



Stibnite Mining District Cleanup Responsiveness Summary

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
SUPERFUND & EMERGENCY MANAGEMENT DIVISION
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

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From July 26 to August 25, 2021, the U.S. Environmental Protection Agency held a public comment period related to Stibnite Mine Site (site). The agency invited public review of the administrative record for upcoming cleanup actions at the site. This record includes documents which support an Action Memorandum for removal actions. The actions are to address some of the contamination at discrete areas of the site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA and U.S. Forest Service (USFS) issued the Action Memorandum on January 15, 2021.

EPA announced the public comment period several ways. EPA issued a fact sheet, updated its website, sent out an email to its site mailing list, and placed a display ad in the McCall Star News.

EPA received 11 comment submittals. This document summarizes the comments received and EPA's response to those comments.

COMMENT: Administrative Settlement Agreement and Order on Consent for Removal Actions, or ASAOC

Three commenters asserted that the ASAOC between the U.S. EPA, the USFS, and Perpetua Resources is a last-minute sweetheart deal between the Trump EPA and a major Perpetua stockholder. They said the deal is an attempt to fend off lawsuits for ongoing water pollution at the mine site. One of the commenters also said the deal is a vehicle for a public relations spin campaign by Perpetua. These commenters called on EPA to rescind the ASAOC to restore public trust.

One commenter further noted: "It is my contention that this ASAOC between the EPA, the Forest Service and Perpetua Resources constitutes an attempt to make an end run around the ongoing NEPA process. If I remember my NEPA instructions properly this is what is known as 'Fragmenting the Analysis' and is a definite no/no. I also feel that this proposed action is not in keeping with the 3Ts: Truth, Transparency and Trust, and is somewhat underhanded."

RESPONSE: Thank you for sharing your concerns about the ASAOC between EPA, the USFS (together, the Agencies), and Perpetua. EPA understands that a lawsuit was filed against Perpetua pursuant to the Clean Water Act (CWA) before the ASAOC's effective date of January 15, 2021. The work required under the Scope of Work (SOW) in the ASAOC will partially address contamination at discrete areas of the site. Although there are activities in the Action Memorandum that may have minimal overlap geographically with some of the areas outlined in the CWA lawsuit, the limited CERCLA actions under the ASAOC will not eliminate the major discharge sources alleged in the CWA lawsuit.

The actions selected in the Action Memorandum and incorporated into the SOW in the ASAOC will be performed by Perpetua under the Agencies' CERCLA oversight prior to implementation of any potential mining activities described in the draft National Environmental Policy Act (NEPA) Modified Plan of Restoration and Operations 2 (modPRO2), which is Perpetua's plan for mining.

The modPRO2 has not been approved by the USFS and Perpetua has not received the necessary authorizations and permits to begin mining. The USFS is developing an Environmental Impact Statement under NEPA in order to review impacts of the modPRO2 before it makes decisions regarding the modPRO2. The response actions selected in the Action Memorandum for Phase I of the SOW do not affect the USFS' obligation to conduct the ongoing NEPA process for the modPRO2 since the actions are not included in the draft modPRO2.

COMMENT: Time sensitivity

Another commenter questioned “whether the actions proposed in the Action Memorandum are truly time-sensitive.” The commenter asks, “How were these particular removal actions chosen as being time-sensitive from a host of remediation needs out there? ... The chosen actions certainly do not address the major existing arsenic loading sources to the East Fork South Fork Salmon River.... Since these actions were determined to be time-sensitive, why hasn't any work commenced on-site yet?” The commenter notes that perhaps “EPA has made a determination that less than six months exists before on-site removal activity must begin. Presumably that means within six months of the date of signing of the Action Memorandum. Given that the memo was signed on January 15, 2021, the six month deadline of July 15, 2021 is long past.”

RESPONSE: EPA recognizes that the Stibnite Mining area has longstanding environmental problems, and many actions could have been chosen for Perpetua to perform as removal actions. The removal actions selected in the Action Memorandum were selected to address existing environmental issues in areas that would not be disturbed by mining if Perpetua were to obtain the necessary authorizations and permits to begin mining. These actions were selected to be completed as time-critical removal actions because field activities could be initiated within six months of the effective date of the Action Memorandum and the following factors from the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) apply to the Site:

- High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate to surface water;
- Actual or potential contamination of drinking water supplies or sensitive ecosystems; and,
- Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants, or contaminants.

The time-critical removal action commenced on June 1, 2021.

COMMENT: Support for remedial action; time sensitivity

One commenter noted, “I support remedial action at this site, but the selection of these removal actions and the determination of financial assurance seems to be inordinately influenced by political maneuvering. I'd really like to see some supporting scientific evidence for the prioritization of these actions as time-sensitive, and how they will ultimately contribute to any anticipated long-term remedial actions that will obviously be required.”

RESPONSE: See previous response related to prioritization of the removal actions as time-sensitive.

Regarding how the removal actions will ultimately contribute to any anticipated long-term remedial actions, EPA recognizes that water quality impacts will remain after completion of the removal actions. In selecting response actions, EPA's choices to conduct removal actions were limited by the potential for such actions to be impacted by mining, if mining were to be authorized and permits were obtained.

The benefit of the removal actions selected in the Action Memorandum and required in the SOW will not be significantly disturbed by potential mining activities.

Although the planned activities will remove only a small fraction of the waste present at the site resulting in limited environmental improvements, these removal actions do not preclude future remedial actions that would continue to expand on progress made by the removal actions. EPA retains its authority to enter into future orders on consent or to compel cleanup by Perpetua or any other future viable potentially responsible party (PRP). Perpetua remains liable for existing contamination not addressed in Phase 1 of the ASAOC. The site will remain proposed on the National Priorities List until risks related to Site contaminants are addressed.

The amount of financial assurance does not limit Perpetua's obligation under the ASAOC to fully fund and perform Phase 1 of the SOW, regardless of cost.

COMMENT: Lower Meadow Creek Valley Tailings Removal Project

How has the integrity of the Canadian Superior leach pad liner been confirmed? Are there time series water quality data for cyanide or metals from any groundwater monitoring wells nearby that support this contention? It is unclear whether there will be additional modifications to the existing liner system. If so, will it meet current CERCLA and State regulatory standards for permanent repositories?

RESPONSE: The integrity of the former Canadian Superior leach pad liner system is not known and is very difficult to determine because of the presence of 14-21 feet of spent ore that is currently in place on top of the former heap leach pads. Therefore, investigations are planned to determine the suitability of the repository design for protective, permanent disposal of waste rock and tailings removed from the Bradley Man Camps and Lower Meadow Creek. These investigations and evaluations include:

1. Physical investigation to understand the current configuration of piping draining the former heap leach pads. The physical investigation will include excavation of test pits and possibly dye tracers.
2. Collection of samples representative of planned repository configuration and the subsurface beneath the liner (i.e., the waste rock and tailings that will be consolidated in the repository, current spent ore that is present on top of the former heap pad liner system, water that is currently discharging from the heap leach area, the subsurface below the existing liner system and the groundwater upgradient, downgradient, and beneath the former heap leach pad liner system). Analyses will include metals, cyanide, acid generating potential, leaching tests of the solid media, as well as geotechnical data on the hydraulic conductivity and other soil moisture properties of the solid materials. Groundwater and surface water will be monitored quarterly for metals and cyanide.
3. Implementation of geochemical and infiltration modeling to estimate potential leachate quality and quantity that may infiltrate through the repository.

Using this information, the design of the repository will be optimized as needed, to manage potential leachate generation and protect groundwater and surface water. This information will aid in determining if leachate collection and treatment is needed and, if so, will assist with the design of those systems. The geochemical and infiltration modeling will also assist with the design of a long-term cover that will minimize infiltration of precipitation into the waste. Finally, a groundwater monitoring program is in development to monitor groundwater quality upgradient and downgradient of the repository for at least 30 years.

COMMENT: NW Bradley Dump Stream Waste Material Removal and Slope Stabilization

There are no requirements given for permanent storage of this material. Why is it not being placed in a permanent repository like the Bradley Man Camp dump material?

RESPONSE: The NW Bradley Dump Stream Waste materials are being placed in an upland location on top of the NW Bradley Dump, rather than in a repository, because the disposal location contains similar material of similar origin. The selected location provides the greatest separation from groundwater available in the vicinity of the removal, and the materials are not expected to contribute to groundwater contamination already observed in the NW Bradley Dumps.

After the materials are placed “high and dry” on the dumps, the slope of the dumps will be stabilized to prevent ongoing erosion into the East Fork of the South Fork of the Salmon River (EFSRSF) and improve river habitat.

COMMENT: Adit Study

Please justify the need for more water quality data. Ample data already exists.... Will the geotechnical investigations include underground study of groundwater inflows and routing to locate bulkhead placement or other permanent closure structures? More importantly, why is there no requirement to capture and treat the current discharges? ... There are plenty of remediation options that could be employed immediately for water treatment.

RESPONSE: Baseline water quality and quantity data must be acquired prior to any mining that may occur, as groundwater changes associated with mining activities may affect adits’ discharge quantity and water quality, and thus pre-mining baseline data is most likely to reflect permanent conditions that will exist after any mining is complete. The baseline water quality and quantity data collected in Phase 1 of the ASAOC SOW will be used to design the appropriate long-term remedy for the adit discharges that may be developed in Optional Phase 2 of the ASAOC SOW.

The “ample data” referred to in this comment was collected under a non-CERCLA program, and thus assurance is needed that CERCLA-quality data informs the Engineering Evaluation / Cost Analysis (EE/CA) and any CERCLA Non-Time Critical Removal Actions (NCRAs) conducted under Optional Phase 2. Upon initiation of the ASAOC, Perpetua provided the Agencies with the Quality Assurance Project Plan (QAPP) that was used to define sample collection and analysis for the data collected prior to the CERCLA action. The Agencies reviewed this “pre-CERCLA” QAPP and found it contained the necessary elements to produce CERCLA-quality data for all data collected except for mercury sampling protocols. Thus, the historical data, except mercury, will be considered in the historical baseline evaluation. Perpetua is continuing to collect surface water quality and quantity data from the five adits listed in the ASAOC under the CERCLA action to further inform the range of baseline conditions created by seasonal and inter-year variability.

Of the five adits detailed in the ASAOC SOW, one is in poor condition (the Bailey Tunnel) and the other four are collapsed with no obvious portal remaining. Baseline geotechnical data gathered during the adit study will focus on understanding if water is pooled behind collapsed openings, evaluating the geotechnical stability of the portal and the adjacent land surface, and collecting other data necessary to identify remedial action options that would be evaluated in the EE/CA conducted under Optional Phase 2 of the SOW.

EPA agrees that conducting studies with no commitment by Perpetua to perform the work is problematic. There is no requirement to capture and treat adit discharges because Perpetua would not agree to perform that work in Phase 1 of the SOW. At the completion of the work outlined in the Action

Memorandum and incorporated into the SOW, EPA will evaluate options for obtaining further work, including relying on EPA's enforcement mechanisms if necessary.

COMMENT: Support for starting Perpetua cleanup

One commenter noted, "I find it discouraging that after five years of reviews, studies, applications, and comment periods, Perpetua has not yet been allowed to move the first shovel full of dirt. Here we have a company that is working hard to remediate a thoroughly messed up piece of real estate, at no expense to the taxpayers. It should be noted that since mining operations ceased over sixty years ago, neither government at any level, nor the Nez Perce Tribe, nor any of the many "environmental" organizations now attempting to halt the project, have made any material effort to clean the site up themselves. Perpetua has thus far been willing to jump through all manner of bureaucratic hoops for the opportunity to right a historic wrong, boost the local economy, and lessen our nation's dependence on foreign sources of antimony. I respectfully suggest that you allow them to get started."

RESPONSE: Thank you for your comment. The Superfund statute was designed to place the cost of remediation on private entities that are potentially liable rather than on the taxpayers. Perpetua will begin construction activities for the time-critical removal action during the 2022 field season.

COMMENT: Support for Perpetua leading the cleanup

One commenter noted, "Over the last 10 years, the people at Perpetua have been active members of our community, providing assistance, hosting community events and offering financial support for infrastructure and public improvements. If there's one thing I can confidently say, its that the Perpetua miners actually care about the environment and cleaning up Stibnite, as well as bringing economic opportunity to Idaho. I understand that their partnership with the EPA was necessary in order to begin cleanup, but I urge you to let them lead the work; they know how to work safely in these mountains, have the trust of the community and have excellent technical people on the staff. Once you've gotten to know them as long as we have, I'm sure you'll feel the same way. Please stand back and let them lead the cleanup work."

RESPONSE: Thank you for your comment. Under the ASAOC, Perpetua is conducting the work under EPA and USFS oversight.

COMMENT: Support for Midas/Perpetua cleanup

A long-time Yellow Pine resident commented that "work undertaken by Midas/Perpetua is more comprehensive than what has been done in the past. None of the past cleanup actions really moved much waste away from the river. The EPA memorandum document indicates that the government cleanup actions moved 400 yards of waste in 2002 and 35,000 yards in 2004. This is not anywhere near the scale of the 325,000 tons that Perpetua is going to move. We applaud the environmental consciousness displayed by Perpetua for undertaking the project. However, these efforts are not sufficient to clean up the Stibnite area. Your website shows the cleanup progress at Stibnite with a remedial investigation started in 2002 and all subsequent cleanup listed as 'Not Yet Achieved'. Given that there has been no progress in 20 years, the only way that Stibnite is going to be cleaned up is if Perpetua is permitted to build and operate the mine and clean up the mess left behind by the federal government. Please work within your agency to permit the Stibnite Mine so we can get on with the real cleanup with the cooperation and support of the EPA."

RESPONSE: Thank you for your comment. EPA, USFS, and Perpetua are working together to conduct the cleanup under CERCLA as described in the Action Memorandum. Permitting activities are being conducted under NEPA and are outside the authority of the Superfund program.

COMMENT: Interest in Perpetua cleanup; concern about waste hauling

One local resident and business owner noted, “I am very interested in Perpetua’s proposal to clean up the Stibnite Area. I think that is a good trade off for the proposed mine. I do have a great concern for the waste that has been left behind by previous mining which has not been cleaned up and would cost us tax payers a great deal to address properly.... Perpetua proposes to bypass Yellow Pine by having the employees live on site and an alternate route to get to the mine which I heartily agree with. My big concern is the dangerous waste which I believe threatens our town.”

RESPONSE: Thank you for your comment. The CERCLA removal actions are intended to remove and permanently dispose of 325,000 tons of waste. Perpetua is responsible for ensuring the geotechnical stability of mine waste placement within the repository and that the repository is designed to standards that could constitute a permanent disposal location for the waste materials, if they do not proceed to later phases of the SOW or conduct mining. At the NW Bradley Dumps, Perpetua is required to create stable slopes after waste placement to prevent erosion into the EFSFSR. The remaining waste may be addressed through later phases of the ASAOC, which are not part of the Phase 1 work described in the Action Memorandum.

COMMENT: Concern about waste hauling

Another resident of Yellow Pine also expressed concern about waste hauling: “I am concerned about hazardous wastes being hauled out of the Stibnite site and through our town. Haulage traffic through the town and along the rivers poses a significant risk to our natural resources in the event of a spill. Whatever sort of hazmat may be found up in Stibnite should remain on site instead of being trucked through our town.”

RESPONSE: Thank you for your comment. The response above partially answers your concerns. Please know that safety is a top concern and priority for EPA. None of the removal actions being conducted will result in haulage traffic through town or transport of hazardous materials off-site. All removal actions involving excavation of waste rock or tailings near the EFSFSR will be conducted on site and include best management practices to minimize erosion or suspension of sediment, prevent stormwater runoff, and protect fish habitat.

The following comments are summarized from correspondence from the Nez Perce Tribe.

COMMENT: EPA provides inadequate information in the Action Memorandum and Administrative Record to support the removal actions. The Administrative Record does not contain the Tribe’s Remedial Action alternative for the Draft Environmental Impact Statement, the Tribe’s comments highlighting why EPA should adopt that alternative, or any documentation reflecting that the agency even considered that information. The Tribe requests that the above information be included in the Administrative Record. The Tribe is also surprised and disappointed to see that the Administrative Record omits comments or correspondence by the USFS, state agencies, other concerned organizations, or any documentation concerning EPA’s and Perpetua Resources’ discussions and other activities leading to the cleanup approach.

RESPONSE: EPA received the letter from the Nez Perce Tribe dated November 5, 2020 requesting a comprehensive sitewide approach to the Stibnite Mining District. This included a Remedial Action Plan. EPA determined that the cleanup would include discrete time critical removal actions which were summarized in the Action Memorandum and were included in the SOW attached to the ASAOC. *The Nez Perce Tribe’s November 5, 2020 letter will be added to the Administrative Record.*

The selection of source areas outlined in the first draft of the SOW was based on the Early Action Candidate Sites analysis. The stream diversions in the first draft of the SOW were selected from a Midas 2020 report (Meyer, 2020) and were carried forward into the final SOW. *These documents will be added to the Administrative Record.*

COMMENT: The ASAOC Phase 1 removal actions are woefully inadequate, and there is insufficient justification in the Action Memorandum or Administrative Record supporting those actions. The TCRA avoids altogether the Yellow Pine Pit, which constitutes a major source of contamination at the site. The removal actions outlined in Phase 2 and 3 of the ASAOC are wholly optional and dependent on Perpetua Resources being permitted to re-mine the site. EPA needs to provide the Tribe and the public with information detailing the percent of releases that work completed under the TCRA will actually address, the specific estimated cost for each of the removal actions in the TCRA, the specific water quality improvements the removal actions will result in, and the other alternatives that were considered but not adopted.

RESPONSE: EPA expects water quality improvements to be de minimis. The Yellow Pine Pit was not included because the draft modPRO2 proposes mining and expanding the pit. EPA selected actions that would not be disturbed by potential future mining activities if the mine plan were approved and the necessary permits were obtained.

EPA typically does not identify estimated costs for PRP-led projects in the Action Memorandum. This approach avoids the estimated costs being interpreted as a cost cap by PRPs.

With respect to the request for information detailing the percent of releases that work completed under the TCRA will actually address, EPA does not have reliable estimates on the volume of mine waste at the mine site. Waste volumes may range from 20-30 million cubic yards.

COMMENT: The Action Memorandum and Administrative Record provide no information reflecting that EPA considered or addressed the Tribe's Treaty-reserved rights. EPA needs to disclose in the record any non-privileged communications or other information reflecting its consideration of the Tribe's Treaty-reserved rights in the context of the TCRA and ASAOC. If none exists, it must say so.

RESPONSE: EPA received letters from the Nez Perce Tribe dated November 5, 2020, November 27, 2020, December 18, 2020, and January 14, 2021, regarding the Stibnite Mining District ASAOC and SOW. Some of the letters discussed the Tribe's treaty-reserved rights. EPA also received letters from the Shoshone-Bannock Tribes dated November 6, 2020, and January 7, 2020, regarding the Stibnite Mining District ASAOC and SOW. EPA determined that the cleanup would include the discrete time critical removal actions that were included in the Action Memorandum. *These letters will be added to the Administrative Record.*

COMMENT: EPA provides inadequate justification in the Action Memorandum or Administrative Record that the removal actions are time critical. If this is, in fact, a TCRA, then on-site removal activities must be initiated within 60-days of the date of the execution of the ASAOC, or by July 15, 2021. EPA therefore needs to provide an accounting of any Phase 1 work performed between January 15, 2021, and July 15, 2021, at the site.

RESPONSE: The time-critical removal action commenced on June 1, 2021. Response actions completed to date include finalizing work plans for the Bradley Man Camp Dumps, Lower Meadow Creek, and Stream Diversions; finalizing the Site Characterization Report; and finalizing the Wetland Assessment Work Plan.

COMMENT: EPA provides inadequate information explaining the dramatic reduction in Perpetua Resource’s financial assurance. EPA reduced Perpetua Resource’s financial assurance from \$16.6 million in the October 2020 draft ASAOC to \$7.5 million in the final ASAOC. The Action Memorandum and Administrative Record also provide no analysis or calculations supporting EPA’s determination that \$7.5 million would be sufficient for the agency to complete the ASAOC’s work. EPA needs to provide this important information, including any communications between EPA and Perpetua Resources, that would assist the Tribe and the public with understanding the rationale for decreasing the financial assurance so substantially between the draft and final ASAOC.

RESPONSE: The amount of financial assurance does not limit Perpetua’s obligation under the ASAOC to fully fund and perform Phase 1 of the SOW, regardless of cost.

COMMENT: EPA has an obligation to take appropriate action regarding the unaddressed releases. The Tribe requests that EPA immediately adopt a plan to “ensure an orderly transition from removal to remedial response activities” (40 C.F.R. § 300.415(g)) at the Stibnite Site. In the meantime, the Tribe requests that EPA take all appropriate action, including enforcement action, to ensure that the contaminants not covered under the TCRA or ASAOC are addressed in full compliance with the CWA, CERCLA, and other applicable federal laws and regulations.

RESPONSE: EPA does not currently have plans for long-term remedial actions; however, the removal actions do not preclude future remedial actions that would continue to expand on the incremental/limited environmental improvements made by the removal actions. EPA retains its authority to enter into future orders on consent or to compel cleanup by Perpetua or any other future viable PRP. The site will remain proposed on the National Priorities List until risks related to site contaminants are addressed.

EPA does not comment on potential enforcement actions but encourages the Tribe to share with the Agency any information it may have regarding potential violations of federal environmental laws and regulations.

The following comments are from a single letter submitted on behalf of five conservation organizations. The letter contains 8 main points and supporting material. Each point, plus the letter’s closing statement, is noted as a comment below.

COMMENT: EPA has failed to document the basis for applying “time critical” to the Phase 1 removal actions, and failed to provide an opportunity for pre-decisional public comment.

RESPONSE: The removal actions selected in the Action Memorandum were selected to address contamination in discrete areas of the Site that would not be disturbed if Perpetua’s mine plan were approved and it obtained all necessary permits for mining. These actions were selected to be completed as time-critical removal actions because field activities could be initiated within 6 months of the effective date of the Action Memorandum and the following factors from the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) apply to the site:

- High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate to surface waters;
- Actual or potential contamination of drinking water supplies or sensitive ecosystems; and,
- Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants, or contaminants.

The time-critical removal action commenced on June 1, 2021.

EPA understands there was significant public interest in the decision to enter into an agreement with Perpetua. The NCP requires EPA to publish notice of availability of the Administrative Record for time-critical removal actions within 60 days of initiation of site activities, and provide opportunity for public comment, as appropriate. EPA's public involvement regarding the Action Memorandum is consistent with the NCP requirements.

COMMENT: Even if EPA properly identified phase 1 as "time-critical," EPA failed to establish that the removal actions "contribute to the efficient performance of any anticipated long-term remedial actions with respect to the release concerned."

RESPONSE: Although we are removing a small fraction of the waste present at the site, the removal actions do not preclude future remedial actions that would continue to expand on progress made by the removal actions. EPA retains its authority to enter into future orders on consent or to compel cleanup by Perpetua or any other future viable potentially responsible party (PRP). The site will remain proposed on the National Priorities List until risks related to site contaminants are addressed.

COMMENT: The removal actions are entirely inadequate, and the Administrative Record fails to provide data or analysis to demonstrate why these removal actions were selected or whether these removal actions will be effective in providing water quality benefits.

RESPONSE: The removal action at the Bradley Man Camp Dumps is expected to fully address the contamination in the area, which will reduce loading of contaminants of concern (COCs) from this area. The Lower Meadow Creek Tailings removal will remove tailings from the banks of the river and reconstruct the river with natural channel morphology. The NW Bradley Dumps will remove waste rock from the stream banks and stabilize the banks, which are currently at the angle of repose, from future erosion. The stream diversions will create lined channels that will prevent clean water from infiltrating into waste rock and transporting site COCs, thereby keeping clean water clean. The removal actions are consistent with remedies selected at other sites for managing water and mine waste. Any improvements to water quality are expected to be localized, but minimal at the downstream end of the EFSFSR at the site.

COMMENT: The Adit studies are inadequate to understand the most appropriate removal action.

RESPONSE: The objective of the adit study is to conduct baseline studies of mine influenced water at Bailey Tunnel, Defense Minerals Exploration Administration (DMEA) Waste Rock Dump Adit, Bonanza Adit, Cinnabar Tunnel, and Meadow Creek Adit. The study will include water quality and volumetric flow data of the adit discharges, soil/sediment data, assessment of the physical characteristics, including the surrounding geology and geotechnical characteristics of the adits. The study will result in an Adit Removal Action Area Characterization Report and a Removal Alternatives Analysis Report for the Adits.

COMMENT: The EPA has reduced the financial assurance for the removal action, without disclosing the appropriate data and analysis to support that reduction.

RESPONSE: The amount of financial assurance does not limit Perpetua's obligation under the ASAOC to fully fund and perform Phase 1 of the SOW, regardless of cost.

COMMENT: The estimated costs are not included in the Action Memorandum.

RESPONSE: EPA typically does not identify estimated costs for PRP-led projects in the Action Memorandum. This approach avoids the estimated costs being interpreted as a cost cap by PRPs.

COMMENT: The EPA should make clear the hazardous releases and/or contamination covered under the ASAOC, and those which are not covered by the ASAOC.

RESPONSE: The hazardous releases and/or contamination selected in the Action Memorandum and incorporated into and included in the ASAOC are described in the SOW and its associated figures (specifically, figure 1 and section 2.2). The removal actions described in the Action Memorandum cover Phase 1 of the SOW. This work includes:

- Stream diversions to divert clean, upgradient surface water around three historic mining features: NW Bradley Dumps / Hennessy Creek, the DMEA Waste Rock Dump, and Smelter Flats / Hangar Flats;
- Removal of 25,000 tons of tailings in the Lower Meadow Creek Valley upstream of the EFSFSR Box Culvert and downstream of the confluence between Meadow Creek and the EFSFSR;
- Removal of 200,000 tons of waste material at the Bradley Man Camp Dumps from streambanks and/or floodplains along the east side of the EFSFSR and construction of a repository on top of the former Canadian Superior on/off leach pads;
- Removal of 100,000 tons (of the approximately 2 million tons) and bank stabilization of waste material at the NW Bradley Dumps adjacent to the EFSFSR; and,
- A baseline study of the Bailey Tunnel Adit, Meadow Creek Mine Adit, Cinnabar Tunnel Adit, DMEA Adit, and the Bonanza Adit.

Unless and until Perpetua Resources requests to conduct later phases of work described in the SOW, and the Agencies approve the request, the ASAOC only covers the work conducted under Phase 1 of the SOW. Other source areas (e.g., yellow pine pit, hangar flats, etc.) are areas that may be addressed under the mining plan and are not included under this Phase 1 ASAOC.

COMMENT: The EPA and USFS have inappropriately intertwined Perpetua's proposed removal actions with its plans for new, vastly larger, and unpermitted mining activities at the site.

RESPONSE: The actions selected in the Action Memorandum and incorporated into the SOW in the ASAOC will be performed by Perpetua under the Agencies' CERCLA oversight prior to implementation of any potential mining activities described in the draft NEPA modPRO2, which is Perpetua's plan for mining. The modPRO2 has not been approved by the USFS and Perpetua has not received the necessary authorizations and permits to begin mining. The USFS is developing an Environmental Impact Statement under NEPA in order to review impacts of modPRO2 before it makes decisions regarding modPRO2. The response actions selected in the Action Memorandum for Phase I of the SOW do not affect the USFS' obligation to conduct the ongoing NEPA process for the modPRO2 since the actions are not included in the draft modPRO2.

EPA did not want CERCLA actions to be disrupted by potential mining activities and EPA did not want oversight of CERCLA removal actions to be intertwined with other agencies' regulatory authority over potential mining activities.

There are two removal action locations that may overlap with geographic areas of proposed mining activities: the repository being constructed over the On/Off leach pads and the southern extent of the NW Bradley Dumps removal. The On/Off repository will be constructed to standards that could constitute a permanent disposal location for the waste materials. Therefore, the Agencies believe that despite the potential for the repository to be removed, it will be protective in both the short and long term, and is unrelated to mining.

The southern extent of the NW Bradley Dumps removal may intersect with a potential expansion of the Yellow Pine Pit; however, the plans for the Yellow Pine Pit remain in draft and may change. In addition, had EPA moved the removal footprint downstream to avoid overlap with a potential pit expansion, the action could have destabilized the upper lifts of the NW Bradley Dumps, exacerbating the erosion risks from the dumps. The Agencies believe the removal of the NW Bradley Dumps is important for improving stream habitat in the EFSFSR.

COMMENT: We urge the EPA and USFS to rescind the ASAOC and Action Memorandum, and initiate a comprehensive clean-up plan for the Stibnite Mining District legacy pollution, with a remedial investigation/feasibility study and advance public review. Alternatively, if EPA insists on proceeding with this limited “time critical removal action,” it must demonstrate that the removal action contributes to the efficient performance of any anticipated long-term remedial actions in the Stibnite Mining District and begin as soon as possible to eliminate the threat to public health and welfare.

RESPONSE: EPA does not intend to rescind the ASAOC and Action Memorandum at this time. EPA does not currently have plans for long-term remedial actions; however, the removal actions do not preclude future remedial actions that would continue to expand on progress made by the removal actions. EPA retains its authority to enter into future orders on consent or to compel cleanup by Perpetua or any other future viable PRP. The site will remain proposed on the National Priorities List until risks related to Site contaminants are addressed.

References:

Meyer, J., 2020. Proposed Early Actions – Midas Gold Stibnite Mine Site. Memorandum. January 23.