



February 8, 2021

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Re: Administrative Settlement Agreement and Order on Consent, CERCLA Docket No. 10-2021-0034

It has come to our attention that the U.S. Forest Service and the U.S. Environmental Protection Agency signed an Administrative Settlement Agreement and Order on Consent (ASAOC) on January 15, 2021 with Midas Gold Corp. and its subsidiaries for removal actions at the Stibnite Mining District in Idaho.

The removal actions involve activities on Forest Service lands and constitute a major federal action that may significantly affect the quality of the human environment. The removal actions are also a component of a highly controversial proposal by Midas Gold Corp., a Canadian-based mining company, to undertake new, and vastly larger, mining activities on federal public lands in the Payette National Forest.

The undersigned organizations, which represent local, state, and national conservation organizations with decades of experience working on public lands, mining and water quality issues in Idaho, object to the following actions with respect to the ASAOC:

1. The EPA and Forest Service failed to provide an opportunity for pre-decisional public comment on the proposed removal actions.

The ASAOC was signed by the EPA and Forest Service in the last days of the Trump Administration without opportunity for public review and comment, despite extensive public interest.

The removal actions identified in Phase 1 are being implemented as a Time Critical Removal Action. While we certainly agree that there is extensive contamination at the mine site, the water quality impacts that the removal action proposes to partially address have been ongoing for decades. A time critical removal action is typically in response to an imminent threat, where the lead agency has determined that a removal action is necessary and that the action must be initiated within 6 months of the determination. It's inappropriate to consider "time critical" removal as a rationale for circumventing public engagement, when the EPA, Forest Service and Midas Gold have been in discussions over these issues for three years, and the problem has been well documented as "decades" old pollution.¹

2. The removal actions outlined in the ASAOC are entirely inadequate.

The removal actions identified in the ASAOC are inadequate to address the contamination issues at the site. The primary source of contamination – the Yellow Pine Pit – is not addressed. One of the few actual requirements, which would remove 325,000 tons of toxic mine waste, accounts for only 2-3% of the 10-15 million tons of legacy mine waste on the site. Under the agreement, the contaminated waste isn't being isolated from the environment; simply moved to another location on site. The removal actions identified in Phase 2 and 3 are entirely optional and dependent on future mining approval.² Furthermore, the ASAOC fails to provide sufficient data or analysis to evaluate or predict the effectiveness of the proposed removal actions at remediating water quality issues at the site.

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

We understand that the EPA reduced Midas Gold's financial assurance for the proposed removal actions from \$16.6 million in the October 2020 draft of the ASAOC to \$7.5 million in the final ASAOC signed on January 15, 2021.³ It also appears that Midas Gold's status as a "start-up" company and the company's financial condition was potentially a factor in this consideration.⁴ Midas Gold should not be getting favorable treatment from EPA. Financial assurance should be particularly robust for a company like Midas Gold with no prior experience in mining.

EPA also failed to publicly disclose the financial assurance calculations to demonstrate that the reduced financial assurance amount is adequate to complete the ASAOC work. We are particularly troubled by this lack in transparency, given EPA's frequent urging of other agencies to provide financial assurance calculations for public review during the NEPA process.

¹ <https://midasgoldcorp.com/investors/news/2021/midas-gold-reaches-agreement-to-begin-environmental-restoration-at-abandoned-mine-site-and-announces-relocation-to-united-states/>

² ASAOC, p. 1, "The Work in the subsequent Bridge Phase, Phase 2 and Phase 3 are not required under the ASAOC until the Respondents elect to do that Work as provided in the ASAOC and the Agencies agree to the performance of the Work by Respondents." See ASAOC p. 2, Respondents assert that the restoration and water quality benefits envisioned under Respondent MGII's PRO are contingent on Respondent MGII's ability to secure the necessary permits and operate a mine in the Stibnite Mining District.

³ Nez Perce Tribal Executive Committee, Response to January 12, 2021, Government -to-Government Consultation with EPA Regarding the Draft ASAOC for the Stibnite Mine Site, January 14, 2021.

⁴ *Id.*

4. The EPA and Forest Service have inappropriately intertwined Midas Gold’s proposed removal actions with its plans for new, vastly larger, and unpermitted mining activities at the site.

Most of the cleanup actions identified in the ASAOC (phase 2 and 3) are contingent on the approval of the company’s new plans for mining at Stibnite, creating an inappropriate incentive for the EPA and Forest Service to permit the Stibnite Gold Project, with the ostensible goal for “restoration” of the area. Yet, the ASAOC mischaracterizes Midas Gold’s plan of operations - the Stibnite Gold Project - as “restoration,”⁵ and infers that “redevelopment” of the Stibnite Mining District is the most beneficial outcome. The proposed mine plan will not result in “restoration” of the site, and should not be characterized as such. The proposed plan of operations will result in a substantially greater disturbance footprint than the original legacy pollution.⁶ The Draft Environmental Impact Statement (DEIS) predicts significant and lasting harm to the environment from the proposed mine plan (Alternative 2), including:

- the direct loss of or injury of 100,000 fish⁷ and the net loss of up to 26% of critical habitat for Chinook Salmon and 28-70% of critical habitat for Bull Trout, even with mitigation;⁸
- a significant increase in water temperature, with temperature criteria violations predicted downstream of the project for several decades post-closure;
- post-closure, long term contamination of groundwater of unknown extent due to Yellow Pine pit backfill;⁹
- groundwater pollution below the Hangar Flats and West End DRSFs [Development Rock Storage Facilities];
- the generation of contaminated mine water that will require active water treatment in perpetuity, and inadequate analysis to determine the effectiveness of passive and active water treatment to mitigate water quality impacts;¹⁰
- the use of the existing historical mine waste to build new waste facilities – spreading mine contamination across the site, with unknown effects;¹¹
- the generation of 32 pounds of mercury emissions per year, with inadequate analysis to determine impacts.¹²

Please see the attached letter from EPA Region 10, which articulates its ongoing “significant concern regarding potential impacts to water quality and aquatic resources.” Even if it were appropriate to intertwine the two process (permitting and remediation), the proposed removal

⁵ See ASAOC, p. 1, “Respondents intend to simultaneously mine and engage in environmental restoration of the Site to improve water quality and address other historic contamination left behind by former operators.” See ASAOC p. 3, “This ASAOC establishes the framework to address certain areas in the Stibnite Mining District through an iterative, phased restoration approach, ...”

⁶ USDA Forest Service, Stibnite Gold Project, Draft Environmental Impact Statement, August 2020.

⁷ *Id.* Table 4.12-2b

⁸ *Id.* P. 4.12-69.

⁹ U.S. Environmental Protection Agency, Letter to Linda Jackson, Payette National Forest Supervisor, Comments on Stibnite Gold Project Draft EIS, November 18, 2020.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

actions fall far short of the robust, comprehensive clean-up plan repeatedly promised by Midas Gold. The ASAOC, with its lack of public review and inadequate analysis, is particularly inappropriate, given Midas Gold's inexperience with mining and its entire financial reliance on future mining activities. According to the ASAOC,

“Midas Gold has no current mining operations and are presently funded entirely by investor capital that has been raised only through the prospect of future mining. Midas Gold will not have ongoing operating revenue unless they are able to commence future mining operations in the Stibnite Mining District.”

The Stibnite Mining District is located at the headwaters of the Salmon River, an iconic and economically important watershed with salmon and steelhead fisheries of local, state and national interest. It's also the traditional lands of indigenous peoples, who have relied on these resources for a millennium. Activities within this watershed – even proposed remediation activities – must undergo rigorous scrutiny and be subject to public review, particularly those proposed by a mining company with no history of mining and no source of ongoing operating revenue.

The ASAOC appears to be a politically driven action by the Trump Administration to facilitate Midas Gold's Stibnite Gold Proposal, rather than a legitimate effort to provide comprehensive clean-up.

We urge the EPA and Forest Service to rescind the ASAOC, and initiate a comprehensive clean-up plan for the Stibnite Mining District legacy pollution, subject to public review.

Sincerely,



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