Page 10-3 of the 2002 ROD states "The time needed to achieve overall cleanup goals, including AWQC and risk-based sediment cleanup goals, will be lengthy and require a period of natural recovery for all the alternatives."

No comments

November 18, 2010

Area / Source Type	Units	Total Quantity	Alternative				
			2	3	4	5	6
Floodplain Sediments	cy	7,100,000	2,000,000	5,700,000	7,100,000	195,000	170,000
Tailings	cy	11,000,000	3,800,000	8,600,000	9,300,000	2,800,000	3,500,000
Waste Rock	cy	11,700,000	5,600,000	7,000,000	9,800,000	2,500,000	5,300,000 – removal from within the 100-yr floodplain
Adit Controls	#Zn/d	101	89	101	101	94	65 – treatment of major sources

1C17-16

No significant improvements to the PAT were made between the NAS Review of 2005 and the release of the 2010 Proposed Plan and FFS. As stated on Page B-1 of the 2010 FFS, "The fundamentals of the original analysis have remained unchanged since its initial development for the 2001 FS." Continuation of using this flawed analysis perpetuates the underlying assumptions and results in meaningless conclusions as to the Proposed Plan's preferred alternative relative to the overall effectiveness of protecting human health and the environment. In fact, the 2010 analysis is less complete than the 2001 FS in that it no longer includes an analysis of time-to-achieve ARARs nor does it evaluate the effectiveness of Alternatives 5 and 6. Rather, the EPA relies upon the 2001 and 2002 effectiveness analysis and the logic presented therein as the basis for dismissing Alternatives 5, and 6. This is inappropriate for a number of reasons:

- In the 2001 FS, a criticism of Alternative 6 is the unspecified extent, type and effectiveness of some treatment alternatives. The Proposed Plan is subject to these same criticisms. As stated on Page ES-6 of the FFS, "For planning

22

No comments

purposes, this FFS has taken the ***same*** conservative approach applied in the 2001 FS by including many sites, some of which have only limited or outdated data available. However, additional site-specific data will be collected during the design phase of the Upper Basin cleanup, and it may be determined that some sites do not require remedial action at all or that they require a smaller scale action than identified in this FFS Report. Conversely, data collected during the design phase may indicate that more extensive actions may be required at some locations. . . ." (emphasis added).

- Between 2001/2002 and 2010 changes to the site-specific AWQC value for dissolved zinc increased by a factor of 2 (Page 7-43, 2010 FFS). As a result of this change alone, and assuming for this purpose that the 2002 time-to-achieve analysis was reliable, all estimated pre- and post-remediation AWQC ratios presented in the 2002 ROD (and 2001 FS) would be 50% lower. That is, the post-remediation AWQC ratio at Pinehurst for Alternative 6 would be lowered from 8.5 in the 2002 ROD to approximately 4.25 in 2010. This change would also greatly reduce the time-to-achieve ARARs associated with Alternative 6. In addition, the pre-remediation loading from Pine Creek has been reduced by 22% which would also lower the pre- and post-AWQC values associated with all alternatives.

LC17-16

  - These changes made to both the input parameters of the PMT and the evaluation criteria between 2002 and 2010 make it grossly inappropriate, arbitrary and capricious for the EPA to rely upon the flawed and largely irrelevant Alternatives Assessment described in the 2001 FS and 2002 ROD. That analysis is flawed because, as stated by the NAS report (page 463), "the PMT suffers from invalidating deficiencies in its formulation and application." That analysis is outdated because the 2001 FS evaluated alternative effectiveness at Pinehurst, at Harrison, in Lake Coeur d'Alene and within the Spokane River, whereas, the downstream extent of the 2010 FFS and Proposed Plan is at Pinehurst, and most importantly for OUs, in the Upper Basin, at Elizabeth Park.

In 2010 the EPA has not provided any additional analysis justifying why Alternatives 5 and 6 should be and were removed from consideration. Rather, the 2010 FFS refers the public back to the flawed and out-dated analysis presented in the 2001 FS which states that none of the proposed action alternatives are capable of meeting ARARs post-remediation. In the 2001 FS, the EPA suggests that Alternative 6 will take over twice as long to achieve ARARs as the preferred alternative (3) post-remediation. In 2010, the EPA no longer presents a time-to-achieve ARARs analysis due to the limitations in the available data and understanding of physical/chemical/biological

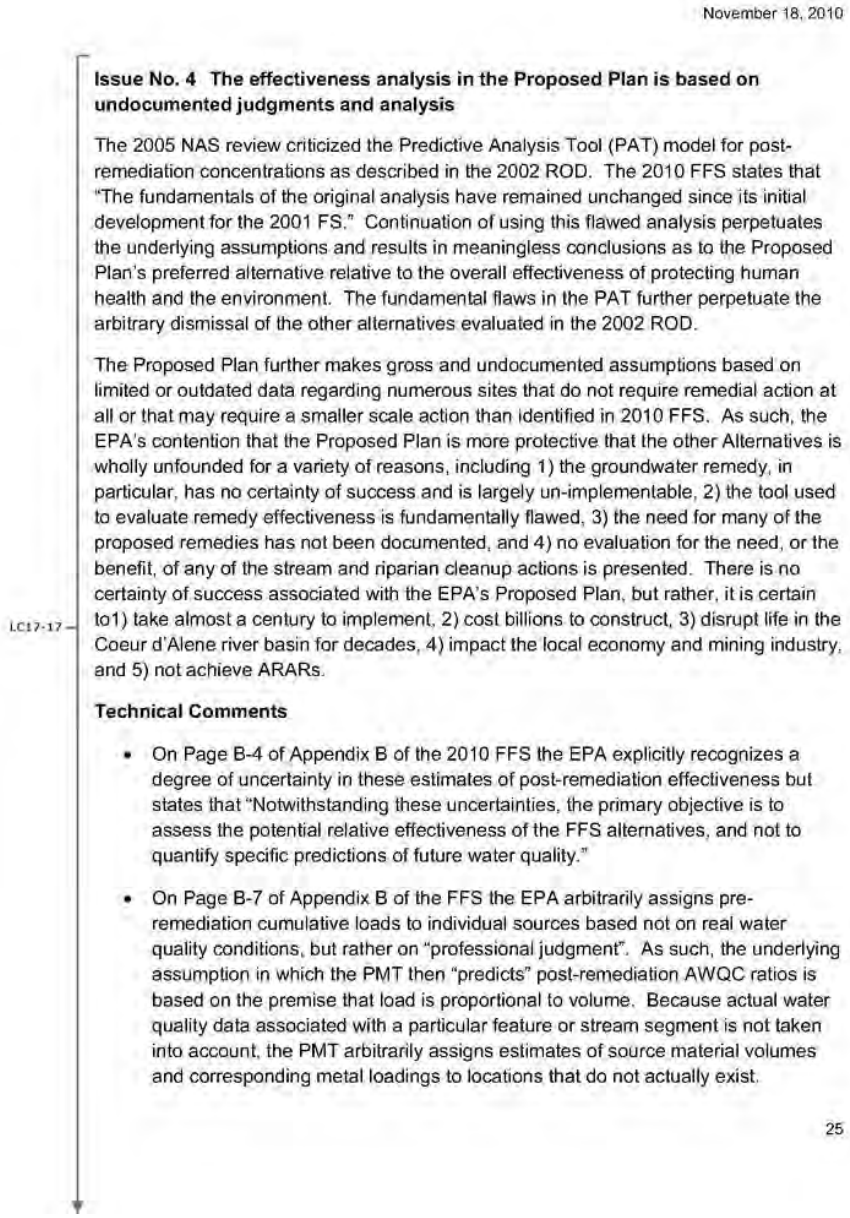
No comments

November 18, 2010

processes. Consequently, given no differences in quantified time-to-achieve, the fact that none of the action alternatives achieve ARARs, (and the public and State of Idaho do not support Alternative 3), the EPA has failed to provide reasonable justification for summarily dismissing Alternatives 5 and 6 and, as such, has acted in an arbitrary and capricious manner.

LC17-16 Section 300.430 (e)(9)(iii) of the NCP provides the requirements for comparing alternatives through the assessment of the nine evaluation criteria. Each alternative is to be evaluated for each of the nine criteria. The failure to provide reasonable explanations of the technical details for each alternative and criteria is inconsistent with the NCP. This failure also denies the public the opportunity to understand the given alternatives and how they relate to each other. Similarly the public is unable to determine how the alternatives will impact the local community. Where EPA must resort to assumptions, the agency must provide reasonably detailed discussions of the basis for these assumptions and the implications of these assumptions to allow the public to comment on those assumptions and their implications (CERCLA 117 (a)).

No comments



November 18, 2010

Issue No. 4 The effectiveness analysis in the Proposed Plan is based on undocumented judgments and analysis

The 2005 NAS review criticized the Predictive Analysis Tool (PAT) model for post-remediation concentrations as described in the 2002 ROD. The 2010 FFS states that "The fundamentals of the original analysis have remained unchanged since its initial development for the 2001 FS." Continuation of using this flawed analysis perpetuates the underlying assumptions and results in meaningless conclusions as to the Proposed Plan's preferred alternative relative to the overall effectiveness of protecting human health and the environment. The fundamental flaws in the PAT further perpetuate the arbitrary dismissal of the other alternatives evaluated in the 2002 ROD.

The Proposed Plan further makes gross and undocumented assumptions based on limited or outdated data regarding numerous sites that do not require remedial action at all or that may require a smaller scale action than identified in 2010 FFS. As such, the EPA's contention that the Proposed Plan is more protective that the other Alternatives is wholly unfounded for a variety of reasons, including 1) the groundwater remedy, in particular, has no certainty of success and is largely un-implementable, 2) the tool used to evaluate remedy effectiveness is fundamentally flawed, 3) the need for many of the proposed remedies has not been documented, and 4) no evaluation for the need, or the benefit, of any of the stream and riparian cleanup actions is presented. There is no certainty of success associated with the EPA's Proposed Plan, but rather, it is certain to1) take almost a century to implement, 2) cost billions to construct, 3) disrupt life in the Coeur d'Alene river basin for decades, 4) impact the local economy and mining industry, and 5) not achieve ARARs.

LC17-17

Technical Comments

- On Page B-4 of Appendix B of the 2010 FFS the EPA explicitly recognizes a degree of uncertainty in these estimates of post-remediation effectiveness but states that "Notwithstanding these uncertainties, the primary objective is to assess the potential relative effectiveness of the FFS alternatives, and not to quantify specific predictions of future water quality."
- On Page B-7 of Appendix B of the FFS the EPA arbitrarily assigns pre-remediation cumulative loads to individual sources based not on real water quality conditions, but rather on "professional judgment". As such, the underlying assumption in which the PMT then "predicts" post-remediation AWQC ratios is based on the premise that load is proportional to volume. Because actual water quality data associated with a particular feature or stream segment is not taken into account, the PMT arbitrarily assigns estimates of source material volumes and corresponding metal loadings to locations that do not actually exist.

25

Response to comment LC17-17

This comment criticizes EPA's effectiveness analysis, specifically the Predictive Analysis. EPA's evaluation of effectiveness of the remedial alternatives was consistent with the NCP. Regarding EPA's use of the Predictive Analysis in evaluating the effectiveness of remedial alternatives, see response to Document BU48 submitted by Cambridge Environmental on behalf of Hecla Mining.

- Furthermore, EPA's contention that the Proposed Plan is more protective than other Alternatives is unfounded for a variety of reasons:
    - The groundwater remedy, in particular, has no certainty of success and is largely unimplementable.
- On page B-11 of Appendix B of the FSS the EPA also states that "Actual post-implementation performance of remedial alternatives may deviate significantly from predictions due to the inherent uncertainties in modeling, as reflected in the 80% probability intervals (PIs) presented along with the results." However, if the PMT is flawed, as indicated by NAS, the PI intervals are flawed as well.
- Waste type load reductions are estimated using remedial effectiveness factors (RFs) based on professional judgment (FFS, p. 7-39). The Proposed Plan (and the FFS) does not elaborate on the assignment of RFs. Appendix B of the FFS (Table B-5) lists RFs for various remedial actions, but does not provide the basis for these values.
- The NAS Review (p. 403) severely criticizes the reliability of the probabilistic model in terms of post-remediation effectiveness. EPA continues to use the same analysis, now termed the Predictive Analysis, in evaluating the effectiveness of Alternatives 3+ and 4+ (FFS, Section 7.3.2.2)

LC17-17

- The Predictive Analysis does not explicitly indicate the time period in which load reductions would occur. The FFS only states that Alternative 3+ would take 50 to 90 years to complete (FFS, p. 7- 58).

The NCP allows for the application of professional judgment but does not relieve the lead agency of the responsibility to support the use of that judgment. Similarly the application of professional judgment does not eliminate the need to develop an evaluation of alternatives for screening and of each of the alternatives that survives screening and undergoes detailed evaluation. The application of professional judgment certainly does not relieve the lead agency of its statutory responsibility to develop sufficient information as may be necessary to provide the public with a reasonable explanation of the proposed plan and the other alternatives considered (CERCLA 117 (a)). CERCLA also requires the development of an administrative record that contains the documents that form the basis for the selection of a CERCLA response action (CERCLA 113 (k)(2)). The public must understand the basis for and the implications of the application of professional judgment. EPA is not allowed to edit the administrative record and not including such information in effect edits the file and denies the public the opportunity to understand various response alternatives and how they compare to each other (55FR8805).

No comments

Issue No. 5 The Proposed Plan advocates $1.3B remedy that includes components for which the return on the response in terms of protectiveness, if any, is not proportionate to cost of the components of the total response.

The EPA's Proposed Plan includes extensive response actions as part of the total remedial action in Pine Creek, Big Creek, Moon Creek, and the Upper SFCDR [above Wallace]. The cost for these response actions is in excess of $326M but the available data indicates that water quality goals to be addressed by these actions have already been achieved, or have very nearly been achieved. Where higher cost alternatives are selected there must be a proportionate return in terms of human health and/or environmental protection (NCP 300.430 (e)(7)(iii)). This is most evident in EPA's groundwater collection/treatment scheme. EPA plans on spending $560M for a groundwater diversion, collection, and treatment system that is technically infeasible. Even if what EPA proposes was feasible and effective, it is very likely unnecessary, especially on the proposed scale, if focused source control efforts were implemented. No such return or benefit has been documented. The EPA's Proposed Plan is clearly not cost-effective and the selected remedy is not appropriate.

Technical Comments

LC17-18

- Figure 4 of the 2010 Proposed Plan indicates that the water quality relative to dissolved zinc at the mouth of Pine Creek and within the SFCDR upstream of Mullan is in compliance, or very nearly in compliance, with the AWQC.
- Figure 5 of the Proposed Plan shows only one or two locations within Pine Creek where the maximum zinc AWQC Ratios is above 1 and does not indicate any locations within Big Creek or Moon Creek where the AWQC ratio for zinc is above one and only one location within the SFCDR upstream from Mullan.
- The cost of proposed activities within Moon Creek, Big Creek and Pine Creek is in excess of $100,000,000. The cost of proposed activities in the Upper SFCDR above Wallace is approximately $215,000,000 (Table D-41, Appendix D, 2010 FFS).
- The remediation cost per pound of reduced dissolved zinc load per day for Pine Creek is in excess of $500,000 despite the fact that the available water quality data indicates that Pine Creek is very near ARARs and natural source depletion continues to improve Pine Creek water quality.
- Based on Table 7-3 of the FFS, EPA plans on diverting 26 to 42 cubic feet per second (cfs) in pipes to the CTP for treatment. This range represents the total average and the total maximum amount that would be diverted above Elizabeth

Response to comment LC17-18

The comment includes wide-ranging criticisms related to the anticipated cost of the Preferred Alternative identified in the Proposed Plan. However, as noted above, EPA has significantly reduced the scope of the Selected Remedy and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. This is described in detail in ROD Amendment, Part 3, Section 2.0. Regarding cost of the Selected Remedy, also see ROD Amendment, Part 3, Section 3.9.1. The comment also speculates that the remedy may have detrimental ecological effects by diverting waters for remedies. This notion is incorrect. See ROD Amendment, Part 3, Section 3.7.3. The comment also contends EPA evaluated remedies in a manner inconsistent with the NCP. EPA disagrees. As described in the Proposed Plan and ROD Amendment, EPA conducted its remedy selection process in a manner consistent with the NCP.

November 18, 2010

Park. A breakdown of the total average and total maximum flows for specific watersheds is provided below.

Stream Location	Average Flow Diversion above Stream Location (cfs)	Maximum Flow Diversion above Stream Location (cfs)	Average Base Flows (cfs) (FFS)
SFCDR above Wallace	9.2	18.5	>20
Mouth of Canyon Creek	8.3	15.0	10
Mouth of Ninemile Creek	0.032	0.062	<4
SFCDR above Elizabeth Park	25.7	42.0	80

LC17-18

- The NAS (p. 372) indicated that "treatment of the Canyon Creek water at the mouth of the stream will do nothing to meet EPA's overarching objective of protecting aquatic species in Canyon Creek". Further, the diversion of an average flow of approximately 8 cfs (FFS, Table 7-3) can potentially have negative effects on base flow in Canyon Creek of 10 cfs (FFS, p. 3-5). Diversion of groundwater and surface water can impact ecological community types such as wetlands along the stream channels that are supported and maintained by the presence of near-surface groundwater.

- Lowering water tables by the diversion of groundwater could have detrimental impacts to these community types, affecting not only vegetative types but wildlife use as well. Similarly, the ecological impacts to reaches of streams where flow has been diverted by piping or the channels impacted by stream lining could be severe and long lasting.

- Of the $560M for the groundwater diversion, collection, and treatment system, EPA plans on spending approximately $373M alone on just stream lining and French drains (FFS, Table D-37) in Canyon Creek and in the Upper SFCDR above Elizabeth Park. Further, EPA fails to provide any analysis or evaluation as to the effectiveness of these actions. Stream lining and French drains are "standard technologies", but most certainly not on the scale and across the varied conditions of the Upper SFCDR. EPA further exacerbated the flaws within their estimates of post-remediation load reductions as determined in the numerical groundwater model by using a one-size fits all approach for these

28

No comments

hydraulic isolation remedial action types. In particular, EPA only considers stream lining widths of either 20 feet or 100 feet as indicated in Table D-37 - Summary of Estimated Cost for Sites by Trait and TCD, Alternative 3+ (FFS, Appendix D). Further, EPA only assumes that the French drain will be 15 feet deep. As such, EPA fails to consider site-specific constraints for these features, yet EPA is adamant spending 100's of millions of dollars for a remedy that is grossly disproportional with the perceived and questionable benefits. The effectiveness of the groundwater diversion, collection, and treatment system is also meaningless. EPA fails to provide any evaluation for the amount of time needed for this remedy to meet ARARs in terms of reducing metals loads to surface water and, effectively, is endorsing a perpetual treatment remedy, that may be unnecessary, without telling the public that perpetual treatment apparently is what EPA prefers over more permanent, more reliable, and more conventional options.

The remedy selection process prescribed in the NCP requires first the screening of potential alternatives' effectiveness, implementability and cost (NCP 300.430 (e)(7)(i-iii) and then the surviving alternatives are compared based on their compliance with the expectations of each of the nine evaluation criteria. Screening and comparison for cost are based on the cost compared to the overall effectiveness of the alternative(s).
LC17-18 — Accordingly, to survive the screening and comparison process, the overall effectiveness must be discussed in enough detail to provide the public and the decision maker with sufficient information to compare alternatives (55FR8705, RI/FS Guidance § 4.1.2.2). The failure of EPA to clearly discuss the effectiveness and protectiveness of the various response activities as detailed above is inconsistent with the NCP. The fact that the absence of this information also denies the public of the opportunity to consider a meaningful comparison of all nine criteria for all alternatives advanced for detailed evaluation is also inconsistent with the NCP. It is arbitrary and capricious for EPA not to provide a substantial and meaningful discussion of the effectiveness and cost for the various alternatives and a specific discussion of how the costs of proposed response actions are proportional to the effectiveness and provide reasonable value.

The NCP addresses management principles that state a bias for action – that is the goal of reducing risks as soon as possible. This bias for action is consistent with EPA's long-standing policy of responding by distinct operable units at sites rather than waiting to take one consolidated response action." (55FR803) It is often "necessary and appropriate, particularly for complex sites, to divide the site or site problems for effective site management and early action." It would be totally appropriate for this response to separate a more reasonable set of response actions from the total response currently proposed by EPA. This more focused response could be presented so that the public

No comments

LC17-18

and the decision makers could understand the relation of cost and effectiveness and so that the response action could meet the requirements of the NCP.

No comments

Issue No. 6 The Proposed Plan fails to prioritize sites and does not present information on implementation planning or a schedule. These are key considerations that cannot be relegated to a post-ROD discussion and evaluations.

The Proposed Plan does not provide any details regarding how sites will be prioritized or the justification for any prioritization. Further, the Proposed Plan does not provide a realistic schedule for the proposed remedy and does not provide any details regarding funding of remedial actions. These details cannot be dismissed to a later remedial design (RD) stage. As described in comment No. 8 of ARCADIS' NCP analysis, the issue of implementability is a fundamental concept to be considered during screening of alternatives. Without providing this level of detail, it is not possible for stakeholders to clearly understand and evaluate the proposed remedial actions. This is particularly true for people who live and work in the Upper Basin.

The NCP does not allow EPA to leave key details to post-ROD "implementation plan". NCP dictates that NCP implementability is a key remedy selection criteria and cannot be relegated to a post-ROD event in EPA's discretion. Even the National Remedy Review Board (NRRB) told EPA to address at least the "first increment" of remediation priorities in its Proposed Plan. (May 12, 2010 Memorandum to D. Opalski, p. 3)

Technical Comments

LC17-19

- On page ES-6 of the FFS: "In conjunction with the development of this FFS Report and the forthcoming Upper Basin ROD Amendment, EPA is in the process of planning and prioritizing actions for implementation of the comprehensive remedy for the Upper Basin. . . ."
- "For planning purposes, this FFS has taken the same conservative approach applied in the 2001 FS *by including many sites, some of which have only limited or outdated data available*. However, additional site-specific data will be collected during the design phase of the Upper Basin cleanup, and it may be determined that some sites do not require remedial action at all or that they require a smaller-scale action than identified in this FFS Report. Conversely, data collected during the design phase may indicate that more extensive actions may be required at some locations. . . ."
- Page 2-2 of the FFS states "In addition to this FFS Report, the Proposed Plan, and the Upper Basin ROD Amendment, a separate Implementation Plan will be prepared that will describe the adaptive management approach for the Upper Basin . . .The Implementation Plan will be a 'living document' that will be revised on a regular basis as more information is gained from cleanup actions taken."

Response to comment LC17-19

The comment is critical of EPA's implementation plan for cleanup. As to EPA's intentions regarding an implementation plan for the cleanup, see ROD Amendment, Part 3, Section 3.11.

November 18, 2010

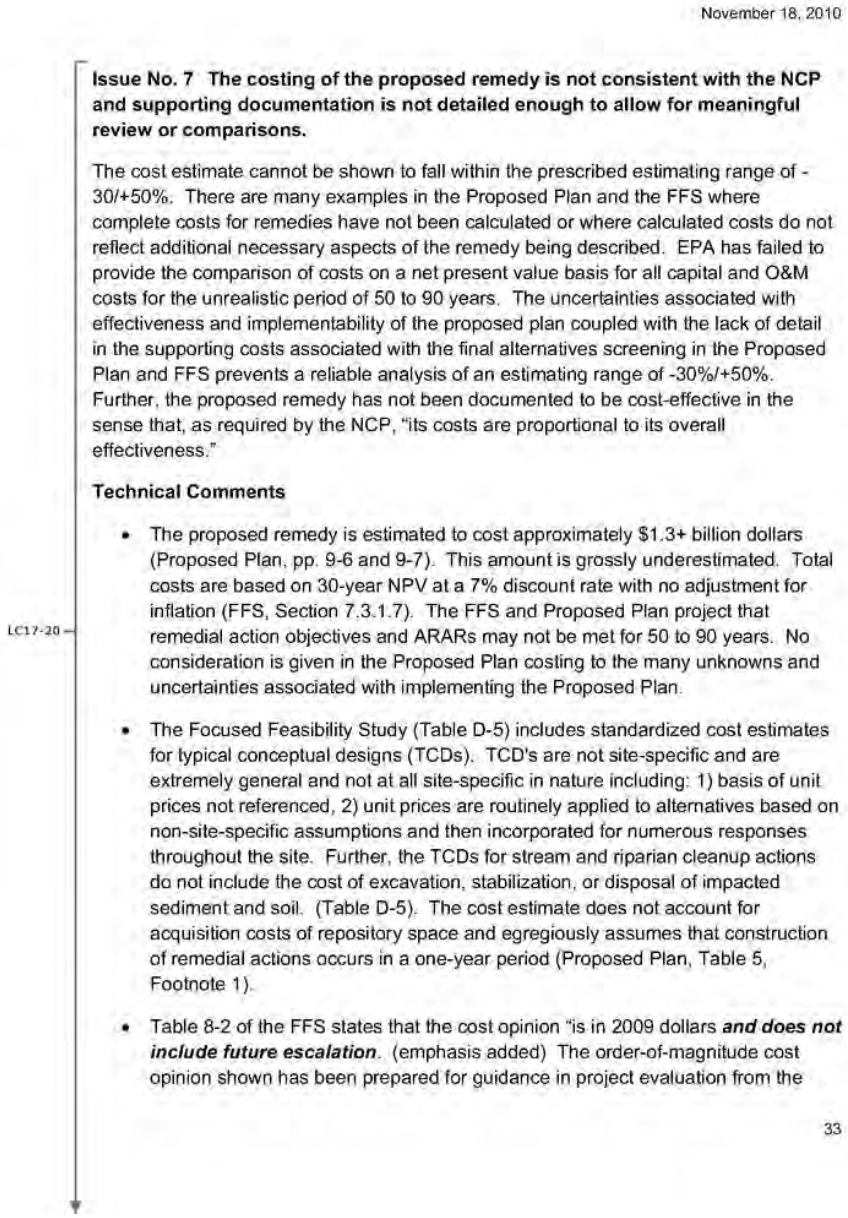
- Page 6-13 of the FFS states, " . . . the order in which actions are implemented . . . will not be determined until the Implementation Plan is completed . . .".
- Page 10-1 of the Proposed Plan states that the "Implementation Plan . . . will be developed as a separate document from the Upper Basin ROD Amendment", apparently after that Amendment is finalized.

LC17-19 Section 10 of the Proposed Plan acknowledges that a large number of cleanup actions identified in the Preferred Alternative for the Upper Basin would need to be planned carefully and that the EPA has begun planning and prioritizing actions for implementation. The Proposed Plan clearly acknowledges the absence of a substantial amount of information that is typically incorporated into alternatives comparison and remedy selection.

The Proposed Plan presents no details on the implementation plan. Without presenting a reasonably detailed schedule or implementation plan the public has not had a meaningful opportunity to evaluate the proposed remedy from the perspective of its implementability or potential effectiveness.

32

No comments



November 18, 2010

Issue No. 7 The costing of the proposed remedy is not consistent with the NCP and supporting documentation is not detailed enough to allow for meaningful review or comparisons.

The cost estimate cannot be shown to fall within the prescribed estimating range of -30/+50%. There are many examples in the Proposed Plan and the FFS where complete costs for remedies have not been calculated or where calculated costs do not reflect additional necessary aspects of the remedy being described. EPA has failed to provide the comparison of costs on a net present value basis for all capital and O&M costs for the unrealistic period of 50 to 90 years. The uncertainties associated with effectiveness and implementability of the proposed plan coupled with the lack of detail in the supporting costs associated with the final alternatives screening in the Proposed Plan and FFS prevents a reliable analysis of an estimating range of -30%/+50%. Further, the proposed remedy has not been documented to be cost-effective in the sense that, as required by the NCP, "its costs are proportional to its overall effectiveness."

Technical Comments

LC17-20

- The proposed remedy is estimated to cost approximately $1.3+ billion dollars (Proposed Plan, pp. 9-6 and 9-7). This amount is grossly underestimated. Total costs are based on 30-year NPV at a 7% discount rate with no adjustment for inflation (FFS, Section 7.3.1.7). The FFS and Proposed Plan project that remedial action objectives and ARARs may not be met for 50 to 90 years. No consideration is given in the Proposed Plan costing to the many unknowns and uncertainties associated with implementing the Proposed Plan.
- The Focused Feasibility Study (Table D-5) includes standardized cost estimates for typical conceptual designs (TCDs). TCD's are not site-specific and are extremely general and not at all site-specific in nature including: 1) basis of unit prices not referenced, 2) unit prices are routinely applied to alternatives based on non-site-specific assumptions and then incorporated for numerous responses throughout the site. Further, the TCDs for stream and riparian cleanup actions do not include the cost of excavation, stabilization, or disposal of impacted sediment and soil. (Table D-5). The cost estimate does not account for acquisition costs of repository space and egregiously assumes that construction of remedial actions occurs in a one-year period (Proposed Plan, Table 5, Footnote 1).
- Table 8-2 of the FFS states that the cost opinion "is in 2009 dollars ***and does not include future escalation***. (emphasis added) The order-of-magnitude cost opinion shown has been prepared for guidance in project evaluation from the

33

Response to comment LC17-20

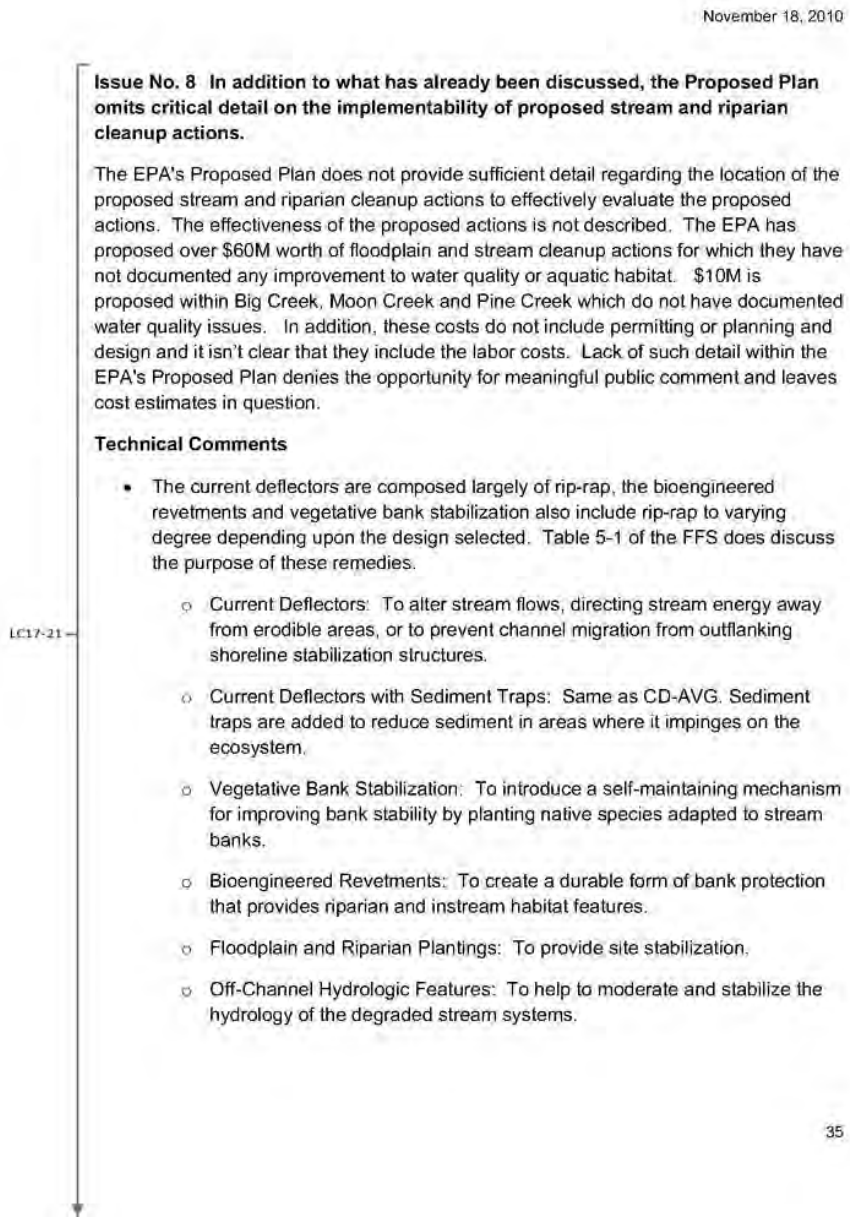
The comment contends EPA's cost estimating process was not consistent with the NCP. EPA disagrees with this conclusion. EPA's preparation of cost estimates for the remedial alternatives evaluated was conducted in a manner consistent with the NCP. See response above to Comment No. LC17-9. Furthermore, EPA determined that the Selected Remedy is cost effective. The comment is also critical of EPA's use of typical conceptual designs (TCDs) in the costing process. Regarding EPA's use of TCDs for cost estimating, see ROD Amendment, Part 3, Section 3.11.2.

information available at the time of preparation. However, the final costs of the project will depend on actual labor and material costs, actual site conditions, productivity, competitive market conditions, the final project scope, the final project schedule, and other variable factors. As a result, the final project costs will grossly vary from those presented in the Proposed Plan. Because of these factors, funding needs must be carefully reviewed prior to making specific financial decisions or establishing final budgets."

LC17-20

- It is impossible to conclude in the face of the admitted gross errors and uncertainties in costs that are based on non-site-specific guestimates that costs among sites will be comparable.
- The omission of information and erroneous assumptions fails to establish that cost estimates used for alternatives comparison and remedy selection do actually fall within the prescribed estimating range of -30/+50 %. The above referenced uncertainties and attendant assumptions bring into question all aspects of the proposed remedy, including cost, and preclude any meaningful cost comparisons among alternatives. These uncertainties are even more troubling in light of the massive scope of the proposed remedy and the lack of justification for moving ahead with a ROD on this scale now in the face of the enormous uncertainties and unknowns. This is the antithesis for the adaptive management recommendation of the NAS.

No comments



November 18, 2010

Issue No. 8 In addition to what has already been discussed, the Proposed Plan omits critical detail on the implementability of proposed stream and riparian cleanup actions.

The EPA's Proposed Plan does not provide sufficient detail regarding the location of the proposed stream and riparian cleanup actions to effectively evaluate the proposed actions. The effectiveness of the proposed actions is not described. The EPA has proposed over $60M worth of floodplain and stream cleanup actions for which they have not documented any improvement to water quality or aquatic habitat. $10M is proposed within Big Creek, Moon Creek and Pine Creek which do not have documented water quality issues. In addition, these costs do not include permitting or planning and design and it isn't clear that they include the labor costs. Lack of such detail within the EPA's Proposed Plan denies the opportunity for meaningful public comment and leaves cost estimates in question.

Technical Comments

- The current deflectors are composed largely of rip-rap, the bioengineered revetments and vegetative bank stabilization also include rip-rap to varying degree depending upon the design selected. Table 5-1 of the FFS does discuss the purpose of these remedies.
    - Current Deflectors: To alter stream flows, directing stream energy away from erodible areas, or to prevent channel migration from outflanking shoreline stabilization structures.
    - Current Deflectors with Sediment Traps: Same as CD-AVG. Sediment traps are added to reduce sediment in areas where it impinges on the ecosystem.
    - Vegetative Bank Stabilization: To introduce a self-maintaining mechanism for improving bank stability by planting native species adapted to stream banks.
    - Bioengineered Revetments: To create a durable form of bank protection that provides riparian and instream habitat features.
    - Floodplain and Riparian Plantings: To provide site stabilization.
    - Off-Channel Hydrologic Features: To help to moderate and stabilize the hydrology of the degraded stream systems.

LC17-21

35

Response to comment LC17-21

The comment poses that EPA has not provided sufficient detail regarding the location of proposed stream and riparian cleanup actions. Based on public comments, EPA further evaluated and described anticipated stream and riparian cleanup actions under the Selected Remedy. See ROD Amendment, Part 3, Sections 3.11.3 and 3.11.4.

- Channel Realignment: To reshape the stream channel to more naturally stable conditions and to recreate in-channel hydrologic features, particularly increased pool density and volume.

- Table 4-1b of the FFS includes a Remedial Action Objective regarding ". . . provide habitat capable of supporting a functional ecosystem for the aquatic and terrestrial plant and animal population in the Upper Coeur d'Alene Basin." The actions described above can only be explained by this RAO. None of the purpose statements include a statement regarding reducing zinc or lead loading.

- On Page 5-14 of the FFS, the intent of the bioengineering TCD's is described as:

> "The stream and riparian cleanup action TCDs would be implemented following any excavation, regrading, or waste consolidation planned for the area. Depending on the site, there may or may not be contaminants remaining at depth when the stream and riparian cleanup actions are implemented. The objective of the stream and riparian cleanup action TCDs would be to improve bank and stream stability, thereby reducing erosion and sediment loading to the stream. Following the implementation of stream and riparian cleanup actions at many sites, the Natural Resource Trustees would then conduct restoration activities to further improve ecosystem function. The Stream Habitat Restoration Guidelines co-published by the Washington Departments of Fish and Wildlife and Ecology and the U.S. Fish and Wildlife Service (Saldi-Caromile et al., 2004) can be referenced during the design phase of the project to optimize the implementation of these TCDs."

LC17-21

- On Page 7-3 of the FFS the EPA provide the following summary of Stream and Riparian Cleanup Activities proposed as part of Alternative 3+:

> "Stream and Riparian Cleanup Actions – Stream and riparian cleanup actions would be used along approximately 250,000 feet of stream banks, along with floodplain and riparian plantings covering approximately 330 acres. Approximately

No comments

1,800 current deflectors would be installed, with approximately 10 percent configured to serve as sediment traps. The more extensive removals of contaminated floodplain sediments would provide the opportunity for establishment of off-channel hydrologic units (such as wetlands). Approximately 100 acres of off-channel hydrologic units would be constructed within the Upper Basin. For cost estimating purposes, an estimated 4,000 cy per year of contaminated sediments accumulating in sediment traps would periodically be dredged and disposed of."

- Starting on Page 7-25 of the FFS (Section 7.3) the EPA discusses "Evaluation of the Remedial Alternatives". On Page 7-32 the EPA states that" Remedial action effectiveness was evaluated in this FFS using both the numerical groundwater models (CH2M HILL, 2007a, 2009d) and the Predictive Analysis (EPA, 2007)." None of which assess the potential habitat benefits of the proposed stream and riparian cleanup actions.

LC17-21 –

- EPA provides no analysis to evaluate the environmental impact (either positive or negative) of the proposed stream and riparian cleanup actions which will certainly cost well over $60M to implement. Further, these actions are not addressed or discussed in the 2010 Alternative Comparison Table (8-1a and 8-1b, volume 2 of FFS).
- In the 2001 FS (Page 4-12) these activities are described as "The intent of bioengineering techniques is to provide durable, self maintaining bank, channel bed, and floodplain stabilization. The successful application of these techniques requires careful consideration of ecological context, basin hydrology, and floodplain and stream morphology as an integral part of project planning."
- In the 2001 FS (Page 4-12) these activities are described as "The intent of bioengineering techniques is to provide durable, self maintaining bank, channel bed, and floodplain stabilization. The successful application of these techniques requires careful consideration of ecological context, basin hydrology, and floodplain and stream morphology as an integral part of project planning."
- On Page 4-13 of the 2001 FS, the EPA states "The stabilization of degraded stream systems will require a basin-wide approach that will include areas not directly associated with contaminant source areas. This approach is justifiable

No comments

November 18, 2010

No comments

under CERCLA because the degradation and resulting instability of these areas ***is at least partially attributable*** to mining-related impacts."

- On Page 4-14 of the 2001 FS, the EPA states "It is not practical at this time to define site-specific criteria for rehabilitation of these physical functions, as more detailed site specific information will be required." So, they are proposing actions that will surely cost well over $60M without any criteria to define success.

Sub-Basin (Quantities Taken Tables - Section 6.0 Volume 2 of 2010 FFS)	Bioengineered Revetments (linear feet)	Channel Realignment (acre)	Current Deflectors (number)	Current Deflectors / Sediment Traps (number)	Floodplain and Riparian Replanting (acre)	Off-Channel Hydrologic Features (acre)	Vegetative Bank Stabilization (linear feet)	
Canyon Creek	12,670.00	19	310	35	70.7	0	21,100	
Ninemile Creek	20,020.00	22.7	272	30	45.9	0.48	23,220	
Big Creek	5,800.00	0	137	18	7.4	4	5,800	
Moon Creek	4,480.00	0	145	17	17.4	2	4,770	
Pine Creek	4,600.00	0	65	8	16	7.5	4,600	
SFCDR	28,452.00	27.6	281	35	102.17	75.77	24,627.70	
Total Quantities	74,022	69.30	1,210	141	259.57	89.75	84,117.70	
Average Unit Costs (Table D-5)	$121.93	$204,199.60	$2,063.65	$1,870.00	$58,370.40	$206,426.00	$52.00	
Total Estimated Cost by Sub-Basin								
Canyon Creek	$1,544,853.10	$3,879,792.40	$639,731.50	$65,450.00	$4,126,767.28	$0.00	$1,097,200.00	$11,353,814.28
Ninemile Creek	$2,441,039.80	$4,635,330.92	$561,312.80	$56,100.00	$2,679,201.36	$99,497.33	$1,207,440.00	$11,679,921.01
Big Creek	$707,194.00	$0.00	$282,720.05	$29,920.00	$431,940.95	$825,704.00	$301,600.00	$2,579,079.01
Moon Creek	$546,246.40	$0.00	$299,229.25	$31,790.00	$1,015,644.96	$412,852.00	$248,040.00	$2,553,802.61
Pine Creek	$560,878.00	$0.00	$134,137.25	$14,960.00	$933,926.40	$1,548,195.00	$239,200.00	$3,431,296.65
SFCDR	$3,225,292.36	$5,635,908.96	$579,885.65	$65,450.00	$5,963,411.92	$15,640,896.02	$1,280,640.40	$32,391,487.31
Total Estimated Cost	$9,025,502.46	$14,151,032.28	$2,497,016.50	$263,670.00	$15,150,912.88	$18,527,146.35	$4,374,120.40	$63,988,400.87

LC17-21

- In the 2001 FS (Page 4-12) these activities are described as "The intent of bioengineering techniques is to provide durable, self maintaining bank, channel bed, and floodplain stabilization. The successful application of these techniques requires careful consideration of ecological context, basin hydrology, and floodplain and stream morphology as an integral part of project planning."

- In the 2001 FS (Page 4-12) these activities are described as "The intent of bioengineering techniques is to provide durable, self maintaining bank, channel bed, and floodplain stabilization. The successful application of these techniques requires careful consideration of ecological context, basin hydrology, and floodplain and stream morphology as an integral part of project planning."

- On Page 4-13 of the 2001 FS, the EPA states "The stabilization of degraded stream systems will require a basin-wide approach that will include areas not directly associated with contaminant source areas. This approach is justifiable under CERCLA because the degradation and resulting instability of these areas ***is at least partially attributable*** to mining-related impacts."

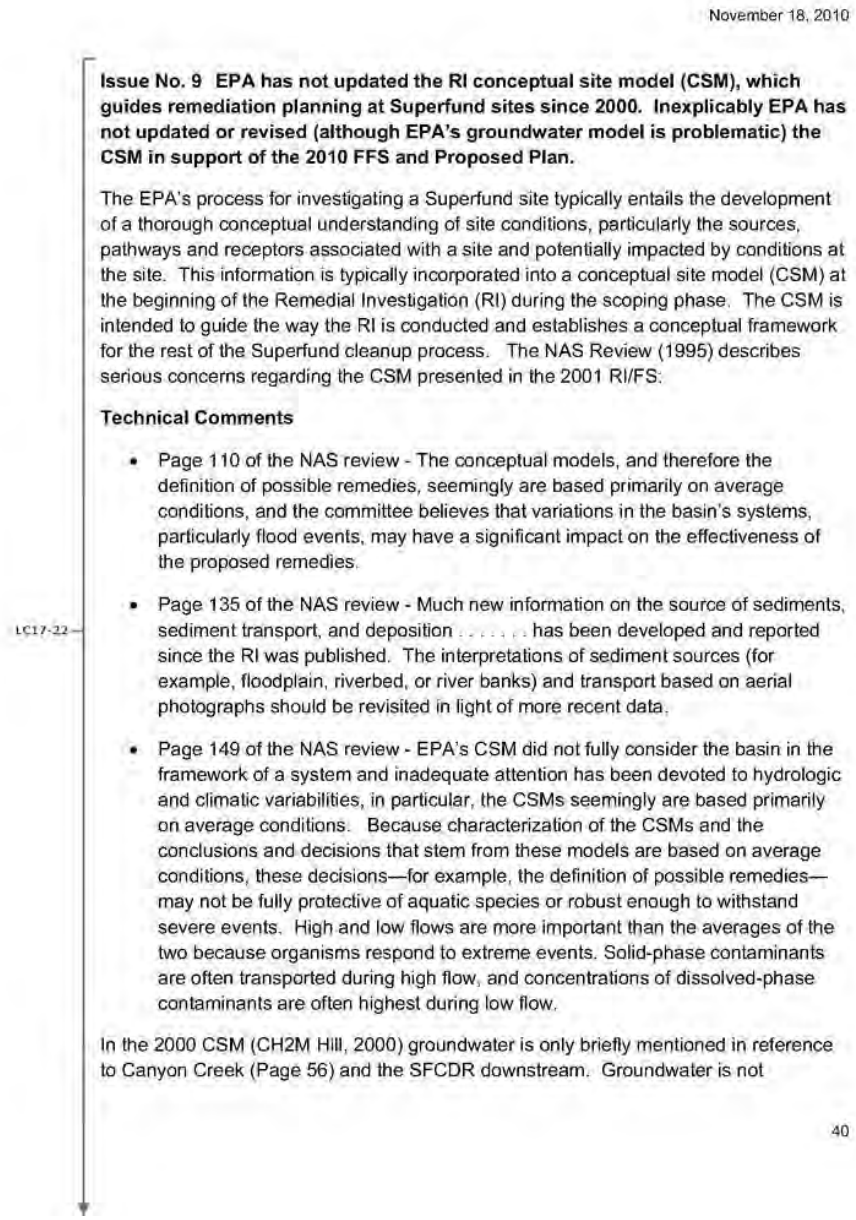
- On Page 4-14 of the 2001 FS, the EPA states "It is not practical at this time to define site-specific criteria for rehabilitation of these physical functions, as more

38

detailed site specific information will be required." So, they are proposing actions that will surely cost well over $60M without any criteria to define success.

LC17-21 In considering cost while evaluating remedies, the costs for the selected remedy must be proportional to their overall benefit (53 FR 51423, 55FR8727, and 8728). As has been demonstrated above, EPA proposes to implement these specific remedial actions with no clear or proven benefit. Further, the implementation of these features does not take into account the need or consideration of the availability of facilities, equipment and personnel (300.430(e)(9)(iii)(F),1988 RI/FS Guidance § 4.2.5.2 , 4.3.2.2 and 6.2.3.6). Associated costs for stream and riparian actions neglect to consider the entire period during which response actions will be will be required (CERCLA § 121 (a) and 53FR51429). Failure to consider all capital costs both long and short term and to consider O&M costs throughout the life of operation is inconsistent with the statute and the NCP. The failure to provide this critical analysis and background information denies the public a reasonable opportunity to understand the impacts of the proposed alternative.

No comments



November 18, 2010

Issue No. 9 EPA has not updated the RI conceptual site model (CSM), which guides remediation planning at Superfund sites since 2000. Inexplicably EPA has not updated or revised (although EPA's groundwater model is problematic) the CSM in support of the 2010 FFS and Proposed Plan.

The EPA's process for investigating a Superfund site typically entails the development of a thorough conceptual understanding of site conditions, particularly the sources, pathways and receptors associated with a site and potentially impacted by conditions at the site. This information is typically incorporated into a conceptual site model (CSM) at the beginning of the Remedial Investigation (RI) during the scoping phase. The CSM is intended to guide the way the RI is conducted and establishes a conceptual framework for the rest of the Superfund cleanup process. The NAS Review (1995) describes serious concerns regarding the CSM presented in the 2001 RI/FS:

Technical Comments

- Page 110 of the NAS review - The conceptual models, and therefore the definition of possible remedies, seemingly are based primarily on average conditions, and the committee believes that variations in the basin's systems, particularly flood events, may have a significant impact on the effectiveness of the proposed remedies.
- Page 135 of the NAS review - Much new information on the source of sediments, sediment transport, and deposition . . . . . has been developed and reported since the RI was published. The interpretations of sediment sources (for example, floodplain, riverbed, or river banks) and transport based on aerial photographs should be revisited in light of more recent data.
- Page 149 of the NAS review - EPA's CSM did not fully consider the basin in the framework of a system and inadequate attention has been devoted to hydrologic and climatic variabilities, in particular, the CSMs seemingly are based primarily on average conditions. Because characterization of the CSMs and the conclusions and decisions that stem from these models are based on average conditions, these decisions—for example, the definition of possible remedies—may not be fully protective of aquatic species or robust enough to withstand severe events. High and low flows are more important than the averages of the two because organisms respond to extreme events. Solid-phase contaminants are often transported during high flow, and concentrations of dissolved-phase contaminants are often highest during low flow.

In the 2000 CSM (CH2M Hill, 2000) groundwater is only briefly mentioned in reference to Canyon Creek (Page 56) and the SFCDR downstream. Groundwater is not

40

LC17-22

Response to comment LC17-22

The comment poses that the Conceptual Site Model (CSM) has not been updated since 2000. EPA disagrees with this conclusion. EPA has provided considerable information regarding its current CSM for the Upper Basin in Part 2, Section 5.0 of the ROD Amendment.

described in detail as a potential source of contamination until Page 78 when describing sources to the Lower Coeur d'Alene River. The public is provided very little information describing how groundwater and surface water interact and how groundwater acts as either a source or a pathway for contamination.

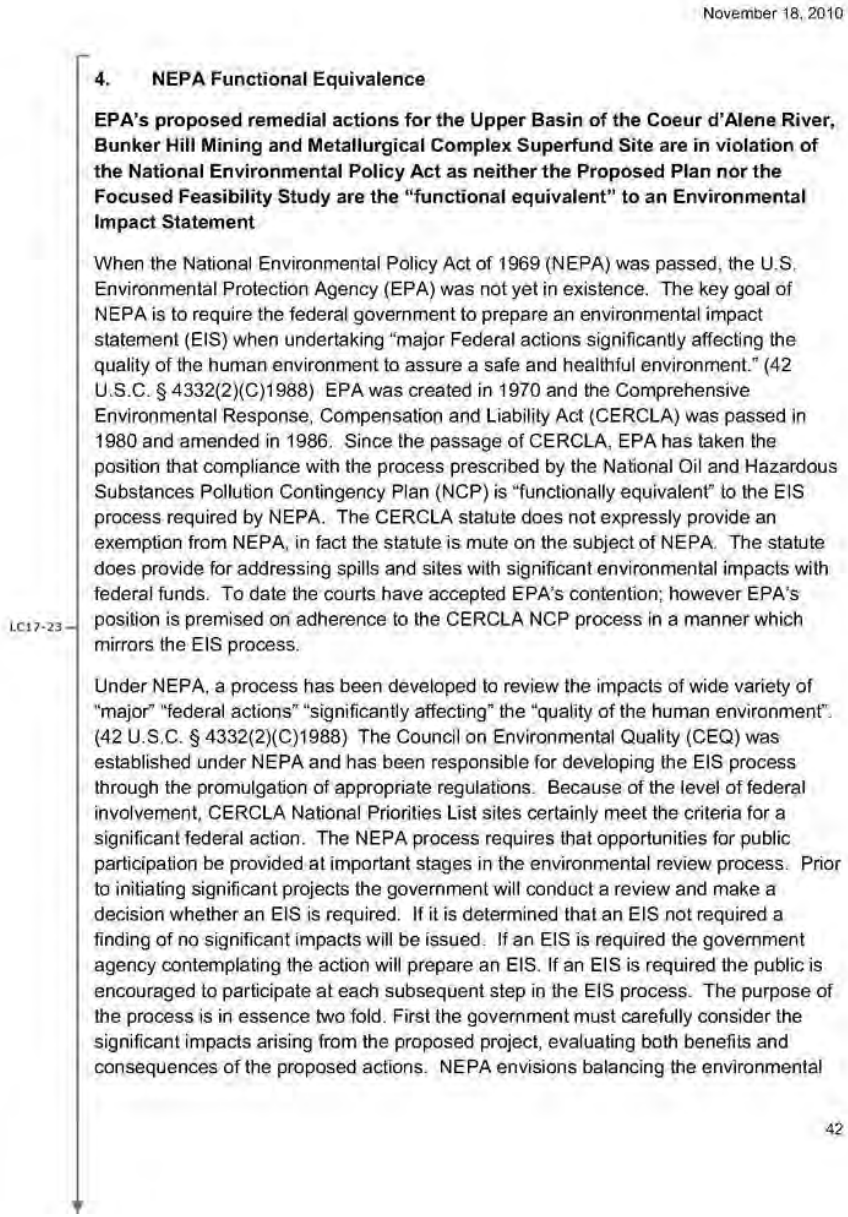
In a 2009 working draft of the FFS (Page 3-1) CH2M Hill acknowledged that between 2001 and 2009 EPA has developed ". . . an improved understanding of groundwater-surface water interactions and aquifer properties for the Woodland Park area of Canyon Creek, Osburn Flats, and the Bunker Hill "Box"." Neither the 2010 FFS or the Proposed Plan includes a clear discussion of this improved understanding and how it has been incorporated into the 2010 FFS and subsequent Proposed Plan. Without providing a conceptual model that incorporates this improved understanding the public has not been afforded the opportunity to evaluate and comment on this new information or to understand how this information has been used to improve protectiveness of the remedies.

LC17-22 — The EPA has not revised the CSM since 2001 when the EPA described a basin-wide CSM (CH2M HILL 1998) in the RI/FS. Since that time the EPA has 1) significantly altered the geographic scope of the Proposed Plan from the entire Coeur d'Alene River, Coeur d'Alene Lake and Spokane River in 2001/2002 to only the South Fork Coeur d'Alene River above Pinehurst, 2) developed detailed groundwater models of the Woodland Park area of Canyon Creek, and 3) the site-specific AWQC for dissolved zinc has approximately doubled – any of which would require a revised CSM.

Section 300.430 (b)(2) of the 1990 NCP and the 1988 RI/FS Guidance clearly identifies the need for a conceptual understanding of the site. The preamble to the 1990 NCP (FR558707) identifies the need to consider sources, pathways of exposure and receptors in the development of this understanding. The development of a CSM is a critical part of the site characterization and alternative development process. (RI/FS Guidance § 2.2.2.2 , Figure 2.2)

The CSM is one of the basic tools in site cleanup work for evaluating and communicating with the public about site conditions and cleanup options. The absence of a current CSM, based on all of the available site data and the reliable evaluation, is inexplicable. It among other things, denies the public the opportunity to understand the conditions, risks and proposed remedies for the site and how EPA plans to address these threats and in what priority through the implementation of the proposed remedy. The absence of a current CSM only magnifies the uncertainty attendant to that missing information.

No comments



November 18, 2010

4. NEPA Functional Equivalence

EPA's proposed remedial actions for the Upper Basin of the Coeur d'Alene River, Bunker Hill Mining and Metallurgical Complex Superfund Site are in violation of the National Environmental Policy Act as neither the Proposed Plan nor the Focused Feasibility Study are the "functional equivalent" to an Environmental Impact Statement

When the National Environmental Policy Act of 1969 (NEPA) was passed, the U.S. Environmental Protection Agency (EPA) was not yet in existence. The key goal of NEPA is to require the federal government to prepare an environmental impact statement (EIS) when undertaking "major Federal actions significantly affecting the quality of the human environment to assure a safe and healthful environment." (42 U.S.C. § 4332(2)(C)1988) EPA was created in 1970 and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was passed in 1980 and amended in 1986. Since the passage of CERCLA, EPA has taken the position that compliance with the process prescribed by the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) is "functionally equivalent" to the EIS process required by NEPA. The CERCLA statute does not expressly provide an exemption from NEPA, in fact the statute is mute on the subject of NEPA. The statute does provide for addressing spills and sites with significant environmental impacts with federal funds. To date the courts have accepted EPA's contention; however EPA's position is premised on adherence to the CERCLA NCP process in a manner which mirrors the EIS process.

LC17-23

Under NEPA, a process has been developed to review the impacts of wide variety of "major" "federal actions" "significantly affecting" the "quality of the human environment". (42 U.S.C. § 4332(2)(C)1988) The Council on Environmental Quality (CEQ) was established under NEPA and has been responsible for developing the EIS process through the promulgation of appropriate regulations. Because of the level of federal involvement, CERCLA National Priorities List sites certainly meet the criteria for a significant federal action. The NEPA process requires that opportunities for public participation be provided at important stages in the environmental review process. Prior to initiating significant projects the government will conduct a review and make a decision whether an EIS is required. If it is determined that an EIS not required a finding of no significant impacts will be issued. If an EIS is required the government agency contemplating the action will prepare an EIS. If an EIS is required the public is encouraged to participate at each subsequent step in the EIS process. The purpose of the process is in essence two fold. First the government must carefully consider the significant impacts arising from the proposed project, evaluating both benefits and consequences of the proposed actions. NEPA envisions balancing the environmental

42

Response to comment LC17-23

The comment raises issues regarding whether EPA satisfied National Environmental Policy Act (NEPA) requirements. For CERCLA response actions, EPA is exempted from the procedural requirements of environmental laws, including NEPA. See EPA response to Comment No. BU36-15 submitted by Temkin Wielga & Hardt LLP on behalf of Hecla Mining.

costs against the anticipated benefits. Second, the public must be afforded an opportunity for meaningful participation in the agency's consideration of the proposed action. Opportunities to submit comments are to be provided and comments are to be considered and incorporated as appropriate.

Historically, the courts have recognized an exemption from NEPA where EPA has adhered to substantive and procedural standards that provide adequate consideration of environmental issues. In these instances functional compliance with the expectations of NEPA is considered to be sufficient. There are numerous examples of functional equivalence.

The CERCLA RI/FS and remedy selection process are very similar to the EIS process. The reauthorization of CERCLA in 1986 emphasized the requirement for meaningful public participation and the 1990 NCP clearly prescribes a process for public participation comparable to the EIS process. Similarly, the remedy selection process required by CERCLA and prescribed in the NCP provides for the comparison of alternatives and the evaluation of potential impacts and benefits. The focus of CERCLA is primarily on protection of human health and the environment and on selecting a cost effective response action.

LC17-23 — The fundamental basis for EPA's contention that the NCP process is functionally equivalent to the NEPA process is that the agency in fact follows the process. In the case of the Upper Basin EPA has failed in many substantial ways to comply with the NCP. Similarly, these failures forfeit any claim EPA can make to functional equivalency with NEPA. As demonstrated in the table set forth below, a technical and CERCLA/NCP compliance review details the specifics of EPA's failures to meet the requirements of CERCLA and the NCP. These failures encompass the identification and evaluation of environmental impacts and benefits and the costs associated with these impacts and benefits. Failures also include the failure to provide the minimum amount of information necessary for the public to develop a reasonable understanding of the costs and implications of the proposed response actions to support meaningful public comment. These failures in the Upper Basin remedy selection process are clearly inconsistent with the NCP and the EIS process. EPA can make no credible argument that the flawed remedy selection process that is being followed for the Upper Basin is NEPA compliant.

Two representative examples of the agency's failure to follow a process that could be claimed to be functionally equivalent to NEPA are offered as examples of failures to qualify for an exemption from NEPA on the basis of functional equivalency. The first is in the discussion of and cost estimate development for a repository for waste disposal. Several critical components of the repository are omitted from the discussion in the Proposed Plan, including its proposed location. Other missing elements include the

No comments

locations of cover and borrow source materials, the failure to include haul costs as part of the construction cost estimate, and any discussion of the level of effort required to leave excavation areas, for both waste and cover/borrow materials, in conditions that will not cause erosion or result in noxious weed development. These omissions prevent the public and stakeholders from fully understanding the potential benefit and consequences of the proposed action.

The second example of the agency's failure to fully disclose potential environmental impacts and costs is the proposal to pump and pipe impacted groundwater and surface water to a centralized treatment plant as well as line stream beds to limit groundwater-surface water interaction. There is no discussion of the potential impact of dewatering significant portions of aquifers that recharge stream flow, the impact of this loss on riparian and aquatic systems, or the impact to aquatic systems from lining portions of the stream bed.

Nor is it sufficient for EPA to acknowledge potential impacts and leave any meaningful consideration or evaluation of these impacts to some future date, after its decision of this proposed amended plan is made. See, e.g., Draft Final FFS, Table 8-1a, p. 5 "Impacts of stream liners on river hydraulics would need to be evaluated." More generally, EPA can not comply with its NEPA obligations by promising that "During the implementation planning process and design of remedial actions, EPA will consider a wide range of site-specific issues that will affect the implementation of the cleanup," including "current and future [land] use, impacts to local residences, and impact to ongoing or future site development…" July 2010 Draft Final FFS, p. 108. Under NEPA, (and the NCP), these are precisely the sort of issues that are pre-decisional. They cannot be left to some future date.

LC17-23

Details on EPA's failure to achieve functional equivalency with NEPA is set forth in the following table:

No comments

November 18, 2010

NEPA REQUIREMENT	UPPER BASIN PROPOSED PLAN AND FOCUSED FEASIBILITY STUDY
The EIS shall "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public." The EIS is to "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." The EIS is to "devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." 40 CFR §1502.14.	The Proposed Plan (PP) and Focused Feasibility Study (FFS) did not consider "all reasonable alternatives." The 2001 FS considered six alternatives including a State of Idaho Cleanup Plan and a Mining Companies Cleanup Plan. The FFS only evaluated EPA's Alternative 3 "More extensive removal, disposal, and treatment" and Alternative 4 "Maximum Removal, Disposal, and Treatment." This is not an evaluation of "all reasonable alternatives."
The EIS shall "include the alternative of no action." 40 CFR §1502.14(d).	The PP and FFS do not fully or accurately consider a no action alternative.
The EIS shall discuss "the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented." 40 CFR §1502.16.	The PP and FFS are devoid of any meaningful disclosure and evaluation of the environmental impacts of the major construction projects contemplated by the PP including: 1. The specific locations and amounts of material to be excavated, methods and routes of transportation, location of repositories, location of cover and borrow sources. 2. Specifics related to the massive system for collection and treatment of groundwater, including description of

LC17-23

45

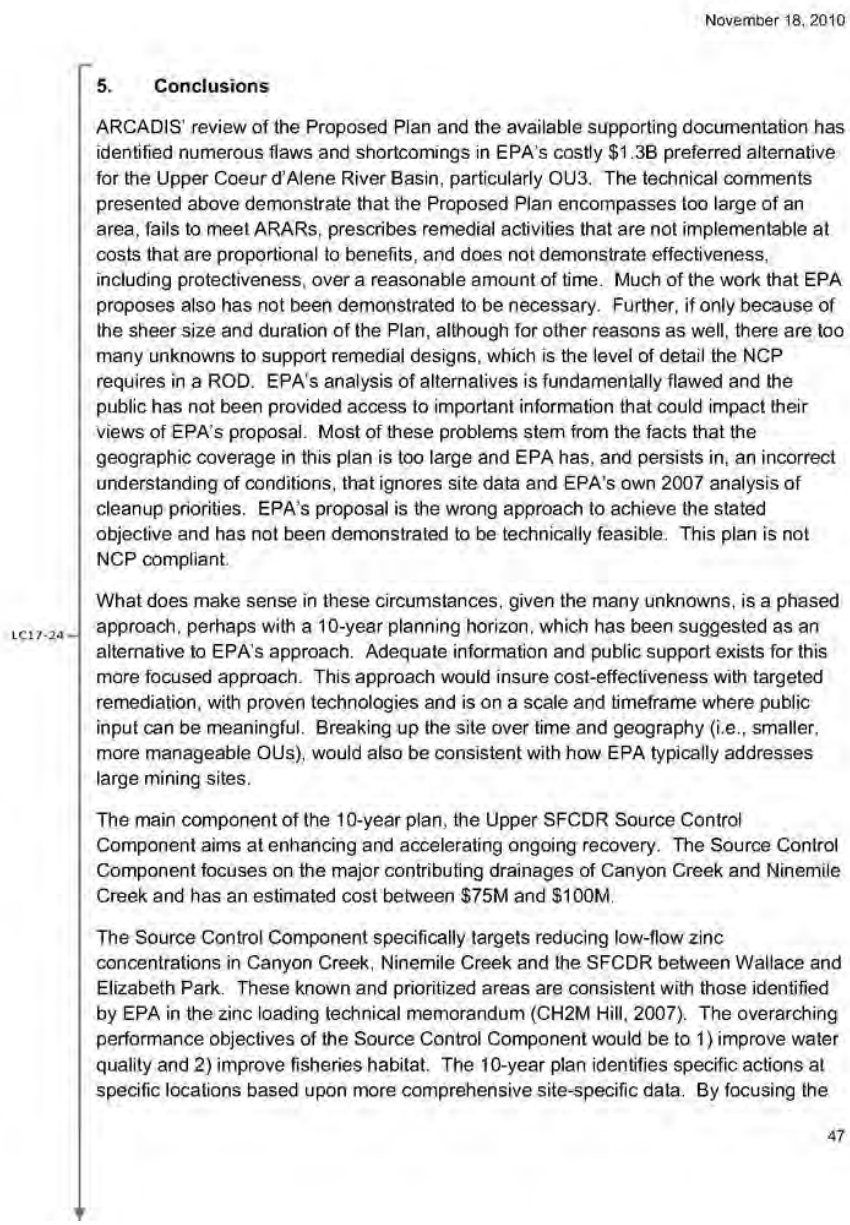
No comments

November 18, 2010

	where and how the stream lining will occur, location of pipelines, dewatering of creeks and the SFCDR and flood control.
With respect to all alternatives, including the proposed action, the EIS shall "discuss direct effects and their significance" and "indirect effects and their significance" and "cumulative impacts." 40 CFR §1502.16(a) and (b).	The PP identifies 346 sites and 21 million cubic yards of material to be excavated, capped or hydraulically isolated. Most of these sites would each require an EIS by itself. There is virtually no information in either the PP or the FFS what describes how these projects will be carried out and the environmental consequences.
LC17-23 — The EIS shall discuss "possible conflicts between the proposed action and the objectives of Federal, regional, State, and local … land use plans, policies and controls for the area concerned." 40 CFR §1502.16(c).	State and local governments have been unanimous in their opposition to the PP. This is not discussed in the PP.
The agency shall "make diligent efforts to involve the public in preparing and implementing their NEPA procedures" and "solicit appropriate information from the public." 40 CFR §1506.6(a) and (d).	The public has not been involved in or listened to in the PP process. The public has made clear its opposition to the PP and EPA has made clear that anything less than their proposed 50-90 year plan is unacceptable.
"All agencies of the Federal Government shall comply with these regulations." 40 CFR §1507.1.	EPA has not complied with NEPA in the PP process.

46

No comments



November 18, 2010

5. Conclusions

ARCADIS' review of the Proposed Plan and the available supporting documentation has identified numerous flaws and shortcomings in EPA's costly $1.3B preferred alternative for the Upper Coeur d'Alene River Basin, particularly OU3. The technical comments presented above demonstrate that the Proposed Plan encompasses too large of an area, fails to meet ARARs, prescribes remedial activities that are not implementable at costs that are proportional to benefits, and does not demonstrate effectiveness, including protectiveness, over a reasonable amount of time. Much of the work that EPA proposes also has not been demonstrated to be necessary. Further, if only because of the sheer size and duration of the Plan, although for other reasons as well, there are too many unknowns to support remedial designs, which is the level of detail the NCP requires in a ROD. EPA's analysis of alternatives is fundamentally flawed and the public has not been provided access to important information that could impact their views of EPA's proposal. Most of these problems stem from the facts that the geographic coverage in this plan is too large and EPA has, and persists in, an incorrect understanding of conditions, that ignores site data and EPA's own 2007 analysis of cleanup priorities. EPA's proposal is the wrong approach to achieve the stated objective and has not been demonstrated to be technically feasible. This plan is not NCP compliant.

LC17-24

What does make sense in these circumstances, given the many unknowns, is a phased approach, perhaps with a 10-year planning horizon, which has been suggested as an alternative to EPA's approach. Adequate information and public support exists for this more focused approach. This approach would insure cost-effectiveness with targeted remediation, with proven technologies and is on a scale and timeframe where public input can be meaningful. Breaking up the site over time and geography (i.e., smaller, more manageable OUs), would also be consistent with how EPA typically addresses large mining sites.

The main component of the 10-year plan, the Upper SFCDR Source Control Component aims at enhancing and accelerating ongoing recovery. The Source Control Component focuses on the major contributing drainages of Canyon Creek and Ninemile Creek and has an estimated cost between $75M and $100M.

The Source Control Component specifically targets reducing low-flow zinc concentrations in Canyon Creek, Ninemile Creek and the SFCDR between Wallace and Elizabeth Park. These known and prioritized areas are consistent with those identified by EPA in the zinc loading technical memorandum (CH2M Hill, 2007). The overarching performance objectives of the Source Control Component would be to 1) improve water quality and 2) improve fisheries habitat. The 10-year plan identifies specific actions at specific locations based upon more comprehensive site-specific data. By focusing the

47

Response to comment LC17-24

The comment repeats criticisms that have already been addressed in EPA responses above, and concludes with support for a "10-year Plan," presumably referring to the Hecla 10-Year Plan. Hecla's 10-Year Plan is not sufficiently comprehensive in nature to protect human health and the environment throughout the Upper Basin and, as applied at specific locations, the identified actions would not adequately address the threats to human health and the environment that are present in the Upper Basin, and would not, unless supplemented by additional response actions, result in actions that would be consistent with a final remedy for the Upper Basin. See the ROD Amendment, Part 3, Section 3.10.4.

remediation activities to those sites that are the known primary sources and have adequate data to design and evaluate remediation activities realistic construction and O&M costs will be developed.

The 10-year plan is focused on key sources of contamination, and as such, prescribes final source control and water treatment remedies for significant discrete mining-related sources of zinc loading. The Source Control Component of the 10-year plan advances source control within Canyon Creek and Ninemile Creek to the forefront, thereby eliminating the need for long-term conventional and large-scale water treatment. This approach is consistent with the views of the NAS regarding early implementation of focused water treatment coupled with near-term source control actions. The 10-year plan is implementable, supported by the available data, and has a high likelihood of achieving the FFS/Proposed Plan Performance Objective of lessening downstream water quality impacts and improved biological conditions.

The types of source control actions proposed in the 10-year plan have been effectively implemented as a primary component of a final remedy at many sites under both state and federal programs. The water treatment system included in this Source Control Component was selected as a component of the final remedy for the Butte Priority Soils Operable Unit of the Silver Bow Creek/Butte Area Superfund Site in Butte, Montana. At that site, the application of the lagoon treatment system has been proven to be effective in reducing metals loading to Silver Bow Creek and improving the quality of the underlying alluvial groundwater system. Given the experience with lagoon treatment at Butte and elsewhere, there is sufficient room in Canyon and Ninemile Creeks to locate and size the lagoon treatment systems included in the 10-year plan.

LC17-24

The 10-year plan proposes a series of actions to improve fish passage and aquatic habitat within both Ninemile and Canyon Creek Basins. Typical actions include installing large rock for bank stabilization, pool construction, riparian vegetation establishment, top pullbacks and dump stabilization, instream energy dissipation structures, culvert removals to improve fish passages, etc. The 10-year plan identifies the locations of these activities by river reach.

The 10-year plan proposes specific reach-identified Performance Objectives based on a range of fishery tiers correlated to water quality improvements. The 10-year plan will achieve these goals post-construction and does not require natural source depletion to achieve stated goals. The 10-yr plan further accounts for natural recovery processes as substantiated by ongoing improvements to water quality documented in Canyon Creek.

The 10-year plan's initial focus is on source removal and discrete and localized water quality treatment at historic mining locations. This approach is responsive to the NAS reports' comments that "source removal or stabilization of sources is fundamental to any

No comments

remediation effort." Following these source control activities, real-time effectiveness monitoring would be used to determine the need and scope of any further remediation
LC12-24 activities and priorities. By targeting those areas that are the largest contributors of zinc and lead with proven technologies on a scale that is implementable, the 10-year plan is both more protective and cost-effective at addressing the critical sources of contamination within a manageable time frame. In summary, the 10-year plan is consistent with the NCP if fairly judged, sensible and effective, responsive to local needs and concerns, less costly, and responsive to NAS recommendations for the Upper Basin cleanup.

No comments

6. References

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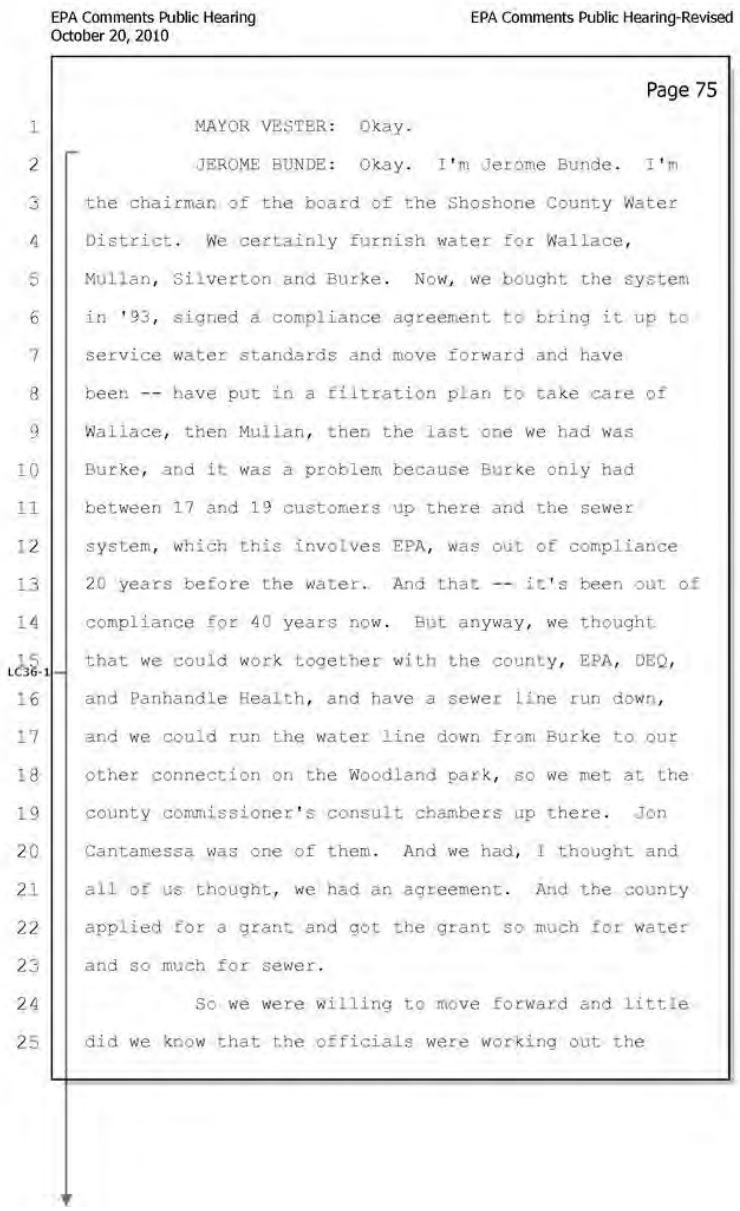
No comments

Chairman of the Board of the Shoshone County Water District, LC36, Letter 619651-31



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 75

MAYOR VESTER: Okay.

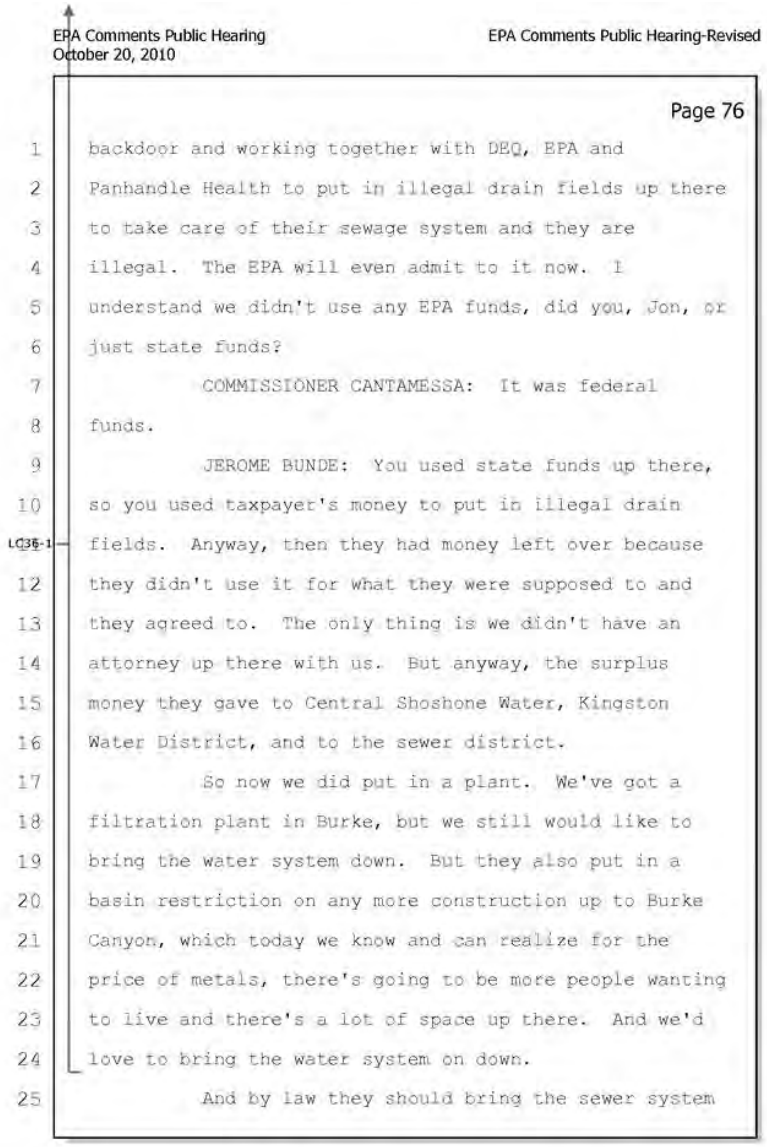
JEROME BUNDE: Okay. I'm Jerome Bunde. I'm the chairman of the board of the Shoshone County Water District. We certainly furnish water for Wallace, Mullan, Silverton and Burke. Now, we bought the system in '93, signed a compliance agreement to bring it up to service water standards and move forward and have been -- have put in a filtration plan to take care of Wallace, then Mullan, then the last one we had was Burke, and it was a problem because Burke only had between 17 and 19 customers up there and the sewer system, which this involves EPA, was out of compliance 20 years before the water. And that -- it's been out of compliance for 40 years now. But anyway, we thought that we could work together with the county, EPA, DEQ, and Panhandle Health, and have a sewer line run down, and we could run the water line down from Burke to our other connection on the Woodland park, so we met at the county commissioner's consult chambers up there. Jon Cantamessa was one of them. And we had, I thought and all of us thought, we had an agreement. And the county applied for a grant and got the grant so much for water and so much for sewer.

So we were willing to move forward and little did we know that the officials were working out the

LC36-1

Response to comment LC36-1

Comment noted.



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 76

backdoor and working together with DEQ, EPA and Panhandle Health to put in illegal drain fields up there to take care of their sewage system and they are illegal. The EPA will even admit to it now. I understand we didn't use any EPA funds, did you, Jon, or just state funds?

COMMISSIONER CANTAMESSA: It was federal funds.

JEROME BUNDE: You used state funds up there, so you used taxpayer's money to put in illegal drain fields. Anyway, then they had money left over because they didn't use it for what they were supposed to and they agreed to. The only thing is we didn't have an attorney up there with us. But anyway, the surplus money they gave to Central Shoshone Water, Kingston Water District, and to the sewer district.

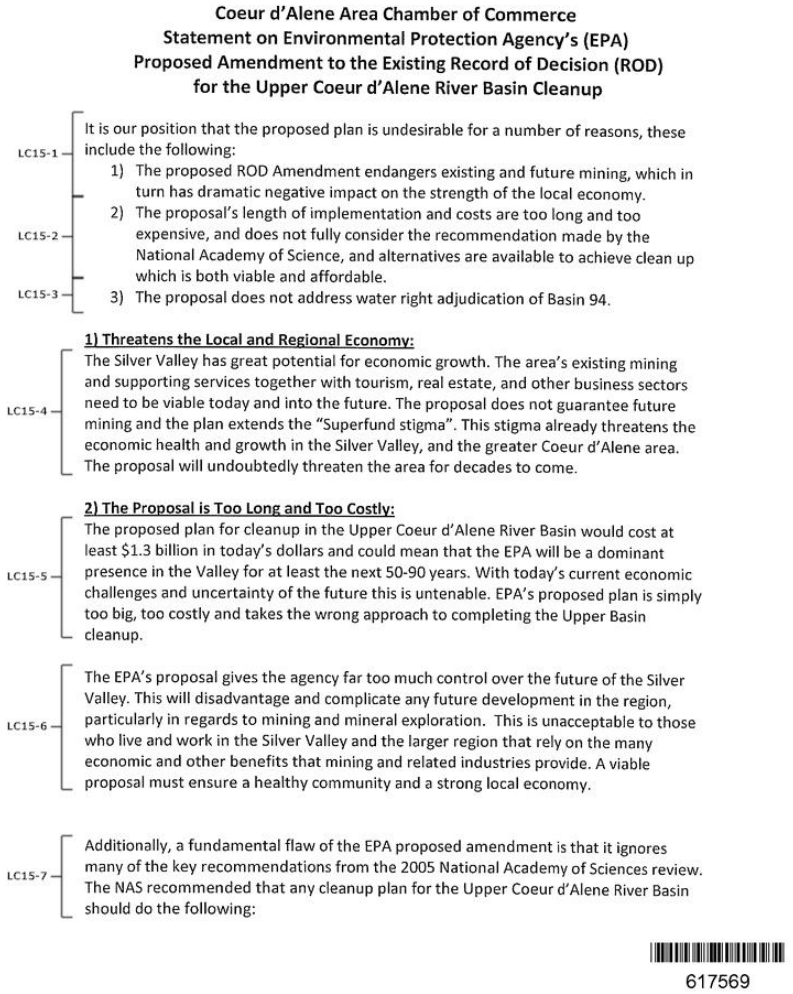
So now we did put in a plant. We've got a filtration plant in Burke, but we still would like to bring the water system down. But they also put in a basin restriction on any more construction up to Burke Canyon, which today we know and can realize for the price of metals, there's going to be more people wanting to live and there's a lot of space up there. And we'd love to bring the water system on down.

And by law they should bring the sewer system

LC36-1

No comments

Coeur d'Alene Area Chamber of Commerce, LC15, Letter 617569



Coeur d'Alene Area Chamber of Commerce
Statement on Environmental Protection Agency's (EPA)
Proposed Amendment to the Existing Record of Decision (ROD)
for the Upper Coeur d'Alene River Basin Cleanup

LC15-1 It is our position that the proposed plan is undesirable for a number of reasons, these include the following:

1) The proposed ROD Amendment endangers existing and future mining, which in turn has dramatic negative impact on the strength of the local economy.
2) The proposal's length of implementation and costs are too long and too expensive, and does not fully consider the recommendation made by the National Academy of Science, and alternatives are available to achieve clean up which is both viable and affordable. (LC15-2)
3) The proposal does not address water right adjudication of Basin 94. (LC15-3)

1) Threatens the Local and Regional Economy:

LC15-4 The Silver Valley has great potential for economic growth. The area's existing mining and supporting services together with tourism, real estate, and other business sectors need to be viable today and into the future. The proposal does not guarantee future mining and the plan extends the "Superfund stigma". This stigma already threatens the economic health and growth in the Silver Valley, and the greater Coeur d'Alene area. The proposal will undoubtedly threaten the area for decades to come.

2) The Proposal is Too Long and Too Costly:

LC15-5 The proposed plan for cleanup in the Upper Coeur d'Alene River Basin would cost at least $1.3 billion in today's dollars and could mean that the EPA will be a dominant presence in the Valley for at least the next 50-90 years. With today's current economic challenges and uncertainty of the future this is untenable. EPA's proposed plan is simply too big, too costly and takes the wrong approach to completing the Upper Basin cleanup.

LC15-6 The EPA's proposal gives the agency far too much control over the future of the Silver Valley. This will disadvantage and complicate any future development in the region, particularly in regards to mining and mineral exploration. This is unacceptable to those who live and work in the Silver Valley and the larger region that rely on the many economic and other benefits that mining and related industries provide. A viable proposal must ensure a healthy community and a strong local economy.

LC15-7 Additionally, a fundamental flaw of the EPA proposed amendment is that it ignores many of the key recommendations from the 2005 National Academy of Sciences review. The NAS recommended that any cleanup plan for the Upper Coeur d'Alene River Basin should do the following:

617569

Response to comment LC15-1

See response to Comment No. I58-5.

Response to comment LC15-2

See responses to Comment Nos. I58-1 and I58-2. Since issuance of the OU 3 ROD in 2002 (EPA, 2002; www.epa.gov/superfund/sites/rods/fulltext/r1002032.pdf) and the NAS report in 2005 (National Academy of Sciences, 2005, http://www.epa.gov/superfund/accomp/coeur/), EPA has continued to collect environmental data and conduct studies throughout the Coeur d'Alene Basin, particularly in the Upper Basin. The additional data and studies have improved EPA's understanding of the Upper Basin, and enabled EPA to address key NAS recommendations. The NAS review validated much of the 2002 ROD for OU 3, and the recommendations for areas of improvement primarily focused on ecological protection. EPA carefully considered the NAS report and its recommendations, and conducted studies and evaluations to address the major recommendations. The results of those efforts are reflected in the actions identified in the Upper Basin Selected Remedy. EPA believes the Selected Remedy presented in the ROD Amendment addresses the NAS report's recommendations, while recognizing EPA's statutory obligations under CERCLA.

Response to comment LC15-3

EPA received notice of the Northern Idaho Adjudication in August of 2011. However, and consistent with the terms of the notice, EPA is not yet required to participate in the adjudication since any permit application EPA may submit would be filed after November 12, 2008, the cut-off date for requiring participation in the adjudication. See response to Comment No. SA4-12 and the ROD Amendment, Part 3, Section 3.7.4.

Response to comment LC15-4

See responses to Comment Nos. I474-1 and I58-5.

Response to comment LC15-5

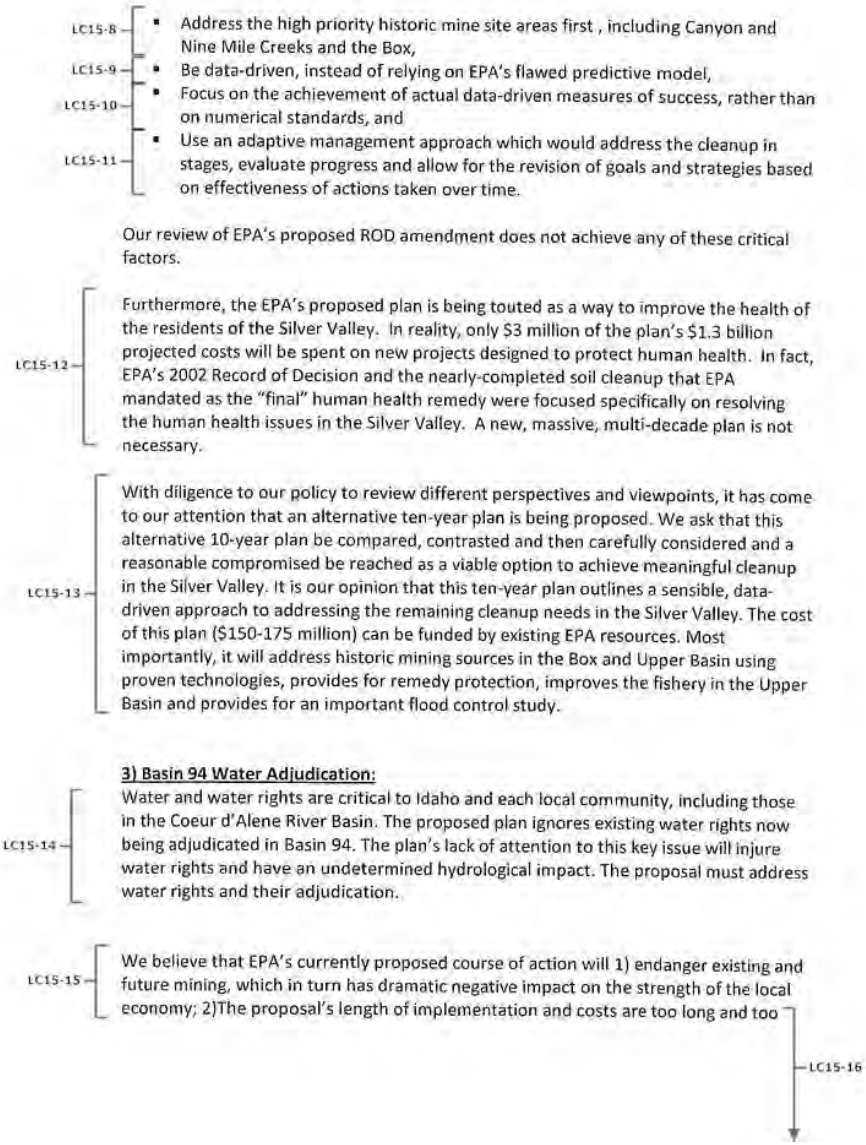
See responses to Comment Nos. I58-1 and I58-2.

Response to comment LC15-6

See responses to Comment Nos. I58-5 and I54-2.

Response to comment LC15-7

See response to Comment No. LJ27-8.



LC15-8
- Address the high priority historic mine site areas first , including Canyon and Nine Mile Creeks and the Box,

LC15-9
- Be data-driven, instead of relying on EPA's flawed predictive model,

LC15-10
- Focus on the achievement of actual data-driven measures of success, rather than on numerical standards, and

LC15-11
- Use an adaptive management approach which would address the cleanup in stages, evaluate progress and allow for the revision of goals and strategies based on effectiveness of actions taken over time.

Our review of EPA's proposed ROD amendment does not achieve any of these critical factors.

LC15-12
Furthermore, the EPA's proposed plan is being touted as a way to improve the health of the residents of the Silver Valley. In reality, only $3 million of the plan's $1.3 billion projected costs will be spent on new projects designed to protect human health. In fact, EPA's 2002 Record of Decision and the nearly-completed soil cleanup that EPA mandated as the "final" human health remedy were focused specifically on resolving the human health issues in the Silver Valley. A new, massive, multi-decade plan is not necessary.

LC15-13
With diligence to our policy to review different perspectives and viewpoints, it has come to our attention that an alternative ten-year plan is being proposed. We ask that this alternative 10-year plan be compared, contrasted and then carefully considered and a reasonable compromised be reached as a viable option to achieve meaningful cleanup in the Silver Valley. It is our opinion that this ten-year plan outlines a sensible, data-driven approach to addressing the remaining cleanup needs in the Silver Valley. The cost of this plan ($150-175 million) can be funded by existing EPA resources. Most importantly, it will address historic mining sources in the Box and Upper Basin using proven technologies, provides for remedy protection, improves the fishery in the Upper Basin and provides for an important flood control study.

3) Basin 94 Water Adjudication:

LC15-14
Water and water rights are critical to Idaho and each local community, including those in the Coeur d'Alene River Basin. The proposed plan ignores existing water rights now being adjudicated in Basin 94. The plan's lack of attention to this key issue will injure water rights and have an undetermined hydrological impact. The proposal must address water rights and their adjudication.

LC15-15
We believe that EPA's currently proposed course of action will 1) endanger existing and future mining, which in turn has dramatic negative impact on the strength of the local economy; 2)The proposal's length of implementation and costs are too long and too

LC15-16

Response to comment LC15-8

EPA agrees with the comment and has identified these three areas as a high priority within the implementation plan for the selected remedy. Also see response to Comment No. I822-14.

Response to comment LC15-9

See responses to Comment Nos. LJ39-5, SA4-13, and LJ27-8.

Response to comment LC15-10

CERCLA requires EPA to implement cleanups that meet applicable standards. Such standards are often numerical. As part of this action, EPA has developed ecological metrics to evaluate progress toward meeting the numerical standards as well as the effectiveness of the Selected Remedy. Regarding applicable or relevant and appropriate requirement (ARAR) waivers, see response to Comment No. SA4-11.

Response to comment LC15-11

Regarding EPA's use of the adaptive management process for implementing the Selected Remedy, see the ROD Amendment, Part 2, Section 12.3. Also see response to Comment No. LJ11-2.

Response to comment LC15-12

See response to Comment No. I295-1. The Upper Basin Selected Remedy includes an estimated $33.9 million for remedy protection work in the Upper Basin. Remedy protection is intended to protect the existing human health clean soil barriers (e.g., remediated yards, commercial properties, and rights-of-way) within Upper Basin communities from tributary flooding and high precipitation events. In addition to the remedy protection work, cleanup actions that address mine waste contamination within drainage areas accessible for recreational use will protect human health and improve surface water quality. Common recreational activities in the Coeur d'Alene Basin include hiking, fishing, hunting, boating, swimming, and all-terrain-vehicle riding. Exposure to lead contamination can cause elevated blood lead levels and resulting adverse neurological effects. EPA has also found that elevated blood lead levels can occur within relatively short exposure periods (such as through recreational exposure

to contamination located along the SFCDR, on waste piles, etc.). The Selected Remedy will provide clean surface soil in contaminated areas and reduce particulate lead loading to surface water. In these ways, the Selected Remedy will further reduce the risks people may be exposed to during recreational activities.

Response to comment LC15-13

See response to Comment No. I474-2.

Response to comment LC15-14

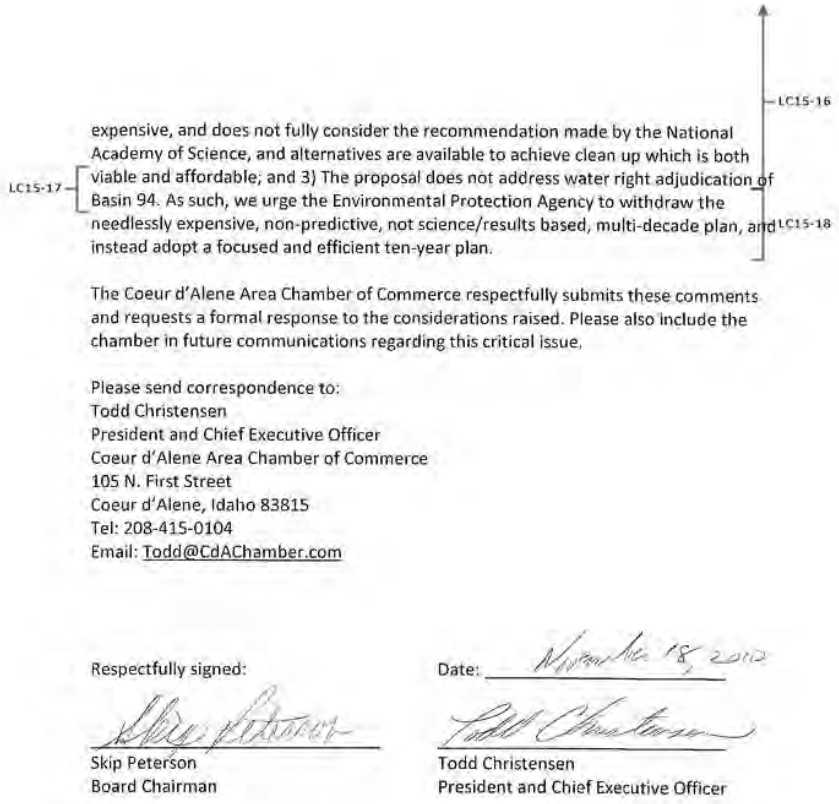
See above response to Comment No. LC15-3.

Response to comment LC15-15

See response to Comment No. I58-5.

Response to comment LC15-16

See above response to Comment No. LC15-2.



expensive, and does not fully consider the recommendation made by the National Academy of Science, and alternatives are available to achieve clean up which is both viable and affordable; and 3) The proposal does not address water right adjudication of Basin 94. As such, we urge the Environmental Protection Agency to withdraw the needlessly expensive, non-predictive, not science/results based, multi-decade plan, and instead adopt a focused and efficient ten-year plan.

LC15-16
LC15-17
LC15-18

The Coeur d'Alene Area Chamber of Commerce respectfully submits these comments and requests a formal response to the considerations raised. Please also include the chamber in future communications regarding this critical issue.

Please send correspondence to:
Todd Christensen
President and Chief Executive Officer
Coeur d'Alene Area Chamber of Commerce
105 N. First Street
Coeur d'Alene, Idaho 83815
Tel: 208-415-0104
Email: Todd@CdAChamber.com

Respectfully signed:

Date: November 18, 2012

Skip Peterson
Board Chairman

Todd Christensen
President and Chief Executive Officer

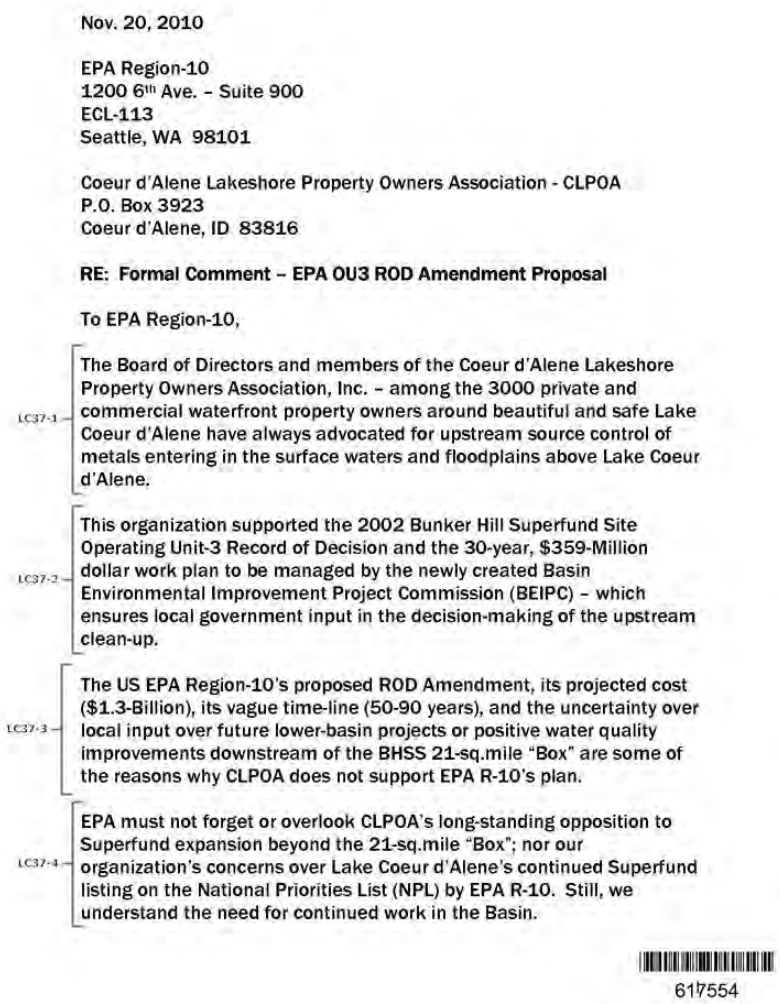
Response to comment LC15-17

See above response to Comment No. LC15-3.

Response to comment LC15-18

See responses to Comment Nos. I58-2 and I474-2. With regard to the non-predictive, not science/results-based, multi-decade plan comment, the Selected Remedy was developed in a manner consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as required by CERCLA. In EPA's experience at complex sites such as the Upper Basin, it is reasonable to expect that considerable time will be necessary to achieve cleanup. Considerable uncertainty is associated with predicting cleanup times at such sites. For complex sites like these, EPA typically examines the magnitude and extent of contamination, selects and implements remedies, and then collects empirical data over time to assess the effectiveness of the remedies.

Coeur d'Alene Lakeshore Property Owners Association, LC37, Letter 617554



Nov. 20, 2010

EPA Region-10
1200 6th Ave. – Suite 900
ECL-113
Seattle, WA 98101

Coeur d'Alene Lakeshore Property Owners Association - CLPOA
P.O. Box 3923
Coeur d'Alene, ID 83816

RE: Formal Comment – EPA OU3 ROD Amendment Proposal

To EPA Region-10,

LC37-1 The Board of Directors and members of the Coeur d'Alene Lakeshore Property Owners Association, Inc. – among the 3000 private and commercial waterfront property owners around beautiful and safe Lake Coeur d'Alene have always advocated for upstream source control of metals entering in the surface waters and floodplains above Lake Coeur d'Alene.

LC37-2 This organization supported the 2002 Bunker Hill Superfund Site Operating Unit-3 Record of Decision and the 30-year, $359-Million dollar work plan to be managed by the newly created Basin Environmental Improvement Project Commission (BEIPC) – which ensures local government input in the decision-making of the upstream clean-up.

LC37-3 The US EPA Region-10's proposed ROD Amendment, its projected cost ($1.3-Billion), its vague time-line (50-90 years), and the uncertainty over local input over future lower-basin projects or positive water quality improvements downstream of the BHSS 21-sq.mile "Box" are some of the reasons why CLPOA does not support EPA R-10's plan.

LC37-4 EPA must not forget or overlook CLPOA's long-standing opposition to Superfund expansion beyond the 21-sq.mile "Box"; nor our organization's concerns over Lake Coeur d'Alene's continued Superfund listing on the National Priorities List (NPL) by EPA R-10. Still, we understand the need for continued work in the Basin.

617554

Response to comment LC37-1

Comment noted and appreciated. EPA shares your goal of establishing source control in the upstream source areas to protect Lake Coeur d'Alene.

Response to comment LC37-2

Thank you for your support.

Response to comment LC37-3

See responses to Comment Nos. I58-2, I58-1, and I58-4. EPA is committed to meaningful community participation throughout the Superfund process in the Coeur d'Alene Basin. Over the years, EPA has engaged the public through all phases of its work. Most importantly, EPA has encouraged the public to be involved in selection of the remedies for OUs 1, 2, and 3 and, most recently, the Selected Remedy for the Upper Basin. As studies and work move into the Lower Basin, there will continue to be numerous opportunities for public input.

Response to comment LC37-4

Comment noted.

Our comments include questions, concerns, and recommendations as EPA and the BEIPC move forward in the Basin:

LC37-5 Has EPA abandoned the 2002 Bunker Hill Superfund Site – Operating Unit 3 Record of Decision – only 8-years into the 30-year clean-up plan?

LC37-6 Please explain why EPA and its Region-10 staff continue to perpetuate a negative Superfund stigma on Northern Idaho and its residents by basing the ROD Amendment on human health and environmental needs?

LC37-7 The uncertainty over the ultimate costs / timeline of EPA's proposal, forces CLPOA to ask whether or not EPA's ROD Amendment is following the regulations set forth in the National Contingency Plan?

LC37-8 On the need for water quality improvements in order to reduce dissolved metals loading into Lake Coeur d'Alene and downstream, CLPOA finds it necessary for ground water and surface water reductions in dissolved metals. But at the same time, CLPOA wants to know why exactly does EPA continue to flood the Bunker Hill Mine? Why hasn't anything been done to this point to prevent or resolve this particular problem as outlined in the 1991 OU2 ROD for the 21-sq.mile "Box"?

LC37-9 CLPOA is also well aware of the ongoing need for improvements to the Central Treatment Plant and prevention of ground-water seeps from the Central Impoundment Area. But again, why haven't these issues been completed since the 1991 OU2 ROD?

LC37-10 CLPOA cannot support EPA's ROD expansion when Idaho's local government leaders (and taxpayers) are currently forced into litigation over unfair water quality standards against Idaho's Waste Water Treatment Plants attempting to secure long-term NPDES permits for the Spokane River – while EPA supports the State of Washington's Dept. of Ecology standards that are unattainable, far too costly, and unrealistic for dischargers in Idaho.

LC37-11 CLPOA's mission strongly supports private property rights and as proposed, the association cannot allow EPA R-10 to ignore Idaho Water Rights and the ongoing adjudication process that provides for continued use and withdrawal of ground and surface water in the basin by private property owners.

2

Response to comment LC37-5

EPA has not abandoned the 2002 OU 3 ROD (EPA, 2002; www.epa.gov/superfund/sites/rods/fulltext/r1002032.pdf). Part 2, Section 4.4 of the ROD Amendment describes the relationship between the Selected Remedy in this ROD Amendment and the interim actions selected in the 2002 OU 3 ROD as well as those actions taken in operable units 01 and 02. Implementation of the previously selected remedies is ongoing.

Response to comment LC37-6

EPA is required under CERCLA, the Superfund law, to address unacceptable risks to human health and the environment at the Bunker Hill Superfund Site. While significant cleanup has taken place in the Basin, there is still contamination in site soil, sediments, groundwater, and surface water that poses risks to people, wildlife, fish, and the environment. The levels of contamination significantly exceed acceptable state and site-specific water quality standards. Contaminants include lead, zinc, cadmium, arsenic, and other metals. Millions of tons of old mill tailings, mine waste rock, and ore concentrates are spread across the Upper Basin. There is substantial documentation of the contamination levels and risks posed. The Upper Basin cleanup is essential to reducing these risks. Regarding the effects of the Selected Remedy, see response to Comment No. I474-1.

Response to comment LC37-7

The Focused Feasibility Study (FFS), Proposed Plan, and ROD Amendment were developed in a manner consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), as required by CERCLA. Regarding the cost and duration of the Selected Remedy, see response to Comment No. I58-4.

Response to comment LC37-8

EPA does not "continue to flood the Bunker Hill Mine." On the contrary, in the absence of a viable responsible party, EPA had to step in and collect and treat minewater discharges from the mine to mitigate large discharges of dissolved metals to the Upper Basin. As described in the ROD Amendment, Part 2, Sections 9.0 and 12.0, EPA will be implementing additional actions regarding Bunker Hill Mine water as part of the Selected Remedy.

Response to comment LC37-9

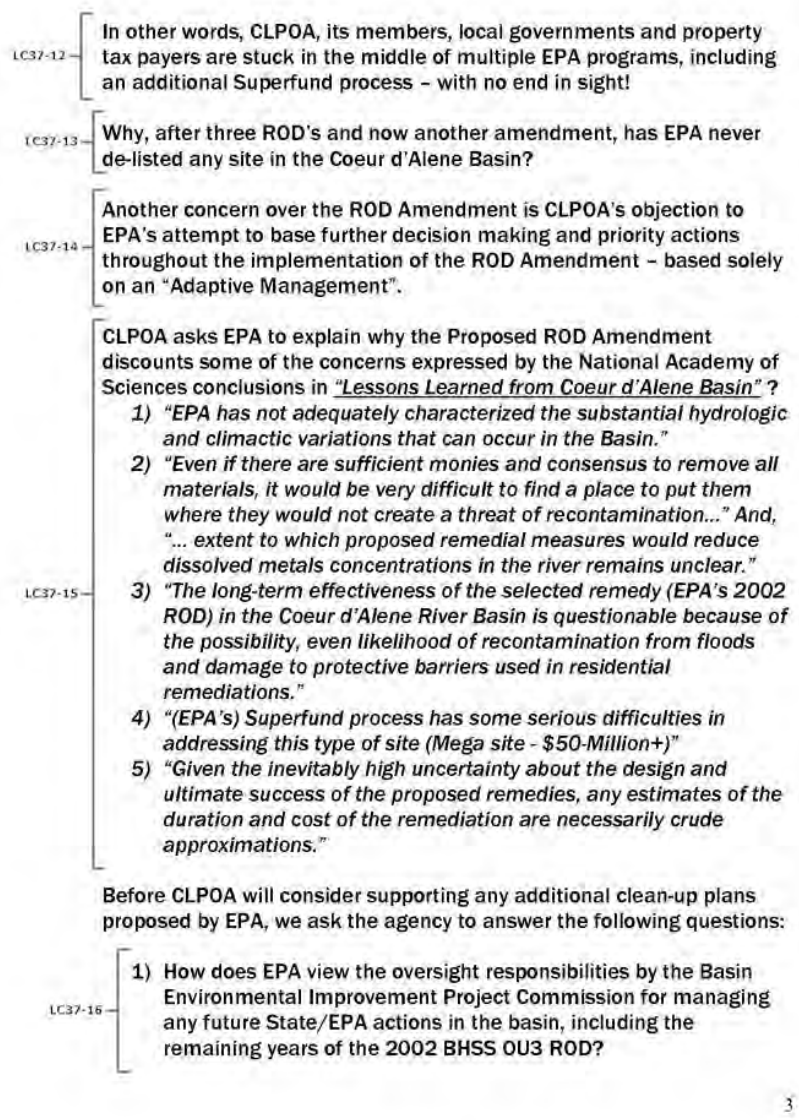
Some of the water treatment for the Upper Basin Selected Remedy will be conducted at the Central Treatment Plant (CTP), an active water treatment plant in Kellogg, Idaho, that treats acid mine drainage (AMD) and metals-contaminated water. The CTP is currently operated in low-density sludge mode and contains excess (unused) treatment capacity during much of the year. The 2001 ROD Amendment for OU 2 (EPA, 2001, *EPA Superfund Record of Decision Amendment: Bunker Hill Mining & Metallurgical Complex, OU 02, Smelterville, ID*. EPA ID: IDD048340921) identified the need for the CTP to be upgraded to improve efficiency and increase reliability, and to achieve lower concentrations of metals in the plant's discharge to better meet water quality standards. The Upper Basin Selected Remedy includes expanding the CTP to accommodate additional flows as well as the upgrades identified in the 2001 ROD Amendment that have not yet been implemented. Implementation of these upgrades will allow for operation in high density sludge mode, reduced waste sludge volumes, and consistent compliance with discharge standards. Waste sludge will be disposed of in sludge disposal cells near the CTP, as is the current practice. When the existing waste sludge cell reaches capacity, a new sludge disposal cell will be constructed.

Response to comment LC37-10

Comment noted. The issues identified by the comment are outside the scope of the Selected Remedy and are within the province of the Clean Water Act.

Response to comment LC37-11

See above response to Comment No. LC15-3.



LC37-12 In other words, CLPOA, its members, local governments and property tax payers are stuck in the middle of multiple EPA programs, including an additional Superfund process – with no end in sight!

LC37-13 Why, after three ROD's and now another amendment, has EPA never de-listed any site in the Coeur d'Alene Basin?

LC37-14 Another concern over the ROD Amendment is CLPOA's objection to EPA's attempt to base further decision making and priority actions throughout the implementation of the ROD Amendment – based solely on an "Adaptive Management".

LC37-15 CLPOA asks EPA to explain why the Proposed ROD Amendment discounts some of the concerns expressed by the National Academy of Sciences conclusions in *"Lessons Learned from Coeur d'Alene Basin"* ?

1) *"EPA has not adequately characterized the substantial hydrologic and climactic variations that can occur in the Basin."*
2) *"Even if there are sufficient monies and consensus to remove all materials, it would be very difficult to find a place to put them where they would not create a threat of recontamination..." And, "... extent to which proposed remedial measures would reduce dissolved metals concentrations in the river remains unclear."*
3) *"The long-term effectiveness of the selected remedy (EPA's 2002 ROD) in the Coeur d'Alene River Basin is questionable because of the possibility, even likelihood of recontamination from floods and damage to protective barriers used in residential remediations."*
4) *"(EPA's) Superfund process has some serious difficulties in addressing this type of site (Mega site - $50-Million+)"*
5) *"Given the inevitably high uncertainty about the design and ultimate success of the proposed remedies, any estimates of the duration and cost of the remediation are necessarily crude approximations."*

Before CLPOA will consider supporting any additional clean-up plans proposed by EPA, we ask the agency to answer the following questions:

LC37-16 1) How does EPA view the oversight responsibilities by the Basin Environmental Improvement Project Commission for managing any future State/EPA actions in the basin, including the remaining years of the 2002 BHSS OU3 ROD?

3

Response to comment LC37-12

Comment noted. See response to Comment No. 1351-3.

Response to comment LC37-13

As documented in the ROD Amendment, although considerable progress has been made in cleaning up the Coeur d'Alene Basin, considerable work remains to mitigate the adverse effects of a century of mining, milling, and smelting in the Basin. Under CERCLA, EPA has an obligation to mitigate unacceptable risks to human health and the environment. The Selected Remedy, albeit an interim action, is anticipated to result in considerable progress toward accomplishing this goal. Consistent with CERCLA and the NCP, EPA will not de-list portions of the Site until it can conclude that no further response actions are necessary to protect human health and the environment.

Response to comment LC37-14

Adaptive management does not mean that EPA can change the Selected Remedy without meaningful public participation. In fact, if EPA determines in the future that significant changes to the remedy are necessary, then EPA is legally obligated by CERCLA to address these changes through either an Explanation of Significant Differences or another ROD Amendment. Within the context of the Selected Remedy, adaptive management simply means that EPA will implement specific cleanup actions included in the remedy, monitor the effectiveness of those actions to determine whether cleanup goals are being achieved, and make adjustments to future cleanup actions to benefit from the information gained through the effectiveness monitoring. If these adjustments require significant changes to the Selected Remedy, EPA will prepare a new decision document that will be submitted for public comment. Adaptive management does not relieve EPA of these obligations under law and policy, or of its commitment to work with the affected communities.

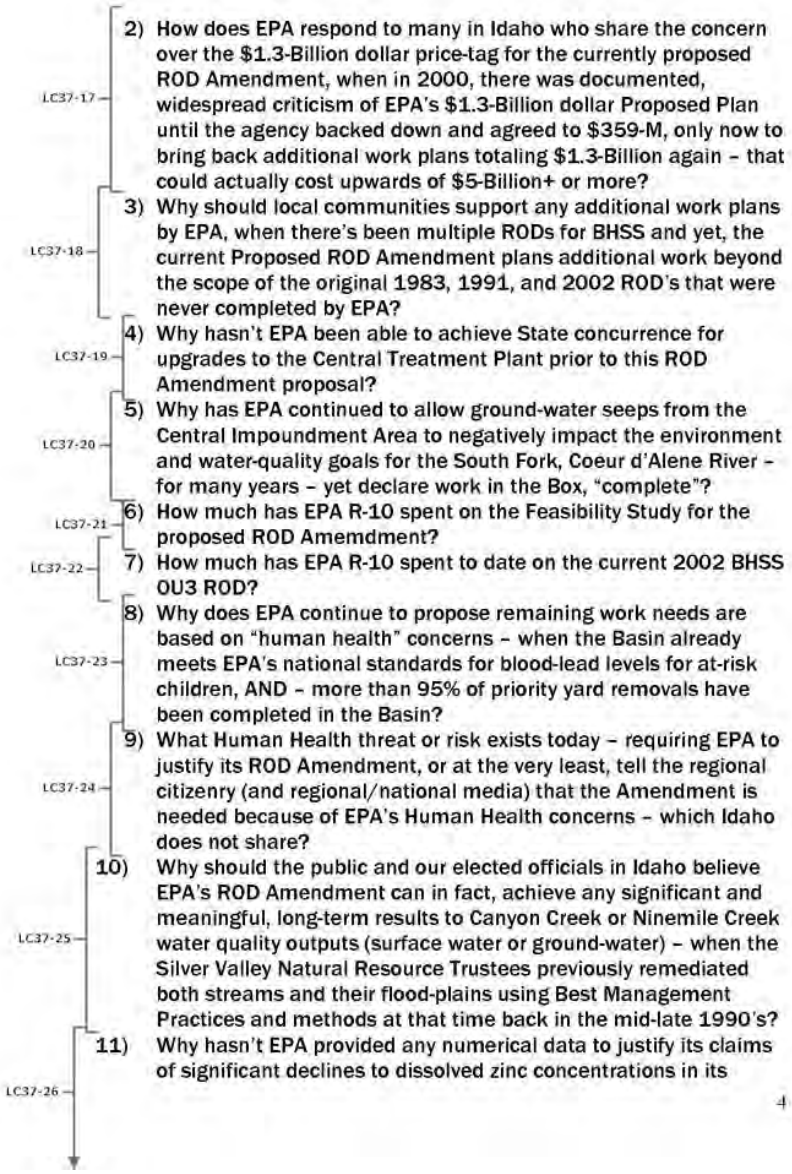
Response to comment LC37-15

Regarding the relationship between the Selected Remedy and the NAS evaluation, see response to Comment No. LJ27-8. In regards to sufficient space to place contaminated materials, see response to Comment No. I54-3. See response to Comment No. LJ36-3 regarding flooding issues in the Upper Basin.

Many factors went into the remedy selection process for this ROD Amendment including, but not limited to, site characterization and cost.

Response to comment LC37-16

EPA looks forward to a continuing productive relationship with the Basin Environmental Improvement Project Commission. The use of adaptive management in implementing the Selected Remedy does not mean that EPA can change the remedy without meaningful public participation. In fact, if EPA determines in the future that significant changes to the remedy are necessary, then EPA is legally obligated by CERCLA to address these changes through either an Explanation of Significant Differences or a ROD Amendment. Within the context of the Selected Remedy, adaptive management simply means that EPA will do specific cleanup actions in the Selected Remedy, monitor the effectiveness of these actions to determine whether cleanup goals are being achieved, and make adjustments to future cleanup actions to benefit from the information gained through the effectiveness monitoring. If these remedy adjustments require significant changes to the remedy, EPA will write a new decision document that would be open for public comment. Adaptive management does not relieve EPA of these obligations under law and policy nor our commitment to work with the affected communities.



LC37-17
2) How does EPA respond to many in Idaho who share the concern over the $1.3-Billion dollar price-tag for the currently proposed ROD Amendment, when in 2000, there was documented, widespread criticism of EPA's $1.3-Billion dollar Proposed Plan until the agency backed down and agreed to $359-M, only now to bring back additional work plans totaling $1.3-Billion again – that could actually cost upwards of $5-Billion+ or more?

LC37-18
3) Why should local communities support any additional work plans by EPA, when there's been multiple RODs for BHSS and yet, the current Proposed ROD Amendment plans additional work beyond the scope of the original 1983, 1991, and 2002 ROD's that were never completed by EPA?

LC37-19
4) Why hasn't EPA been able to achieve State concurrence for upgrades to the Central Treatment Plant prior to this ROD Amendment proposal?

LC37-20
5) Why has EPA continued to allow ground-water seeps from the Central Impoundment Area to negatively impact the environment and water-quality goals for the South Fork, Coeur d'Alene River – for many years – yet declare work in the Box, "complete"?

LC37-21
6) How much has EPA R-10 spent on the Feasibility Study for the proposed ROD Amemdment?

LC37-22
7) How much has EPA R-10 spent to date on the current 2002 BHSS OU3 ROD?

LC37-23
8) Why does EPA continue to propose remaining work needs are based on "human health" concerns – when the Basin already meets EPA's national standards for blood-lead levels for at-risk children, AND – more than 95% of priority yard removals have been completed in the Basin?

LC37-24
9) What Human Health threat or risk exists today – requiring EPA to justify its ROD Amendment, or at the very least, tell the regional citizenry (and regional/national media) that the Amendment is needed because of EPA's Human Health concerns – which Idaho does not share?

LC37-25
10) Why should the public and our elected officials in Idaho believe EPA's ROD Amendment can in fact, achieve any significant and meaningful, long-term results to Canyon Creek or Ninemile Creek water quality outputs (surface water or ground-water) – when the Silver Valley Natural Resource Trustees previously remediated both streams and their flood-plains using Best Management Practices and methods at that time back in the mid-late 1990's?

LC37-26
11) Why hasn't EPA provided any numerical data to justify its claims of significant declines to dissolved zinc concentrations in its

4

Response to comment LC37-17
See response to Comment No. I58-2.

Response to comment LC37-18
See response to Comment No. LC37-13. Regarding the relationship between the Selected Remedy and past RODs (there was no 1983 ROD), see the ROD Amendment, Part 2, Section 4.4.

Response to comment LC37-19
This question should be addressed to the State of Idaho.

Response to comment LC37-20
EPA has not concluded that work in the Bunker Hill Box is complete. As described in the ROD Amendment, Part 2, Section 12.0, the Selected Remedy includes considerable work in the Box, including the interception of contaminated groundwater in the vicinity of the Central Impoundment Area (CIA).

Response to comment LC37-21
Since 2009, EPA has spent approximately $3.5 million developing the technical basis for the Focused Feasibility Study (FFS) and the FFS Report (EPA, August 2012, *Final Focused Feasibility Study Report, Upper Basin of the Coeur d'Alene River, Bunker Hill Mining and Metallurgical Complex Superfund Site*).

Response to comment LC37-22
EPA has spent over $200,000,000 to date implementing cleanup actions selected by the 2002 OU3 ROD. A majority of the work implemented under the 2002 ROD has been on the residential yard cleanup in addition to several large mine and mill sites in the Upper Basin that represented a risk to human health.

Response to comment LC37-23
See response to Comment No. I295-1.

Response to comment LC37-24
EPA and other agencies have done many studies over the years that document the unacceptable human health risks posed by contamination in the Coeur d'Alene Basin. Although risks have been greatly reduced through cleanup

activities completed to date, more work is needed to address the continued transport of lead from Upper Basin sources, along the SFCDR floodplain and into Coeur d'Alene Lake. EPA is committed and required by CERCLA to address the remaining unacceptable human health risks in the Upper Basin.

Response to comment LC37-25

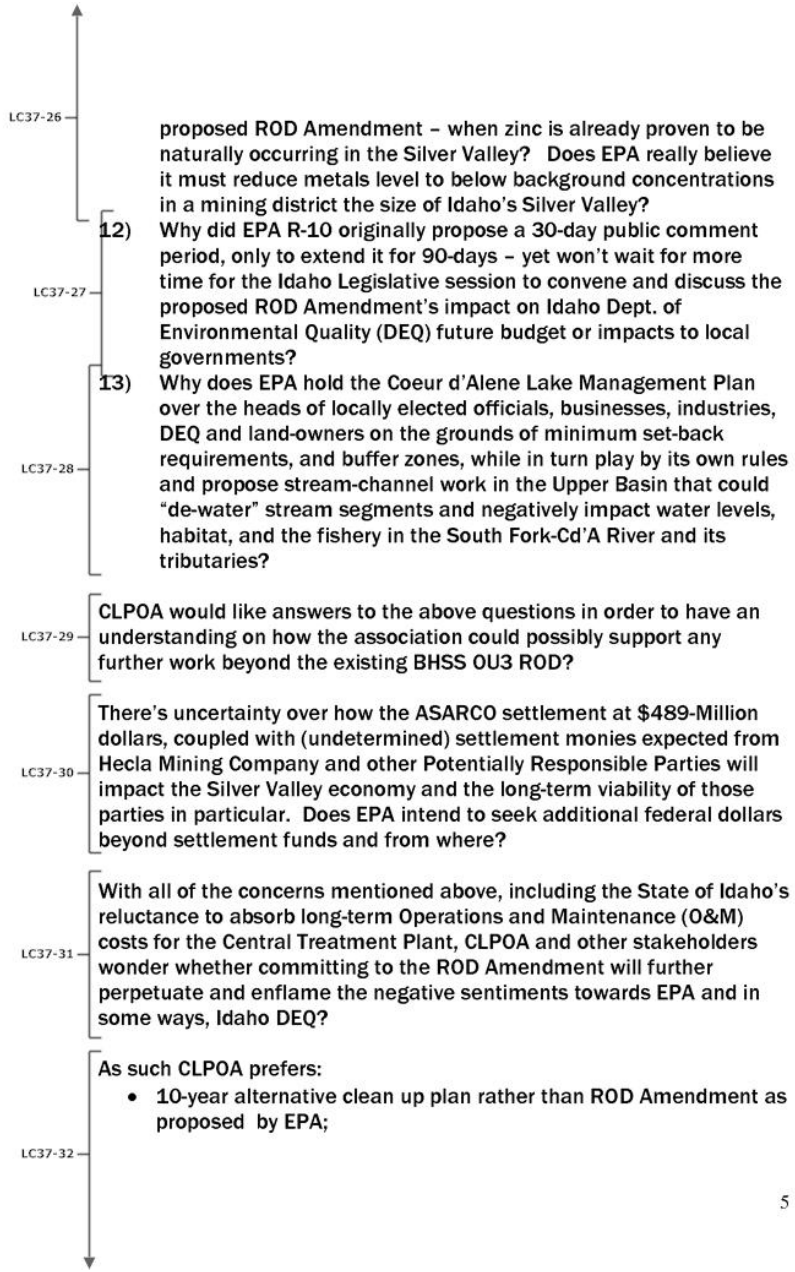
Although some work has been implemented by others in the Canyon Creek and Ninemile Creek drainages, considerably more work is required. The Upper Basin is a large area with complicated contamination issues that have evolved over a long period of time. The extent and nature of the contamination dictate that it will take substantial time and resources to clean up. The ROD Amendment provides details regarding the implementation approach for the Selected Remedy, including where the work starts and how it will proceed over time. With help from stakeholders and community members involved in the Basin Commission's Upper Basin Project Focus Team over the last several years, EPA developed a logical and transparent prioritization process for cleanup actions. Using this prioritization process, the Selected Remedy, an interim action, focuses on a prioritized set of cleanup actions. The actions include the most contaminated drainages (i.e., Ninemile and Canyon Creeks), areas that have the greatest adverse impact on groundwater and surface water (e.g., OU 2), and areas that provide protection for existing remedies. This process of prioritizing actions included in the Selected Remedy is consistent with the adaptive management approach.

Response to comment LC37-26

Since the Proposed Plan was issued, EPA has conducted a statistical evaluation of surface water data collected from selected monitoring stations in the Upper and Lower Basins. The methodology and results of this evaluation are documented in the *Draft Basin Environmental Monitoring Plan/ Environmental Monitoring Plan (BEMP/EMP) Surface Water Statistical Evaluation* (CH2M HILL, 2011). The evaluation sought to determine whether statistically significant trends in surface water quality are occurring. The evaluation examined station-specific trends over both the full period of the sampling record and the sampling period subsequent to 2002. Both measured variables (metals and nutrient concentrations) and calculated variables (ambient water quality criteria [AWQC], AWQC ratios, and loads) were included in the evaluation. Results from the evaluation indicate that metals concentrations, AWQC ratios, and metals loads show generally decreasing trends at most stations over the full period of the sampling record. However, results from the evaluation of post-2002 trends indicated the following:

- The majority of stations exhibit no significant post-2002 trends, suggesting that conditions are unchanging, based on what the post-2002 data can detect.
- The majority of stations have median post-2002 AWQC ratios that exceed 1, with five stations exceeding the dissolved zinc AWQC by more than 20 times and eight stations exceeding the dissolved cadmium AWQC by more than 20 times.

The evaluation concluded that unchanging trends, coupled with AWQC ratios significantly exceeding 1, suggest that conditions at the stations with the AWQC exceedances will likely continue to exceed AWQC without significant additional cleanup actions that target improvements in water quality. Regarding background conditions, see response to Comment No. LC33-8.



LC37-26

proposed ROD Amendment – when zinc is already proven to be naturally occurring in the Silver Valley? Does EPA really believe it must reduce metals level to below background concentrations in a mining district the size of Idaho's Silver Valley?

12) Why did EPA R-10 originally propose a 30-day public comment period, only to extend it for 90-days – yet won't wait for more time for the Idaho Legislative session to convene and discuss the proposed ROD Amendment's impact on Idaho Dept. of Environmental Quality (DEQ) future budget or impacts to local governments?

LC37-27

13) Why does EPA hold the Coeur d'Alene Lake Management Plan over the heads of locally elected officials, businesses, industries, DEQ and land-owners on the grounds of minimum set-back requirements, and buffer zones, while in turn play by its own rules and propose stream-channel work in the Upper Basin that could "de-water" stream segments and negatively impact water levels, habitat, and the fishery in the South Fork-Cd'A River and its tributaries?

LC37-28

LC37-29 CLPOA would like answers to the above questions in order to have an understanding on how the association could possibly support any further work beyond the existing BHSS OU3 ROD?

LC37-30 There's uncertainty over how the ASARCO settlement at $489-Million dollars, coupled with (undetermined) settlement monies expected from Hecla Mining Company and other Potentially Responsible Parties will impact the Silver Valley economy and the long-term viability of those parties in particular. Does EPA intend to seek additional federal dollars beyond settlement funds and from where?

LC37-31 With all of the concerns mentioned above, including the State of Idaho's reluctance to absorb long-term Operations and Maintenance (O&M) costs for the Central Treatment Plant, CLPOA and other stakeholders wonder whether committing to the ROD Amendment will further perpetuate and enflame the negative sentiments towards EPA and in some ways, Idaho DEQ?

LC37-32 As such CLPOA prefers:

- 10-year alternative clean up plan rather than ROD Amendment as proposed by EPA;

5

Response to comment LC37-27

EPA's decision-making process was a careful and collaborative effort consistent with the NCP. EPA included input from state and local governments, Tribes, other federal agencies, the Basin Commission, and the public. EPA has been, and will continue to be, committed to meaningful community participation throughout the Superfund process in the Coeur d'Alene Basin. Over the years, EPA has spent considerable time and energy to engage the public through all phases of our work. Most importantly, we have encouraged the public to provide comments and input on remedy selection. As required, EPA received public comments on its Proposed Plan and is now selecting a remedy. An initial public comment period of 30 days is required by CERCLA for Proposed Plans. Anticipating a great deal of public interest, EPA set the initial public comment period for the Upper Basin Proposed Plan at 45 days. In response to requests for extension, EPA extended the comment period an additional 90 days, for a total of 135 days. During this time, some members of the Idaho State Legislature reviewed and submitted formal comments on the Proposed Plan.

Response to comment LC37-28

See response to Comment Nos. LC33-10 and I54-8.

Response to comment LC37-29

Comment noted and addressed in responses to overall Coeur d'Alene Lakeshore Property Owners Association responses.

Response to comment LC37-30

Regarding funding and the anticipated effects on the economy, see responses to Comments Nos. I295-3 and I54-2.

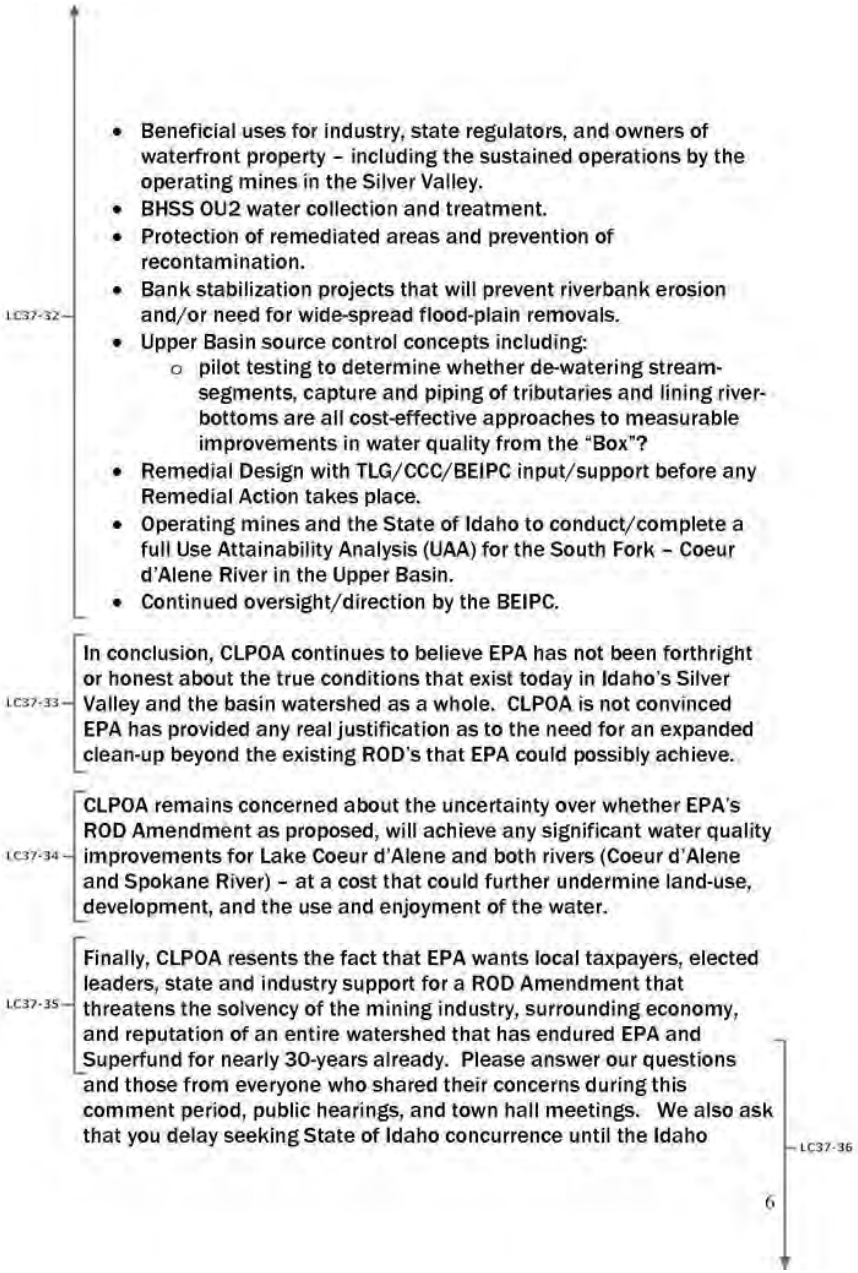
Response to comment LC37-31

EPA, as a federal agency, is obligated to make sound scientific decisions. EPA is dedicated to its mission and mandate to protect people's health and the environment, even if our actions are unpopular. EPA takes public input seriously and always considers the information and comments provided by citizens. EPA may, at times, make decisions that some people do not agree with. This does not mean that the agency is not listening to concerns or is carelessly disregarding

public input. In these instances, the agency is listening but has not heard or seen information which would cause a change in conclusions. In the case of this cleanup plan, EPA has made many significant changes in response to public comments.

Response to comment LC37-32

Comment noted. See responses to Comment Nos. I474-2 and I295-2.



- Beneficial uses for industry, state regulators, and owners of waterfront property – including the sustained operations by the operating mines in the Silver Valley.
- BHSS OU2 water collection and treatment.
- Protection of remediated areas and prevention of recontamination.
- Bank stabilization projects that will prevent riverbank erosion and/or need for wide-spread flood-plain removals.
- Upper Basin source control concepts including:
  - pilot testing to determine whether de-watering stream-segments, capture and piping of tributaries and lining river-bottoms are all cost-effective approaches to measurable improvements in water quality from the "Box"?
- Remedial Design with TLG/CCC/BEIPC input/support before any Remedial Action takes place.
- Operating mines and the State of Idaho to conduct/complete a full Use Attainability Analysis (UAA) for the South Fork – Coeur d'Alene River in the Upper Basin.
- Continued oversight/direction by the BEIPC.

LC37-32

In conclusion, CLPOA continues to believe EPA has not been forthright or honest about the true conditions that exist today in Idaho's Silver Valley and the basin watershed as a whole. CLPOA is not convinced EPA has provided any real justification as to the need for an expanded clean-up beyond the existing ROD's that EPA could possibly achieve.

LC37-33

CLPOA remains concerned about the uncertainty over whether EPA's ROD Amendment as proposed, will achieve any significant water quality improvements for Lake Coeur d'Alene and both rivers (Coeur d'Alene and Spokane River) – at a cost that could further undermine land-use, development, and the use and enjoyment of the water.

LC37-34

Finally, CLPOA resents the fact that EPA wants local taxpayers, elected leaders, state and industry support for a ROD Amendment that threatens the solvency of the mining industry, surrounding economy, and reputation of an entire watershed that has endured EPA and Superfund for nearly 30-years already. Please answer our questions and those from everyone who shared their concerns during this comment period, public hearings, and town hall meetings. We also ask that you delay seeking State of Idaho concurrence until the Idaho

LC37-35

LC37-36

6

Response to comment LC37-33

Despite the considerable cleanup that has already occurred, there remain considerable risks to human health and the environment in the Basin. Water quality levels throughout the Basin that are orders of magnitude above site-specific state standards and annual waterfowl mortality from lead are just two examples of these risks. EPA is required under CERCLA to address these unacceptable risks. The ROD Amendment, including the Selected Remedy, was developed in a manner consistent with the NCP, as required by CERCLA.

Response to comment LC37-34

EPA believes the Upper Basin Selected Remedy will significantly improve surface water quality in the SFCDR and its tributaries. In addition cleanup actions in the Lower Basin will be conducted in the future under other decision documents. Through the adaptive management process, EPA will monitor the effectiveness of the cleanup actions included in the remedy to determine whether cleanup goals are being achieved, and make adjustments to future cleanup actions to benefit from the information gained through the effectiveness monitoring, if necessary. As work in the Upper and Lower Basins proceeds, the information collected in the Basin monitoring program in combination with the lake monitoring being conducted by the state and Tribe will help inform the progress being made toward water quality improvements.

Response to comment LC37-35

See responses to Comment Nos. I58-5 and I474-1.

Response to comment LC37-36

EPA has responded to each comment received. See response to Comment No. LJ39-5.

LC37-36

Legislature convenes and understands the scope of the issues raised in the ROD Amendment. Thank you.

Sincerely,

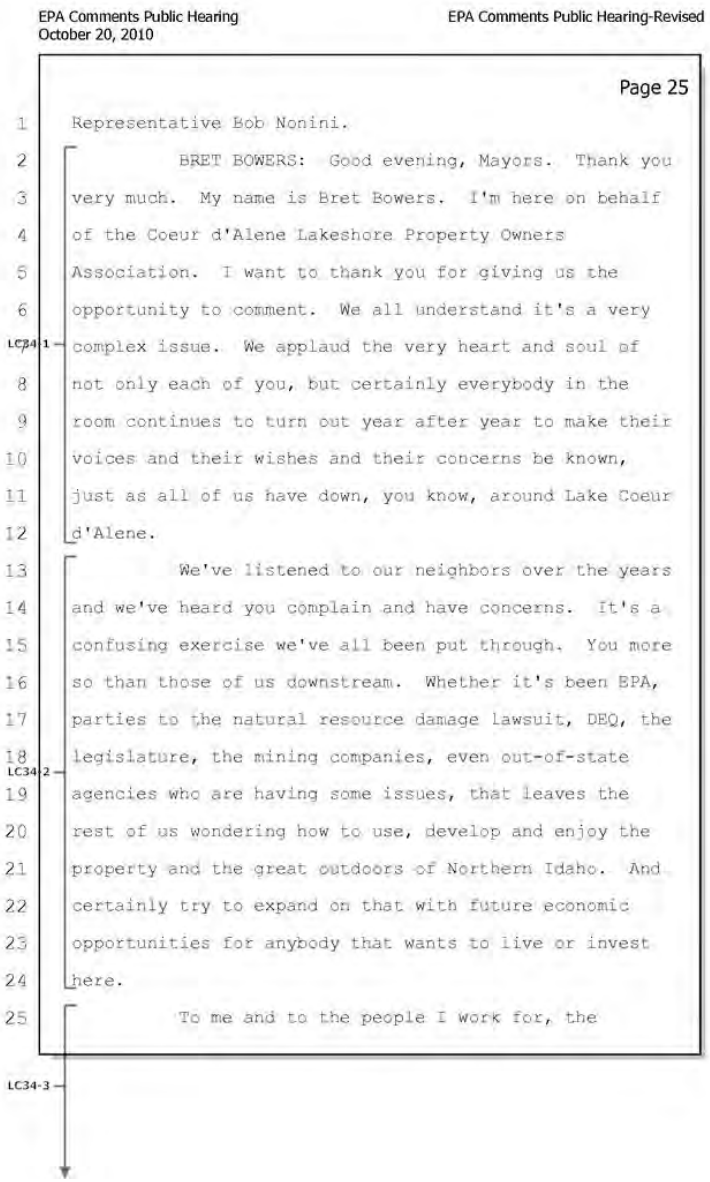
Bret Bowers, Exec. Director
CLPOA

CC: Idaho Governor C.L. "Butch" Otter
US Senator Mike Crapo
US Senator Jim Risch
Idaho State Legislators from Northern Idaho
Idaho DEQ Director Tony Hardesty
Kootenai County Commissioners
Shoshone County Commissioners
Benewah County Commissioners

7

No comments

Coeur d'Alene Lakeshore Property Owners Association, LC34, Letter 619651-11



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 25

Representative Bob Nonini.

BRET BOWERS: Good evening, Mayors. Thank you very much. My name is Bret Bowers. I'm here on behalf of the Coeur d'Alene Lakeshore Property Owners Association. I want to thank you for giving us the opportunity to comment. We all understand it's a very complex issue. We applaud the very heart and soul of not only each of you, but certainly everybody in the room continues to turn out year after year to make their voices and their wishes and their concerns be known, just as all of us have down, you know, around Lake Coeur d'Alene.

LC34-1

We've listened to our neighbors over the years and we've heard you complain and have concerns. It's a confusing exercise we've all been put through. You more so than those of us downstream. Whether it's been BPA, parties to the natural resource damage lawsuit, DEQ, the legislature, the mining companies, even out-of-state agencies who are having some issues, that leaves the rest of us wondering how to use, develop and enjoy the property and the great outdoors of Northern Idaho. And certainly try to expand on that with future economic opportunities for anybody that wants to live or invest here.

LC34-2

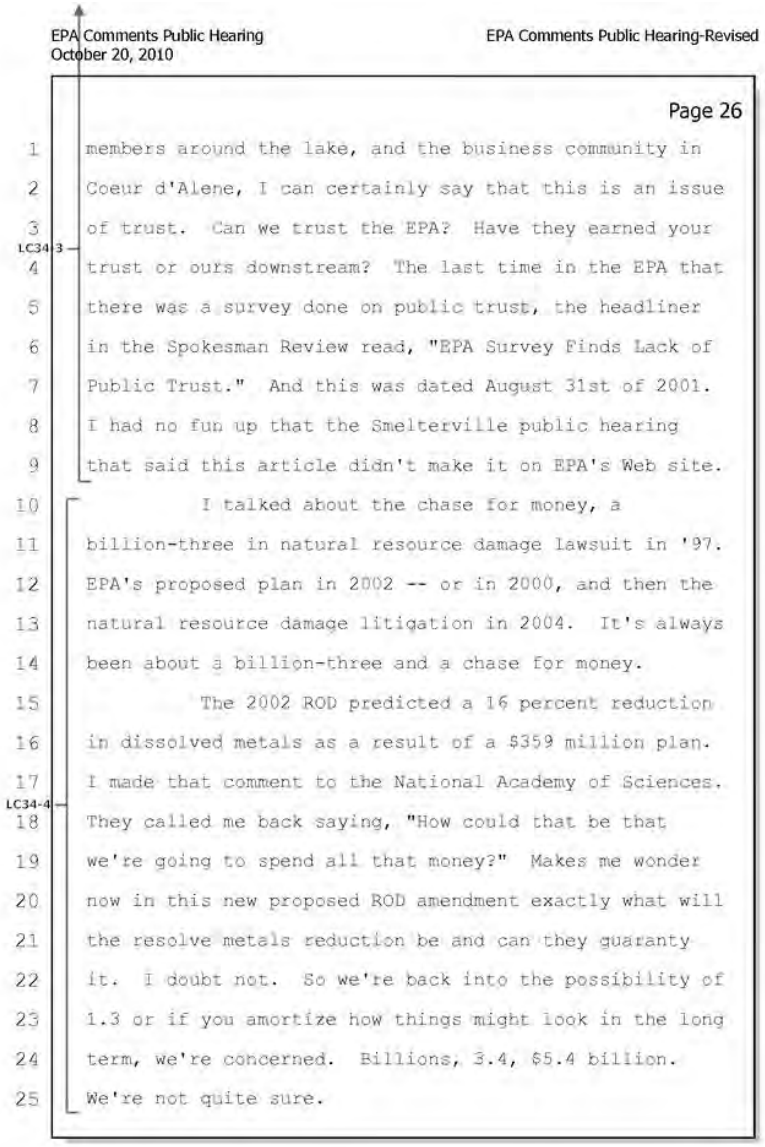
To me and to the people I work for, the

LC34-3

Response to comment LC34-1
Thank you for your comment.

Response to comment LC34-2
Thank you for your comment.

Response to comment LC34-3
Comment noted.



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 26

members around the lake, and the business community in Coeur d'Alene, I can certainly say that this is an issue of trust. Can we trust the EPA? Have they earned your trust or ours downstream? The last time in the EPA that there was a survey done on public trust, the headliner in the Spokesman Review read, "EPA Survey Finds Lack of Public Trust." And this was dated August 31st of 2001. I had no fun up that the Smelterville public hearing that said this article didn't make it on EPA's Web site.

I talked about the chase for money, a billion-three in natural resource damage lawsuit in '97. EPA's proposed plan in 2002 -- or in 2000, and then the natural resource damage litigation in 2004. It's always been about a billion-three and a chase for money.

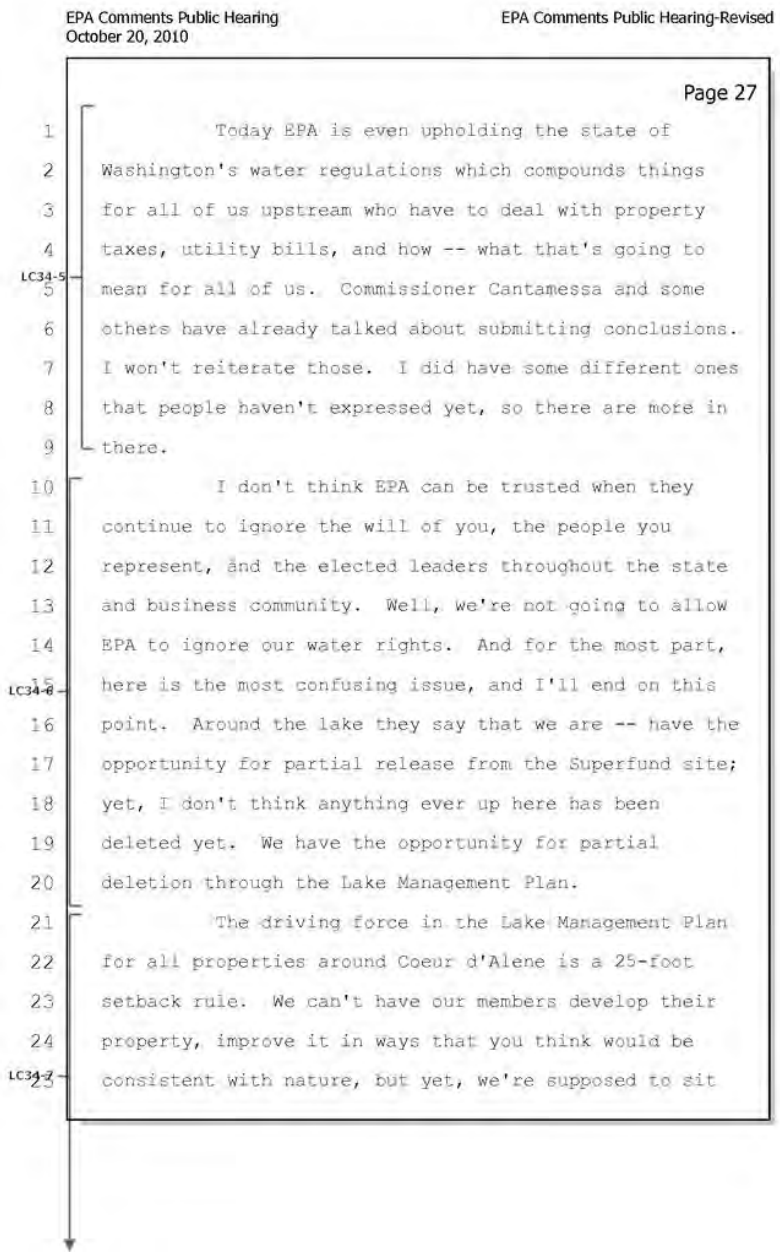
The 2002 ROD predicted a 16 percent reduction in dissolved metals as a result of a $359 million plan. I made that comment to the National Academy of Sciences. They called me back saying, "How could that be that we're going to spend all that money?" Makes me wonder now in this new proposed ROD amendment exactly what will the resolve metals reduction be and can they guaranty it. I doubt not. So we're back into the possibility of 1.3 or if you amortize how things might look in the long term, we're concerned. Billions, 3.4, $5.4 billion. We're not quite sure.

LC34-3

LC34-4

Response to comment LC34-4

See response to Comment No. I58-1.



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 27

Today EPA is even upholding the state of Washington's water regulations which compounds things for all of us upstream who have to deal with property taxes, utility bills, and how -- what that's going to mean for all of us. Commissioner Cantamessa and some others have already talked about submitting conclusions. I won't reiterate those. I did have some different ones that people haven't expressed yet, so there are more in there.

LC34-5

I don't think EPA can be trusted when they continue to ignore the will of you, the people you represent, and the elected leaders throughout the state and business community. Well, we're not going to allow EPA to ignore our water rights. And for the most part, here is the most confusing issue, and I'll end on this point. Around the lake they say that we are -- have the opportunity for partial release from the Superfund site; yet, I don't think anything ever up here has been deleted yet. We have the opportunity for partial deletion through the Lake Management Plan.

LC34-6

The driving force in the Lake Management Plan for all properties around Coeur d'Alene is a 25-foot setback rule. We can't have our members develop their property, improve it in ways that you think would be consistent with nature, but yet, we're supposed to sit

LC34-7

Response to comment LC34-5

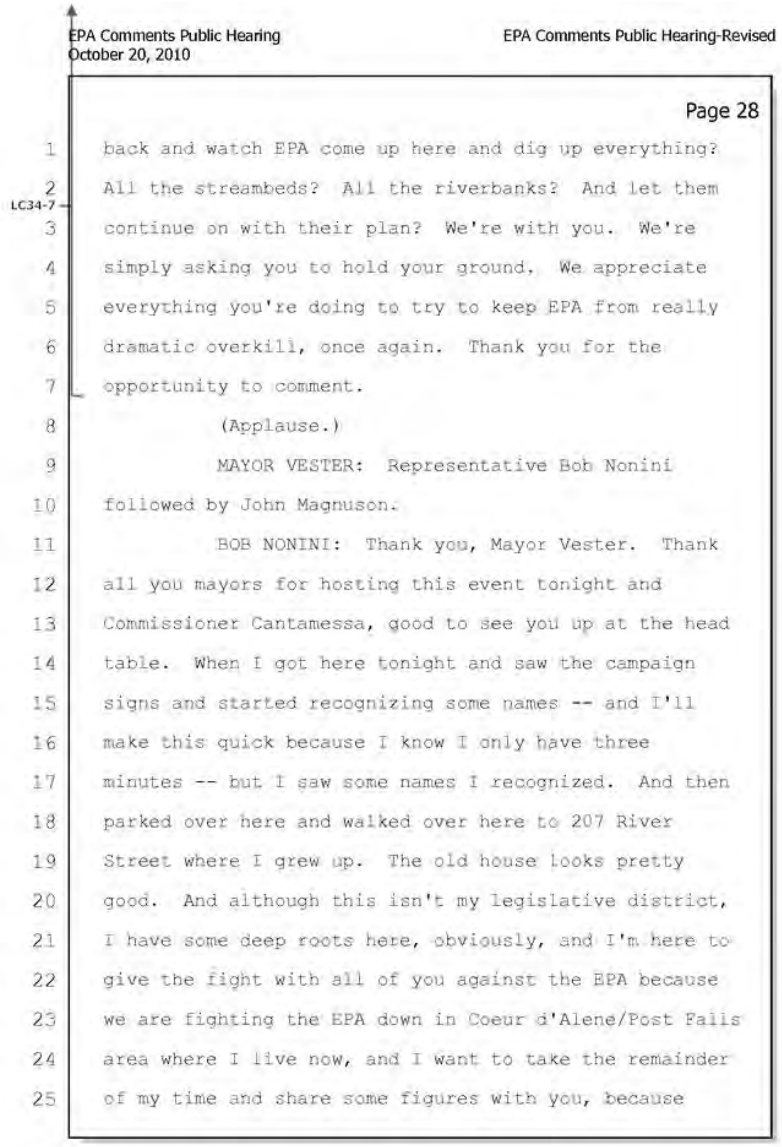
Comment noted.

Response to comment LC34-6

In regards to water rights, see response to Comment No. SA4-12 and the ROD Amendment, Part 3, Section 3.7.4.

Response to comment LC34-7

Comment noted.



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 28

back and watch EPA come up here and dig up everything? All the streambeds? All the riverbanks? And let them continue on with their plan? We're with you. We're simply asking you to hold your ground. We appreciate everything you're doing to try to keep EPA from really dramatic overkill, once again. Thank you for the opportunity to comment.

LC34-7

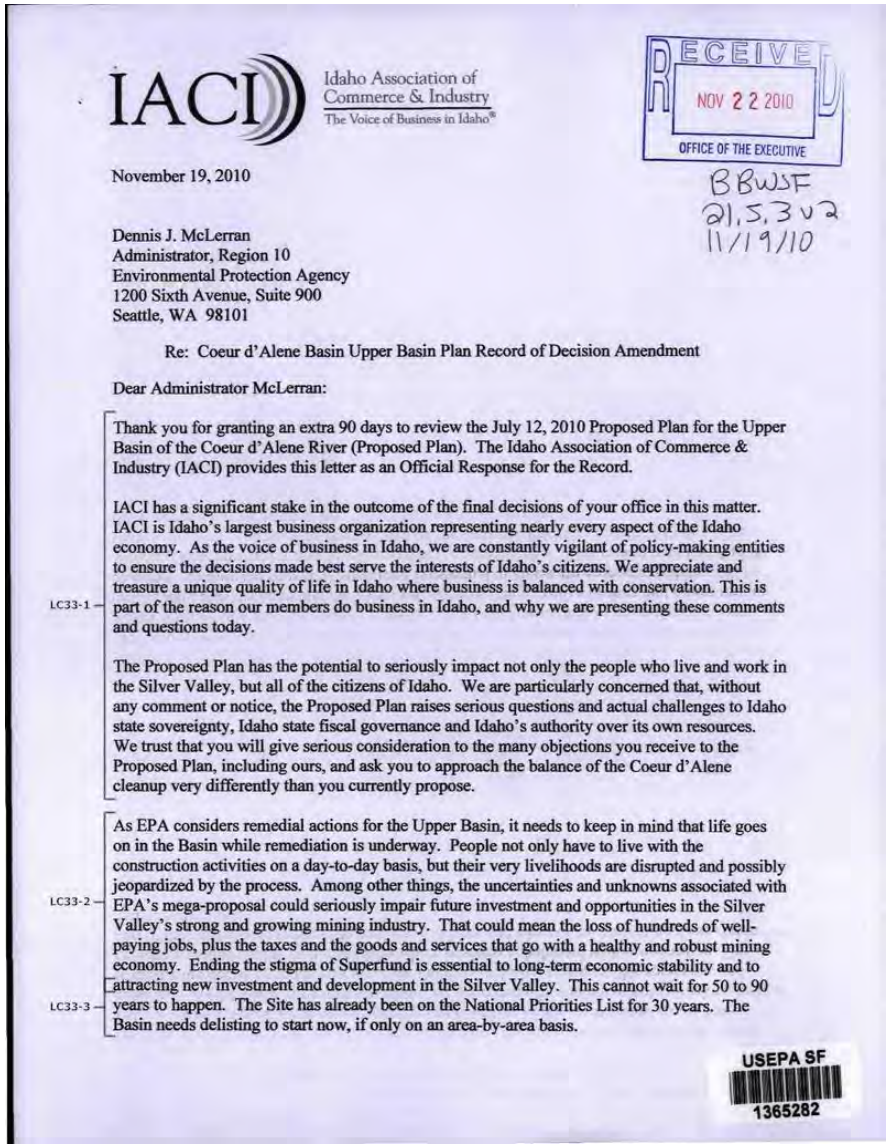
(Applause.)

MAYOR VESTER: Representative Bob Nonini followed by John Magnuson.

BOB NONINI: Thank you, Mayor Vester. Thank all you mayors for hosting this event tonight and Commissioner Cantamessa, good to see you up at the head table. When I got here tonight and saw the campaign signs and started recognizing some names -- and I'll make this quick because I know I only have three minutes -- but I saw some names I recognized. And then parked over here and walked over here to 207 River Street where I grew up. The old house looks pretty good. And although this isn't my legislative district, I have some deep roots here, obviously, and I'm here to give the fight with all of you against the EPA because we are fighting the EPA down in Coeur d'Alene/Post Falls area where I live now, and I want to take the remainder of my time and share some figures with you, because

No comments

Idaho Association of Commerce and Industry, LC33, Letter 1365282



IACI Idaho Association of Commerce & Industry
The Voice of Business in Idaho®

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November 19, 2010

Dennis J. McLerran
Administrator, Region 10
Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Re: Coeur d'Alene Basin Upper Basin Plan Record of Decision Amendment

Dear Administrator McLerran:

Thank you for granting an extra 90 days to review the July 12, 2010 Proposed Plan for the Upper Basin of the Coeur d'Alene River (Proposed Plan). The Idaho Association of Commerce & Industry (IACI) provides this letter as an Official Response for the Record.

IACI has a significant stake in the outcome of the final decisions of your office in this matter. IACI is Idaho's largest business organization representing nearly every aspect of the Idaho economy. As the voice of business in Idaho, we are constantly vigilant of policy-making entities to ensure the decisions made best serve the interests of Idaho's citizens. We appreciate and treasure a unique quality of life in Idaho where business is balanced with conservation. This is LC33-1 part of the reason our members do business in Idaho, and why we are presenting these comments and questions today.

The Proposed Plan has the potential to seriously impact not only the people who live and work in the Silver Valley, but all of the citizens of Idaho. We are particularly concerned that, without any comment or notice, the Proposed Plan raises serious questions and actual challenges to Idaho state sovereignty, Idaho state fiscal governance and Idaho's authority over its own resources. We trust that you will give serious consideration to the many objections you receive to the Proposed Plan, including ours, and ask you to approach the balance of the Coeur d'Alene cleanup very differently than you currently propose.

As EPA considers remedial actions for the Upper Basin, it needs to keep in mind that life goes on in the Basin while remediation is underway. People not only have to live with the construction activities on a day-to-day basis, but their very livelihoods are disrupted and possibly jeopardized by the process. Among other things, the uncertainties and unknowns associated with LC33-2 EPA's mega-proposal could seriously impair future investment and opportunities in the Silver Valley's strong and growing mining industry. That could mean the loss of hundreds of well-paying jobs, plus the taxes and the goods and services that go with a healthy and robust mining economy. Ending the stigma of Superfund is essential to long-term economic stability and to attracting new investment and development in the Silver Valley. This cannot wait for 50 to 90 LC33-3 years to happen. The Site has already been on the National Priorities List for 30 years. The Basin needs delisting to start now, if only on an area-by-area basis.

USEPA SF
1365282

Response to comment LC33-1

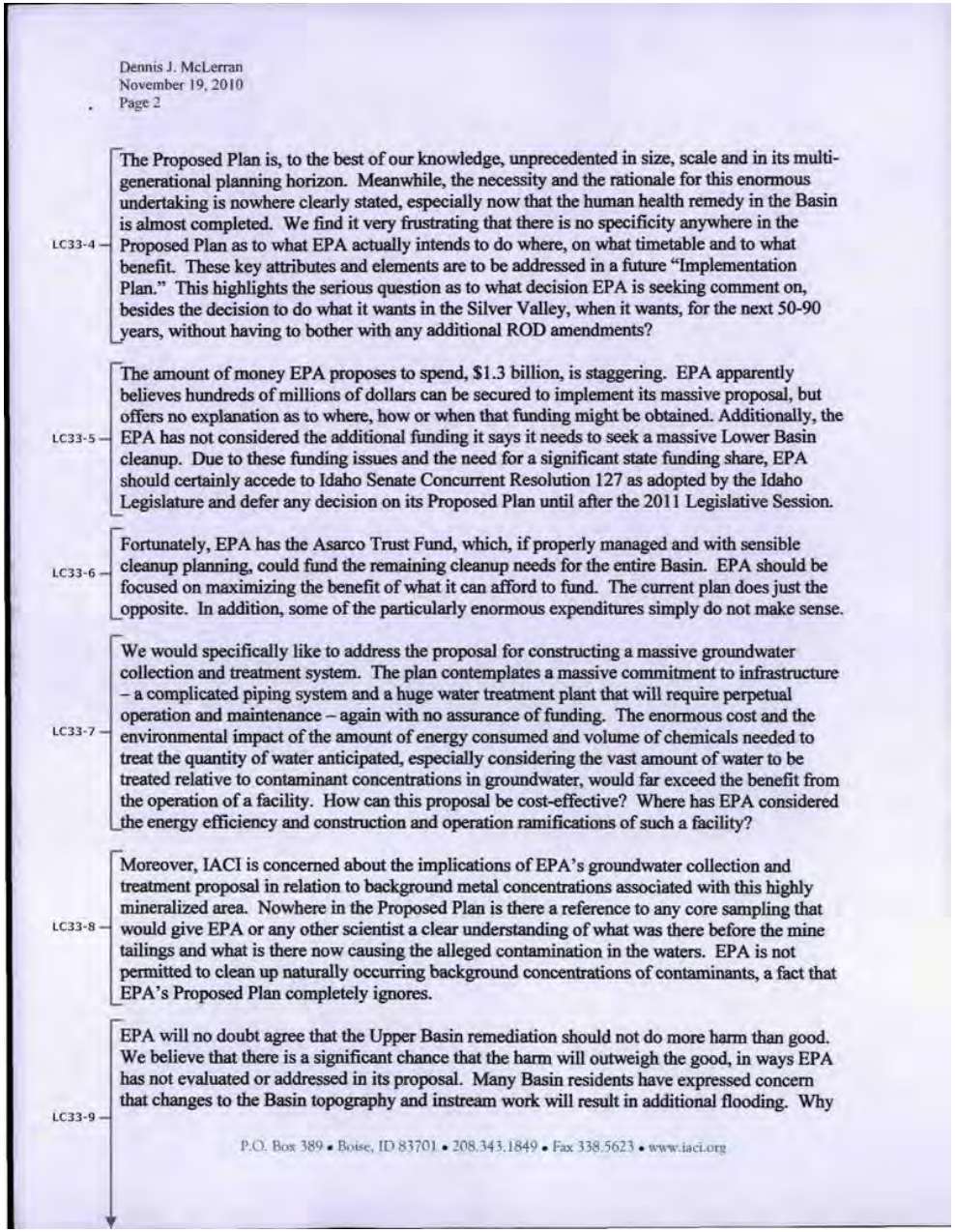
Comment noted. See responses to Comments Nos. I295-2, I54-6, and I58-1.

Response to comment LC33-2

See responses to Comment Nos. I474-1 and I58-5.

Response to comment LC33-3

It would be premature for EPA to de-list the Site or portions of the site. CERCLA allows EPA to de-list a site, or portions thereof, from the National Priority List only after EPA determines that no further cleanup actions are necessary. See response to Comment No. I58-1.



Dennis J. McLerran
November 19, 2010
Page 2

LC33-4 The Proposed Plan is, to the best of our knowledge, unprecedented in size, scale and in its multi-generational planning horizon. Meanwhile, the necessity and the rationale for this enormous undertaking is nowhere clearly stated, especially now that the human health remedy in the Basin is almost completed. We find it very frustrating that there is no specificity anywhere in the Proposed Plan as to what EPA actually intends to do where, on what timetable and to what benefit. These key attributes and elements are to be addressed in a future "Implementation Plan." This highlights the serious question as to what decision EPA is seeking comment on, besides the decision to do what it wants in the Silver Valley, when it wants, for the next 50-90 years, without having to bother with any additional ROD amendments?

LC33-5 The amount of money EPA proposes to spend, $1.3 billion, is staggering. EPA apparently believes hundreds of millions of dollars can be secured to implement its massive proposal, but offers no explanation as to where, how or when that funding might be obtained. Additionally, the EPA has not considered the additional funding it says it needs to seek a massive Lower Basin cleanup. Due to these funding issues and the need for a significant state funding share, EPA should certainly accede to Idaho Senate Concurrent Resolution 127 as adopted by the Idaho Legislature and defer any decision on its Proposed Plan until after the 2011 Legislative Session.

LC33-6 Fortunately, EPA has the Asarco Trust Fund, which, if properly managed and with sensible cleanup planning, could fund the remaining cleanup needs for the entire Basin. EPA should be focused on maximizing the benefit of what it can afford to fund. The current plan does just the opposite. In addition, some of the particularly enormous expenditures simply do not make sense.

LC33-7 We would specifically like to address the proposal for constructing a massive groundwater collection and treatment system. The plan contemplates a massive commitment to infrastructure – a complicated piping system and a huge water treatment plant that will require perpetual operation and maintenance – again with no assurance of funding. The enormous cost and the environmental impact of the amount of energy consumed and volume of chemicals needed to treat the quantity of water anticipated, especially considering the vast amount of water to be treated relative to contaminant concentrations in groundwater, would far exceed the benefit from the operation of a facility. How can this proposal be cost-effective? Where has EPA considered the energy efficiency and construction and operation ramifications of such a facility?

LC33-8 Moreover, IACI is concerned about the implications of EPA's groundwater collection and treatment proposal in relation to background metal concentrations associated with this highly mineralized area. Nowhere in the Proposed Plan is there a reference to any core sampling that would give EPA or any other scientist a clear understanding of what was there before the mine tailings and what is there now causing the alleged contamination in the waters. EPA is not permitted to clean up naturally occurring background concentrations of contaminants, a fact that EPA's Proposed Plan completely ignores.

LC33-9 EPA will no doubt agree that the Upper Basin remediation should not do more harm than good. We believe that there is a significant chance that the harm will outweigh the good, in ways EPA has not evaluated or addressed in its proposal. Many Basin residents have expressed concern that changes to the Basin topography and instream work will result in additional flooding. Why

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Response to comment LC33-4

See response to Comment No. I58-1. Regarding implementation of the Selected Remedy, see the ROD Amendment, Part 2, Section 12.3.

Response to comment LC33-5

See responses to Comment Nos. I58-1 and I58-2. Although the Lower Basin is not included in the Selected Remedy, actions in the Upper Basin are expected to improve water quality and reduce the movement of contaminated sediments downstream in the Lower Basin. Thus, the Upper Basin cleanup is expected to complement cleanup activities in the Lower Basin by reducing the flow of contaminated materials and reducing the potential for recontamination from the Upper Basin to the Lower Basin. EPA continues to pursue data collection and analysis efforts in the Lower Basin to support the future development and evaluation of remedial alternatives.

Response to comment LC33-6

See responses to I295-3 and I58-1.

Response to comment LC33-7

See responses to Comment Nos. I58-1, I295-3, and LC37-9. As described in the ROD Amendment, Part 2, Section 13.0, the Selected Remedy was determined to be cost effective.

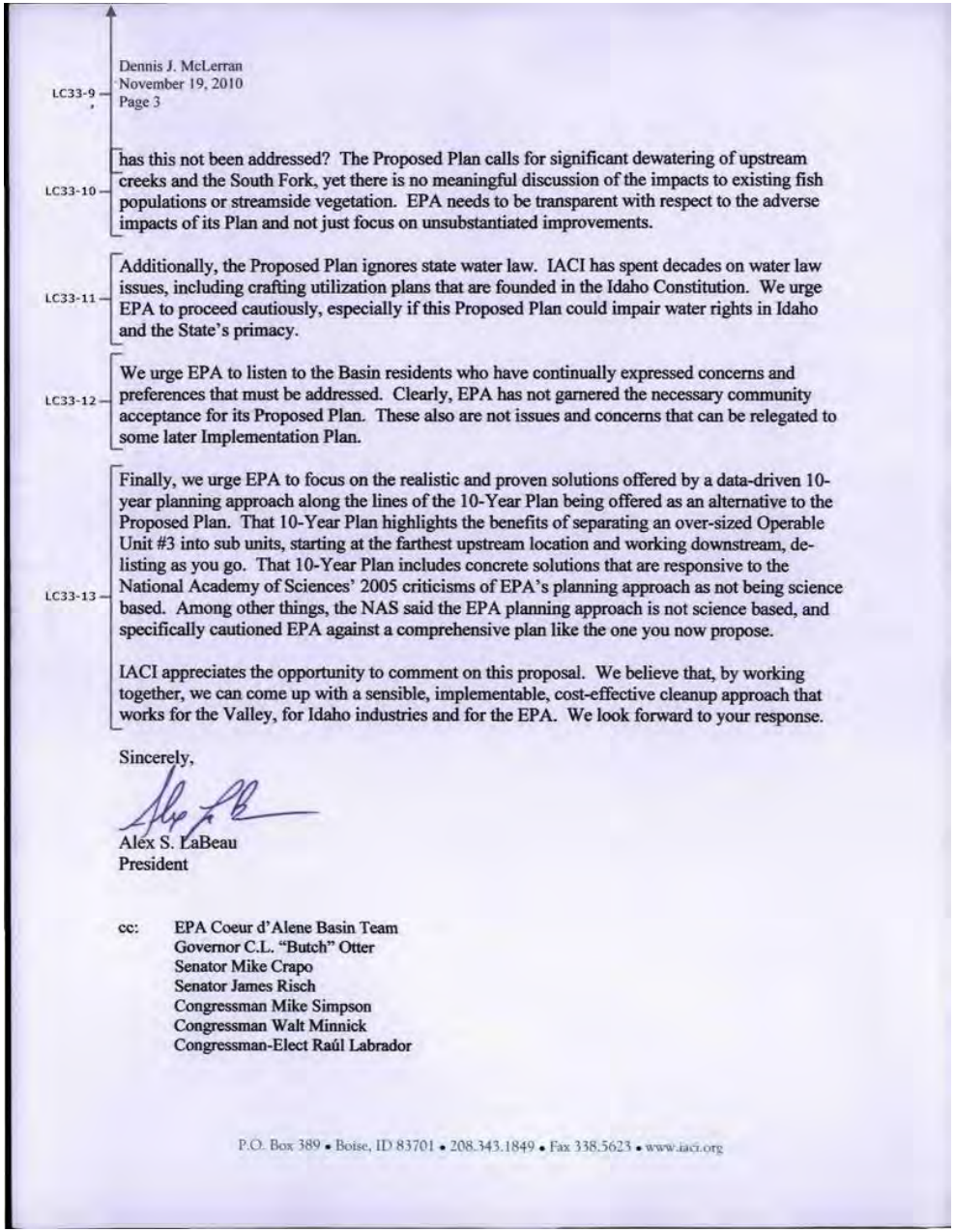
Response to comment LC33-8

EPA conducted extensive analyses and evaluations of background conditions as part of the OU 3 Remedial Investigation/Feasibility Study (RI/FS). These analyses and evaluations conclusively demonstrated that the dominant source of metals is from mining-related activities, not natural sources. A comprehensive analysis of background concentrations, representing more than 10,000 samples, can be found in the *Final Technical Memorandum (Revision 3) Estimation of Background Concentrations in Soil, Sediment, and Surface Water in the Coeur d'Alene and Spokane River Basins* (URS Greiner 2001). Because metals concentrations are naturally variable, the analysis quantified the range of background concentrations for each metal and selected the 90th percentile for soil and sediment and the 95th percentile for surface water as the representative

background concentrations. The background concentrations identified for the Upper Basin represent the most mineralized conditions and are different from background sediment concentrations for the Lower Basin, Coeur d'Alene Lake, and Spokane River. The background soil/sediment and surface water metals concentrations are far below, indeed are small fractions of, the existing concentrations in the mining-impacted media targeted for cleanup by the Selected Remedy. Furthermore, the background soil and sediment lead levels are far below the soil/sediment cleanup level (530 milligrams/kilogram) reflected in the Selected Remedy. As described in the ROD Amendment, the numerical cleanup criteria for soil and sediment may be revised as additional information becomes available.

Response to comment LC33-9

During site characterization, remedial design, and construction of remedy protection, source control, and water quality projects, EPA will continue to coordinate with local communities and flood control authorities, the Basin Commission, the U.S. Army Corp of Engineers, and the Federal Emergency Management Agency. This coordination will ensure that cleanup actions do not exacerbate flooding concerns along the SFCDR and Pine Creek, and will leverage future work by the various entities involved in SFCDR and Pine Creek activities.



Dennis J. McLerran
November 19, 2010
Page 3

LC33-9

has this not been addressed? The Proposed Plan calls for significant dewatering of upstream creeks and the South Fork, yet there is no meaningful discussion of the impacts to existing fish populations or streamside vegetation. EPA needs to be transparent with respect to the adverse impacts of its Plan and not just focus on unsubstantiated improvements.

LC33-10

Additionally, the Proposed Plan ignores state water law. IACI has spent decades on water law issues, including crafting utilization plans that are founded in the Idaho Constitution. We urge EPA to proceed cautiously, especially if this Proposed Plan could impair water rights in Idaho and the State's primacy.

LC33-11

We urge EPA to listen to the Basin residents who have continually expressed concerns and preferences that must be addressed. Clearly, EPA has not garnered the necessary community acceptance for its Proposed Plan. These also are not issues and concerns that can be relegated to some later Implementation Plan.

LC33-12

Finally, we urge EPA to focus on the realistic and proven solutions offered by a data-driven 10-year planning approach along the lines of the 10-Year Plan being offered as an alternative to the Proposed Plan. That 10-Year Plan highlights the benefits of separating an over-sized Operable Unit #3 into sub units, starting at the farthest upstream location and working downstream, de-listing as you go. That 10-Year Plan includes concrete solutions that are responsive to the National Academy of Sciences' 2005 criticisms of EPA's planning approach as not being science based. Among other things, the NAS said the EPA planning approach is not science based, and specifically cautioned EPA against a comprehensive plan like the one you now propose.

LC33-13

IACI appreciates the opportunity to comment on this proposal. We believe that, by working together, we can come up with a sensible, implementable, cost-effective cleanup approach that works for the Valley, for Idaho industries and for the EPA. We look forward to your response.

Sincerely,

Alex S. LaBeau
President

cc: EPA Coeur d'Alene Basin Team
Governor C.L. "Butch" Otter
Senator Mike Crapo
Senator James Risch
Congressman Mike Simpson
Congressman Walt Minnick
Congressman-Elect Raúl Labrador

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Response to comment LC33-10

See response to comment I54-8 for more information about surface water flows in Canyon Creek and the SFCDR. Additionally, the Selected Remedy, including the water collection portions of it, will not be implemented all at once but rather over a period of about 30 years. During this time, stream flow and biological monitoring will continue to support evaluations of remedial effectiveness and potential impacts of the Selected Remedy on things like stream flow, stream temperature, and ecosystem health. Adverse effects on animals and plants are not anticipated; though if observed, the Selected Remedy will be modified as needed to minimize such effects.

Response to comment LC33-11

See response to Comment No. SA4-12 and the ROD Amendment, Part 3, Section 3.7.4.

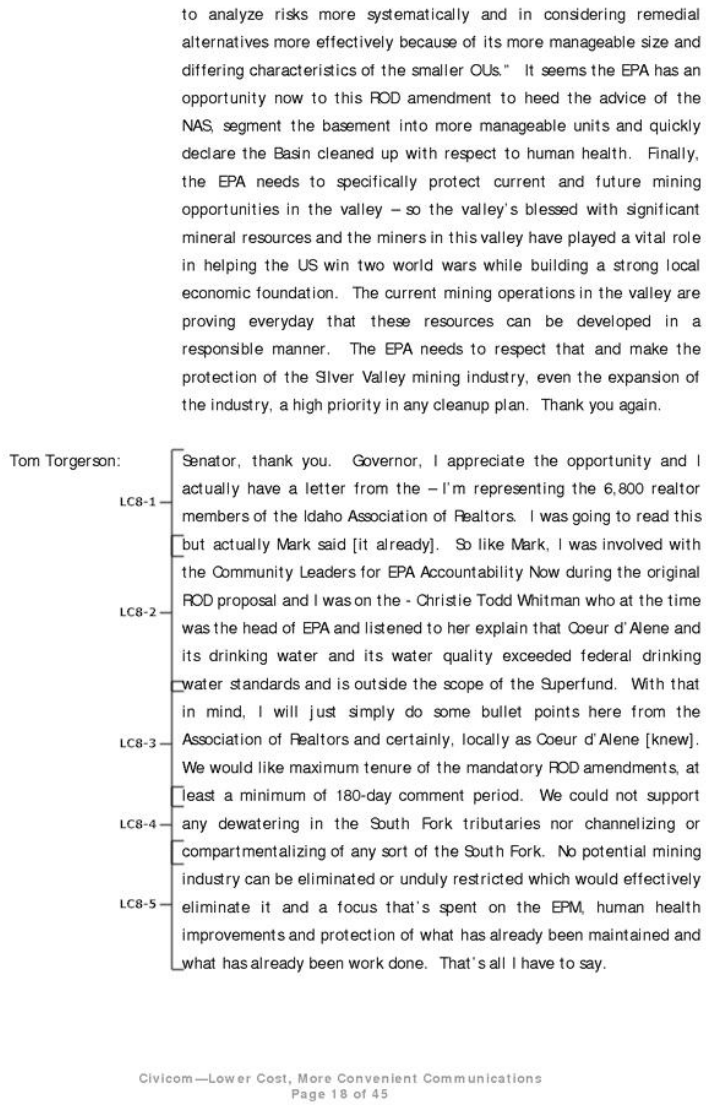
Response to comment LC33-12

EPA, as a federal agency, is obligated to make sound scientific decisions. EPA is dedicated to its mission and mandate to protect people's health and the environment, even if our actions are unpopular. EPA takes public input seriously and always considers the information and comments provided by citizens. EPA may, at times, make decisions that some people do not agree with. This does not mean that the agency is not listening to concerns or is carelessly disregarding public input. In these instances, the agency is listening but has not heard or seen information which would cause a change in conclusions. In the case of this cleanup plan, EPA has made many significant changes in response to public comments. See response to Comment No. I474-1.

Response to comment LC33-13

See response to Comment No. I474-2.

Idaho Association of Realtors, LC8, Letter 616015-13



to analyze risks more systematically and in considering remedial alternatives more effectively because of its more manageable size and differing characteristics of the smaller OUs." It seems the EPA has an opportunity now to this ROD amendment to heed the advice of the NAS, segment the basement into more manageable units and quickly declare the Basin cleaned up with respect to human health. Finally, the EPA needs to specifically protect current and future mining opportunities in the valley – so the valley's blessed with significant mineral resources and the miners in this valley have played a vital role in helping the US win two world wars while building a strong local economic foundation. The current mining operations in the valley are proving everyday that these resources can be developed in a responsible manner. The EPA needs to respect that and make the protection of the Silver Valley mining industry, even the expansion of the industry, a high priority in any cleanup plan. Thank you again.

Tom Torgerson: Senator, thank you. Governor, I appreciate the opportunity and I
LC8-1 actually have a letter from the – I'm representing the 6,800 realtor members of the Idaho Association of Realtors. I was going to read this but actually Mark said [it already]. So like Mark, I was involved with the Community Leaders for EPA Accountability Now during the original
LC8-2 ROD proposal and I was on the - Christie Todd Whitman who at the time was the head of EPA and listened to her explain that Coeur d'Alene and its drinking water and its water quality exceeded federal drinking water standards and is outside the scope of the Superfund. With that in mind, I will just simply do some bullet points here from the
LC8-3 Association of Realtors and certainly, locally as Coeur d'Alene [knew]. We would like maximum tenure of the mandatory ROD amendments, at least a minimum of 180-day comment period. We could not support
LC8-4 any dewatering in the South Fork tributaries nor channelizing or compartmentalizing of any sort of the South Fork. No potential mining industry can be eliminated or unduly restricted which would effectively
LC8-5 eliminate it and a focus that's spent on the EPM, human health improvements and protection of what has already been maintained and what has already been work done. That's all I have to say.

Civicom—Lower Cost, More Convenient Communications
Page 18 of 45

Response to comment LC8-1

Thank you for your comment.

Response to comment LC8-2

The comment appears to refer to the 2002 ROD for OU 3 (EPA, 2002; www.epa.gov/superfund/sites/rods/fulltext/r1002032.pdf) and a decision regarding Coeur d'Alene Lake. The 2002 ROD concluded (Part 2, Section 12.3) that "Coeur d'Alene Lake is not included in the Selected Remedy. State, tribal, federal, and local governments are currently in the process of implementing a lake management plan outside of the Superfund process using separate regulatory authorities." That continues to be EPA's position. See also the ROD Amendment, Part 2, Section 8.0 for additional details regarding remedial action objectives and cleanup levels.

Response to comment LC8-3

See response to Comment No. I54-6. The input EPA has received has been instrumental in the changes made to the Upper Basin cleanup plan since the Proposed Plan was issued. The ongoing involvement of the community will be an important part of the cleanup as it moves forward.

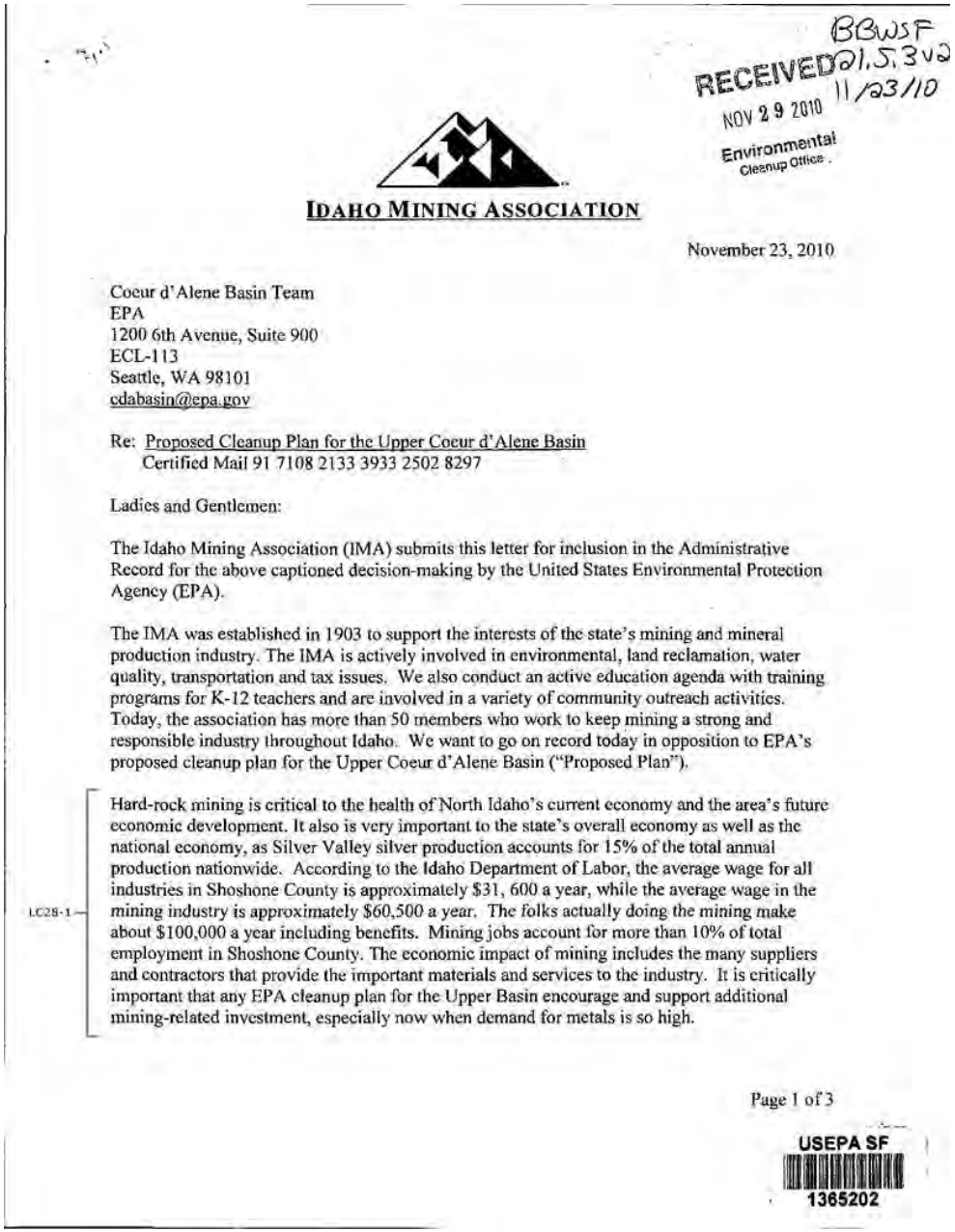
Response to comment LC8-4

See responses to Comment Nos. I54-8 and I828-10.

Response to comment LC8-5

See response to Comment No. I58-5.

Idaho Mining Association, LC28, Letter 1365202



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Environmental Cleanup Office

IDAHO MINING ASSOCIATION

November 23, 2010

Coeur d'Alene Basin Team
EPA
1200 6th Avenue, Suite 900
ECL-113
Seattle, WA 98101
cdabasin@epa.gov

Re: Proposed Cleanup Plan for the Upper Coeur d'Alene Basin
Certified Mail 91 7108 2133 3933 2502 8297

Ladies and Gentlemen:

The Idaho Mining Association (IMA) submits this letter for inclusion in the Administrative Record for the above captioned decision-making by the United States Environmental Protection Agency (EPA).

The IMA was established in 1903 to support the interests of the state's mining and mineral production industry. The IMA is actively involved in environmental, land reclamation, water quality, transportation and tax issues. We also conduct an active education agenda with training programs for K-12 teachers and are involved in a variety of community outreach activities. Today, the association has more than 50 members who work to keep mining a strong and responsible industry throughout Idaho. We want to go on record today in opposition to EPA's proposed cleanup plan for the Upper Coeur d'Alene Basin ("Proposed Plan").

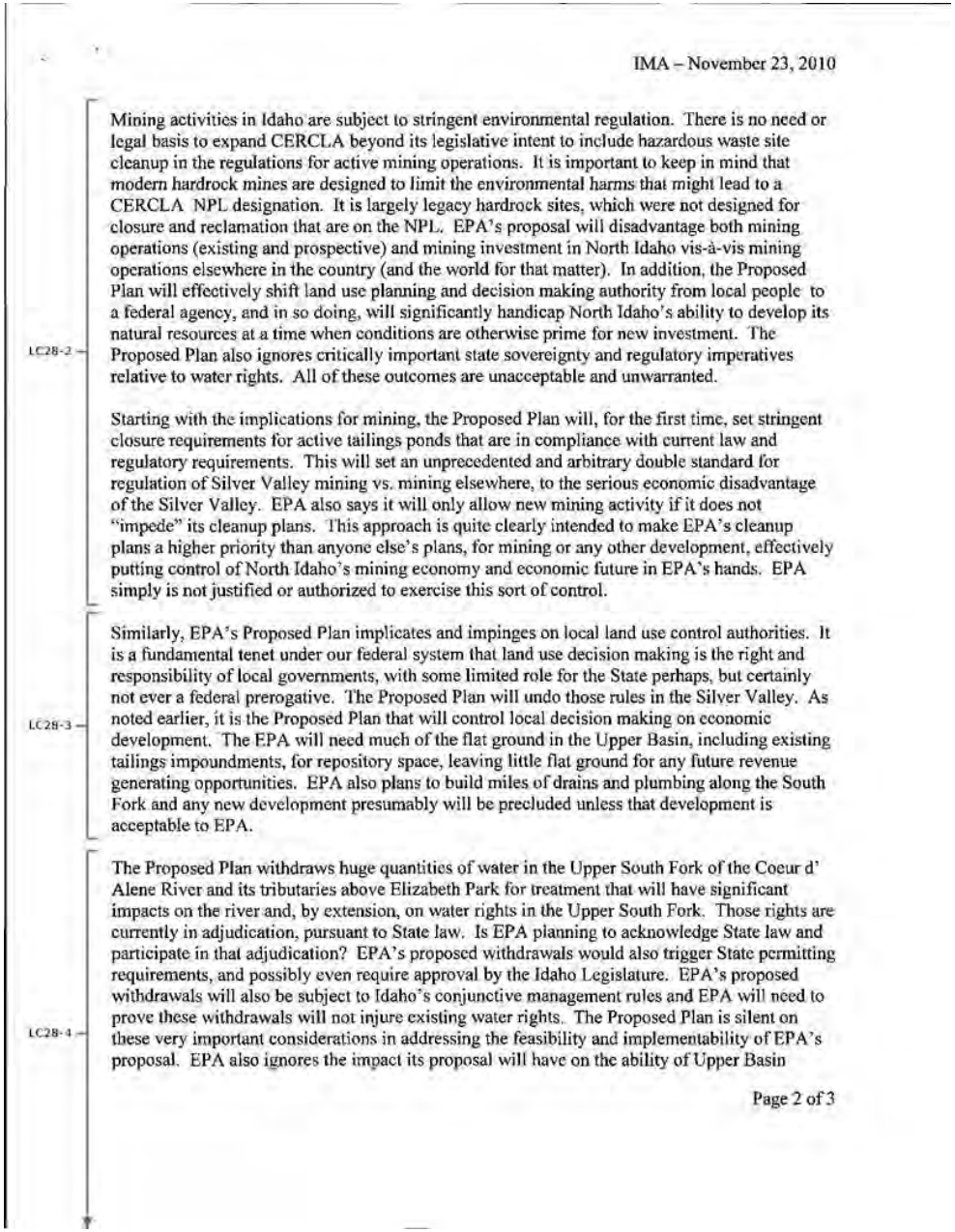
LC28-1 — Hard-rock mining is critical to the health of North Idaho's current economy and the area's future economic development. It also is very important to the state's overall economy as well as the national economy, as Silver Valley silver production accounts for 15% of the total annual production nationwide. According to the Idaho Department of Labor, the average wage for all industries in Shoshone County is approximately $31, 600 a year, while the average wage in the mining industry is approximately $60,500 a year. The folks actually doing the mining make about $100,000 a year including benefits. Mining jobs account for more than 10% of total employment in Shoshone County. The economic impact of mining includes the many suppliers and contractors that provide the important materials and services to the industry. It is critically important that any EPA cleanup plan for the Upper Basin encourage and support additional mining-related investment, especially now when demand for metals is so high.

Page 1 of 3

USEPA SF
1365202

Response to comment LC28-1

The comment stresses the importance of hard-rock mining to northern Idaho and the country. EPA recognizes this importance and does not seek to impede it. Regarding EPA's commitment to working with the mining during the Upper Basin cleanup, see the ROD Amendment, Part 3, Section 3.1.3.



IMA – November 23, 2010

Mining activities in Idaho are subject to stringent environmental regulation. There is no need or legal basis to expand CERCLA beyond its legislative intent to include hazardous waste site cleanup in the regulations for active mining operations. It is important to keep in mind that modern hardrock mines are designed to limit the environmental harms that might lead to a CERCLA NPL designation. It is largely legacy hardrock sites, which were not designed for closure and reclamation that are on the NPL. EPA's proposal will disadvantage both mining operations (existing and prospective) and mining investment in North Idaho vis-à-vis mining operations elsewhere in the country (and the world for that matter). In addition, the Proposed Plan will effectively shift land use planning and decision making authority from local people to a federal agency, and in so doing, will significantly handicap North Idaho's ability to develop its natural resources at a time when conditions are otherwise prime for new investment. The LC28-2 Proposed Plan also ignores critically important state sovereignty and regulatory imperatives relative to water rights. All of these outcomes are unacceptable and unwarranted.

Starting with the implications for mining, the Proposed Plan will, for the first time, set stringent closure requirements for active tailings ponds that are in compliance with current law and regulatory requirements. This will set an unprecedented and arbitrary double standard for regulation of Silver Valley mining vs. mining elsewhere, to the serious economic disadvantage of the Silver Valley. EPA also says it will only allow new mining activity if it does not "impede" its cleanup plans. This approach is quite clearly intended to make EPA's cleanup plans a higher priority than anyone else's plans, for mining or any other development, effectively putting control of North Idaho's mining economy and economic future in EPA's hands. EPA simply is not justified or authorized to exercise this sort of control.

Similarly, EPA's Proposed Plan implicates and impinges on local land use control authorities. It is a fundamental tenet under our federal system that land use decision making is the right and responsibility of local governments, with some limited role for the State perhaps, but certainly not ever a federal prerogative. The Proposed Plan will undo those rules in the Silver Valley. As LC28-3 noted earlier, it is the Proposed Plan that will control local decision making on economic development. The EPA will need much of the flat ground in the Upper Basin, including existing tailings impoundments, for repository space, leaving little flat ground for any future revenue generating opportunities. EPA also plans to build miles of drains and plumbing along the South Fork and any new development presumably will be precluded unless that development is acceptable to EPA.

The Proposed Plan withdraws huge quantities of water in the Upper South Fork of the Coeur d' Alene River and its tributaries above Elizabeth Park for treatment that will have significant impacts on the river and, by extension, on water rights in the Upper South Fork. Those rights are currently in adjudication, pursuant to State law. Is EPA planning to acknowledge State law and participate in that adjudication? EPA's proposed withdrawals would also trigger State permitting requirements, and possibly even require approval by the Idaho Legislature. EPA's proposed withdrawals will also be subject to Idaho's conjunctive management rules and EPA will need to prove these withdrawals will not injure existing water rights. The Proposed Plan is silent on LC28-4 these very important considerations in addressing the feasibility and implementability of EPA's proposal. EPA also ignores the impact its proposal will have on the ability of Upper Basin

Page 2 of 3

Response to comment LC28-2

The comment objects to extending CERCLA into the regulation of active mining activities and goes on to pose potential negative outcomes. Neither the Preferred Alternative in the Proposed Plan nor the Selected Remedy would regulate mining activities. Moreover, in response to public comments and concerns, EPA reduced the scope of the Selected Remedy. The Selected Remedy does not include cleanup actions at sites considered "Active Facilities." "Active Facilities" are defined as sites where industrial and/or commercial activities are currently occurring. At some of these sites, access controls and/or Institutional Controls Program (ICP) protective barriers are in place that prevent or minimize direct contact with source materials. In addition to the presence of in-place measures to reduce direct-contact risk, the active sites are typically overseen by regulatory agencies outside of CERCLA. This identification of "Active Facilities" was developed through cooperation between EPA, IDEQ, and the community members and stakeholders involved in the Basin Commission's Upper Basin Project Focus Team.

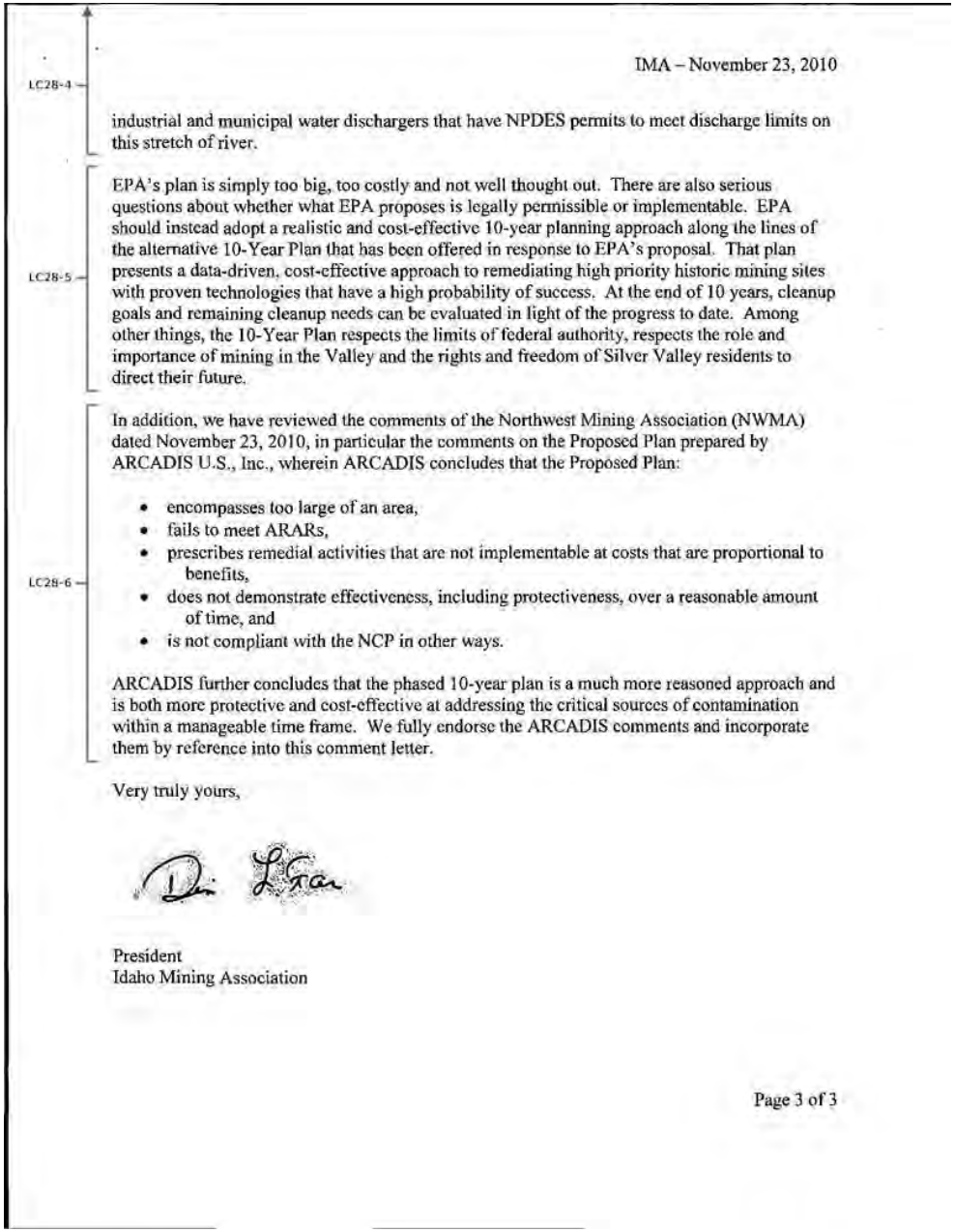
Response to comment LC28-3

The comment poses that the remedial approach will unduly restrict local land use authorities. The comment fails to describe the undue restriction, and it is not readily apparent. EPA does not believe the Selected Remedy will unduly interfere or restrict future land use. EPA does recognize that limitations on future land use may be necessary where implementation of a remedial action is not protective of all uses (e.g., residential use) of the property. In such instances, limitations to those uses that are protective would be appropriate. As described in the ROD Amendment, Part 3 Section 3.1.2, EPA believes the cleanup will benefit the local economy in a variety of ways, and is committed to working with the mining industry and Silver Valley businesses and landowners to conduct the cleanup in ways that are consistent with the current and future land uses desired by the community.

Response to comment LC28-4

The comment concludes that cleanup will result in huge water withdrawals from the Upper Basin and consequent negative effects. EPA disagrees with this

conclusion as described in detail in the ROD Amendment, Part 3, Section 3.7.3. EPA received notice of the Northern Idaho Adjudication in August of 2011. However, and consistent with the terms of the notice, EPA is not yet required to participate in the adjudication since any permit application EPA may submit would be filed after November 12, 2008, the cut-off date for requiring participation in the adjudication. See response to comment SA4-12.



IMA – November 23, 2010

LC28-4

industrial and municipal water dischargers that have NPDES permits to meet discharge limits on this stretch of river.

LC28-5

EPA's plan is simply too big, too costly and not well thought out. There are also serious questions about whether what EPA proposes is legally permissible or implementable. EPA should instead adopt a realistic and cost-effective 10-year planning approach along the lines of the alternative 10-Year Plan that has been offered in response to EPA's proposal. That plan presents a data-driven, cost-effective approach to remediating high priority historic mining sites with proven technologies that have a high probability of success. At the end of 10 years, cleanup goals and remaining cleanup needs can be evaluated in light of the progress to date. Among other things, the 10-Year Plan respects the limits of federal authority, respects the role and importance of mining in the Valley and the rights and freedom of Silver Valley residents to direct their future.

LC28-6

In addition, we have reviewed the comments of the Northwest Mining Association (NWMA) dated November 23, 2010, in particular the comments on the Proposed Plan prepared by ARCADIS U.S., Inc., wherein ARCADIS concludes that the Proposed Plan:

- encompasses too large of an area,
- fails to meet ARARs,
- prescribes remedial activities that are not implementable at costs that are proportional to benefits,
- does not demonstrate effectiveness, including protectiveness, over a reasonable amount of time, and
- is not compliant with the NCP in other ways.

ARCADIS further concludes that the phased 10-year plan is a much more reasoned approach and is both more protective and cost-effective at addressing the critical sources of contamination within a manageable time frame. We fully endorse the ARCADIS comments and incorporate them by reference into this comment letter.

Very truly yours,

President
Idaho Mining Association

Page 3 of 3

Response to comment LC28-5

The comment criticizes cleanup as too big and too costly. CERCLA and its implementing regulations, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), tailor cleanup to the problems being addressed. Due to the large size and complexity of the Upper Basin, with massive contamination released to the environment over a long period, it is expected that a large cleanup scope requiring considerable money is necessary to protect human health and the environment. Furthermore, in response to comments, EPA has significantly reduced the scope of the Selected Remedy, and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. This is described in detail in ROD Amendment, Part 3, Section 2.0. The comment also concludes that the cleanup plan is not well thought-out nor legally permissible or implementable. EPA disagrees. As described at length in the Proposed Plan and ROD Amendment, EPA's remedy selection process was conducted in a thoughtful, legally defensible manner consistent with the NCP. As part of this remedy evaluation process, EPA determined that the Selected Remedy is implementable. The comment also endorses the "10-Year Plan," apparently a reference to the Hecla 10-Year Plan. As described in the ROD Amendment, Part 3, Section 3.10.4, EPA evaluated this plan and concluded that it is not sufficiently comprehensive in nature to protect human health and the environment throughout the Upper Basin.

Response to comment LC28-6

The comment endorses the ARCADIS comments regarding the Proposed Plan. For EPA's response, see responses to Document No. LC17.

Idaho Mining Association, LC6, Letter 616015-11

considerations can be finalized. I appreciate Senator Risch and Congressman Minnick requesting the 90 days but we would request at least to the mid end of the 2011 legislative session. Thank you.

Mary Lou Shepard: I have great concerns with vast magnitude of the EPA cleanup plan and I wonder, how can this possibly work with the cost running over so many years? How do we really know what will be happening during the period technology-[wide]? Will there be better plans to come along that are not known at this time? How can Hecla and the other operating mines plan for their future with so much unknown ahead of them? EPA proposes a management plan that gives them, that means the EPA, the opportunity to change the plan every five years without any additional public input. I believe this gives me the greatest heartburn of it all. I firmly believe that any changes must be clearly laid out and very clearly explained to the public. There's a huge need for this county to return to the era when Shoshone County paid among the highest taxes to the state of Idaho at any time. We simply cannot do this without our good-paying mining jobs. EPA tells us that they bring good-paying jobs but ladies and gentlemen, these are seasonal jobs but what about the mining industry jobs which are lost because of it? Do they not supply good-paying jobs, ones that also make for additional input that trickledown effect? These mines have kept this county alive and prosperous for many years and can certainly do so again. Thank you very much for being here.

Jack Lyman: I'm Jack Lyman, the Executive Vice President of Idaho Mining Association. The Silver Valley, the mining industry employs hundreds of people and pays millions of dollars in wages, benefits and taxes. These high-paying jobs sustain local families and support many if not most of the businesses operating in this area. The modern mining industry recognizes the role it must play in addressing the historic impacts of past mining and pledges to work cooperatively with all of the interested parties to find workable solutions. EPA's proposed plan LC6-1 will dramatically alter the regulatory framework and the government's decision-making authority in ways that are clearly unreasonable and [pose] cost on the industry will make it uncompetitive and raises critical legal issues. The proposed plan will impact current mining by

Response to comment LC6-1

See response to Comment No. I58-5.

LC6-1 setting enclosure rules for active tailings ponds that are already in compliance with all applicable requirements. This heightened level of regulation imposes significant additional cost and makes it uncompetitive. The proposed plan will shape the region's economic future by withdrawing huge quantities of ground water for treatments.

LC6-2 There's EPA plan to comply with state water law for will it ignore them in an unprecedented federal seizure of that water. We are also concerned of the proposed plan [and search] Local Land Use Planning Authority. Let me reiterate the mining industry's commitment to seeking solutions to these issues that will work for all the parties involved.

LC6-3 We recommend EPA go back to the drawing board to develop a realistic cost-effective proposal that reflects the appropriate limits of federal authority, recognizes the importance of maintaining a viable mining industry in the Silver Valley and respects the freedoms of the residents of the Silver Valley and the right to direct their own future.

Mark Compton: Hi, I am Mark Compton. I am with the Northwest Mining Association here representing our 1,800 members. I want to thank you all for being here tonight. I don't think this plan was actually written over the last eighteen months by the EPA. I think it was actually written about eight years ago and it's just been in the bottom drawer of the shelf since then. When the current ROD was negotiated, the EPA stated at that time that the cleanup could potentially take up to 100 years and cost more than $1 billion but the EPA also knew that they could never get buy-in from the local community or the state of Idaho for a plan of such epic proportions. So the 30-year ROD was agreed to knowing that you would evaluate the status of the cleanup at periodic intervals and make adjustments but I find it discontinuous of the EPA to come back to this community after only eight years and say, "We now learned enough to expand the cleanup for 50 to 90 years." It appears the EPA took what it could get in 2002 knowing it would be easier to push through a ROD amendment in the future when there might be a different administration in the White House. When the NAS reviewed the EPA's plans in 2005, they noted that breaking site down to more manageable units may have been preferable given the size and complexity of the site. The NAS noted and I quote, "This approach would have had some clear technical advantages in allowing the agency

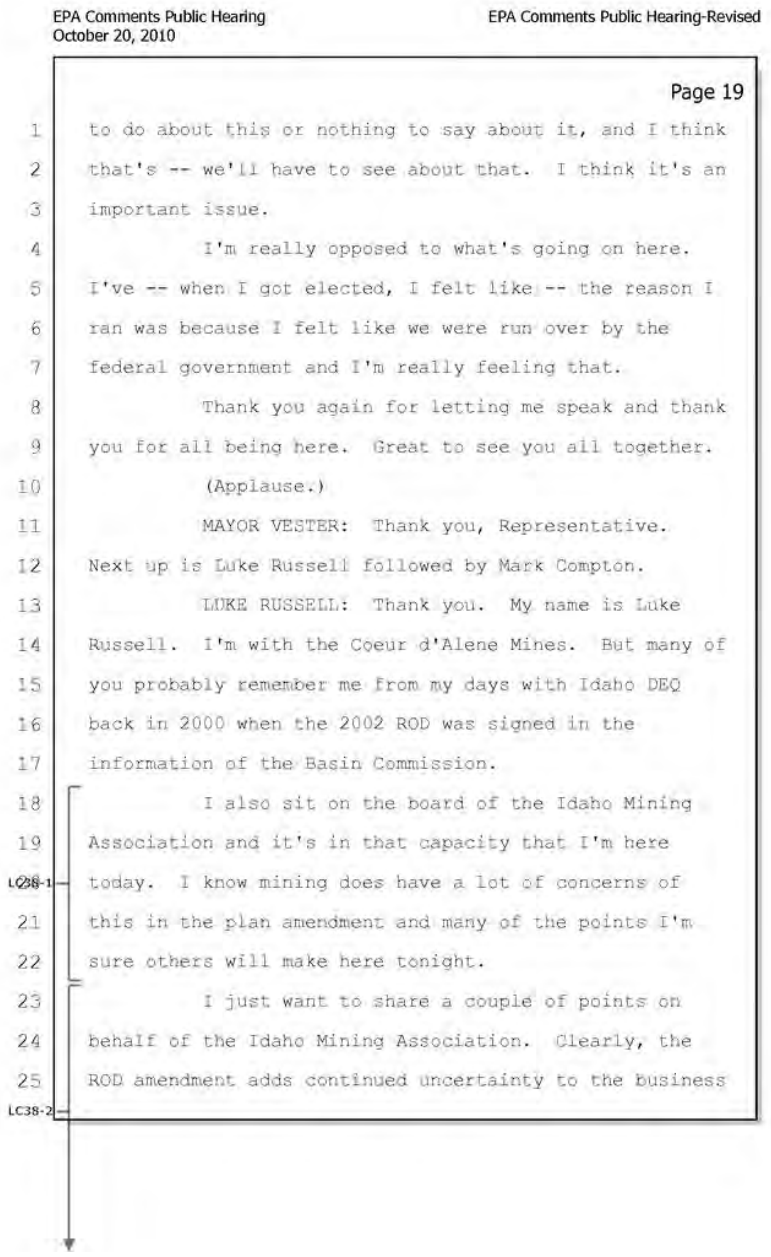
Response to comment LC6-2

See response to Comment No. SA4-12 and the ROD Amendment, Part 3, Section 3.7.4.

Response to comment LC6-3

The ROD Amendment, including the Selected Remedy, was developed in a manner consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as required by CERCLA. In response to comments, EPA has significantly reduced the scope of the Selected Remedy and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. Changes made to the Selected Remedy are described in detail in Part 2, Section 14.0 of the ROD Amendment. Also see response to Comment No. I58-5.

Idaho Mining Association, LC38, Letter 619651-9



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 19

to do about this or nothing to say about it, and I think that's -- we'll have to see about that. I think it's an important issue.

I'm really opposed to what's going on here. I've -- when I got elected, I felt like -- the reason I ran was because I felt like we were run over by the federal government and I'm really feeling that.

Thank you again for letting me speak and thank you for all being here. Great to see you all together.

(Applause.)

MAYOR VESTER: Thank you, Representative. Next up is Luke Russell followed by Mark Compton.

LUKE RUSSELL: Thank you. My name is Luke Russell. I'm with the Coeur d'Alene Mines. But many of you probably remember me from my days with Idaho DEQ back in 2000 when the 2002 ROD was signed in the information of the Basin Commission.

I also sit on the board of the Idaho Mining Association and it's in that capacity that I'm here today. I know mining does have a lot of concerns of this in the plan amendment and many of the points I'm sure others will make here tonight.

I just want to share a couple of points on behalf of the Idaho Mining Association. Clearly, the ROD amendment adds continued uncertainty to the business

LC38-1

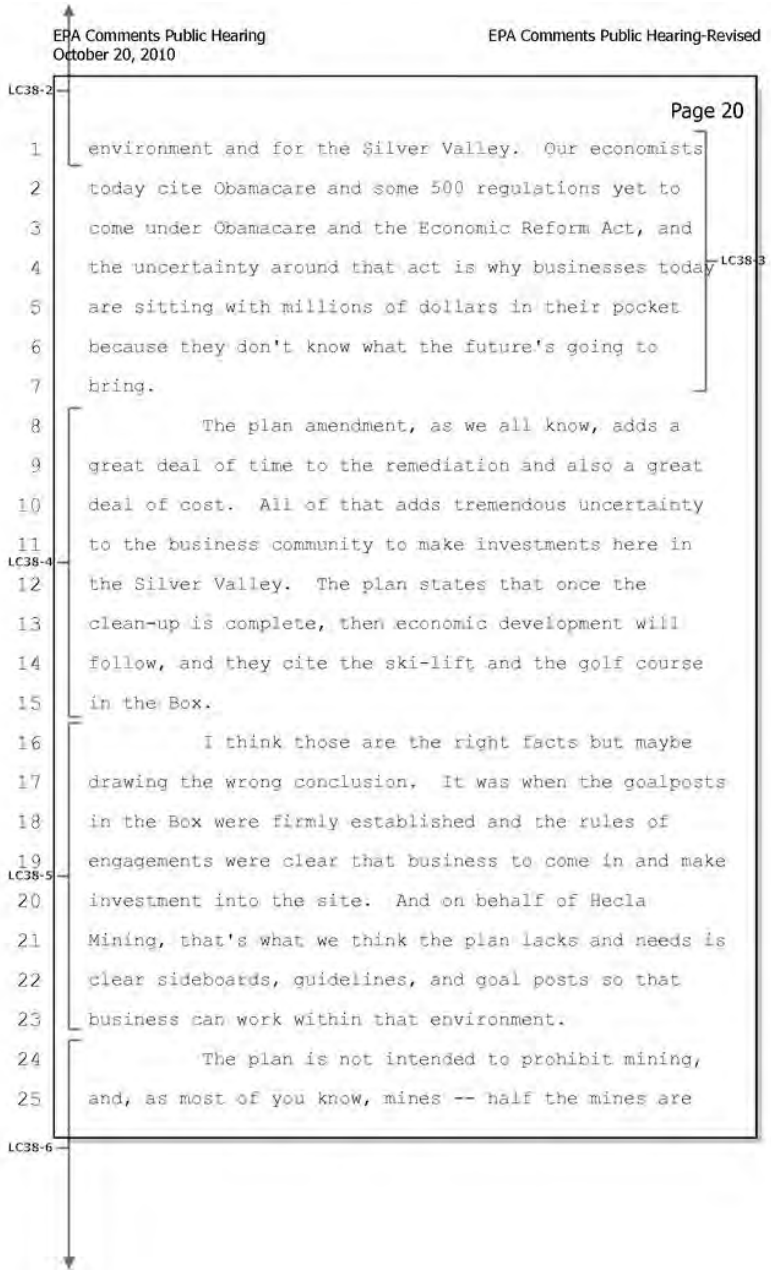
LC38-2

Response to comment LC38-1

Thank you for your comment.

Response to comment LC38-2

See response to Comment No. I58-5.



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 20

environment and for the Silver Valley. Our economists today cite Obamacare and some 500 regulations yet to come under Obamacare and the Economic Reform Act, and the uncertainty around that act is why businesses today are sitting with millions of dollars in their pocket because they don't know what the future's going to bring.

The plan amendment, as we all know, adds a great deal of time to the remediation and also a great deal of cost. All of that adds tremendous uncertainty to the business community to make investments here in the Silver Valley. The plan states that once the clean-up is complete, then economic development will follow, and they cite the ski-lift and the golf course in the Box.

I think those are the right facts but maybe drawing the wrong conclusion. It was when the goalposts in the Box were firmly established and the rules of engagements were clear that business to come in and make investment into the site. And on behalf of Hecla Mining, that's what we think the plan lacks and needs is clear sideboards, guidelines, and goal posts so that business can work within that environment.

The plan is not intended to prohibit mining, and, as most of you know, mines -- half the mines are

LC38-2 LC38-3 LC38-4 LC38-5 LC38-6

Response to comment LC38-3

Thank you for your comment.

Response to comment LC38-4

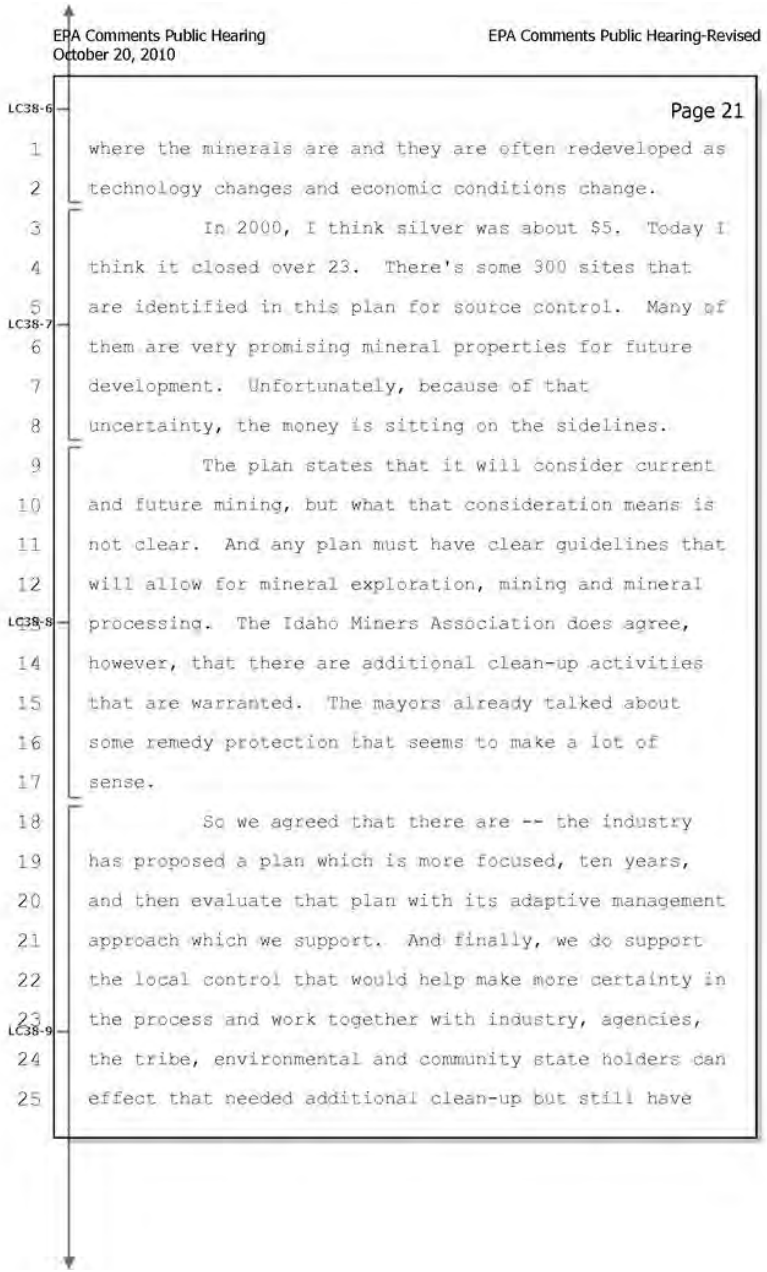
See response to Comment No. I54-2.

Response to comment LC38-5

See responses to Comment Nos. I474-1 and I58-5. Regarding implementation of the Selected Remedy, see the ROD Amendment, Part 2, Section 12.3.

Response to comment LC38-6

Thank you for your comment.



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 21

where the minerals are and they are often redeveloped as technology changes and economic conditions change.

In 2000, I think silver was about $5. Today I think it closed over 23. There's some 300 sites that are identified in this plan for source control. Many of them are very promising mineral properties for future development. Unfortunately, because of that uncertainty, the money is sitting on the sidelines.

The plan states that it will consider current and future mining, but what that consideration means is not clear. And any plan must have clear guidelines that will allow for mineral exploration, mining and mineral processing. The Idaho Miners Association does agree, however, that there are additional clean-up activities that are warranted. The mayors already talked about some remedy protection that seems to make a lot of sense.

So we agreed that there are -- the industry has proposed a plan which is more focused, ten years, and then evaluate that plan with its adaptive management approach which we support. And finally, we do support the local control that would help make more certainty in the process and work together with industry, agencies, the tribe, environmental and community state holders can effect that needed additional clean-up but still have

Response to comment LC38-7

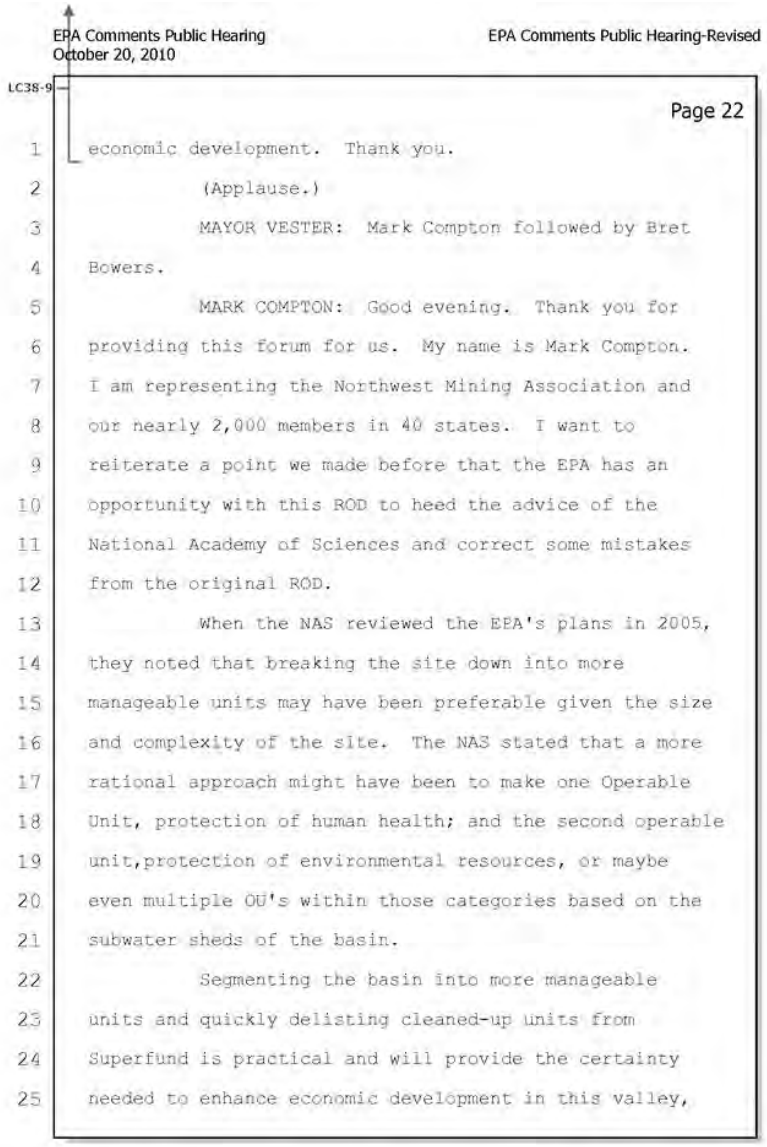
See responses to Comment Nos. I822-14 and I58-5.

Response to comment LC38-8

See response to Comment No. I58-5.

Response to comment LC38-9

See responses to Comment Nos. I474-2 and I295-2.



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

LC38-9

Page 22

economic development. Thank you.

(Applause.)

MAYOR VESTER: Mark Compton followed by Bret Bowers.

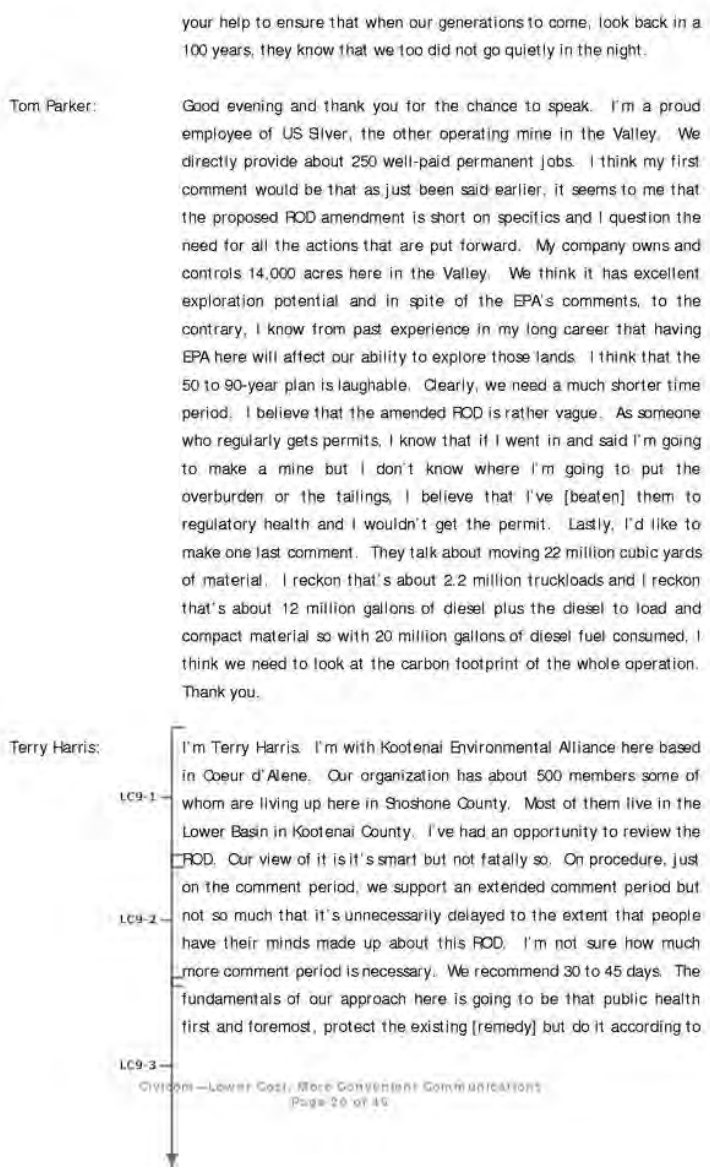
MARK COMPTON: Good evening. Thank you for providing this forum for us. My name is Mark Compton. I am representing the Northwest Mining Association and our nearly 2,000 members in 40 states. I want to reiterate a point we made before that the EPA has an opportunity with this ROD to heed the advice of the National Academy of Sciences and correct some mistakes from the original ROD.

When the NAS reviewed the EPA's plans in 2005, they noted that breaking the site down into more manageable units may have been preferable given the size and complexity of the site. The NAS stated that a more rational approach might have been to make one Operable Unit, protection of human health; and the second operable unit,protection of environmental resources, or maybe even multiple OU's within those categories based on the subwater sheds of the basin.

Segmenting the basin into more manageable units and quickly delisting cleaned-up units from Superfund is practical and will provide the certainty needed to enhance economic development in this valley,

No comments

Kootenai Environmental Alliance, LC9, Letter 616015-17



your help to ensure that when our generations to come, look back in a 100 years, they know that we too did not go quietly in the night.

Tom Parker: Good evening and thank you for the chance to speak. I'm a proud employee of US Silver, the other operating mine in the Valley. We directly provide about 250 well-paid permanent jobs. I think my first comment would be that as just been said earlier, it seems to me that the proposed ROD amendment is short on specifics and I question the need for all the actions that are put forward. My company owns and controls 14,000 acres here in the Valley. We think it has excellent exploration potential and in spite of the EPA's comments, to the contrary, I know from past experience in my long career that having EPA here will affect our ability to explore those lands. I think that the 50 to 90-year plan is laughable. Clearly, we need a much shorter time period. I believe that the amended ROD is rather vague. As someone who regularly gets permits, I know that if I went in and said I'm going to make a mine but I don't know where I'm going to put the overburden or the tailings, I believe that I've [beaten] them to regulatory health and I wouldn't get the permit. Lastly, I'd like to make one last comment. They talk about moving 22 million cubic yards of material. I reckon that's about 2.2 million truckloads and I reckon that's about 12 million gallons of diesel plus the diesel to load and compact material so with 20 million gallons of diesel fuel consumed, I think we need to look at the carbon footprint of the whole operation. Thank you.

Terry Harris: I'm Terry Harris. I'm with Kootenai Environmental Alliance here based in Coeur d'Alene. Our organization has about 500 members some of whom are living up here in Shoshone County. Most of them live in the Lower Basin in Kootenai County. I've had an opportunity to review the ROD. Our view of it is it's smart but not fatally so. On procedure, just on the comment period, we support an extended comment period but not so much that it's unnecessarily delayed to the extent that people have their minds made up about this ROD. I'm not sure how much more comment period is necessary. We recommend 30 to 45 days. The fundamentals of our approach here is going to be that public health first and foremost, protect the existing [remedy] but do it according to

LC9-1
LC9-2
LC9-3

Civicom—Lower Cost, More Convenient Communications
Page 20 of 49

Response to comment LC9-1

Thank you for your comments.

Response to comment LC9-2

See response to Comment No. I54-6.

Response to comment LC9-3

Thank you for your comment. Work in the Lower Basin is continuing with additional characterization and refinement of the Conceptual Site Model and will likely include pilot projects. EPA continues to pursue data collection and analysis efforts in the Lower Basin to support the future development and evaluation of remedial alternatives. After these studies have been completed, EPA expects to select additional cleanup actions, subject to public comment, to address contamination issues in the Lower Basin. Although the Lower Basin is not included in the Selected Remedy, actions in the Upper Basin are expected to improve water quality and reduce the movement of contaminated sediments downstream in the Lower Basin. Thus, the Upper Basin cleanup is expected to complement cleanup activities in the Lower Basin by reducing the flow of contaminated materials and reducing the potential for recontamination from the Upper Basin to the Lower Basin. Actions in the Lower Basin will be conducted concurrently with Upper Basin cleanups depending on recontamination and other factors.

LC9-3

law and according to science and recognize that the Lower Basin still needs work. Thirty seconds. We understand the difficulty of the timeframe but we understand that this ROD properly and honestly describes the scope and scale of this problem. We're going to recommend procedures that will give input and collaboration so that the process moving forward is fair and reasonable and we get meaningful involvement but let's understand that this needs to become the - that the Lower Basin needs to be dealt with and...

Mayor Dick Vester: Senator Crapo, Governor Otter, members of the head table, other elected officials, friends and neighbors, I'm Dr. Dick Vester. I'm the Mayor of Wallace. I wish everybody could've been at the meeting last Wednesday in Smelterville. It was very enlightening. There were doctors and lawyers, hard rock miners and mining executives, retired people and college kids, Democrats and Republicans, yet the message sent to the EPA was almost unanimous and universal. The message sent was, "We don't want this thing to go on forever and we need a longer time to digest the information." I would ask our elected officials to use your clout and influence with the EPA for two things. It sounds like you've already accomplished one and that's to extend the comment period so that we have – our citizens have enough time to digest the approximately 2,400 pages of information. More importantly, I would ask you to use your influence to have this Record of Decision end in a maximum of ten years. We do not need our community to go through the devastation of being a Superfund site for 30 or 50 or 90 years so we ask your help and we hope the EPA will listen to the comments.

Todd Christensen: On July 26, we formally requested an extension to Administrator McLerran. Mr. Opalski, we appreciate the notification of such an extension. Additionally, we highlight the importance of additional review by the Idaho State Legislature as already outlined this evening specifically to have a full understanding on the current and future fiscal impact to the state for a plan that reaches between 50 to 90 years. We appreciate your consideration and I [yield] the balance of my time.

No comments

Kootenai Environmental Alliance, LC19, Letter 618252

Kootenai Environmental Alliance * Idaho Conservation League
Spokane Riverkeeper * Idaho Rivers United * Lands Council

Summary

Our organizations appreciate this opportunity to comment on the proposed amendment to the Upper Coeur d'Alene basin ROD. Our comments are sensitive to the legal obligations of EPA under CERCLA and we support the EPA's attempts to address these critical obligations in the Basin. In sum, we believe the EPA has met the letter and spirit of the law with this ROD amendment. Nevertheless, we do suggest some improvements that would make the remedy more protective of human health and the environment, more protective of remedies already in place, and provide better community acceptance. We also would accelerate the timeframes so that more comprehensive cleanup in the lower basin might proceed earlier. And finally, we would oppose the "10-year-plan" counter-proposal by Hecla Mining as being inadequate, incomplete, and insufficient to meet environmental and public health standards required under the law.

LC19-1

Introduction

Kootenai Environmental Alliance (KEA) is a grassroots non-profit organization based in Coeur d'Alene and with more than 500 members throughout the Coeur d'Alene basin. KEA is the oldest non-profit conservation organization in Idaho, with a mission to conserve, protect, and restore the environment in North Idaho, with a particular emphasis on the Coeur d'Alene basin.

The Idaho Conservation League (ICL) represents more than 9,000 members statewide, many of whom have a deep interest in preventing the ongoing human health and wildlife impacts from mining contamination. ICL has been working to protecting Idaho's water quality, wilderness and quality of life since 1973.

The Spokane Riverkeeper is dedicated to restoring and protecting water quality and habitat in the Spokane River Basin. The Riverkeeper accomplishes this task through education, advocacy, and, when necessary, litigation.

Idaho Rivers United (IRU) is a conservation organization representing all who love the freedom, adventure and solitude of Idaho's rivers, numbering more than 3500 members. IRU's mission is to protect and restore the rivers of Idaho.

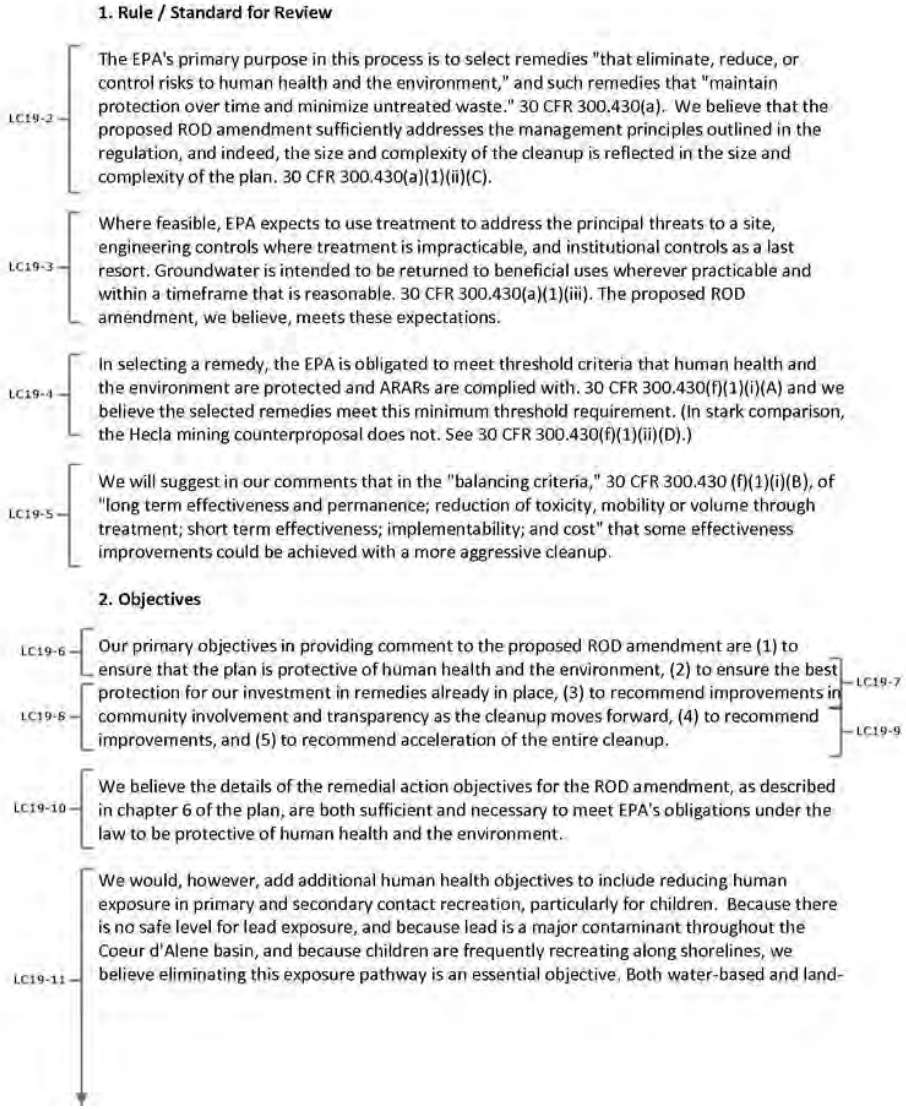
Founded in 1983, the Lands Council's mission is to preserve and revitalize inland northwest forests, water, and wildlife through advocacy, education, effective action, and community engagement.

All of our organizations join in the following comments.

618252

Response to comment LC19-1

Comment noted. Also see response to Comment No. I58-1.



1. Rule / Standard for Review

LC19-2 The EPA's primary purpose in this process is to select remedies "that eliminate, reduce, or control risks to human health and the environment," and such remedies that "maintain protection over time and minimize untreated waste." 30 CFR 300.430(a). We believe that the proposed ROD amendment sufficiently addresses the management principles outlined in the regulation, and indeed, the size and complexity of the cleanup is reflected in the size and complexity of the plan. 30 CFR 300.430(a)(1)(ii)(C).

LC19-3 Where feasible, EPA expects to use treatment to address the principal threats to a site, engineering controls where treatment is impracticable, and institutional controls as a last resort. Groundwater is intended to be returned to beneficial uses wherever practicable and within a timeframe that is reasonable. 30 CFR 300.430(a)(1)(iii). The proposed ROD amendment, we believe, meets these expectations.

LC19-4 In selecting a remedy, the EPA is obligated to meet threshold criteria that human health and the environment are protected and ARARs are complied with. 30 CFR 300.430(f)(1)(i)(A) and we believe the selected remedies meet this minimum threshold requirement. (In stark comparison, the Hecla mining counterproposal does not. See 30 CFR 300.430(f)(1)(ii)(D).)

LC19-5 We will suggest in our comments that in the "balancing criteria," 30 CFR 300.430 (f)(1)(i)(B), of "long term effectiveness and permanence; reduction of toxicity, mobility or volume through treatment; short term effectiveness; implementability; and cost" that some effectiveness improvements could be achieved with a more aggressive cleanup.

2. Objectives

LC19-6 Our primary objectives in providing comment to the proposed ROD amendment are (1) to ensure that the plan is protective of human health and the environment, (2) to ensure the best protection for our investment in remedies already in place, (3) to recommend improvements in community involvement and transparency as the cleanup moves forward, (4) to recommend improvements, and (5) to recommend acceleration of the entire cleanup. LC19-7 LC19-8 LC19-9

LC19-10 We believe the details of the remedial action objectives for the ROD amendment, as described in chapter 6 of the plan, are both sufficient and necessary to meet EPA's obligations under the law to be protective of human health and the environment.

LC19-11 We would, however, add additional human health objectives to include reducing human exposure in primary and secondary contact recreation, particularly for children. Because there is no safe level for lead exposure, and because lead is a major contaminant throughout the Coeur d'Alene basin, and because children are frequently recreating along shorelines, we believe eliminating this exposure pathway is an essential objective. Both water-based and land-

Response to comment LC19-2

Thank you for your comment. The ROD Amendment, including the Selected Remedy, was developed in a manner consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), as required by CERCLA. In response to comments, EPA has significantly reduced the scope of the Selected Remedy and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. Changes made to the Selected Remedy are described in detail in Part 2, Section 14.0 of the ROD Amendment.

Response to comment LC19-3

Comment noted and appreciated.

Response to comment LC19-4

Thank you for your comment.

Response to comment LC19-5

Comment noted. Regarding the scope of the Selected Remedy, see response to Comment No. I58-1. The remedy selection process was conducted in a manner consistent with the NCP, as required by CERCLA.

Response to comment LC19-6

Comment noted.

Response to comment LC19-7

Comment noted. See response to Comment No. I54-5.

Response to comment LC19-8

Comment noted. See response to Comment No. I295-2.

Response to comment LC19-9

See response to Comment No. I58-1 regarding the duration of the Selected Remedy. See response to Comment No. I58-4 regarding implementation of the remedy and adaptive management.

Response to comment LC19-10

Comment noted.

Response to comment LC19-11

See response to Comment No. I295-1. Cleanup actions that address mine waste contamination within drainage areas accessible for recreational use will protect human health and improve surface water quality. Common recreational activities in the Coeur d'Alene Basin include hiking, fishing, hunting, boating, swimming, and all-terrain-vehicle riding. As noted in the ROD Amendment, Part 3, Section 3.2.4, exposure to lead contamination can cause elevated blood lead levels and resulting adverse neurological effects. EPA has also found that elevated blood lead levels can occur within relatively short exposure periods (such as through recreational exposure to contamination located along the SFCDR, on waste piles, etc.). The Selected Remedy will provide clean surface soil in contaminated areas and reduce particulate lead loading to surface water. In these ways, the Selected Remedy will further reduce the risks people may be exposed to during recreational activities.

LC19-11 based recreation needs to be considered. ATV use, for example, is widespread on contaminated lands throughout the area, which kicks up contaminated dust that can contaminate clothing and materials, and ultimately be ingested by small children. Likewise, shoreline activities, like fishing and swimming, are frequently along contaminated shores that provide an ingestion opportunity for small children.

LC19-12 We are supportive of the ROD amendment's general ecological objectives. The basic requirement that the cleanup support a functional aquatic and terrestrial ecosystem should not be lost in the many details. The specific identification of bull trout, waterfowl, riparian songbirds, and otherwise-protected species, for example, is absolutely appropriate to focus attention and to set priorities, but should not be to the exclusion of minimum standards which may be necessary for other species. The cleanup standards should be sufficiently robust to support the health of the entire ecosystem, rather than selected specific component parts, which may or may not be interrelated.

LC19-13 We are also supportive, generally, of the ROD amendment's focus on water quality, and keeping clean water clean. We are concerned, however, that the water quality standards for cleanup may need to be clarified. Specifically, we are concerned that allowed site-specific levels for lead contamination in the South Fork of the Coeur d'Alene may be too high and not sufficiently supportive of the human health and ecological objectives. The ROD should either establish lower allowed lead levels in the South Fork or explain why more protective levels are not appropriate.

3. Alternatives and Preferred Remedy

LC19-14 We are generally supportive of the EPA's selection of remedy for this ROD amendment. We concur that the remedial actions identified as alternatives 3+ and 4+ generally meet the threshold requirements that they be protective of human health and the environment, and that appropriate standards are met.

LC19-15 We understand the tradeoffs that EPA was balancing in coming to its preference for Alternative 3+, and we understand that Alternative 4+ would have presented more extensive community impacts over a much longer term. We support this selection, albeit with reservations. We do not necessarily believe that the lower cost alone should balance the longer term effectiveness and added permanence that more extensive removal and disposal would provide. Indeed, under a polluter-pays principle, any cost-benefit analysis should be more weighted to broad permanent protections rather than to cost savings. In this cleanup, with substantial funds available in trust and substantial funds that should be available from outstanding responsible parties, cost effectiveness is not necessarily measured against other national priorities. Nevertheless, the ongoing impact to communities is a serious concern, and in this instance, moving less material to complete the cleanup more quickly is a fair tradeoff. Still, as the cleanup plan is implemented, we hope that the EPA remains flexible in analyzing and prioritizing areas where more removal and disposal may be necessary for more permanent protections and which have minimal community impacts.

Response to comment LC19-12

Comment noted. Also see response to comment No. SA4-13.

Response to comment LC19-13

The applicable or relevant and appropriate requirements (ARARs) for protection of the environment in the Upper Basin are the site-specific surface water quality standards for cadmium, lead, and zinc developed by the State of Idaho (Idaho Administrative Procedures Act [IDAPA] 58.01.02.285). The site-specific criteria for lead and zinc are higher than the federal and state-wide criteria for protection of aquatic life, although they have been demonstrated to provide a comparable level of protectiveness within the SFCDR Watershed. In the future if the applicable water quality standards are revised by the state or Tribe, EPA would evaluate the protectiveness of the remedy in light of these changes and make adjustments in the cleanup levels as appropriate.

Response to comment LC19-14

Comment noted. Regarding the scope of the Selected Remedy, see response to Comment No. I58-1.

Response to comment LC19-15

EPA appreciates your comment and will be using an adaptive management approach to prioritize actions to ensure the work is occurring in the highest priority areas. Also see response to Comment No. I58-2.

LC19-16 Additionally, based on our review, we believe that in Alternative (d) the EPA has selected the appropriate cost balance for the amount of stream lining and French drain combination necessary to meet standards. More extensive stream lining, we concur, would provide little incremental benefit for the additional costs and construction impacts. Indeed, to the extent that streams can remain as un-engineered as possible, while retaining adequate ecological function, there is less concern about long-term reliability and maintenance. We do have lingering concerns that the French drains systems may not be extensive enough to capture all the leaks going into the South Fork of the Coeur d'Alene River. If such a system is being implemented, it should be extensive enough to capture all potential sources of contaminated groundwater from entering the South Fork. We hope that monitoring and adaptive management will allow for more extensive capture of contamination, if it proves to be necessary. LC19-17

4. Remedy Protection

We are strongly supportive of measures in the ROD amendment designed to protect remedial actions already in place. This protects, of course, the extensive financial investment in cleanup that has occurred over the last several decades, and protects the significant and demonstrable human health improvements achieved by eliminating exposure pathways. We believe that remedy protection should be a high priority for the most immediate attention when the proposed ROD amendment is finalized.

Clearly, of the two alternatives presented by EPA, the RP-2 Alternative is the proper choice. Proactive stormwater control is certainly more protective of the remedy than no action at all. (Obviously, an existing remedy has much better long-term effectiveness if it isn't washed away in occasional flood events.) Moreover, although designed to protect the remedy in flood events, the alternative will also provide significant day-to-day community benefits by conveying stormwater that is not at flood level. And as the proposed ROD amendment makes clear, a proactive approach is estimated to be significantly less expensive than making repairs to remedial protections after flood events. LC19-18

We are concerned, however, that the proposed remedy protection alternative is *not protective enough*. The 50-year flood event may not be a sufficiently protective design standard. The basin floods quite heavily quite frequently. Also, the ROD should anticipate variability within the drainages due to future development and future logging and mining operations upstream and due to anticipated increased precipitation and rain-on-snow events in from climate change. For these reasons, we suggest that the proposed alternative might be under-engineered for larger, and not-improbable, flooding events, and that more extensive remedy protections may be required.

Response to comment LC19-16

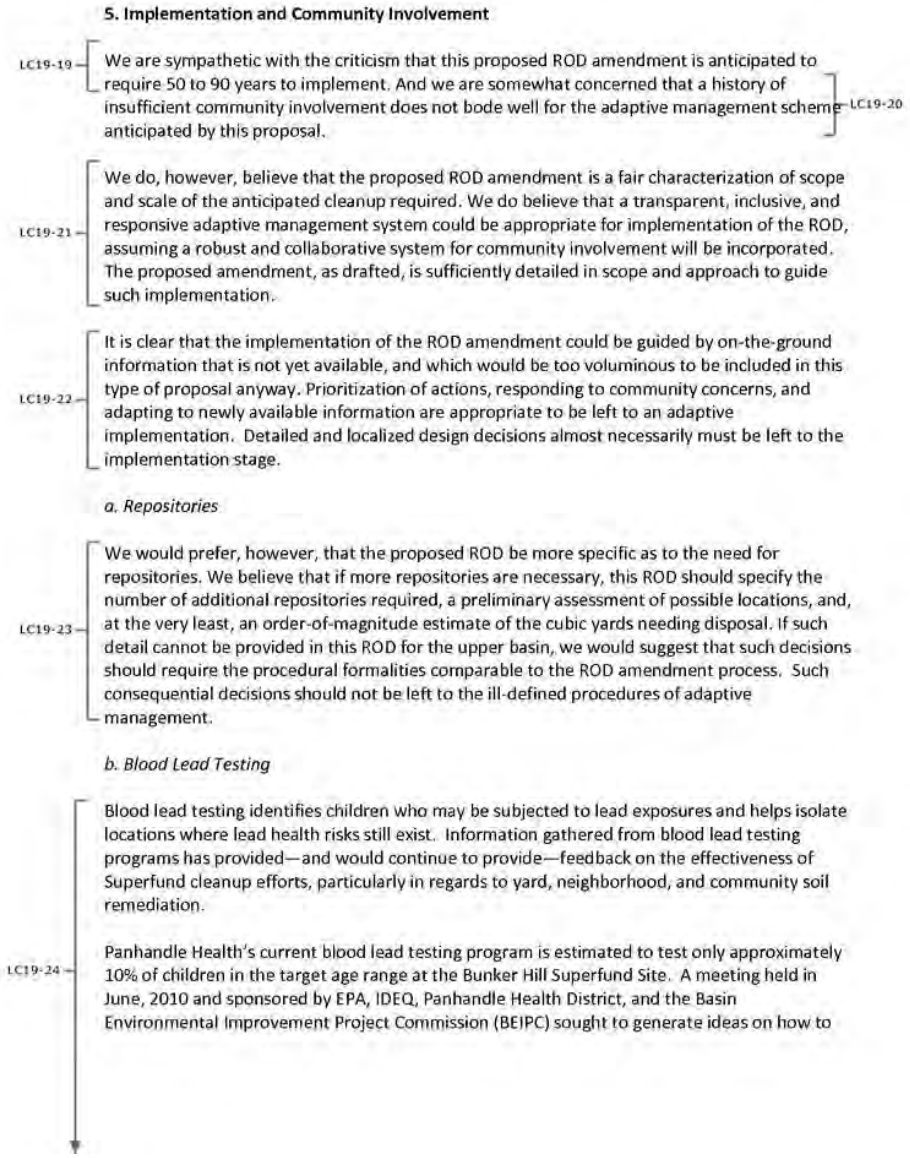
Comment noted and appreciated.

Response to comment LC19-17

See response to Comment No. I828-10.

Response to comment LC19-18

Thank you for your comment. The 50-year flood event was used as the basis for developing remedy protection actions and estimating costs to remain consistent with, and in some cases more protective than, design engineering standards developed for the Bunker Hill Superfund Site (Welch, Comer & Associates, Inc., March 2, 1994, *Bunker Hill Superfund Site, Stormwater Management Plan, Criteria and Engineering Standards. Final Draft*), the State of Idaho Transportation Department (Idaho Transportation Department, 2009, *Idaho Design Manual*), and the Washington State Department of Transportation (Washington State Department of Transportation, 2008, *Highway Runoff Manual*). It is important to note that the remedy protection actions included in the Selected Remedy are not final designs. Additional design and analysis will be completed prior to implementation, and the protectiveness of each remedy protection action will be determined based on design engineering standards.



5. Implementation and Community Involvement

LC19-19 — We are sympathetic with the criticism that this proposed ROD amendment is anticipated to require 50 to 90 years to implement. And we are somewhat concerned that a history of insufficient community involvement does not bode well for the adaptive management scheme anticipated by this proposal. — LC19-20

LC19-21 — We do, however, believe that the proposed ROD amendment is a fair characterization of scope and scale of the anticipated cleanup required. We do believe that a transparent, inclusive, and responsive adaptive management system could be appropriate for implementation of the ROD, assuming a robust and collaborative system for community involvement will be incorporated. The proposed amendment, as drafted, is sufficiently detailed in scope and approach to guide such implementation.

LC19-22 — It is clear that the implementation of the ROD amendment could be guided by on-the-ground information that is not yet available, and which would be too voluminous to be included in this type of proposal anyway. Prioritization of actions, responding to community concerns, and adapting to newly available information are appropriate to be left to an adaptive implementation. Detailed and localized design decisions almost necessarily must be left to the implementation stage.

a. Repositories

LC19-23 — We would prefer, however, that the proposed ROD be more specific as to the need for repositories. We believe that if more repositories are necessary, this ROD should specify the number of additional repositories required, a preliminary assessment of possible locations, and, at the very least, an order-of-magnitude estimate of the cubic yards needing disposal. If such detail cannot be provided in this ROD for the upper basin, we would suggest that such decisions should require the procedural formalities comparable to the ROD amendment process. Such consequential decisions should not be left to the ill-defined procedures of adaptive management.

b. Blood Lead Testing

Blood lead testing identifies children who may be subjected to lead exposures and helps isolate locations where lead health risks still exist. Information gathered from blood lead testing programs has provided—and would continue to provide—feedback on the effectiveness of Superfund cleanup efforts, particularly in regards to yard, neighborhood, and community soil remediation.

LC19-24 — Panhandle Health's current blood lead testing program is estimated to test only approximately 10% of children in the target age range at the Bunker Hill Superfund Site. A meeting held in June, 2010 and sponsored by EPA, IDEQ, Panhandle Health District, and the Basin Environmental Improvement Project Commission (BEIPC) sought to generate ideas on how to

Response to comment LC19-19

See response to Comment No. I58-1.

Response to comment LC19-20

See response to Comment No. I295-2.

Response to comment LC19-21

Comment noted. See response to Comment No. LJ11-2 regarding how EPA will incorporate public input into the adaptive management approach.

Response to comment LC19-22

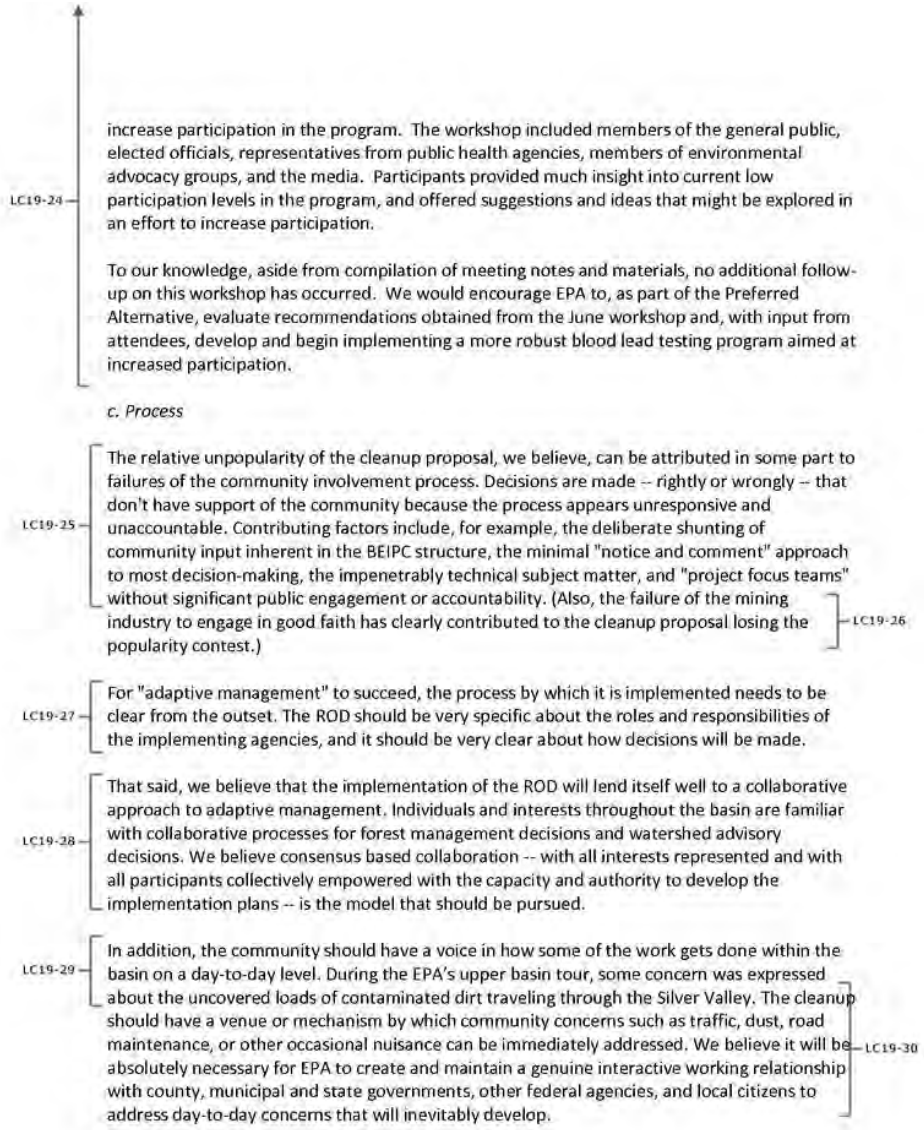
Comment noted. Also see response to Comment No. LJ11-2.

Response to comment LC19-23

See response to Comment No. I54-3.

Response to comment LC19-24

Thank you for your comment. EPA, IDEQ, and the Panhandle Health District are continuing to explore ways to encourage broader participation in Panhandle Health District's annual voluntary blood lead testing program.



LC19-24 increase participation in the program. The workshop included members of the general public, elected officials, representatives from public health agencies, members of environmental advocacy groups, and the media. Participants provided much insight into current low participation levels in the program, and offered suggestions and ideas that might be explored in an effort to increase participation.

To our knowledge, aside from compilation of meeting notes and materials, no additional follow-up on this workshop has occurred. We would encourage EPA to, as part of the Preferred Alternative, evaluate recommendations obtained from the June workshop and, with input from attendees, develop and begin implementing a more robust blood lead testing program aimed at increased participation.

c. Process

LC19-25 The relative unpopularity of the cleanup proposal, we believe, can be attributed in some part to failures of the community involvement process. Decisions are made -- rightly or wrongly -- that don't have support of the community because the process appears unresponsive and unaccountable. Contributing factors include, for example, the deliberate shunting of community input inherent in the BEIPC structure, the minimal "notice and comment" approach to most decision-making, the impenetrably technical subject matter, and "project focus teams" without significant public engagement or accountability. (Also, the failure of the mining industry to engage in good faith has clearly contributed to the cleanup proposal losing the popularity contest.) LC19-26

LC19-27 For "adaptive management" to succeed, the process by which it is implemented needs to be clear from the outset. The ROD should be very specific about the roles and responsibilities of the implementing agencies, and it should be very clear about how decisions will be made.

LC19-28 That said, we believe that the implementation of the ROD will lend itself well to a collaborative approach to adaptive management. Individuals and interests throughout the basin are familiar with collaborative processes for forest management decisions and watershed advisory decisions. We believe consensus based collaboration -- with all interests represented and with all participants collectively empowered with the capacity and authority to develop the implementation plans -- is the model that should be pursued.

LC19-29 In addition, the community should have a voice in how some of the work gets done within the basin on a day-to-day level. During the EPA's upper basin tour, some concern was expressed about the uncovered loads of contaminated dirt traveling through the Silver Valley. The cleanup should have a venue or mechanism by which community concerns such as traffic, dust, road maintenance, or other occasional nuisance can be immediately addressed. We believe it will be absolutely necessary for EPA to create and maintain a genuine interactive working relationship with county, municipal and state governments, other federal agencies, and local citizens to address day-to-day concerns that will inevitably develop. LC19-30

Response to comment LC19-25

Regarding EPA's extensive efforts in involving the public in the remedy selection process, see response to Comment No. I295-2.

Response to comment LC19-26

Comment noted. EPA, as a federal regulatory agency, is obligated to make sound scientific decisions. EPA is dedicated to its mission and mandate to protect people's health and the environment, even if our actions are unpopular.

Response to comment LC19-27

Comment noted. Also see response to Comment LJ11-2. Regarding the implementation of the Selected Remedy, see the ROD Amendment, Part 2, Section 12.3.

Response to comment LC19-28

Thank you for your comment. EPA has been, and will continue to be, committed to meaningful community participation throughout the Superfund process in the Coeur d'Alene Basin.

Response to comment LC19-29

EPA will continue to engage the community in the implementation of the Selected Remedy.

Response to comment LC19-30

EPA appreciates your suggestion and agrees that a local interactive relationship will be helpful. In March 2011, EPA hired (through the "SEE" program) a local resident to help serve this role. That individual later accepted a different position, resigning in 2012. The agency has recently been looking into options for re-establishing the position and is now moving forward with filling this position with someone from the local community. In addition, several local resources are available. EPA maintains a field office in Coeur d'Alene, staffed with a key local contact for the cleanup. The office of the Coeur d'Alene Trust, heavily involved in cleanup work, is located in Kellogg. Also, IDEQ has an office in Kellogg, staffed with people working on the cleanup. EPA encourages citizens to contact cleanup staff any time with questions or concerns.

5. Why Hecla's plan won't work

We've had the opportunity to review a draft alternative "10-year Plan" offered by Hecla mining, and we have very serious concerns that the plan would not satisfy the fundamental criteria for cleanup. Most specifically, the alternative plan does not provide sufficient assurance that the appropriate standards can be met. Indeed, the alternative suggests changing standards so that narrative standards be substituted for numeric standards for water quality. The plan uses "monitoring" as an excuse to postpone additional cleanup that will almost assuredly be necessary until the monitoring data can be fed to ill-defined "planning process for additional future work beginning in year 5".

We are adamantly opposed to any plan which does not meet its legal threshold requirements. Because Hecla's plan cannot and does not meet basic water quality standards, it cannot serve as an alternative.

A geographically-narrowed "prioritized source control" approach, as Hecla proposes, could perhaps get the fastest returns on some of the investment, but this prioritization should come through a collaborative public process, and it should come with an understanding that the cleanup should be comprehensive, it should come with the appropriate scientific data demonstrating the priority, and it should come with an understanding that the job won't be complete with cleanup limited to the "prioritized" sites and drainages. The failure of Hecla's plan to do any cleanup at all in significant portions of the basin makes the alternative unacceptable.

LC19-31 Hecla's plan "defers the large water collection and treatment program of the EPA's Proposed Plan for possible future consideration" but does not provide sufficient data or reasoning for this deferral, nor does it suggest that the how this consideration might occur. Hecla's suggestion for "lagoon" treatment for Nine Mile and Canyon Creeks appear to be speculative, and without sufficient engineering or siting detail to determine whether such suggestions are even remotely feasible or whether they would be acceptable to the community.

Procedurally, Hecla's extensive comments are perhaps several years late. Hecla's comments provide an enormously complex rationalization for the feasibility of their alternative. But such information should have been provided at the feasibility study stage of the remedy selection process. Providing what is essentially a new alternative at this late stage, does nothing to assist the EPA in selecting among the already well-studied, and clearly feasible alternatives in front of the Agency. Perhaps Hecla's data and approach will be helpful in setting priorities and designing engineering solutions moving forward. But at this point, the priority-setting should be within the scope of EPA's selected alternative in the proposed ROD amendment. Such information and participation would be welcome in a post-ROD-approval adaptive management collaboration. Finally, Hecla's plan does not provide for sufficient community involvement. Of course, there was no community input whatsoever in its submitted comments. There has been no public process by which Hecla's assumptions can be challenged, its data reviewed, or its decision-

Response to comment LC19-31

Comment noted. See response to Comment No. I474-2 regarding EPA's position on the 10-Year Plan proposed by Hecla.

LC19-31 — making ventilated. EPA has submitted to an extended comment period, a formal public hearing, numerous public meetings and open houses. We fully expect EPA will take into account the community's acceptance of the remedy as a modifying factor, as the superfund regulations allow. We would suggest, however, that Hecla's proposal goes beyond mere modification, but rather it constitutes a complete substitution. Should EPA cede to Hecla's proposal, we would suggest that EPA should be required to re-open a public process for another full airing of the Hecla substitute. — LC19-32

Thank you for this ability to comment.

Respectfully submitted,

/s/ Terry J. Harris
Executive Director
Kootenai Environmental Alliance
408 Sherman Ave. #301
Coeur d'Alene, ID 83814

For:

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Board of Directors
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35 West Main, Suite 330
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Mike Peterson
Executive Director
The Lands Council
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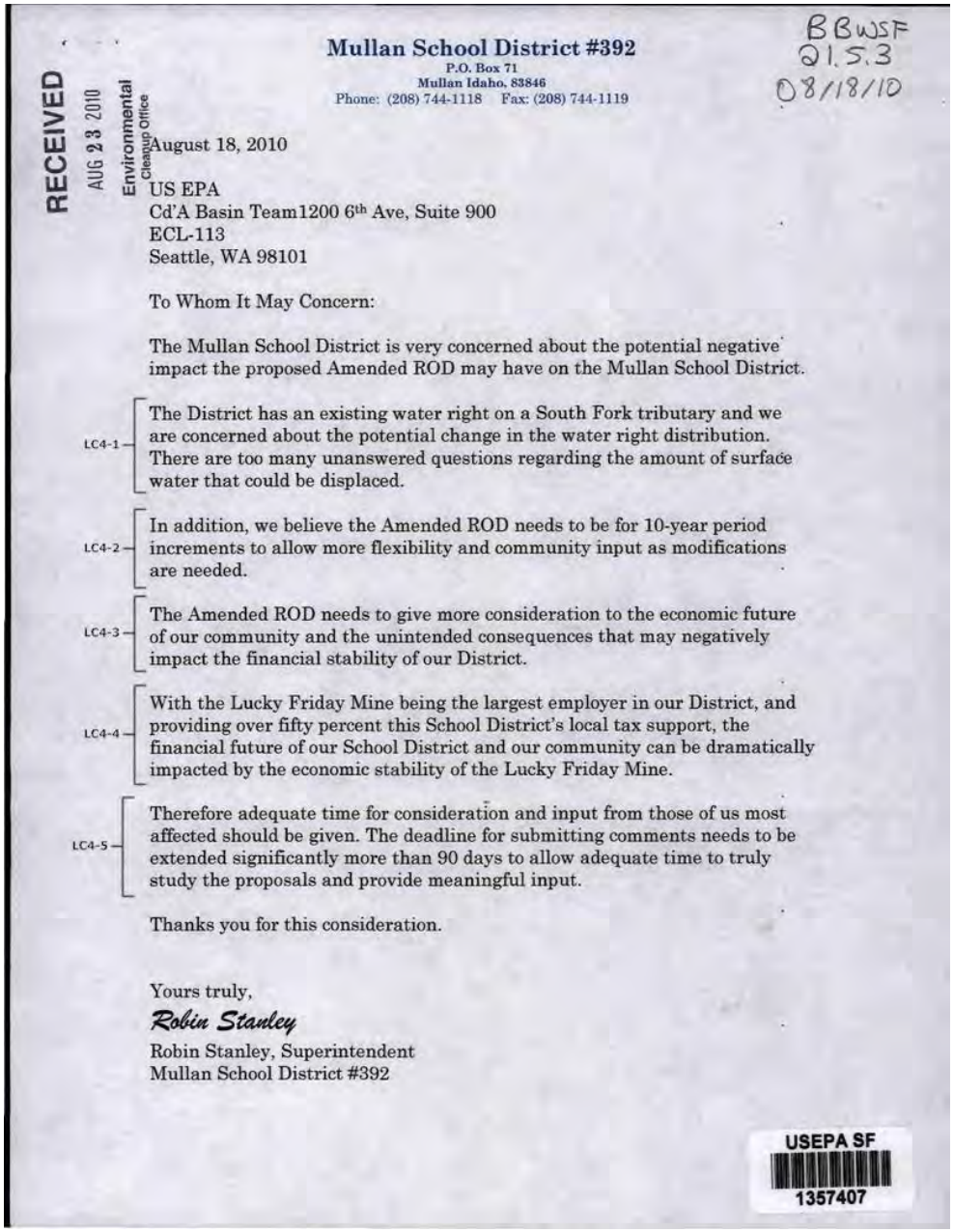
Spokane, WA 99201

Response to comment LC19-32

EPA has taken the many comments received from community members into consideration when finalizing the Selected Remedy. Consideration of comments received from the public on the Proposed Plan have been balanced with EPA's responsibility and authority to take actions to protect human health and the environment.

Mullan School District, LC4, Letter 1357407



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Mullan School District #392
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August 18, 2010

US EPA
Cd'A Basin Team1200 6th Ave, Suite 900
ECL-113
Seattle, WA 98101

To Whom It May Concern:

The Mullan School District is very concerned about the potential negative impact the proposed Amended ROD may have on the Mullan School District.

LC4-1 The District has an existing water right on a South Fork tributary and we are concerned about the potential change in the water right distribution. There are too many unanswered questions regarding the amount of surface water that could be displaced.

LC4-2 In addition, we believe the Amended ROD needs to be for 10-year period increments to allow more flexibility and community input as modifications are needed.

LC4-3 The Amended ROD needs to give more consideration to the economic future of our community and the unintended consequences that may negatively impact the financial stability of our District.

LC4-4 With the Lucky Friday Mine being the largest employer in our District, and providing over fifty percent this School District's local tax support, the financial future of our School District and our community can be dramatically impacted by the economic stability of the Lucky Friday Mine.

LC4-5 Therefore adequate time for consideration and input from those of us most affected should be given. The deadline for submitting comments needs to be extended significantly more than 90 days to allow adequate time to truly study the proposals and provide meaningful input.

Thanks you for this consideration.

Yours truly,
Robin Stanley
Robin Stanley, Superintendent
Mullan School District #392

USEPA SF
1357407

Response to comment LC4-1

EPA intends to implement the remedial actions identified for the collection and treatment of ground and surface such that these actions do not interfere with existing water rights. EPA notes that it does not intend to collect ground or surface water from the tributary from which the Mullan School District withdraws water and does not anticipate interfering with the Mullan School District's water use. See response to Comment No. SA4-12 and the ROD Amendment, Part 3, Sections 3.7.3 and 3.7.4.

Response to comment LC4-2

See responses to Comment Nos. I58-4 and LJ11-2.

Response to comment LC4-3

See response to Comment No. I54-2.

Response to comment LC4-4

See response to Comment No. I58-5.

Response to comment LC4-5

See response to Comment No. I54-6.

Mullan School District, LC11, Letter 617549

MULLAN SCHOOL DISTRICT NO. 392
P.O. BOX 71
MULLAN, IDAHO 83846

Phone: (208)744-1118 FAX: (208)744-1119

EPA
Dennis McLerran
1200 6th Ave
Suite 900
ELC-113
Seattle, WA 98101

November 22, 2010

By this letter as superintendant of the Mullan School District I insist that you immediately contact me to make arrangements to begin coordination with this unit of local government. As you know, "coordination" is a government to government process through which federal agencies must provide local officials with meaningful participation in planning, and must seek to reach consistency between federal and local plans and policies.

Recently you visited our area and met with mayors, without any attempt to arrange a meeting with the District, even though you know how active the District has been in planning for the area. You know how the District is impacted by plans and decisions developed by your agency.

Because the local economy directly impacts the funding of our District, we have a direct, real interest in protecting the local environment in a way that allows a viable economic structure. Our District funding is critical to the education of our young people. Government to government engagement by your agency with the District is necessary so that you will be faced with the specific issues affecting the District and its constituents--- the property owners, parents and young students within the District's boundaries.

The "coordination" relationship we insist on is mandated by federal statutory law and regulations.

LC11-1

The National Environmental Policy Act, passed in 1969, mandated the "coordination" process. 42 USC Section 4331 provided at passage and still requires that the "continuing policy of Federal government" be as follows:

"cooperation with State and local governments. . .and to use all practicable means and measures...in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."

Congress also provides that in carrying out this national policy of "cooperation" federal agencies shall "coordinate" with state and local governments:

617549

Response to comment LC11-1

Regarding public participation in the remedy selection process, see response to Comment No. I295-2. The comment raises issues regarding whether EPA satisfied National Environmental Policy Act (NEPA) requirements. For CERCLA response actions, EPA is exempted from the procedural requirements of environmental laws, including NEPA. CERCLA Section 121 (d)(2)(A) addresses the applicability of other environmental laws through applicable or relevant and appropriate requirements (ARARs). The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) interprets this to require compliance only with substantive, not procedural, aspects of ARARs. Because NEPA requirements are procedural, NEPA is not an ARAR for CERCLA response actions. Courts consistently have recognized that EPA procedures or environmental reviews under CERCLA enabling legislation are functionally equivalent to NEPA process and thus, exempt from the procedural requirements in NEPA. CERCLA addresses the two basic objectives of NEPA: (1) the agency should consider significant environmental impacts of the proposed action, and (2) relevant environmental information should be made available to the public, which allows the public to play a role in the agency's decision-making process and implementation of the decision. The administrative record EPA developed in support of the Selected Remedy documents that EPA, by following the requirements of the NCP, conducted a remedy selection process that was the functional equivalent of NEPA. Furthermore, the Selected Remedy clearly considers input EPA received from the public during the public comment period. See, the ROD Amendment, Part 2, Section 3.0, detailing community participation during the ROD Amendment process. Sections 113 and 117 of CERCLA,42 U.S.C. §§ 9613 & 9617 identify the public participation requirements of CERCLA. These requirements are further described in the NCP, the regulations that implement CERCLA, 40 Code of Federal Regulations (CFR) Part 300 et seq. Neither CERCLA nor the NCP requires EPA to consult with local school districts during the CERCLA remedy selection process. Nevertheless, EPA has and will continue to provide ample opportunities for involvement of local entities like the Mullan School District as it implements the Selected Remedy. EPA encourages the commenter to take advantage of these opportunities.

"it is the continuing responsibility of the Federal Government **to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate** Federal plans, functions, programs, and resources."

It should not need citation to substantiate the conclusion that a very "practicable means" of coordinating is for your agency, charged with enforcement and implementation of this very statute, to meet with this District and gain an understanding of the environmental consequences of your actions on our policies, our plans and our operations in behalf of our youth.

We at the District see the impacts and consequences of your actions and those of other federal agencies, hear about them from our constituents, and hear from legislators as to how they affect our funding, every day of the week. We hear about them even on week-ends in the check-out lines in stores, at school sporting and music events, and in church. From meetings with our officials, you will gain input as to the needs and demands of our citizens that should be included in your planning.

After all, NEPA does require that you act to "create and maintain conditions under which" we as officials and citizens of the School District can live in harmony with the natural environment for which you are planning. Within the two sections of NEPA cited hereinabove, you are charged with coordinating to seek, with us, to "fulfill the social [and] economic requirements" of our District and its constituents.

LC11-1 As you are aware, the Council on Environmental Quality has issued regulations by which NEPA must be implemented. 40 CFR Section 6.103 (b) (3) provides that your agency "ensure, to the extent practicable, early and continued involvement of interested federal agencies, state and local governments. . .in the environmental review process." It certainly would have been "practicable" for you to have met with the District's officials when you came to the area to talk to the towns' mayors. We were not even invited to the meeting. But, that is past. Now, we look to the present and future, and insist that now you work to involve your agency and its staff with the Mullan School District in a meaningful way in the "environmental review process." The specific nature of the language in 6.103(2) takes this District outside the scope of the general public commenting process. Our interests are specific and should be heard under the statute and implementing regulations.

The CEQ regulations require your agency to integrate the NEPA process into "early planning" and to emphasize the cooperation mandate by Congress by "emphasizing interagency cooperation **before the environmental impact statement is prepared**, rather than submission of adversary comments on a completed document." 40 CFR 1500.5. We should have been engaged long before the Draft EIS was issued. But, again, that was then. We now expect the engagement to begin.

In 40 CFR Section 1506.2 (b) and (c) CEQ requires that your agency "cooperate with State and local agencies t**o the fullest extent possible** to reduce duplication between NEPA and comparable State and local requirements."CEQ defines "to the fullest extent possible" to mean preparation of joint planning processes, joint environmental research and studies, and joint public hearings . . .joint environmental assessments." Had you met with us before, you would have had the opportunity to review the alternatives we have to the findings and conclusions stated in your Draft EIS. You would have seen the inconsistencies between our alternative and the contents of

No comments

your Draft. You would have been able to work on resolving those inconsistencies even before the Draft was completed, as you are supposed to do under the CEQ regulations.

The CEQ regulations require that you "discuss any inconsistency of a proposed action with any approved State or local plan (whether or not federally sanctioned)." CEQ requires that your Draft "describe the extent to which the Agency would reconcile proposed action with the [local]plan." Your Draft does not describe the inconsistencies between our alternative and yours, and does not describe the extent to which you would go to reconcile the inconsistencies, because you did not meet with us to learn of our alternative in government to government fashion as you should have. LC11-1

We will be submitting our alternative to you not as a public comment but as an alternative which we will discuss with you in coordination meetings. The extent of cooperation and coordination required by statute and regulations cannot possibly be met through written communication. Joint planning and consideration of inconsistencies can only be done effectively through government to government meetings and full discussion.

It is interesting to note that the language of Congress in expressing the national purpose speaks of "productive harmony" as the goal to be reached for man and nature. The governmental term "coordination" has been described by a California Appellate Court as including a meeting designed to reach harmonious negotiations.

In **California Native Plant Society v. City of Rancho Cordero 172 Cal.App.4th 603-91 Cal.Rptr. 3d 571**, the Court defined what "coordination" involves in the setting of a planning relationship between the city and the United States Fish and Wildlife Service regarding a residential and commercial development. The Court said:

> "to bring into a common action, movement, or condition"; **it is synonymous with "harmonize**." (Merriam-Webster's Collegiate Dict., *supra*, at p. 275, col. 1.) Indeed, the very dictionary the City cites for the definition of the word "coordinate" defines the word "coordination" as "cooperative effort resulting in an effective relationship." (New Oxford Dict., *supra*, at p. 378, col. 3.) Although the City suggests "coordination" is synonymous with "consultation" -- and therefore the City satisfied its "coordination" obligation under the general plan at the same time it satisfied its "consultation" obligation under the plan. That is not true. While the City could "consult" with the Service by soliciting and considering the Service's comments on the draft EIR, the City could not "coordinate" with the Service by simply doing those things. The City may be correct in asserting "consultation is not a synonym for 'agreement,'" but Action NR.1.7.1 required more than "consultation" with the Service; it required "coordination," and by definition "coordination" implies some measure of cooperation that is not achieved merely by asking for and considering input or *trying* to work together. Had the City intended the obligation under Action NR.1.7.1 to be one of mere "consultation," it could have used that word, as it did in Action NR.1.1.3. The fact that it did not do so supports the conclusion that the City intended "coordination" to have a different meaning than "consultation," consistent with the dictionary definitions of those words." LC11-2

When Congress used the term "harmony" and then required "coordination" between federal agencies and local government, the link between the two falls directly within the reasoning of California Native Plants Society, supra.

Response to comment LC11-2

See response to Comment No. LC11-1.

The federal district court for the Northern District of California has implemented "coordination" as required by the National Forest Management Act in the same manner as did the California court. The Court pointed out that "coordination" required far more than mere cooperation or consultation.

The Court pointed to Forest Service Rules similar to the CEQ rules, cited supra and concluded that the rule required more than just "talking and considering." The Court concluded that meetings between the agencies were necessary, meetings involving review of inconsistencies and attempts to resolve this.

The Forest Service and the Bureau of Land Management both have defined "coordination" in terms of meetings between the agencies and local government, seeking meaningful input from local government, and attempting to resolve conflicts or inconsistencies between federal and local plans and policies.

LC11-2

An example where the EPA is ordered to coordinate is stated in Executive Order 13,101 signed by President William J. Clinton September 14, 1998 in section **302 (3) In coordination with the Office of Federal Procurement Policy, the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Agriculture (USDA), convene a group of acquisition/procurement managers and environmental State, and local government managers to work with State and local governments to improve the Federal, State, and local governments' use of recycled products and environmentally preferable products and services.**

So, let's please get to the table, and begin anew the coordination process with the hope of reaching a level of communication which benefits our citizens and your agency's performance.

Please contact me by December 10, 2010 to establish a time to meet to begin a productive coordinate relationship.

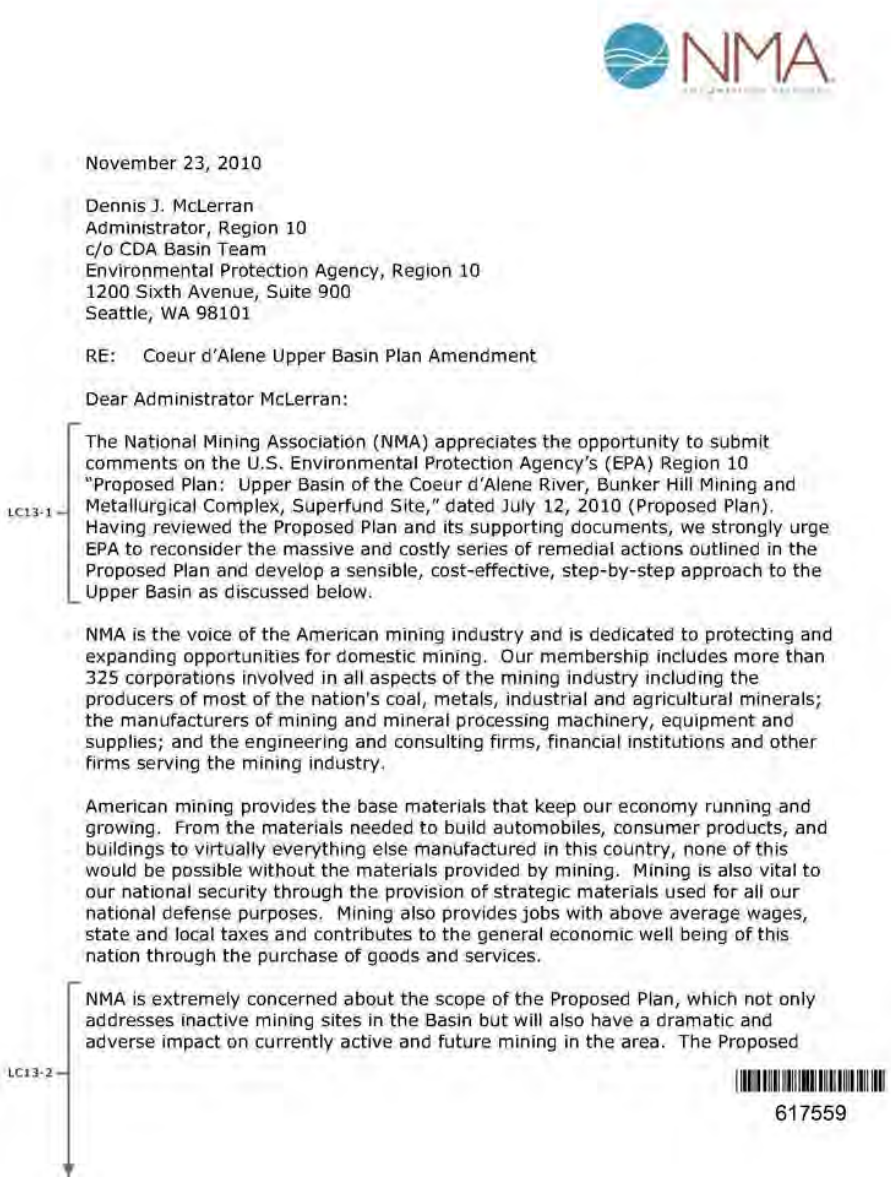
Cordially,

Robin Stanley

Robin Stanley-
Superintendant of Mullan School District #392
robins@sd392.k12.id.us

No comments

National Mining Association, LC13, Letter 617559



November 23, 2010

Dennis J. McLerran
Administrator, Region 10
c/o CDA Basin Team
Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

RE: Coeur d'Alene Upper Basin Plan Amendment

Dear Administrator McLerran:

LC13-1 The National Mining Association (NMA) appreciates the opportunity to submit comments on the U.S. Environmental Protection Agency's (EPA) Region 10 "Proposed Plan: Upper Basin of the Coeur d'Alene River, Bunker Hill Mining and Metallurgical Complex, Superfund Site," dated July 12, 2010 (Proposed Plan). Having reviewed the Proposed Plan and its supporting documents, we strongly urge EPA to reconsider the massive and costly series of remedial actions outlined in the Proposed Plan and develop a sensible, cost-effective, step-by-step approach to the Upper Basin as discussed below.

NMA is the voice of the American mining industry and is dedicated to protecting and expanding opportunities for domestic mining. Our membership includes more than 325 corporations involved in all aspects of the mining industry including the producers of most of the nation's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms serving the mining industry.

American mining provides the base materials that keep our economy running and growing. From the materials needed to build automobiles, consumer products, and buildings to virtually everything else manufactured in this country, none of this would be possible without the materials provided by mining. Mining is also vital to our national security through the provision of strategic materials used for all our national defense purposes. Mining also provides jobs with above average wages, state and local taxes and contributes to the general economic well being of this nation through the purchase of goods and services.

LC13-2 NMA is extremely concerned about the scope of the Proposed Plan, which not only addresses inactive mining sites in the Basin but will also have a dramatic and adverse impact on currently active and future mining in the area. The Proposed

617559

Response to comment LC13-1

The comment requests that EPA reconsider and change the Preferred Alternative identified in the Proposed Plan. In response to comments, EPA has significantly reduced the scope of the Selected Remedy, and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. This is described in detail in ROD Amendment, Part 3, Section 2.0. Consistent with the commenter's desires, the Selected Remedy represents a cost-effective, step-by-step approach to cleanup of the Upper Basin.

Response to comment LC13-2

The comment poses that the scope of the Proposed Plan will have an adverse effect on current and future mining in the Basin. As noted above, the scope of the Selected Remedy has been reduced from the Preferred Alternative of the Proposed Plan. Regarding EPA's commitment to work with the mining during the Upper Basin cleanup, see the ROD Amendment, Part 3, Section 3.1.3.

Plan wrongly attempts to set stringent closure requirements for active tailings ponds that currently comply with all applicable laws and regulations. The Proposed Plan also indicates that new mining will only be allowed if it does not impede EPA's remedial activities. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) does not give EPA the authority to decide when and how mining can take place.[1] Therefore, EPA should remove references to the regulation of active mining sites such as the following:

LC13-2

> "USEPA intends to manage its Superfund responsibilities in the Upper Basin in a manner that will allow for responsible mining and mineral processing activities as well as exploration and development. . . . As it has in the past, USEPA will continue to work with property owners and affected businesses in the area as it moves forward with cleanup on specific properties, and with mining companies that plan to conduct work at existing mining sites identified in the cleanup plan or at new mining sites in the area of the cleanup." Proposed Plan at pages viii and ix.
>
> "[S]ites identified as being potential sources of significant metals loading based on the source materials present are assigned a complete set of remedial actions in this FFS Report, regardless of operational status. USEPA will consider current and potential mining-related activities as it implements remedial actions in these areas." FFS at page 6-13.

In 2002, Congress instructed EPA to ask the National Research Council to conduct an independent evaluation of the Coeur d'Alene Superfund process. In 2005, the National Academy of Sciences (NAS) released its findings in a report titled: *Superfund and Mining Megasites: Lessons from the Coeur d'Alene Basin.* The NAS panel made a series of recommendations concerning the way that EPA should approach remediation in the Basin:

- Design the data collection, evaluation and decision-making process so that it is focused on establishing a durable process for long-term management of mining megasites, rather than selecting "final" remedies that cannot truly be final.

LC13-3

[1] CERCLA Section 302(d): "Nothing in this chapter shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to releases of hazardous substances or other pollutants or contaminants." *South Carolina Dept. of Health and Environmental Control v. Commerce and Industry Ins. Co.,* 372 F. 3d 245, 256 (4th Cir. 2004) (CERCLA is remedial and curative addressing past threats.)

Response to comment LC13-3

The comment concludes EPA's remedy selection process did not heed the advice of the NAS. EPA disagrees with this conclusion. As to how the Selected Remedy compares to NAS recommendations, see the ROD Amendment, Part 3, Section 3.5.2.

- Focus on the basic purposes of CERCLA, protecting human health and the environment, and be ready to waive specific applicable or relevant and appropriate requirements (ARARs) if an effective monitoring program demonstrates that it is not necessary to achieve these numeric standards to achieve these basic purposes.

- Where it is unlikely that final remedies can be identified and implemented, establish a rigorous adaptive-management process with well-defined performance milestones, monitoring strategies, and evaluation criteria and focus the data collection and analysis activities on supporting this process.

- Establish an independent external multidisciplinary scientific review panel to evaluate and advise the agency on critical needs for characterization and remediation decisions at mining megasites as a quality control mechanism.

- Encourage alternative and innovative technologies including responsible re-mining to clean up at least some of the contamination. LC13-3

- Look for opportunities to provide long-term support for implementing the cleanup activities and stewardship of the land.

EPA's Proposed Plan does not adequately implement a single one of these NAS recommendations, despite the fact that the Coeur d'Alene Basin covers some 275 square miles and is one of the geographically largest Superfund sites in the United States. Instead, EPA has forged ahead with a "mega-plan" knowing that this "final" plan can never be final. EPA should have followed the advice of the NAS and designed a step-by-step approach, starting with a division of the Basin into manageable sub-units similar to virtually all other large Superfund sites in the United States. It is only in this way that EPA can realistically determine exactly what needs to be done and the best available technology to truly gain source control.

Ironically, the NAS did not say that megasites need mega-remedies. Instead, the NAS advised establishing a process for the long-term management of mining megasites, whereby rather than selecting "final" remedies that cannot truly be final, the agency should be ready to waive specific ARAR requirements, define biological performance goals, and establish a rigorous adaptive-management process. In fact, the NAS advised a six-step process to remediate sources: assess the problem, design a management plan, implement the plan, monitor and evaluate the results, and adjust the plan in response to the monitored results. EPA's Proposed Plan does not follow this approach.

The Proposed Plan has an EPA-estimated cost of $1.34 billion and an estimated time to completion of some 50-90 years. The foundation for the entire Proposed Plan is based on the erroneous assumption that large volumes of mine waste equal LC13-4

Response to comment LC13-4

The comment criticizes the amount of money estimated to be needed for remedies in areas posed as not significant sources of metals loadings. As noted above, EPA has significantly reduced the scope of the Selected Remedy, and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. This is described in detail in ROD Amendment, Part 3, Section 2.0, and applies to areas of the commenter's concern upstream from Wallace.

Dennis J. McLerran
November 23, 2010
Page 4 of 4

LC13-4 large sources of metals that are released to area surface water and groundwater. For example, EPA proposes to spend $211 million in the area of the South Fork above Wallace to remediate, among other things, the Lucky Friday Mine tailings ponds. Yet, the actual data from the South Fork demonstrate conclusively that those tailings ponds are not the source of significant metals loading. In fact, the water quality of the South Fork above Wallace is quite good and currently supports fish life. Yet, in this Proposed Plan, EPA has formulated a plan in which large sums of money will be spent but will achieve no beneficial results.

LC13-5 In addition to our comments above, we are enclosing comments on the Proposed Plan that have been prepared by Mr. Steve Larson of S.S. Papadopulos & Associates. In his comments, Mr. Larson concludes that: (1) EPA has not responded to the NAS' concerns and recommendations with respect to use of the Predictive Analysis (PA) and that the PA does not reliably predict the effectiveness of remedial actions; (2) by failing to consider and use available data, EPA has mischaracterized the sources of metals loading in the Basin and is targeting insignificant sources; (3) EPA has failed to adequately consider and discuss major impacts and costs of the proposed remedial actions; and (4) EPA should have approached OU-3 by dividing it into a number of OUs or subunits as is normally done at Superfund sites of this size. We are also attaching a copy of Mr. Larson's CV.

LC13-6 Mining is critical to the economic prosperity of the Coeur d'Alene Basin. It is important that EPA's plan for remediation accommodate both currently active and future mining in the Basin. In addition, in these uncertain economic times, it is important that EPA use its resources wisely. Both EPA and the people of the Basin are fortunate that over $400 million is available from the Asarco bankruptcy for future Basin cleanup activities. EPA should design cleanup plans for both the Upper and Lower Basins that maximize the use of this funding. NMA believes that the best approach is to divide the Basin into sub-units and to address these sub-units individually, delisting them as they are cleaned up. This is what the NAS thought was the best approach and NMA agrees.

Thank you for this opportunity to comment on the Proposed Plan. Please feel free to contact me at (202) 463-2629 or tbridgeford@nma.org if you have any questions regarding NMA's comments.

Sincerely,

Tawny A. Bridgeford
Associate General Counsel

Response to comment LC13-5

The comment refers to enclosed comments from a consultant to the commenter. See responses to Comment Nos. LC13-7 through LC13-12 included below.

Response to comment LC13-6

The comment notes the economic importance of mining in the Basin and the need to expend cleanup funds wisely. EPA agrees. The comment goes on to suggest the most effective cleanup approach is to divide the Basin into sub-units. For EPA's response, see response to Comment No. LC13-12 below.

No comments

Comments on Proposed Plan

Upper Basin of the Coeur d'Alene River,
Bunker Hill Mining and Metallurgical Complex
Superfund Site

Prepared by

Steven P. Larson
S. S. Papadopulos & Associates, Inc.

November, 2010

1

Comments on Proposed Plan

Introduction

S. S. Papadopulos & Associates, Inc. (SSPA) was asked to review the Proposed Plan submitted by USEPA on July 12, 2010. The purpose of this review was to provide comments on certain aspects of the plan related to the characterization of contamination, the integration of that characterization for purposes of selecting and evaluating remedial alternatives, and impact of that characterization and integration on the selection of a preferred alternative.

Specifically, I was asked to comment upon a predictive analysis or probabilistic analysis (PA) that was used by USEPA to both characterize quantitatively the contamination and to estimate the impact of potential remedial actions. I was also asked to review and comment on the degree to which the plan responded to concerns and recommendations from a report by the National Academy of Sciences (NAS) in 2005 that independently evaluated EPA's scientific and technical practices associated with the site. The SSPA review and comment focused on the degree to which available data and information were used in the FFS and the plan in an attempt to provide greater specificity and reliability in evaluating site conditions and potential impacts of remedial actions as called for by the NAS. I have also commented on certain technical and conceptual issues related to the potential implementation of the plan and how this plan compares with the overall approach EPA has used at other large Superfund sites.

Use of Predictive Analysis

The 2005 NAS evaluation expressed significant concerns about the predictive or probabilistic analysis that EPA was using to characterize site conditions and evaluate potential remedial actions. In their report the NAS stated, "*In particular, the committee has concerns about the accuracy of the "probabilistic model" that the agency used to predict postremediation dissolved zinc concentrations and compare remedial alternatives.*." (NAS report at page 340). Variations on this concern were expressed elsewhere in the NAS report.

LC13-7

The NAS was severely critical of the PA for a number of reasons that included: (1) being based on an untested hypothesis that metal loading and source volume are proportional and reductions in loading likewise proportional to reductions in source volume, (2) not attempting to rigorously calibrate the model, and (3) not considering the substantial source removals and monitoring data along the South Fork and tributaries to the river. The NAS wanted to to ensure that EPA's use of any predictive tool would be "*based on sound scientific principles and supported by site-specific information on leaching potential, groundwater movement, and other such factors to allow them to accurately assess the likely effectiveness of remedial actions on dissolved metal loadings from*

2

Response to comment LC13-7

The comment is critical of EPA's use of the Predictive Analysis in selecting a remedy for the Upper Basin. Regarding EPA's use of the Predictive Analysis in evaluating the effectiveness of remedial alternatives, see responses to comments in Document No. BU48 submitted by Cambridge Environmental on behalf of Hecla Mining.

various sources along the river" (NAS report at page 404). In short, the NAS was telling EPA to better utilize the available data and information along with sound science so that the decision making process could rely on the predictive calculations.

In response to the NAS concerns and recommendations, EPA made modifications to the PA analysis that were, for the most part, cosmetic, and did not address the fundamental issue of providing a reliable basis for decision making. For example, EPA added a calculation point at Elizabeth Park which would supposedly allow for impacts in the Box to be distinguished from OU3 impacts. They also deducted certain groundwater impacts that were estimated from models, updated the source inventory to reflect changes since 2001 and used certain data from after October 2002 to update PAT parameters. Updates to the source inventory were minor (see Proposed Plan page 7-4). The deduction of certain estimated groundwater impacts presumes that those estimates are reliable. Otherwise, the process simply transfers error to the other sources. Use of the data after October 2002 is certainly appropriate but the mechanics of applying that data, at least above Elizabeth Park remained unchanged. The RLPs (relative loading potential) as originally defined in the 2001 FFS PA were not changed. The RFs (remedial factors) previously defined for waste types and treatment technologies from the original FS modeling were similarly retained. In essence, the EPA tried to give the appearance of responding to the NAS criticisms but that response lacked substance and did not respond to the real concern that the PA was not rigorous enough or accurate enough to provide a reliable basis for decision making.

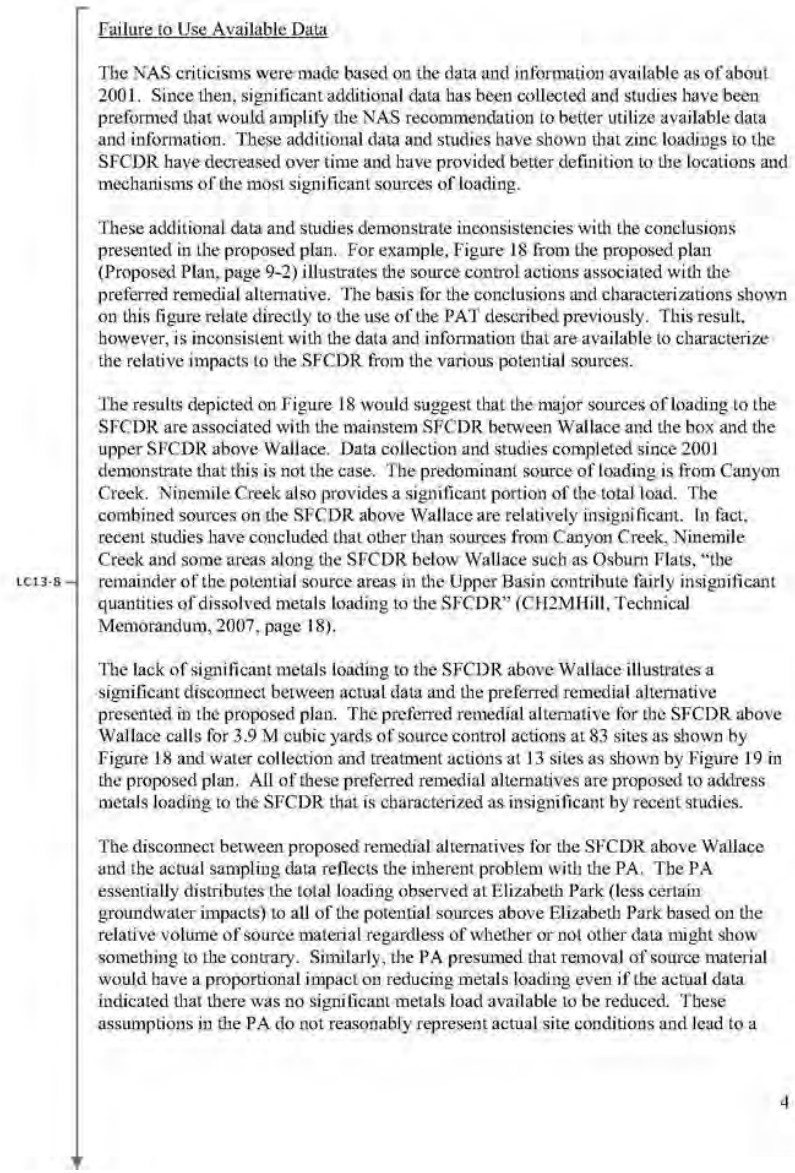
LC13-7

The EPA response to the NAS in one case was to simply remove their evaluation from consideration. In the original development of the PA, factors were included to try to estimate the longer-term benefits of potential remedial actions. These types of assessments are appropriate since the relative time frames for achieving clean up goals are one of the considerations for comparing alternative remedial actions. The NAS was especially critical of the determination and assignment of these factors. The response of the EPA was to, at the very end of the process, simply remove that component of the evaluation from consideration.

The thrust of the NAS criticism with regard to the PA was that it needed greater specificity as to leaching processes and loading sources and more confidence that assumptions about the potential effectiveness of various remedial actions were accurate. On the second issue, the RFs (remediation factors) used in the 2001 FS were not changed so, in effect, nothing was done. On the first issue, a calculation point was added at Elizabeth Park but everything above that point except for estimated groundwater impacts was still lumped together via the same RLP factors that had been used previously. This continued despite the data collection and studies that had been completed over time, including since 2001. For example, a study of zinc loading completed in 2007 concluded that the primary sources of zinc loading were from Canyon Creek, Ninemile Creek, and some specific reaches along the SFCDR. It also concluded that the "remainder of the potential source areas in the Upper Basin contribute fairly insignificant quantities of dissolved metals loading to the SFCDR". This is the type of specificity the NAS was looking for. The PA, however, did not attempt to incorporate this type of information.

3

No comments



Failure to Use Available Data

The NAS criticisms were made based on the data and information available as of about 2001. Since then, significant additional data has been collected and studies have been preformed that would amplify the NAS recommendation to better utilize available data and information. These additional data and studies have shown that zinc loadings to the SFCDR have decreased over time and have provided better definition to the locations and mechanisms of the most significant sources of loading.

These additional data and studies demonstrate inconsistencies with the conclusions presented in the proposed plan. For example, Figure 18 from the proposed plan (Proposed Plan, page 9-2) illustrates the source control actions associated with the preferred remedial alternative. The basis for the conclusions and characterizations shown on this figure relate directly to the use of the PAT described previously. This result, however, is inconsistent with the data and information that are available to characterize the relative impacts to the SFCDR from the various potential sources.

The results depicted on Figure 18 would suggest that the major sources of loading to the SFCDR are associated with the mainstem SFCDR between Wallace and the box and the upper SFCDR above Wallace. Data collection and studies completed since 2001 demonstrate that this is not the case. The predominant source of loading is from Canyon Creek. Ninemile Creek also provides a significant portion of the total load. The combined sources on the SFCDR above Wallace are relatively insignificant. In fact, recent studies have concluded that other than sources from Canyon Creek, Ninemile Creek and some areas along the SFCDR below Wallace such as Osburn Flats, "the remainder of the potential source areas in the Upper Basin contribute fairly insignificant quantities of dissolved metals loading to the SFCDR" (CH2MHill, Technical Memorandum, 2007, page 18).

LC13-8

The lack of significant metals loading to the SFCDR above Wallace illustrates a significant disconnect between actual data and the preferred remedial alternative presented in the proposed plan. The preferred remedial alternative for the SFCDR above Wallace calls for 3.9 M cubic yards of source control actions at 83 sites as shown by Figure 18 and water collection and treatment actions at 13 sites as shown by Figure 19 in the proposed plan. All of these preferred remedial alternatives are proposed to address metals loading to the SFCDR that is characterized as insignificant by recent studies.

The disconnect between proposed remedial alternatives for the SFCDR above Wallace and the actual sampling data reflects the inherent problem with the PA. The PA essentially distributes the total loading observed at Elizabeth Park (less certain groundwater impacts) to all of the potential sources above Elizabeth Park based on the relative volume of source material regardless of whether or not other data might show something to the contrary. Similarly, the PA presumed that removal of source material would have a proportional impact on reducing metals loading even if the actual data indicated that there was no significant metals load available to be reduced. These assumptions in the PA do not reasonably represent actual site conditions and lead to a

4

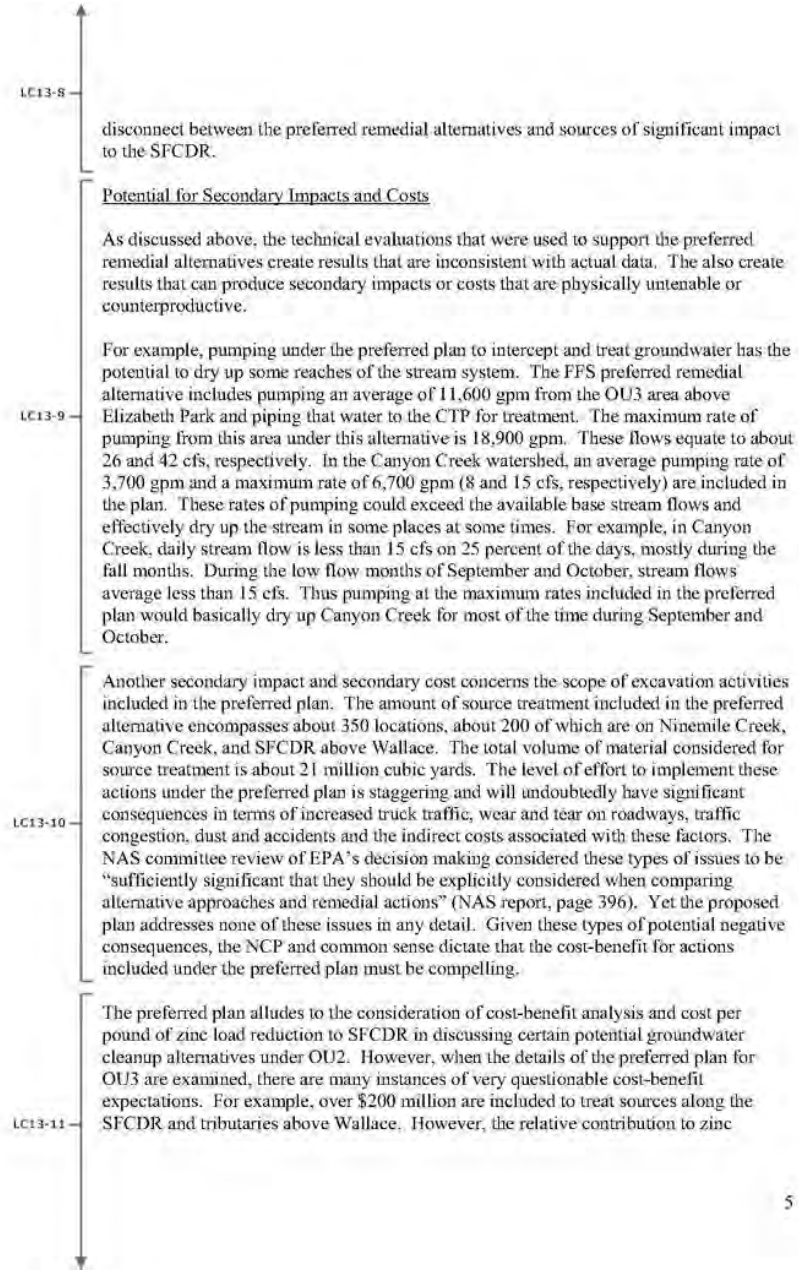
Response to comment LC13-8

The comment poses that EPA has failed to use available data and has advanced a larger-than-justified scope to the Preferred Alternative. EPA disagrees that it has failed to use available data. Since the Proposed Plan was issued, EPA has conducted a statistical evaluation of surface water data collected from selected monitoring stations in the Upper and Lower Basins. The methodology and results of this evaluation are documented in the *Draft Basin Environmental Monitoring Plan/ Environmental Monitoring Plan (BEMP/EMP) Surface Water Statistical Evaluation* (CH2M HILL, 2011). The evaluation sought to determine whether statistically significant trends in surface water quality are occurring. The evaluation examined station-specific trends over both the full period of the sampling record and the sampling period subsequent to 2002. A total of 33 stations, 26 stations in the Upper Basin, were evaluated. Both measured variables (metals and nutrient concentrations) and calculated variables (ambient water quality criteria [AWQC], AWQC ratios, and loads) were included in the evaluation. Results from the evaluation indicate that metals concentrations, AWQC ratios, and metals loads show generally decreasing trends at most stations over the full period of the sampling record. However, results from the evaluation of post-2002 trends indicated the following:

- The majority of stations exhibit no significant post-2002 trends, suggesting that conditions are unchanging, based on what the post-2002 data can detect.
- The majority of stations have median post-2002 AWQC ratios that exceed 1, with five stations exceeding the dissolved zinc AWQC by more than 20 times and eight stations exceeding the dissolved cadmium AWQC by more than 20 times.

The evaluation concluded that unchanging trends, coupled with AWQC ratios significantly exceeding 1, suggest that conditions at the stations with the AWQC exceedances will likely continue to exceed AWQC without significant additional cleanup actions that target improvements in water quality. As noted above, EPA has significantly reduced the scope of the Selected Remedy, and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for

the Upper Basin in the Proposed Plan. This is described in detail in ROD Amendment, Part 3, Section 2.0, and applies to areas of the commenter's concern upstream from Wallace.



LC13-8

disconnect between the preferred remedial alternatives and sources of significant impact to the SFCDR.

Potential for Secondary Impacts and Costs

As discussed above, the technical evaluations that were used to support the preferred remedial alternatives create results that are inconsistent with actual data. The also create results that can produce secondary impacts or costs that are physically untenable or counterproductive.

LC13-9

For example, pumping under the preferred plan to intercept and treat groundwater has the potential to dry up some reaches of the stream system. The FFS preferred remedial alternative includes pumping an average of 11,600 gpm from the OU3 area above Elizabeth Park and piping that water to the CTP for treatment. The maximum rate of pumping from this area under this alternative is 18,900 gpm. These flows equate to about 26 and 42 cfs, respectively. In the Canyon Creek watershed, an average pumping rate of 3,700 gpm and a maximum rate of 6,700 gpm (8 and 15 cfs, respectively) are included in the plan. These rates of pumping could exceed the available base stream flows and effectively dry up the stream in some places at some times. For example, in Canyon Creek, daily stream flow is less than 15 cfs on 25 percent of the days, mostly during the fall months. During the low flow months of September and October, stream flows average less than 15 cfs. Thus pumping at the maximum rates included in the preferred plan would basically dry up Canyon Creek for most of the time during September and October.

LC13-10

Another secondary impact and secondary cost concerns the scope of excavation activities included in the preferred plan. The amount of source treatment included in the preferred alternative encompasses about 350 locations, about 200 of which are on Ninemile Creek, Canyon Creek, and SFCDR above Wallace. The total volume of material considered for source treatment is about 21 million cubic yards. The level of effort to implement these actions under the preferred plan is staggering and will undoubtedly have significant consequences in terms of increased truck traffic, wear and tear on roadways, traffic congestion, dust and accidents and the indirect costs associated with these factors. The NAS committee review of EPA's decision making considered these types of issues to be "sufficiently significant that they should be explicitly considered when comparing alternative approaches and remedial actions" (NAS report, page 396). Yet the proposed plan addresses none of these issues in any detail. Given these types of potential negative consequences, the NCP and common sense dictate that the cost-benefit for actions included under the preferred plan must be compelling.

LC13-11

The preferred plan alludes to the consideration of cost-benefit analysis and cost per pound of zinc load reduction to SFCDR in discussing certain potential groundwater cleanup alternatives under OU2. However, when the details of the preferred plan for OU3 are examined, there are many instances of very questionable cost-benefit expectations. For example, over $200 million are included to treat sources along the SFCDR and tributaries above Wallace. However, the relative contribution to zinc

5

Response to comment LC13-9

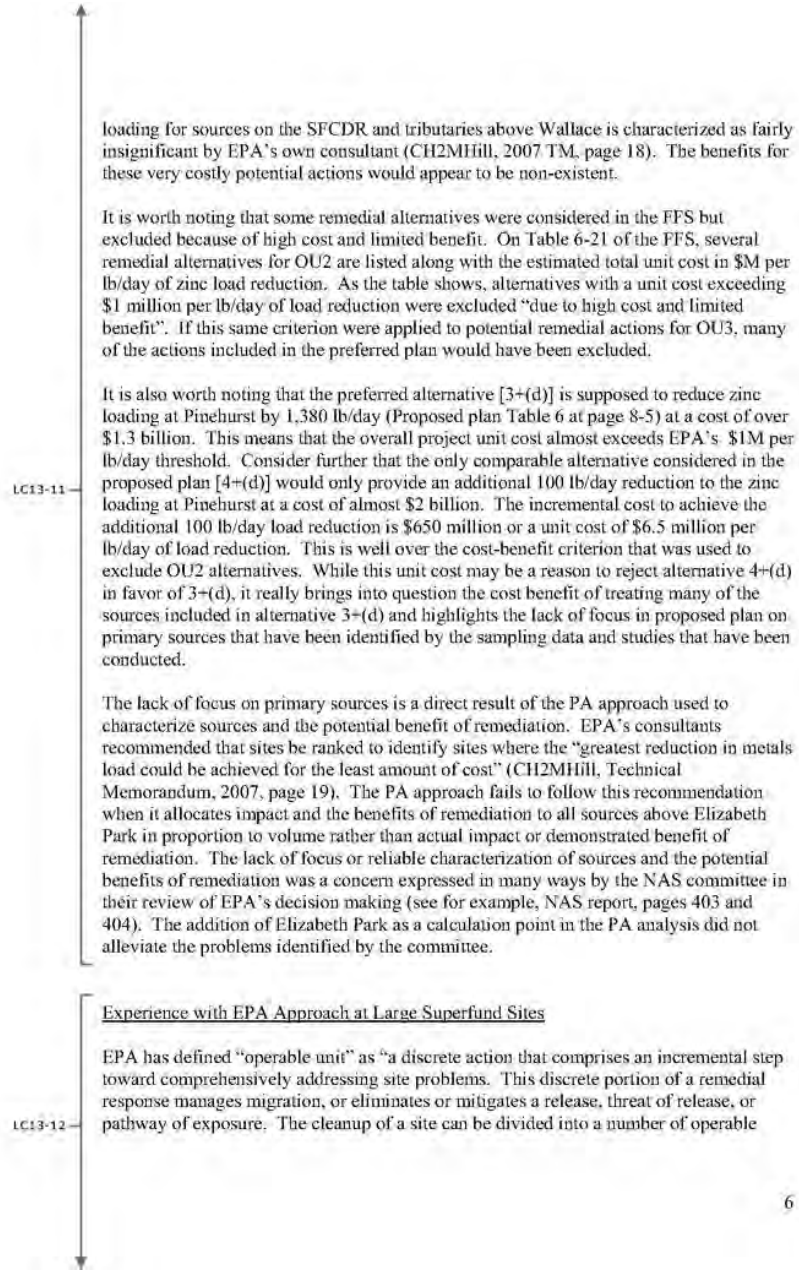
The commenter concludes that water treatment will eliminate or greatly reduce surface water flows in creeks and rivers. EPA disagrees with this conclusion. EPA has modeled these reductions during low-flow and average-flow conditions. The modeling estimates that the maximum stream flow reductions in Canyon Creek and the SFCDR during extreme low-flow conditions would be about 10 percent and 16 percent, respectively. To put this in perspective, in a "typical" year, dry season flow rates, as represented by flows in the 10 percentile, have been shown to fluctuate by 21 percent on average over the period of record. Therefore, a fluctuation of 16 percent is within the range of average natural low-flow fluctuation from year to year. Under average-flow conditions, the reductions are estimated to only be about 1 percent in Canyon Creek and 5 percent in the SFCDR. Further, this reduction will only occur for a small stretch of river between the collection points in Osburn and Canyon Creek and Kellogg, where the same volume of clean treated water will be returned to the SFCDR. EPA has estimated this expected stream flow reduction using the Basin-wide groundwater model and historical stream-flow monitoring data collected by the U.S. Geological Survey (USGS). The *Estimated Stream Flow Reductions Resulting from Groundwater Remedial Actions Technical Memorandum* (CH2M HILL, 2012) documents and explains these estimated flow reductions in detail. The impact of collecting contaminated adit drainage water was not included in EPA's flow reduction analysis because insufficient data exist for most discharges (i.e., in most cases there has only been one flow measurement at a given adit, and these measurements were generally not made during low-flow periods for comparability to the low-flow condition). Collection of flow and analytical data for adit discharges will be a high-priority pre-design task. When data are available, estimates of potential flow reduction will be refined prior to the implementation of remedial actions. Before conducting any water treatment project as part of the Selected Remedy, EPA will perform additional study and remedial design to ensure that stream flows are not reduced to a point that will have negative effects on aquatic life.

Response to comment LC13-10

The comment questions whether EPA has adequately considered the scope of impact of the excavation activities included in the Proposed Plan. As noted above, EPA has significantly reduced the scope of the Selected Remedy, and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. This is described in detail in ROD Amendment, Part 3, Section 2.0. As described in the ROD Amendment, implementability of the remedial alternatives was evaluated as required by the NCP. The Selected Remedy was determined by EPA to be implementable. Before the cleanup takes place, many pre-design activities will take place regarding the specific details concerning the logistics of implementing the Selected Remedy. Following pre-design work, enough information will be available to begin site-specific remedial design. The use of this iterative process to address uncertainty is common in EPA response actions. As discussed in Part 3 of the ROD Amendment, Section 3.11.1, adaptive management is critical to the remedial strategy for the Upper Basin. This was also recognized by the NAS during its review, and was a recurring theme of its conclusions and recommendations (National Academy of Sciences, 2005, http://www.epa.gov/superfund/accomp/coeur/), Overview of Conclusions and Recommendations, Summary Page 3). As EPA progresses through this iterative process, lessons learned from each iteration will be applied to subsequent remedial designs and the implementation of remedies that follow.

Response to comment LC13-11

The comment questions whether EPA adequately considered the cost-benefit and cost of remediating sources in the Upper Basin, particularly in the area upstream from Wallace. As noted above, EPA has significantly reduced the scope of the Selected Remedy, and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan, including the area upstream from Wallace. As described in the ROD Amendment, the Selected Remedy was determined by EPA to be cost effective, consistent with the NCP. As described in the Focused Feasibility Study, Proposed Plan, and ROD Amendment, estimated remedial costs were prepared in a manner consistent with the NCP. Costs were developed based upon principles outlined in EPA's *A Guide to Developing and Documenting Cost Estimates during the Feasibility Study* (EPA, 2000). The comment also criticizes EPA's use of the Predictive Analysis and questions whether EPA adequately addressed NAS concerns. Regarding these issues, see EPA responses to Comment No. LC13-7 above and Comment No. LC13-3 above, respectively.



loading for sources on the SFCDR and tributaries above Wallace is characterized as fairly insignificant by EPA's own consultant (CH2MHill, 2007 TM, page 18). The benefits for these very costly potential actions would appear to be non-existent.

It is worth noting that some remedial alternatives were considered in the FFS but excluded because of high cost and limited benefit. On Table 6-21 of the FFS, several remedial alternatives for OU2 are listed along with the estimated total unit cost in $M per lb/day of zinc load reduction. As the table shows, alternatives with a unit cost exceeding $1 million per lb/day of load reduction were excluded "due to high cost and limited benefit". If this same criterion were applied to potential remedial actions for OU3, many of the actions included in the preferred plan would have been excluded.

It is also worth noting that the preferred alternative [3+(d)] is supposed to reduce zinc loading at Pinehurst by 1,380 lb/day (Proposed plan Table 6 at page 8-5) at a cost of over $1.3 billion. This means that the overall project unit cost almost exceeds EPA's $1M per lb/day threshold. Consider further that the only comparable alternative considered in the
LC13-11 proposed plan [4+(d)] would only provide an additional 100 lb/day reduction to the zinc loading at Pinehurst at a cost of almost $2 billion. The incremental cost to achieve the additional 100 lb/day load reduction is $650 million or a unit cost of $6.5 million per lb/day of load reduction. This is well over the cost-benefit criterion that was used to exclude OU2 alternatives. While this unit cost may be a reason to reject alternative 4+(d) in favor of 3+(d), it really brings into question the cost benefit of treating many of the sources included in alternative 3+(d) and highlights the lack of focus in proposed plan on primary sources that have been identified by the sampling data and studies that have been conducted.

The lack of focus on primary sources is a direct result of the PA approach used to characterize sources and the potential benefit of remediation. EPA's consultants recommended that sites be ranked to identify sites where the "greatest reduction in metals load could be achieved for the least amount of cost" (CH2MHill, Technical Memorandum, 2007, page 19). The PA approach fails to follow this recommendation when it allocates impact and the benefits of remediation to all sources above Elizabeth Park in proportion to volume rather than actual impact or demonstrated benefit of remediation. The lack of focus or reliable characterization of sources and the potential benefits of remediation was a concern expressed in many ways by the NAS committee in their review of EPA's decision making (see for example, NAS report, pages 403 and 404). The addition of Elizabeth Park as a calculation point in the PA analysis did not alleviate the problems identified by the committee.

Experience with EPA Approach at Large Superfund Sites

EPA has defined "operable unit" as "a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or
LC13-12 pathway of exposure. The cleanup of a site can be divided into a number of operable

6

Response to comment LC13-12

The comment criticizes EPA's decision to include the Upper Basin sources within a single OU, and notes a number of CERCLA sites where EPA has chosen to break the site down into numerous OUs. CERCLA and its implementing regulations, the NCP, provide EPA with considerable flexibility as how to approach complex sites. As described in detail in the Proposed Plan and ROD Amendment, the approach taken by EPA for the Upper Basin is a well reasoned one, consistent with the NCP. Contrary to the implication of the comment, EPA will not merely launch remedial activities at a myriad of sites with no strategic planning regarding which ones to remediate in what order. In response to comments, EPA has significantly reduced the scope of the Selected Remedy and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. Changes made to the Selected Remedy are described in detail in Part 2, Section 14.0 of the ROD Amendment. As described in the text of the ROD Amendment and in Part 3, Section 3.11, the Selected Remedy will be implemented employing an adaptive management approach. Cleanup actions will be prioritized as part of an implementation planning process while providing the public with continuing opportunities to provide input on how the cleanup is being implemented. EPA is confident this process will be efficient, cost effective, and successful in implementing the Selected Remedy.

units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site. Operable units will not impede implementation of subsequent actions, including final action at the site" (40 CFR §307.14).

EPA previously divided the Coeur d'Alene Basin into three operable units. OU-1 (Populated Areas) and OU-2 (Non-Populated Areas) are located within the 21 square mile Bunker Hill "Box". The Upper Basin component of OU-3 alone covers some 275 square miles of the Basin, which appears to make the Upper Basin area covered in EPA's plan one of the largest OUs in Superfund history. Nor are there many Proposed Plans that have a 50 to 90 year duration. This is inconsistent with the way EPA normally approaches the investigation and remediation of large Superfund sites and with the direction from the NAS at this site, in particular

SSPA has been involved in a number of large Superfund sites including Hanford, Onondaga Lake, Hastings Nebraska, Aerojet Sacramento, and Silver Bow Creek/Butte Montana. The EPA approach at these sites has been to use multiple operable units or, in the case of Hastings, subsites with separate OUs to issue RODs and manage the remedial actions. At the Hanford site, EPA used 96 OUs to subdivide the problem into manageable units. Similarly, at Onondaga Lake, 25 OUs were created. At the Hastings Nebraska site, the overall contamination problem was subdivided into 7 subsites and a total of 20 OUs for purposes of investigation and to facilitate identification and implementation of remedial actions. The overall site contamination has been managed and is being remediated through the issuance of multiple RODs and ROD amendments. This process has allowed EPA to focus on the major sources of contamination and move forward toward cost-effective remedial actions and OU-based NPL delistings.

LC13-12

Examples of some multiple OU sites taken from EPA's database are as follows:

SITE	SIZE	Number of OUs
Hanford 200 Area	215 square miles	56
Aberdeen Proving Ground	13,000 acres	48
Griffiss Air Base	3,552 acres	39
Hanford 100 Area	26 square miles	36
Naval Air Engineering Center	7,382 acres	26
California Gulch	16.5 square miles	12
Cherokee County	110 square miles	7
Oronogo-Duenweg Mining	6,400 acres	5
Tar Creek	40 square miles	5
Summitville Mine	11 acres	5

As shown by this table, EPA has routinely subdivided large sites with multiple sources into many OUs. The purpose of this subdivision is to break large problems manageable

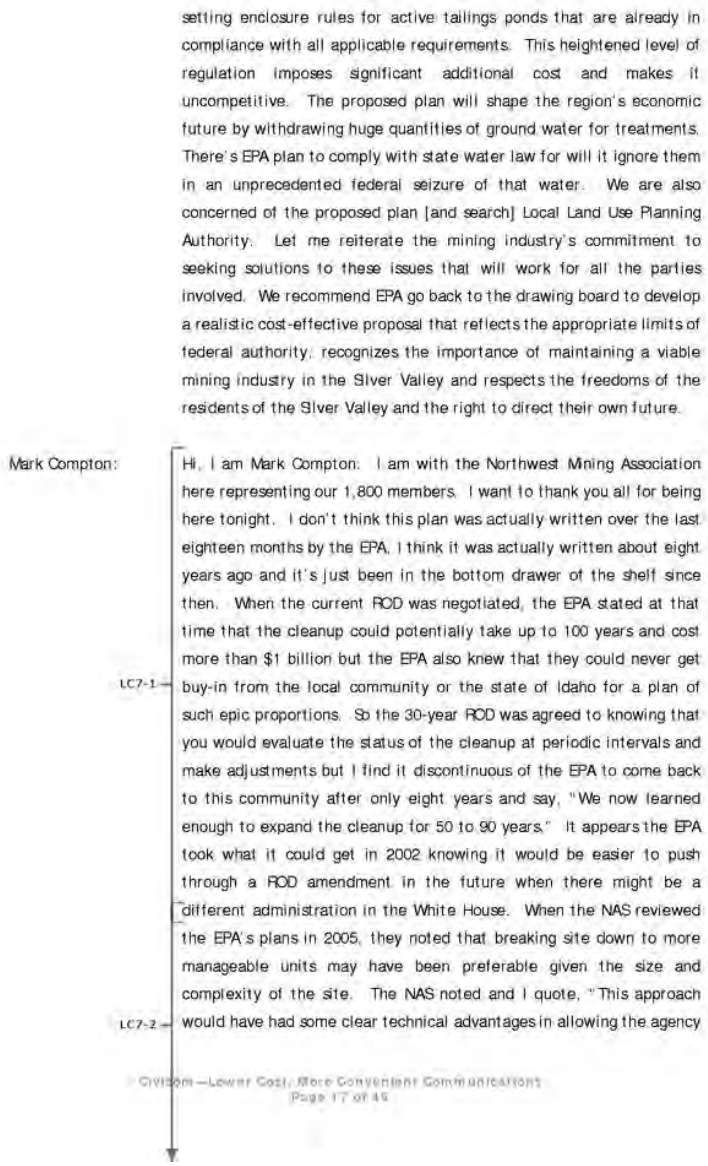
7

No comments

LC13-12 units, adequately characterize the contribution of the units to the overall problem and make a reasonable assessment of the nature and effectiveness of remedial actions that are applicable to each unit. The approach used in the CDR site is to basically lump literally hundreds of sources or potential sources in a single OU. This approach has the potential to lead to significant inefficiency and expenditures of significant monies with little benefit or progress toward overall remedial goals.

No comments

Northwest Mining Association, LC7, Letter 616015-12



setting enclosure rules for active tailings ponds that are already in compliance with all applicable requirements. This heightened level of regulation imposes significant additional cost and makes it uncompetitive. The proposed plan will shape the region's economic future by withdrawing huge quantities of ground water for treatments. There's EPA plan to comply with state water law for will it ignore them in an unprecedented federal seizure of that water. We are also concerned of the proposed plan [and search] Local Land Use Planning Authority. Let me reiterate the mining industry's commitment to seeking solutions to these issues that will work for all the parties involved. We recommend EPA go back to the drawing board to develop a realistic cost-effective proposal that reflects the appropriate limits of federal authority, recognizes the importance of maintaining a viable mining industry in the Silver Valley and respects the freedoms of the residents of the Silver Valley and the right to direct their own future.

Mark Compton: Hi, I am Mark Compton. I am with the Northwest Mining Association here representing our 1,800 members. I want to thank you all for being here tonight. I don't think this plan was actually written over the last eighteen months by the EPA, I think it was actually written about eight years ago and it's just been in the bottom drawer of the shelf since then. When the current ROD was negotiated, the EPA stated at that time that the cleanup could potentially take up to 100 years and cost more than $1 billion but the EPA also knew that they could never get LC7-1 buy-in from the local community or the state of Idaho for a plan of such epic proportions. So the 30-year ROD was agreed to knowing that you would evaluate the status of the cleanup at periodic intervals and make adjustments but I find it discontinuous of the EPA to come back to this community after only eight years and say, "We now learned enough to expand the cleanup for 50 to 90 years." It appears the EPA took what it could get in 2002 knowing it would be easier to push through a ROD amendment in the future when there might be a different administration in the White House. When the NAS reviewed the EPA's plans in 2005, they noted that breaking site down to more manageable units may have been preferable given the size and complexity of the site. The NAS noted and I quote, "This approach LC7-2 would have had some clear technical advantages in allowing the agency

Civitom—Lower Cost, More Convenient Communications
Page 17 of 49

Response to comment LC7-1

See response to Comment No. I58-1.

Response to comment LC7-2

The comment poses that EPA needs to heed the advice of the NAS. EPA has considered NAS recommendations. As to how the Selected Remedy compares to NAS recommendations, see the ROD Amendment, Part 3, Section 3.5. Furthermore, as noted above, EPA has significantly reduced the scope of the Selected Remedy from that of the Preferred Alternative contained in the Proposed Plan.

LC7-2 to analyze risks more systematically and in considering remedial alternatives more effectively because of its more manageable size and differing characteristics of the smaller OUs." It seems the EPA has an opportunity now to this ROD amendment to heed the advice of the NAS, segment the basement into more manageable units and quickly declare the Basin cleaned up with respect to human health. Finally, the EPA needs to specifically protect current and future mining opportunities in the valley – so the valley's blessed with significant mineral resources and the miners in this valley have played a vital role in helping the US win two world wars while building a strong local economic foundation. The current mining operations in the valley are proving everyday that these resources can be developed in a responsible manner. The EPA needs to respect that and make the protection of the Silver Valley mining industry, even the expansion of the industry, a high priority in any cleanup plan. Thank you again.

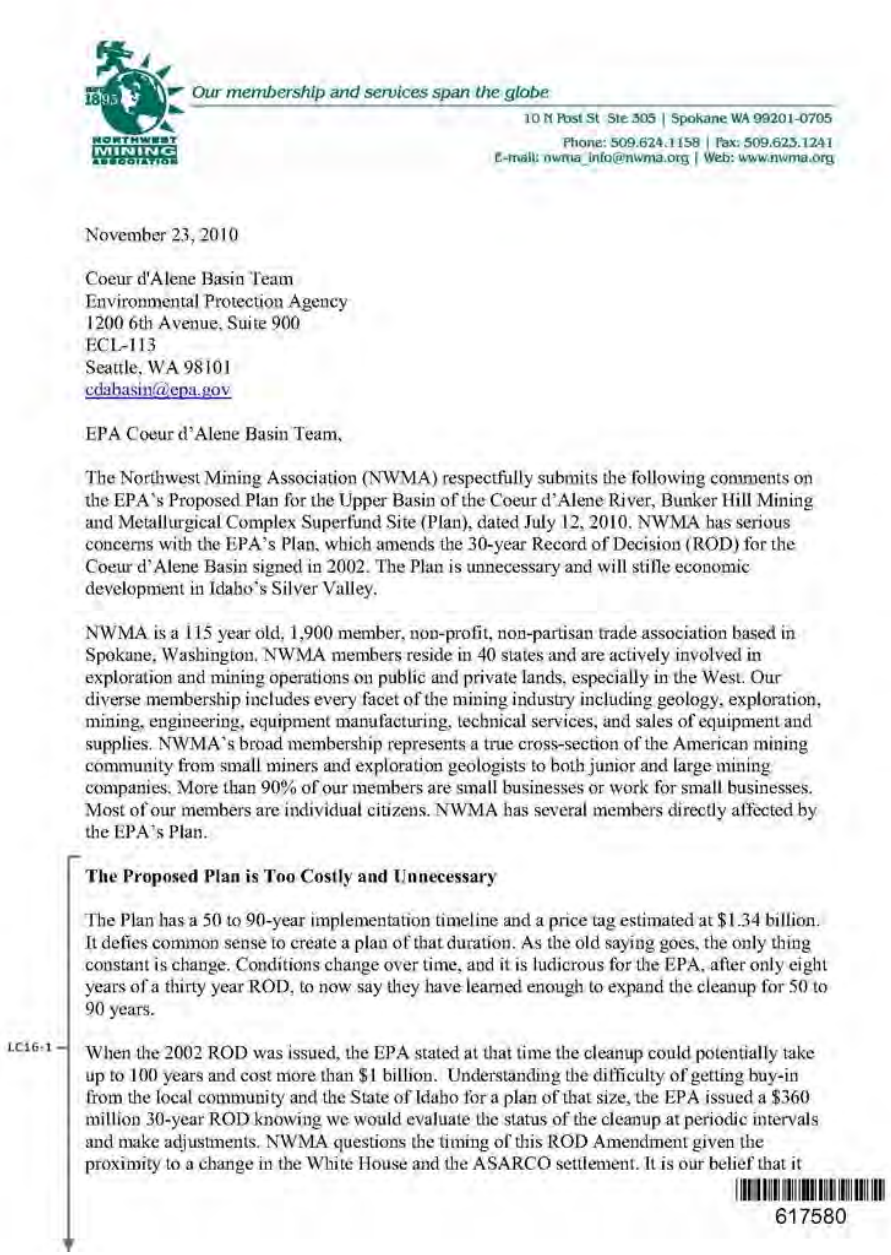
LC7-3

Tom Torgerson: Senator, thank you. Governor, I appreciate the opportunity and I actually have a letter from the – I'm representing the 6,800 realtor members of the Idaho Association of Realtors. I was going to read this but actually Mark said [it already]. So like Mark, I was involved with the Community Leaders for EPA Accountability Now during the original ROD proposal and I was on the - Christie Todd Whitman who at the time was the head of EPA and listened to her explain that Coeur d'Alene and its drinking water and its water quality exceeded federal drinking water standards and is outside the scope of the Superfund. With that in mind, I will just simply do some bullet points here from the Association of Realtors and certainly, locally as Coeur d'Alene [knew]. We would like maximum tenure of the mandatory ROD amendments, at least a minimum of 180-day comment period. We could not support any dewatering in the South Fork tributaries nor channelizing or compartmentalizing of any sort of the South Fork. No potential mining industry can be eliminated or unduly restricted which would effectively eliminate it and a focus that's spent on the EPM, human health improvements and protection of what has already been maintained and what has already been work done. That's all I have to say.

Response to comment LC7-3

See response to Comment No. I58-5.

Northwest Mining Association, LC16, Letter 617580



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November 23, 2010

Coeur d'Alene Basin Team
Environmental Protection Agency
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EPA Coeur d'Alene Basin Team,

The Northwest Mining Association (NWMA) respectfully submits the following comments on the EPA's Proposed Plan for the Upper Basin of the Coeur d'Alene River, Bunker Hill Mining and Metallurgical Complex Superfund Site (Plan), dated July 12, 2010. NWMA has serious concerns with the EPA's Plan, which amends the 30-year Record of Decision (ROD) for the Coeur d'Alene Basin signed in 2002. The Plan is unnecessary and will stifle economic development in Idaho's Silver Valley.

NWMA is a 115 year old, 1,900 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 40 states and are actively involved in exploration and mining operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA's broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens. NWMA has several members directly affected by the EPA's Plan.

The Proposed Plan is Too Costly and Unnecessary

The Plan has a 50 to 90-year implementation timeline and a price tag estimated at $1.34 billion. It defies common sense to create a plan of that duration. As the old saying goes, the only thing constant is change. Conditions change over time, and it is ludicrous for the EPA, after only eight years of a thirty year ROD, to now say they have learned enough to expand the cleanup for 50 to 90 years.

LC16-1

When the 2002 ROD was issued, the EPA stated at that time the cleanup could potentially take up to 100 years and cost more than $1 billion. Understanding the difficulty of getting buy-in from the local community and the State of Idaho for a plan of that size, the EPA issued a $360 million 30-year ROD knowing we would evaluate the status of the cleanup at periodic intervals and make adjustments. NWMA questions the timing of this ROD Amendment given the proximity to a change in the White House and the ASARCO settlement. It is our belief that it

617580

Response to comment LC16-1

The comment questions the cost and implementation timeline for the Preferred Alternative contained in the Proposed Plan. Regarding cost and duration of Selected Remedy, see ROD Amendment, Part 3, Sections 3.9.1 and 3.10.1, respectively. Furthermore, in response to comments, EPA has significantly reduced the scope of the Selected Remedy, and is not including all of the remedial actions that were identified in EPA's Preferred Alternative for the Upper Basin in the Proposed Plan. As described in detail in the ROD Amendment, Part 3, Section 2.0, the Selected Remedy is both implementable and effective. Regarding the "10-year phased approach" which apparently refers to the Hecla 10-Year Plan, see the ROD Amendment, Part 3, Section 3.10.4. Regarding the commenter's claims about human health aspects of the cleanup, EPA is not trying to "sell the Proposed Plan as protective of human health." However, as described in detail in the ROD Amendment, Part 3, Section 3.2.3, there are human health benefits to the Selected Remedy and they are not "only $3 million." The comment also questions EPA's use of settlement funds and its relationship to taxpayer money. Regarding EPA's plans for the expenditure of settlement funds for cleanup, see the ROD Amendment, Part 3, Section 3.9.3.

does make sense to replace the 2002 ROD because even the new Proposed Plan recognizes that many aspects of the remedy selected in that decision are not implementable or will not be effective. The answer, however, is not a bigger, longer, more expensive plan. As discussed below, the answer is a 10-year phased approach.

LC16-1 The 2002 ROD correctly prioritized human health. Now that cleanup related to human health is nearly complete, it appears EPA is searching for reasons to stay in the Coeur d'Alene Basin. However, the EPA should not try to sell the Proposed Plan as protective of human health. Only $3 million of the $1.34 billion in the Plan is targeted towards human health remedies and EPA personnel testified in the Asarco bankruptcy that the current plan is not a human health remedy.

EPA states that with the $500 million from the Asarco settlement, if managed correctly the expanded cleanup will not expend much taxpayer money. That is the proverbial lipstick on a pig. With the Proposed Plan, it appears EPA is looking for ways to spend the money, regardless of need. After all, if there isn't a real need to spend $500 million now, what good would additional settlement monies be?

EPA needs to step back and take a more realistic approach to the cleanup.

EPA Needs to Heed the Advice of the NAS

The EPA has an opportunity with this ROD Amendment to heed the advice of the National Academy of Sciences (NAS) and correct some mistakes from the original ROD. When the NAS reviewed the EPA's plans in 2005, they noted that breaking the site down into more manageable units may have been preferable given the size and complexity of the site. They further noted: "There is a remarkable independence between protecting human health and protecting the environment. None of the remedies undertaken for human health protection will have any discernable impact on the protection of fish and wildlife. Similarly, EPA identifies only limited human health benefits that would result from the remedies being considered for protecting environmental resources."

The NAS stated that a more rational approach might have been to make one Operable Unit (OU) the protection of human health and the second OU the protection of environmental resources (or maybe even multiple OU's within those categories based on the sub-watersheds of the Basin).

LC16-2 The NAS noted "This approach would have had some clear technical advantages in allowing the agency to analyze risks more systematically and in considering remedial alternatives more effectively, because of the more manageable size and differing characteristics of the smaller OU's.

"In addition, such an approach probably would reduce the pall that so many residents believe will shadow the basin for decades to come, for the human health protection remedies in the basin will be completed relatively quickly. When this occurs, the basin could be declared to be cleaned up with respect to human health, although further work would be required to protect the environmental resources. To the extent that the designation of the basin as a Superfund site affects its economic prospects, such a distinction might well have reduced these negative effects."

Response to comment LC16-2

The comment poses that EPA needs to heed the advice of the NAS. EPA has considered NAS recommendations. As to how the Selected Remedy compares to NAS recommendations, see the ROD Amendment, Part 3, Section 3.5.2. Furthermore, as noted above, EPA has significantly reduced the scope of the Selected Remedy from that of the Preferred Alternative contained in the Proposed Plan.

LC16-2

EPA should segment the basin into more manageable units and quickly declare the basin cleaned up with respect to human health. Segmenting the basin in this manner and quickly de-listing the cleaned up units from Superfund is practical and would provide the certainty needed to enhance economic development in this valley, including more future mining.

EPA's Plan Must Protect Current and Future Mining

Importantly, as part of the ongoing cleanup in the Basin, the EPA needs to specifically protect current and future mining opportunities in the Silver Valley. Mining is the ultimate sustainable business. It creates new wealth and provides the high-paying family wage level jobs with good benefits our country and the Silver Valley desperately needs. Moreover, the indirect employment multiplier for the mining industry is twice the national average. Mining is economic stimulus that won't require deficit spending or cost taxpayers a dime.

Unfortunately, according to a recent report by Behre Dolbear, the U.S. is tied with Papua New Guinea for the longest permitting approval process among the top 25 mining countries in the world. Consequently, the U.S. is seeing fewer investment dollars for new projects and an increased reliance on foreign sources to meet our metal and minerals needs. In fact, the U.S. currently attracts less than *seven percent* of worldwide exploration dollars. A 50-90 year Superfund designation for the entire Basin would only exacerbate the problem.

The Silver Valley and the State of Idaho already has seen the negative effects of the current Superfund designation on mining investment. Imagine the activity that should be occurring here with the significant increase in commodity prices we are now seeing – the highest gold price on record and the highest silver price since the Hunt brothers manipulated the market between September 1979 and January 1980.

LC16-3

The U.S. can and should be more self-reliant for the minerals we need. Despite reserves of 78 important mined minerals, our nation is becoming more dependent upon foreign sources to meet our metal and minerals requirements. For example, here we are referencing the "Silver Valley," and yet the U.S. is 63% dependent on foreign sources for our silver needs. That just doesn't make sense.

Currently, America is 100 percent dependent on foreign sources for 18 minerals commodities and more than 50 percent import reliant on another 45 commodities. Increased import dependency causes a multitude of negative consequences, including aggravation of the U.S. balance of payments, unpredictable price fluctuations, loss of high paying jobs and vulnerability to possible supply disruptions.

Our over-reliance on foreign supplies is exacerbated by competition from the surging economies of countries such as China and India. As these countries continue to evolve and emerge into the global economy, their consumption rates for mineral resources are ever-increasing; they are growing their economies by employing the same mineral resources that we used to build and maintain our economy. As a result, there exists a much more competitive market for global mineral resources.

Response to comment LC16-3

The comment implores EPA to protect current and future mining. EPA recognizes the importance of mining in the Upper Basin and is confident that cleanup and mining can coexist. Regarding EPA's commitment to work with mining during the Upper Basin cleanup, see the ROD Amendment, Part 3, Section 3.1.3.

EPA Advertisements Need Clarification

A disturbing aspect of EPA's newspaper advertisements selling the proposed plan is the statement that cleanup and *responsible* mining can continue together. The term "responsible mining" is redundant. According to the environmental laws and regulations of the United States - the *most stringent* in the world - irresponsible mining cannot occur; a permit to mine would never be issued for any mine that cannot demonstrate compliance with all applicable federal and state environmental laws and regulations. Part of the apprehension for the mining industry regarding the EPA's expansion plans is the uncertainty surrounding what the *EPA* defines as responsible mining.

LC16-4

We also are confused by EPA's claims in newspaper ads touting job creation as a benefit of the cleanup. The Comprehensive Environmental Response and Liability Act (CERCLA) is not a job creating statute. Certainly there are temporary jobs created and job security for EPA taxpayer funded positions, but at what expense? If a perpetual Superfund stigma inhibits mining and other economic development investment in the Silver Valley, many more potential high-paying, wealth creating jobs are lost. When lost investment is factored in, the Plan certainly will create a net loss of jobs.

EPA's Plan is Inconsistent with the National Contingency Plan, Suffers from Numerous Technical Deficiencies and Does Not Achieve NEPA Functional Equivalence

EPA's Proposed Plan is significantly deficient in a number of ways. Despite the size of the Plan and the Focused Feasibility Study (FFS), the fact of the matter is the real remedial action decision-making is deferred to the Remedial Design stage. Whether the topic is where and how the "extensive excavation of waste rock, tailings and floodplain sediments" will be actually conducted, where and how the massive groundwater collection and treatment system will be located, and where the "appropriate locations for [waste] repositories" will be are not described in any meaningful way in either the Plan or the FFS. Where and how will the actual cleanup take place? What exactly will be done? When will it occur? How will materials be transported? What are the environmental impacts associated with the remediation activities? The lack of specificity precludes any meaningful environmental analysis as required of CERCLA cleanups in order to be the functional equivalent of the National Environmental Policy Act, 42 U.S.C. sections 4321 et seq.

LC16-5

The Proposed Plan also is inconsistent with the National Contingency Plan (NCP) in many other ways, but we will limit our discussion to two: The NCP requires a reasonable opportunity for the public to comment. The failure of the Proposed Plan to provide specifics on the actual remediation which will occur deprives the public of the opportunity to provide meaningful comment on those plans. The NCP also requires that EPA screen and then compare a reasonable number of remedial alternatives. In this case, EPA arbitrarily dismissed the reasonable alternatives presented by the Mining Companies and by the State of Idaho and proceeded to evaluate and compare only their own big and bigger alternatives.

Attached to this letter and incorporated herein, are detailed comments on the Proposed Plan prepared by ARCADIS U.S., Inc. ARCADIS concludes that the Proposed Plan encompasses too large of an area, fails to meet ARARs, prescribes remedial activities that are not implementable at costs that are proportional to benefits, does not demonstrate effectiveness, including

Response to comment LC16-4

The comment questions what EPA means by "responsible" mining. EPA's use of the term is not intended to be pejorative, and simply means in compliance with applicable laws. The comment goes on to question whether valuable jobs will be created by the cleanup, and raises the specter of a "Superfund stigma." EPA does maintain that additional jobs will be created in the Basin as described in the ROD Amendment, Part 3, Section 3.1.2. Regarding the mistaken notion that the cleanup program will create or sustain a "Superfund stigma," see ROD Amendment, Part 3, Section 3.10.2.

Response to comment LC16-5

The commenter concludes the Proposed Plan is significantly deficient because remedial action decision-making is deferred to post-ROD periods. Regarding EPA's response, see response to Comment No. BU45-8 submitted by Formation Environmental on behalf of Hecla Mining. As to NEPA functional equivalence, see EPA response to Comment No. BU36-15 submitted by Temkin Wielga & Hardt LLP on behalf of Hecla Mining. The commenter also asserts that the Proposed Plan is inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This is mistaken. As described at length in the Proposed Plan and ROD Amendment, EPA's remedy selection process was conducted in a manner consistent with the NCP. The comment also concludes the remediation will preclude meaningful public comment. EPA disagrees with this conclusion. As to EPA's plans to provide the public with the opportunity to provide meaningful comment on future cleanup, see ROD Amendment, Part 3, Section 3.11.2. The comment also concludes EPA's remedial screening process was inconsistent with the NCP. EPA disagrees with this conclusion. Regarding the remedial alternative screening process and specifically the rejected Mining Company and State of Idaho alternatives, see Comment No. BU45-3 submitted by Formation Environmental on behalf of Hecla Mining. The commenter's conclusion that the Proposed Plan failed to provide specifics on the actual remediation and consequently deprives the public of the opportunity to provide meaningful comment on those plans is incorrect. The Proposed Plan and supporting documentation provided specificity on the locations proposed for remediation and the type of remediation proposed. Also, see response to Comment No. I295-2 regarding EPA's efforts to involve the community in the Superfund process.

LC16-5 –

protectiveness, over a reasonable amount of time and is not NCP compliant in a number of ways. They further conclude that the phased 10-year plan is a much more reasoned approach and is both more protective and cost-effective at addressing the critical sources of contamination within a manageable time frame.

Conclusion

The EPA should use a common sense approach that focuses the cleanup efforts in the highest priority areas first, and that protects property that already has been cleaned up from re-contamination.

Rather than implementing a 50-90 year plan under a single ROD, it makes much more sense to complete the cleanup in 10-year increments under separate ROD amendments with frequent opportunities for *meaningful* public input.

Bottom line - a strong domestic mining industry is critical to our nation's future. A strong Silver Valley mining industry is an important component of that, and is critical to the economic success

LC16-6 – of the region and its people.

We don't have the luxury of choosing where minerals are located. The Silver Valley is blessed with significant mineral resources. The miners of the Silver Valley played a vital role in helping the U.S. win two world wars while building a strong, local economic foundation. The current mining operations in the Valley are proving every day these resources can be developed in a responsible manner. The EPA needs to respect that and make the protection of the Silver Valley mining industry, even the expansion of the industry, a high priority in any cleanup plan.

The EPA should work with the local communities, mining companies and the Coeur d'Alene Basin Environmental Improvement Project Commission (Basin Commission) to manage the Coeur d'Alene Basin cleanup in a way that protects and enhances current and future mining opportunities.

Thank you for considering our comments.

Sincerely,

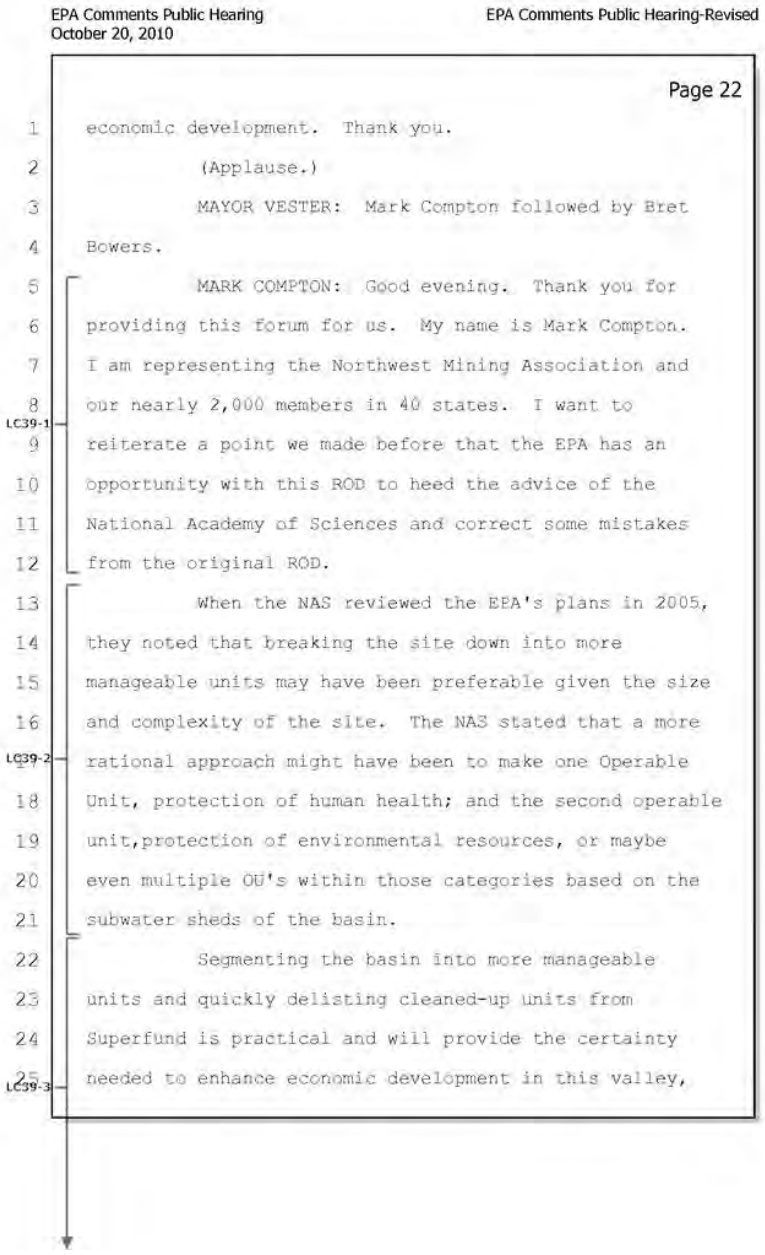
Laura Skaer

Laura Skaer
Executive Director

Response to comment LC16-6

EPA shares the commenter's desire to "use a common sense approach to cleanup that focuses the cleanup efforts in the highest priority areas first and that protects property that already has been cleaned up from recontamination." Such an approach has been employed in EPA's Selected Remedy. As to EPA's intentions regarding an implementation plan for the cleanup, see ROD Amendment, Part 3, Section 3.11. As described in the ROD Amendment, Part 3, Section 3.1.3, EPA is confident that cleanup and mining can coexist.

Northwest Mining Association, LC39, Letter 619651-10



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 22

economic development. Thank you.

(Applause.)

MAYOR VESTER: Mark Compton followed by Bret Bowers.

MARK COMPTON: Good evening. Thank you for providing this forum for us. My name is Mark Compton. I am representing the Northwest Mining Association and our nearly 2,000 members in 40 states. I want to LC39-1 reiterate a point we made before that the EPA has an opportunity with this ROD to heed the advice of the National Academy of Sciences and correct some mistakes from the original ROD.

When the NAS reviewed the EPA's plans in 2005, they noted that breaking the site down into more manageable units may have been preferable given the size and complexity of the site. The NAS stated that a more LC39-2 rational approach might have been to make one Operable Unit, protection of human health; and the second operable unit,protection of environmental resources, or maybe even multiple OU's within those categories based on the subwater sheds of the basin.

Segmenting the basin into more manageable units and quickly delisting cleaned-up units from Superfund is practical and will provide the certainty LC39-3 needed to enhance economic development in this valley,

Response to comment LC39-1

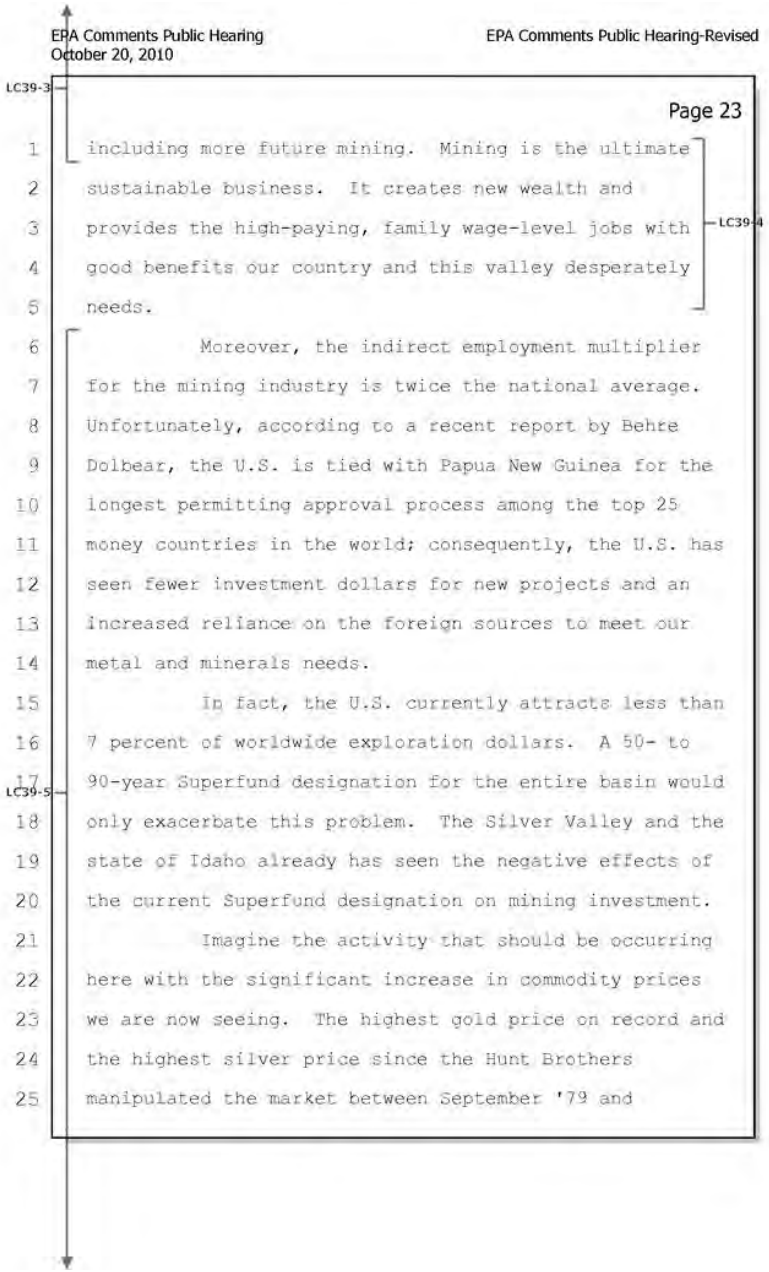
See response to Comment No. LJ27-8.

Response to comment LC39-2

The comment poses that EPA needs to heed the advice of the NAS. EPA has considered NAS recommendations. As to how the Selected Remedy compares to NAS recommendations, see the ROD Amendment, Part 3, Section 3.5. Furthermore, as noted above, EPA has significantly reduced the scope of the Selected Remedy from that of the Preferred Alternative contained in the Proposed Plan.

Response to comment LC39-3

See response to Comment No. BU24-2.



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 23

including more future mining. Mining is the ultimate sustainable business. It creates new wealth and provides the high-paying, family wage-level jobs with good benefits our country and this valley desperately needs.

Moreover, the indirect employment multiplier for the mining industry is twice the national average. Unfortunately, according to a recent report by Behre Dolbear, the U.S. is tied with Papua New Guinea for the longest permitting approval process among the top 25 money countries in the world; consequently, the U.S. has seen fewer investment dollars for new projects and an increased reliance on the foreign sources to meet our metal and minerals needs.

In fact, the U.S. currently attracts less than 7 percent of worldwide exploration dollars. A 50- to 90-year Superfund designation for the entire basin would only exacerbate this problem. The Silver Valley and the state of Idaho already has seen the negative effects of the current Superfund designation on mining investment.

Imagine the activity that should be occurring here with the significant increase in commodity prices we are now seeing. The highest gold price on record and the highest silver price since the Hunt Brothers manipulated the market between September '79 and

LC39-3

LC39-4

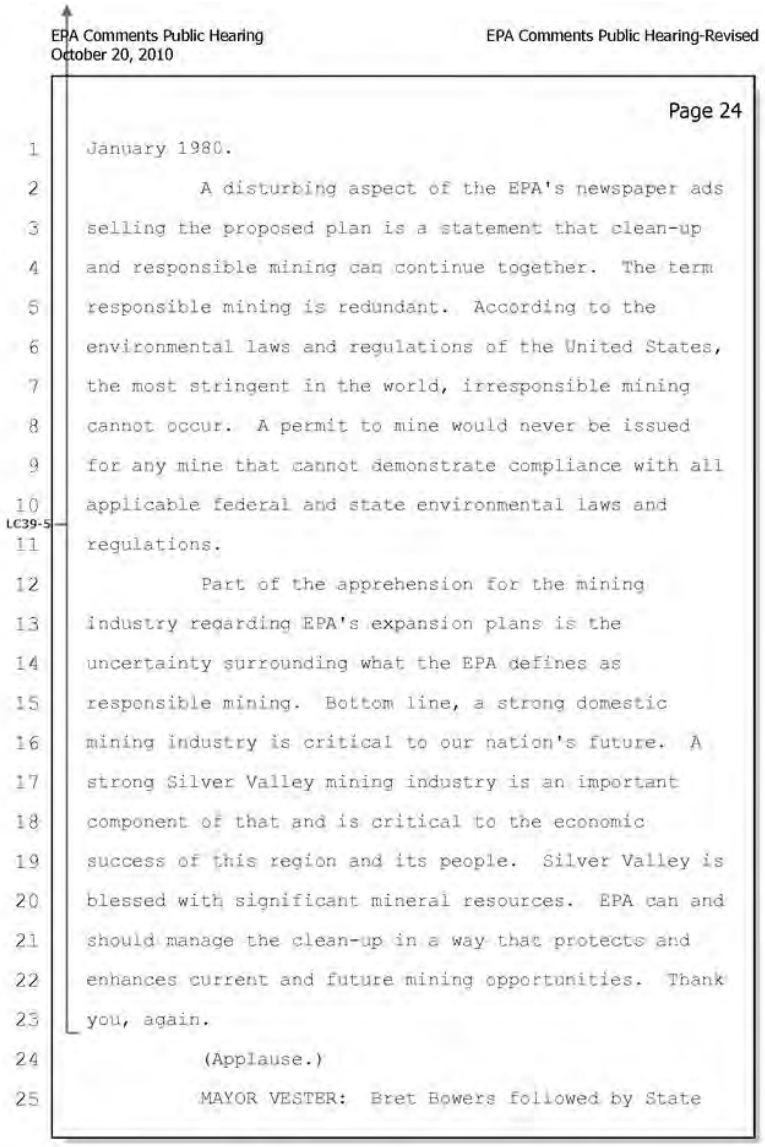
LC39-5

Response to comment LC39-4

See response to Comment No. I58-5.

Response to comment LC39-5

EPA recognizes the importance of mining in the Upper Basin and is confident that cleanup and mining can coexist. Regarding EPA's commitment to work with the mining during the Upper Basin cleanup, see response to Comment No. I58-5.



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 24

January 1980.

A disturbing aspect of the EPA's newspaper ads selling the proposed plan is a statement that clean-up and responsible mining can continue together. The term responsible mining is redundant. According to the environmental laws and regulations of the United States, the most stringent in the world, irresponsible mining cannot occur. A permit to mine would never be issued for any mine that cannot demonstrate compliance with all applicable federal and state environmental laws and regulations. LC39-5

Part of the apprehension for the mining industry regarding EPA's expansion plans is the uncertainty surrounding what the EPA defines as responsible mining. Bottom line, a strong domestic mining industry is critical to our nation's future. A strong Silver Valley mining industry is an important component of that and is critical to the economic success of this region and its people. Silver Valley is blessed with significant mineral resources. EPA can and should manage the clean-up in a way that protects and enhances current and future mining opportunities. Thank you, again.

(Applause.)

MAYOR VESTER: Bret Bowers followed by State

No comments

Sabala, James, LC5, Letter 616015-6

make a further comment about the process here that will give you more access.

Dan Opalski: Right. So I apologize. I meant to mention this in my opening comments as you heard from I think both of the clips on - we have received most recently, a request for a 90-day extension to the comment period from the federal delegation. We've also received a number of other requests from other entities and I wanted to let - some folks have already heard back and there's response from Dennis on those things. I want to let you know that we're at a point right now where the question is not whether we're going to extend the comment period, it's really about for how long. So I want to let everybody calm down about that that there will be more time. Dennis is still thinking through and we'll be working through with him as quickly as he's back in the saddle, so to speak, is exactly what that time extension would be. So I want everybody to be aware that that's where we are in that process.

Sen. Mike Crapo: Thank you very much. We appreciate that clarification. Alright, thank you very much. Jim?

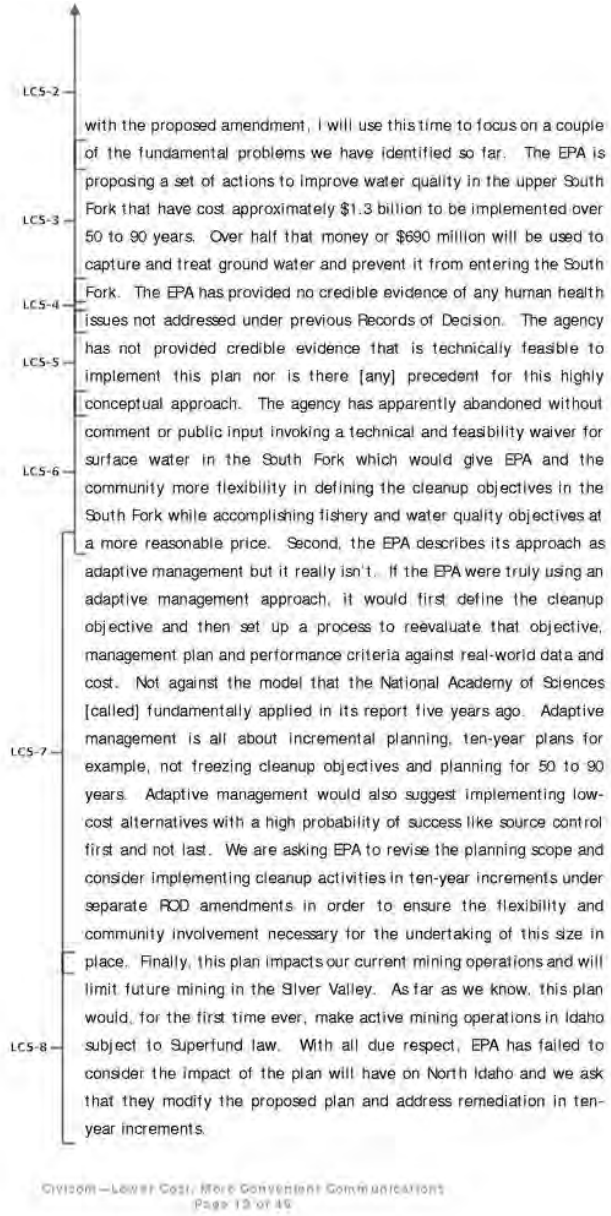
James Sabala: My name is James Sabala. Good evening, Senator Crapo, Governor Otter, Chief Allan, Commissioner Cantamessa and Mr. Opalski and thank you for being here tonight to hear our concerns about the EPA's LC5-1 proposed amendment to the Record of Decision for the Upper Coeur d'Alene River Basin. I offer my comments tonight on behalf of Hecla Mining Company but also on behalf of the Sabala family who first came to Shoshone County in 1929. My grandfather, father and indeed myself are proud to have been a part of the mining heritage in the communities of Shoshone County who have been affected by EPA's past activities in the Valley and if this ROD amendment is finalized, we'll be adversely affected for possibly 90 years. Hecla has been operating in the Silver Valley for over 100 years and has a deep commitment to the people who live, work and play here as well as the commitment to LC5-2 responsible mining practices where we operate. I also offer these comments tonight in interest of Hecla's approximately 700 employees as well as many others who are employed by contractors and vendors who are also part of the Hecla family. While we have many concerns

Response to comment LC5-1

Thank you for your comment.

Response to comment LC5-2

See responses to Comment Nos. I58-1 and I58-5.



LC5-2

with the proposed amendment, I will use this time to focus on a couple of the fundamental problems we have identified so far. The EPA is proposing a set of actions to improve water quality in the upper South Fork that have cost approximately $1.3 billion to be implemented over 50 to 90 years. Over half that money or $690 million will be used to capture and treat ground water and prevent it from entering the South Fork. The EPA has provided no credible evidence of any human health issues not addressed under previous Records of Decision. The agency has not provided credible evidence that is technically feasible to implement this plan nor is there [any] precedent for this highly conceptual approach. The agency has apparently abandoned without comment or public input invoking a technical and feasibility waiver for surface water in the South Fork which would give EPA and the community more flexibility in defining the cleanup objectives in the South Fork while accomplishing fishery and water quality objectives at a more reasonable price. Second, the EPA describes its approach as adaptive management but it really isn't. If the EPA were truly using an adaptive management approach, it would first define the cleanup objective and then set up a process to reevaluate that objective, management plan and performance criteria against real-world data and cost. Not against the model that the National Academy of Sciences [called] fundamentally applied in its report five years ago. Adaptive management is all about incremental planning, ten-year plans for example, not freezing cleanup objectives and planning for 50 to 90 years. Adaptive management would also suggest implementing low-cost alternatives with a high probability of success like source control first and not last. We are asking EPA to revise the planning scope and consider implementing cleanup activities in ten-year increments under separate ROD amendments in order to ensure the flexibility and community involvement necessary for the undertaking of this size in place. Finally, this plan impacts our current mining operations and will limit future mining in the Silver Valley. As far as we know, this plan would, for the first time ever, make active mining operations in Idaho subject to Superfund law. With all due respect, EPA has failed to consider the impact of the plan will have on North Idaho and we ask that they modify the proposed plan and address remediation in ten-year increments.

LC5-3 LC5-4 LC5-5 LC5-6 LC5-7 LC5-8

Civicom—Lower Cost, More Convenient Communications
Page 13 of 45

Response to comment LC5-3

See responses to Comment Nos. I58-1 and I58-2 regarding the cost and duration of the Selected Remedy.

Response to comment LC5-4

See response to Comment No. I295-1.

Response to comment LC5-5

Cleanup actions included in the Selected Remedy represent well proven technologies used at many other similar sites with mining contamination.

Response to comment LC5-6

See response to Comment No. SA4-11.

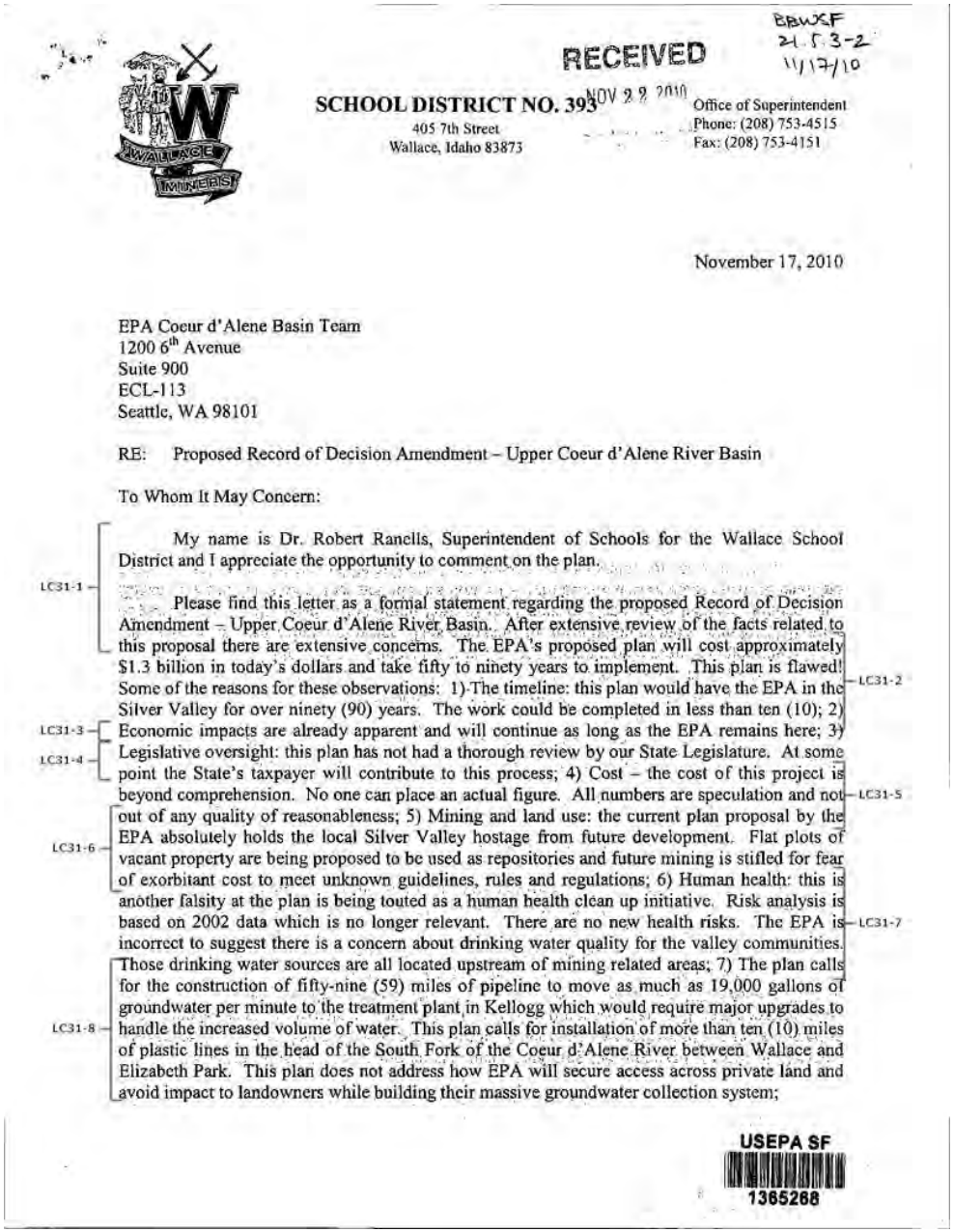
Response to comment LC5-7

See responses to Comment Nos. I58-1 and LJ11-2 and the ROD Amendment, Part 2, Section 12.3.

Response to comment LC5-8

See response to Comment No. I58-5.

School District No. 393, LC31, Letter 1365268



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NOV 22 2010

SCHOOL DISTRICT NO. 393
405 7th Street
Wallace, Idaho 83873

Office of Superintendent
Phone: (208) 753-4515
Fax: (208) 753-4151

November 17, 2010

EPA Coeur d'Alene Basin Team
1200 6th Avenue
Suite 900
ECL-113
Seattle, WA 98101

RE: Proposed Record of Decision Amendment – Upper Coeur d'Alene River Basin

To Whom It May Concern:

My name is Dr. Robert Ranells, Superintendent of Schools for the Wallace School District and I appreciate the opportunity to comment on the plan. LC31-1

Please find this letter as a formal statement regarding the proposed Record of Decision Amendment – Upper Coeur d'Alene River Basin. After extensive review of the facts related to this proposal there are extensive concerns. The EPA's proposed plan will cost approximately $1.3 billion in today's dollars and take fifty to ninety years to implement. This plan is flawed! Some of the reasons for these observations: 1) The timeline: this plan would have the EPA in the Silver Valley for over ninety (90) years. The work could be completed in less than ten (10); 2) Economic impacts are already apparent and will continue as long as the EPA remains here; 3) Legislative oversight: this plan has not had a thorough review by our State Legislature. At some point the State's taxpayer will contribute to this process; 4) Cost – the cost of this project is beyond comprehension. No one can place an actual figure. All numbers are speculation and not out of any quality of reasonableness; 5) Mining and land use: the current plan proposal by the EPA absolutely holds the local Silver Valley hostage from future development. Flat plots of vacant property are being proposed to be used as repositories and future mining is stifled for fear of exorbitant cost to meet unknown guidelines, rules and regulations; 6) Human health: this is another falsity at the plan is being touted as a human health clean up initiative. Risk analysis is based on 2002 data which is no longer relevant. There are no new health risks. The EPA is incorrect to suggest there is a concern about drinking water quality for the valley communities. Those drinking water sources are all located upstream of mining related areas; 7) The plan calls for the construction of fifty-nine (59) miles of pipeline to move as much as 19,000 gallons of groundwater per minute to the treatment plant in Kellogg which would require major upgrades to handle the increased volume of water. This plan calls for installation of more than ten (10) miles of plastic lines in the head of the South Fork of the Coeur d'Alene River between Wallace and Elizabeth Park. This plan does not address how EPA will secure access across private land and avoid impact to landowners while building their massive groundwater collection system;

LC31-2 LC31-3 LC31-4 LC31-5 LC31-6 LC31-7 LC31-8

USEPA SF
1365268

Response to comment LC31-1
Thank you for your comments.

Response to comment LC31-2
See responses to Comment Nos. I58-1 and I58-2.

Response to comment LC31-3
See response to Comment No. I54-2.

Response to comment LC31-4
See response to Comment No. LJ39-5.

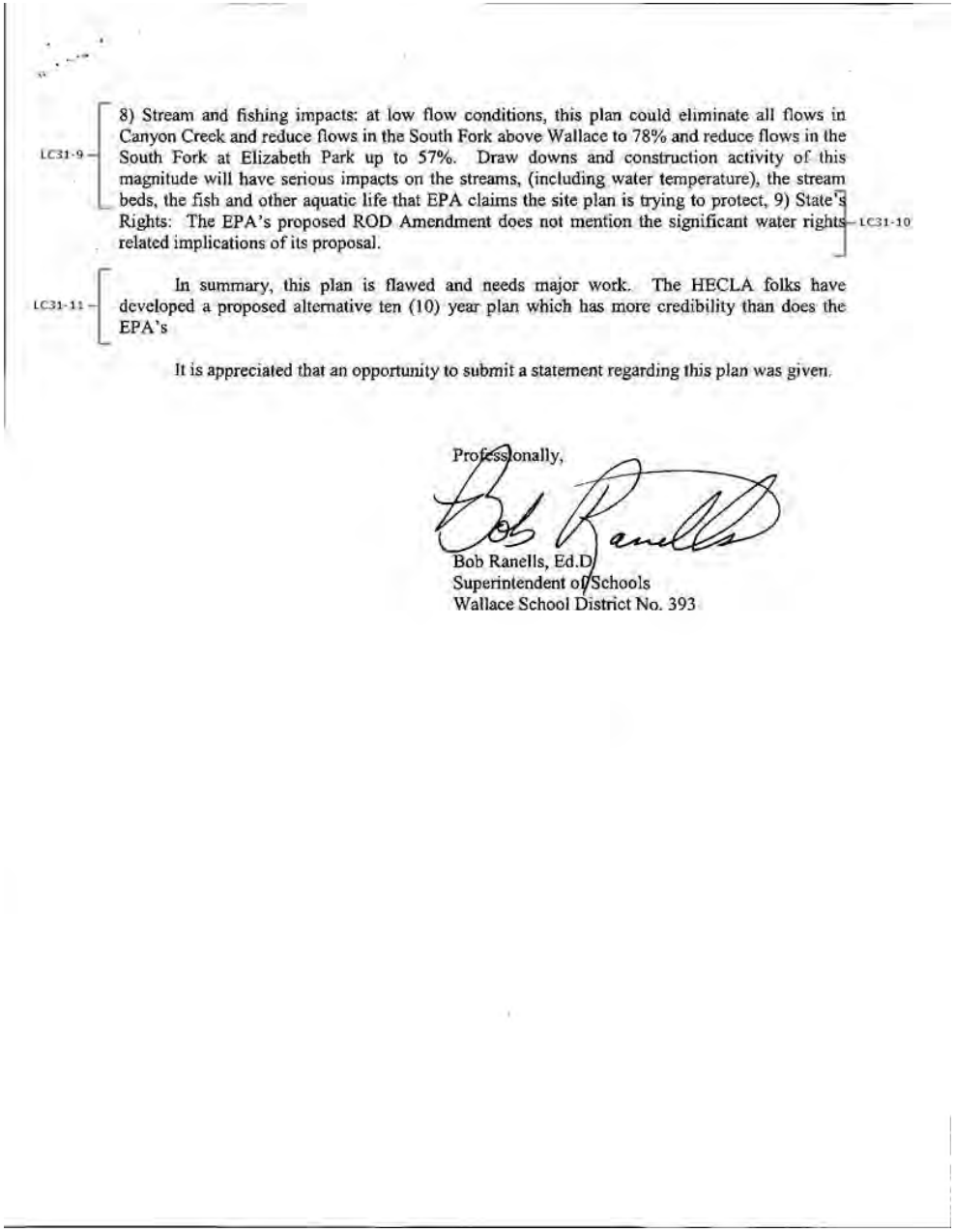
Response to comment LC31-5
See response to Comment No. I54-12.

Response to comment LC31-6
See response to Comment No. I58-5.

Response to comment LC31-7
Regarding human health risks, see response to Comment No. 1295-1. EPA has not focused its Selected Remedy on drinking water. Past cleanup plans have already addressed residential drinking water issues. However, the Upper Basin Selected Remedy will significantly improve surface water quality in the SFCDR and its tributaries. In the case of the SFCDR, the applicable or relevant and appropriate requirements (ARARs) that will protect the environment include site-specific ambient water quality criteria (AWQC). These criteria were developed by the State of Idaho to protect aquatic life. The water quality standards to protect the environment are more stringent than drinking water standards (i.e., maximum contaminant levels [MCLs]) for contaminants of concern in the Basin. (There is one exception -- mercury, as it has not been found to be prevalent in the Upper Basin.) Therefore, EPA believes that achieving ARARs will inherently have a potential drinking water benefit.

Response to comment LC31-8

With regard to water treatment, see responses to Comment Nos. LC37-9 and I899-7. With regard to the SFCDR action, see response to Comment No. I828-10. With regard to private land access, see response to Comment No. I248-1.



LC31-9 — 8) Stream and fishing impacts: at low flow conditions, this plan could eliminate all flows in Canyon Creek and reduce flows in the South Fork above Wallace to 78% and reduce flows in the South Fork at Elizabeth Park up to 57%. Draw downs and construction activity of this magnitude will have serious impacts on the streams, (including water temperature), the stream beds, the fish and other aquatic life that EPA claims the site plan is trying to protect, 9) State's Rights: The EPA's proposed ROD Amendment does not mention the significant water rights related implications of its proposal. — LC31-10

LC31-11 — In summary, this plan is flawed and needs major work. The HECLA folks have developed a proposed alternative ten (10) year plan which has more credibility than does the EPA's

It is appreciated that an opportunity to submit a statement regarding this plan was given.

Professionally,

Bob Ranells, Ed.D.
Superintendent of Schools
Wallace School District No. 393

Response to comment LC31-9

See responses to Comment Nos. LC33-10 and I54-8.

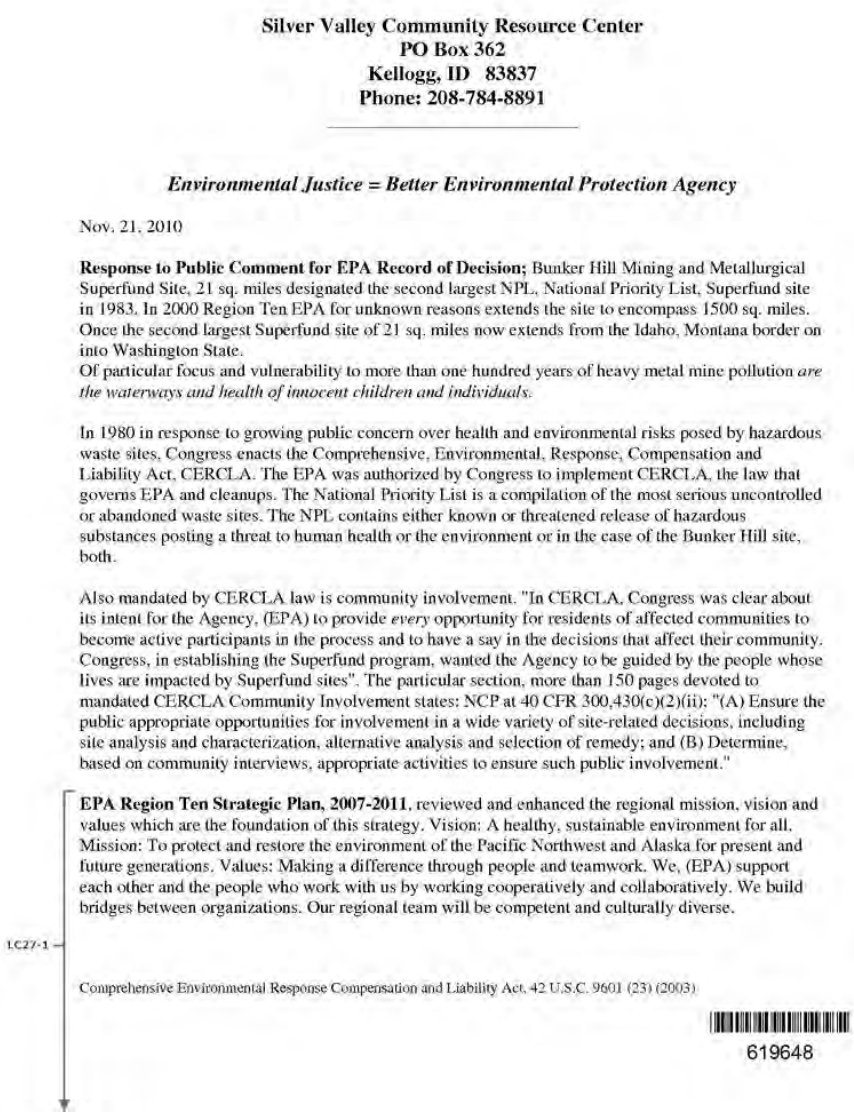
Response to comment LC31-10

EPA intends to comply with Idaho water law as required by CERCLA as it implements the Selected Remedy. See response to Comment No. SA4-12 and the ROD Amendment, Part 3, Section 3.7.4.

Response to comment LC31-11

See response to Comment No. I474-2.

Silver Valley Community Resource Center, LC27, Letter 619648



Silver Valley Community Resource Center
PO Box 362
Kellogg, ID 83837
Phone: 208-784-8891

Environmental Justice = Better Environmental Protection Agency

Nov. 21, 2010

Response to Public Comment for EPA Record of Decision; Bunker Hill Mining and Metallurgical Superfund Site, 21 sq. miles designated the second largest NPL, National Priority List, Superfund site in 1983. In 2000 Region Ten EPA for unknown reasons extends the site to encompass 1500 sq. miles. Once the second largest Superfund site of 21 sq. miles now extends from the Idaho, Montana border on into Washington State.
Of particular focus and vulnerability to more than one hundred years of heavy metal mine pollution *are the waterways and health of innocent children and individuals.*

In 1980 in response to growing public concern over health and environmental risks posed by hazardous waste sites, Congress enacts the Comprehensive, Environmental, Response, Compensation and Liability Act, CERCLA. The EPA was authorized by Congress to implement CERCLA, the law that governs EPA and cleanups. The National Priority List is a compilation of the most serious uncontrolled or abandoned waste sites. The NPL contains either known or threatened release of hazardous substances posting a threat to human health or the environment or in the case of the Bunker Hill site, both.

Also mandated by CERCLA law is community involvement. "In CERCLA, Congress was clear about its intent for the Agency, (EPA) to provide *every* opportunity for residents of affected communities to become active participants in the process and to have a say in the decisions that affect their community. Congress, in establishing the Superfund program, wanted the Agency to be guided by the people whose lives are impacted by Superfund sites". The particular section, more than 150 pages devoted to mandated CERCLA Community Involvement states: NCP at 40 CFR 300,430(c)(2)(ii): "(A) Ensure the public appropriate opportunities for involvement in a wide variety of site-related decisions, including site analysis and characterization, alternative analysis and selection of remedy; and (B) Determine, based on community interviews, appropriate activities to ensure such public involvement."

EPA Region Ten Strategic Plan, 2007-2011, reviewed and enhanced the regional mission, vision and values which are the foundation of this strategy. Vision: A healthy, sustainable environment for all. Mission: To protect and restore the environment of the Pacific Northwest and Alaska for present and future generations. Values: Making a difference through people and teamwork. We, (EPA) support each other and the people who work with us by working cooperatively and collaboratively. We build bridges between organizations. Our regional team will be competent and culturally diverse.

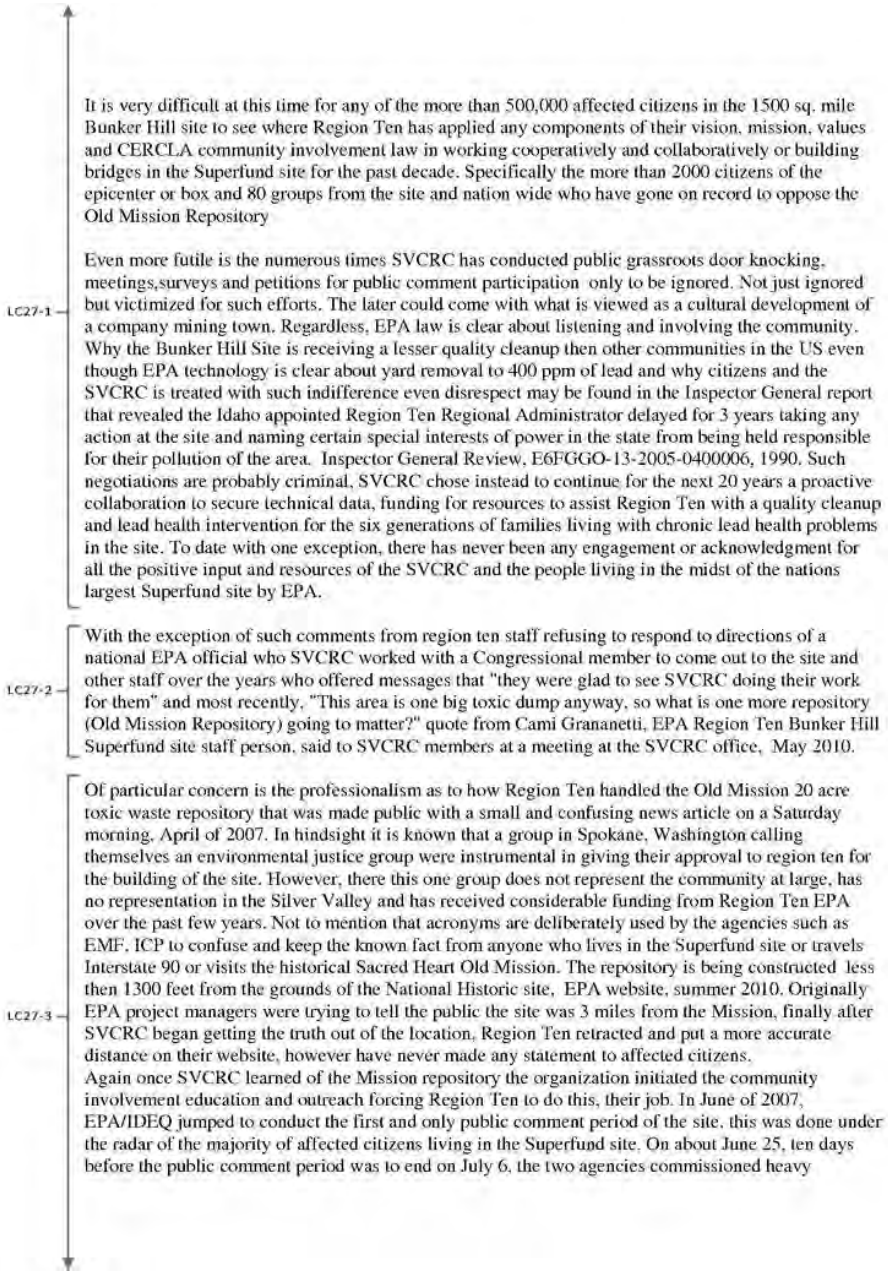
LC27-1

Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 (23) (2003)

619648

Response to comment LC27-1

Regarding EPA's extensive efforts to involve the public in the remedy selection process, see response to Comment No. I295-2. Issues related specifically to the East Mission Flats Repository (EMF) are outside the scope of this response to comments. EMF is now operational and functioning as designed. Decisions regarding its placement are final. EMF documents related to its technical design, community involvement process, inspector general review, and monitoring can be found online at http://yosemite.epa.gov/R10/CLEANUP.NSF/sites/east_mission_flats_repository. EPA, as a federal agency, is obligated to make sound scientific decisions. EPA is dedicated to its mission and mandate to protect people's health and the environment, even if our actions are unpopular. EPA takes public input seriously and always considers the information and comments provided by citizens. EPA may, at times, make decisions that some people do not agree with. This does not mean that the agency is not listening to concerns or is carelessly disregarding public input. In these instances, the agency is listening but has not heard or seen information which would cause a change in conclusions. In the case of this cleanup plan, EPA has made many significant changes in response to public comments. The agency values the input and involvement of the local residents and community groups, and remains committed to meaningful public engagement.



It is very difficult at this time for any of the more than 500,000 affected citizens in the 1500 sq. mile Bunker Hill site to see where Region Ten has applied any components of their vision, mission, values and CERCLA community involvement law in working cooperatively and collaboratively or building bridges in the Superfund site for the past decade. Specifically the more than 2000 citizens of the epicenter or box and 80 groups from the site and nation wide who have gone on record to oppose the Old Mission Repository

LC27-1 Even more futile is the numerous times SVCRC has conducted public grassroots door knocking, meetings,surveys and petitions for public comment participation only to be ignored. Not just ignored but victimized for such efforts. The later could come with what is viewed as a cultural development of a company mining town. Regardless, EPA law is clear about listening and involving the community. Why the Bunker Hill Site is receiving a lesser quality cleanup then other communities in the US even though EPA technology is clear about yard removal to 400 ppm of lead and why citizens and the SVCRC is treated with such indifference even disrespect may be found in the Inspector General report that revealed the Idaho appointed Region Ten Regional Administrator delayed for 3 years taking any action at the site and naming certain special interests of power in the state from being held responsible for their pollution of the area. Inspector General Review, E6FGGO-13-2005-0400006, 1990. Such negotiations are probably criminal, SVCRC chose instead to continue for the next 20 years a proactive collaboration to secure technical data, funding for resources to assist Region Ten with a quality cleanup and lead health intervention for the six generations of families living with chronic lead health problems in the site. To date with one exception, there has never been any engagement or acknowledgment for all the positive input and resources of the SVCRC and the people living in the midst of the nations largest Superfund site by EPA.

LC27-2 With the exception of such comments from region ten staff refusing to respond to directions of a national EPA official who SVCRC worked with a Congressional member to come out to the site and other staff over the years who offered messages that "they were glad to see SVCRC doing their work for them" and most recently, "This area is one big toxic dump anyway, so what is one more repository (Old Mission Repository) going to matter?" quote from Cami Grananetti, EPA Region Ten Bunker Hill Superfund site staff person, said to SVCRC members at a meeting at the SVCRC office, May 2010.

LC27-3 Of particular concern is the professionalism as to how Region Ten handled the Old Mission 20 acre toxic waste repository that was made public with a small and confusing news article on a Saturday morning, April of 2007. In hindsight it is known that a group in Spokane, Washington calling themselves an environmental justice group were instrumental in giving their approval to region ten for the building of the site. However, there this one group does not represent the community at large, has no representation in the Silver Valley and has received considerable funding from Region Ten EPA over the past few years. Not to mention that acronyms are deliberately used by the agencies such as EMF, ICP to confuse and keep the known fact from anyone who lives in the Superfund site or travels Interstate 90 or visits the historical Sacred Heart Old Mission. The repository is being constructed less then 1300 feet from the grounds of the National Historic site, EPA website, summer 2010. Originally EPA project managers were trying to tell the public the site was 3 miles from the Mission, finally after SVCRC began getting the truth out of the location, Region Ten retracted and put a more accurate distance on their website, however have never made any statement to affected citizens.
Again once SVCRC learned of the Mission repository the organization initiated the community involvement education and outreach forcing Region Ten to do this, their job. In June of 2007, EPA/IDEQ jumped to conduct the first and only public comment period of the site, this was done under the radar of the majority of affected citizens living in the Superfund site. On about June 25, ten days before the public comment period was to end on July 6, the two agencies commissioned heavy

Response to comment LC27-2

Comment noted.

Response to comment LC27-3

Regarding EPA's need for repositories for the Selected Remedy, see response to comment I54-3. Issues related specifically to the East Mission Flats Repository (EMF) are outside the scope of this response to comments. EMF is now operational and functioning as designed. Decisions regarding its placement are final. EMF documents related to its technical design, community involvement process, inspector general review, and monitoring can be found online at http://yosemite.epa.gov/R10/CLEANUP.NSF/sites/east_mission_flats_repository.

equipment onto the east end of the site and began destroying trees and the land. This action was seen as another deliberate unilateral act of the agencies because more than 1000 individuals were signing petitions and opposing the site location and sending them to the IDEQ office as instructed in the public comment period information.

Also because there was next to no effort made to inform the public in spite of what the June 2009 OIG reported on community involvement. OIG, No. 09-P-0162. SVCRC has written several letters to EPA Mathey Stanislaus to address the fact that the OIG report said "adequate community involvement had been conducted" in regards to informing the pubic of the Old Mission Repository. In the study 5 examples were given, there were two actual meetings held, with one single public notice in the local newspaper owned by a rich tourism PRP that said nothing of a repository and its potential impact to each and every person living in the Superfund site. Instead the ad was targeted to Cataldo people who did show up and once they realized the plan Region Ten was announcing for building the repository they voiced strong unanimous opposition. The next evening another "public meeting" was held at the Canyon School a short distance from Cataldo in a very rural area, a half dozen people showed up who where interviewed and sadly said they threw their hands up in the air as the meeting was heavily attended by government officials. The other public opportunities that the OIG reports were 3 mentions of the CD'A Basin and by the CD'A Basin directors own admission does *not represent community interests*. Although the director boldly embraced the OIG investigation and allowed the OIG to use the Basin Commission as a means to justify that "adequate community involvement had been conducted" when the Basin Commission was desperately calling for people to belong since there were only about 5 people participating. Again, anyone can see these numbers especially when accompanied by unanimous opposition to the Mission Repository for all the right reasons are not adequate when it comes to the fact that there are more than a half million citizens who needed to be told by the agencies about the temporary toxic repositories being built in the upper basin. This failure to address adequate community involvement has been addressed several times to national EPA Administrator Mathey Stanislaus in letters and phone calls, to this day no one from either the CD'A Basin. EPA or IDEQ has acknowledged the hundreds of citizens and groups who are speaking out about the Old Mission Repository. At the present time,
EPA is running daily $2500 ads in at least two newspapers instructing citizens to send comments for the ROD to the cdabasincommission.com.

LC27-3

In June of 2010 after a year long investigation of the Advisory Council for Historic Preservation it was found that Section 106 of the National Historic Preservation law had been violated by EPA and IDEQ.

LC27-4

November 23, 2010

Hundreds of concerned citizens in the Silver Valley have been contacting EPA Administrator Lisa Jackson to stop the Mission Repository, SVCRC has been working diligently to set up a conference call or even a visit as recommended by her staff for the past two years. Today, her staff person called and said she would not cooperate with the conference call and had turned the situation over to Mathey Stanislaus, OSWER. Mr. Stanislaus is the staff person that was sent by EPA when outraged citizens began learning about the Old Mission Repository. He is the same person who spent two days in Region Ten being before coming to the Silver Valley. He is the same person who is allowing the special interests to influence the cleanup of Bunker Hill, and violate EPA Executive Orders allowing agencies to dump toxic waste any place Region Ten wants destroying the environment and exposing innocent children and individuals to toxic pollution.

LC27-5

Additional concerns of the CD'A Basin Commission come from the director in a response to one of the Superfund site mayors when addressing the location of the Old Mission Repository the flooding that

LC27-6

Response to comment LC27-4

Regarding the preservation of historic landmarks in the Coeur d'Alene Basin, see response to Comment No. I822-11.

Response to comment LC27-5

See response to Comment No. LC27-3.

Response to comment LC27-6

See response to Comment No. LC27-3.

takes place, the fact that there is no liner being put in this repository because of the flooding according to officials and the downstream contamination. "We already have a number of repositories either in operation or closed in the Basin. The largest, the Central Impoundment Area, (a stones throw from the Kellogg Elementary School, the Kellogg Middle School, the Kellogg School District Administration office and Gondola center) has something on the oder of 27 million cubic yards (of heavy metal mine waste) is closed and sits in the flood plain in downtown Kellogg; the Moon Gulch repository site within 100 feet of Moon Creek is in the flood plain and is closed, the Page Pond repository sites in the flood plain and is currently in operation, and the Big Creek repository sites in the mouth of Big Creek and is currently in operation. A fairly flat spot is needed to build these things and the flat spots in the CDA Basin are usually in the flood plain. Most of the communities are also built in the flood plain. None of
LC27-6 the referenced repositories have washed away in any floods. As far as repositories do, the bottom of CDA Lake contains over 70 million cubic yards of waste material and it's in the flood plain".

"In no uncertain terms do we want the Bunker Hill Superfund site to become a disposal site for cleanup wastes from any other locations outside the box. Having greater quantities of toxic materials buried at Bunker Hill only means more threats to the local community over time". Taken from letter written by SVCRC to Reg. Ten Regional Administrator, Feb. 21, 1999.

In another letter written in Sept. 1998, SVCRC members wrote after hearing feedback from the community regarding the Central Impoundment and Page Pond repositories that "residents of the Bunker Hill Superfund site and extended CD'A Basin are being exposed to unacceptable lead and heavy metal contamination". "Now, the use of the Bunker Hill site as a regional waste repository raises the importance of this issue. The citizens of the Silver Valley do not want any more dumping of any kind of waste by anyone ever again in our community".

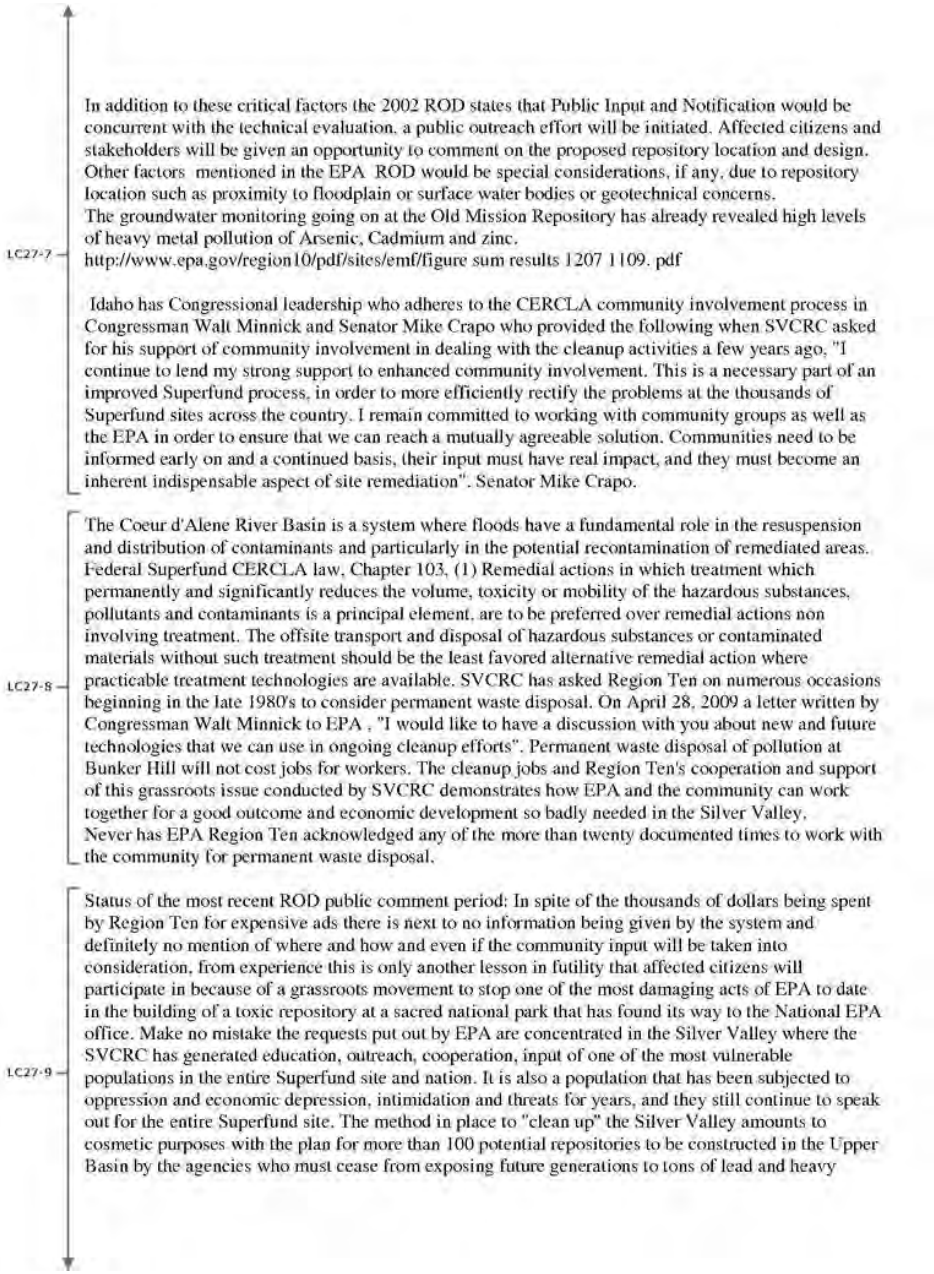
Four year after these strong statements were shared by the community with EPA the following information is read in an EPA 2002 ROD, "Repositories will be located and designed to:

- Â Prevent adverse human health or ecological impacts and result in improvements wherever possible.
- Â Prevent additional groundwater and/or surface water impacts
- Â Integrate with past or nearby cleanup efforts
- Â Comply with all ARAR's Applicable or Relevant and Appropriate Regulations
- Â Be appropriate for the characteristics of the waste that will be disposed of there, (how does EPA justify a repository being built within 1300 feet of a National Historic Landmark, in a floodplain that floods annually and they knew this, native American ancestral grounds, in a vast wetland that is home to every kind of wildfowl in North Idaho including osprey, eagles, blue herrings, moose, bear, muskrat, beaver and deer, is a major recreational area for tourists and children who visit the Mission each Spring in groves from all over the Pacific Northwest and runs parallel to Interstate
LC27-7 90?)
- Â Be cost-effective. (Even though EPA/IDEQ paid less then $100,000 for the 20 acre site, they are spending more than $13,000,000 to put in a bridge from the Interstate after the Highway District opposed the location and would not grant travel for the hundreds of heavy ton trucks to haul the waste through Cataldo and the old bridge there).
- Â Minimize long-term operation and maintenance costs
- Â Community Acceptance

Information taken from the 2002 EPA ROD

Response to comment LC27-7

Regarding EPA's need for repositories for the Selected Remedy, see response to comment I54-3.



In addition to these critical factors the 2002 ROD states that Public Input and Notification would be concurrent with the technical evaluation, a public outreach effort will be initiated. Affected citizens and stakeholders will be given an opportunity to comment on the proposed repository location and design. Other factors mentioned in the EPA ROD would be special considerations, if any, due to repository location such as proximity to floodplain or surface water bodies or geotechnical concerns.
The groundwater monitoring going on at the Old Mission Repository has already revealed high levels of heavy metal pollution of Arsenic, Cadmium and zinc.
LC27-7 http://www.epa.gov/region10/pdf/sites/emf/figure sum results 1207 1109. pdf

Idaho has Congressional leadership who adheres to the CERCLA community involvement process in Congressman Walt Minnick and Senator Mike Crapo who provided the following when SVCRC asked for his support of community involvement in dealing with the cleanup activities a few years ago, "I continue to lend my strong support to enhanced community involvement. This is a necessary part of an improved Superfund process, in order to more efficiently rectify the problems at the thousands of Superfund sites across the country. I remain committed to working with community groups as well as the EPA in order to ensure that we can reach a mutually agreeable solution. Communities need to be informed early on and a continued basis, their input must have real impact, and they must become an inherent indispensable aspect of site remediation". Senator Mike Crapo.

LC27-8 The Coeur d'Alene River Basin is a system where floods have a fundamental role in the resuspension and distribution of contaminants and particularly in the potential recontamination of remediated areas. Federal Superfund CERCLA law, Chapter 103, (1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants and contaminants is a principal element, are to be preferred over remedial actions non involving treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. SVCRC has asked Region Ten on numerous occasions beginning in the late 1980's to consider permanent waste disposal. On April 28, 2009 a letter written by Congressman Walt Minnick to EPA , "I would like to have a discussion with you about new and future technologies that we can use in ongoing cleanup efforts". Permanent waste disposal of pollution at Bunker Hill will not cost jobs for workers. The cleanup jobs and Region Ten's cooperation and support of this grassroots issue conducted by SVCRC demonstrates how EPA and the community can work together for a good outcome and economic development so badly needed in the Silver Valley.
Never has EPA Region Ten acknowledged any of the more than twenty documented times to work with the community for permanent waste disposal.

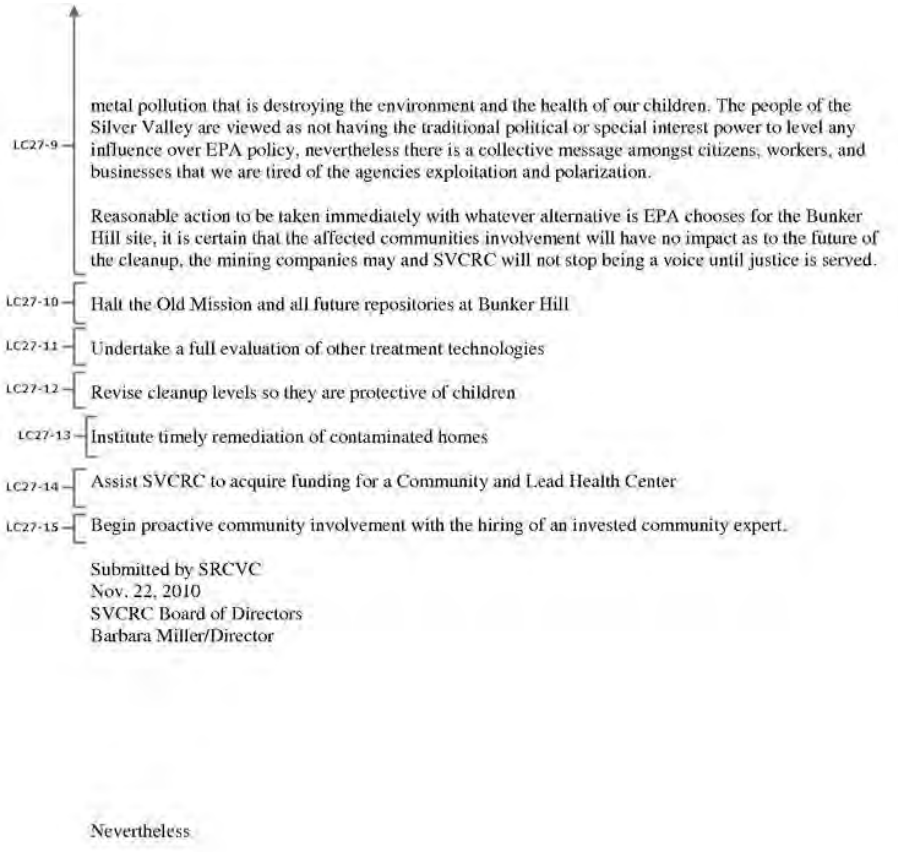
LC27-9 Status of the most recent ROD public comment period: In spite of the thousands of dollars being spent by Region Ten for expensive ads there is next to no information being given by the system and definitely no mention of where and how and even if the community input will be taken into consideration, from experience this is only another lesson in futility that affected citizens will participate in because of a grassroots movement to stop one of the most damaging acts of EPA to date in the building of a toxic repository at a sacred national park that has found its way to the National EPA office. Make no mistake the requests put out by EPA are concentrated in the Silver Valley where the SVCRC has generated education, outreach, cooperation, input of one of the most vulnerable populations in the entire Superfund site and nation. It is also a population that has been subjected to oppression and economic depression, intimidation and threats for years, and they still continue to speak out for the entire Superfund site. The method in place to "clean up" the Silver Valley amounts to cosmetic purposes with the plan for more than 100 potential repositories to be constructed in the Upper Basin by the agencies who must cease from exposing future generations to tons of lead and heavy

Response to comment LC27-8

In regard to disposal of contaminated mine waste, EPA has determined that onsite consolidation in a repository provides the best balance of the CERCLA nine criteria for remedy selection. EPA is not aware of any other treatment technology for large volume waste disposal. Offsite disposal would result in a substantial increase in cost of the Selected Remedy with little or no increased protection to human health. Regarding EPA's extensive efforts to involve the public in the remedy selection process for the cleanup, see response to Comment No. I295-2.

Response to comment LC27-9

Regarding EPA's extensive efforts to involve the public in the remedy selection process, see response to Comment No. I295-2.



LC27-9 metal pollution that is destroying the environment and the health of our children. The people of the Silver Valley are viewed as not having the traditional political or special interest power to level any influence over EPA policy, nevertheless there is a collective message amongst citizens, workers, and businesses that we are tired of the agencies exploitation and polarization.

Reasonable action to be taken immediately with whatever alternative is EPA chooses for the Bunker Hill site, it is certain that the affected communities involvement will have no impact as to the future of the cleanup, the mining companies may and SVCRC will not stop being a voice until justice is served.

LC27-10 Halt the Old Mission and all future repositories at Bunker Hill

LC27-11 Undertake a full evaluation of other treatment technologies

LC27-12 Revise cleanup levels so they are protective of children

LC27-13 Institute timely remediation of contaminated homes

LC27-14 Assist SVCRC to acquire funding for a Community and Lead Health Center

LC27-15 Begin proactive community involvement with the hiring of an invested community expert.

Submitted by SRCVC
Nov. 22, 2010
SVCRC Board of Directors
Barbara Miller/Director

Nevertheless

Response to comment LC27-10

Regarding EPA's need for repositories for the Selected Remedy, see response to Comment No. I54-3.

Response to comment LC27-11

EPA's cleanup plan identifies comprehensive, effective, and proven actions. For example, EPA's plan includes techniques such as excavation of highly contaminated floodplain sediments and tailings, and groundwater collection and treatment to address contamination that is inaccessible for removal (such as materials located beneath roads and towns). The remedy selection process was conducted in a manner consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as required by CERCLA.

Response to comment LC27-12

EPA believes that cleanup levels established for the Bunker Hill Superfund Site are protective of human health. EPA and other agencies have done many studies over the years that document the human health risks posed by contamination in the Coeur d'Alene Basin. The primary human health concern in the Upper Basin is excessive lead in the blood of young children and pregnant women. Site-specific analysis of blood lead data paired with environmental lead data demonstrate that complex exposure pathways exist. In response to risks posed by lead, EPA has prioritized cleanup actions to reduce human health exposures in residential areas. Although risks have been greatly reduced through cleanup activities completed to date, more work is needed to address the continued transport of lead from Upper Basin sources, along the SFCDR floodplain and into Coeur d'Alene Lake. EPA is committed and required by CERCLA to address the remaining unacceptable human health risks in the Upper Basin and to evaluate whether new information suggests that cleanup standards are not protective.

Response to comment LC27-13

Ongoing Basin residential property cleanups will continue. At this time, IDEQ will continue as the lead for implementing this priority human health cleanup work with funding from EPA.

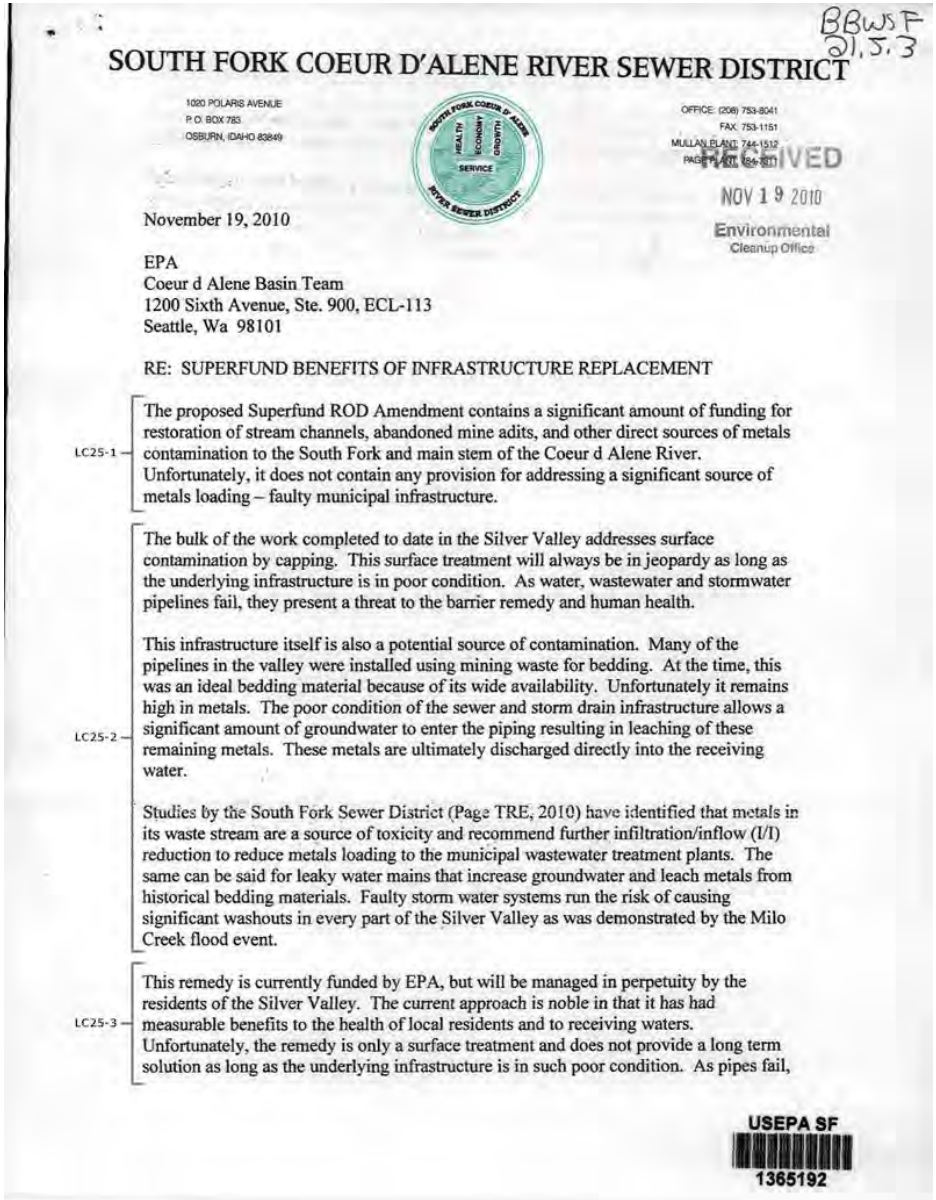
Response to comment LC27-14

EPA must use cleanup monies to fund or perform response actions at the site. EPA cannot use cleanup monies to help Silver Valley Community Resource Center fund a Community and Lead Health Center. Addressing concerns about perceived gaps in community health infrastructure locally is beyond the limits of EPA's authority.

Response to comment LC27-15

To supplement the existing community involvement program, EPA is bringing its "Technical Assistance Services for Communities" (TASC) program to the site. TASC provides independent experts who can give free educational and technical assistance to communities affected by hazardous waste sites. A technical assistance needs assessment is under way to learn about local assistance needs. In March 2011, EPA hired (through the Senior Environmental Employment Program) a local resident and "invested community expert" to serve as a community information specialist. That individual has since accepted another position. Recognizing the value of having a community liaison, EPA is exploring options for backfilling that position.

South Fork Coeur d'Alene River Sewer District, LC25, Letter 1365192



BBWSF 21.5.3

SOUTH FORK COEUR D'ALENE RIVER SEWER DISTRICT

1020 POLARIS AVENUE
P.O. BOX 783
OSBURN, IDAHO 83849

OFFICE: (208) 753-8041
FAX: 753-1151
MULLAN PLANT: 744-1512
PAGE PLANT: 664-9511

RECEIVED
NOV 19 2010
Environmental
Cleanup Office

November 19, 2010

EPA
Coeur d Alene Basin Team
1200 Sixth Avenue, Ste. 900, ECL-113
Seattle, Wa 98101

RE: SUPERFUND BENEFITS OF INFRASTRUCTURE REPLACEMENT

LC25-1 The proposed Superfund ROD Amendment contains a significant amount of funding for restoration of stream channels, abandoned mine adits, and other direct sources of metals contamination to the South Fork and main stem of the Coeur d Alene River. Unfortunately, it does not contain any provision for addressing a significant source of metals loading – faulty municipal infrastructure.

LC25-2 The bulk of the work completed to date in the Silver Valley addresses surface contamination by capping. This surface treatment will always be in jeopardy as long as the underlying infrastructure is in poor condition. As water, wastewater and stormwater pipelines fail, they present a threat to the barrier remedy and human health.

This infrastructure itself is also a potential source of contamination. Many of the pipelines in the valley were installed using mining waste for bedding. At the time, this was an ideal bedding material because of its wide availability. Unfortunately it remains high in metals. The poor condition of the sewer and storm drain infrastructure allows a significant amount of groundwater to enter the piping resulting in leaching of these remaining metals. These metals are ultimately discharged directly into the receiving water.

Studies by the South Fork Sewer District (Page TRE, 2010) have identified that metals in its waste stream are a source of toxicity and recommend further infiltration/inflow (I/I) reduction to reduce metals loading to the municipal wastewater treatment plants. The same can be said for leaky water mains that increase groundwater and leach metals from historical bedding materials. Faulty storm water systems run the risk of causing significant washouts in every part of the Silver Valley as was demonstrated by the Milo Creek flood event.

LC25-3 This remedy is currently funded by EPA, but will be managed in perpetuity by the residents of the Silver Valley. The current approach is noble in that it has had measurable benefits to the health of local residents and to receiving waters. Unfortunately, the remedy is only a surface treatment and does not provide a long term solution as long as the underlying infrastructure is in such poor condition. As pipes fail,

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1365192

Response to comment LC25-1

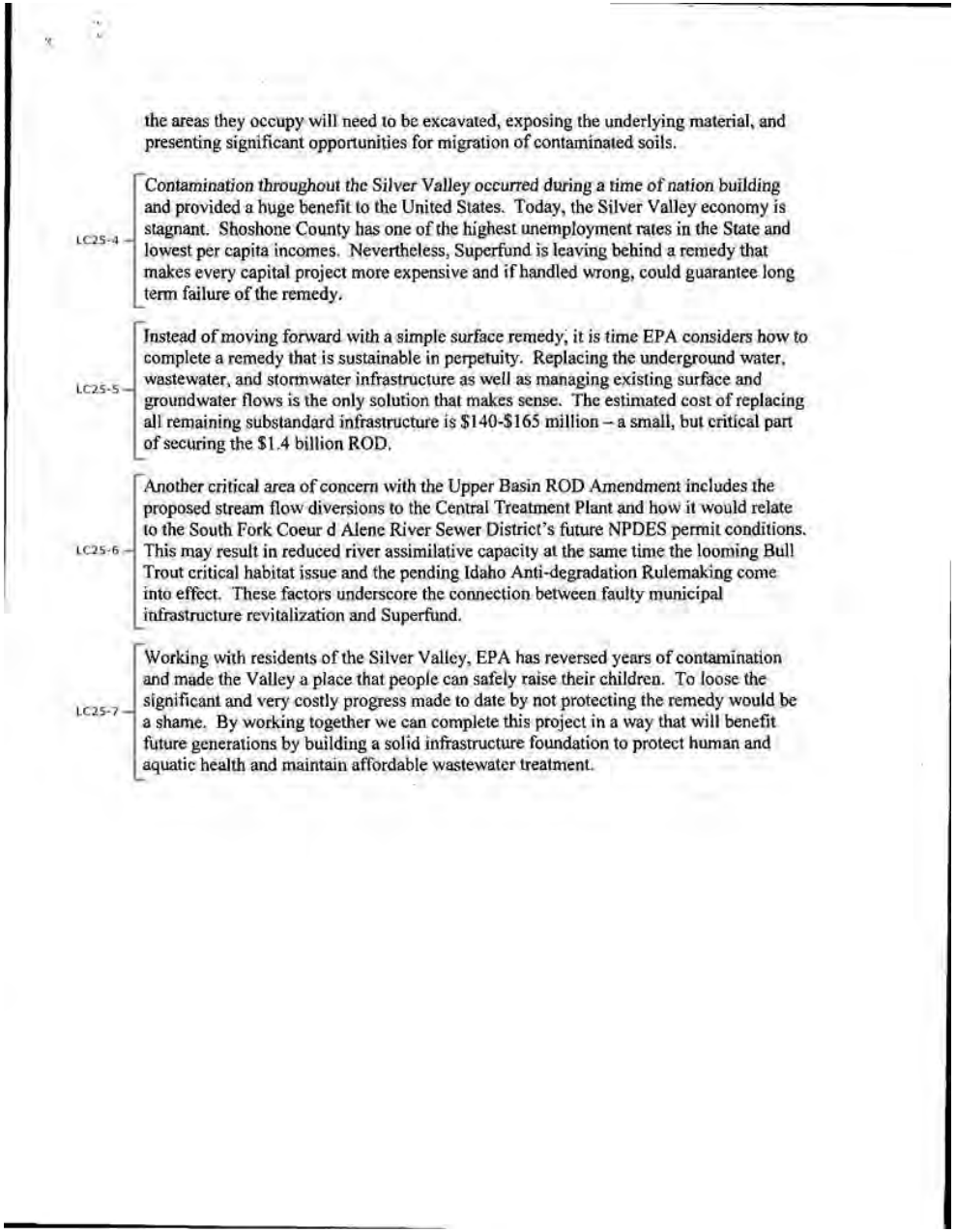
As EPA implements cleanup actions, we will continue to look for opportunities to partner with entities responsible for infrastructure maintenance. For example, projects that include excavation for water collection pipelines could be coordinated with local jurisdictions to enable more cost-effective replacement and/or repair of underground infrastructure. CERCLA does not provide EPA with the authority to address all issues related to aging infrastructure. The Selected Remedy is intended to address mine waste contamination that is accessible without significant impact on local communities and infrastructure. Operation and maintenance of infrastructure systems that are not directly related to the cleanup of mine waste are outside the scope of the Selected Remedy.

Response to comment LC25-2

EPA and IDEQ evaluated whether infiltration and inflow (I&I) of contaminated groundwater into sanitary sewer lines resulted in increased metals loadings to surface water bodies within the Upper Basin. I&I poses problems meeting metals discharge requirements at the Page and Smelterville municipal treatment plants, but it is a lesser source of metals to surface waters than other source areas under consideration for cleanup actions. As a result, cleanup actions relative to sanitary sewers were not evaluated in the Focused Feasibility Study (FFS) and are not included in this Proposed Plan.

Response to comment LC25-3

CERCLA does not provide EPA with the authority to address all issues related to aging infrastructure. The Selected Remedy is intended to address mine waste contamination that is accessible without significant impact on local communities and infrastructure. Operation and maintenance of a sewer treatment system that is not directly related to the cleanup of mine waste is outside the scope of the Selected Remedy.



the areas they occupy will need to be excavated, exposing the underlying material, and presenting significant opportunities for migration of contaminated soils.

LC25-4 — Contamination throughout the Silver Valley occurred during a time of nation building and provided a huge benefit to the United States. Today, the Silver Valley economy is stagnant. Shoshone County has one of the highest unemployment rates in the State and lowest per capita incomes. Nevertheless, Superfund is leaving behind a remedy that makes every capital project more expensive and if handled wrong, could guarantee long term failure of the remedy.

LC25-5 — Instead of moving forward with a simple surface remedy, it is time EPA considers how to complete a remedy that is sustainable in perpetuity. Replacing the underground water, wastewater, and stormwater infrastructure as well as managing existing surface and groundwater flows is the only solution that makes sense. The estimated cost of replacing all remaining substandard infrastructure is $140-$165 million – a small, but critical part of securing the $1.4 billion ROD.

LC25-6 — Another critical area of concern with the Upper Basin ROD Amendment includes the proposed stream flow diversions to the Central Treatment Plant and how it would relate to the South Fork Coeur d Alene River Sewer District's future NPDES permit conditions. This may result in reduced river assimilative capacity at the same time the looming Bull Trout critical habitat issue and the pending Idaho Anti-degradation Rulemaking come into effect. These factors underscore the connection between faulty municipal infrastructure revitalization and Superfund.

LC25-7 — Working with residents of the Silver Valley, EPA has reversed years of contamination and made the Valley a place that people can safely raise their children. To loose the significant and very costly progress made to date by not protecting the remedy would be a shame. By working together we can complete this project in a way that will benefit future generations by building a solid infrastructure foundation to protect human and aquatic health and maintain affordable wastewater treatment.

Response to comment LC25-4

See response to Comment No. I54-2.

Response to comment LC25-5

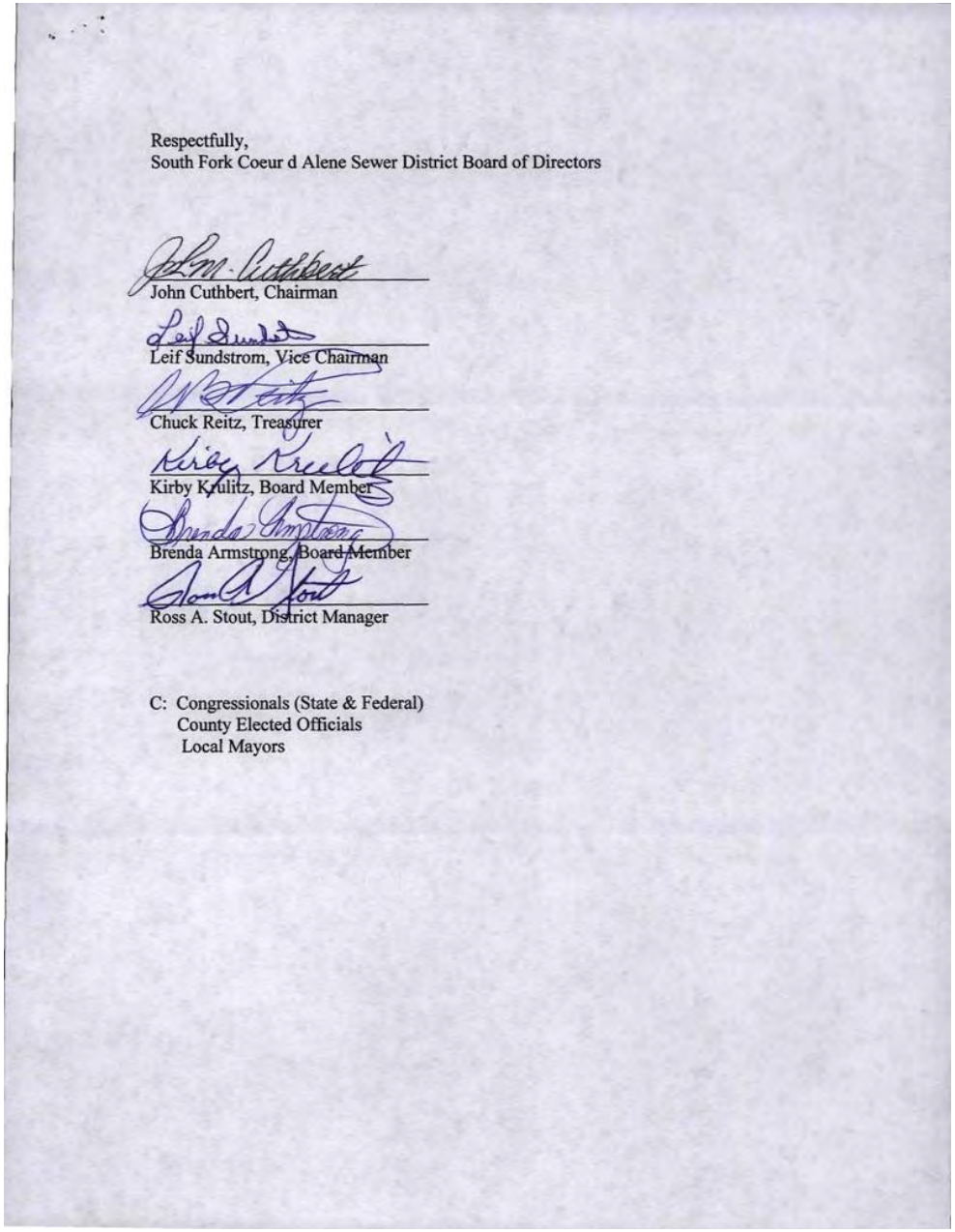
See response to Comment No. LC25-1.

Response to comment LC25-6

See response to comment I54-8 regarding estimated reductions in stream flows. The NPDES permit for the SFCDR Sewer District applies to discharges from the Mullan Wastewater Treatment Plant to the SFCDR in Mullan. Upstream from this permitted discharge point, there will be very little collection of contaminated water for conveyance and treatment at the Central Treatment Plant (CTP). The only waters upstream from Mullan identified for possible collection and conveyance to the CTP for treatment are a relatively low priority and will be evaluated further to determine if the identified actions in the ROD Amendment are still appropriate. In general given the number of water treatment actions removed from the selected remedy in the Upper South Fork, very little or no impact on the assimilative capacity of the SFCDR in Mullan is expected to result from implementation of the Selected Remedy.

Response to comment LC25-7

EPA agrees that preserving the efficacy of remedies is very important. EPA is required under CERCLA, the Superfund law, to address unacceptable risks to human health and the environment at the Bunker Hill Superfund Site. Protecting human health remains EPA's highest priority. The Upper Basin ROD Amendment includes remedy protection work in the Upper Basin that will aid in protecting the existing human health clean soil barriers (e.g., remediated yards and rights-of-way) within Upper Basin communities from tributary flooding and heavy precipitation events.



Respectfully,
South Fork Coeur d Alene Sewer District Board of Directors

John Cuthbert, Chairman

Leif Sundstrom, Vice Chairman

Chuck Reitz, Treasurer

Kirby Krulitz, Board Member

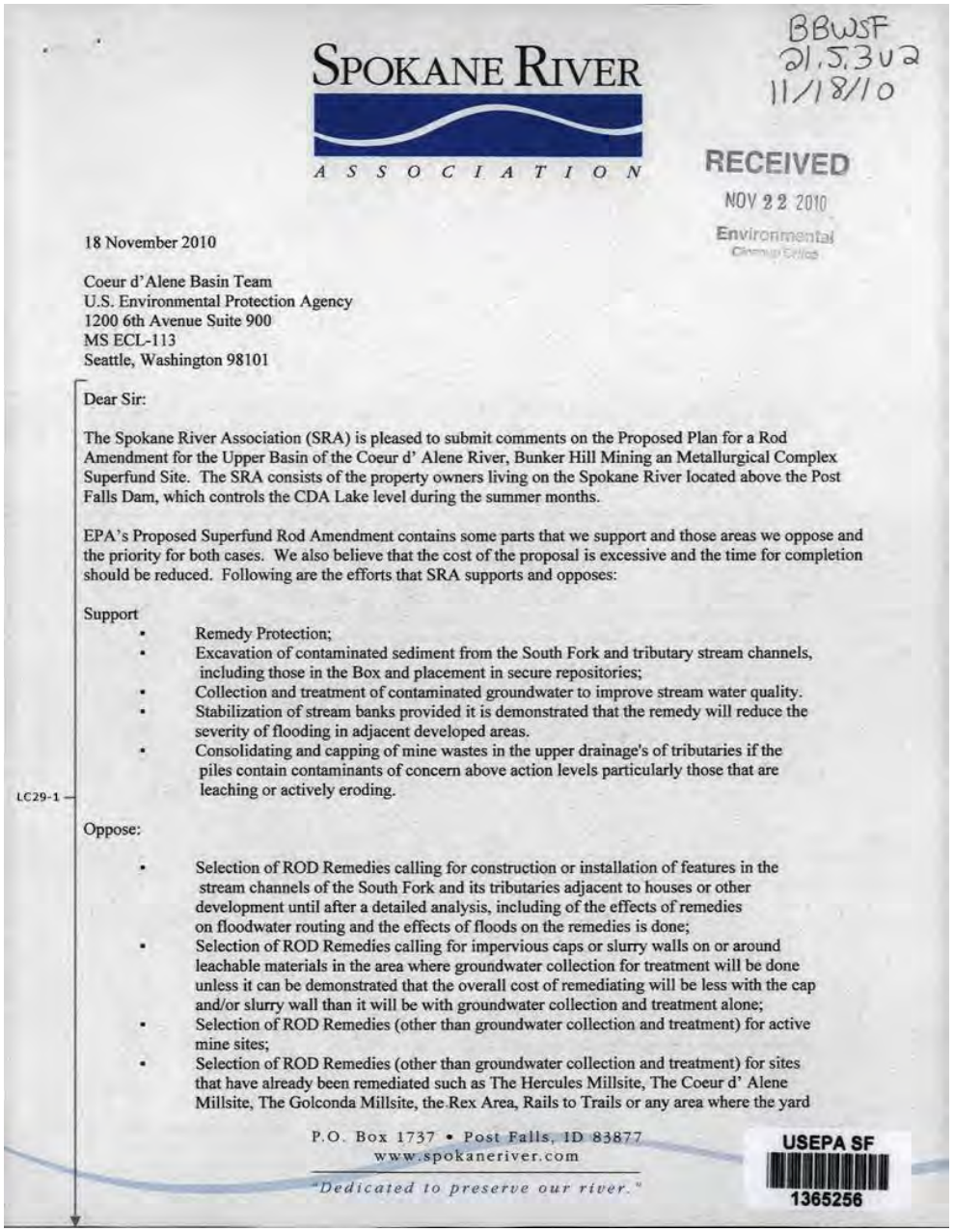
Brenda Armstrong, Board Member

Ross A. Stout, District Manager

C: Congressionals (State & Federal)
County Elected Officials
Local Mayors

No comments

Spokane River Association, LC29, Letter 1365256



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21.5.3v2
11/18/10

SPOKANE RIVER
ASSOCIATION

RECEIVED
NOV 22 2010
Environmental

18 November 2010

Coeur d'Alene Basin Team
U.S. Environmental Protection Agency
1200 6th Avenue Suite 900
MS ECL-113
Seattle, Washington 98101

Dear Sir:

The Spokane River Association (SRA) is pleased to submit comments on the Proposed Plan for a Rod Amendment for the Upper Basin of the Coeur d' Alene River, Bunker Hill Mining an Metallurgical Complex Superfund Site. The SRA consists of the property owners living on the Spokane River located above the Post Falls Dam, which controls the CDA Lake level during the summer months.

EPA's Proposed Superfund Rod Amendment contains some parts that we support and those areas we oppose and the priority for both cases. We also believe that the cost of the proposal is excessive and the time for completion should be reduced. Following are the efforts that SRA supports and opposes:

Support

- Remedy Protection;
- Excavation of contaminated sediment from the South Fork and tributary stream channels, including those in the Box and placement in secure repositories;
- Collection and treatment of contaminated groundwater to improve stream water quality.
- Stabilization of stream banks provided it is demonstrated that the remedy will reduce the severity of flooding in adjacent developed areas.
- Consolidating and capping of mine wastes in the upper drainage's of tributaries if the piles contain contaminants of concern above action levels particularly those that are leaching or actively eroding.

LC29-1

Oppose:

- Selection of ROD Remedies calling for construction or installation of features in the stream channels of the South Fork and its tributaries adjacent to houses or other development until after a detailed analysis, including of the effects of remedies on floodwater routing and the effects of floods on the remedies is done;
- Selection of ROD Remedies calling for impervious caps or slurry walls on or around leachable materials in the area where groundwater collection for treatment will be done unless it can be demonstrated that the overall cost of remediating will be less with the cap and/or slurry wall than it will be with groundwater collection and treatment alone;
- Selection of ROD Remedies (other than groundwater collection and treatment) for active mine sites;
- Selection of ROD Remedies (other than groundwater collection and treatment) for sites that have already been remediated such as The Hercules Millsite, The Coeur d' Alene Millsite, The Golconda Millsite, the Rex Area, Rails to Trails or any area where the yard

P.O. Box 1737 • Post Falls, ID 83877
www.spokaneriver.com
"Dedicated to preserve our river."

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1365256

Response to comment LC29-1

Please see responses to the Board of Kootenai County Commissioners (Document No. LJ58). These comments are nearly identical to comments from Kootenai County.

program has installed an adequate cap;

- Selection of EPA remedies for waste piles or audits on Federal lands controlled by the BLM or USFS;
- Selection of remedies for waste piles where EPA has no analytical data to show if contaminants of concern are present;
- Water treatment of audit flows unless it can be demonstrated that it will provide significant improvement to fish and aquatic life habitat.

Following is the rationale that we used in arriving at our conclusions:

In our opinion, a lot of the proposed Rod Amendment has not been developed in enough detail for either the public or EPA to really evaluate the probable impacts in the Silver Valley and beyond. EPA waved their own or other Executive Branch procedures in developing the Rod Amendment. EPA procedure 40CFR300.430 states "The development and evaluation of alternatives shall reflect the scope and complexity of the remedial action under consideration . . ." and Executive Order 11,988 states, "In carrying out the activities described in Section 1 of this order, each agency has the responsibility to evaluate the potential effects of any actions it may take in a Flood plain, . . .". The waver was granted because EPA claimed the superfund area was far to large and not enough "technical data" was available to make informed decisions.

The Rod Amendment's described stream channel designs for the South Fork of the CDA River (SFCDAR) between Wallace and Kellogg will result in widespread adverse impacts including increased flooding. In public meetings in the Silver Valley, EPA has stated they don't have the technical expertise or the regulatory authority to accomplish the task describe in the Draft Rod Amendment The work on the stream channels requires more development and official approval by the Army Corps of Engineers(COE) before we can really understand what would be done. The estimated cost of this effort is approximately $350 million. SRA's conclusion is that the
LC29-1 — work should not be included in the Rod Amendment until EPA has engaged the COE as a partner. COE has the regulatory Authority and Technical expertise to develop a Supplemental Feasibility Study that adequately evaluates all the potential effects including floodwater routing through the Silver Valley.

SRA supports the work for surface and/or groundwater treatment (i.e., Bunker Hill Groundwater, Woodland Park Ground Water including Water from the Gem Portal). SRA believes that this work will have the largest effect in reducing the soluble zinc in the lower basin and CDA Lake for the lowest expenditure of money. EPA should have the highest priority in this and similar work along the South Fork of the Coeur d' Alene River (SFCDAR). However, SRA believes regarding the work pertaining to surface and/or ground treatment, that the Water Quality Standards for the SFCDAR, whose beneficial use is as a trout fishery, is far too conservative. The cost of the cleanup appears to be excessive and driven by the conservative Idaho Site Specific Water Quality Standards. In the Proposed Rod Amendment, Figure 16 demonstrate that much of the overall cost of the cleanup is driven by EPA's attempt to meet the Idaho Site Specific Water Quality Standards which EPA acknowledges in the Proposed Plan, will not be met.

SRA proposes that EPA and ID DEQ negotiate a (less stringent Site Specific Water Quality Standard) and change the criteria from chemical standard to a biological standard. This approach was discussed in the NAS report "Lessons Learned from the Coeur d' Basin "pages 363-365. The current Site Specific Standard was negotiated in 2000 and was suppose to protect the use of the South Fork of the Coeur d' Alene River (SFCDAR) as a trout fishery. However, currently the SFCDAR has a trout fishery as Silver Valley residents catch cut throat regularly and as acknowledge by EPA in Figure E-9 of the proposed plan. Figure E-9 clearly states that the SFCDAR has a Tier 3 fishery which has a moderate trout fishery. SRA believes by accomplishing the Box's ground water program and the Canyon creek program there is a good chance for the SFCDAR to advance to a Tier 4 fishery at a cost of approximately $200 million. IF that doesn't occur the Tier 4 Fishery would probably be realized, with the additional "dredging" of the SFCDAR from Wallace to Kellogg at a cost of approximately $300 million. Since Idaho DEQ is the Regulatory Agency, the Clean Water Act provides for States to do a Use

No comments

Attainability Analysis (UAA) to evaluate what can really be achieved and the cost-benefit trade off. Idaho DEQ should do a Use Attainability Analysis (UAA) for the SFCDAR and change the chemical standards to biological standards. If EPA rejects this suggestion, the alternative is that they could easily waive the applicable ARARs on the SFCDAR. To summarize, the SRA's position, we believe that the surface water/ground water treatment and "dredging" SFCDAR from Wallace to Kellogg costed at approximately $500 million dollars, would be sufficient to accomplish the ecological goal of having a Tier 4 Fishery in the SFCDAR.

Also in the ROD Amendment, many of the projects listed provide very little benefit for the cost. An example of this fact is the approximately 22 mill sites where EPA proposes "Site mini-treatment facilities" which are propose to reduce metal content in the surface water. Work done in the Pine Creek drainage in recent years by BLM showed this method to be costly and inefficient. Also, many of the proposed water treatment sites are in drainages where there is not even a problem (i.e. they meet water quality standards).

SRA has concern about the EPA's use of adaptive management. EPA's justification for presenting remedies that are not adequately developed is that they are going to use "adaptive management" as recommended by the National Academy of Sciences. EPA will collect more information and develop more detailed plans after the ROD is issued during the Remedial Design / Remedial Activities phase of the cleanup. However, our reading of "40CFR300.435(b) RD/RA Activities. (1) All RD/RA activities shall be in conformance with the remedy selected and set forth in the ROD or other decision document for that site." tells us that EPA does not have much latitude LC29-1 for adaptive management after selecting a remedy and issuing a ROD. Can EPA ignore this guidance and substantially change a remedy without issuing an Explanation of Significant Differences document or another ROD Amendment? Are the details of specific source area remedies presented in the cost estimate, an integral part of the remedy description by which to judge RD/RA activity conformance? Given EPA's publicly expressed reluctance to doing ROD Amendments it appears to us that adaptive management should precede formal selection of a remedy in a ROD. Presenting well developed plans supported by real data would also greatly improve relations with the local community by giving them the opportunity to evaluate and comment on remedies EPA really intends to implement. The present Typical Conceptual Design approach has the practical effect of denying the local community that opportunity.

In summary, SRA supports some of the technical work to be done by EPA as proposed in the ROD Amendment, but most importantly it opposes the $1.39 billion cost and its extreme time duration. By our analysis the cost of the Rod Amendment could be approximately $500 million with the duration of approximately 20-30 years. SRA has a summary of those portions of the Rod Amendment we support and those portions we oppose in this letter (i.e. para. 3). We also implore EPA to find sufficient funding to immediately start the surface water/groundwater work in the "BOX " and Canyon Creek, which would immediately reduce the soluble zinc in the SFCDAR by up to 60 percent. That program yields the largest reduction in the whole Rod Amendment at the lowest cost. SRA stands ready to answer and questions that EPA may have regarding their rationale.

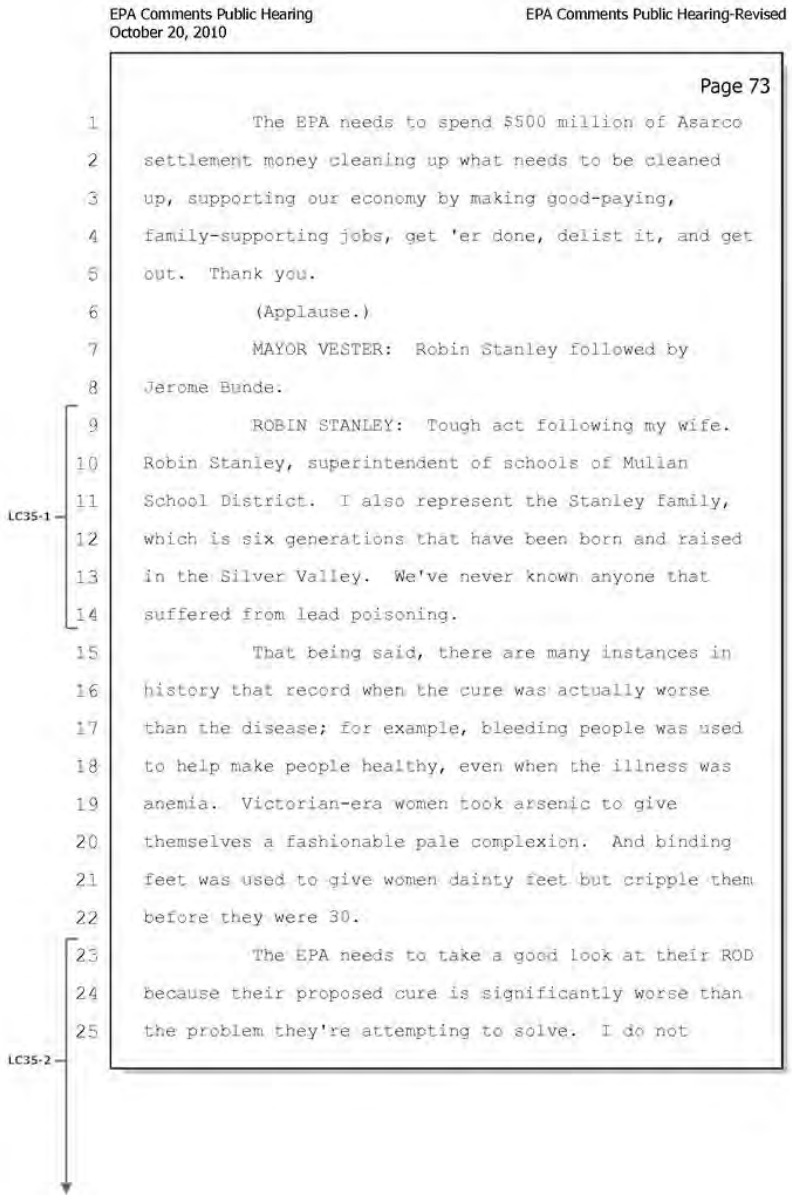
Very truly yours,

Rusty Sheppard
SRA Environmental Committee Chair

CC Toni Hardesty, Director ID DEQ
Congressional Delegation
Kootenai Co Commission
Kootenai Co Legislators

No comments

Superintendant of Schools of Mullan School District, LC35, Letter 619651-29



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 73

The EPA needs to spend $500 million of Asarco settlement money cleaning up what needs to be cleaned up, supporting our economy by making good-paying, family-supporting jobs, get 'er done, delist it, and get out. Thank you.

(Applause.)

MAYOR VESTER: Robin Stanley followed by Jerome Bunde.

ROBIN STANLEY: Tough act following my wife. Robin Stanley, superintendent of schools of Mullan School District. I also represent the Stanley family, which is six generations that have been born and raised in the Silver Valley. We've never known anyone that suffered from lead poisoning.

LC35-1

That being said, there are many instances in history that record when the cure was actually worse than the disease; for example, bleeding people was used to help make people healthy, even when the illness was anemia. Victorian-era women took arsenic to give themselves a fashionable pale complexion. And binding feet was used to give women dainty feet but cripple them before they were 30.

The EPA needs to take a good look at their ROD because their proposed cure is significantly worse than the problem they're attempting to solve. I do not

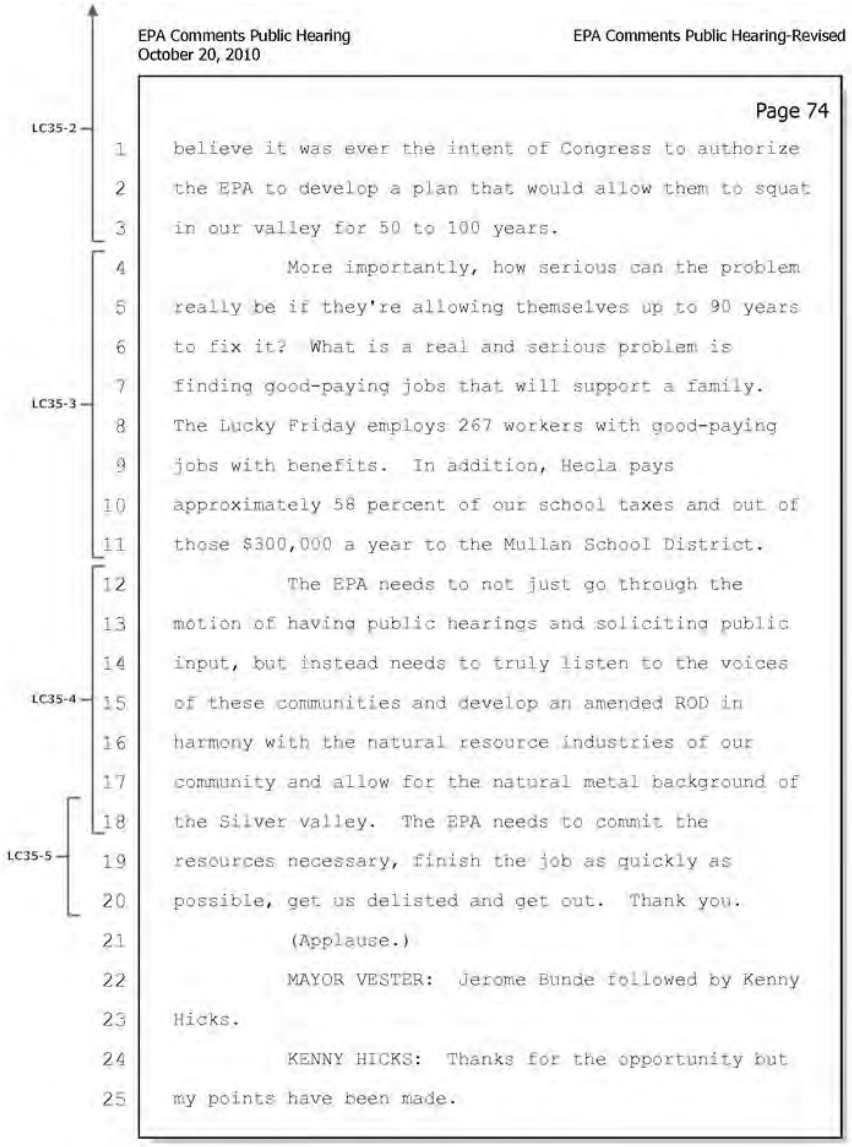
LC35-2

Response to comment LC35-1

See response to Comment No. I295-1.

Response to comment LC35-2

See response to Comment No. I58-1.



EPA Comments Public Hearing
October 20, 2010

EPA Comments Public Hearing-Revised

Page 74

LC35-2

believe it was ever the intent of Congress to authorize the EPA to develop a plan that would allow them to squat in our valley for 50 to 100 years.

More importantly, how serious can the problem really be if they're allowing themselves up to 90 years to fix it? What is a real and serious problem is finding good-paying jobs that will support a family. The Lucky Friday employs 267 workers with good-paying jobs with benefits. In addition, Hecla pays approximately 58 percent of our school taxes and out of those $300,000 a year to the Mullan School District.

LC35-3

The EPA needs to not just go through the motion of having public hearings and soliciting public input, but instead needs to truly listen to the voices of these communities and develop an amended ROD in harmony with the natural resource industries of our community and allow for the natural metal background of the Silver valley. The EPA needs to commit the resources necessary, finish the job as quickly as possible, get us delisted and get out. Thank you.

LC35-4

LC35-5

(Applause.)

MAYOR VESTER: Jerome Bunde followed by Kenny Hicks.

KENNY HICKS: Thanks for the opportunity but my points have been made.

Response to comment LC35-3

See response to Comment No. I58-5.

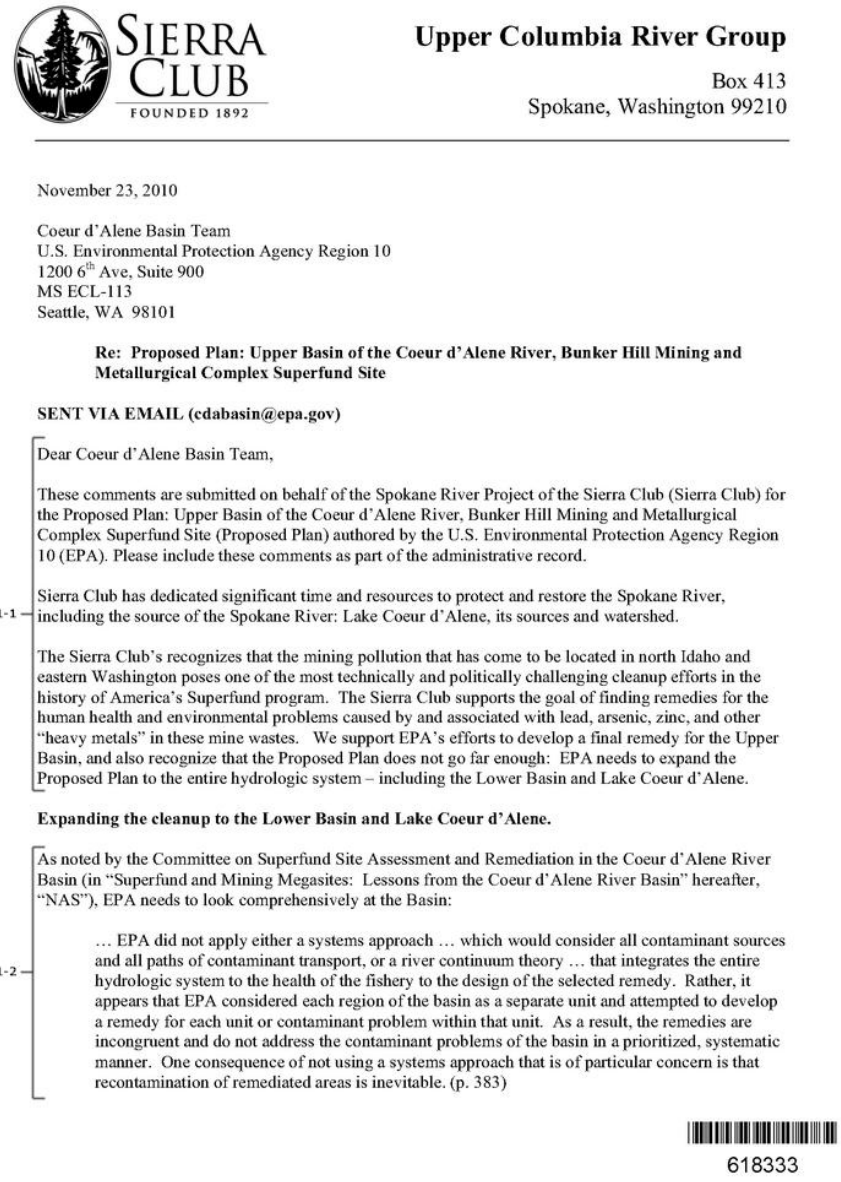
Response to comment LC35-4

See response to Comment No. I295-2.

Response to comment LC35-5

See response to Comment No. I58-1.

The Sierra Club, LC21, Letter 618333



SIERRA CLUB
FOUNDED 1892

Upper Columbia River Group

Box 413
Spokane, Washington 99210

November 23, 2010

Coeur d'Alene Basin Team
U.S. Environmental Protection Agency Region 10
1200 6th Ave, Suite 900
MS ECL-113
Seattle, WA 98101

Re: Proposed Plan: Upper Basin of the Coeur d'Alene River, Bunker Hill Mining and Metallurgical Complex Superfund Site

SENT VIA EMAIL (cdabasin@epa.gov)

Dear Coeur d'Alene Basin Team,

These comments are submitted on behalf of the Spokane River Project of the Sierra Club (Sierra Club) for the Proposed Plan: Upper Basin of the Coeur d'Alene River, Bunker Hill Mining and Metallurgical Complex Superfund Site (Proposed Plan) authored by the U.S. Environmental Protection Agency Region 10 (EPA). Please include these comments as part of the administrative record.

LC21-1 Sierra Club has dedicated significant time and resources to protect and restore the Spokane River, including the source of the Spokane River: Lake Coeur d'Alene, its sources and watershed.

The Sierra Club's recognizes that the mining pollution that has come to be located in north Idaho and eastern Washington poses one of the most technically and politically challenging cleanup efforts in the history of America's Superfund program. The Sierra Club supports the goal of finding remedies for the human health and environmental problems caused by and associated with lead, arsenic, zinc, and other "heavy metals" in these mine wastes. We support EPA's efforts to develop a final remedy for the Upper Basin, and also recognize that the Proposed Plan does not go far enough: EPA needs to expand the Proposed Plan to the entire hydrologic system – including the Lower Basin and Lake Coeur d'Alene.

Expanding the cleanup to the Lower Basin and Lake Coeur d'Alene.

As noted by the Committee on Superfund Site Assessment and Remediation in the Coeur d'Alene River Basin (in "Superfund and Mining Megasites: Lessons from the Coeur d'Alene River Basin" hereafter, "NAS"), EPA needs to look comprehensively at the Basin:

LC21-2

> … EPA did not apply either a systems approach … which would consider all contaminant sources and all paths of contaminant transport, or a river continuum theory … that integrates the entire hydrologic system to the health of the fishery to the design of the selected remedy. Rather, it appears that EPA considered each region of the basin as a separate unit and attempted to develop a remedy for each unit or contaminant problem within that unit. As a result, the remedies are incongruent and do not address the contaminant problems of the basin in a prioritized, systematic manner. One consequence of not using a systems approach that is of particular concern is that recontamination of remediated areas is inevitable. (p. 383)

618333

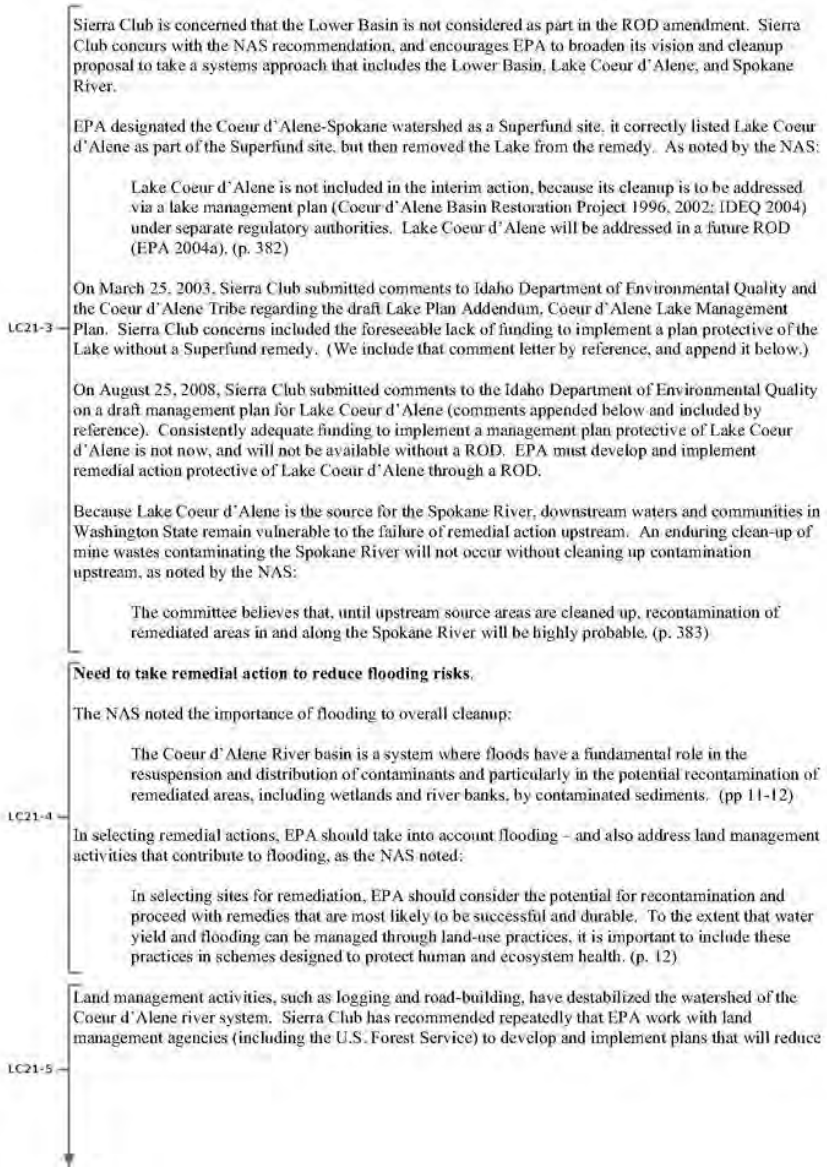
Response to comment LC21-1

Thank you for your comment. Work in the Lower Basin is continuing with additional characterization and refinement of the Conceptual Site Model and will likely include pilot projects. EPA continues to pursue data collection and analysis efforts in the Lower Basin to support the future development and evaluation of remedial alternatives. After these studies have been completed, EPA expects to select additional cleanup actions, subject to public comment, to address contamination issues in the Lower Basin. Although the Lower Basin is not included in the Selected Remedy, actions in the Upper Basin are expected to improve water quality and reduce the movement of contaminated sediments downstream in the Lower Basin. Thus, the Upper Basin cleanup is expected to complement cleanup activities in the Lower Basin by reducing the flow of contaminated materials and reducing the potential for recontamination from the Upper Basin to the Lower Basin. Actions in the Lower Basin will be conducted concurrently with Upper Basin cleanups depending on recontamination and other factors. Because hazardous substances released upstream have flowed downstream and come to be located in Coeur d'Alene Lake, the lake is part of the Site. However, a remedy for lakebed contamination has been deferred contingent upon successful contaminant management through the Tribal/State Lake Management Plan (LMP). The LMP's goal is to manage metals in contaminated lakebed sediments through a nutrient management plan as well as outreach and education with property owners related to their potential impacts on lake water quality. The LMP has been written and adopted by the State of Idaho and the Coeur d'Alene Tribe, but its implementation is in its initial phase. The state and Tribe have been monitoring water quality in the Lake since 2007 and continue to do so. Continued water quality monitoring information, especially with implementation of remedial actions in this Upper Basin ROD Amendment, will provide EPA, the Tribe, and the State of Idaho with data to demonstrate the effectiveness of the LMP. EPA may re-evaluate its deferral of a remedy selection for the Lake considering these data and other relevant site information. Although the Lake is outside the scope of this Upper Basin ROD Amendment, EPA continues to recognize the importance of protecting Coeur d'Alene Lake and as such is committed to working with interested parties to clarify metrics for determining the effectiveness and sufficiency of the LMP.

Regarding the scope of the Selected Remedy for the Upper Basin and future plans, see response to Comment No. I58-1.

Response to comment LC21-2

See response to Comment No. LJ27-8.



Sierra Club is concerned that the Lower Basin is not considered as part in the ROD amendment. Sierra Club concurs with the NAS recommendation, and encourages EPA to broaden its vision and cleanup proposal to take a systems approach that includes the Lower Basin, Lake Coeur d'Alene, and Spokane River.

EPA designated the Coeur d'Alene-Spokane watershed as a Superfund site. it correctly listed Lake Coeur d'Alene as part of the Superfund site, but then removed the Lake from the remedy. As noted by the NAS:

> Lake Coeur d'Alene is not included in the interim action, because its cleanup is to be addressed via a lake management plan (Coeur d'Alene Basin Restoration Project 1996, 2002; IDEQ 2004) under separate regulatory authorities. Lake Coeur d'Alene will be addressed in a future ROD (EPA 2004a). (p. 382)

On March 25, 2003, Sierra Club submitted comments to Idaho Department of Environmental Quality and the Coeur d'Alene Tribe regarding the draft Lake Plan Addendum, Coeur d'Alene Lake Management
LC21-3 Plan. Sierra Club concerns included the foreseeable lack of funding to implement a plan protective of the Lake without a Superfund remedy. (We include that comment letter by reference, and append it below.)

On August 25, 2008, Sierra Club submitted comments to the Idaho Department of Environmental Quality on a draft management plan for Lake Coeur d'Alene (comments appended below and included by reference). Consistently adequate funding to implement a management plan protective of Lake Coeur d'Alene is not now, and will not be available without a ROD. EPA must develop and implement remedial action protective of Lake Coeur d'Alene through a ROD.

Because Lake Coeur d'Alene is the source for the Spokane River, downstream waters and communities in Washington State remain vulnerable to the failure of remedial action upstream. An enduring clean-up of mine wastes contaminating the Spokane River will not occur without cleaning up contamination upstream, as noted by the NAS:

> The committee believes that, until upstream source areas are cleaned up, recontamination of remediated areas in and along the Spokane River will be highly probable. (p. 383)

Need to take remedial action to reduce flooding risks.

The NAS noted the importance of flooding to overall cleanup:

> The Coeur d'Alene River basin is a system where floods have a fundamental role in the resuspension and distribution of contaminants and particularly in the potential recontamination of remediated areas, including wetlands and river banks, by contaminated sediments. (pp 11-12)

LC21-4

In selecting remedial actions, EPA should take into account flooding – and also address land management activities that contribute to flooding, as the NAS noted:

> In selecting sites for remediation, EPA should consider the potential for recontamination and proceed with remedies that are most likely to be successful and durable. To the extent that water yield and flooding can be managed through land-use practices, it is important to include these practices in schemes designed to protect human and ecosystem health. (p. 12)

Land management activities, such as logging and road-building, have destabilized the watershed of the Coeur d'Alene river system. Sierra Club has recommended repeatedly that EPA work with land management agencies (including the U.S. Forest Service) to develop and implement plans that will reduce

LC21-5

Response to comment LC21-3

The CDA Tribe and the State of Idaho have demonstrated a commitment to implementing the Lake Management Plan. In addition, both received substantial funds from the Hecla settlement for this purpose. The historic mine waste located in the Upper Basin continues to serve as a source of dissolved and particulate metals to downstream areas, including the Lower Basin and Coeur d'Alene Lake. That is one of the primary drivers behind EPA's Selected Remedy. Although the Lower Basin is not included in the Selected Remedy, actions in the Upper Basin are expected to improve water quality and reduce the movement of contaminated sediments downstream in the Lower Basin. Thus, the Upper Basin cleanup is expected to complement cleanup activities in the Lower Basin by reducing the flow of contaminated materials and reducing the potential for recontamination from the Upper Basin to the Lower Basin. EPA continues to pursue data collection and analysis efforts in the Lower Basin to support the future development and evaluation of remedial alternatives. See response to Comment No. LC21-1 above.

Response to comment LC21-4

See responses to Comment Nos. LJ27-8, LJ36-3, and I54-5.

Response to comment LC21-5

See response to Comment No. LC21-7.

LC21-5

flooding risk by ending activities that contribute to flooding and by restoring the forested watershed upstream from contaminated areas.

In 2001 Sierra Club submitted comments to the Idaho Department of Environmental Quality on the Draft Sub-basin Assessment and Total Maximum Daily Loads of the North Fork Coeur d'Alene River noting, in part:

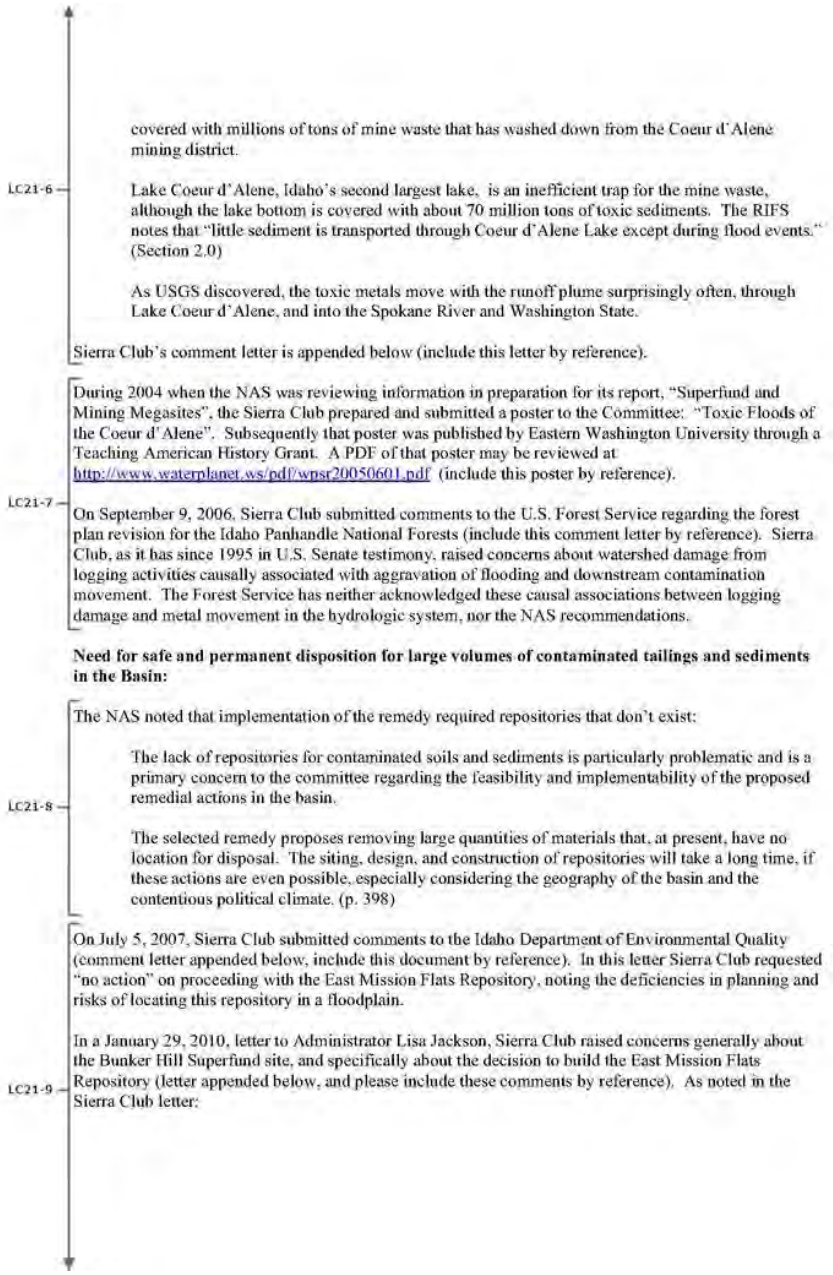
> There is a direct connection between Idaho's toxic mine waste washing onto the beaches of Spokane, Washington, and the clearcuts and logging roads of the Coeur d'Alene forest.
>
> The mining pollution comes from the Coeur d'Alene's South Fork; the floods, the North Fork. Combing these two problems results in "toxic floods".
>
> The Coeur d'Alene River's South Fork is the source of mine waste. Over a century, mining companies used the South Fork as an industrial sewer, dumping 70 million tons of toxic mine waste directly into the waters of the South Fork. The pollution flowed downstream
>
> If you are standing at the confluence of these two rivers you can see the South Fork's stream bed and banks discolored by upstream mining. You can then turn and look at the North Fork: the river is shallow with large rocks lacking moss, indicating an unravelling river system choked with bedload sediment. When these two rivers converge, their waters bring together two separate histories (mining and logging): toxic mine wastes such as lead, zinc, cadmium and arsenic, and the floods. Combining these two rivers and their separate pathologies results in the Coeur d'Alene's toxic floods.
>
> About 100 million tons of toxic soils now temporarily rest in the floodplain between the confluence and the lake, vulnerable to the North Fork's floods. The paramount importance of this toxic floodplain to the region is noted in the Feasibility Study:

LC21-6

> > [T]he impacted floodplain sediments are the major source of metals in basin waters, the major source of metal exposure risk to ecological receptors and a major source to humans, and a major source of potential future recontamination of downstream areas that are cleaned up. The estimated mass and extent of impacted site media-primarly sediments- exceeds 100 million tons dispersed over thousands of acres. (." [Draft Feasibility Study Report for the Coeur d'Alene Basin Remedial Investigation/Feasibility Study. Dec. 20, 2000. hereafter "RIFS". Part 1, Overview/Preface p. iv)
>
> Restoring the hydrologic integrity of the watersheds of the Spokane River—Lake Coeur d'Alene region is paramount because of mine waste pollution. As noted by EPA, "Past mining practices have resulted in the broad distribution of mine wastes throughout much of the upper and lower [Coeur d'Alene] basins. Metal contamination associated with this material continues to move within the hydrologic/hydrogeologic system from the upper and lower basins downstream into Coeur d'Alene Lake and the Spokane River. [RIFS, overview, 2.6. The relationship between watersheds and mining pollution is illustrated in RIFS Figure 2.1-1, "Conceptual Model of Fate and Transport Coeur d'Alene River and Watershed."]
>
> In the flood of February 1996 in the Spokane River—Lake Coeur d'Alene watershed, USGS estimated that in just a single day the floodwaters carried over a million pounds of lead into Lake Coeur d'Alene. The floods sweep across a floodplain between Cataldo and Harrison that is

Response to comment LC21-6

Thank you for your comments.



covered with millions of tons of mine waste that has washed down from the Coeur d'Alene mining district.

LC21-6 Lake Coeur d'Alene, Idaho's second largest lake, is an inefficient trap for the mine waste, although the lake bottom is covered with about 70 million tons of toxic sediments. The RIFS notes that "little sediment is transported through Coeur d'Alene Lake except during flood events." (Section 2.0)

As USGS discovered, the toxic metals move with the runoff plume surprisingly often, through Lake Coeur d'Alene, and into the Spokane River and Washington State.

Sierra Club's comment letter is appended below (include this letter by reference).

During 2004 when the NAS was reviewing information in preparation for its report, "Superfund and Mining Megasites", the Sierra Club prepared and submitted a poster to the Committee: "Toxic Floods of the Coeur d'Alene". Subsequently that poster was published by Eastern Washington University through a Teaching American History Grant. A PDF of that poster may be reviewed at http://www.waterplanet.ws/pdf/wpsr20050601.pdf (include this poster by reference).

LC21-7 On September 9, 2006, Sierra Club submitted comments to the U.S. Forest Service regarding the forest plan revision for the Idaho Panhandle National Forests (include this comment letter by reference). Sierra Club, as it has since 1995 in U.S. Senate testimony, raised concerns about watershed damage from logging activities causally associated with aggravation of flooding and downstream contamination movement. The Forest Service has neither acknowledged these causal associations between logging damage and metal movement in the hydrologic system, nor the NAS recommendations.

Need for safe and permanent disposition for large volumes of contaminated tailings and sediments in the Basin:

The NAS noted that implementation of the remedy required repositories that don't exist:

LC21-8 The lack of repositories for contaminated soils and sediments is particularly problematic and is a primary concern to the committee regarding the feasibility and implementability of the proposed remedial actions in the basin.

The selected remedy proposes removing large quantities of materials that, at present, have no location for disposal. The siting, design, and construction of repositories will take a long time, if these actions are even possible, especially considering the geography of the basin and the contentious political climate. (p. 398)

On July 5, 2007, Sierra Club submitted comments to the Idaho Department of Environmental Quality (comment letter appended below, include this document by reference). In this letter Sierra Club requested "no action" on proceeding with the East Mission Flats Repository, noting the deficiencies in planning and risks of locating this repository in a floodplain.

In a January 29, 2010, letter to Administrator Lisa Jackson, Sierra Club raised concerns generally about the Bunker Hill Superfund site, and specifically about the decision to build the East Mission Flats Repository (letter appended below, and please include these comments by reference). As noted in the Sierra Club letter:

LC21-9

Response to comment LC21-7

EPA agrees that forest practices and other land use activities that may influence surface water runoff may contribute to the transport of mine waste contamination. Regulation of such activities is generally outside the scope of the Selected Remedy. Multi-jurisdictional groups like the Basin Commission may provide a forum to discuss coordination of land use activities that may contribute to the transport of mine waste.

Response to comment LC21-8

See responses to Comment Nos. LJ27-8 and I54-3.

Response to comment LC21-9

EPA and IDEQ concluded that a repository at the East Mission Flats location could be safely built and managed, and would not spread contamination to surrounding areas. Flood concerns were addressed early in the design. In response to early public input after the initial flood evaluation, the agencies did an even more detailed study. That re-evaluation resulted in changes to designs for the site. The repository was engineered to prevent metals from getting into the groundwater under the site. The repository was also designed to prevent sediments from eroding during floods. The sides of the repository have an engineered surface designed to resist erosion from flowing water, even during the 100-year flood event. Plus, the soil is tightly compacted so that most water will run off the sloped repository sides. This means that even in a flood, the soil in the repository will remain dry except around the outer edges. Water will not flow through the repository picking up contaminants.

The East Mission Flats site is mostly level and shielded from fast-flowing water during floods. It is protected by I-90 to the south, Canyon Road to the north, and the dredge road to the west. During a flooding event, water would fill the site gradually, like a reservoir, instead of flowing quickly through the site. Erosion controls help ensure that materials do not get eroded by rain or snowmelt. For extra protection, the lower slopes of the repository are armored with rock or vegetation to make it stable during floods.

The Selected Remedy does call for significant excavation and consolidation of contaminated materials in either engineered repositories or "waste consolidation areas." EPA, IDEQ, and the Basin Commission are working together to identify locations for new repositories in the Upper Basin. There will continue to be many opportunities for community involvement in repository siting.

EPA intends to explore all opportunities to reduce the amount of contaminated material slated for disposal in repositories by making use of waste consolidation areas within upstream drainages, where practicable. For example, work conducted by EPA and the ASARCO Work Trust during the 2011 field season has identified several areas that can become waste consolidation areas in the Ninemile Creek drainage. The potential waste consolidation areas identified in Ninemile Creek will have sufficient capacity to contain all contaminated material estimated to be generated from source control and removal actions in the Ninemile Creek drainage, and will alleviate the need for approximately 460,000 cubic yards of disposal space in regional repositories. EPA is committed to continuing to seek out and develop additional upstream drainage waste consolidation areas to reduce the amount of material that would need to be placed in regional repositories.

LC21-9

> Concerns continue to this day, culminating in objections to the decision to move vast amounts of contaminated soils to East Mission Flats Repository. Many individuals and groups have opposed the selection of the site because it is in a floodplain and could contaminate the Coeur d'Alene River. Shifting climatic patterns and more severe flooding could lead to disastrous outcomes. The safety of the site should have been studied before the decision was made, not as part of its implementation.

Based on the experience of the East Mission Flats Repository, the Sierra Club remains concerned about the appropriate siting, design, and construction of repositories. In addition, mining companies constructed settling impoundments to contain tailings and these impoundments leak. The impoundments were often built in floodplains with surface waters rerouted away from the impoundments. But groundwater flows beneath these impoundments, and is consequently contaminated. Using such sites as repositories is problematic because of continued contamination of groundwater and surface water.

Need for adequate funding to carry out a Final Plan.

The NAS noted the need for long-term funding:

> None of the remedies proposed for cleanup and risk management in the Coeur d'Alene River basin is permanent.

LC21-10

> Remediated sites are likely to suffer from recontamination from sediment carried by the frequent floods in the basin. These floods can also erode protective caps covering contaminated areas, thereby eliminating the protection that the caps provide. …
>
> A plan should be developed to create appropriate institutions and funding to maintain selected remedies through time. Such maintenance will be required for hundreds of years. (pp 398-9)

LC21-11

Even with the $500 million from the ASARCO settlement, the Sierra Club remains concerned that funding costs will fall short of total remedial costs for the Coeur d'Alene Basin that will likely exceed $2 billion. If cleanup of the Spokane River – Lake Coeur d'Alene Basin cannot be funded over the decades, then the public in both impacted states – Idaho and Washington – will be adversely impacted.

Again, thank you for the opportunity to provide comment on cleaning up the Spokane River – Lake Coeur d'Alene watershed.

John Osborn, MD
Upper Columbia River Group, Sierra Club – Chair
Spokane River Project, Coordinator

Appendices:

1. Sierra Club comments on Lake Plan Addendum, Coeur d'Alene Lake Management Plan, March 25, 2003
2. Sierra Club comments on draft Coeur d'Alene Lake Management Plan, August 25, 2008
3. Sierra Club comments on Draft Sub-basin Assessment and Total Maximum Daily Loads of the North Fork Coeur d'Alene River, Idaho Department of Environmental Quality, January 20, 2001

Response to comment LC21-10

See responses to Comment Nos. LJ27-8, LJ36-3, I54-5, I295-3, and I54-12.

Response to comment LC21-11

Regarding the funding of remedies, see response to Comment No. I295-3. EPA is mindful there will be future needs regarding funding for cleanup in both the Lower and Upper Basins, and will seek to ensure there are funds available for these needs.

4. Sierra Club comments on draft forest plan revision, Idaho Panhandle National Forests, U.S. Forest Service, September 9, 2006
5. Letter from Sierra Club to Idaho Department of Environmental Quality commenting on the East Mission Flats Waste Repository Plans, July 5, 2007
6. Letter from Sierra Club to EPA Administrator Lisa Jackson, January 29, 2010

(1) Sierra Club comments on Lake Plan Addendum, Coeur d'Alene Lake Management Plan, March 25, 2003

March 25, 2003

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Dear Mr. Tulloch and Mr. Cernera,

The following comments are submitted on behalf of the 1,700 members of Sierra Club's Upper Columbia River Group. We want to thank the Idaho Department of Environmental Quality and the Coeur d'Alene Tribe for this opportunity to comment, as well as the decision to lengthen the public comment period.

I am a Spokane physician and serve as the Sierra Club's conservation chair for Idaho and eastern Washington. Since 1983 I have been involved with environmental issues in the Spokane River watershed. I currently serve as conservation chair for the Upper Columbia River Group of the Sierra Club, and it is in this capacity that I offer these comments.

The Sierra Club has about 700,000 members, 1,700 of whom live in the Idaho Panhandle and northeastern Washington. The Sierra Club was formed in 1892. Regional offices are located in Boise, Spokane, and Seattle; the national office, in San Francisco. The Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth; practice and promote the responsible use of the earth's ecosystems and resources; educate and enlist humanity to protect and restore the quality of the natural and human environment; and use all lawful means to carry out these objectives.

My comments on the draft Lake Plan Addendum, Coeur d'Alene Lake Management Plan are structured as follows:

(1) No Funding

No comments

Note: These appendices are referenced in the Sierra Club letter, and responded to in the comments above.

No comments

(2) Forest Destruction and Toxic Floods
(3) Nutrient Loading
(4) Post Falls Dam
(5) Spokane River
(6) Agencies Are Not Committed to the Lake
(7) Basin-wide monitoring
(8) The Lake should not be delisted from Superfund

(1) No Funding

> Funding sources must be identified and secured to assure the restoration project list and Action Items identified in the tables of the Plan will be conducted. [Lake Plan Addendum p. iii]
>
> Representatives were unable to provide firm funding information on what has been spent over the past five years or what future funding is required. Lake Plan Addendum, p. 10.

The Coeur d'Alene Lake Management Plan and the Addendum (hereafter, the "Plan") will require a reliable funding source. Yet there is none. Without funding, this will be yet another plan in the Spokane River watershed that collects dust. Indeed, the Lake Coeur d'Alene Management Plan has been collecting dust since it was completed in 1995.

By contrast, the Superfund Trust Fund provides a far greater likelihood of a reliable funding source for ongoing Lake restoration.

We have considerable experience in the Spokane River watershed with government agencies adopting Plans that are predicated on false assumptions of money. For example, consider the forest plan for the Idaho Panhandle National Forests (IPNF). The 2.5-million-acre IPNF comprises a major part of the Lake's watershed. In 1987 a coalition of conservation and sporting groups pointed out problems with a government agency adopting a plan without a realistic expectation of funding:

> During the development of the Preferred Alternative, USFS planners expressed concerns about the huge budgetary increases necessary to implement the Plan. [See for example IPNF Planning Document 1756 in which the planning team discusses the problems of a 36 percent increase in budget and a 146 percent increase in hard money dollars over the 1980 budget.] In 1983 IPNF Forest Supervisor wrote to the Regional Forester about the unrealistic budgetary assumptions of the preferred alternative, "It is apparent that there is a considerable funding gap between the Preferred Alternative in our proposed forest plan analysis and our probable program." [IPNF Planning Document 3151] During the review of the draft plan at the regional office in 1984, concerns were expressed that '[p]rojections for a budget increase for the preferred alternative seems to be wishful thinking these days.' Ultimately, the regional forester did not communicate to IPNF planners any concern or provide any direction pertaining to developing alternatives based on a realistic budget. [IPNF Planning Document 2012]
> [Idaho Conservation League et al, "Reply to the Responsive Statement", administrative appeal of the USFS Plan for the Idaho Panhandle National Forests.]

The Lake Plan, just as with the Forest Plan and the rest of the Clean-up Plan, is worthless unless there is funding.

Any Lake Plan will require a high likelihood of committed funding. Funding will need to be given a priority for plans and activities of all state and federal agencies involved with Lake protection and restoration.

No comments

(2) Forest Destruction and Toxic Floods

> [L]ead concentrations have exceeded drinking water standards during extreme high flows" [Lake Plan Addendum, p. ii]
>
> Lead exceeds water quality standards during floods (high discharge) events and total lead exceeded drinking water standards prior to filtration for an extended period during the exceptionally high discharges of 1996. [Lake Plan Addendum, p. 5]
>
> Several representatives of Industry, the United States Forest Service (USFS) and private landowners believed that the [Idaho] Forest Practices Act (FPA) provided sufficient standards for conducting activities within stream corridors. [Lake Plan Addendum, p. 11]
>
> Specifically, the FS includes the basin except for the North Fork of the Coeur d'Alene River. [Coeur d'Alene Basin clean-up plan, draft, Overview, Draft p.v]
>
> Little sediment is transported through Coeur d'Alene Lake except during flood events. [Coeur d'Alene Basin clean-up plan, draft, Overview, p. 2-17]
>
> These weather patterns make the Basin one of the highest-precipitation areas of the Upper Columbia River Basin and can lead to flooding, especially when winter rainfall occurs on top of snow conditions. [Human Health Alternatives 1-11]
>
> High blood lead levels in the lower basin have been associated with homes that were flooded in 1996, and recreational activities outside the home (TerraGraphics and URSG 2001). [Coeur d'Alene Basin clean-up plan, draft, Overview 3-4]
>
> Recontamination—Periodic flooding can recontaminate previously remediated areas where storm, snow melt, or flood waters have caused erosion and subsequent redeposition of contaminated sediments. This is a particular concern for community recontamination in smaller basin communities. Many of these communities do not have surface water control systems (e.g., curbs, gutters, and ditches) that effectively control runoff during snowmelt and storm events. For residents living in or near flood plains, uncontrolled surface water runoff, especially during flood events, has a high likelihood of recontaminating properties where remediation has previously been conducted. [Coeur d'Alene Basin clean-up plan, draft, Overview, p. ix]
>
> Flooding would recontaminate remediated yards by depositing contaminated sediment derived from upstream mining activities. Reviews of flood maps prepared by the U. S. Department of Housing and Urban Development (HUD) and the Federal Emergency Management Agency (FEMA) identified communities with significant flooding problems. Other communities with flooding problems were identified by obtaining anecdotal information from local residents. The estimated percentage of residences with flooding problems is provided by investigation area and community in Table 4-3. [Human Health Assessment, 4-6]

Reducing flood severity and frequency is integral to protecting human health in communities at risk for flooding, and slowing the movement of mine wastes into Lake Coeur d'Alene and the Spokane River.

The relationship between forest damage and floods is not newly recognized in the Coeur d'Alene Mountains. In the North Fork of the Coeur d'Alene, the relationship of stream flows between heavily

No comments

logged Big Elk Creek drainage and lightly logged or recovered Halsey Creek drainage is clearly shown in the graph derived from monitoring during 1989 and 1990 that accompanied *A Procedure for Evaluating Risk of Increasing Peak Flows from Rain on Snow Events by Creating Openings in the Forest Canopy*, [Gary Kappesser, USFS Idaho Panhandle National Forests, March, 1991].

Forest ownerships of the Coeur d'Alene are a mix of federal, state and private. A glance at forest maps shows that most of the watershed is in the Coeur d'Alene National Forest (an individually proclaimed National Forest that has since been combined with the St. Joe and Kaniksu National Forests as an administrative unit: Idaho Panhandle National Forests).

The Coeur d'Alene National Forest contains some of the most damaged forest in the National Forest System, with logging road densities *averaging* about 11 road miles per square mile of forest. Forests canopies have been extensively clearcut. As a Forest Service hydrologist told the *Spokesman-Review* in describing the Little North Fork of the Coeur d'Alene River: "There's no question this drainage has been hammered. It's been killed. That's a legacy we're still paying for." [*Spokesman-Review*, Nov. 20, 2001.]

Since passage and implementation of the National Environmental Policy Act in 1969, the U.S. Forest Service claimed that each of its timber sales in the North Fork of the Coeur d'Alene drainage would have no significant cumulative effect on the environment. Yet since that time, most of the streams in that drainage are so burdened with sediment that they are classified as Functioning at Risk (FAR) or Not Properly Functioning (NPF). The situation is so severe that both the North Fork and the Little North Fork Coeur d'Alene River systems are classified under the Clean Water Act as a Water Quality Limited Segment, 303(d).

Logging headwater forests sets in motion a series of changes like falling dominoes: damage starts at the top and perpetuates through the river system. Forest disturbing activities at the top of the Coeur d'Alene Basin increase peak flows and stream energies, thereby mobilizing bedload sediment. Filling river channels with bedload and increasing water flows helps explain some of the profound movement of lead and other toxins into Lake Coeur d'Alene and the Spokane River.

Headwater are sensitive to increases in peak flows. This is acknowledged in the 1993 IPNF *Guidelines for Watershed and Stream Channel Evaluations and Project Implementation*. This document emphasizes the need to limit headwater logging in all drainages, especially in drainages with streams in condition yellow (FAR) or condition red (NPF). Peak flows will increase in all the affected drainages and thus the risk for damage and downstream movement of mine wastes is also greatly increased.

Much of the watershed is located within well-defined elevations referred to as "rain-on-snow" (ROS) belts. Rain on snow events occurring where forests and slopes have been disrupted by forest canopy removal and logging roads increase the peak flows, increase the risk of further destabilization of the affected stream channels and increase bedload production and transport. The more heavily logged and road-damaged is a drainage, the greater the impact from ROS events.

Aggradation of bedload sediment from headwater logging results in the rivers becoming wider and shallower, and therefore more susceptible to flooding. As Paul Woods of the U.S. Geological Survey noted, "You could have lower flow, but higher stage [of flood] because the river can't handle it." [*Spokesman-Review* 2/15/96.]

The Lake Plan's omission of the Coeur d'Alene watershed is glaring. Both the North and South Fork Coeur d'Alene Basins need to be restored. A final Lake Plan needs to include enforceable watershed management agreements. Forest canopies should be allowed to grow back, and logging roads removed.

Restoration and flood-prevention should be given the highest priority in land management decisions on the Coeur d'Alene forested watersheds.

The Sierra Club urges a 25-year-moratorium on commercial logging in the North Fork of the Coeur d'Alene River, and the adoption of INFISH.

(3) Nutrient Loading

> "As stated in the ROD, upon further review of the Plan, the EPA, Tribe and State of Idaho will determine if actions outlined in the Plan have and will continue to be conducted to assure the Lake will be protected from accelerated nutrient loading." [Lake Plan Addendum 3]

Nutrients entering Lake Coeur d'Alene pose a risk that water chemistries will substantially change, lake eutrophication will accelerate, and lake-bottom mine wastes will reenter the water column. With some 70-million tons of toxic sediments on the Lake bottom (and more washing in daily especially during flood events), this is of concern. Logging, agriculture, shoreline development, sewage contribute to nutrients in the Lake.

A TMDL needs to be done for nutrients in the Lake, and standards adopted that will recover the Lake.

(4) Post Falls Dam

The Lake Plan Addendum is silent on Post Falls Dam. Avista Utilities has begun the FERC relicensing process for Post Falls Dam.

Adjusting water levels at Post Falls Dam is likely to have a significant impact on transport of the heavy metal pollution into Lake Coeur d'Alene and the Spokane River. This dam is currently being relicensed.

The Lake Plan needs to address the reservoir levels set by Post Falls Dam and resulting changes in toxic metal movement in the Basin.

(5) Spokane River

> "The migration and fate of inflow plumes through the northern pool of the Lake was assessed. Results for this single year event indicate that an inflow plume did move across the surface of the northern pool and was directly discharged to the Spokane River." [Lake Plan Addendum p. 7]

Millions of dollars will be spent remediating the Spokane River from metal pollution flowing in from Lake Coeur d'Alene.

The Lake Plan Addendum is silent on the impact of the Lake on the Spokane River. The Lake gives rise to the Spokane River. A few miles downstream, the Spokane River crosses the state boundary separating Idaho from Washington. At that line, the water must meet Washington water quality standards, including dissolved oxygen and metals.

A Plan for Lake Coeur d'Alene (including its watershed) needs to protect the Spokane River.

(6) Agencies are not committed to the Lake

No comments

No comments

> "Resource managers had varying opinions about the implementation done to date and what would be needed in the future. Based on comments received, managers believed that each had been [. . . doing more than] what is legally required to manage their respective resources." [Lake Plan Addendum, p 9-10]
>
> "Forestry Workgroup: Meeting participation was broad based and included representatives of private landowners, industry, and federal, state, and tribal resource managers. One of the major resource managers, Idaho Department of Lands (IDL) was not represented." [Lake Plan Addendum, p. 10]

Agencies responsible for Lake Coeur d'Alene (including its watershed) are not committed to the Lake. For example:

- Idaho Department of Lands did not attend meetings of the Forestry Workgroup. IDL's TMDL for the North Fork Coeur d'Alene contributes to mine-waste movement into Lake Coeur d'Alene and the Spokane River.
- The U.S. Forest Service is the major landowner in the Lake's watershed. It must make watershed restoration the priority on the Idaho Panhandle National Forests. This needs to be reflected in the forest management plan, budget priorities, and activities in the forest. As we have pointed out for nearly 20 years, the USFS manages the Lake's watershed as though the forested watershed is disconnected from the Lake.
- The Idaho Department of Transportation fills entire bays of the Lake with mud.
- EPA and Idaho of Environmental Quality do nothing to stop forest destruction that causes the toxic floods. EPA removed the Lake from its cleanup plan for the Basin.

Taken altogether (and acknowledging some exceptions) the family of agencies responsible for Lake Coeur d'Alene have no real commitment to Lake Coeur d'Alene. The Lake has 70 million tons of toxic sediment on its bottom, there are 100 million tons of toxic sediments perched on the floodplain just above the lake, and the forested watersheds are wrecked and cause the toxic floods that further polluting Lake Coeur d'Alene.

State and federal agencies must make protecting Lake Coeur d'Alene a priority, not lip service. This needs to be reflected in agency plans, activities and fund priorities.

(7) Basin-wide monitoring

Precision monitoring with key indicators throughout the watershed will let the responsible agencies know about problems (and an opportunity to take corrective action) before the problem ends up in the Lake.

Any Lake Plan will require a basin-wide monitoring system that provides early detection of threats to the Lake.

(8) Lake Coeur d'Alene should not be delisted from Superfund

> If the Plan is deemed adequate, the Lake will then be considered for official EPA deletion from the current Superfund designation. This decision will be the subject of a future ROD. [Lake Plan Addendum, 3]

No comments

> Two alternatives have been developed for the lake (CSM Unit 4). Alternative 1 is "no action," as required by the NCP. Alternative 2 involves implementation of the Lake Management Plan (CLCC 1996). [Coeur d'Alene Basin clean-up plan, draft, Overview 5-18]
>
> Management goals were primarily directed toward phosphorus control because lowering zinc concentration required action to address mining-impacted areas in the Coeur d'Alene Basin, which was beyond the scope of the Lake Management Plan. [Coeur d'Alene Basin clean-up plan, draft, Overview 5-18]

Lake Coeur d'Alene is inadequately dealt with in EPA's basinwide cleanup plan. There is very little information provided, and only two alternatives developed. Protecting the lake will likely require significant trade-offs: failure to clean-up the metals will result in a transfer of the economic burden to other industries, including timber, agriculture, and real estate. These other economic sectors will likely pay a price for the ongoing mine waste pollution of Lake Coeur d'Alene.

The basin-wide Plan relies on the future implementation of a Lake Management Plan. For the Lake Management Plan to work it must be both effective and enforceable. Effectiveness must still be tested scientifically. And even if the Lake Plan is scientifically effective there must be changes made to local laws and funding must be available. Moreover, since the Lake Plan is part of a CERCLA remedy for the Basin, there is a legal requirement for EPA to remain in an enforcement position for the long term.

Because of

- 70 million tons of toxic sediments on the lake bottom,
- 100 million tons of toxic sediments perched upstream,
- forests wrecked and flooding,
- the Spokane River originating from the Lake and dependent on Lake water quality,
- lack of agency commitment to the Lake (including its watershed) and the Spokane River, and
- the draft Lake Plan's deficiencies and omissions as enumerated above.

Lake Coeur d'Alene should not be considered for official EPA deletion from the current Superfund designation.

Again, thank you for this opportunity to comment.

Sincerely

John Osborn, MD
Conservation Chair, Idaho and eastern Washington

cc:
Rep. George Nethercutt
Senator Maria Cantwell
Senator Larry Craig
Senator Mike Crapo
Senator Patty Murray
Governor Dirk Kempthorne
Governor Gary Locke
John Ianni, U.S. Environmental Protection Agency
Sheila Eckman, U.S. Environmental Protection Agency

No comments

(2) Sierra Club comments on draft Coeur d'Alene Lake Management Plan, August 25, 2008

Idaho Department of Environmental Quality
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Coeur d'Alene Tribe
P.O. Box 408
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August 25, 2008

Sierra Club and the Center for Environmental Law and Policy (CELP) appreciate the opportunity to comment on the draft Coeur d'Alene Lake Management Plan (LMP). We recognize the effort by Idaho Department of Environmental Quality and the Coeur d'Alene Tribe in jointly developing the draft LMP, and recognize the challenges and opportunities that attach to a watershed with severe pollution problems and multiple jurisdictions.

Sierra Club has a long history of involvement in the Lake Coeur d'Alene – Spokane River watershed. Over the past 25 years we have focused on the problem of the movement of mine wastes resulting from overcutting watershed forests, further polluting Superfund-remediated sites, Lake Coeur d'Alene, and the Spokane River. For an example, see "Toxic Floods of the Coeur d'Alene", a poster developed for the National Academy of Sciences. (www.waterplanet.ws/pdf/wpsr20050601.pdf). As the Kootenai Environmental Alliance correctly noted in its comments dated August. 20, 2008 (hereby incorporated by reference), rampant development within the watershed further threatens Lake water quality.

Impact on Washington State

Decisions upstream impact water quality downstream. Lake Coeur d'Alene is the source for the Spokane River, flowing through Washington State. Large quantities of mine wastes on the Lake's bottom, and located upstream from the Lake are a major concern to both Idaho and Washington. Eutrophication of the Lake that would resuspend mine wastes into the lake water column would be disastrous for waters in both states.

Our comments incorporate by reference those of the Washington Department of Ecology dated August 19, 2008. Washington State points out that the draft LMP is deficient for its failure to:

- describe methods and procedures to ensure accountability and enforcement to address nutrient sources,
- provide a process and timeline for securing commitments from responsible government partners,
- assure compliance with the action items in the Management Action Tables (MAT), without which change will not occur,
- ensure compliance with local, state, and federal laws by providing specifics on implementation and timelines,
- provide firm commitments for funding initial stages of LMP implementation,
- set forth a deliberate, transparent implementation schedule,
- measure and report substantive gains showing compliance,
- provide for more "robust" interventions should voluntary compliance fail.

No comments

- provide a process to enact corrective measures for monitored violations of action items in the MAT,
- include a task and schedule for responding to water quality triggers if prevention measures are inadequate, and
- identify staffing positions responsible for field inspections/audits of regulatory activities and assuring compliance.

Washington encourages Idaho to adopt both a metals TMDL and a nutrient TMDL in conjunction with the LMP. The state also provides eighteen specific comments on the Management Action Tables. Sierra Club agrees with and endorses the comments provided by the Washington Department of Ecology.

Relationship to Superfund

At the time the U.S. Environmental Protection Agency designated the Coeur d'Alene-Spokane watershed as a Superfund site, it listed the Lake as part of the Superfund site, but then failed to adopt a remedy to address the pollution lying at the bottom of the Lake .

In order to address the Lake's pollution problems, and to protect the Lake and the Spokane River into the future, Sierra Club supported the Lake's inclusion as part of the remedy for the Superfund cleanup of the Coeur d'Alene Basin. Sierra Club opposed the decision to remove the Lake from the 2002 Interim Record of Decision (ROD).

On the day that the MOA was announced Sierra Club, along with other conservation organizations and individuals, met with EPA Administrator Christine Todd Whitman, then-Governor Kempthorne, and others to voice our concerns about the decision to remove Lake Coeur d'Alene from the remedy in the 2002 Interim ROD, and the failure to address metal-movement problems aggravated by damage to watershed forests. Subsequently, Sierra Club has met on multiple occasions with EPA Region X Administrators to convey these same concerns.

Sierra Club anticipates that Idaho is unlikely to provide the firm commitment of funding for the initial implementation of a final LMP, regardless whether the plan is sufficiently protective of Lake Coeur d'Alene. Without funding, the LMP will be shelved, and the Lake and Spokane River will continue to be at risk. More viable and reliable funding is with Superfund.

General Comments

- The Draft LMP fails to address sediment and metal loading from the CDA River Basin, including addressing the toxic flooding problem associated with the dual problems of mine wastes and damage to watershed forests.

- Success of the LMP will be heavily contingent on a significant amount of funding. While the Coeur d'Alene Tribe has made commitments to funding activities in the Basin, the State of Idaho has been unwilling to dedicate significant funds for lake cleanup efforts. The LMP should clarify what happens if the State fails to fully fund implementation of cleanup activities. This should include the option of moving the Lake toward formal Superfund listing and the development of a ROD that contains cleanup activities for the Lake.

- The Draft LMP lacks any real regulatory mechanisms to address the significant problem of metals in Lake Coeur d'Alene. No requirements for land management, buffer strips, dredging, septic tank management, or NPDES permitting exist in the plan. The entire basis of the Draft LMP appears to hinge on monitoring and education (requiring a significant budget). Given the significance of the problem of metals in the Lake, the Parties should adopt stringent requirements for land

No comments

management, land use planning, and septic tanks that will actually and measurably reduce nutrient inputs into the Lake.

- There is no discussion of NPDES permitted sources of nutrients into the Basin and how those sources might be reviewed. This seems like a key regulatory area to address to reduce nutrient sources. The Final LMP should contain measures to review these sources and should contain an appendix listing all permitted sources that contribute nutrients to the Basin.

- The Final LMP should contain a listing of actions resulting from the Avista relicensing that may (or will) assist in addressing metals in the Lake.

- Page 26-28: The Draft LMP does not appear to commit to complete the "overruled" metals TMDL. The Final LMP must contain a commitment by the parties to complete this TMDL. Idaho and EPA have an independent legal obligation not to unreasonably delay the completion of this TMDL and that obligation should be reflected in the Final LMP, including a specific timeframe toward its finalization and completion. In the alternative, if Idaho cannot complete this TMDL because of state regulatory hurdles, Idaho should petition EPA to complete the TMDL.

- Page 28: Given that the Lake is not meeting tribal nutrient standards, the Final LMP should contain a commitment by the parties to complete a nutrient TMDL.

- Page 29: Given the scope of the problem and the limited funds, the Final LMP should reallocate funds and effort that otherwise would be directed to the Lake Stewardship Center toward tangible activities designed toward actually reducing the problem. While this may be a "high profile" and "feel good" action designed to increase awareness of problems associated with the Lake, it is unclear how effective such an effort might be in resolving the actual problems. In the alternative, the Final LMP should point toward other examples of "Lake Stewardship Centers" and quantify their effectiveness in dealing with problems as significant as the metals pollution in Lake Coeur d'Alene. Moreover, it appears that resources devoted toward the Center might be better spent on enforcement of NPDES permit requirements, stormwater permitting, and other regulatory enforcement that has gone largely unaddressed in the Basin.

- Page 35-35: The description of the EPA Water Quality Program should clarify that EPA retains authority for issuing and enforcing NPDES permits, including stormwater permits, with both tribal and state areas in the Basin.

- Appendix D: This Appendix should identify TMDLs that will be completed as part of this effort, including listing the estimated cost for completing these TMDLs and the scheduled completion date.

- Appendix E: This Appendix should identify FERC and IDEQ as responsible agencies for enforcement of Avista-related measures benefiting the Lake. FERC's authority stems from the Federal Power Act and IDEQ's authority stems from Section 401 of the Clean Water Act.

Model for Lake Coeur d'Alene: Tahoe Regional Planning Agency (TRPA)

Idaho State and the Coeur d'Alene Tribe may wish to adopt a regulatory framework similar to that used to protect Lake Tahoe. In the late 1960's, governors and lawmakers of California and Nevada developed The Lake Tahoe Compact to create a regional planning agency to oversee development at Lake Tahoe. In 1969, the United States Congress ratified the agreement and created the Tahoe Regional Planning Agency (TRPA). In 1987 the TRPA Governing Board adopted the 1987 Regional Plan giving

TRPA the authority to adopt environmental quality standards, termed thresholds, and enforce ordinances designed to achieve the thresholds. As its mission, TRPA "leads the cooperative effort to preserve, restore, and enhance the unique natural and human environment of the Lake Tahoe Region." Lake Coeur d'Alene's pollution challenges and continued development, combined with multiple jurisdictions, would justify a regulatory authority empowered to protect and restore the Lake.

In conclusion, the protection of Lake Coeur d'Alene is important to residents in both Idaho and Washington because of the relationship between the Lake and Spokane River. Sierra Club looks forward to the completion and implementation of a plan that will protect these important waters.

John Osborn, MD
Sierra Club, Upper Columbia River Group
Center for Environmental Law and Policy

(3) Sierra Club comments on Draft Sub-basin Assessment and Total Maximum Daily Loads of the North Fork Coeur d'Alene River, Idaho Department of Environmental Quality, January 20, 2001

January 20, 2001

Geoff Harvey
Idaho Department of Environmental Quality
Coeur d'Alene Regional Office
2110 Ironwood Parkway, Suite 100
Coeur d'Alene, Idaho 83814-2648

Dear Mr. Harvey,

On behalf of The Lands Council, Sierra Club, and Idaho Wildlife Federation, I wish to submit the following comments on Idaho State government's proposed TMDL (Draft Sub-basin Assessment and Total Maximum Daily Loads of the North Fork Coeur d'Alene River) for a watershed of extraordinary importance to Washington State: the Coeur d'Alene River's North Fork.

The TMDL required under the Clean Water Act would seem to provide Idaho State an opportunity to protect and restore the North Fork. Indeed we wish to thank Idaho State for proposing in the TMDL the "removal of roads from flood plains and rehabilitation of the road crossings and approaches which deliver excess waters and sediment to the streams." [p. 48] Idaho State, however, advocates a strategy that can be summarized as "logging watersheds to health": cutting remaining forest canopies in order to pay for limited and speculative restoration efforts.

Idaho's proposal can be expected to (1) worsen the flooding problems on the North Fork, (2) damage fisheries, and (3) wash more toxic mine waste downstream into the city of Spokane.

(1) IDAHO WOULD WORSEN FLOODING

To the casual observer, flying over the forests of the Coeur d'Alene's North Fork reveals the full extent of the clearcuts and logging roads that are mostly hidden behind the "beauty strips" strategically left along the major roads.

No comments

No comments

Comparing historic photographs from the 1930s to the 1990s underscores the dramatic change in this watershed. (Such photos currently are on display at the Spokane International Airport, and we encourage Idaho State officials to look at them.) These photographs reveal hundreds of clearcuts that were not present during the 1930s. Many clearcuts are located up high on mountain sides and mountain tops.

Aerial photographs also reveal logging roads stacked one upon another. These are the so-called Idaho "jammer roads". Average road densities, a measure for unhealthy forests, exceed 11 road miles per square mile of forest on the Coeur d'Alene National Forest. This is an astounding figure, the highest logging road densities in the entire United States National Forest System.

The Coeur d'Alene River's North Fork has become a "poster child" for the national debate over forest practices in the National Forests. *The New York Times*, for example, published an aerial photograph of clearcuts and roads in the North Fork, and an accompanying article featuring the Coeur d'Alene. "Quiet Roads Bringing Thundering Protests: Congress to Battle Over Who Pays to Get to National Forest Trees." [May 23, 1997]

The relationship between cutting forests and resultant flooding has been long recognized. Protecting watersheds is the foundation for the National Forest System. Gifford Pinchot, Chief of the Forest Service under President Theodore Roosevelt, testified before Congress on this matter. In one hand Pinchot would hold a picture of a mountainside denuded of its forests; in his other hand, a sponge representing an intact forest. When the forester poured water on the clearcut, it ran off on the floor. Not so the sponge: the intact forest held the water.

During the 1970s US Forest Service hydrologists articulated their concerns publicly about the impact of logging and road-building on worsening floods of the North Fork. [See for example, Fred Rabe and David Flaherty. The River of Green and Gold, Idaho Research Foundation, 1974.] During the 1980s hydrologists continued their criticism of the North Fork logging practices. [See, for example, Clearcutting hurts streams, Jeff Sher, *Spokesman-Review* June 23, 1983.] The result? Logging continued. These hydrologists were removed from the Idaho Panhandle National Forests.

Compacted road surfaces increase water delivered to streams. So, too, are peak flows increased by the impact of road cutting into mountain sides, piercing and draining perched water tables.

The Coeur d'Alene forest is remarkable for large areas that are in "rain-on-snow" elevation ranges of 3,300 to 4,500 feet (TMDL, p. 3). Snow accumulates. Warm winter storms can cause a rapid melt of the snow pack. In areas denuded of trees such as clearcuts, increased amounts of water are released into the river system. As noted by U.S. Forest Service hydrologist Gary Kappesser in "A Procedure for Evaluating Risk of Increasing Peak Flows from Rain on Snow Events by Creating Openings in the Forest Canopy":

> Some of the largest and most damaging flood events in north Idaho have occurred in November through February from "rain on snow" events. Warm pacific maritime air masses moving into the area provide the moisture and energy to rapidly melt existing snowpacks. Latent heat of condensation is liberated as the water vapor in the warm moist air condenses at the snow surface. Rate of heat liberation is a function of wind velocity at the snow surface to provide a continuing source of water vapor. Large openings in the forest canopy created by timber harvest can result in significantly increased wind velocities at the snow surface. This will produce an altered hydrologic response with higher flood peaks, shorter times to rise, and shorter recession. The result may be destabilized stream channels with increased bedload transport. The risk of increasing peak flows through timber harvest may be evaluated in terms of significant causal factors.

No comments

> These include elevation range, size of opening created in the canopy, percent crown cover removed, and a combination of aspect and slope. [USFS. Idaho Panhandle National Forests. March, 1991.]

The relationship between stream flow and energy is logarithmic: as stream flow doubles, stream energy increases 10 times. Increased peak flows in the upper watershed damage stream structures, producing bedload sediment. Like dominos falling, streams high up in the watershed begin to unravel, producing the bedload sediment causing damage all the way through the system. The North Fork is unraveling from the top of the watershed all the way down.

The hydrology of the Coeur d'Alene River's North Fork has been profoundly changed by Idaho jammer roads stacked one upon another, and massive clearcutting in rain-on-snow zones.

What is an appropriate intervention to restore this watershed? Idaho State, as the author of this TMDL, proposes more logging as the fix. Idaho proposes the very treatments that inflicted such grave injury on this forest watershed. Idaho blithely assumes that receipts from logging can be used to pull some culverts and remove some roads. (It is worthwhile noting that similar rosy assumptions by the USFS about receipts used to "improve" the forest proved incorrect when timber markets declined in the region.)

As noted in the comments by the Kootenai Environmental Alliance submitted to Idaho State on January 18:

> The sub-basin Assessment does not examine the issues relating to the large flows of water that are leaving the watersheds and drainages on National Forest lands. Pulling some culverts and closing some roads will not stop the large flows of water from the watersheds that have been clearcut, while at the same time new logging would open more of the canopy with new logging units. The 17, 287 acres that were clearcut between the years 1980 and 1989 on the CDA National Forest have not recovered hydrologically. The over 11,000 acres that were clearcut cut between the years 1990 and 1999 have not recovered hydrologically. The figure of 28,000+ acres equals approximately 44.2 sq miles being clearcut during the past 20 years. No evidence has been cited in the Assessment that refutes the findings stated in "Forest Hydrology, Hydrologic Effects of Vegetation Manipulation" regarding logging and increases in streamflow. The USFS document was cited on page 3 of our May 2, 2000 letter.

The Idaho proposal, by cutting away even more forest canopy, will worsen flooding.

IDAHO WOULD DAMAGE FISHERIES

In the Inland Northwest, fisheries are an important issue. Fisheries contribute significantly to quality of life and a growing and robust economy based on high quality outdoor recreation.

The Coeur d'Alene River's North Fork was once the region's most important fishery. Deep pools supported a healthy trout fishery that was a short drive from large population centers in Coeur d'Alene and Spokane.

All that has changed.

Deep pools needed by fisheries for overwintering habitat have been filled in by bedload sediment, destroying the fishery. As acknowledged in Idaho's TMDL, "The evidence indicates that stream bed

No comments

instability may have lead to interference with trout recruitment and the loss of pools, a critical habitat to trout. As a result trout densities are low." (TMDL, p. 14.)

The Idaho proposal, by cutting away even more forest canopy, will worsen flooding. This already unstable watershed will further unravel, mobilizing even more bedload sediment into the system, and further damaging habitat for fish.

IDAHO WOULD FURTHER POLLUTE WASHINGTON WITH TOXIC FLOODS

There is a direct connection between Idaho's toxic mine waste washing onto the beaches of Spokane, Washington, and the clearcuts and logging roads of the Coeur d'Alene forest.

The mining pollution comes from the Coeur d'Alene's South Fork; the floods, the North Fork. Combing these two problems results in "toxic floods".

The Coeur d'Alene River's South Fork is the source of mine waste. Over a century, mining companies used the South Fork as an industrial sewer, dumping 70 million tons of toxic mine waste directly into the waters of the South Fork. The pollution flowed downstream

If you are standing at the confluence of these two rivers you can see the South Fork's stream bed and banks discolored by upstream mining. You can then turn and look at the North Fork: the river is shallow with large rocks lacking moss, indicating an unravelling river system choked with bedload sediment. When these two rivers converge, their waters bring together two separate histories (mining and logging): toxic mine wastes such as lead, zinc, cadmium and arsenic, and the floods. Combining these two rivers and their separate pathologies results in the Coeur d'Alene's toxic floods.

About 100 million tons of toxic soils now temporarily rest in the floodplain between the confluence and the lake, vulnerable to the North Fork's floods. The paramount importance of this toxic floodplain to the region is noted in the Feasibility Study:

> [T]he impacted floodplain sediments are the major source of metals in basin waters, the major source of metal exposure risk to ecological receptors and a major source to humans, and a major source of potential future recontamination of downstream areas that are cleaned up. The estimated mass and extent of impacted site media-primarly sediments- exceeds 100 million tons dispersed over thousands of acres. (." [Draft Feasibility Study Report for the Coeur d'Alene Basin Remedial Investigation/Feasibility Study. Dec. 20, 2000. hereafter "RIFS". Part 1, Overview/Preface p. iv)

Restoring the hydrologic integrity of the watersheds of the Spokane River—Lake Coeur d'Alene region is paramount because of mine waste pollution. As noted by EPA, "Past mining practices have resulted in the broad distribution of mine wastes throughout much of the upper and lower [Coeur d'Alene] basins. Metal contamination associated with this material continues to move within the hydrologic/hydrogeologic system from the upper and lower basins downstream into Coeur d'Alene Lake and the Spokane River. [RIFS, overview, 2.6. The relationship between watersheds and mining pollution is illustrated in RIFS Figure 2.1-1, "Conceptual Model of Fate and Transport Coeur d'Alene River and Watershed."]

In the flood of February 1996 in the Spokane River—Lake Coeur d'Alene watershed, USGS estimated that in just a single day the floodwaters carried over a million pounds of lead into Lake Coeur d'Alene. The floods sweep across a floodplain between Cataldo and Harrison that is covered with millions of tons of mine waste that has washed down from the Coeur d'Alene mining district.

No comments

Lake Coeur d'Alene, Idaho's second largest lake, is an inefficient trap for the mine waste, although the lake bottom is covered with about 70 million tons of toxic sediments. The RIFS notes that "little sediment is transported through Coeur d'Alene Lake except during flood events." (Section 2.0)

As USGS discovered, the toxic metals move with the runoff plume surprisingly often, through Lake Coeur d'Alene, and into the Spokane River and Washington State.

Pollution of fish and beaches has prompted the issuing of Health Advisories by the Spokane Regional Health District, the Washington State Department of Health, and Washington State Department of Ecology.

The critical importance between Coeur d'Alene floods and the toxic-covered floodplain perched above Lake Coeur d'Alene is revealed in some of the "Key Technical Issues" pertaining to the proposed clean-up of the mine waste:

> *Impacted sediments--Large-scale cleanup of impacted sediments would be difficult and costly, presenting major technical and administrative challenges as well as significant adverse short-term impacts to the local communities and natural enviroment.
>
> *Recontamination--Periodic flooding can recontaminate previously remediated areas where storm, snow melt, or flood waters have caused erosion and subsequent redeposition of contaminated sediments. This is a particular concern for community recontamination in smaller basin communities....For residents living in or near flood plains, uncontrolled surface water runoff, especially during flood events, has a high likelihood of recontaminating properties where remediation has previously been conducted.
>
> *Long-term management and associated costs--Required periodic cleanups of remediated areas that are recontaminated by subsequent flood events would add to long-term management costs, as would required long-term monitoring and periodic site reviews. [RIFS, page vi, vii]

Because of clearcuts above toxic mine waste, the future of the Coeur d'Alene River's badly damaged forests is also the future of Lake Coeur d'Alene and the Spokane River. Any comprehensive proposal to clean-up the heavy metal pollution must necessarily include forest protection and restoration.

Idaho, already polluting Washington waters, would worsen this injury by cutting away even more forest canopy and worsening the flooding.

In closing, Idaho State does not address the overriding problem of increased flooding from forests damaged by past road-building and logging. Idaho State actually proposes to "log the river back to health." Idaho's proposal can be expected to worsen the flooding problems on the North Fork, damage fisheries, and wash more toxic mine waste downstream into the city of Spokane.

Idaho continues to act in a way that threatens public health and environmental quality for its own citizens, as well as the citizens of Washington State.

Sincerely,

John Osborn, MD

No comments

founder, The Lands Council
conservation chair, Northern Rockies Chapter Sierra Club
Pacific time zone Rep, Idaho Wildlife Federation

cc:
Governor Gary Locke
Attorney General Christine Gregoire.
Asst Attorney General Owen F. Clarke
Tony Grover, Dept of Ecology
Sen. Patty Murray
Sen. Maria Cantwell
Michael Gearheard, EPA
Clifford Villa, EPA
Ernest Stensgar, Chair, Coeur d'Alene Indian Nation
Bruce Wynne, Chair, Spokane Indian Nation

(4) Sierra Club comments on draft forest plan revision, Idaho Panhandle National Forests, U.S. Forest Service, September 9, 2006

September 9, 2006

Ms. Jodi Kramer
U.S. Forest Service
Idaho Panhandle National Forests
3815 Schreiber Way, CDA, ID 83815
r1_kipz_revision@fs.fed.us

Dear Ms. Kramer,

The following are comments on the Proposed Land Management Plan (LMP) for the Idaho Panhandle National Forests (IPNF) submitted on behalf of the Upper Columbia River Group, Sierra Club.

(I) Background

National Forests are one component of forest in the United States, and comprise most of the forested watersheds for the rivers and lakes in the Inland Northwest. Forests and the timber industry changed profoundly during the past thirty years: a brief forest history that provides context for the IPNF draft revised Plan is located at http://www.waterplanet.ws/spokaneriver/Forest/Forest%20History.html

In 1976, thirty years ago, Congress enacted the National Forest Management Act (NFMA). In 1985, the Forest Service unveiled its draft forest plan for the Idaho Panhandle National Forests (IPNF) for public comment, and signed the record of decision for the final plan in 1987. In 2006, the agency has released its revised draft Plan for public comment.

While there are differences between the 1987 plan and the current draft plan, the two documents represent a continuity of process and outcomes. The 1987 plan is a foundation for the current draft plan.

Sierra Club and other conservation organizations have been involved with forest planning on the Idaho Panhandle since 1984. We commented extensively on the DEIS for the forest planning 1985. Throughout the first planning cycle, conservationists – in the face of intense political and industry

No comments

pressure to continue high and damaging levels of logging -- emphasized the need for a forest plan based on science with integrity, sound economics, and protection for the public's forest.

A brief chronological overview of our involvement follows:

April 9, 1985, the Notice of Availability of the Draft Environmental Impact Statement (DEIS) and proposed Land and Resource Management Plan was published in the Federal Register. The draft EIS discusses at length the thousands of miles of logging roads, including impacts on watersheds, fisheries, and wildlife. We commented extensively, including subsequent Congressional testimony that focused on IPNF logging roads.

The Notice of Availability of the Final EIS, Forest Plan, and Record of Decision were published in the Federal Register on September 25, 1987. On October 20, 1987, conservationists appealed the Record of Decision and requested a stay of activities (1) in riparian areas that must be studied pursuant to the Wild and Scenic Rivers Act, and (2) in roadless areas. In January 1988, conservationists filed our statement of reasons for the appeal (326 pages, with additional appendices).

On March 31, 1988, the Forest Service decided our stay request: rejecting our request to stop logging riparian zones, but supporting the stay for Idaho Panhandle's roadless areas. On June 3, the USDA Forest Service issued a decision bifurcating the roadless issue from the other issues raised in our Statement of Reasons. Opposing this decision, conservationists provided multiple submittals, and on July 7 presented oral arguments to Washington, D.C. Forest Service staff. George Leonard, the Associate Chief of the USFS, issued his decision on August 15:

> Although we deny the relief requested with respect to the roadless areas, the appellants will have the opportunity to participate in project level decisions, monitoring, evaluation, amendments, and revision of the Forest Plan.

This decision was issued just days before the Chief of the Forest Service, Dale Robertson (wearing a logging cap) spoke at a timber industry rally at Farragut State Park in north Idaho. Conservationists challenged this decision on IPNF roadless areas in federal court on December 29, 1988.

On April 3, 1989 the Regional Forester issued the agency's Responsive Statement for the remaining 24 issues raised in our appeal. Conservationists submitted our Reply to the Responsive Statement on September 25 (174 pages, with appendices, www.waterplanet.ws/pdf/wpfor1989.pdf). [We would commend the Forest Service staff to read this document and especially the second section. That section is a history of the 1987 forest plan's timber targets and is written from documents located in the agency's planning files in the basement of the Supervisor's Office in 1989: "280 MMBF ASQ is a political figure, not based on science and scholarship and represents 'top-down' not 'bottom-up planning."]

On February 20, 1992, the Washington Office heard conservationists' oral presentation requesting a reduced timber sell level for the entire IPNF, and a specific moratorium on further logging in the watershed of the North Fork of the Coeur d'Alene River drainage.

On June 8, 1995, and nearly eight years after we filed our administrative appeal, the Washington Office issued its final decision, rejecting our appeal and relief requested, stating:

> The appellant has the opportunity and is encouraged to participate in project-level decisionmaking, monitoring, evaluation, possible amendments, and revision of the Forest Plan.

No comments

Since the early 1990s when conservationists turned to project level planning and revision of the forest plan, we have found a progressive erosion of the ability of the public to have a meaningful role in decision-making about the public's lands. Conservationists find a shell game that takes place between the forest plan and project-level decision-making, where the public is left searching for the "pea". At the forest planning level, citizens are informed that the necessary information for decisions will be provided at the project level. When citizens go to the individual project level, they are informed that those broad-based decisions were made at the forest planning level.

The 2005 regulations on forest planning (under which the IPNF forest plan revision is being issues) sparked a great deal of controversy by exempting forest plans from the normal requirements of the National Environmental Policy Act (NEPA). In particular, the regulations categorically exclude forest planning from the NEPA requirements to prepare an environmental impact statement (EIS) and to consider a range of alternatives.

Overall, the new forest planning directives rely on "guidance," not clearly defined rules, and provide a great deal of discretion to Forest Service managers in deciding the scope of planning and involvement of the public. This is a level of agency autonomy not seen in the National Forests since before Congress enacted NFMA in 1976, with very little in the way of public accountability in return.

(II) Science: Need to incorporate recommendations of the NAS

On September 6, 2006, in a public meeting sponsored by the Spokane Mountaineers held at Spokane's Corbin Senior Center, forest supervisor and plan-deciding officer Rànotta McNair emphasized the importance of science in the forest plan for the IPNF. In this she is supported by the recently revised forest planning rule. The final plan needs to extensively address at least two major scientific issues largely absent in the draft forest plan:

(1) Impact of global warming on forested watersheds (our public "water towers" for rivers and lakes) and resulting impacts on the hydrograph for streams and rivers flowing from the IPNF. (During the 1980s King Affiliated TV stations aired a documentary, "Roads to Nowhere" about road-building in Region 1 and especially north Idaho. IPNF supervisory hydrologist Al Isaacson commented how streams were drying up in the Coeur d'Alene National Forest after being logged over, thereby aggravating summertime low-flows.)

(2) The recommendations of the National Academies of Science to change land use practices to reduce flood risk and the movement of toxic mine wastes in the 1,500 square mile Coeur d'Alene Basin Superfund site.

A. Requirements under the Planning Rule

Sound science is fundamental to forest planning, as noted in the planning rules:

> Protection and management of the NFS should be based on sound science, which is fundamental to this final rule. (Federal Register / Vol. 70, No. 3 / Wednesday, January 5, 2005 [36 CFR 219], page 1024)

The Plan needs to include all relevant information:

> The final rule requires a Plan Document or Set of Documents to contain all information relevant to the planning and EMS processes. A Plan Document or Set of Documents includes (1) Evaluation reports that, among other things, document the public involvement process in planning; (2) the plan, including applicable maps; (3) the plan approval document; (4) National Environmental Policy Act of 1969 (NEPA) documents; (5) the monitoring program for the plan

No comments

area; (6) documents relating to the environmental management system (EMS) established for the unit; and (7) documentation of how science was taken into account in the planning process. (Federal Register page 1025)

Science is integral to the Plan:

The Responsible Official must take into account the best available science, and document in the plan that science was considered, correctly interpreted, appropriately applied, and evaluate and disclose incomplete or unavailable information, scientific uncertainty, and risk. This evaluation and disclosure of uncertainty and risk provide a crosscheck for appropriate interpretation of science and helps clarify the limitations of the information base for the plan. (Federal Register page 1027)

The Responsible Official must take into account science:

Therefore, the Responsible Official must take into account the best available science when plans are developed, revised, or amended (219.11). (Federal Register pages 1034,1035)

The final rule requires the Responsible Official to take into account the best available science. The final rule puts the burden on the Responsible Official rather than on the plan.

Under the final rule, the Responsible Official must: (1) Document how the best available science was considered in the planning process within the context of the issues being considered; (2) evaluate and disclose any substantial uncertainties in that science; (3) evaluate and disclose substantial risks associated with plan components based on that science; and (4) document that the science was appropriately interpreted and applied. (Federal Register pages1048 and 1049)

B. The Plan and science

The proposed Land Management Plan states that it intends to be based on best science:

Emphasizes the role of best available science. New knowledge and information can be analyzed and added to this Plan at any time. (proposed LMP, p. v)

C. Notable absence of the National Academies of Science's review and recommendations

In July 2005, about one year prior to the release of the proposed Land Management Plan, the National Academies of Science (NAS) published its findings and recommendations, "Superfund and Mining Megasites: Lessons from the Coeur d'Alene River Basin". Requested by Congress in P.L. 108-7, this new report from The National Academies reviewed the Environmental Protection Agency's expansion of an Idaho Superfund site contaminated by years of mining and smelting. A copy of the NAS study is available at http://www.epa.gov/superfund/reports/coeur.htm.

The NAS wrote, in part:

The Coeur d'Alene River basin is a system where floods have a fundamental role in the resuspension and distribution of contaminants and particularly in the potential recontamination of remediated areas, including wetlands and river banks, by contaminated sediments. An understanding of the source areas of these contaminated sediments is evolving. Although impacts to waterfowl in the lower basin are severe, the durability of proposed remedial efforts to protect waterfowl is highly questionable. In addition, recontamination of wetland by flood waters containing lead-contaminated sediments would quickly undo the benefits of remediation. The committee sees the need for such measures as restoring wetlands on agricultural lands in the

No comments

lower basin and upgrading the quality of the habitat in existing wetland areas that have the least likelihood of being recontaminated. ...

Remedial Measures to Address Transport and Effects of Particulate Lead

Recontamination of remediated areas from flooding is a major concern. In selecting sites for remediation, EPA should consider the potential for recontamination and proceed with remedies that are most likely to be successful and durable. The extent that water yield and flooding can be managed through land-use practices, it is important to include these practices in schemes designed to protect human and ecosystem health. ...

The NAS report was completed in July, 2005. Ten months later in May, 2006, the Forest Service released its "science-based" draft Forest Plan for public comment. Compare the NAS report (or even EPA's discussion of flooding and toxic metal movement) with the Forest Service's oblique reference in the Plan to the Superfund and flooding issues (with added notes in italics):

The Coeur d'Alene River originates from two principle forks that are defined by the Coeur d'Alene and St. Joe Mountains. The North Fork, the largest tributary, is dominated by NFS lands and has been a major source of wood products for the region. *[Congressional testimony of Barry Rosenberg: "Here is a graphic and dramatic illustration of the result of the Forest Service's flawed and illegal policies. This map depicts the state of watershed health in the Idaho Panhandle National Forests (IPNF), and is part of an evaluation of watershed conditions across all of Rebion 1 (northern Idaho and Mongana). The red indicates waershes that the Forest Service calls 'management constrained." If you want to be more blunt and truthful, these watersheds are trashed. The yellow indicates drainages which preliminary indications suggest have some of the parameters of instability and these watersheds require further study. The green displays watersheds that still have integrity. Most of these watersheds are in roadless condition, and/or have been only lightly logged. (U.S. House Natural Resources Subcommittees on National Parks, Forests, and Public Lands, and Oversight and Investigations, Feb. 1, 1994)].*

The South Fork is smaller, but its extraordinary mineral deposits have had a long history of mining and milling *["An estimated 62 million tons of tailings were discharged to streams from the beginning of ore processsin 1884 until discharge to streams was discontinued in 1968. The tailings contained an estimated 880,000 tons of lead and more than 720,000 tons of zinc (Long 1998)"; EPA, Overview 1-6].*

A few large mines remain in the Silver Valley east of Coeur d'Alene at Wallace, Silverton, Kellogg, and Mullan along Interstate 90. An EPA-designated "Superfund" site is located on the South Fork *[Note: flowing waters carry the toxic mine wastes downstream, and EPA expanded the Superfund site to include the 1,500 square mile Coeur d'Alene Basin],* as well as many other mine and mill sites; these have been adversely affecting water quality and the support of beneficial uses downstream *[Congressional testimony of Barry Rosenberg: "Massive clearcut logging and mining have yielded stream instability and toxic heavy metal pollution. Floodwaters from the North Fork are disgorged onto a floodplain, contaminated with heavy metals, pushing toxic metals and nutrients into Lake Coeur d'Alene. In spite of this, Forest Service officers continue to propose large timber sales. These sales call for the same clearcut-like logging that has destabilized the Coeur d'Alene watershed and caused the extirpation of the bull trout and the loss of viability of the native westslope cutthroat trout, Idaho's state fish."]*

The lower Coeur d'Alene River has been especially impacted with residual metals in its vast flood-prone areas and wetlands *[Note the lack of discussion on any causal relationship between*

No comments

the upstream forest damage and downstream flooding and metal movement), and these metals have been found in Lake Coeur d'Alene and the Spokane River. *[In a single day of the February 1996 flood over a million pounds of lead flood from the contaminated floodplains into Lake Coeur d'Alene. The Lake has some 70 million tons of toxic media on its bottom. The lake being an inefficient trap for pollution, flushes significant mine wastes into the Spokane River and into Washington State during high water events.]*

Many waterbody segments within the GA have been identified on the State of Idaho's impaired waterbodies (303(d)) list.

Reducing flood severity and frequency is integral to protecting human health in communities at risk for flooding, and slowing the movement of mine wastes into Lake Coeur d'Alene and the Spokane River. A poster entitled "Toxic Floods of the Coeur d'Alene" prepared for the NAS Committee of Scientists and subsequently published by Eastern Washington University can be found, along with related documents, at www.waterplanet.ws/spokaneriver/Forest/USFS%20&%20EPA.html. At the request of IPNF Forest Supervisor Ranotta McNair, a small copy of the poster is also attached.

It would seem reasonable and appropriate for the USFS to incorporate the NAS recommendations into the revised forest plan, and fully protect and restore the severely damaged forested watersheds of the Spokane River-Lake Coeur d'Alene system – especially those forested areas that provide water (and flooding risks) to the 1500 square mile Superfund cleanup of the Coeur d'Alene Basin.

Given the nexus of mine wastes and watershed damage and the resulting toxic floods of the Coeur d'Alenes, the prudent remedy is a moratorium on logging activities as recommended by the IPNF's former supervisory hydrologist, J. Allen Isaacson:

> By removing more timber and increasing the risk for damage [the U.S. Forest Service is] also risking the rehabilitation efforts and risking the taxpayers funds. I recommend that the North Fork of the Coeur d'Alene River be placed under a moratorium from timber harvest, and that rehabilitation be completed along with at least 10 if not 20 years' regrowth on the vegetation before any timber removal. [September 1993]

D. Failure to disclose the agency's sole review of the NAS recommendations

On April 6, 2006, Rick Eichstaedt , attorney with the Center for Justice, filed a Freedom of Information Act request to the Forest Service for the following records:

> 1. Any documents and correspondence, including, but not limited to emails, letters, memos, etc., between the Forest Service and the Environmental Protection Agency in regards to the revision process for the Forest Plan.
>
> 2. Any documents and correspondence related to the Forest Service's implementation of the recommendations of the National Academy of Science's report entitled "Superfund and Mining Megasites – Lessons from the Coeur d'Alene River Basin."

Over three months later, on July 20, 2006, the Regional Forester responded to the first request by releasing documents, noting that "the content of these documents may not be relevant as the revision process continues to go forward." Many of these inter-agency communications were based on forest planning rules since changed in 2005 that excluded the forest plans from the National Environmental Policy Act.

No comments

The Regional Forester responded to the request about the Forest Service's implementing the NAS recommendations this way:

> In response to Item 2 of your request, one document exists. The document is an internal three-page Forest Service document prepared by the IPNF staff at the request of the decision-maker and provided to the decision-maker in considering implementation of the recommendations of the report. The document is labeled "Draft-Preliminary Review Copy" and is dated March 9, 2006. Pursuant to Exemption 5 of FOIA we are withholding this document.

The proposed forest plan neither acknowledges the recommendations of the NAS nor adopts NAS recommendations. Thus, on one hand Forest Service staff claim science to promote the 2006 draft plan while simultaneously ignoring recommendations from one of the Nation's premier scientific bodies, the NAS, in a report requested by Congress and issued on the Coeur d'Alene Basin nearly a year prior to the draft forest plan's release. It is unclear to us when, if ever, the public will understand how if, at all, the Forest Service has considered or adopted the NAS recommendations.

III. Lack of coordination and consultation with EPA on toxic flooding issue

The two federal agencies with considerable responsibility for the upper watershed of the Spokane River-Lake Coeur d'Alene are the Forest Service and EPA. Both agencies have plans that direct major federal actions: the IPNF forest plan guides management of the forested watershed, and the Superfund Cleanup Plan guides the clean-up of mine wastes in the 1500 square mile basin.

The Superfund cleanup plan acknowledges the role of flooding in aggravating toxicant movement and clean-up efforts, but offers no remedy. The IPNF forest plans (1987, and the current proposed land management plan) do not address the causal relationship between forest damage and flooding, off-forest problem of flood impacts on metal movement into Lake Coeur d'Alene and the Spokane River, and Superfund cleanup efforts.

Thus, the two major federal plans impacting the upper watershed for the Spokane-Coeur d'Alene Basin are disconnected and, in effect, blind to each other.

EPA's Draft Superfund cleanup proposal for the Coeur d'Alene Basin states:

> Specifically, the [Feasibility Study] includes the basin except for the North Fork of the Coeur d'Alene River. [Overview, p.v]
>
> Little sediment is transported through Coeur d'Alene Lake except during flood events. [Overview, p. 2-17]
>
> These weather patterns make the Basin one of the highest-precipitation areas of the Upper Columbia River Basin and can lead to flooding, especially when winter rainfall occurs on top of snow conditions. [Human Health Alternatives 1-11]
>
> High blood lead levels in the lower basin have been associated with homes that were flooded in 1996, and recreational activities outside the home (TerraGraphics and URSG 2001). [Overview 3-4]
>
> Recontamination—Periodic flooding can recontaminate previously remediated areas where storm, snow melt, or flood waters have caused erosion and subsequent redeposition of contaminated sediments. This is a particular concern for community recontamination in smaller basin communities. Many of these communities do not have surface water control systems (e.g., curbs,

No comments

gutters, and ditches) that effectively control runoff during snowmelt and storm events. For residents living in or near flood plains, uncontrolled surface water runoff, especially during flood events, has a high likelihood of recontaminating properties where remediation has previously been conducted. [Overview, p. ix]

Flooding would recontaminate remediated yards by depositing contaminated sediment derived from upstream mining activities. Reviews of flood maps prepared by the U. S. Department of Housing and Urban Development (HUD) and the Federal Emergency Management Agency (FEMA) identified communities with significant flooding problems. Other communities with flooding problems were identified by obtaining anecdotal information from local residents. The estimated percentage of residences with flooding problems is provided by investigation area and community in Table 4-3. [Human Health Assessment, 4-6]

In our meetings with the succession of EPA Regional Administrators (RA) who also represent the "federal family" in Coeur d'Alene Basin Commission meetings, EPA staff and the RA acknowledge the problem of flooding and the Forest Service, but offer that EPA has no jurisdiction over Forest Service management decisions and indicated that we should address these concerns with the Forest Service directly. Despite our efforts spanning two decades and as evidenced by the draft Plan, the Forest Service remains uncommitted to acknowledging and remedying the toxic floods of the Coeur d'Alene.

This is a classic example of "passing the buck". EPA and the Forest Service have failed to coordinate on the issue of uplands management and its impacts to the Superfund cleanup efforts. The Forest Service must consider these impacts and the recommendations of the NAS study and appropriately adopt management strategies that consider these concerns.

36 C.F.R. § 219.9 provides that the Forest "must use a collaborative and participatory approach to land management planning … by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other Federal agencies." Obviously, EPA has significant skills and expertise that would benefit the Forest Service on proper management of lands to avoid the devastating toxic flooding that result from poorly planned projects.

It would seem prudent for one federal agency spending hundreds of millions of dollars cleaning up mine wastes downstream to coordinate closely with the other federal agency conducting land disturbing activities upstream. Stunningly, these two federal plans that so profoundly impact the Spokane River-Lake Coeur d'Alene Basin – the Forest Service's Forest Plan and EPA's Superfund cleanup plan -- still do not acknowledge the other federal plan's existence – despite years of our efforts at the administrative and Congressional levels to do so.

(IV) USDA Forest Service and floods

The 1985 DEIS for the first IPNF forest plan has multiple references to the IPNF road system, and adverse environmental impacts. In contrast, the 2006 Forest Plan has a surprisingly limited discussion about roads and environmental impacts. The Forest Service tallies the road miles on the IPNF as follows:

Current Condition of the Transportation System

On the IPNF there are approximately 11,770 miles of Forest road under Forest Service jurisdiction. Of these 11,770 miles, 8,853 miles are NFSR [National Forest System roads] and 2,917 miles are undetermined. [draft CER 2-2]

No comments

The Forest Service acknowledges that the Bush Administration and Congress are not providing adequate funds to maintain the IPNF's road systems.

> The ability to provide motorized access is related to the amount of annual and deferred maintenance completed on roads. … The amount of road maintenance that can be completed is directly related to budget allocations. The amount of funding available through the appropriation process has not kept pace with the needs. As annual and deferred maintenance remains undone, there is potential for increased costs in the future and for resource impacts to occur. [draft CER 2-7]

In 1997 *The New York Times* featured Forest Service roads damaging the Coeur d'Alene watershed:

> Logging roads, especially here in the Pacific Northwest, are increasingly blamed for contributing to landslides, floods like those threatening parts of Idaho, and changes in rivers and streams like those that have devastated fish stocks in rivers and lakes around this town in the Coeur d'Alene (pronounced kur da LANE) National Forest.
>
> The cost of building roads is also increasingly cited as the reason that many national forests lose money on timber sales. And the dirt roads so web the country's woods, with more than 380,000 miles nationwide enough to circle the globe nearly 15 times that here in Idaho, one square mile of forest can be riddled by as many as 20 miles of roads.
>
> "We're concerned about the road network we have and the fact that it's two and a half times the size of the national highway system, which is amazing," said Jim Lyons, the Agriculture Department Under Secretary who oversees the Forest Service. "Our No. 1 water quality problem in the National Forest System is roads." …
>
> "The roads have largely destroyed the Coeur d'Alene River here; the river has died a death of a thousand cuts," said John Osborn, founder of the Inland Empire Public Lands Council, a forest conservation group in Spokane, Wash. "This is the worst case of watershed damage in the National Forest System."
>
> Roads damage ecosystems in several ways, scientists say, and when heavy road-building is combined with cutting all the timber in an area known as clear-cutting, the result is a one-two punch.
>
> Trees absorb water. When they have been cut, more water flows down slopes like those that dominate the Coeur d'Alene National Forest. When roads wash out, the scientists say, they dump rocks and soil on lower slopes and into streambeds; even when they remain intact, roads act as channels for water and contribute further to the erosion of lands and streams. The overall effect is that the streams and rivers fill with silt, the scientists say, and the shallower waters mean ruined fish habitats and more flooding.
>
> "It took only one-half the water in 1996 to cause the same damage as the floods in 1974 because the river flooded so much more easily," said Barry Rosenberg of the Inland Empire Public Lands Council.
>
> Roads reduce the complement of fish species in an area, said Chip Corsi, a biologist at the Idaho Fish and Game Department. Researchers have found that as little as 1.7 miles of roads per square mile of forest have that effect, Mr. Corsi said, adding, "And here we have from 4 to 10 to 15 to up to 20 miles of road per square mile so it's extreme."

No comments

He added that roads can also hurt some forms of wildlife by opening their areas of the forest to other species, whether noxious weeds or human beings.

But the greatest damage roads do, Mr. Corsi and others said, is to watersheds, and warnings to that effect have been coming from scientists and environmentalists for decades. The heavy flooding in the Northwest in 1996 including landslides that cost several lives focused particular attention on the perils of forest roads.

[Carey Goldberg, "Quiet Roads Bringing Thundering Protests Congress to Battle Over Who Pays to Get to National Forest Trees" The New York Times May 23, 1997]

The relationship between forest damage and floods is not newly recognized in the Coeur d'Alene Mountains. In the North Fork of the Coeur d'Alene, the relationship of stream flows between heavily logged Big Elk Creek drainage and lightly logged or recovered Halsey Creek drainage is clearly shown in the graph derived from monitoring during 1989 and 1990 that accompanied *A Procedure for Evaluating Risk of Increasing Peak Flows from Rain on Snow Events by Creating Openings in the Forest Canopy.* [Gary Kappesser, USFS Idaho Panhandle National Forests, March, 1991].

Forest ownerships of the Coeur d'Alene are a mix of federal, state and private. A glance at forest maps shows that most of the watershed is in the Coeur d'Alene National Forest (an individually proclaimed National Forest that has since been combined with the St. Joe and Kaniksu National Forests as an administrative convenience: Idaho Panhandle National Forests).

The Coeur d'Alene National Forest contains some of the most damaged forest in the National Forest System, with logging road densities *averaging* about 11 road miles per square mile of forest. Forests canopies have been extensively clear-cut. As a Forest Service hydrologist told the *Spokesman-Review* in describing the Little North Fork of the Coeur d'Alene River: "There's no question this drainage has been hammered. It's been killed. That's a legacy we're still paying for." [*Spokesman-Review*, Nov. 20, 2001.]

Since passage and implementation of the National Environmental Policy Act in 1969, the Forest Service claimed that each of its timber sales in the North Fork of the Coeur d'Alene drainage would have no significant cumulative effect on the environment. Yet since that time, most of the streams in that drainage are so burdened with sediment that they are classified as Functioning at Risk (FAR) or Not Properly Functioning (NPF). The situation is so severe that both the North Fork and the Little North Fork Coeur d'Alene River systems are classified under section 303(d) of the Clean Water Act as a Water Quality Limited Segment.

Logging headwater forests sets in motion a series of changes like falling dominoes: damage starts at the top and perpetuates through the river system. Forest disturbing activities at the top of the Coeur d'Alene Basin increase peak flows and stream energies, thereby mobilizing bedload sediment. Filling river channels with bedload and increasing water flows helps explain some of the profound movement of lead and other toxins into Lake Coeur d'Alene and the Spokane River.

Headwaters are sensitive to increases in peak flows. This is acknowledged in the 1993 IPNF *Guidelines for Watershed and Stream Channel Evaluations and Project Implementation.* This document emphasizes the need to limit headwater logging in all drainages, especially in drainages with streams in condition yellow (FAR) or condition red (NPF). Peak flows will increase in all the affected drainages and thus the risk for damage and downstream movement of mine wastes is also greatly increased.

Much of the watershed is located within well-defined elevations referred to as "rain-on-snow" (ROS) belts. Rain on snow events occurring where forests and slopes have been disrupted by forest canopy removal and logging roads increase the peak flows, increase the risk of further destabilization of the affected stream channels and increase bedload production and transport. The more heavily logged and road-damaged is a drainage, the greater the impact from ROS events.

Aggradation of bedload sediment from headwater logging results in the rivers becoming wider and shallower, and therefore more susceptible to flooding. As Paul Woods of the U.S. Geological Survey noted, "You could have lower flow, but higher stage [of flood] because the river can't handle it." [*Spokesman-Review* 2/15/96.]

V. Lack of substantive fisheries protection measures

The U.S. Fish and Wildlife Service developed the Inland Native Fish Strategy for managing watersheds in Eastern Oregon and Washington, Idaho, Western Montana, and portions of Nevada (INFISH), to provide interim direction for managing native fish habitat on federal lands, including the IPNF, to protected listed-species such as bull trout. The primary purpose of this management direction was to take prudent measures to arrest the degradation and begin the restoration of riparian and aquatic ecosystems in watersheds where native fish are present, or could easily be reestablished. The timber management standards in INFISH require the Forest Service to delineate portions of watersheds as Riparian Habitat Conservation Areas (RHCAs) where riparian-dependent resources receive primary emphasis, and management activities are subject to specific standards and guidelines. Under the standards and guidelines in INFISH, timber harvesting, including fuelwood cutting, is prohibited in RHCAs. The vegetation management, in order to be consistent with INFISH, must (1) not retard attainment of resource management objectives (RMOs) and (2) must avoid adverse effects on inland native fish. For forested ecosystems, RMOs consist of habitat features within stream channels that is critical for fish. Pool frequency, water temperature, large woody debris, and width/depth ratio are the habitat features for forested systems. The management objectives and requirements of INFISH, obviously have secondary benefits to water quality and prevention of flooding.

Rather than retain the INFISH protection measures, which have served as a minimum level of protection for fisheries habitat and water quality, the draft forest plan rejects INFISH and offers 10 non-binding guidelines, that completely abandon the Watershed Analysis process and eliminates consideration of landslide-prone areas and imperiled bull trout priority watersheds. Unfortunately, these measures will provide inadequate protection for fisheries and water quality.

Sierra Club recommends that the Forest Service specifically create a management area designation for critical riparian areas that mirror the requirements of INFISH and ensures the protection of high quality riparian areas and allows for the recovery of poorly function riparian areas. Particular attention should be given to areas that provide outstanding fisheries habitat, stream segments that are not meeting water quality standards, and areas that are land slide prone.

Given that the INFISH measures were developed with the U.S. Fish and Wildlife Service to protect imperiled species, it is critical that these management areas and standards be developed with that agency to ensure that Forest Service actions either individual or cumulative will not adversely impact listed species.

VI. Road System and Roadless Area protection

No comments

No comments

In 2004, the Upper Columbia River Group Sierra Club gave the annual "Dead Swan Award" to the current Agriculture Undersecretary Mark Rey, holding him partly accountable for floods that spread heavy metals across the Inland Northwest.

As undersecretary for natural resources and environment, Rey oversees the U.S. Forest Service. For nearly two decades prior to his appointment, Rey as a lobbyist for the timber industry and then holding key Congressional staff positions, advocated higher levels of logging and roadbuilding on the National Forests. Forest Service policies on timber cutting have caused floods that wash toxic mining wastes across the region, the Upper Columbia River Sierra Club chapter contends.

As noted in the AP story by John Wiley ("Dubious honor goes to Ag official:
Sierra Club chapter says forest policies lead to toxic floods." December 29, 2004, *Spokesman-Review*)

> In a telephone interview from his Washington, D.C., office, Rey called the award a baseless attack. "Generally speaking, I'll take responsibility for anything that happened on my watch," he said, noting that forest policies the Sierra Club objects to had been approved by his predecessor.
>
> The group's award is named for tundra swans that migrate through the Coeur d'Alene River Basin each spring, and feed in wetlands contaminated with lead from past mining activity. Lead paralyzes the swans' ability to swallow and they slowly starve to death.
>
> Wastes from more than 100 years of silver mining in northern Idaho's Silver Valley have flowed into Lake Coeur d'Alene, the headwaters of the Spokane River. The waste flows down the river into Washington and eventually to the Columbia River.
>
> During the 1980s and early 1990s Rey was a lobbyist for the timber industry. He then served as a staff member with the U.S. Senate Committee on Energy and Natural Resources, which helped set national forest policy.
>
> Rey was sworn in as undersecretary of agriculture on Oct. 2, 2001, and has worked to increase levels of logging in the national forests.
>
> The conservation group accused Rey of reversing protections for 58 million acres of national forest roadless areas.
>
> The Sierra Club chapter's award comes on the heels of a Bush administration announcement of new rules allowing local forest managers to approve logging without formal scientific review.
>
> "Mark Rey has his hand on the chainsaw," Jeff Holmes, hunting and fishing program coordinator for the Sierra Club, said in the group's release. "His decisions cut into every national forest. But the poster child of damage is the Coeur d'Alene in Idaho."
>
> Logging roads and clearcuts have led to flooding that has wiped out the region's trout spawning streams, the group contends.
>
> "The resulting floods carry mine wastes that harm the Spokane River fishery as well," Holmes said. "Mark Rey is targeting the river's few roadless areas, all that remains of an intact watershed, and final refuge for fish and wildlife."
>
> The floods carry toxic metals into Washington state by way of the Spokane River. In 2000, the Spokane Regional Health District posted signs on Spokane River beaches warning of public

No comments

health risks from lead and arsenic. In 2001, the Health District warned the public not to consume any fish caught between the Idaho line and Upriver Dam near Spokane.

About one-third of the Idaho Panhandle National Forests remain roadless, although these are largely islands of intact wildlife habitat and watershed with integrity in seas of forest damage. As noted in this revised Plan.

> Approximately 73 percent of the acreage in the IRAs [Inventoried Roadless Areas] is allocated to backcountry (MA5) . An additional 15 percent of IRAs is allocated to recommended wilderness (MA1b). The rest of the IRAs are allocated to a variety of MAs, most of which emphasize wilderness and undeveloped values suchas wilderness study areas (MA1c), primitive lands (MA1e, wild and scenic rivers (MAs 2a and 2b), and special interest areas (MA3). Less than 4 percent of IRAs are allocated to general forest (MA6).

Given the extent of the environmental damage on the Idaho Panhandle National Forests, we request that the Forest Service protect the remaining one-third of the forest that remains roadless. On the two-thirds of the IPNF that are already roaded, the agency needs to place a priority on securing funds from Congress to meet its obligations for the maintenance backlog for its deteriorating road system. The Forest Service should not be building more roads until it has funding to manage the thousands upon thousands of miles of logging roads the federal agency has built already.

In closing, we wish to thank you for this opportunity to comment on the draft Land Management Plan for the Idaho Panhandle National Forests. Please do not hesitate to contact us if we can provide clarifying or additional information. We look forward to working with the U.S. Forest Service staff as you move forward with revisions and preparing the final plan.

Sincerely,

John Osborn, MD
Upper Columbia River Group, Sierra Club

Rick Eichstaedt
Center For Justice

(5) Letter from Sierra Club to Idaho Department of Environmental Quality commenting on the East Mission Flats Waste Repository Plans, July 5, 2007

July 5, 2007

Teri Gregory
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706

RE: Comments on East Mission Flats: Waste Repository Plans

Dear Ms. Gregory:

These comments are submitted on behalf of my client, the Upper Columbia River Group of the Sierra Club (Sierra Club), on the May 2007 Draft Coeur d'Alene Basin East Mission Flats Repository 30% Design Report (30% Report).

No comments

1. ON-THE-GROUND ACTIV ITIES

Sierra Club strongly objects to the ongoing actions currently occurring at the East Mission Flats site. The design for this project is currently out for public comment. The validity of seeking public comment is severely undermined by the actions currently occurring at site. The fundamental question must be asked: why seek public comment on this project if IDEQ is already implementing it? Moreover, these actions potentially undermine the ability to adjust the design of the project based upon public input.

Lastly, the actions occurring on-the-ground are particularly disturbing given the lack of ARAR analysis for this project (as described in great detail below). Without an adequate ARAR assessment, it is impossible to assess whether the project as whole or the actions currently ongoing are incompliance with the ARARs, including those designed to protect wetlands and water quality. The failure to include this analysis prior to implementing this portion of the remedy is clearly inconsistent with CERCLA.

Accordingly, Sierra Club requests that all action at this site immediately cease until: (1) the public comment period closes and (2) a thorough ARAR analysis is conducted and ARAR compliance is determined.

2. ARAR COMPLIANCE

Section 121(d) of CERCLA requires that remedial actions at CERCLA sites at least attain legally applicable or relevant and appropriate Federal and State requirements, standards, criteria, and limitations which are collectively referred to as "ARARs," unless such ARARs are waived under CERCLA Section 121(d)(4). Applicable requirements are those substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address hazardous substances, the remedial actions to be implemented at the site, the location of the site, or other circumstances present at the site. Relevant and appropriate requirements are those substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law which address problems or situations sufficiently similar to those encountered at the site that their use is well-suited to the site. Compliance with ARARs addresses whether a remedy will meet all of the applicable or relevant and appropriate requirements of other Federal and State environmental statutes.

The 2001 Bunker Hill Mining and Metallurgical Complex Operable Unit 3 Record of Decision sets forth a number of ARARs applicable to this site and establishes that soil repositories must be evaluated and designed to comply with these ARARs. However, a review of the 30% Report indicates: (1) ARAR compliance has not been fully assessed and (2) it is unclear if this project will comply with ARARs.

The document is inconsistent in its description of the ARAR analysis. The document first asserts at page 2 that there is "a complete evaluation of applicable, relevant, and appropriate requirements (ARARs) for a repository in this location and a concomitant evaluation of risks to the site, human health, and the environment." However, this statement is directly contradicted later in the document, which specifically states:

> These key [ARAR] elements, which are currently being addressed or may require further assessment, include the following:
>
> - Location of the site within a Federal Emergency Management Agency (FEMA) floodplain
> - Proximity to a wetland adjacent to the Coeur d'Alene River
> - A biological assessment to evaluate the effects on threatened or endangered species, migratory birds, and wildlife protected by the State of Idaho
> - Coordination with the State Historic Preservation Office (SHPO) to establish excavation limits

No comments

and assess historical and archaeological factors at the site
- Evaluation of impacts to surface water and ground water (National Pollutant Discharge Elimination System (NPDES) permit, Ambient Water Quality Life Criteria for cadmium, and hydrologic separation of the affected aquifer from drinking water supplies)

30% Report at 67-68. This is further illustrated in Appendix B of the document (addressing ARARs), which indicates several significant ARAR analysis gaps:

Endangered Species: Page B-4, 13: "A biological assessment has not been conducted at the EMF Repository site; therefore, further evaluation of the site may be required to determine the effects on endangered or threatened species."

Migratory Birds: "A biological assessment has not been conducted at the EMF Repository site; therefore, further evaluation of the site may be required to determine the effects on migratory birds in the Coeur d'Alene Basin."

The document provides no indication of when a biological assessment will be completed for the project. It is common knowledge that this area is utilized by migratory birds. Moreover, bald eagle have been sighted in this area. (*See, e.g.*, http://www.cdaaudubon.org/March2004.htm) In addition, there are a number of federally listed threatened species that inhabit the Coeur d'Alene Subbasin, including bull trout (*Salvelinus confluentus*), water howellia (*Howellia aquatilis*), Ute ladies'-tresses (*Spiranthes diluvialis*), and Spalding's catchfly (*Silene spaldingii*). Peregrine falcons are state-listed as endangered in Idaho.

Development of this site could impact species habitat through construction and utilization of the repository. In addition, construction activities and potential discharge from the site could increase the amount and availability of metals and other contaminants.

Lead exposure has been found in numerous wildlife species due to the ingestion of contaminated sediments, plants, and/or prey species. Species that have been found with lead exposure include Canada geese, mallards, tundra swans, wood ducks, song sparrows, American kestrels, northern harriers, great horned owls, bald eagles, muskrats, mink, raccoons, deer, mice, and spotted frog tadpoles. Waterfowl mortality related to lead exposure has been reported frequently since the early 1900s. The majority of waterfowl mortality is associated with the highly contaminated wetland and lakes areas of the lower Coeur d'Alene River, including the Mission Flats area. In addition to lead, zinc and cadmium have been found to present the most risk to bird species in the area, while arsenic, cadmium, copper, lead, and zinc present the most risk to mammals. Amphibian species are at risk from cadmium, copper, lead, and zinc.

Clean Water Act: Page B-4: "Erosion stability is factored into the design of the repository; however, it has not been determined whether a NPDES permit will be required during the construction and operation activities at the EMF Repository.

Groundwater Protection: Page B-4: "Two ground water wells are located downgradient of the site and tap into the lower aquifer. Further evaluation is required to determine whether the affected aquifer beneath the EMF Repository site is hydrologically separated from the lower aquifer (drinking water supply)."

Cultural Resources: Page B-10, 11 "DEQ is working with the State Historic Preservation Office (SHPO) to establish excavation limits at the EMF Repository site."

Page B-11: "The NHPA will be taken into consideration during the design, construction, and operation of the EMF Repository. The SHPO will be contacted if historic sites or structures are identified and will be

No comments

impacted by the development of the repository."

Page B-12: "The ARPA will be taken into consideration during the design, construction, and operation of the EMF Repository. DEQ is also working with the SHPO to establish excavation limits at the EMF Repository site."

While the document has an overall lack of ARAR analysis, the floodplain analysis indicates that there will be a floodplain impacts, but provides no explanation of mitigation measures, stating, "Based on the HEC-RAS analysis conducted by the USACE for the EMF Repository site, the site will be in contact with flood water during a 100-year flood event." 30% Report at B-15.

The analysis for wetlands is similarly flawed, first indicating that a wetland delineation has occurred and then indicating that one is needed. The 30% Report first states, "Full and exact wetland delineation has been conducted for the EMF Repository site/footprint to ensure no wetlands are impacted by development." 30% Report at 68. The document concludes, "No dredging or infilling activities will occur during the construction and operation of the EMF Repository site." *Id.* at B-10. However, the document contradicts these statements stating, "A full and exact wetland delineation should be conducted for the EMF Repository site/footprint to ensure no wetlands are impacted by the development of the repository." *Id.* at B-15. It is unclear when this will occur.

In short, the final report and subsequent 90% Design Report must fully assess ARARs. Moreover, once the assess is completed, the project must be designed in a way to ensure that actual compliance with these ARARs occurs. Until that analysis and demonstration of compliance is made, no action at this site should proceed.

Sierra Club appreciates the opportunity to comment on this project. Please include my name on the list to receive future information on this project, including a copy of the 90% Report, and a response to these comments.

Sincerely,
Rick Eichstaedt
Attorney for Sierra Club

cc: Ed Moreen, EPA Client

(6) Letter from Sierra Club to EPA Administrator Lisa Jackson, January 29, 2010

January 29, 2010

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460-0001

Dear Administrator Jackson:

The Sierra Club welcomes and applauds your commitment to stronger programs to protect communities from toxic chemicals. We strongly support your recent statement:

No comments

> Using all the tools at our disposal, including enforcement and compliance efforts, we will continue to focus on making safer, healthier communities. I am committed to maximizing the potential of our brownfields program, particularly to spur environmental cleanup and job creation in disadvantaged communities. We are also developing enhanced strategies for risk reduction in our Superfund program, with stronger partnerships with stakeholders affected by our cleanups.

We write today to point out that the Bunker Hill Superfund site is in great need of such attention. As others have noted, "It is time to correct the environmental injustices of the past when an inadequate, unsafe remediation plan was approved under the Bush Administration. "EPA should reopen the site's Record of Decision and establish a health- protective cleanup plan."

Since the Bunker Hill site was listed on the NPL in 1983, citizens have struggled to protect the environment and human health, especially the health of children. Concerns continue to this day, culminating in objections to the decision to move vast amounts of contaminated soils to East Mission Flats Repository. Many individuals and groups have opposed the selection of the site because it is in a floodplain and could contaminate the Coeur d'Alene River. Shifting climatic patterns and more severe flooding could lead to disastrous outcomes. The safety of the site should have been studied before the decision was made, not as part of its implementation. To quote from "Questions and Answers" about the plan: "Surface water flow: Sampling will also be done to study the way surface water flow influences groundwater levels. The data will look at whether high water in the Coeur d'Alene River has a connection to high groundwater levels at East Mission Flats repository."

Furthermore, new information about the hazards of lead make it questionable whether trucking all the dirt to the repository has protected or will protect the community. The clean up level of 1000 ppm for lead is high compared to other sites, such as Jacobsville, Indiana: "Based on levels that will protect human health, EPA selected 400 ppm as the cleanup goal for lead and 30 ppm as the cleanup goal for arsenic. The risk assessment found the cleanup goals of 400 ppm for lead and 30 ppm for arsenic will protect people's health and the environment."
http://www.epa.gov/region5/sites/jacobsville/pdfs/EPA_JNSCS_Fact%20Sheet_Web_June2009.pdf

There is a great need for health intervention in the Bunker Hill Superfund Site community. Many of the recommendations of its ATSDR Health Consultation (September 14,2000) have not been implemented. ATSDR recommended that EPA: monitor lead levels in house dust
following soil remediation to measure remediation effectiveness; evaluate the potential for recontamination, and determine if additional remediation actions, such as cleaning of home interiors, is necessary; consider interior cleaning of homes where indoor dust levels exceed site cleanup goals or where children have elevated blood lead levels; conduct additional evaluations to determine which house dust sampling method, vacuum bag or dust mat, best correlates with lead exposures and blood lead levels in site residents."

The recent report "Superfund and Mining Megasites: Lessons from the Coeur d'Alene River Basin" (National Research Council), reviewed and evaluated the scientific and technical basis of EPA's decisions about cleaning up this site. The full report is available at:
http://books.nap.edu/openbook.php?record_id=11359&utm_source=WID%2411616423820100116143908&utm_medium=Widgetv3&utm_content=11359&utm_campaign=Widget&ut m_term=homeview

The Report's Summary included many recommendations about the need for better blood- lead studies:

> Children of ages 1 to 4 are the group at highest risk from lead exposure. The committee found it inappropriate that the HHRA presented aggregate data on childhood lead screening for children 0-9 years old, as that information is misleading and tends to underestimate the risk among the

No comments

principal target group. Furthermore, the annual blood lead sampling of children at fixed sites is suboptimal and produces results with too much potential for nonrepresentative sampling to evaluate the effectiveness of public health intervention strategies in the basin. Universal blood lead screening of children 1-4 years old is warranted for Coeur d'Alene River basin communities, given the prevalence of high concentrations of environmental lead.

The absence of meaningful blood lead studies and health intervention is attributed to "an agreement between community leaders, the state of Idaho, and EPA, which affirmed that no studies would be conducted for "scientific research or academic" reasons (von Lindern 2004)." This agreement should be revisited in the light of the very relevant recommendations in the Megasites report.

We urge EPA to respond to all of the report's recommendations, which include precautionary interventions, improved blood lead screening and improvements to the cleanup remedies at Bunker Hill. Greater protection of community health will lead to many benefits. It is now widely recognized that there is no "safe" level of lead in children. The December 2009 report, "The Social Costs of Childhood Lead in New Jersey" documented why "reducing sources of environmental lead exposure such that no child would have a blood lead level > 1 μg/dL would reduce costs to the state by at least $9 billion dollars." http://www.state.nj.us/publicadvocate/public/pdf/NJ_Lead_Report_Final-5.pdf

There is now more money available for improving the current efforts at Bunker Hill. "The Obama administration placed $15 to $20 million in the stimulus bill to clean up the area", and "ASARCO, agreed to pay the federal government $1.79 billion to settle the bankruptcy. It included $435 million specifically for Bunker Hill." EPA should involve affected citizens in deciding how this money is spent.

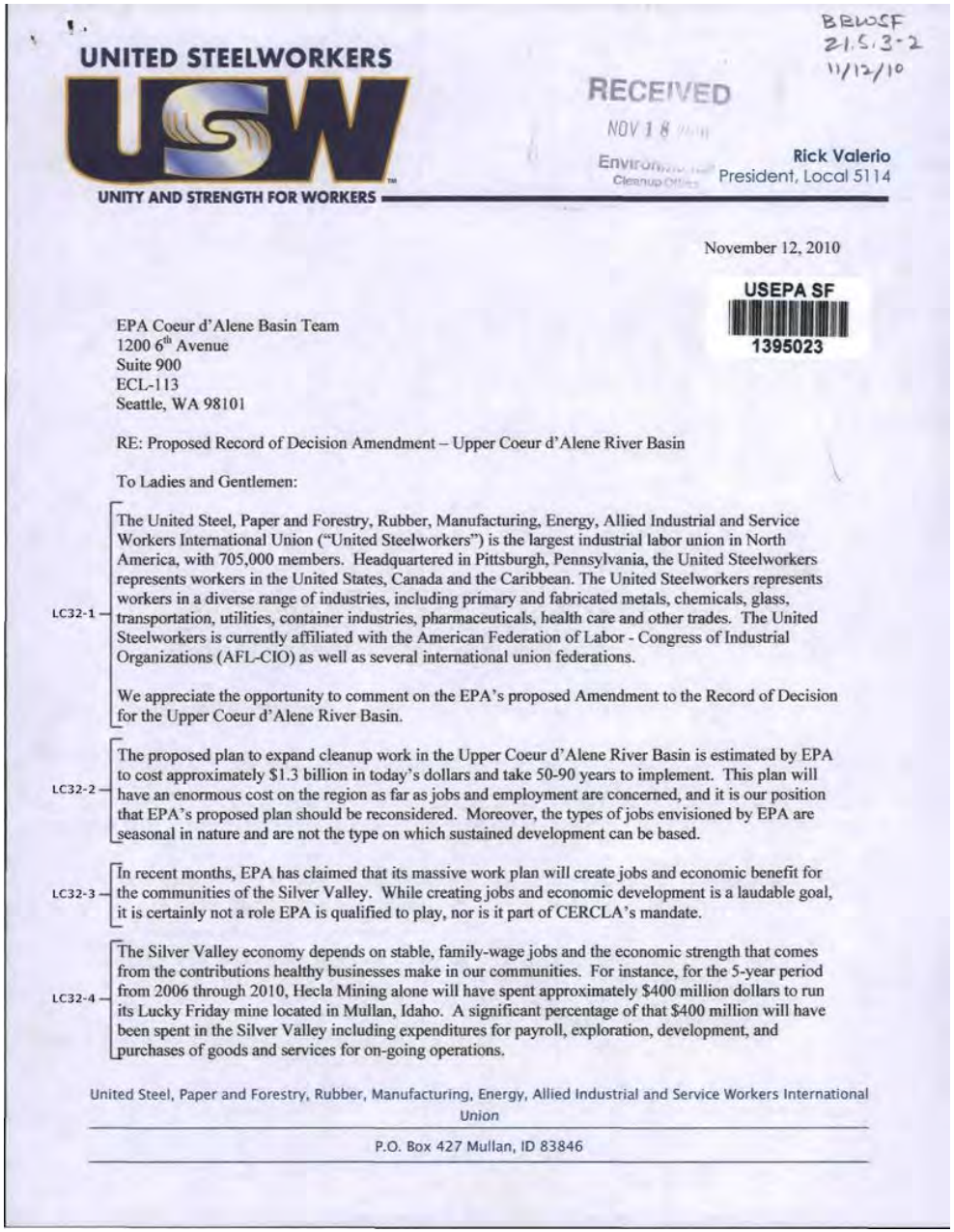
Sincerely,

Doris Cellarius,
Sierra Club Toxics Team
Contaminated Communities Project

CC:
Mathy Stanislaus
Assistant Administrator, Superfund Program U.S. EPA OSWER
1200 Pennsylvania Avenue NW Washington, DC 20460-0001

Charles Lee, Director, Office of Environmental Justice OECA
1200 Pennsylvania Avenue EPA,
Washington, DC 20460

United Steelworkers of America, LC32, Letter 1395023



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UNITED STEELWORKERS

USW

UNITY AND STRENGTH FOR WORKERS

RECEIVED
NOV 18
Environmental Cleanup Office

Rick Valerio
President, Local 5114

November 12, 2010

USEPA SF
1395023

EPA Coeur d'Alene Basin Team
1200 6th Avenue
Suite 900
ECL-113
Seattle, WA 98101

RE: Proposed Record of Decision Amendment – Upper Coeur d'Alene River Basin

To Ladies and Gentlemen:

LC32-1 The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("United Steelworkers") is the largest industrial labor union in North America, with 705,000 members. Headquartered in Pittsburgh, Pennsylvania, the United Steelworkers represents workers in the United States, Canada and the Caribbean. The United Steelworkers represents workers in a diverse range of industries, including primary and fabricated metals, chemicals, glass, transportation, utilities, container industries, pharmaceuticals, health care and other trades. The United Steelworkers is currently affiliated with the American Federation of Labor - Congress of Industrial Organizations (AFL-CIO) as well as several international union federations.

We appreciate the opportunity to comment on the EPA's proposed Amendment to the Record of Decision for the Upper Coeur d'Alene River Basin.

LC32-2 The proposed plan to expand cleanup work in the Upper Coeur d'Alene River Basin is estimated by EPA to cost approximately $1.3 billion in today's dollars and take 50-90 years to implement. This plan will have an enormous cost on the region as far as jobs and employment are concerned, and it is our position that EPA's proposed plan should be reconsidered. Moreover, the types of jobs envisioned by EPA are seasonal in nature and are not the type on which sustained development can be based.

LC32-3 In recent months, EPA has claimed that its massive work plan will create jobs and economic benefit for the communities of the Silver Valley. While creating jobs and economic development is a laudable goal, it is certainly not a role EPA is qualified to play, nor is it part of CERCLA's mandate.

LC32-4 The Silver Valley economy depends on stable, family-wage jobs and the economic strength that comes from the contributions healthy businesses make in our communities. For instance, for the 5-year period from 2006 through 2010, Hecla Mining alone will have spent approximately $400 million dollars to run its Lucky Friday mine located in Mullan, Idaho. A significant percentage of that $400 million will have been spent in the Silver Valley including expenditures for payroll, exploration, development, and purchases of goods and services for on-going operations.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

P.O. Box 427 Mullan, ID 83846

Response to comment LC32-1

Thank you for your comments.

Response to comment LC32-2

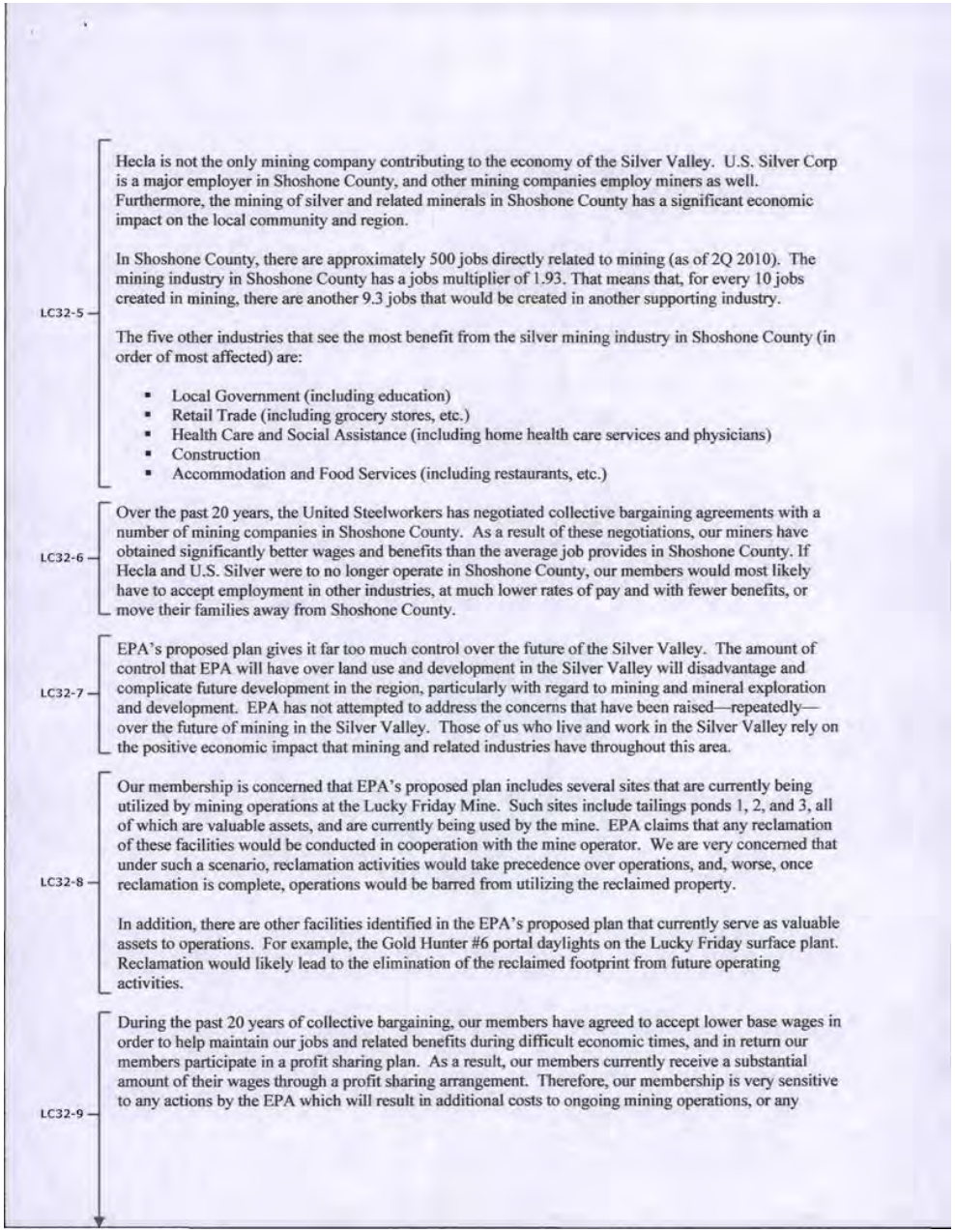
It is true that many of the jobs created as part of the Selected Remedy will be seasonal, but they could be relatively long term (considering that implementation will take about 30 years). The influx of construction activity and workers will also have the added benefit of supporting local businesses (hotels, restaurants, etc.). Job creation is not part of EPA's mandate; however, if jobs are created through decisions and actions implemented by EPA, this is a positive aspect of the cleanup for the local economy.

Response to comment LC32-3

See response to Comment No. LC32-2.

Response to comment LC32-4

See response to Comment No. I58-5.



Hecla is not the only mining company contributing to the economy of the Silver Valley. U.S. Silver Corp is a major employer in Shoshone County, and other mining companies employ miners as well. Furthermore, the mining of silver and related minerals in Shoshone County has a significant economic impact on the local community and region.

In Shoshone County, there are approximately 500 jobs directly related to mining (as of 2Q 2010). The mining industry in Shoshone County has a jobs multiplier of 1.93. That means that, for every 10 jobs created in mining, there are another 9.3 jobs that would be created in another supporting industry.

LC32-5

The five other industries that see the most benefit from the silver mining industry in Shoshone County (in order of most affected) are:

- Local Government (including education)
- Retail Trade (including grocery stores, etc.)
- Health Care and Social Assistance (including home health care services and physicians)
- Construction
- Accommodation and Food Services (including restaurants, etc.)

LC32-6

Over the past 20 years, the United Steelworkers has negotiated collective bargaining agreements with a number of mining companies in Shoshone County. As a result of these negotiations, our miners have obtained significantly better wages and benefits than the average job provides in Shoshone County. If Hecla and U.S. Silver were to no longer operate in Shoshone County, our members would most likely have to accept employment in other industries, at much lower rates of pay and with fewer benefits, or move their families away from Shoshone County.

LC32-7

EPA's proposed plan gives it far too much control over the future of the Silver Valley. The amount of control that EPA will have over land use and development in the Silver Valley will disadvantage and complicate future development in the region, particularly with regard to mining and mineral exploration and development. EPA has not attempted to address the concerns that have been raised—repeatedly—over the future of mining in the Silver Valley. Those of us who live and work in the Silver Valley rely on the positive economic impact that mining and related industries have throughout this area.

LC32-8

Our membership is concerned that EPA's proposed plan includes several sites that are currently being utilized by mining operations at the Lucky Friday Mine. Such sites include tailings ponds 1, 2, and 3, all of which are valuable assets, and are currently being used by the mine. EPA claims that any reclamation of these facilities would be conducted in cooperation with the mine operator. We are very concerned that under such a scenario, reclamation activities would take precedence over operations, and, worse, once reclamation is complete, operations would be barred from utilizing the reclaimed property.

In addition, there are other facilities identified in the EPA's proposed plan that currently serve as valuable assets to operations. For example, the Gold Hunter #6 portal daylights on the Lucky Friday surface plant. Reclamation would likely lead to the elimination of the reclaimed footprint from future operating activities.

LC32-9

During the past 20 years of collective bargaining, our members have agreed to accept lower base wages in order to help maintain our jobs and related benefits during difficult economic times, and in return our members participate in a profit sharing plan. As a result, our members currently receive a substantial amount of their wages through a profit sharing arrangement. Therefore, our membership is very sensitive to any actions by the EPA which will result in additional costs to ongoing mining operations, or any

Response to comment LC32-5

See response to Comment No. I58-5.

Response to comment LC32-6

See response to Comment No. I58-5.

Response to comment LC32-7

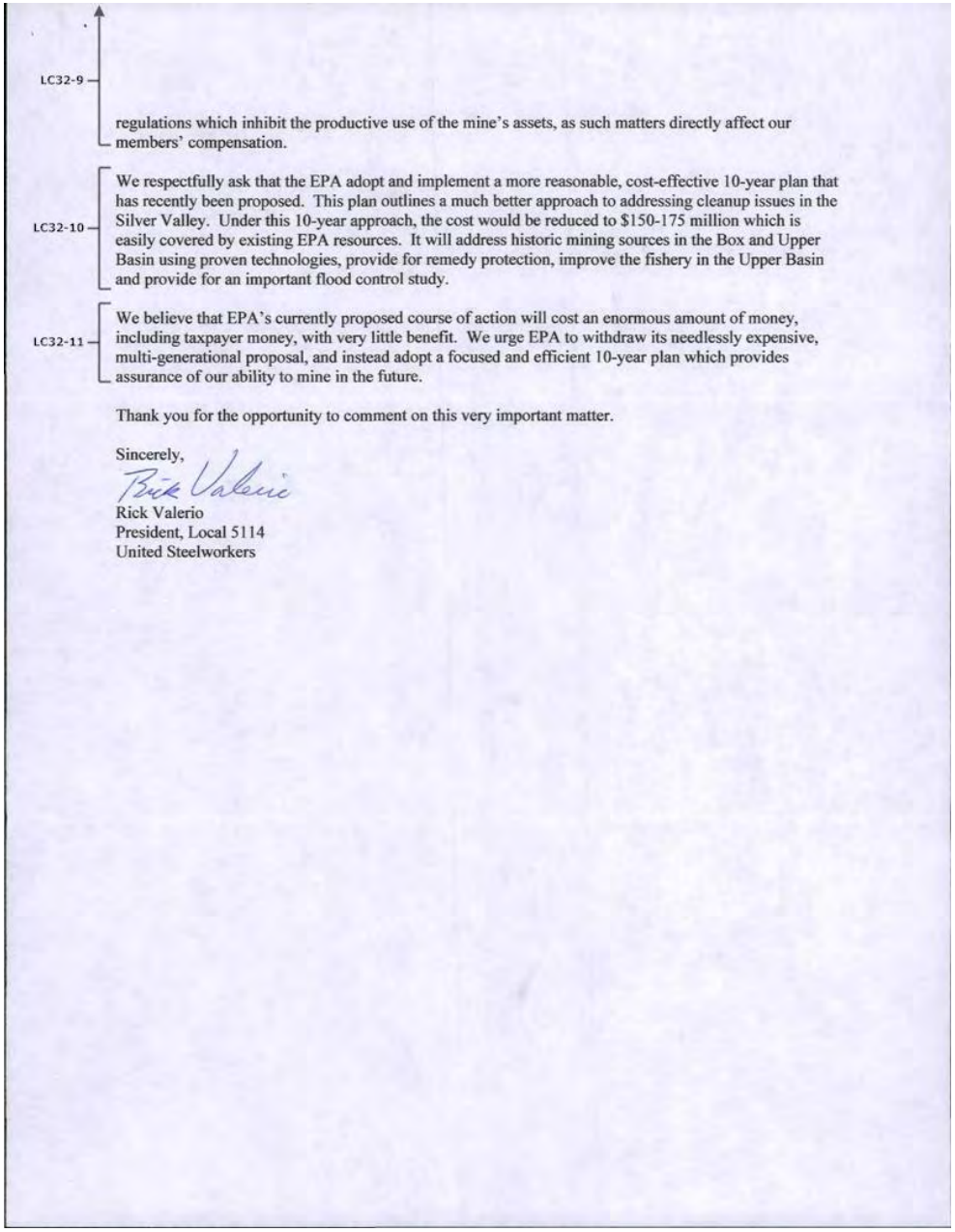
See response to Comment No. I58-5 regarding how EPA's cleanup plan will coexist with continuing mining activities. See response to Comment No. I54-2 regarding how cleanup is expected to provide benefits to the local economy and future development opportunities.

Response to comment LC32-8

As described in the ROD Amendment, EPA has reduced the scope of the Selected Remedy. The Selected Remedy does not include actions at active facilities (including Lucky Friday). These active facilities were identified with help from the Basin Commission's Upper Basin Project Focus Team. In regard to EPA cleanup and mining, see response to Comment No. I58-5.

Response to comment LC32-9

See response to Comment No. I58-5.



LC32-9

regulations which inhibit the productive use of the mine's assets, as such matters directly affect our members' compensation.

LC32-10

We respectfully ask that the EPA adopt and implement a more reasonable, cost-effective 10-year plan that has recently been proposed. This plan outlines a much better approach to addressing cleanup issues in the Silver Valley. Under this 10-year approach, the cost would be reduced to $150-175 million which is easily covered by existing EPA resources. It will address historic mining sources in the Box and Upper Basin using proven technologies, provide for remedy protection, improve the fishery in the Upper Basin and provide for an important flood control study.

LC32-11

We believe that EPA's currently proposed course of action will cost an enormous amount of money, including taxpayer money, with very little benefit. We urge EPA to withdraw its needlessly expensive, multi-generational proposal, and instead adopt a focused and efficient 10-year plan which provides assurance of our ability to mine in the future.

Thank you for the opportunity to comment on this very important matter.

Sincerely,

Rick Valerio

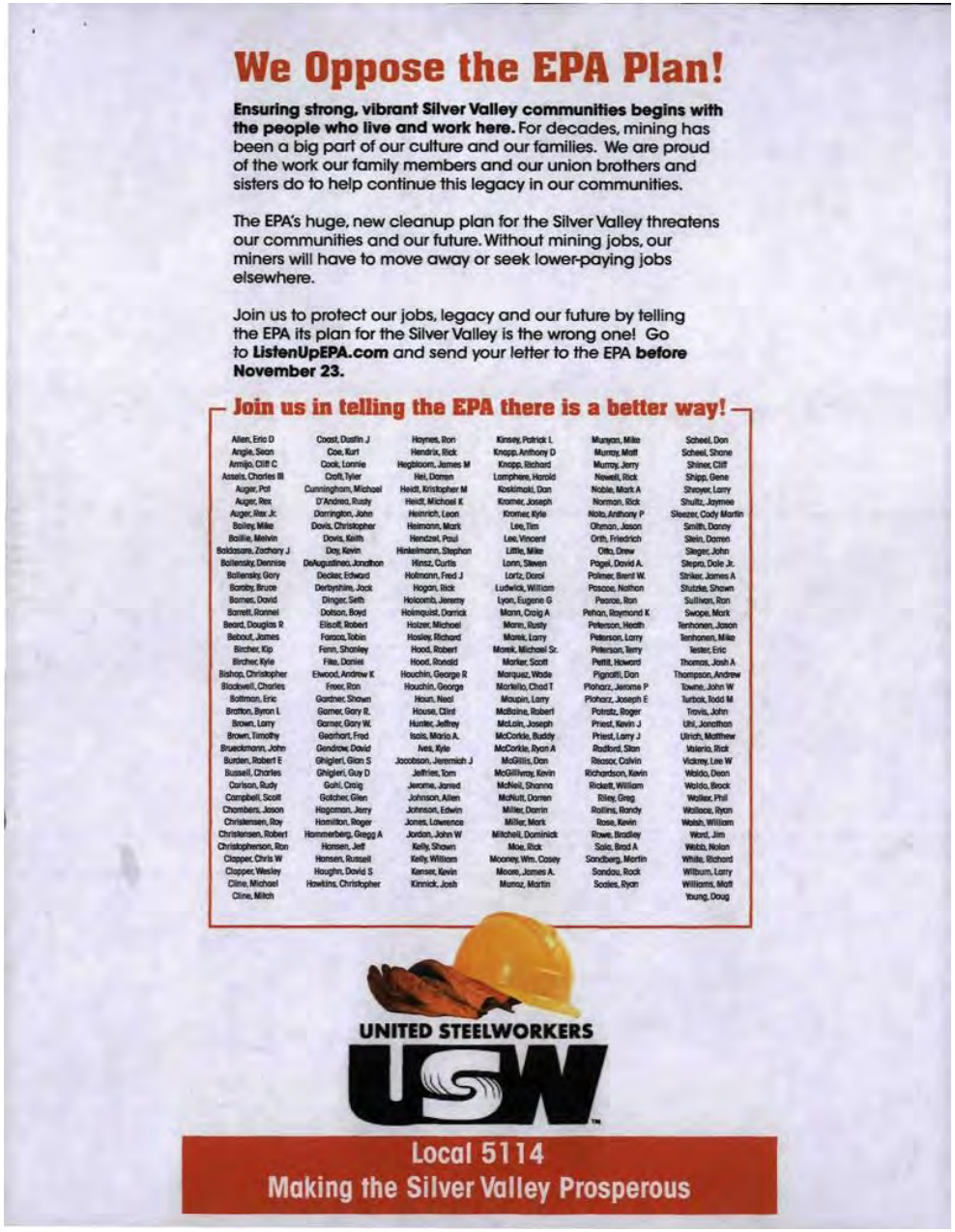
Rick Valerio
President, Local 5114
United Steelworkers

Response to comment LC32-10

See response to Comment No. I474-2.

Response to comment LC32-11

See responses to Comments No. I58-2and I474-2.



We Oppose the EPA Plan!

Ensuring strong, vibrant Silver Valley communities begins with the people who live and work here. For decades, mining has been a big part of our culture and our families. We are proud of the work our family members and our union brothers and sisters do to help continue this legacy in our communities.

The EPA's huge, new cleanup plan for the Silver Valley threatens our communities and our future. Without mining jobs, our miners will have to move away or seek lower-paying jobs elsewhere.

Join us to protect our jobs, legacy and our future by telling the EPA its plan for the Silver Valley is the wrong one! Go to **ListenUpEPA.com** and send your letter to the EPA **before November 23.**

Join us in telling the EPA there is a better way!

Allen, Eric D
Angle, Sean
Armijo, Cliff C
Assels, Charles III
Auger, Pat
Auger, Rex
Auger, Rex Jr.
Bailey, Mike
Baillie, Melvin
Baldasare, Zachary J
Ballensky, Dennise
Ballensky, Gary
Barsby, Bruce
Barnes, David
Barrett, Ronnel
Beard, Douglas R
Bebout, James
Bircher, Kip
Bircher, Kyle
Bishop, Christopher
Blackwell, Charles
Bottman, Eric
Bratton, Byron L
Brown, Larry
Brown, Timothy
Brueckmann, John
Burden, Robert E
Bussell, Charles
Carlson, Rudy
Campbell, Scott
Chambers, Jason
Christensen, Ray
Christensen, Robert
Christopherson, Ron
Clapper, Chris W
Clapper, Wesley
Cline, Michael
Cline, Mitch
Coast, Dustin J
Coe, Kurt
Cook, Lonnie
Croft, Tyler
Cunningham, Michael
D'Andrea, Rusty
Darrington, John
Davis, Christopher
Davis, Keith
Day, Kevin
DeAugustinea, Jonathon
Decker, Edward
Derbyshire, Jack
Dinger, Seth
Dotson, Boyd
Elliott, Robert
Faraca, Tobin
Fenn, Shanley
Fike, Daniel
Elwood, Andrew K
Freer, Ron
Gardner, Shawn
Garner, Gary R.
Garner, Gary W.
Geerhart, Fred
Gendrow, David
Ghigleri, Glen S
Ghigleri, Guy D
Gohl, Craig
Golcher, Glen
Hagaman, Jerry
Hamilton, Roger
Hammerberg, Gregg A
Hansen, Jeff
Hansen, Russell
Haughn, David S
Hawkins, Christopher
Haynes, Ron
Hendrix, Rick
Hegbloom, James M
Hei, Darren
Heidt, Kristopher M
Heidt, Michael K
Heinrich, Leon
Heimann, Mark
Hendzel, Paul
Hinkelmann, Stephan
Hinsz, Curtis
Hofmann, Fred J
Hogan, Rick
Holcomb, Jeremy
Holmquist, Darrick
Holzer, Michael
Hosley, Richard
Hood, Robert
Hood, Ronald
Houchin, George R
Houchin, George
Houn, Neal
House, Clint
Hunter, Jeffrey
Ibsis, Mario A.
Ives, Kyle
Jacobson, Jeremiah J
Jeffries, Tom
Jerome, Jared
Johnson, Allen
Johnson, Edwin
Jones, Lawrence
Jordan, John W
Kelly, Shawn
Kelly, William
Kensen, Kevin
Kinnick, Josh
Kinsey, Patrick L
Knapp, Anthony D
Knapp, Richard
Lamphere, Harold
Kostimaki, Dan
Kramer, Joseph
Kramer, Kyle
Lee, Tim
Lee, Vincent
Little, Mike
Lonn, Steven
Lortz, Darol
Ludwick, William
Lyon, Eugene G
Mann, Craig A
Mann, Rusty
Marek, Larry
Marek, Michael Sr.
Marker, Scott
Marquez, Wade
Markello, Chad T
Maupin, Larry
McBaine, Robert
McLain, Joseph
McCorkle, Buddy
McCorkle, Ryan A
McGillis, Dan
McGillivray, Kevin
McNeil, Shanna
McNutt, Darren
Miller, Darrin
Miller, Mark
Mitchell, Dominick
Moe, Rick
Mooney, Wm. Casey
Moore, James A.
Munoz, Martin
Munyan, Mike
Murray, Matt
Murray, Jerry
Newell, Rick
Noble, Mark A
Norman, Rick
Nolo, Anthony P
Ohman, Jason
Orth, Friedrich
Otto, Drew
Pagel, David A.
Palmer, Brent W.
Pascoe, Nathan
Pascoe, Ron
Pehan, Raymond K
Peterson, Heath
Peterson, Larry
Peterson, Terry
Pettit, Howard
Pignotti, Dan
Pinhorz, Jerome P
Pinhorz, Joseph E
Potratz, Roger
Priest, Kevin J
Priest, Larry J
Radford, Stan
Reasor, Calvin
Richardson, Kevin
Rickett, William
Riley, Greg
Rollins, Randy
Rose, Kevin
Rowe, Bradley
Sala, Brad A
Sandberg, Martin
Sandau, Rock
Scales, Ryan
Scheel, Don
Scheel, Shane
Shiner, Cliff
Shipp, Gene
Shoyer, Larry
Shultz, Jaymee
Sleezer, Cody Martin
Smith, Danny
Stein, Darren
Steger, John
Stepro, Dale Jr.
Striker, James A
Stubbs, Shawn
Sullivan, Ron
Swope, Mark
Tenhonen, Jason
Tenhonen, Mike
Tester, Eric
Thomas, Josh A
Thompson, Andrew
Towne, John W
Turbak, Todd M
Travis, John
Uhl, Jonathon
Ulrich, Matthew
Valerio, Rick
Vickrey, Lee W
Waldo, Dean
Waldo, Brock
Walker, Phil
Wallace, Ryan
Walsh, William
Ward, Jim
Webb, Nolan
White, Richard
Wilburn, Larry
Williams, Matt
Young, Doug

UNITED STEELWORKERS
USW
Local 5114
Making the Silver Valley Prosperous

No comments